www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

Women of the World:

Laws and Policies Affecting Their Reproductive Lives

East Central Europe

Edited by The Center for Reproductive Law and Policy

WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES

Published by:

The Center for Reproductive Law and Policy
120 Wall Street
New York, NY 10005
U.S.A.

1-890671-06-1
1-890671-00-2

Acknowledgments

This report was coordinated by Mindy Jane Roseman, International Program Staff Attorney for East Central Europe of the Center for Reproductive Law and Policy (CRLP).

Research and preliminary drafting of the corresponding country chapters were undertaken by the following individuals and their organizations: Manuela Bello, Vjollca Meçaj, Valentina Leskaj, all with Albanian Family Planning Association (Albania); Gordana Lukac-Koritnik, Radmilla Sucevic, Nevenka Sudar, all with B.a.B.e. (Croatia); Judit Wirth, with NaNE! (Hungary); Paulius Bindokas, Milda Trakimiene, Asta Satkauskaite, and Esmeralda Kuliesyte with the Lithuanian Family Planning and Sexual Education Association (Lithuania); Monica Tajak, Wanda Nowicka, both with the Federation of Women and Family Planning (Poland); Flora Bocioc, Doina Dimitriu, Laura Grünberg, all with AnA: Society for Feminist Analyses (Romania); Elena Dmitriyeva with the Open Dialogue on Reproductive Rights (Russia).

Each chapter was peer reviewed by lawyers and experts from their respective countries. They are: Barjam Meidia (Albania); Jerina Malesevic (Croatia); Judit Sandor (Hungary); Linas Sesickas (Lithuania); Eleonora Zielinska (Poland); Romaniţa Iordache and Mihaela Poenariu (Romania), and Olga Khazova (Russia).

The final report was edited by Mindy Jane Roseman for CRLP. Mihaela Şerban Rosen, a consulting attorney, contributed her invaluable technical and editorial assistance. Deborah Gesensway also provided editorial guidance. Enkelea Gjoleka and Paulina Gruszczynski capably translated documents from Albanian and Polish, respectively, as did Danka Rapic from Croatian.

The following people at CRLP also contributed to the various steps in the coordination and production of this report. Anika Rahman reviewed and helped edit portions of the report. Katherine Tell coordinated the pre-research meeting in preparation for this report; Danka Rapic and Alina Sternberg undertook the seemingly endless task of physically producing the text of this report. With Alina Sternberg, Jill Molloy, Deborah Dudley and Barbara Becker helped shepherd the report into production. Shahrbanou Tadjbakhsh, Gender Adviser at UNDP Regional Bureau for Europe and the CIS-RBEC, graciously provided use of the cover photos.

CRLP would like to thank the following organizations for their generous support towards the completion of this report: the Gender, Population and Development Branch of the Technical and Evaluation Division of the United Nations Population Fund, and the William and Flora Hewlett Foundation.

Design: © Emerson, Wajdowicz Sudios, New York, N.Y.
Production: Mesa, New York, NY

Table of Contents

Foreword

I am extremely pleased to introduce *Women of the World: Laws and Policies Affecting Their Reproductive Lives, East Central Europe.* This book is a unique review of laws and policies relating to reproductive health and rights in East Central Europe. The dramatic political and economic transitions in this region have resulted in numerous laws and policies that shape women's health and reproductive lives. With this publication, we seek to present a snapshot view of such relevant laws and policies in East Central Europe and to identify the arenas in which changes to promote women's reproductive rights and health need to be made. Although most chapters of this book present specific national-level information, the conclusion focuses attention on regional trends in the field of reproductive health and rights.

Like other publications in our *Women of the World* series, this volume is the result of approximately eighteen months of collaboration between a number of women's rights organizations. Given the diversity of regional languages, it was difficult and cost ineffective for CRLP to work with only one regional coordinator. Rather, we choose to work closely with each national-level NGO and to enhance dialogue, wherever possible, among groups within this region. CRLP's goal has always been to ensure that our global *Women of the Women* series is authored by women's organizations. We continue to forge ahead to complete future reports on East and Southeast Asia, the Middle East and North Africa, and South Asia. We are also now in the process of updating some of the earlier reports — those covering Anglophone Africa and Latin America and the Caribbean — that were models for this body of work.

In undertaking legal and policy research, we seek to enhance knowledge regarding the range of formal laws and policies that affect the actions of billions of women and men around the globe. While there are many problems regarding the selective implementation of laws and policies, there is no doubt that laws and policies remain the primary means by which governments around the world express their values and priorities. By making information about laws widely available, we hope to promote worldwide legal and policy advocacy to advance reproductive health and the status of women. Our goal at CRLP is to secure women's reproductive rights as a step toward gender equality.

Anika Rahman
Director, International Program
The Center for Reproductive Law and Policy
August 2000

1. Introduction

Reproductive rights encompass a broad range of internationally recognized political, economic, social and cultural rights understood at both the individual and collective levels. They are critical to advancing women's human rights and for promoting national economic development. In recent years, nations have acknowledged and pledged to advance their citizens' reproductive rights to an unprecedented degree. Such governmental commitments — at major international conferences, such as the Fourth World Conference on Women (Beijing, 1995), the International Conference on Population and Development (Cairo, 1994), and the World Conference on Human Rights (Vienna, 1993) — have set the stage for moving from rhetoric to reality in the arena of women's rights. But for governments and non-governmental organizations to work toward reforming laws and policies and implementing the mandates of these international conferences, they must understand the current state of laws and policies affecting reproductive rights in their communities, counties and regions. The objective of this report is to ensure that women's concerns are reflected in future legal and policy efforts.

Laws are essential tools used to promote women's reproductive health, to facilitate their access to health services, and to protect their human rights as users of such services. Laws, however, also can keep women from achieving optimal reproductive health. For example, laws may limit access to an individual's choice of contraceptive methods, impose restrictions on accessing abortion services, and discriminate against specific groups, such as adolescents, by denying them full access to reproductive health services. Laws that discriminate against women, or serve to define or value them primarily in terms of their reproductive capacities, undermine the right to reproductive self-determination and serve to legitimize unequal relations between men and women.

The absence of laws or procedures to enforce existing laws may also have a negative effect on the reproductive lives of women and men. For example, the absence of laws and policies regarding violence against women makes it difficult to obtain reliable documentation and to assess its overall impact on women's health, including reproductive health. The lack of anti-discrimination laws affects marginalized women in particular as it undermines their ability to access reproductive health services. Furthermore, the dearth of reproductive health and family planning policies in some countries demonstrates the need for greater effort to ensure that governments live up to the commitments they assumed at the international conferences in Vienna, Cairo, and Beijing.

This report sets forth national laws and policies in key areas of reproductive health and women's empowerment in seven East Central European countries: Albania, Croatia, Hungary, Lithuania, Poland, Romania, and Russia. This legal analysis examines constitutional provisions, laws and regulations enacted by each country's legislative and executive branches. Government programs and activities examined include those that directly or indirectly involve reproductive health. In addition, this report describes the entities charged with implementing these policies and the mechanisms that enable people to participate in the monitoring of government reproductive programs and activities. This book also includes a description of the civil and socio-economic rights of women and the status of adolescents in each country. It concludes with an analysis of the regional trends in population, reproductive health, and family planning policies and a description of the existing legal standards in reproductive rights.

This introduction seeks to provide a general background to the East Central European region, the nations profiled in this report, and the information presented on each country. The following section provides an overview of the regional context of East Central Europe as well as a review of the characteristics shared by the seven countries profiled herein. A special emphasis is placed on the legal system and on the principal regional indicators of women's status and reproductive health. This description provides an overall perspective on the East

Central European region in terms of the key issues covered in this report. Finally, this chapter includes a description of the content of each of the national-level profiles presented in this report.

I. An Overview of the East Central European Region and Shared Characteristics

About 150 million women and 50 million girls live in the 27 countries in the region of East Central Europe and the former Soviet Union (hereinafter East Central Europe). As these countries are quite diverse, viewing them as a unified region is the legacy of World War II. With the end of the Cold War, the differences among these nations are again becoming prominent. Nonetheless, there is good reason to treat these countries together not only because of their geographical proximity but also because they have experienced similar historic, political, and economic transformations.

The seven countries analyzed in this report represent a large cross-section of the populations of East Central Europe and were selected because they reflect the features of the different sub-regions in which they are located. Their similarities and differences reflect their shared heritage as well as the diversity that characterizes the region. Russia is the largest and most populous country in the region, with 147.2 million inhabitants, while Albania and Lithuania are the least populated countries, with 3.4 million and 3.7 million people, respectively. Religious participation is not a major feature of most of these societies, except perhaps in Poland. Six of the seven East Central European countries profiled in this book are officially Christian; Croatia, Hungary, Lithuania, and Poland are predominately Roman Catholic; Russia and Romania are Orthodox. Albania's citizens are principally Muslim. In terms of their economic status, the World Bank has categorized all the nations described in this report as low- to middle-level income countries. Albania is the poorest country in Europe, with a 1995 per capita gross national product (GNP) of USD $670. Hungary has the highest per capita annual income among the seven countries profiled in the report, at USD $4,120 in 1995. The per capita GNP for Russia in 1995 was USD $2,240.

All seven countries that are the subject of this report currently have democratically elected governments. Only the Russian Federation is politically and administratively divided into republics or regions with their own constitutions and select representatives for their own executive, legislative and judicial branches.

For the purposes of this report, the seven East Central European nations being discussed have three critical features in common: a shared legal tradition and recent history; similar reproductive health problems; and similar issues regarding the legal status of women.

A. SHARED LEGAL TRADITION

The legal systems in East Central Europe are of recent vintage. The earliest reforms date from 1989. The systems, however, share important historical antecedents under state socialist forms of governance, and before that as part of the Austro-Hungarian or Russian imperial state organizations. Most importantly, however, the legal systems of the seven countries profiled in this report share characteristics common to the civil legal system prevalent in Western Europe and Latin America. In this system, legislation is the principal source of law and judicial decisions establish legal norms only in the rare cases where legislative enactment or constitutional provisions so mandate. It is also important to note that in some remote parts of Albania, customary norms have legal authority, and in certain republics of the Russian Federation, Islamic law and custom is recognized.

B. REPRODUCTIVE HEALTH PROBLEMS: A COMMON AGENDA

Before 1989, the governments of East Central Europe spent relatively large proportions of their budgets on health care and social services. Health care was virtually universally accessible. The state supported an extensive array of childcare facilities. There was little evidence of gender discrimination between boys and girls. Women were employed full-time, and were represented in the political and governmental structures at all but the highest levels. It is well known, however, that under state socialism, gender equality was only an illusion.

The welfare state that had subsidized the appearance of equality collapsed along with the political regimes, particularly because one of the first reforms, promoted by multilateral financial institutions and donor governments, was the privatization of state services. These structural adjustment policies throughout East Central Europe had, and continue to have, a dramatic adverse impact on people's, especially women's, health and quality of life. Increasing poverty and growing ill-health has been the undeniable consequence of state privatization efforts.

An early consequence was a dramatic deterioration in life expectancy. In Russia, for example, life expectancy between 1989 and 1993 for men declined by 6.3 years, and for women by 3.2 years. In 1997, life expectancy continued to decline in many countries in the region. Lowered life expectancy rates

have contributed to decreasing population rates. In Hungary in 1997 the rate of natural population increase was -3.8; in Russia for 1997, -5.1, and in Poland, a small increase of 0.9. The only country among the seven profiled in this report in which the population is significantly increasing is Albania. In 1996, its population increased 15.6%. The countries in question have also generally experienced stagnating or declining birth rates. The combination of declining population and lower birth rates has fueled nationalist policies to encourage parenthood, particularly among ethnic majority populations. Croatia, Poland, Russia, Hungary, and the Federal Republic of Yugoslavia (not profiled in this report) all have nationalist political parties which have enjoyed some political successes and helped foster a hostile climate for the exercise of women's reproductive rights.

In the context of a decline in access to general health care throughout the region, the women of East Central Europe face similar problems in taking care of their reproductive health. Consider the case of maternal mortality. The World Health Organization has set a target for maternal deaths in Europe at 15 per 100,000 live births, but maternal mortality rates in Albania, Romania and Russia are well above this. In 1997, the maternal mortality rate in Russia was 50.2 per 100,000 live births; in Romania, 41.4 per 100,000 live births; and in Albania, in 1996, it was 27.8 per 100,000 live births. Even in a relatively wealthy country such as Hungary, the 1997 maternal mortality rate was surprisingly elevated at 20.9 per 100,000 live births.

Unsafe abortion is also a concern for East Central European women. Since 1956, abortion has been legal and available throughout the region of East Central Europe, except in Romania and Albania, where abortion and contraception were illegal. Since 1989, Albania and Romania have legalized abortion and contraception, and most countries in the region, with the exception of Poland, have preserved their previous liberal abortion laws. But while most abortions are legal and performed by trained health care professionals, abortion remains the leading cause of maternal death, accounting for up to 20% of maternal deaths in some countries.

Abortion is still an important procedure for women's reproductive control, despite the steady decline in absolute numbers. Only in Poland, which is the only country in the region where abortion is illegal, is the officially reported abortion rate below European Union averages. There is good reason to believe, however, that many Polish women obtain abortions outside the country and that these abortions are not reflected in official statistics. The abortion rate in Russia for 1997 was 198.3 per 100 live births, in Romania for the same year 146.4 per 100, and in Lithuania 60 per 100. Poland reported 0.8 abortions per 100 live births that year.

High rates of abortion reflect the lack of access to modern methods of family planning. During state socialism, modern methods of contraception were largely unavailable, and even when they were, they were viewed with suspicion. In the former Soviet Union, for instance, oral contraceptives were impossible to obtain, and the most popular modern method available was the IUD. However, it was found only in urban areas and was never used by more than 10% of women. Even though there have been significant changes in reproductive health policies to permit and distribute other forms of contraception, their lack of availability or their high costs put them beyond the reach of most women. In Russia, a package of spermicide can cost two-thirds the minimum monthly salary; oral contraceptive pills are similarly costly. Romania must import all of its modern contraception. High rates of pregnancy and abortion among adolescents in East Central Europe are also indications of impediments to reproductive health care information and services.

An important element underlying women's reproductive health status in the region is lack of sex education. In Romania, a country with one of the highest abortion rates in the region, there is no post-abortion counseling. In Croatia, portraits of the Pope hang in the offices of state-employed gynecologists who do not distribute information regarding modern contraception. In Poland, a physician does not need to inform a woman about methods of family planning unless she specifically requests them. Sex education in schools is altogether inadequate. Albania is one of the few countries that mandates sex education in schools but for only nine hours per school year, and lessons are to be devoted primarily to sexually transmissible infections (STIs).

Indicators relating to the increase of HIV/AIDS and STIs suggest that women, particularly young women and adolescents, are quite vulnerable. For the entire East Central European region, including countries not covered in this report, the number of recorded HIV cases is on the rise. In Russia, for example, in 1996 there were 1,525 newly registered cases of HIV/AIDS and 4,399 in 1997. These figures are only a pale indication of the severity of the problem, as the gathering of statistics is spotty, and laws do not protect anonymity or encourage reporting.

C. WOMEN'S LEGAL AND SOCIAL STATUS

A country's laws also play a critical role in how effectively women can exercise their reproductive rights. Based on an analysis of constitutional provisions and governmental commitment to implement international treaties relating to equality, the countries of East Central Europe appear to fully

embrace women's equality and full participation in society. All the newly minted constitutions of the region have non-discrimination and equality clauses; the overwhelming majority of nations have signed and ratified the Convention for the Elimination of All Forms of Discrimination Against Women. This commitment to formal equality follows seamlessly on the prior regimes' commitment to women's formal equality. But just as reality did not match theory historically, this current commitment has a hollow ring. While lifestyles in, for example, Albania, Romania, Poland and Russia differed substantially under state socialism, they shared state socialism's tendency to define women as mothers, as well as workers. The sacrificial heroine mother — the new socialist woman — was a stock character in the official representation of desirable gender roles for women. Women therefore bore a double burden of working outside of the home and inside of the home, and sometimes even a triple burden of waiting in endless lines to acquire foodstuffs and other necessities for the family.

When the state socialist regimes fell after 1989, the contradictions between official gender equality and underlying reality could no longer be suppressed. Ironically, women's continuing unequal status has some roots in the new constitutions that promote women's equality. The constitutions of all of the seven nations profiled in this report, and most of the countries of East Central Europe, provide for the protection of motherhood, or make the promotion of family life a national goal. A consequence of the special protection afforded motherhood are laws and policies which place women at a disadvantage in the newly capitalistic labor market.

Law and policy in the countries of the region of East Central Europe prohibit overt gender discrimination, but in many countries women are barred from employment in industries considered dangerous or unhealthy. Mandatory paid maternity leaves and job protection schemes, which for example in Russia require an employer to protect a woman's job for up to three years after she gives birth, leave women vulnerable to discriminatory hiring practices. The result is that while laws in the countries of this region forbid overt discrimination, women earn less than men. In Russia in 1996, women earned 69.5% of what men earned. In Hungary in 1997, women earned 78% of what men earned; in Poland in 1996, women earned 79% of what men earned. Studies which adjust for the fact that women tend to select jobs in the public sector — education, health, administration — that pay much less than the private sector, still find that women earn significantly less than men: in Russia in 1996, 24.2% less; in Poland in 1996, 16% less. While there are many factors which might contribute to the wage discrimination, the fact that women's participation in the workforce is viewed as unreliable and costly has been frequently cited. Moreover, as the state shifts responsibility for the care of children, the ill, and the elderly out of the public sphere, women are the ones left to fill in the gap.

Other important indicators of women's social status are their educational levels and their participation in government. Women in the East Central European region have higher educational levels than in many other regions of the world. Enrollment of girls in primary school is above 90%. Secondary and tertiary enrollment in education is also quite high. In 1997, approximately 54% of all university students enrolled in Hungary and Croatia were women. Illiteracy rates are not significant; where there is illiteracy, women tend to have higher rates than men. Ethnic minority men and women face discrimination in educational institutions, particularly the Roma (gypsies) in Hungary and Romania.

In terms of women's participation in government, the legacy of state socialism has presented particular impediments for women. Quotas for women's formal representation in parliaments were common. But real power was never exercised there, and women were rarely, if ever, represented in the powerful party central committees. Once democratic multi-party systems of government were established, women's formal representation in parliaments dropped considerably — from 23% to 30% before 1989 in countries such as Hungary and Poland, to less than 10% after the transition. Women's participation in senior governmental positions is also not encouraging: in 1996, 5.6% of ministerial and 7.1% of sub-ministerial posts went to women; in Romania, no ministerial and 4.1% of sub-ministerial posts were occupied by women; and in Russia, 2.4% of ministerial and 2.2% of sub-ministerial posts were held by women. Women tend to be well represented in the judiciary in the countries of East Central Europe. However, they tend to be grouped in positions with little social prestige.

Violence against women is a serious, but ill-documented, problem in almost all the countries analyzed in this report. In the countries in which such information is available, the main forms of violence against women include sexual violence, domestic violence and other forms of physical and psychological violence. Similarly, the level at which violence against women is accepted in the region of East Central Europe is a serious threat to women's rights and health. The laws and policies of the nations of this region do not recognize domestic violence, nor do they take it seriously as a women's rights — or even public health — issue. State statistics on sexual and non-sexual assaults against women are unreliable and often non-existent. Yet the anecdotal evidence is worrisome: in one study in the Ukraine (a country not covered in this report) 50% of 1,500 adolescents surveyed reported unwanted sexual contact. In 1997 in Romania, 23% of all divorce cases filed in Bucharest

alleged physical abuse by the husband. And similarly in 1996 in Moscow 39% of 973 women surveyed reported being "manhandled" by their spouse.

Another aspect of women's physical vulnerability with the opening of the region to the global economy has been the development of the sex industry. Prostitution and pornography, illegal under state socialism, were among the "enterprises" to participate in the new economy. The result is that some women, mainly the young, have been targeted by organized criminal rings that promise them economic opportunity and then coerce them into the sex trade, often beyond the borders of their own countries.

A final disturbing facet of East Central Europe's problems with violence against women concerns the use of sexual violence in armed conflict situations: rape as a weapon of war, forced childbearing and sexual enslavement. Armed conflicts in the former Yugoslavia sent hundreds of thousands of refugees into Croatia in the early 1990s, and in 1999, refugees from Kosovo poured into Albania. Armed conflict, in addition, generally escalates the acceptable level of violence in society, and in the regional context of non-documentation of violence against women, suggests that women's human rights are in danger.

II. National-Level Information Discussed

This report presents an overview of the content of the laws and policies that relate to specific reproductive health issues as well as to women's rights more generally. It discusses each country separately, but organizes the information provided uniformly in four main sections to enable regional comparisons.

The first section of each chapter briefly lays out the basic legal and political structure of the country being analyzed and provides the critical framework within which to examine the laws and policies affecting its women's reproductive rights. This background information seeks to explain how laws are enacted, by whom, and the manner in which they can be challenged, modified, or repealed.

The second part of each chapter details the laws and policies affecting specific reproductive health and rights issues. This section describes laws and policies regarding those major reproductive health issues that have been the concern of the international community. The report thus reviews governmental health and population policies, with an emphasis on general issues relating to women's status. It also examines laws and policies regarding contraception, abortion, sterilization, HIV/AIDS, and other STIs.

The next section of each chapter provides general insights into women's legal status in each country. The focus is on laws and policies regarding marriage, divorce, custody of children, property rights, labor rights, access and rules regarding credit, and access to education. In addition, the chapters look at women's rights to physical integrity, including laws on rape, domestic violence, sexual harassment, and trafficking for the purposes of forced prostitution.

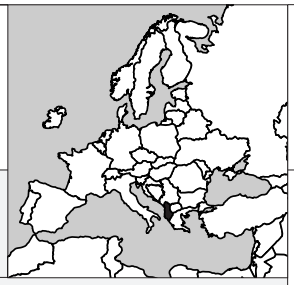
The final section of each chapter focuses on the reproductive health and rights of adolescents. Discrimination against women often begins at a very early age and leaves women less empowered than men to control their sexual and reproductive lives. Women's unequal status in society may limit their abilities to protect themselves against unwanted or coercive sexual relations and thus from unwanted pregnancies as well as from HIV/AIDS and STIs. The segment on adolescents focuses on reproductive health, marriage, sexual crimes, and sex education.

This report is the product of a collaborative process involving the following institutions: the Center for Reproductive Law and Policy, based in New York, USA; the Albanian Family Planning Association, based in Tirana, Albania; B.a.B.e (Be Active, Be Emancipated), based in Zagreb, Croatia; NaNE! (Women's Rights Association) based in Budapest, Hungary; the Lithuanian Family Planning and Sexual Education Association, based in Vilnius, Lithuania; the Federation of Women and Family Planning, based in Warsaw, Poland; AnA: Society for Feminist Analyses, based in Bucharest, Romania; and the Open Dialogue on Reproductive Rights, St. Petersburg and Moscow, Russia.

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

2. Albania



Statistics

GENERAL

Population

- The total population of Albania is 3.1 million.[1]
- The proportion of the population residing in urban areas is estimated to be 37%.[2]
- Between 1995 and 2000, the annual population growth rate is estimated at -0.4%.[3]
- In 1997, the gender ratio was estimated to be 96 women to 100 men.[4]

Territory

- The territory of Albania is 11,100 square miles.[5]

Economy

- In 1997, the gross national product (GNP) was USD $2.5 billion.[6]
- In 1997, the gross domestic product (GDP) was USD $2,276 million.[7]
- Between 1990 and 1997, the average annual growth was 1.8%.[8]
- From 1990 to 1995, public expenditure on health was 2.7% of GDP.[9]

Employment

- Women comprised 41% of the labor force in 1997, compared to 39% in 1990.[10]

WOMEN'S STATUS

- In 1999, the life expectancy for women was 75.9 years, compared with 69.9 years for men.[11]
- In 1997, among the total population, the illiteracy rate was 7% for both women and men.[12]
- Gross primary school enrollment in 1998 was 97% for girls, and 95% for boys; gross secondary school enrollment was 84% for boys and 72% for girls.[13]

ADOLESCENTS

- 33% of the population is under 15 years of age.[14]

MATERNAL HEALTH

- Between 1995 and 2000, the total fertility rate is estimated at 2.5.[15]
- As of 1999, there were 34 births per 1,000 women aged 15-19.[16]
- In 1998, the maternal mortality ratio was 28:100,000.[17]
- Infant mortality was at 30 per 1,000 live births.[18]
- 99% of births were attended by trained attendants.[19]

CONTRACEPTION AND ABORTION

- The contraceptive prevalence for any method (traditional, medical, barrier, natural) is estimated at 11%, and that for modern methods at 8.3%.[20]

HIV/AIDS AND STIs

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

ENDNOTES

1. United Nations Population Fund (unfpa), The State of World Population 1999 (visited July 13, 2000) <http://www.unfpa.org>.

2. *Id.*

3. *Id.* This figure reports the relative slowing of the population growth rate.

4. The World's Women 2000. Trends and Statistics, at 20.

5. The World Almanac and Book of Facts 1998, at 737 (1998).

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, *supra* note 1.

12. CIA, Albania, World factbook (visited Sept. 23, 1999) <http://www.odci.gov/cia/publications/factbook/al.html>.

13. The State of World population, *supra* note 1.

14. World factbook, *supra* note 12.

15. The State of World Population, *supra* note 1.

16. *Id*.

17. *Id*.

18. *Id*.

19. *Id*.

20. Dorina Islami et. al, *Reproductive Health in Albania* (1998) (visited Apr. 6, 2000) <http://matweb.hcuge.ch/matweb>; Ministry of Health Estimates 1994, Ken Legins, *Women and Families in Albania: Confronting the Past*, POPULI Vol. 26, No. 2 (June 1999).

21. UNAIDS & WHO, Epidemiological Fact Sheet on HIV/AIDS and Sexually Transmitted Diseases-Albania 3 (2000) (visited July 13, 2000) <www.unaids.org>.

22. *Id.*

23. *Id.*

24. *Id.*

Albania is located in Southeastern Europe and borders Serbia, Macedonia, Greece and the Adriatic Sea. The official language is Albanian. Its population in 1999 was 3.4 million and growing. Albania is currently making the transition to an open-market economy after the fall of state socialism and the establishment of a multiparty system in the early 1990s. The transition from state socialism to a more plural form of government came later in Albania than in most other countries of East Central Europe. The resignation of the last state socialist government in June 1992 sent the country into political and economic chaos.[1] Attempts to introduce comprehensive reform programs were interrupted in the early months of 1997 by the collapse of financial pyramid schemes in which much of the population had invested. Criminal activity of all sorts, including the plundering of army gun depots, led many international organizations to leave Albania,[2] as the political and security situation became extremely unstable.

In June 1997, after the establishment of a transitional government of National Reconciliation, general elections were held that resulted in a new government and the appointment of a new president. The elements of the new government's strategy for political, social and economic reform and recovery were political normalization and democratization, restoration of law and order, institutional reform, addressing poverty caused by the crisis, financial reform and privatization.[3] The relative novelty of the Constitution — ratified by a nationwide referendum in November 1997[4] — and continued social unrest have meant that there has been insufficient time for governmental functions to become fully operational.[5]

The ethnic composition of Albania consists of 95% Albanians and 3% Greeks, plus 2% Vlachs, Roma, Serbs and Bulgarians. About 70% of its citizens are Muslim, 20% Albanian Christian Orthodox, and 10% Catholic.[6]

I. Setting the Stage: The Legal and Political Framework

A. THE STRUCTURE OF NATIONAL GOVERNMENT

Albania is a multiparty,[7] democratic, parliamentary republic.[8] The Constitution establishes sovereignty in the people[9] who exercise it directly or through their representatives.[10] The government is based on the separation and balance of executive, legislative and judicial powers.[11]

Executive branch

The executive branch consists of the president and the Council of Ministers, which includes the prime minister. The president is the head of state and represents the unity of the people.[12] A minimum of 20 members of the assembly proposes and a majority of three-fifths of the assembly elects a candidate for president.[13] The president serves for a term of five years and may be re-elected once.[14] The president's functions are largely those of a figurehead. The president addresses the assembly, gives titles of honor, signs international agreements, requests opinions and information from the directors of state institutions, issues decrees, and sets the date of elections for the assembly, for local governments, and for referenda.[15]

The Council of Ministers sets general state policy,[16] issues decisions and instructions,[17] and is generally responsible for all state functions not delegated to other organs of state power or to local government.[18] The prime minister is appointed by the president of the republic on the proposal of the party or coalition of parties that holds the majority of seats in the assembly.[19] His or her appointment must be approved by the assembly.[20] The president appoints ministers, proposed by the prime minister, to the Council of Ministers.[21] Acts of the Council of Ministers are valid when signed by the prime minister and the proposing minister.[22] The Ministry of Health is responsible for the implementation of health care policies.

The prime minister is responsible for presenting general state policy, implementing legislation and policies approved by the Council of Ministers, and coordinating and supervising the work of the Council of Ministers and other institutions of central state administration.[23] The prime minister has the power to issue orders to fulfill these responsibilities.[24] Ministers also have the authority to issue orders and instructions.[25] A prime minister can be removed upon a motion of no confidence, initiated by one-fifth of the members of the assembly and approved by a majority of the assembly.[26]

Legislative branch

The legislative branch of the government consists of the unicameral People's Assembly. The Assembly is composed of 140 deputies[27] who serve four-year terms.[28] One hundred deputies are elected directly by the people, with one deputy elected per each electoral zone.[29] The remaining deputies are elected from lists provided by parties or party coalitions, with the number of deputies from each party determined by the proportion of total votes received by that party in the first round of national elections.[30]

Laws can be proposed by any deputy, by the Council of Ministers, or by a petition signed by 20,000 citizens qualified to vote.[31] The Assembly needs a three-fifths vote of its members to authorize legal codes, constitutional and general legislation — including that relating to referenda, the status of public employees, and administrative divisions of the republic.[32] The Albanian people, through the initiative of 50,000 citizens

eligible to vote, can call for a referendum to abrogate a law or to request that the president call a referendum on issues of special importance.[33] Similarly, the assembly, at the request of at least one-fifth of the deputies or the Council of Ministers, can propose a draft law of special importance for adoption by referendum.[34]

Judicial branch

The judicial branch is composed of 29 district courts, six appellate courts, a military court of appeals, the High Court and the Constitutional Court.[35] District courts are courts of first instance, and each appellate court hears issues presented by these lower district courts.[36] The High Court, formerly called the Court of Cassation, is the highest appellate court. The High Court is divided into three panels (colleges): criminal, civil and administrative/commercial.[37] It also has original jurisdiction over criminal charges against the president, the prime minister, members of the Council of Ministers, deputies and judges of the High and Constitutional Court.[38] Members of the High Court are appointed by the president with consent of the assembly for one nine-year term.[39]

The Constitutional Court is composed of nine judges who are appointed by the president of the republic with the consent of the assembly. Judges serve for one nine-year term; one-third of the court is renewed every three years.[40] In addition to deciding all constitutional questions, the Constitutional Court determines if national laws are compatible with the Constitution and with international agreements.[41]

The Constitution also provides for an Ombudsman (People's Advocate) to defend the rights, freedoms and lawful interests of individuals against unlawful and improper government actions or omissions to act.[42] The People's Advocate is elected by three-fifths of all members of the Assembly for a renewable five-year period.[43] He or she must present an annual report to the Assembly and has the right to make recommendations and propose measures when he or she observes violations of human rights.[44]

B. THE STRUCTURE OF TERRITORIAL DIVISIONS

Regional and local governments

Albania is divided into 36 administrative districts.[45] Local government is founded on the principle of decentralization of power and is exercised according to the principle of local autonomy.[46] The basic units of local government are communes and municipalities, which perform all duties of self-government not delegated by law to other units of local government.[47] General direct elections of the local councils are held every three years;[48] additionally, referenda on local issues are held as needed.[49] A local executive, the Chairman of the Council, is elected directly by the people every three years.[50]

Several municipalities or communes combine to form a region.[51] The representative organ of a region is the Regional Council. Its members consist of delegates sent by the composite municipalities and communes in proportion to their population.[52] Orders and decisions of a Regional Council have general obligatory force in its region.[53] The Council of Ministers appoints a prefect in each region as its representative.[54]

C. SOURCES OF LAW

Domestic sources of law

The Constitution, ratified international agreements, national laws and other legal or normative acts of the Council of Ministers are effective in the entire territory of the Republic of Albania. Acts that are issued by local or regional councils are effective only within the territorial jurisdiction of those organs. Normative acts of ministers and of other central governing institutions are effective in all of Albania but limited to their spheres of jurisdiction.[55]

International sources of law

International agreements are ratified by a majority vote of the assembly.[56] Any international agreement that has been ratified becomes part of Albania's legal system as soon as it is published, unless it requires additional legislative ratification. Once ratified, an international agreement takes precedence over all national laws. Similarly, norms issued by an international organization have superiority over national laws if the agreement of participation ratified by Albania expressly contemplates their direct applicability.[57] Albania has been a state party to the Convention on the Elimination of All Forms of Discrimination Against Women,[58] the International Covenant on Economic, Social and Cultural Rights,[59] the International Covenant on Civil and Political Rights,[60] the Convention on the Rights of the Child,[61] the International Convention for the Elimination of All Forms of Racial Discrimination,[62] and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[63]

II. Examining Health and Reproductive Rights

A. HEALTH LAWS AND POLICIES

Albania is in the process of developing a new national health policy. Current health policy — the Primary Health Care Policy — was adopted in 1997[64] and aims to offer accessible and financially affordable health care to all Albanians. Improving maternal and child health is the main priority of both the Ministry of Health and the Albanian government.[65] Specific objectives of the primary curative service include the following:

- To increase the accessibility of health care services by the year 2005 from 95% to 100% of the urban population and from 70% to 90% in rural areas; and
- To improve the quality of health care services through the use of standardized protocols for diagnosis and treatment for 95% of patients by 2005.[66]

The specific objectives related to the health status of the population are to reduce the incidence of disease in children, including lowering the infant mortality rate to less than 25 per 1,000 live births by the year 2000 (infant mortality in 1995 was 30 per 1,000); to reduce the maternal mortality ratio to 25 per 100,000 live births by the year 2000 (the maternal mortality ratio was 28.5 per 100,000 live births in 1995); and to reduce the prevalence of malnutrition in children under five to less than 10%.[67]

Public sector health providers serve almost all of the Albanian population. But the public health care system inherited considerable deficiencies from the former regime and initially relied almost completely on medical supplies from international humanitarian aid. To increase the capacity of its health system, the government has allowed the creation of a parallel private health care system. In some fields, such as dentistry and pharmacy, private services have come to dominate. The cost of most private health care, however, puts it beyond the means of most citizens. Family planning services were only introduced in Albania after 1990. Integrated reproductive health services have been established since the 1994 Cairo International Conference on Population and Development (ICPD).[68]

Infrastructure of health services

There are three levels of health services provided by the public sector. The first is primary health care, which serves all basic medical needs on an ambulatory basis and takes place at primary health care posts (PHC). The next level of care occurs at district hospitals, including maternity hospitals. Advanced medical services are provided in the University hospital clinics located in the capital city, Tirana.[69]

Primary health care services are administered at three levels. Nationally, there is the Primary Health Care Directorate of the Ministry of Health, led by a Director. At regional and district levels, there are District Directorates of PHC.[70] The District Health Authorities are composed of a District Health Team, headed by the District Health Director.[71] The teams oversee the health centers that provide primary health care in towns (urban health centers) and communes (rural health centers). At the village level, there are ambulanca — walk-in clinics — which may be staffed only by a nurse.[72]

As regulated by a 1997 act, reproductive health care and basic family planning services are provided at the primary health care level, as well as in maternity hospitals.[73] In 1996, there were 11 regional family planning centers, 137 women's consulting centers, and 28 district maternity hospitals located throughout the country.[74] The overall goals of the reproductive health care services are to offer good quality, reproductive health care services to the Albanian population; to improve the health status of women during their reproductive age, especially during childbearing and delivery; to improve the health status of fetuses, newborns, infants and children up to age five; and to improve the sexual health of adolescents and adults.[75] The government endorses a human rights approach to the provision of reproductive health services in that they enable individuals and couples to make informed choices concerning the number and spacing of their children, as well as to promote gender equality and a woman's right to health.

In 1996, there was a total of 12,000 medical and non-medical personnel working in the PHC services at various levels — approximately 55% of all physicians and 56% of midwives/nurses. Overall in Albania, there is one medical doctor for every 690 inhabitants and one nurse-midwife for every 230 women, with one general practitioner stationed in PHC posts for every 1,300 inhabitants, and one nurse-midwife for every 400.[76]

Like other countries in the region, Albania is introducing the specialty of the family physician (FP) — a fully licensed medical graduate who has completed two years of postgraduate training in the specialty of family medicine. FPs work at the first level of the health care system and act as gatekeepers providing primary and continuing health care to their populations as well as referring to specialists and advocating for their patients.[77] On average, a family physician will care for between 1,500 and 2,000 patients.[78]

Cost of health services

The government allocates about 6% of its overall budget to the health sector, which in 1995 amounted to about 4% of the Albanian GDP. In the 1996 budget, the Ministry of Health dedicated about 1.867 million lek (USD $18.6 million) to PHC. The per capita contribution of the Albanian government for primary health care translates into approximately USD $7 per year, with multinational and bilateral aid contributing an additional USD $1 per inhabitant per year.[79] The estimated cost of running the PHC posts in Albania in 1997 was USD $64,200.[80]

The Law on Health Insurance, enacted by presidential Decree No. 950 on October 25, 1994, regulates the financing of health care.[81] There are four sources of revenue for the health care system: compulsory medical insurance, state contributions, citizen co-payments, and supplemental health insurance.[82] Compulsory health insurance covers all citizens

of Albania and permanent or temporary legal residents employed and insured in Albania.[83] This insurance is provided by the Health Insurance Institute (HII), an independent entity that reimburses the insured according to a fee schedule determined and approved each year by the Council of Ministers.[84] All "economically active" citizens contribute 3.4% of their monthly incomes to HII; employers, with some exceptions, and the state make additional contributions.[85] Self-employed individuals and those who earn regular income from property and investments are also mandatory contributors.[86] Children, students, pensioners, mentally or physically disabled people, the unemployed, social assistance recipients, mothers on maternity leave or those conscripted in the military do not make contributions, but are covered.[87] There are penalties for failing to contribute.[88]

The state covers all expenses relating to medical examinations, specialist visits, hospitalizations, and emergency treatments.[89] National health insurance also covers a percentage of the costs of pharmaceuticals.[90] For services not covered by national insurance, individuals pay directly or buy supplemental insurance.[91]

The organization of HII is specified in Chapter V of the Law on Health Insurance. HII is managed by an Administrative Council of 11 members, nominated from various bodies such as the Council of Ministers, the physicians union, and the pharmaceutical industry. Each member serves four years.[92] It is headed by a General Director nominated by the Minister of Health. The Minister of Health is responsible for setting policy for HII.[93] The HII issues insurance cards and registers all individuals who are unable to pay health insurance contributions.[94] Individuals may sue HII in a court of law for disputes arising due to reimbursements.[95]

Regulation of health care providers

The law on Health Service Employees lays out the regulatory framework governing health care practitioners. According to this law, all health care providers must be licensed to practice by the Minister of Health with the approval of the Physician's Medical Association. Specific regulations governing reproductive health professionals are found in a draft Law on Reproductive Health, which has not yet been submitted to the assembly.[96] FPs, gynecologists, pediatricians, nurses and midwives active in the field of reproductive health[97] must be trained at the Faculty of Medicine and University Clinics in Tirana.[98] There, they follow a curriculum prepared by the Ministry of University Education in obstetrics and gynecology.[99] Nurses train in schools for nurses,[100] complying with criteria defined by the Ministry of Health and the Ministry of University Education.[101]

Patients' rights

The draft Law on Reproductive Health, not yet submitted to the Assembly, would guarantee the right of Albanians to the highest attainable standard of reproductive health care.[102] It requires all reproductive health services be provided only with the informed, free and explicit consent of the patient.[103] All decisions relating to reproduction must respect the free will of the individual.[104] The draft law would require a pregnant woman, upon court order, to submit to medical procedures, even over her refusal, if such interventions would be indispensable for reasons of her life or health, "or for her fetus."[105]

Currently, the 1995 Criminal Code is the principal source of patients' rights.[106] Physicians, other medical staff, or pharmacists who endanger the life or health of a person as a result of improper professional treatment can be fined or jailed for up to five years.[107] Causing a woman to abort without her consent, unless there are overriding health justifications, carries a monetary fine or a prison term of up to five years.[108] A health care worker who causes serious injury to a patient due to his or her negligence may be sentenced to a fine or imprisonment of up to one year.[109] Non-serious injuries due to negligence can incur monetary fines.[110] Negligence leading to death is considered manslaughter and is punishable by a fine or imprisonment of up to five years.[111] Serious intentional injury that causes a disability, mutilation or any other permanent detriment to the health, or that provokes a miscarriage or in some other way threatens fetal life carries a sentence of three to ten years imprisonment.[112] An intentional injury, which results in a temporary disability (no longer than nine days) can bring about a monetary fine or a prison term of up to two years.[113]

B. POPULATION POLICY

Under state socialism, the government promoted a strict pronatalist policy that aimed to increase the population by 1 million Albanians by the year 2000.[114] Accordingly, contraception was unavailable and abortion illegal. There was a correspondingly high rate of maternal mortality. Official statistics were considered national secrets, but it has been estimated that half of all deaths of women of childbearing age were due to illegal, unsafe abortions.[115] Prenatal and perinatal health care were free and accessible, although the quality was generally poor.[116]

In the postwar period up to 1990, the population of Albania increased at a rate of more than 2% annually, outstripping both the natural and economic resources of the country. Such growth has continued in the last decade. Based on the general population census in 1989, there were 3.18 million people; in 1995 the population had grown to 3.25 million.[117] By 1999, Albania's population had reached 3.36 million people.[118]

Albania continues to be the only European country with a positive population growth rate. At the same time, the population of Albania is relatively young. Almost one-third of the population is under 14.[119] The average life expectancy of the population is 69 years.[120] Half of the female population of the country is of childbearing age (15-49 years). The average number of children Albanian women bear has constantly decreased from six in 1960, to three in 1990, 2.7 in 1995,[121] and 2.5 in 1999.[122] However, Albania still leads Europe with the number of births per woman. Maternal mortality also continues to be among the highest in Europe: 37 out of 100,000 women die during childbirth. Infant mortality is also quite high: in 1997, 23 out of 1,000 infants died before reaching the first year of life, and 35 out of 1,000 died before five years of age.[123] Migration constitutes another element of population policy in Albania. Before 1990, the government allowed no emigration and only limited migration within the country.[124] In 1990, with the end of travel restrictions, migration abroad became a reality; large-scale emigration to Greece and Italy has particularly affected the population of southern Albania. It has been estimated that in 1992 almost 200,000 people left the country, although many of these people are thought to have returned after short periods. Although accurate data regarding migration within Albania are unavailable, there has been an exodus from the rural areas, particularly the mountainous northern regions of the country.[125]

Since the transition, the government has relented on its pronatalist orientation. In 1990, the grounds for legal abortion were broadened so that by mid-1991, abortion was available upon request. In 1992, the government began to work with the United Nations Population Fund (UNFPA) to train physicians, midwives and nurses in family planning methods. Also in 1992, the government established a family planning service offering all methods of contraception.[126]

C. FAMILY PLANNING

Before the transition, modern family planning methods were outlawed, and a common belief was that attempts to interfere with procreation would cause serious health problems or permanent infertility.[127] In 1992, a Decision of the Council of Ministers declared that family planning should be seen as a basic human right from which all citizens should be able to benefit of their own free will.[128] Under the terms of this decision, the Council of Ministers approves activities in family planning, including prophylaxis, the right of couples to decide on the number of their children, spacing of births, treatment of sterility, control and treatment of sexually transmissible infections such as AIDS and syphilis, and dissemination of information on issues relating to sexual health.[129]

Government delivery of family planning services

There are also now government family planning centers in all of Albania's 37 districts.[130] Family Planning Services of the Ministry of Health, under the direction of a Director, includes a physician responsible for training and education, a physician in charge of statistical tabulation, and an administrative assistant. Gynecologists and midwives provide the family planning services. In each maternity hospital a part-time family planning center is staffed by an OB/GYN and a midwife. Family planning services are supposed to be integrated into the operations of all consulting centers for mothers and children.[131] In Tirana, for example, at least 30 women per day are served.[132]

The government also provides family planning services in cooperation with UNFPA. The immediate objectives of the first Ministry of Health/UNFPA-funded family planning project, which got under way in 1992, were not quite realized, but they included decreasing maternal mortality by at least 50% by 1995, reducing perinatal mortality by 30%, reducing the number of premature births by 20%, and improving contraceptive coverage to at least 10% of all women of reproductive age.[133]

Services provided by NGOs/private sector

The government is not the sole provider of family planning services. The Albanian Family Planning Association, an International Family Planning Federation (IPPF) affiliate, also operates in Tirana and some regional cities.[134] Other national and international NGOs work in the field of reproductive health, such as Marie Stopes International,[135] Population Service International,[136] SEATS — Family Planing Service Expansion & Technical Support.[137] USAID has also contributed to the training of personnel working in family planning.[138]

D. CONTRACEPTION

Prevalence of contraceptives

Data about the use of contraceptives dates from 1996, when it appeared that no more than 5% of women of reproductive age (15-44) used contraception.[139] The use of contraceptives was estimated to have grown to 10-12% by 1998.[140] An increase was seen in both the popularity of oral contraceptives and of injectable drugs. Women aged 30-34 account for 35% of total contraceptive users, followed by women aged 25-29, at 24.9%. Adolescents (15-19 years old) represent only 2% of contraceptive users.[141]

Availability of contraceptives

From mid-1992 to 1995, contraceptives (except condoms) were imported nearly exclusively through UNFPA and IPPF, with UNFPA importing nearly 95%.[142] They were then sold through public pharmacies. When pharmacies were privatized in 1995, access to contraceptives became more difficult chiefly

because of increased retail prices.[143] To counter that, beginning in January 1996, the Minister of Health directed that contraceptives were to be distributed free of charge through approved family planning facilities.[144] The types of modern contraceptives approved for distribution are oral contraceptives (Microgynon, Neogynon, Microlut, Triquilar), injectable contraception (Depo-provera), IUDs (Copper TCu 380A), spermicides (Neoshampoo, Pharmatex), condoms, and emergency contraceptives.[145]

Oral and injectible contraceptives are available with a prescription from a general practitioner. IUDs and other implants must be inserted by a gynecologist. Condoms, spermicides, and other "barrier methods" are available in pharmacies without a prescription.[146] Family planning centers must report the activity of their centers every three months to the District Health Section, which in turn reports to the Family Planning unit of the Ministry of Health.[147]

As of 1996, there were at least three wholesalers and about 630 private pharmacists that stocked contraceptives. It was estimated that they provided about 10% of the nation's contraceptives.[148] Prices vary widely with a cycle of oral contraceptives costing from USD $1.50 to USD $5 (and up to USD $10 in some cases). Since contraceptives are distributed free of charge through the public sector, most private pharmacies have only limited stocks and varieties of contraceptives available and often refer clients to the public family planning facilities.

Regulation of information on contraception

Under the 1995 Law on Drugs, the advertisement of drugs in mass-media publications is prohibited. Contraceptives and condoms are expressly not covered by this prohibition.[149]

E. ABORTION

As abortion was illegal before 1989, and statistics in Albania not thorough, it is difficult to obtain accurate figures for abortion. General trends can nonetheless be discerned. The number of abortions in Albania increased upon legalization from a baseline of 234,000 in 1989 to 334,000 in 1993. The abortion rate per 100 live births sharply increased, from 29.6 in 1989 to 49.4 in 1993, although dropping to 40.6 in 1996.[150] In the first six months of 1998, there was one abortion for every 2.5 live births.[151] Abortion therefore remains one of the most important methods of managing fertility in Albania. As of 1996, 28% of abortions were performed on women aged 30-34 and 22.9% for women aged 25-29.[152] Before the legalization of abortion, the most serious consequence was maternal mortality due to abortions. Between 1980 and 1990, 55% of maternal deaths were caused by or followed illegal abortions. In 1995, no such fatality was recorded.[153]

Legal status of abortion

The 1977 Albanian Penal Code punished abortion as both a crime and a misdemeanor. A pregnant woman who performed an unlawful abortion upon herself was also punished.[154] In 1988, abortion became legal, but only for therapeutic reasons; 30 criteria were listed. Because of the high demand for abortion in 1988, the criteria were tightened the next year.[155] The Ministry of Health authorized abortions to be performed when there were medical indications, when the pregnancy had been the result of rape or incest, or when the pregnant woman was under the age of 16.[156] In 1991, however, the grounds for abortion were again broadened[157] to allow abortions to occur if approved by an obstetrics/gynecology commission, when both the wife and the husband consented, or on the pregnant woman's request because the child was conceived from an extramarital liaison.[158]

Requirements for obtaining legal abortion

Along with the new Criminal Code, a new law on abortion was adopted in 1995.[159] The Law on the Interruption of Pregnancy permits abortion upon a woman's request, or due to mental distress or social problems, up to 12 weeks from the presumed date of conception.[160] It must be performed by a physician, in either a public or private health institution.[161] Terminations of pregnancy to save the mother's life or health or for fetal impairment can be performed anytime during a pregnancy, provided a specially convened commission of three physicians authorize it.[162] Similarly, terminations of pregnancy for social reasons (unspecified in the law) or after a sexual assault (such as rape) are permitted up to 22 weeks from the presumed date of conception, provided three specialists (physician, social worker, and lawyer) authorize the procedure.[163] There is mandatory counseling. The physician must inform a woman requesting an abortion about its health risks; about state and non-state assistance available to families, mothers, and children; about adoption alternatives; and about clinics and hospitals that perform abortions.[164] After this counseling, if the woman still wishes to obtain an abortion, she must reconfirm her request in writing, and wait seven days before undergoing the procedure. If warranted, the physician may reduce the waiting period to two days.[165] When possible, the physician is encouraged to involve the husband or parent in the decision.[166] All women are entitled to post-abortion counseling regarding family planning services and contraception.[167] Unmarried girls under the age of 16 who seek an abortion must have the consent of a parent or guardian.[168] All physicians who perform an abortion are obliged to report it to the Institute of Statistics; the woman's identity may not be revealed.[169]

Fees for abortion are set by the Council of Ministers.[170] Abortions officially cost USD $5, but common practice requires that doctors be paid "on the side," which raises the average amount to about USD $25.[171] Physicians may decline to perform abortions for reasons of conscience.[172] Advertising concerning methods or drugs to interrupt the course of a pregnancy, except those in scientific publications for physicians and pharmacists, is prohibited.[173] Violations carry a fine.[174]

Penalties for abortion

Illegally performing an abortion can be classified as either administrative or penal offense. Administrative fines start at USD $350.[175] Criminal liability is usually reserved for cases where a physician performs an abortion without the woman's consent, and criminal penalties consist of fines or imprisonment of up to five years.[176] Abortions performed by unauthorized individuals in unlicensed clinics or after the gestational time period carry a fine or jail term of up to two years.[177] Where such acts result in the death or serious injury of the woman, imprisonment can be up to five years.[178] Anyone who provides the means for a woman to either self-abort, or have someone else do it, risks a fine or imprisonment of up to one year.[179] The law is silent on criminal prosecution of women who seek illegal abortions. The law does state that abortion will in no case be considered a method of family planning.[180]

F. STERILIZATION

A regulation issued by the Ministry of Health on July 23, 1992 permits surgical sterilization for women and men as a method of family planning.[181] A person seeking to be sterilized must consult with a gynecologist or urologist, and written consent must be jointly signed by the individual and physician.[182] The regulation can be interpreted as requiring both members of a couple to give written consent.[183]

The draft Law on Reproductive Health would also permit voluntary sterilization as a method of family planning: the person wishing to be sterilized must be over 18, consent must be freely given, and it must be shown that sterilization is the only effective method of contraception for this person.[184] Consent may be waived if delaying the sterilization would have "grave health consequences."[185] Should the procedure fail, for example, in the case of a pregnancy following an attempted sterilization, the doctor may be sued for damages.[186]

Proposed methods of sterilization which would be approved include surgery, biochemical or hormonal substances, radiation, or "other new methods approved by competent bodies."[187] Specific safeguards exist for the sterilization of individuals with mental disabilities.[188] It must be shown that risk of pregnancy would pose a serious danger to the person "or others"[189] and that other methods of contraception are not feasible.[190] Consent by the person's legal representative or a court is necessary.[191] However, if the person is over 18 and not considered to be legally incompetent, he or she may (or may not) consent.[192] Compulsory sterilization is possible if it is determined that there is no other way to avoid serious harm to that person or others.[193]

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

Prevalence of HIV/AIDS and STIs

The system of collecting and reporting data on STIs in Albania is very poor. Before the early 1990s, syphilis had been declared "eradicated,"[194] and laboratories and facilities for diagnosis and treatment of STIs were closed. It was not until the early 1990s that STIs were acknowledged to exist: there were 59 cases of syphilis reported between 1993 and 1998, almost half of them in 1998.[195]

HIV/AIDS also became a concern after the opening up of the country in 1990.[196] Serological HIV diagnostic tests are regularly performed at the Institute of Public Health and at the Blood Collection and Preservation Center. The test is confidential and free of charge.[197] It is nevertheless not possible to calculate prevalence in Albania as no surveillance system is in place. UNAIDS has estimated that fewer than 0.01% of adults and children were living with HIV/AIDS in Albania at the end of 1997.[198] In 1994, Albania reported four cases of AIDS, three in 1995, one in 1996, two in 1997, one in 1998 and none by mid-1999.[199] Of these reported cases, seven ended in death.[200] Albania reported a total of 38 cases of HIV infection between 1993 and 1998.[201]

Policies on prevention and treatment of HIV/AIDS and STIs

There is no separate legislation governing HIV/AIDS, but the 1992 Decision of the Council of Ministers, which approved family planning, included the control and treatment of sexually transmissible infections and HIV/AIDS.[202] Under this law, the Ministry of Health has the authority to direct the district commissions to work to prevent and combat AIDS.[203] All blood donors must be screened for HIV any time they donate blood.[204] Additional control measures relate to notification, registration, reporting and mandatory treatment.[205] Additionally, a 1993 law established a National AIDS Commission.[206]

III. Understanding the Exercise of Reproductive Rights: Womens' Legal Status

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

Starting in 1990-1991, a series of political reforms have been enacted to recognize and safeguard the basic rights and freedom of the citizens of Albania. That new legislation has preserved and furthered the formal equality between men and women that had been proclaimed in 1946.

In the early 1990s, the Republic of Albania ratified many of the international human rights treaties, and these standards were incorporated into the Constitution of the Republic of Albania. The 1998 Constitution guarantees equality between men and women as well as non-discrimination. It states that all are equal before the law and that no one can be unfairly discriminated against because of gender; race; political, religious or philosophical convictions; economic, educational, or social situation; or parental status.[207]

The principle of equality between men and women finds expression in all legislation of the Republic of Albania. For example, the Civil Code and the Code of Civil Procedure recognize the equal rights of women in all legal proceedings, such as the right to sue and be sued.[208] The Penal Code and the Code of Penal Procedure protect women and men equally regarding life, health, property, and dignity. Women may be charged with the same penalties as men should they commit the same crimes. Previously, women could not be subject to the death penalty while men could,[209] however the Council of Europe had conditioned Albania's continued membership in the Council in its ending capital punishment. On December 9, 1999, the Constitutional Court of Albania abolished the death penalty.[210] The Labor Code recognizes the equal rights of men and women to work, to employment protection, to paid annual holidays, and to equal pay for equal work.[211] The Family Code recognizes the rights of both men and women to freely choose to marry or to divorce. The Code also emphasizes the equal rights and duties of men and women to the family and for the education and raising of children.[212] The law on social insurance covers situations of unemployment, disability and retirement equally for men and women, but it also recognizes the special needs of women due to childbearing.

In general, the legal framework securing women's equal status is commendable, but it is more an edifice than reality. Most legislation does not take into consideration traditional gender roles and does little to remedy past discrimination and persistent stereotypes.

B. CIVIL RIGHTS WITHIN MARRIAGE

The Family Code governs marriage, and it is the only important legal instrument which has not yet been revised since the transition to democracy in the early 1990s. The Family Code defines the minimum age for first marriage to be 16 for a girl and 18 for a boy.[213] A girl who marries before she turns 18 is no longer considered a minor, even if she is divorced before her 18th birthday.[214] In order for the marriage to be valid, the following conditions must be met: the marriage requires the free consent of both parties and they must be of legal age, single, not related by blood or affinity, and not suffering from any physical disease or mental disability that keeps them from understanding the rights and obligations of marriage.[215] After 1990, when the overt practice of religion was allowed, religious marriages began to be held, but religious ceremonies have no legal effect, and they are still not very common. Having a religious ceremony is not an obstacle to obtaining a civil marriage. The marriage must be registered with the state.[216]

Traditionally, marriage has been considered a family affair. The intended parties would chose to marry, but their parents would have to give their approval. This practice still occurs and co-exists with the formal civil character of marriage.[217] Other traditional practices persist in some regions, particularly in Northern Albania. There, the parents often pledge their infant children in betrothal to secure family alliances. Often, a girl's family provides her with a dowry according to its means. In certain cases, what the girl takes from the family as a dowry is considered to extinguish all further claims to property from the family, including potentially her inheritance.[218] Another custom has reappeared in some very remote northern areas — the practice of "bride price," where a man buys his bride from her family. According to the "Kanun of Lek Dukagjini,"[219] should this marriage end in divorce, the two families are then engaged in a blood feud, and must vindicate their respective honors. The Kanun also authorizes a husband to discipline his wife with physical force, including killing her under certain circumstances.[220]

Divorce laws

The Family Code recognizes equal rights and obligations of both men and women during marriage as well as in divorce, particularly as those rights relate to raising and educating their children.[221] The number of divorces in Albania has been steadily increasing so that in 1991 there was one divorce for every 10 marriages. In larger towns this ratio has been even higher. In 1998 in Durrës, for example, the courts registered two divorces per day. A social stigma still attaches to divorce.

Because of the patriarchal nature of the society, women who seek divorce are commonly blamed for having ruined family unity.[222] Divorced women often find themselves without family support and, therefore, face poverty. Securing suitable and affordable housing — a problem for everyone in Albania — is exacerbated for women seeking a divorce.[223] Nevertheless, in 1998 women initiated 466 out of 868 divorce filings registered in the court of Tirana.[224] Male emigration in order to find paying work outside of Albania has also led to divorce, as many men do not return.

The Albanian Assembly recently adopted a no-fault divorce law.[225] If one party desires a divorce, a court may dissolve the marriage. Either spouse may institute the divorce action, and then the spouses are supposed to live separate and apart for a number of months, during which time they are to reflect on their decision. A court judgment settles property between the spouses, maintenance, and child support and custody. Marital property is presumed to be the common property of both spouses and divided equally.[226]

Regulation of domestic partnership

Recently in Albania, non-marital domestic partnerships have become visible. Formerly, such arrangements were prohibited by law,[227] but the general practice now is to tolerate these domestic partnerships. Laws are silent as to the rights of domestic partners to common property, child custody benefits, and inheritance. Same sex relationships were criminalized in Albania until June 1, 1995 when the new Penal Code came into force.[228] Same sex relationships are no longer illegal.

C. ECONOMIC AND SOCIAL RIGHTS

Property rights

The Constitution guarantees all individuals, regardless of gender, the right to own property. Thus, women may own and enjoy the same tangible and intangible properties as men; they may sell or purchase property without any particular limitation, and can inherit property in the same way as men. The formal equality of women with regard to property rights was first established in Albania in 1928. Nevertheless, these formal guarantees are still not fully realized because the patriarchal mentality which prevails especially in remote rural areas tends to divest women of their rights, particularly in the inheritance of family property.[229]

Labor rights

Article 49 of the Constitution guarantees all citizens the right to freely choose a profession, a place of employment as well as preparatory educational training. That constitutional principle is implemented through the Labor Code which prohibits discrimination of any kind in employment.[230]

The Decision of the Council of Ministers No. 397, May 20, 1996, "On the Special Protection of Pregnancy and Motherhood," grants pregnant women or women with children special employment protection. Women are entitled to 365 days of paid leave, which starts 35 days before childbirth.[231] A woman who gives birth to a second child may take a leave of 390 days, which begins 60 days before childbirth.[232] During this period, the woman's salary is paid from the state social insurance fund — at 80% of her monthly wages for the first 185 days and 50% thereafter.[233] Women are free to return to work as early as 42 days after childbirth. If a woman chooses to return before the end of her right to paid leave, she is paid only her salary; she does not also receive social insurance payments.[234] During her leave, she is guaranteed the right to return to her position without losing her seniority. The law on social insurance also provides a lump sum birth grant to insured parents of 1,500 lek (approximately USD $10) per new child.[235] Women with children under age 15 are supposed to enjoy preferential treatment in hiring and promotion decisions.[236]

The legal framework for workplace equality diverges from the reality in Albania. At the end of 1989, Albanian women's rate of participation in the work force was one of the highest in Europe — between 85% and 94% of all women work outside the home. At that time, there were no striking differences between the unemployment rate for men and women. During the transition from state socialism, women were the first to lose their jobs and were the most likely to be thwarted in finding new work. Contributing factors included the country's slow economic development, a lack of sufficient support for women entrepreneurs, employers' preference for hiring men, the revival of patriarchal mentalities that promote the idea of women staying at home and serving the family, and the paucity of kindergartens and nurseries to care for young children.

Women are also discriminated against in choosing careers. Although women receive the same education as men, they seldom occupy the leading posts in either the public or private sectors. According to the State Committee on Women and Society, 70% of employed women worked in the agriculture sector in 1997, mainly on family farms; 20% worked in the public sector; and 10% were employed in the private sector.[237] Agricultural and public sector work is very poorly paid and low in prestige. Even in the educational sector, where women make up approximately 80% of the employees, most school directors are men.[238] Discrimination against women is also evident when it comes to wages: the average salaries of women, in all sectors and in all levels, are about 80-85% that of men.[239]

In terms of retirement, women who have worked for 20 years have the right to a pension, and their pensions vest fully

after 35 years of work and when they reach the age of 55. Men must also work for 35 years, but may not retire before age 60.[240]

Access to credit

There are no laws which would discriminate against women in obtaining credit. Again, however, in rural areas where traditions prevail, women are often treated as subjects who are not able to make business decisions or transact property. As a consequence, a low percentage of women are engaged in business, or are granted credit in their own names.[241]

Access to education

The Constitution of the Republic of Albania guarantees men and women equal rights to education.[242] The Ministry of Education is responsible for policy development, sector program planning, and management capacities in this area, and the Ministry of Labor and Social Protection supports job training and the development of small enterprises.[243] One of the major groups involved is the Pedagogical Institute, which initiates and advises the government on key issues of school governance, curriculum development, and quality assurance. The Institute of Labor and Social Affairs studies the relationships between the labor market and vocational and technical training. Some NGOs, notably the Open Society Foundation and the Italian NGO Don Bosco, provide financial support to reform the educational sector.[244] The reforms include improving school facilities by renovating, reconstructing, and re-equipping them; updating the education curriculum at all levels; developing skilled teaching staff; establishing an effective system of education management to ensure quality assessment and control; and ensuring a more efficient utilization of facilities and staff to reduce the demands on the state budget.[245]

Women figure greatly in the field of education. There are 58,856 teachers throughout the country, of whom 36,252 (61%) are women and 22,604 (38%) are men. The number of students attending school in 1998-1999 was 694,074. At present, the education system is composed of 2,330 pre-schools, 1,815 mandatory schools,[246] 394 high schools, and 11 universities and other higher education establishments.[247] Higher education is delivered by 1,609 lecturers, of whom 33% are women. Women are even more underrepresented at higher university teaching levels: only 10 out of 146 professors are women (6.8%), and 58 out of 250 assistant professors are women (23.2%).[248] Approximately 36,000 students are enrolled in schools of higher education; 57% of them are women.[249] The percentage of women enrolled in universities is increasing — 65% of the student body in 1999, compared with 53.1% in 1990-1991.[250]

National machinery for the promotion of women's equality

A parliamentary women's group was created in 1995 to focus on women's status and rights.[251] This group played an important role in Albania's preparation for the Fourth World Conference on Women (FWCW) in Beijing. Since the FWCW, approximately 80 women's NGOs and groups have been active in the country.[252]

Beginning in 1998, the governmental machinery for women's issues has been the Committee for Women and Family which reports directly to the Office of the Vice-Prime Minister.[253] The Committee's responsibilities include the implementation of governmental policies for women and family, the coordination of programs for the promotion of equality between men and women, the proposal of new legislation or amendments to existing legislation on women and children in compliance with international standards, and the support and coordination of NGOs active in the field of women's and family rights.[254] In 1998, the Committee for Women and Family prepared a Platform of the Albanian Government for Women for 1999-2000. The Platform addresses issues of equality of men and women in politics and decision-making processes, the role of women in the economy and society, and issues surrounding the status and health of women and girls.

The involvement of Albanian women in both politics and management is generally low, although since 1995 three women were appointed to high ministerial positions.[255] However, the government has done very little to promote women into decision-making positions at the national level. Out of the 580 directors of directorates in ministries and state institutions in 1996, only 80 were women. No women serve as mayors or heads of local governments.[256]

D. RIGHT TO PHYSICAL INTEGRITY

Rape

Sexual violence is a serious problem in Albania. During the post-socialist transition period, there were increasing numbers of prosecutions for rape, due in part to the 1995 New Penal Code, which clarified the definition and punishment of rape.[257] Albanian criminal law defines rape as "nonconsensual sexual intercourse with mature women" and carries a three- to ten-year prison term.[258] If the rape causes serious consequences to the health of the woman, imprisonment can be for five to fifteen years.[259] If the rape results in death or suicide, the possible prison term is 10 to 20 years.[260] There is no law against marital rape.[261] There is a law that specifically punishes statutory rape. For all sexual violations, judicial action can only begin upon the complaint of the woman. Such crimes are considered to be violations of the individual's, rather than the public's, rights.[262]

Domestic violence

While the Criminal Code of Albania has no specific provisions dealing with domestic or sexual violence, the more general provisions on "threat," "torture" and "seriously immoral acts" can be applied to such crimes.[263] Threats of death or serious injury are punishable by a monetary fine or imprisonment of up to one year.[264] Torture or "any other degrading or inhuman treatment" results in a five to ten year prison sentence.[265] If the torture seriously injures, mutilates, permanently harms or kills an individual, the sentence can be 10 to 20 years imprisonment.[266]

Serious intentional injury causing disability, mutilation or any other permanent detriment to health, or causing a miscarriage or any other harm to fetal life carries a sentence of between three and ten years of imprisonment.[267] When the same act is committed against a group of people, or causes death, it is punished by five to fifteen years of imprisonment.[268] Non-serious intentional injury that causes a temporary work disability (lasting no longer than nine days) is subject to a monetary fine or two-year prison term.[269] Assault carries with it anything from a possible monetary fine[270] to a prison sentence of up to six months.[271] Serious injury due to negligence also constitutes a crime and is subject to a fine or a one-year term of imprisonment.[272] Non-serious injuries due to negligence bring only a fine.[273]

The criminal justice system in Albania provides virtually no assistance to survivors of domestic violence. Police, prosecutors and judges are reluctant to prosecute or punish the men.[274] Under the Code of Criminal Procedure, all domestic violence actions must be initiated by a complaint of the survivor. If she withdraws her complaint, the case is closed.[275] If a woman does wish to report a domestic assault, she must go to the police where they attempt to reconcile the couple. If the woman does not want to reconcile she must go to a forensic hospital in order to document her injuries. A woman must be referred to the forensic hospital by the police. She may not decide on her own to get a certificate documenting her injuries.[276] After a physical examination at a forensic hospital, a doctor will issue a certificate which can be used as evidence in court. The certificate describes and grades the severity of the injuries sustained by the woman

With documented evidence of injuries, the woman may then bring her case to the prosecutor. Prosecutors often attempt to reconcile the woman with her abusive husband or partner. If she still wishes to proceed with the prosecution, the prosecutor opens the court case. This is the extent of the state involvement in the process. The prosecutor does not assist the woman with the preparation of her case or with the actual trial. The woman must gather all the evidence and the witnesses and present her own case in court. Only in cases involving very serious injury amounting to repeated torture or death, does domestic violence become public matter leading to a state prosecution.[277] Because the burden of carrying forth the legal process falls on survivors of domestic violence, virtually all cases of domestic assault are dropped before a trial on the merits can be conducted.[278]

There are no official statistics for domestic violence, but many NGOs have undertaken investigations. According to their surveys, 64% of Albanian women report to have suffered violence from family members. Women also mentioned the occurrence of violence directed against children and against the elderly.[279] Despite the commonplace nature of domestic violence, only 5% of such abuses are reported. Out of those 5%, half do not proceed to judgment either because the woman withdraws her complaint or because of insufficient proof.[280] No government-sponsored program exists to assist and defend the rights of domestic violence survivors. An NGO maintains a shelter in Tirana for survivors of domestic violence, but the facility has the capacity to house only a few women at a time. The same NGO also operates a telephone hotline that women and girls can call for advice and counseling.[281]

Sexual harassment

The 1995 Labor Code recognized sexual harassment for the first time in Albania's history. Any conduct that constitutes "sexual molestation on the job" is forbidden. Violations of this law are administrative and are punished with a penalty of up to 30 times the minimum monthly wage.[282]

Trafficking in women

There are no laws which specifically outlaw trafficking in women, although anti-kidnapping laws may be used to prosecute such cases. The Criminal Code punishes kidnapping with the intention of enrichment,[283] prostitution,[284] soliciting prostitution, mediating or gaining from it,[285] and use of premises for prostitution.[286]

Trafficking in women and girls for the purpose of forced prostitution is a significant problem in Albania. The country is both a major transit and source country for such trafficking. NGOs estimate that there are 30,000 Albanian women currently working abroad as prostitutes. The country is also a major conduit for trafficked women from Bulgaria, Moldova, Romania, Russia, and Ukraine. Criminal gangs recruit or coerce women to work as prostitutes abroad, most often in Italy and Greece. There are also reports of some family members who have sold daughters, sisters, and wives to traffickers against their wills. The government has had only periodic success in arresting the criminal organizers.[287] Trafficking of women out of Albania has attracted the concern of women's NGOs in Albania. They are working to amend the penal code

so that taking a woman abroad to work as a prostitute, as well as opening houses for prostitution in the country, would be severely penalized.[288]

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

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

In 1995, 32.9% of Albania's population was under 15 years old. Adolescents aged 13-18 make up 19% of the population. Because of Albania's recent history — including the illegality of family planning methods — the reproductive health of adolescents has been neglected. Contraceptive use is very low, and unintended pregnancies and abortion rates are high. Women between the ages of 13 and 19 account for 3.6% of all officially reported abortions, but a large number of abortions, despite the expense, are carried out in private clinics which often do not report procedures to the Ministry of Health. At the same time, state clinics often fail to report abortions performed on adolescents.

Regulation of the Ministry of Public Health Care, approved in November 1997, states that health care providers must cooperate with the schools to provide reproductive health education, but it does not elaborate any specific policies.[289] There are no reproductive health service centers that specifically serve adolescents.

B. MARRIAGE AND ADOLESCENTS

The legal age of first marriage is 16 for girls, 18 for boys,[290] but the average age for marriage is much higher: for women, it is 22.3 years, for men, 27 years.[291] The average marriage age has been rising for both sexes.

C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

Albanian law punishes statutory rape. If a girl is under 13 or has not yet reached sexual maturity, intercourse is punishable by imprisonment of up to 15 years.[292] Non-consensual sexual intercourse, or sexual intercourse that leads to injury of the underaged girl, is subject to 10 to 20 years of imprisonment.[293] When the act leads to the death or suicide of the underaged girl, it carries a minimum 20-year sentence.[294] "Seriously immoral acts," undefined by the law, committed upon persons under 14, can bring up to five years in jail.[295] Rape of a girl between the ages of 14 and 18 years carries a prison term of up to 10 years.[296] If the rape seriously affects the girl's health, it is punished by up to 15 years in prison,[297] and if the rape leads to her death or suicide, the prison term is a minimum of 15 years.[298] Soliciting prostitution when a minor girl is involved carries a sentence from five to 10 years of prison.[299] Same-sex rape of minors is punished with up to five years of imprisonment.[300]

D. EDUCATION AND ADOLESCENTS

Albania's Education Law guarantees both girls and boys equal access to education. Based on the law, secondary education is compulsory for all children of both sexes in Albania. No differences exist between the two sexes regarding school attendance. Albanian families have traditionally valued education, regardless of their economic status, but since 1990 there has been a noticeable decrease in the number of children who attend school. In 1998, about 2.7% of the total number of Albanian children abandoned mandatory school. There are at least 11,131 school children under the age of 16 who missed over 50% of classes. This phenomenon has grown dramatically in certain districts.[301] About 59% of students finishing mandatory education continue their studies in high schools. High schools are attended by students 14 to 18 years old and consist of 4 years of general education or from 3 to 5 years of vocational training. In cities, 52% of girls who finish mandatory school continue their studies in high schools, whereas in rural areas, the figure is 28% of girls and 72% of boys. Thus, out of 14,458 village girls finishing mandatory schooling in 1999, only 4,065 enrolled in their area's high school. Though it is expected that a number of these girls did enroll in high schools in other areas, the disparity among boys and girls is still high, due in part to the difficult economic conditions facing many rural families and stereotypical perceptions that girls will marry and "waste" their education.[302] There has been no decline, however, in the number of young people who attend secondary schools and universities. In fact, the number of women in higher education exceeds that of men.[303]

E. SEX EDUCATION

A Council of Ministers decision dating from May 1992 directed the Ministry of Health and the Ministry of Education to develop sex education curricula and materials for courses to be taught both inside and outside of schools.[304] In 1993, the first sex education classes were held in schools for children 14 years and older. In 1994, the program was extended to the entire country.

Health education consists of nine hours of sex education per school year, and six hours devoted to information about prevention of HIV/AIDS and STIs. Most Albanians seem to accept having sex education taught in school: 83% of parents and 92% of teenagers have called sex education necessary and useful.[305]

F. TRAFFICKING IN ADOLESCENTS

No specific legislation addresses the problem of trafficking in adolescents. International trafficking in Albanian girls was first noted in 1993, and since then prostitution has been steadily growing in Italy and Greece. Italian authorities officially estimate the number of Albanian prostitutes at between 10,000 and 15,000, accounting for two-thirds of the foreign sex trade in Italy. The great majority of these prostitutes are very young, between the ages of 14 and 18.[306]

NOTE ON SOURCES

The information in this chapter is primarily drawn from secondary sources in English. Albanian secondary sources, unless otherwise noted, are official translations of the original documents. When available, primary sources of national law were used. The Center for Reproductive Law & Policy holds on file unofficial English translations of some of these primary sources of law. The chapter follows as closely as possible THE BLUEBOOK (16th ed. 1996). Blue book footnote style may show variations due to production incompatibilities with certain character fonts.

ENDNOTES

1. Dorina Islami et. al, *Reproductive Health in Albania*, at 5 (1998) (visited Apr. 6, 2000) <http://matweb.hcuge.ch> [hereinafter *Reproductive Health in Albania*].
2. *Id.*
3. UNDP: *Country Cooperation Frameworks and Related Matters, First Country Cooperation Framework for Albania (1998-2001)*, Executive Board of the United Nations Development Programme and of the United Nations Population Fund, 2nd Sess., Agenda Item 3, at 2, DP/CCF/ALB/1 (Jan. 30, 1998).
4. Albanian Constitution [ALB. CONST.], approved by the Albanian Parliament on 21 October 1998 (Kathleen Imholz et. al trans.) (visited Apr. 6, 2000) < http://www.urich.edu>; *Constitution Watch: Albania*, E.EUR.CONST.REV., Vol. 7, No. 4, Fall 1998 (visited Apr. 6, 2000) <http://www.law.nyu.edu/eecr>.
5. For example, the judiciary was unable to function for much of 1997; 15 out of 36 district courts were destroyed by vandalism or fire, along with an unknown amount of records, papers, books and other legal resources. Even before the civil strife, the judicial system was subject to corruption and executive pressure. The High Council of Justice, which appoints judges, has undergone restructuring which gives some hope to the greater independence of the judicial branch. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, ALBANIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1997, at 1, 2, 5 (released Jan. 30, 1998) (visited Apr. 6, 2000) <http://www.state.gov>.
6. CIA, ALBANIA, 1999 WORLD FACTBOOK, at 3 (visited Apr. 6, 2000) <http://www.odci.gov/cia/publications/factbook/al.html> [hereinafter WORLD FACTBOOK].
7. ALB. CONST. art. 9(1) ("political parties based on democratic principles are founded freely").
8. *Id.* art. 1(1).
9. *Id.* art. 2(1).
10. *Id.* art. 2(3).
11. *Id.* art. 7.
12. *Id.* art. 86(1).
13. *Id.* art. 87(1), (2).
14. *Id.* art. 88(1).
15. *Id.* art. 92.
16. *Id.* art. 100(1).
17. *Id.* art. 100(5).
18. *Id.* art. 95(2).
19. *Id.* art. 96(1).
20. *Id.* art. 96(2), (3).
21. *Id.* art. 98.
22. *Id.* art. 100(4).
23. *Id.* art. 102(1).
24. *Id.* art. 102(3).
25. *Id.* art. 102(4).
26. *Id.* art. 105(1).
27. WORLD FACTBOOK, *supra* note 6, at 4.
28. ALB. CONST. art. 65(1). According to art. 64(1) of the Constitution, the assembly consists of 140 deputies. The current legislature, elected before the adoption of the new Constitution, has 155 deputies.
29. *Id.* art. 64(1).
30. *Id.* art. 64(1), (2).
31. *Id.* art. 81(1).
32. *Id.* art. 81(2).
33. *Id.* art. 150(1).
34. *Id.* art. 150(2).
35. CHICAGO-KENT COLLEGE OF LAW, REPORT TO THE WORLD BANK, ALBANIAN LEGAL INFORMATION INITIATIVE: INCREASING ACCESS TO LEGAL INFORMATION IN ALBANIA (Dec. 1999) (visited Apr. 7, 2000) <http://pbosnia.kentlaw.edu/projects/albania/report/2.htm>.
36. *Id.*
37. *Id.*
38. ALB. CONST. art. 141(1).
39. *Id.* art. 136(1), (3).
40. *Id.* art. 125(1)-(3).
41. *Id.* art. 131.
42. *Id.* art. 60(1).
43. *Id.* art. 61(1).
44. *Id.* art. 63.
45. WORLD FACTBOOK, *supra* note 6, at 4.
46. ALB. CONST. art. 13.
47. *Id.* art. 108(3).
48. *Id.* art. 109(1).
49. *Id.* art. 108(4).
50. *Id.* art. 109(2).
51. *Id.* art. 110(1), (2).
52. *Id.* art. 110(3).
53. *Id.* art. 110(4).
54. *Id.* art. 114.
55. *Id.* art. 116.
56. *Id.* art. 121.
57. *Id.* art. 122.
58. The Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sept. 3, 1981, *for Albania* Oct. 6, 1994).
59. The International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Jan. 3, 1976, *for Albania* Jan. 4, 1992).
60. The International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976, *for Albania* Jan. 4, 1992).
61. The Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (*entry into force* Sept. 2, 1990, for *Albania* Mar. 28, 1992).
62. The International Convention for the Elimination of all Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force for Albania* Jun. 10, 1994).
63. Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (*entry into force* Sept. 3, 1953). Last amended by Protocol No. 11, ETS No. 155 (*entry into force* Nov. 1, 1998).
64. DIRECTORATE OF PRIMARY HEALTH CARE, MINISTRY OF HEALTH AND ENVIRONMENTAL PROTECTION, POLICY OF THE SERVICE OF PRIMARY HEALTH CARE (1997); DIRECTORATE OF PRIMARY HEALTH CARE, MINISTRY OF HEALTH AND ENVIRONMENTAL PROTECTION & EUROPEAN COMMISSION, STRATEGY FOR THE IMPLEMENTATION OF THE PRIMARY HEALTH CARE POLICY (1997).
65. POLICY OF THE SERVICE OF PRIMARY HEALTH CARE, *supra* note 64, at 9-10, 13.
66. UNITED NATIONS COMMISSION ON SUSTAINABLE DEVELOPMENT, SOCIAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA (visited

Apr. 7, 2000, last update Apr. 1, 1997) <http://www.un.org/esa/agenda21/natlinfo/countr/albania/social.htm>.
67. *Id.*
68. *Reproductive Health in Albania*, *supra* note 1, at 18 - 19.
69. See LOTHAR SPRINGER, UNFPA, EVALUATION REPORT: STRENGTHENING MCH / FP SERVICES IN ALBANIA (ALB / 91 / PO3), at 10 - 11 (1996) [hereinafter EVALUATION REPORT].
70. STRATEGY FOR THE IMPLEMENTATION OF THE PRIMARY HEALTH CARE POLICY, *supra* note 64, at 8.
71. *Id.* at 46.
72. *Id.* at 8.
73. EVALUATION REPORT, *supra* note 69, at 10 - 11.
74. *Id.*
75. POLICY OF THE SERVICE OF PRIMARY HEALTH CARE, *supra* note 64, at 4 - 5, 9 - 13; STRATEGY FOR THE IMPLEMENTATION OF THE PRIMARY HEALTH CARE POLICY, *supra* note 64, at 67, 72.
76. STRATEGY FOR THE IMPLEMENTATION OF THE PRIMARY HEALTH CARE POLICY, *supra* note 64, at 57 - 58.
77. *Id.* at 95.
78. *Id.* at 92.
79. *Id.* at 58.
80. *Id.* at 52 - 53.
81. Law on Health Insurance No. 7870/Oct. 13, 1994, art. 2 (English translation on file with The Center for Reproductive Law & Policy); *see* EVALUATION REPORT, *supra* note 69, app. 7.
82. Law on Health Insurance, art. 3.
83. *Id.* art. 4 (1).
84. *Id.* art. 4 (3).
85. *Id.* arts. 10 (2), arts. 4(4), 9. According to article 10(3), the self-employed, employers and unpaid family workers in urban areas pay 7% of the minimum wage, while workers in mountainous areas pay 3% of the minimum wage.
86. *Id.* art. 8 (1).
87. *Id.* art. 8 (2).
88. *Id.* art. 12.
89. *Id.* art. 5.
90. *Id.* art. 4 (2).
91. *Id.* arts. 6, 7.
92. *Id.* art. 20.
93. *Id.* arts. 23, 24.
94. *Id.* art. 27.
95. *Id.* art. 30.
96. Draft Law on Reproductive Health arts. 35-40 (English translation on file with The Center for Reproductive Law & Policy).
97. STRATEGY FOR THE IMPLEMENTATION OF THE PRIMARY HEALTH CARE POLICY, *supra* note 64, at 133.
98. Draft Law on Reproductive Health art. 38.
99. *Id.* art. 39.
100. STRATEGY FOR THE IMPLEMENTATION OF THE PRIMARY HEALTH CARE POLICY, *supra* note 64, at 133.
101. Draft Law on Reproductive Health art. 40.
102. *Id.* art. 55.
103. *Id.* art. 51.
104. *Id.* art. 54.
105. *Id.* art. 59.
106. Law No. 7895 from 27 January 1995, Criminal Code of the Republic of Albania [CRIM. CODE] (Agron Alibali trans.) (visited Apr. 9, 2000) <http://pbosnia.kentlaw.edu/resources/legal/albania/crim_code.htm>.
107. *Id.* art. 96.
108. *Id.* art. 93.
109. *Id.* art. 91.
110. *Id.* art. 92.
111. *Id.* art. 85.
112. *Id.* art. 88(1).
113. *Id.* art. 89.
114. *Albania: Abortion and Contraception Now Legal*, REPRODUCTIVE HEALTH MATTERS, May 1993, at 106.
115. *Id.*
116. Kirsten D. Senturia, *Maternal and Child Health* in Albania, 43 SOC. SCI. MED. 1097, 1105 (1996).
117. SOCIAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA, *supra* note 66.
118. WORLD FACTBOOK, *supra* note 6, at 3.
119. *Id.*
120. *Id.*
121. SOCIAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA, *supra* note 66.
122. WORLD FACTBOOK, *supra* note 6, at 3.
123. SOCIAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA, *supra* note 66.
124. *Id.*
125. *Id.*
126. *Albania: Abortion and Contraception Now Legal*, *supra* note 114.
127. Enilda Gorishti & Joan Haffey, *"We Want to Know Everything about It:" Albanian Women Speak about Family Planning*, SEATS Working Paper No. 1, at 11-13 (visited Apr. 10, 2000) <http://www.jsi.com/intl/seats/publications/pub04.html>.
128. Decision of the Council of Ministers for the Approval of the Activities of Family Planning in Albania No. 226 from May 27, 1992, art. 1.
129. Decision of the Council of Ministers for the Approval of the Activities of Family Planning in Albania No. 226 from May 27, 1992, in 43 INT. DIG. HLTH LEG. 701, 737 (1992).
130. Margalina Sina & Olsian Teta, *Albania: Legalization Reduces Abortions and Maternal Deaths*, INTER PRESS SERVICE, August 15, 1996.
131. Directorate of Public Health, Ministry of Health, Structure of Family Planning Services (July 23, 1992) (English translation on file with The Center for Reproductive Law & Policy).
132. Sina & Teta, *supra* note 130.
133. EVALUATION REPORT, *supra* note 69, at 4.
134. INTERNATIONAL PLANNED PARENTHOOD FEDERATION, COUNTRY PROFILE - ALBANIA (visited Apr. 10, 2000) <http://www.ippf.org/regions/countries/alb/index.htm>. The family planning centre in Tirana offers full range of services, including abortion, while the centres in Durres and Lezha do not perform abortions. The Albanian Family Planning Association receives their funds from IPPF and provide services with its own contraceptives. IPPF was asked to extend their activities to Shkodra. There are plans to install, together with the UNFPA-project, a joint youth counselling centre for reproductive and sexual health in Tirana. IPPF requested funding from UNFPA to install a computer based "client management information system" (CMIS). *Reproductive Health in Albania*, *supra* note 1, at 29.
135. As of 1996, Marie Stopes International was planning to implement the social marketing project, financed through a DM 3 million soft loans of the Kreditanstalt für Wiederaufbau (KfW, German Development Bank). The project started at the end of 1996 and included the social marketing of 3 to 5 kinds of contraceptives. This project is executed by the Ministry of Health and is complementary to the UNFPA activities. *Reproductive Health in Albania*, *supra* note 1, at 29.
136. Population Service International has started a social marketing project for their own brand of condoms. They performed focus group discussions and some analysis for the marketing of their product. PSI imported 500,000 condoms in 1996. *Id.* at 30.
137. *Id.* at 29-30.
138. *Id.* at 30.
139. *Id.* at 20-21.
140. UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), ALBANIAN NATIONAL WOMEN REPORT 1999, at 27 (visited Apr. 19, 2000) <http://www.tirana.al/publications.htm>.
141. *Reproductive Health in Albania*, *supra* note 1, at 21.
142. *Id.*
143. *Id.* at 20.
144. Order of the Ministry of Health on Guidelines for the Free Distribution of Contraceptives, in EVALUATION REPORT, *supra* note 69, app. 7.
145. EVALUATION REPORT, *supra* note 69, at 22; Ministry of Health Protocol No. 1567 from July 23, 1992 on Regulations on Family Planning - Activities to the Executive Committee of the District Health Section also approves implants, sterilization, and abortion as contraceptive method (English translation on file with The Center for Reproductive Law & Policy); *Reproductive Health in Albania*, *supra* note 1, app. 5.
146. Regulation on Family Planning Activities No. 1567 from July 23, 1992, arts. 2-4.
147. *Id.* art. 7.
148. *Reproductive Health in Albania*, *supra* note 1, at 30.

149. Law on Drugs, promulgated by Decree of the president No. 841 from May 5, 1995, in *Reproductive Health in Albania*, *supra* note 1, app. 5.
150. INTERNATIONAL CHILD DEVELOPMENT CENTRE, UNICEF, WOMEN IN TRANSITION 117-118 (1999) (visited Apr. 10, 2000) <http://www.unicef-icdc.org> [hereinafter WOMEN IN TRANSITION].
151. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 27.
152. *Reproductive Health in Albania*, *supra* note 1, at 17.
153. Sina & Teta, *supra* note 130.
154. Penal Code of 15 June 1977, arts. 95, 178, 16 ANNUAL REVIEW OF POPULATION LAW 25 (1989) (visited Apr. 11, 2000) <http://cyber.law.harvard.edu>.
155. UNITED NATIONS POPULATION FUND (UNFPA), ALBANIA REPORT 1989-1990, at 17.
156. Order of the Ministry of Health No. 1765 from 17 June 1989 On Permission of Prevention and Eventually Interruption of Pregnancy (visited Apr. 11, 2000) <http://cyber.law.harvard.edu>.
157. Sahatci E., *Legal Abortion Improved Women's Health in Albania*, WOMEN'S GLOBAL NETWORK FOR REPRODUCTIVE RIGHTS NEWSLETTER No. 44, July-Sept. 1993, at 10.
158. Ministry of Health, Addition to Order No. 3 of 17 June 1989 On Permission of Prevention and Eventually Interruption of Pregnancy ([8 June 1991) (visited Apr. 11, 2000) <http://cyber.law.harvard.edu>.
159. Law No. 8045 of 7 December 1995 on the Interruption of Pregnancy, 4 RECHT IN OST UND WEST 113 (Apr. 15, 1996).
160. *Id.* art. 3.
161. *Id.* art. 10.
162. *Id.* art. 9.
163. *Id.* art. 11. The specialist committee decides if pregnancy is a result of a rape or other sexual crime.
164. *Id.* art. 4.
165. *Id.* art. 6(1), (3).
166. *Id.* art. 6(2).
167. *Id.* art. 14.
168. *Id.* art. 8.
169. *Id.* art. 12.
170. *Id.* art. 19.
171. Jean Rafferty, *Birth of a Nation*, THE GUARDIAN, July 13, 1996, at TT20.
172. Law No. 8045 of 7 December 1995 on the Interruption of Pregnancy, art. 16.
173. *Id.* art. 15.
174. *Id.* art. 17.
175. *Id.* art. 17(1).
176. CRIM. CODE art. 93.
177. *Id.* art. 94(1).
178. *Id.* art. 94(2).
179. *Id.* art. 95.
180. Law No. 8045 of 7 December 1995 on the Interruption of Pregnancy, art. 2(1).
181. Ministry of Health Protocol No. 1567 from July 23, 1992 on Regulations on Family Planning - Activities to the Executive Committee of the District Health Section also approves implants, sterilization, and abortion as contraceptive method, art. 1 (English translation on file with The Center for Reproductive Law & Policy).
182. *Id.* art. 5.
183. *Id.* ("when the couple become aware, a written paper will be filled, where the couple and the consulting physician will sign.").
184. Draft Law on Reproductive Health arts. 4, 6 (English translation on file with The Center for Reproductive Law & Policy).
185. *Id.* art. 7.
186. *Id.* art. 9.
187. *Id.* art. 5.
188. *Id.* art. 10.
189. *Id.* art. 10(a).
190. *Id.* art. 10(b).
191. *Id.* art. 10(c).
192. *Id.* art. 12.
193. *Id.* art. 11.
194. EVALUATION REPORT, *supra* note 69, at 2.
195. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 29.
196. SOCIAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA, *supra* note 66.
197. *Id.*
198. UNAIDS & WORLD HEALTH ORGANIZATION, ALBANIA EPIDEMIOLOGICAL FACT SHEET ON HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES 3 (1998) (visited Apr. 12, 2000) <http://www.unaids.org>.
199. EUROPEAN CENTRE FOR THE EPIDEMIOLOGICAL MONITORING OF AIDS, HIV/AIDS SURVEILLANCE IN EUROPE: REPORT NO. 61, June 30, 1999, at 8-9.
200. *Id.* at 16.
201. *Id.* at 37.
202. Decision of the Council of Ministers for the Approval of the Activities of Family Planning in Albania No. 226 from May 27, 1992, art. 1(d) (English translation on file with The Center for Reproductive Law & Policy).
203. Law on Prevention and Fight against Infectious Diseases No. 7761 from October 19, 1993, promulgated by presidential Decree No. 672 from Oct. 29, 1993 (on file with The Center for Reproductive Law & Policy).
204. *Id.*
205. *Id.*
206. *Id.* art. 20.
207. ALB. CONST. art. 18.
208. The Civil Code of the Republic of Albania [CIV. CODE], Law No. 7850 from July 29, 1994; the Code of Civil Procedure of Albania, Law No. 8116 from March 29, 1996.
209. CRIM. CODE art. 31(2).
210. *Albania Abolishes Death Penalty*, RFE/RL NEWSLINE, December 13, 1999 (visited Apr. 12, 2000) <http://www.rferl.org/newsline/1999/12/131299.html>.
211. The Code of Labor of the Republic of Albania [LAB. CODE], Law No. 7961 from July 12, 1995.
212. The Code of Family of the Republic of Albania [FAM. CODE], Law No. 6599 from June 29, 1982.
213. Valentina Zace, *Albania: Family Law under the Dictatorship of the Proletariat*, 33 U. OF LOUISVILLE J. OF FAM. L. 259, 262 (1995).
214. CIV. CODE art. 6.
215. FAM. CODE arts. 15-16; Zace, *supra* note 213, at 262.
216. Zace, *supra* note 213, at 262.
217. *Id.* at 261.
218. INDEPENDENT FORUM OF WOMEN, INDEPENDENT STUDY (1996) (in Albanian).
219. The Kanun of Lek Dukagjin is a code of unwritten law dating from the medieval period. The code encompasses what would be considered family law matters and gender roles. Although now the Family Code has superceded this "law" since the 1920s, the traditions are enjoying renewed prominence in certain areas. MINNESOTA ADVOCATES FOR HUMAN RIGHTS, DOMESTIC VIOLENCE IN ALBANIA (April 1996) (visited Apr. 12, 2000) <www.mnadvocates.org>.
220. *Id.*
221. FAM. CODE art. 94.
222. DOMESTIC VIOLENCE IN ALBANIA, *supra* note 219, at 8.
223. *Id.*
224. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 13.
225. DOMESTIC VIOLENCE IN ALBANIA, *supra* note 219, at 13.
226. Zace, *supra* note 213, at 263-264.
227. Decree 3161 from 10 December 1960 classified cohabitation as an administrative offence and punished it with a fine. *Id.* at 264.
228. FRED ABRAHAMS, HUMAN RIGHTS WATCH, HUMAN RIGHTS IN POST-COMMUNIST ALBANIA 133 (1996).
229. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 7.
230. LAB. CODE art. 9.
231. Law on Social Insurance in the Republic of Albania No. 7703 from May 11, 1993, art. 27.
232. *Id.* arts. 26-29; WOMEN IN TRANSITION, *supra* note 150, at 53.
233. WOMEN IN TRANSITION, *supra* note 150, at 53.
234. Law on Social Insurance in the Republic of Albania No. 7703 from May 11, 1993, art. 27.
235. *Id.* art. 29.
236. Law on Employment Promotion No. 7995 from 20 September 1995, art. 7.
237. COMMITTEE FOR WOMEN AND FAMILY, PLATFORM OF THE ALBANIAN GOVERNMENT FOR WOMEN FOR THE YEARS 1999 - 2000, at 6 (English translation on file with The Center for Reproductive Law & Policy).
238. In the Assembly (1997), women constituted 7.3% of deputies against 92.7% of men. In

government, out 19 cabinet members only two are women, (1% of the total). The same applies to the number of women deputy ministers and out of 12 Prefects only one is woman. At other levels of government, women are in a better position but still a minority when compared to men. Thus, in various management positions in the public administration men have 70% of posts against 30% taken by women. Data are no better at local government where men occupy twice the posts held by women. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 24.

239. *Id.* at 16.

240. Law on Social Insurance in the Republic of Albania No. 7703 from May 11, 1993, art. 31.

241. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 6.

242. The Law on Pre-university Education No. 7952 from June 21, 1995.

243. SOCIAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA, *supra* note 66.

244. *Id.*

245. *Id.*

246. Eight year schooling in Albania comprises age groups from six to fourteen years old and is divided into two cycles: lower cycle (first to fourth grade) which is similar to elementary school in some Western countries and the upper cycle (fifth to eighth grade). Eight-year schooling represents mandatory education period. According to article 57(5) of the Constitution education in public school is free. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 34.

247. *Id.* at 33.

248. *Id.* at 36-37.

249. *Id.* at 36.

250. *Id.*

251. UNITED NATIONS COMMISSION ON SUSTAINABLE DEVELOPMENT, INSTITUTIONAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA (visited Apr. 7, 2000, last update Apr. 1, 1997) <http://www.un.org/esa/agenda21/natlinfo/countr/albania/inst.htm>.

252. *Id.*

253. PLATFORM OF THE ALBANIAN GOVERNMENT FOR WOMEN FOR THE YEARS 1999 - 2000, *supra* note 237, at 3.

254. *Id.*; Decision of the Council of Ministers No. 415 from July 1, 1998.

255. INSTITUTIONAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN ALBANIA, *supra* note 251.

256. *Id.*

257. CRIM. CODE arts. 102-105.

258. *Id.* art. 102(1).

259. *Id.* art. 102(2).

260. *Id.* art. 102(3).

261. DOMESTIC VIOLENCE IN ALBANIA, *supra* note 219.

262. The Code of Criminal Procedure [CODE CRIM. PROC.], promulgated by the Decree of the president No. 1059 from 5 April 1995, art. 284(1) (visited Apr. 12, 2000) <http://pbosnia.kentlaw.edu/resources/legal/albania/crim_pro.htm>.

263. CRIM. CODE arts. 84, 86-91, 108.

264. *Id.* art. 84.

265. *Id.* art. 86.

266. *Id.* art. 87.

267. *Id.* art. 88(1).

268. *Id.* art. 88(2).

269. *Id.* art. 89.

270. *Id.* art. 90(1).

271. *Id.* art. 90(2).

272. *Id.* art. 91.

273. *Id.* art. 92.

274. *Id.*

275. DOMESTIC VIOLENCE IN ALBANIA, *supra* note 219.

276. *Id.*

277. *Id.*

278. *Id.*

279. COUNSELING CENTER FOR WOMEN AND GIRLS IN TIRANA, INDEPENDENT STUDY (1998). For similar findings in 1996, see DOMESTIC VIOLENCE IN ALBANIA, *supra* note 219.

280. DOMESTIC VIOLENCE IN ALBANIA, *supra* note 219 (citing studies of the Association Refleksione).

281. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, ALBANIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1999, at 12 (visited Apr. 12, 2000) <http://www.state.gov>.

282. LAB. CODE art. 32.

283. CRIM. CODE art. 109. The punishment is ten to twenty years in prison.

284. *Id.* art. 113. The punishment is a fine or up to three years in prison.

285. *Id.* art. 114. The punishment is a fine or up to five years in prison.

286. *Id.* art. 115. The punishment is a fine or up to ten years in prison.

287. ALBANIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1999, *supra* note 281, at 17.

288. *Id.* at 17-18.

289. Regulations of the Reproductive Health Service No. 394 from November 7, 1997 (unofficial English translation on file with The Center for Reproductive Law & Policy).

290. Zace, *supra* note 213, at 262.

291. WOMEN IN TRANSITION, *supra* note 150, at 127-128.

292. CRIM. CODE art. 100(1).

293. *Id.* art. 100(2).

294. *Id.* art. 100(3).

295. *Id.* art. 108.

296. *Id.* art. 101(1).

297. *Id.* art. 101(2).

298. *Id.* art. 101(3).

299. *Id.* art. 114(2).

300. *Id.* art. 116.

301. ALBANIAN NATIONAL WOMEN REPORT 1999, *supra* note 140, at 34.

302. *Id.* at 35.

303. *Id.*

304. Decision of the Council of Ministers for the Approval of the Activities of Family Planning in Albania No. 226 from May 27, 1992, art. 3.

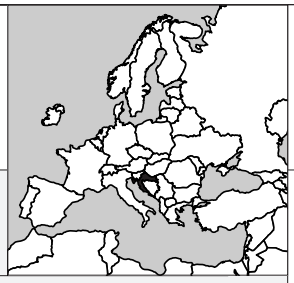
305. Lothar Springer, *The Role of Sexual Education in the Sexuality of Teenagers*, Presentation for the First International Workshop On Reproductive Health, at 4 (1996) (on file with The Center for Reproductive Law & Policy).

306. SOCIAL, HEALTH AND FAMILY AFFAIRS COMMITTEE, COUNCIL OF EUROPE, SITUATION OF CHILDREN IN ALBANIA, Report Doc. 8284, 18 December 1998 (visited Apr. 12, 2000) <http://stars.coe.fr>.

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

3. Croatia



Statistics

GENERAL

Population

- The total population of Croatia is 4.5 million.[1]
- The proportion of the population residing in urban areas is estimated to be 64%.[2]
- Between 1995 and 2000, the annual population growth rate is estimated at –0.1%.[3]
- In 1999, the gender ratio was estimated to be 107 women to 100 men.[4]

Territory

- The territory of Croatia is 21,359 square miles.[5]

Economy

- In 1997, the gross national product (GNP) was USD $20.7 billion.[6]
- In 1997, the gross domestic product (GDP) was USD $19,081 million.[7]
- The average annual growth between 1990 and 1997 was –1.0 %.[8]
- From 1990 to 1995, public expenditure on health was 8.5% of GDP.[9]

Employment

- Women comprised 44% of the labor force in 1997, compared to 40% in 1990.[10]

WOMEN'S STATUS

- In 1999, the life expectancy for women was 76.5 years, compared with 68.8 years for men.[11]
- In 1991, the illiteracy rate among youth between the ages of 15–24 was 5% for females and 1% for males.[12]
- In 1998, gross primary school enrollment was 86% for boys and 85% for girls; gross secondary school enrollment was 73% for boys and 81% for girls.[13]

ADOLESCENTS

- 17% of the population is under 15 years of age.[14]

MATERNAL HEALTH

- Between 1995 and 2000 the total fertility rate is estimated at 1.56.[15]
- In 1999, there were 19 births per 1,000 women aged 15–19.[16]
- In 1999, the maternal mortality ratio was 12:100,000.[17]
- Infant mortality was at 10 per 1,000 live births.[18]
- There are no statistics available on the number of births attended by trained attendants.[19]

CONTRACEPTION AND ABORTION

- There are no statistics available on the prevalence of any method of contraception.[20]

HIV/AIDS AND STIs

- In 1999, the estimated number of people living with HIV/AIDS was 350.[21]
- In 1999, the estimated number of women aged 15–49 living with HIV/AIDS was <100.[22]
- In 1999, the estimated number of children aged 0–14 living with HIV/AIDS was <100.[23]
- In 1999, the estimated cumulative number of AIDS deaths among adults and children was <100.[24]

ENDNOTES

1. United Nations Population Fund (UNFPA), The State of World Population 1999 (visited July 12, 2000) <www.unfpa.org>.
2. *Id.*
3. *Id.*
4. The World's Women 2000. Trends and Statistics, at 20.
5. United Nations Population Fund (UNFPA), The State of World Population 1998, at 757.
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. CIA, Croatia, World factbook (visited Sept. 23, 1999) <http://www.odci.gov/cia/publications/factbook/hr.html>.
13. The State of World Population 1998, *supra* note 5, at 68.
14. World factbook, *supra* note 12.
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-Croatia 3 (2000) (visited July 13, 2000) <www.unaids.org>.
22. *Id.*
23. *Id.*
24. *Id.*

The Republic of Croatia is located in Southeastern Europe. It borders Bosnia and Herzegovina, Yugoslavia, Hungary, Slovenia and the Adriatic Sea. The official language is Croatian. In 1991, Croatia (and Slovenia) proclaimed independence from Yugoslavia, leading to a costly and brutal war. Over the next few years, as one-third of the country became subject to Serbian control, scores of people were displaced and a significant portion of Croatian infrastructure was destroyed. In 1995, Croatia reclaimed its territory, which again caused a mass migration — this time of ethnic Serbs from Croatia into Bosnia and Serbia. According to the 1991 census, 78% of the population was Croatian, 12% was Serbian, and the remaining 10% was a combination of Hungarian, Slovenian, Muslim, and others. While there are no accurate measurements, it is widely accepted that the ratio has now changed and Croatia is overwhelmingly inhabited by ethnic Croatians due to the war and migration patterns of refugees. The predominant religion is Catholicism (76.5%), followed by Orthodox (11.1%), Muslim (1.2%), Protestant (0.4%), and other religions. In July 1999, the total population of Croatia was estimated at 4.67 million, including approximately 2.4 million women.[1]

Croatia is still recovering from the effects of the war. Prior to the war, Croatia was, after Slovenia, the second most prosperous of the six Yugoslav Republics. The economic challenges now include a damaged and insufficient infrastructure, the integration of refugees and displaced persons, and a legacy of Communist mismanagement.[2] The political situation is also in a state of flux. On December 11, 1999, Croatia's first president, Franjo Tudjman, died. He had governed Croatia as an autocracy for nearly 10 years. Presidential elections were held on February 7, 2000, and Stipe Mesic, from a moderately conservative opposition party, was elected the new president of Croatia. New parliamentary elections held on January 3, 2000 resulted in victory for a center-left coalition government. The new government has pledged to reverse Tudjman's positions, to end Croatia's isolation from the rest of the Europe, to meddle less in Bosnian affairs and to cooperate with the International War Crimes Tribunal in The Hague.[3] The new government has also declared health care reform as one of its priorities.

I. Setting the Stage: The Legal and Political Framework

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The Constitution of the Republic of Croatia (hereafter the "Constitution") was adopted on December 22, 1990.[4] The Constitution defines Croatia as "a unitary and indivisible democratic and social state" in which power is derived from and belongs to the people, "as a community of free and equal citizens."[5] It sets "freedom, equal rights, national equality, peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the human environment, the rule of law, and a democratic multiparty system" as the republic's highest constitutional values.[6] The Constitution organizes the government on the principle of separation of powers and divides it into the executive, legislative, and judicial branches.[7]

Executive branch

The president of the republic is the head of state. He represents Croatia at home and abroad and is also commander-in-chief of the armed forces. Directly elected for a term of five years,[8] the president calls parliamentary elections, appoints and removes the prime minister, grants pardons, and confers decorations and awards.[9] He also promulgates laws within eight days of their passage by the House of Representatives.[10]

The government of the Republic of Croatia, which consists of the prime minister, deputy prime ministers, ministers and other members,[11] "exercises executive powers in conformity with the Constitution and the law."[12] It is responsible to the president of the republic and the House of Representatives.[13] Within 15 days of the prime minister's nomination by the president, the prime minister must present his or her cabinet to the House of Representatives and receive a vote of confidence from a majority of all representatives.[14] The government's authority includes power to pass decrees in conformity to the Constitution and laws, to introduce bills, to propose the state budget, and to enforce laws and other regulations enacted by the Parliament.[15] The president has the power to convene a session of the government and place items on its agenda. Representatives of both houses of Parliament have the right to question the government and individual ministers.[16]

Legislative branch

The Croatian Parliament, directly and independently, decides upon all economic, legal and political matters in Croatia.[17] The bicameral Parliament or *Sabor* consists of the House of Representatives and the House of Counties.[18]

There are 127 members of the House of Representatives,[19] elected by direct and equal suffrage, for terms of four years.[20] The House of Representatives enacts and amends the Constitution, passes laws, adopts the state budget, decides matters related to war and peace, decides on alterations of the borders of the republic, holds referenda, supervises the work of the government, and grants amnesty for penal offenses.[21] Both houses make most decisions by majority vote, provided at least a majority of members are present.[22] Exceptions include laws that regulate national or ethnic rights, which must be passed by

a two-thirds majority of all members, and laws that elaborate on constitutionally defined freedoms and rights, the electoral system, or local government, which must be passed by a majority of all representatives.[23]

By direct and equal suffrage, citizens from each county also elect three members to four-year terms in the House of Counties.[24] Currently, there are a total of 68 members in the House of Counties, which includes representatives from 21 counties as well as five members appointed by the president of the republic.[25] The House of Counties has very few autonomous powers. It proposes bills and referenda and advises the House of Representatives on matters falling within its jurisdiction. The House of Counties must give its opinion before the House of Representatives passes laws that concern national (ethnic) rights; constitutionally defined freedoms and rights; the electoral system; the organization, responsibilities, and operation of governmental bodies; and the organization of local self-government and administration. The House of Counties can request that legislation passed by the House of Representatives be reconsidered within 15 days of its passage, but the House of Representatives retains the final word on whether or not the legislation is passed. It decides on re-passage of a law by a majority vote of all representatives.[26]

Judicial branch

The Constitution states that judicial power is "autonomous and independent" and that courts administer justice according to the Constitution and law.[27] The judicial system, inherited from the former Yugoslavia, includes the Supreme Court and lower courts, as well as a separate and independent Constitutional Court.[28] The Supreme Court is the highest court and "ensures uniform application of laws and equality of citizens."[29] A Judicial Council, elected by the House of Representatives, has the power to appoint and discipline judges.[30] Judges are appointed for eight-year terms.[31] Lower courts include: municipal courts (for the territory of one or more cities or municipalities), county courts (for the territory of each county), courts of commerce, the High Court of Commerce of the Republic of Croatia, the Administrative Court of the Republic of Croatia, misdemeanor courts, and the High Misdemeanor Court.[32]

The Constitutional Court, which is separate and independent of all three branches, decides the constitutionality of laws, the conformity of regulations with the Constitution and the law, jurisdictional disputes among the legislative, executive, and judicial branches, the impeachment of the president of the republic, and constitutional freedoms and rights. It also supervises the constitutionality and legality of programs and activities of political parties and can ban their work.[33] The Constitutional Court consists of 11 justices selected "from among outstanding jurists, especially judges, public prosecutors, lawyers and university law professors." They serve for terms of eight years.[34] The Constitutional Court may institute proceedings to determine whether individual laws comply with the Constitution,[35] and can repeal any law or annul any regulation it finds to be unconstitutional or illegal.[36] In addition, any individual can ask the Constitutional Court to review the constitutionality of any law or regulation.[37] After all available administrative and judicial remedies are exhausted, citizens of Croatia have a right to file a constitutional complaint against any judicial judgment or decision, administrative ruling or act of a body vested with public authority that may violate constitutional rights.

B. THE STRUCTURE OF TERRITORIAL DIVISIONS

Regional and local governments

Croatia is divided into counties, municipalities, and towns.[38] These units of local government enjoy considerable autonomy under the constitutional right to local self-government, which includes "the right to decide on needs and interests of local significance, particularly on regional development and town planning, organization of localities and housing, public utilities, child care, social welfare, culture, physical culture, sports and technical culture, and the protection and promotion of the environment."[39] The units of local self-government are independent in the conduct of local affairs and only subjected to oversight by the competent bodies of the republic as specified by law.[40] Their funding comes from a combination of the national budget and from local taxes.[41]

Each unit of local government has a representative body and an executive body. The municipal councils, town councils, and county assemblies pass acts within the framework of the rights and obligations of local self-government and perform other duties prescribed by law.[42] Municipal prefects, mayors and county prefects[43] are the executive officials and are elected by the representative bodies, to which they answer.[44] County prefects must be confirmed by the president of the republic.[45] Local executives prepare proposals of general acts and execute and supervise acts of the representative assemblies. They also manage real estate and other assets of the local administration, its income and expenditures.[46] The municipal prefect, the mayor, and the county prefect are further responsible for checking the legality of general acts of the representative bodies.[47]

Separately from the units of local self-government and administration, the law provides for the existence of local committees, "established as the means of direct participation of citizens in decision-making on local tasks with direct and

substantial influence on the citizens' everyday life and work."[48] The committees are funded by the municipal or city budgets.[49]

C. SOURCES OF LAW

Domestic sources of law

Croatia has a civil law system. The codified laws must conform to the Constitution, and all rules and regulations must conform to both the Constitution and the law. Everyone must abide by the Constitution and the laws of the Republic.[50] Anyone who violates the provisions of the Constitution concerning basic freedoms and rights is "held personally responsible."[51]

The Constitution also establishes a number of human rights as "fundamental freedoms and rights of man and citizen."[52] All citizens of Croatia have a right to enjoy these rights and freedoms without regard to "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status, or other characteristics."[53] These rights can only be limited by law "to protect the freedoms and rights of other people and the public order, morality, and health."[54] The Constitution also provides that "all are equal before the law"[55] but does not specifically define equality as prohibiting discrimination.[56] Without a clear definition and provision against discrimination, the Constitutional Court has been criticized for holding discrimination unconstitutional only when the discrimination is part of a particular law.[57]

The Constitution also includes the right to "respect for and legal protection of personal and family life, dignity, reputation and honor."[58] Family, maternity, and children enjoy special protection, and the state is charged with creating "social, cultural, educational, material and other conditions conducive to the realization of the right to a decent life."[59] Mothers are entitled to special protection at work.[60] The Constitution also guarantees the right to health care.[61]

Other human rights enumerated in the Constitution include the right to life (which bans capital punishment), the right to peaceful assembly and public protest, the right to free association, the right of employed people to a weekly rest and annual holiday with pay (which may not be renounced), the right to free and compulsory primary education, and the right to a healthy life and environment.[62] The Constitution also provides for freedom of religion and conscience[63] and freedom of thought and expression (although it prohibits and punishes any call for or incitement to war or violence; national, racial or religious hatred; or any form of intolerance). In addition, the Constitution states that members of ethnic minorities have equal rights and retain the "freedom to express their national identity, freedom to use their language and script, and cultural autonomy."[64]

International sources of law

International agreements that are ratified are part of Croatia's internal legal order and have effect "above law."[65] Courts in Croatia, therefore, have a legal basis for applying international treaties. The Constitution also allows direct application of rules of international law, which has been confirmed in practice by the Supreme Court. [66] On October 8, 1991, Croatia ratified the Convention on the Elimination of All Forms of Discrimination Against Women,[67] the Convention on the Political Rights of Women,[68] the International Covenant on Civil and Political Rights[69] and its First Protocol,[70] the International Covenant on Economic, Social and Cultural Rights,[71] the International Convention for the Elimination of All Forms of Racial Discrimination,[72] the Convention on the Rights of the Child,[73] and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[74]

II. Examining Health and Reproductive Rights

A. HEALTH LAWS AND POLICIES

The Constitution of the Republic of Croatia guarantees health care to all citizens.[75] The Health Care Act (HCA)[76] and Health Insurance Act (HIA)[77] are the two principal legal instruments that implement the right to health care and regulate the provision of services and insurance. The HCA sets forth the principles, organization, and modalities of health care service provision, while the HIA defines the rights of the insured. Discussed below are numerous subsidiary laws and documents that govern health care rights. There is legislative silence, however, regarding cost control of health care expenditures and public influence over health care policy.

Article 5 of the HIA states that health care insurance is mandatory for all persons. The Croatian Health Insurance Institute (HII) has developed a package of services covered by HIA at fixed prices. Individuals may purchase additional health insurance for services beyond those provided under the mandatory insurance.[78] In other words, there is voluntary health insurance available according to market principles and provided by insurers other than the HII.[79] The Ministry of Health requires independent insurance audits of these private companies.[80] This additional private health insurance is a contract between the insurer and the insured.[81] In the case of comprehensive private insurance, the insured is no longer covered by mandatory insurance. The HIA covers all Croatian citizens who are employed, retired, disabled, unemployed, and registered under specific conditions[82] at the State Employment Bureau, and their dependent family members. Dependents

may include spouses, common law partners, children, parents, grandchildren, brothers, sisters, and grandparents. Farmers whose main income derives from agricultural activities and veterans of the National War (1991-95) are also covered.[83]

Objectives of the health policies

The principal objectives of Croatia's health care policy are the prevention and treatment of diseases. Other objectives include protection against environmental harm, preventative health education; detection, elimination, treatment and rehabilitation of illnesses and diseases; monitoring the health of citizens over 65 years of age and of war victims; providing health care for children, adolescents and women (necessary prenatal, maternity, and postnatal care); and performing autopsies.[84] Some other objectives of the country's health policy are to pass laws and promote strategies to improve public health; to promote healthy habits through taxation and economic measures; to ensure a basis for health through scientific research; and to support the economically and demographically challenged territories. The HCA also mandates measures to protect water, food, and air quality.[85]

Counties and the city of Zagreb are empowered to organize epidemiological, health and statistical services should the Republic of Croatia fail to provide them. These local entities also must contribute financially to build and equip health care institutions. Mortuary and mortician services are a local government responsibility.[86]

Implementing agencies

The provision of health services is regulated by state health institutions — principally the Ministry of Health, the Croatian Health Insurance Institute, and the National Health Board. There is a growing private health care sector.

Infrastructure of health services

State, county, and municipal health institutions, which range from specialized hospitals to community health centers and dispensaries, provide the bulk of health services. Health care institutions can be owned by the government of the Republic of Croatia, counties, the city of Zagreb, or national or foreign private or legal persons.[87] According to the latest official statistics, there are 21 institutes of public health, 37 general hospitals and clinics, 33 specialized hospitals, 120 health care centers, 94 pharmacies, and 142 other health care institutions in Croatia.[88]

Croatian citizens covered by state health insurance can use the services of private physicians provided the physician signs an agreement with the Croatian Health Insurance Institute, and the amount paid for health care services provided by a contracting private health practitioner is determined by the National Health Board.[89] Women may choose their gynecologists, and the services are covered by mandatory insurance.[90] Despite the predominant role the state plays in health care, the number of private doctors' practices has increased considerably. In 1994, there was a total of 1,531 private doctors' practices, 66 of which were for gynecology. By 1997, the number increased to 3,005, 124 of which were for gynecology. The majority of private doctors, however, are dentists (1,325), with the remaining physicians primarily general medicine practitioners (515) and specialists (492).[91] Health care institutions that are privately or foreign-government-owned do exist, but are subject to additional regulations and licensing procedures.[92] All health institutions, except for those covering emergency medicine, public health, or blood transfusion, may be privately or jointly owned.[93]

The health care sector is organized into three sectors — primary, secondary and tertiary care. Primary health care consists of general medical practice, including school medical services, public health services, dentistry, emergency medical services, women's health care, pediatric medicine, occupational medicine, sports medicine, geriatrics, the care of the physically and developmentally disabled, and pharmaceuticals. This care is provided at health centers, emergency medical institutions, and at home. Pharmacies distribute medication, but also sell baby foods, cosmetics, diet products, homeopathic products and veterinary medicines. Gynecological health units at the primary level offer counseling and medical treatment for pregnancy (pre- and postnatal), delivery, family planning and early detection of cancer.[94]

Secondary health care services consist of specialized medical services, counseling, and hospital treatment. Secondary-level health care institutions include polyclinics, that is, multi-specialty clinics, facilities for diagnostic and medical rehabilitation, general and specialized hospitals, and health spas. There has been a noticeable decline in secondary health care institutions. In 1988, the total number of these health care institutions was 108, compared to 78 about 10 years later.[95] The tertiary level of care includes the most specialized medical and health care fields, scientific research, and teaching programs.[96] All health care institutions at the tertiary level are owned and run by the state. There were 21 tertiary level health care institutes in 1997.[97]

In 1996, there was one gynecologist for every 7,338 women of fertile age,[98] but there is an uneven distribution of such providers. Gynecological health units tend to be part of larger health centers, and these are found only in larger urban areas. Women living in rural areas often have no gynecological practices nearby. Travel and other impediments, therefore, prevent many women from consulting gynecologists for their reproductive health needs. Nearly half of all rural women live in

poverty, and the majority of rural women come in contact with a gynecologist only during pregnancy.

Cost of health services

Before 1990, health care was free and accessible to nearly 98% of population in Croatia. Today, health service expenses are covered by health insurance, but only partially. Citizens are obliged to contribute a partial payment for each medical check-up.[99] They also share in the cost of prescribed medicines, house calls, diagnostic, therapeutic and rehabilitative procedures, orthopedic, dental and prosthetic devices, primary level physical exams, room and board in hospitals and spas, and medical transportation.[100]

These fundamental changes, since the days of universal health care coverage, are due to the significant decrease in the country's budget dedicated to health care. Mandatory state health care insurance is financed, in part, by a compulsory deduction from all monthly salaries, official incomes, and pension income. Additional revenue comes from interest and dividend payments.[101] Employers also contribute to the state health care budget.[102] Social care insurance supplements the budget for those dependent on medical assistance and rehabilitation.[103] In particular, the social security budget of the Republic of Croatia finances the salaries and health insurance premiums of women on maternity or sick leave, or those caring intensively for the elderly. The state also underwrites allowances for children less than 15 years of age and pays for health care education, emergency roadside medical assistance, scientific research, and environmental protection.[104]

The overall trend in health care service provision since 1989 is regressive. There are fewer primary health care physicians and fewer consultations take place with medical doctors. Certain specialized services, such as occupational health care and school physicians, have been abolished. Referrals from primary health care physicians to specialists are strictly controlled, and sometimes rationed. And most significantly for women, there have been no preventive efforts related to women's reproductive health. This is especially true in the area of breast cancer detection and treatment, where there is a lack of knowledge and equipment.[105]

As already noted, all insured individuals pay some of their primary health care costs. They also pay a portion of the costs of accommodation and food in hospitals and health spas, for prescribed medicine approved by the National Health Board, for home visits, diagnostics, therapeutic and rehabilitative procedures, orthopedic devices, dental treatments, dental reconstruction services, and transport by ambulance. The National Health Board, with the consent of the Minister of Health, determines the level of the insured persons' financial participation, taking into account the socioeconomic status of the health care beneficiary. There are exceptions to the co-payment rule, for example, when an injury occurs in the workplace. Likewise, preventive health care measures, maternity health care, pediatric care (until the age of 18), and mental illness are covered in full by insurance. Mammograms and pap smears are covered once yearly.[106] Finally, war veterans never co-pay.[107]

Regulation of health care providers

Health care workers who study state-prescribed curricula are regulated by the state and by their professional associations.[108] Health care professionals are graduates of colleges or high schools that specialize in health care disciplines, or they are graduates of the Faculty of Medical Sciences or the Faculty of Dentistry or the Faculty of Pharmacy and Biochemistry.[109] Upon graduation from these institutions, health care professionals are required to complete an internship,[110] the exact content and form of which are prescribed by the Minister of Health.[111] After completion of the internship, a health care professional is required to pass a state exam before he or she may practice independently.[112] Healthcare workers have the right and the duty to continue their professional development. All healthcare professionals with university degrees are required to take professional exams every six years to renew their licenses to practice.[113]

There is a growing preference among physicians to set up independent practices and clinics, rather than to affiliate with state-run ones. In 1993, there was a total of 42,271 health professionals, and the number of private health practitioners increased from 1,579 in 1994 to 4,402 in 1997.[114] To open a private practice and participate in the government's subsidized health care network, a provider must obtain a certificate of confirmation from the Ministry of Health. That certificate is issued based on the opinion of the National Health Board and the provider's professional association, known as a Chamber. In addition to the Croatian Medical Chamber, there is a Croatian Dentists Chamber, the Croatian Pharmacists Chamber, and the Croatian Chamber of Medical Biochemists.[115]

The Ministry of Health's health inspection division is responsible for the control, implementation and execution of laws affecting health care institutions and workers.[116] The director of each health institution is responsible for the professional work of its workers.[117]

Patients' rights

Every citizen covered by the HCA has an equal right to all treatments covered by health insurance. He or she can freely choose any approved medical doctor or dentist. Should care fall below professional standards, the insured is entitled to

monetary compensation for any damages.[118] Citizens also have the right to emergency care, choice of medical treatment (except during a life-threatening emergency), receipt of health care information, refusal of medical exams performed by medical students and other unlicensed persons, refusal to be a subject of medical study without consent, confidentiality regarding one's health status, refusal of medical exams and treatments, the ability to change a medical provider without explanation, refusal of surgery if one is competent,[119] and observance or refusal of religious obligations while in the hospital.[120] Neither the HCA nor HIA provide penalties for healthcare workers who receive bribes. Responsibility in such cases is generally covered by the Criminal Code.[121]

A patient has a right to request, in writing, that the director of a medical institution or a private practitioner answer for the violation of any of these rights. If the patient is not satisfied with the answer received, he or she can request a hearing before the Croatian Medical Chamber, Ministry of Health or a court.[122] Court proceedings are rare, and, given the prevailing solidarity among medical professionals, there are very few successful cases against physicians for inadequate medical treatment, negligence or misconduct. One alarming trend recently is that, upon the recommendations of the State Health Care Fund, the financing agency for health insurance, health care institutes have issued regulations which limit patient rights.

Medical and ethical guidelines

Codes of medical ethics and health care professional responsibilities are known to exist but were unavailable for consultation.[123]

B. POPULATION POLICY

The Croatian Ministry of Development and Renewal released the National Program for Demographic Development for the Republic of Croatia (NPDD) in May 1995. Its two goals were the demographic renewal of Croatia and the liberation of the territories comprising the former United Nations Protected Zones. The main purpose of the NPDD has been to increase the number of newborns, decrease the number of emigrants, increase the number of the returning Croatian diaspora, and better distribute the Croatian population over the entire state territory. The Program expresses concern about "depopulation" and the "failure" of women to sufficiently reproduce.[124] Two simultaneous processes are at issue — a decline in the number of children and adolescents and a corresponding increase in the number of elderly. In the last 10 years, the birth rate decreased from 14.6% (in 1981) to 11.6% (in 1990).[125] In the period from 1991 to 1994, more people died in Croatia than were born.[126] Likewise, there has been a "depopulation" of rural parts of Croatia. Lured by work opportunities and a better standard of living, the rural population has been moving to urban areas. In 1953, 57% of total population in Croatia was rural, while in 1991 only 9.1% of the total population was still registered as rural.[127] As in the more economically developed countries, agriculture can no longer sustain family farms.

According to the NPDD, the restoration of family is essential for the restoration of the entire nation and the country. The NPDD defines family traditionally — acknowledging and respecting women primarily as wives and mothers — stating: "The renewal of family values is at the core of the renewal of the entire nation and the country."[128] The educational policies of the NPDD, meanwhile, "promote the beauty of family life,"[129] and the NPDD recommends the legal encouragement of "demographic renewal of Croatian people and the entire population of the Republic of Croatia."[130] The NPDD thus gives license to those who attack abortion rights and divorce. It is worth noting that a special Division for Demographic Renewal (DDR) was established in the spring of 1992 by the Ministry of Reconstruction and Development. Its first head was don Ante Bakovič, a Catholic priest, known for his extreme nationalism, and radical conservatism, especially in connection with women's roles and family issues. There was much public opposition to his appointment, and the DDR was effectively shut down. However, Bakovič established the Croatian Population Movement, an NGO which had the financial support of many leading national politicians including former President Tudjman. Women's rights advocates hope the recent change of government will direct Croatian policy more towards respecting women's rights in their entirety.

C. FAMILY PLANNING

The 1978 Family Planning Law regulates contraception, sterilization, abortion and infertility. It also sets prices for these services and penalties for violating its terms.[131] Funding for health care services foreseen by this law comes from the National Health Board and Ministry of Health. While the government, through state health care institutions, provides Croatian women with reproductive health care, including contraception and abortion, there is a pronatalist tilt to its policies. As spelled out in the country's HCA, the country's objective is to provide "complete preventive, curative and recovering health care ... for women in relation to family planning, pregnancy, delivery and maternity."[132] Protection of women's health in general, apart from their reproductive function, and of older women's health problems is defined in the law as "other medical needs of women."[133] The law pays little attention to older women's health, is silent on hormone replacement, and gives inconsistent guidance regarding breast cancer.[134] In 1998, Croatia established a National Program for Fighting Breast

Cancer. However, the state has made no commitment to funding this program. No NGOs provide family planning or reproductive health services in Croatia.

D. CONTRACEPTION

Prevalence of contraceptives

The 1978 Family Planning Law defines contraception as temporary prevention of unwanted pregnancy for the purpose of family planning.[135] Despite the fact that the citizens are guaranteed "the right of free use and choice of medical aids for temporary prevention of conception,"[136] a full range of contraceptive products are not available in pharmacies.[137] With the doctor's prescription, the state partially covers the costs of only one kind of contraceptive pill known as Trinovum. All other contraceptive products are paid for in full by the individual. Condoms are available in pharmacies as well as in shops, grocery stores and at newsstands, and, in contrast to pills, are affordable. Other types of contraceptives sold include spermicidal foam, hormonal pills, vaginal diaphragms and IUDs.[138] Although emergency contraception is available and legal, it is not widely publicized, and its expense is borne by the consumer. The Catholic Church influences attitudes relating to contraception. The Church endorses only natural family planning methods, such as the rhythm method.

Legal status of contraceptives

The 1978 Law does not specifically forbid any form of contraceptive. However, the National Health Board, which approves all new pharmaceutical, medical and surgical technologies, publishes an officially approved list of products. The National Health Board list of contraceptives does not include contraceptive hormonal implants such as Norplant; it is therefore widely assumed by providers that such methods are not approved. No official sources contradict this assumption.

Regulation of information on contraception

There is no explicit legal provision in the Ministry of Health's regulations prohibiting the advertising of contraceptives.[139]

E. ABORTION

Legal status of abortion

Abortion is legal in Croatia. The 1978 Family Planning Law makes it legal to terminate a pregnancy up to 10 weeks from the presumed date of conception. After that, termination of pregnancy is allowed only with the approval of a special commission,[140] established by the 1978 Law on Family Planning. While the 1978 Law on Family Planning allows women to choose to terminate a pregnancy before 10 weeks, there is an emerging trend to restrict that choice. An extreme case illustrates the state's growing anti-choice climate. In 1998, a woman who was carrying seven fetuses due to artificially assisted reproduction, elected to reduce four fetuses so as to better ensure the survival of the remaining three. Even though by law this was her right, the hospital convened a committee, which took five weeks to decide that she could not selectively terminate some of the pregnancies. At that point, 14 weeks into the pregnancy, the committee cited ethical and moral grounds for refusing to terminate the pregnancy at a "late term." In her 16th week of pregnancy, she lost all seven fetuses in a spontaneous miscarriage.[141]

Over the last five years there have been periodic attempts to change the current abortion law. Recently, for instance, the Ministry of Health issued a Proposition of the Law on Termination of Pregnancy, which would require a woman requesting a legal abortion to undergo mandatory counseling,[142] either by an authorized health care professional, a social welfare representative, or a member of a religious community.[143] That proposition has not yet been submitted to the legislature.

Requirements for obtaining legal abortion

Abortion is permitted upon the woman's request before 10 weeks of pregnancy, dated from conception.[144] There is no waiting period and the termination of pregnancy can be carried out immediately, but not later than seven days after a woman first contacts her doctor.[145] All abortions must be performed at approved health care institutions.[146]

If a woman is more than 10 weeks pregnant, or if the abortion would endanger her life, she must obtain approval from an ad hoc commission formed by the health care institution.[147] The "first-degree commission," which consists of a gynecologist and a social worker or medical nurse employed by the health care institution, decides all cases related to abortion and sterilization.[148] The commission may approve abortion when the pregnancy presents risks to the woman's life or health, in cases of fetal impairment, or when the pregnancy resulted from a crime, such as rape. Additional reasons for termination include when the pregnancy resulted from an abuse of power, intercourse with a child, or incest.[149] A woman who is dissatisfied with the first-degree commission's decision can appeal to a second-degree commission within three days.[150] The second-degree commission consists of two gynecologists (one of whom is a specialist who can address the particulars related to the woman's case), a social worker, and at the request of the health care institution, a county court judge.[151] The second-degree commission's decision is final.[152] If the case concerns an unmarried adolescent younger than 16, her parents or guardians will be notified.[153]

In principal, abortion expenses are covered partially by the Health Insurance Fund with the cost of anesthesia paid by the

patient. In practice, however, women usually have to pay the full cost of an abortion.[154] Before 1990, legal abortion expenses were covered by the Health Insurance Fund (excluding anesthesia). Today, the price of an abortion in Zagreb's hospitals amounts to approximately USD $180 (including anesthesia).[155] Since the average monthly salary of most employed women is USD $390, the procedure is often prohibitively expensive. Therefore, despite the fact that abortion is legal and safe, it is inaccessible to a large number of women, especially the unemployed. In addition, due to the strong influence of the Catholic Church, gynecologists in many public hospitals in Croatia have refused to perform abortions, citing a conscientious objection. At the same time, there is a growing number of gynecologists who perform abortions in their private gynecological offices for extra money.

Statistics

All health institutions that carry out abortions are required to report the procedure within 30 days.[156] In the last 15 years, the number of legally induced and registered spontaneous abortions has been decreasing. Statistics show that, in 1979, 40% of women of fertile age had abortions, 92.6% of which were legally induced. In 1990, 82.7% of all abortions were non-spontaneous, that is, legally induced, and in 1996 that figure fell to 62.8%.[157]

Penalties for abortion

The 1978 Law on Family Planning imposes monetary fines on health institutions if they perform unauthorized abortions, sterilizations, or violate patient confidentiality.[158] In addition, medical doctors, midwives, and nurses who perform an abortion without the consent of the pregnant woman, or perform an abortion after the 10th week without a commission's approval, are liable to incur criminal penalties.[159] The pregnant woman is not subject to criminal liability.

Restrictions on abortion information and advertisement

According to the Ministry of Health, no regulations address the advertisement of abortion services.[160] It is neither prohibited nor encouraged, and there are very few printed or educational materials on abortion generally available. On the other hand, anti-choice groups are very visible and disseminate their message in all forms of print media, often supported with grants from the state budget.[161]

F. STERILIZATION

The 1978 Law on Family Planning defines sterilization as a permanent method of preventing conception.[162] To obtain a sterilization, a patient must submit a special application to a "first degree commission," as described in the section regarding abortion. The same procedures are followed. Application for sterilization can be submitted by anyone who fits specified criteria: a woman of any age whose life would be endangered by becoming pregnant; a woman whose children would be born with severe physical or mental disabilities; or a person at least 35 years old.[163] If a person seeking sterilization is permanently mentally incompetent, the application for sterilization may be submitted by the person's parents or legal guardians.[164] When sterilization is performed by itself, the costs are borne by the applicant.[165] However, when a sterilization is performed in tandem with another operation such as a caesarian section delivery, the expenses are borne by the Croatian Health Insurance Institute, as long as the person is covered by health insurance.

A revision of the Law on Voluntary Sterilization that seeks to introduce mandatory counseling, similar to the proposition regarding abortion, is under discussion.[166] According to this proposal, the application for sterilization would be submitted in writing to a health care institution,[167] and a person who wishes to be sterilized would be directed to counseling at a state-run Family Planning Counseling Center.[168] The law does not specify the content of such counseling. Medical sterilization by insertion of quinacrine pellets appears to be legal.[169]

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

According to the statistics of the National Health Board, there were 16 registered AIDS cases in 1997.[170] On December 1, 1998, the Health Minister said that a total of 135 cases of AIDS had been registered since 1986.[171] UNAIDS puts that number higher. It estimates that 300 adults and children were living with HIV/AIDS in Croatia at the end of 1997.[172] The United Nations figures represent an infection rate of 0.01%. The estimated incidence of sexually transmissible infections for 1997 is also low, with 18 reported cases of syphilis (12 men and six women) and 27 cases of gonorrhea (25 men and two women).[173]

Laws affecting HIV/AIDS and STIs

HIV and STIs are classified as "infectious diseases" and are addressed by two laws — the Regulations on Medical Examination Procedure for Carriers or Persons Suspected to be Carriers of Certain Infectious Diseases (Regulations on Infectious Diseases)[174] and the Law on Nationwide Protection Against Infectious Diseases (Law on Infectious Diseases).[175] In particular, the Regulations on Infectious Diseases set out the procedures for medical examination and treatment of persons who carry the HIV virus.[176] If medical examination shows that a person has HIV, the health institution must report the findings, and the individual is subject to regular medical supervision.[177] Patients with HIV are classified as "chronic" carriers and are subjected to further health controls.[178] The HIV-positive

individuals are entitled to information about how to prevent the transmission of their infection to others.[179] The law does not permit anonymous HIV screening.

Policies on prevention and treatment of HIV/AIDS and STIs

The Ministry of Health established an AIDS Committee in 1996 to inform the public about prevention and self-protection measures. The AIDS Committee has undertaken a few mass media campaigns and has established an AIDS Commemoration Day to raise awareness.[180] The AIDS Committee, in collaboration with the Ministry of Education and Sport, published a widely distributed booklet entitled "AIDS — Do Not Die Because of Ignorance." Similar booklets are now being prepared for health workers and AIDS patients.

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

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

The Constitution of the Republic of Croatia guarantees, to every citizen of Croatia, "all rights and freedoms regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics."[181] This basic constitutional principle of gender equality is reflected in virtually every law, regulation and sub-legal document in Croatia.

B. CIVIL RIGHTS WITHIN MARRIAGE

Marriage laws

The 1998 Family Law[182] regulates marriage and its dissolution, relationships between parents and children, adoption, guardianship, and common law partnerships between a man and a woman.[183] The law is uniformly applied in the entire territory of Croatia. Marriage is legal only between individuals of the opposite sex and when both individuals give consent.[184] A person under 18 years of age may not contract a marriage. However, a court may permit marriage for a person between 16 and 18, provided she or he is mentally and physically mature and that marriage is in the interest of the minor.[185]

An important change under the new Family Law is that a religious marriage has gained the same validity as civil marriage. A religious marriage, however, must be requested with the civil authorities.[186] A properly concluded and registered religious marriage has the same legal status as a civil marriage.[187] A divorce in a religious marriage has only civil effects and does not interfere with the obligations imposed by the governing religious community on either spouse.[188]

Regulation of domestic partnerships

According to legal experts, there is no distinction between domestic partnerships and marriage. If they are of a heterosexual nature, they are treated as if they are marriages,[189] and provisions of the Family Law apply equally to them. A domestic partnership of long duration, for instance, gives rise to the same rights upon dissolution as a marriage, so that either partner may apply for financial support.[190] The request for support can be presented within six months after dissolution of the relationship.[191] A domestic partnership does not need to be registered.[192] Gay and lesbian relationships are not legal.[193]

According to Family Law, marital status of parents is of no consequence when awarding custody; the crucial issue in determining custody is parenting skills.[194] Both parents have an obligation to take care of their minor children.[195] In addition, the father of a child born outside of marriage is required to support the child's mother for a year after the child was born, if the mother cannot support herself.[196]

Divorce and custody laws

Divorce is also governed by the Family Law. Either spouse may file for divorce, and a court will legally terminate the marriage either if marital relations are seriously and irrevocably damaged or if spouses have been living apart for a year. If both spouses have filed a joint petition and are in agreement on all significant matters, a judge will dissolve the marriage by mutual consent.[197] A husband, however, cannot unilaterally file for divorce during his wife's pregnancy and until the child is one year old.[198] But, if under such circumstances both spouses jointly file for divorce, a divorce will be granted.

The right to alimony is not absolute but depends on a spouse's ability to earn an income.[199] The same alimony rights extend to domestic partnerships as well, provided that such relationships have endured for a long period of time.[200] The disposition of property upon divorce also is covered by the Family Law, and both spouses have equal rights to their marital property,[201] which is defined as all the property the spouses acquired through their work during the marriage. Individual property — gifts and property brought into the marriage — belongs to each individual.

Under the Family Law, divorcing parents are urged to decide between themselves with whom their children will live. Before filing for a divorce, spouses are obliged to submit an application for mediation to the Center for Social Welfare to help facilitate this determination. During the procedure, the Center's representatives investigate the causes that led to the dissolution of the marriage and determine if the spouses can be

reconciled. If the spouses refuse to be reconciled, the Center for Social Welfare helps them decide on the disposition of the child or children. If the spouses cannot find a mutually agreeable solution, the Center for Social Welfare has the authority to decide the issue of child custody and visitation rights.[202]

C. ECONOMIC AND SOCIAL RIGHTS

Property rights

In Croatia, the Property Law, which establishes property rights, applies equally to women and men. Women and men have equal rights to own real estate or other property, to make wills, and to inherit.[203] Property inheritance, in the absence of a will, is regulated by the Inheritance Law,[204] which does not discriminate on the basis of gender. Despite legal equality, property ownership is concentrated in the hands of men, the result of traditional gender role expectations. For example, in 1992, all adult citizens of Croatia were given the right to buy their apartments from the state. In general, women waived their legal right to be named as a co-owner, instead ceding the entire property interest to their husbands. A consequence has been that many women during divorce procedures have encountered difficulties establishing ownership of apartments.[205]

Labor rights

The 1995 Labor Act, which regulates all matters relating to the workplace, explicitly forbids discrimination based on gender and prescribes equal wages for working men and women.[206] It does, however, contain special provisions for the protection of maternity and prohibits women from entering certain professions.[207] In general, in the interest of protecting women's lives and health, the law prohibits women from taking a job requiring physical strength and from working underground, underwater, or under high atmospheric pressure.[208] Pregnant and breast-feeding women are further prohibited from jobs involving various chemical substances.[209]

The prevailing atmosphere in Croatia during the past decade has been conservative and, in keeping with this spirit, the Labor Act created a special legal status of "mother-nurturer" for mothers of four or more children.[210] An employed or an unemployed woman with a status of "mother-nurturer" "is entitled to financial reimbursement, pension and disability insurance, health insurance and other rights in accordance with special regulations."[211] This stipulation thus grants women a professional status for bearing children. Four years after the Labor Act came into force, however, women with four or more children have neither received any of the promised financial support, nor seen their status in society raised to the level the law prescribed. Women who believed the NPDD and Labor Act's guarantees and had four or more children are now testifying about the terrible situation — financial and social — in which they have found themselves, without a job or any hope to get one.[212]

In more subtle ways, the principles of non-discrimination and of freedom to choose an occupation are often neglected. Official statistics do not reflect the pervasive effects of invidious gender discrimination and there is no effective state machinery in place to rectify the situation.[213] A woman's age is also a limiting factor in the job market. Women over 40 are less likely than men or younger women to find a new job regardless of professional skills, qualifications, or work experience. Job advertisements in newspapers often call for "young, attractive women, not over 30 years of age." And women of childbearing age also find themselves at a disadvantage in hiring because employers suspect they will leave work to have children. Although the Act forbids such inquiries about personal life, they are still frequently asked.[214]

The Labor Act protects maternity and offers special rights for pregnant employed women.[215] An employer cannot refuse to hire a pregnant woman, fire her, or discriminate against her in any way.[216] In practice, however, it is common in small private enterprises that women are fired as soon as their employer finds out about their pregnancy. Although women do have legal recourse, the legal procedures are slow and deter many from taking action. Under the Labor Act, an employed woman must go on mandatory maternity leave 28 days prior to giving birth until her child is six months old. She may, however, leave work 45 days prior to giving birth and stay off until her child is one. If she has twins, or gives birth to additional children, an employed woman can take maternity leave until the child or children are three years old. A woman may return to start working earlier, but not before 42 days after the birth.[217] Obligatory maternity leave is paid, and the amount is defined by HIA.[218] After the obligatory maternity leave period, a working woman can return to work part-time until her child reaches one year of age. The rights to maternity leave, after the mandatory maternity leave period, can be shared with the father of the child.[219]

Access to credit

There are no laws or regulations relating to credit which discriminate on the basis of gender.[220]

Access to education

Elementary schooling, lasting eight years, is compulsory, and access to secondary and higher education is guaranteed to every citizen of Croatia.[221] Constitutional rights to education are implemented through the 1990 Law on Primary School System[222] and the 1992 Law on Secondary School System.[223] These guarantees are respected in practice, and there is no overt discrimination against female adolescents in access to educa-

tion. The gross enrollment rate for girls is still slightly behind that of the boys: 87% for girls as opposed to 88% for boys in primary school, and 83% for girls and 86% for boys in secondary school.[224] Nevertheless, as many as 38.1% of women have not finished elementary school education compared to 23.9% of men.[225] The portion of highly educated women is 4.2 % compared to 6.4% of highly educated men.[226]

National machinery for the promotion of women's equality

Since May 9, 1996, a Commission for Women's Equality,[227] created in response to the Platform of the Fourth World Conference on Women held in Beijing in 1995, has been meeting to set policy and work towards the improvement of women's situations. It is made up of representatives from various Ministries, and its secretariat is in the Ministry of Labor and Social Welfare.[228] The Commission's work is divided into the following areas: Women's Human Rights; Institutional Mechanisms for the Improvement of the Status of Women; Women in Positions of Power; Women and Health; Education of Women; Violence Against Women; Women and Agriculture; and Women and War.[229] In all these areas, the Commission seeks to set policy and work towards improvement of the status of women.[230]

D. RIGHT TO PHYSICAL INTEGRITY

Rape

The 1998 Criminal Code sanctions various sexual offenses. Legal regulations of these criminal offenses are gender-neutral, and perpetrators and victims can be either men or women. The Criminal Code defines all crimes and punishments in the case of rape,[231] sexual intercourse with a disabled person,[232] forced sexual intercourse "under threat,"[233] sexual intercourse accomplished by abuse of position,[234] sexual intercourse with a child,[235] "obscene acts,"[236] "satisfying lust" in front of a child or a minor,[237] prostitution,[238] exploitation of children or minors for pornographic purposes,[239] incest,[240] and common law marriage with a minor.[241]

Rape occurs when "a person forces another person to [perform] sexual intercourse or an equivalent sexual activity, by means of force or by threatening to inflict serious bodily injury or death to the person or someone close to that person."[242] The punishment is one to ten years in prison.[243] In rape cases committed by a person unrelated to the survivor, the state is responsible for the prosecution of the alleged perpetrator. However, if the perpetrator of rape is married to, or cohabits with the survivor, the penal proceedings will only be initiated upon the survivor's petition.[244] This means that unless a woman initiates the criminal proceedings against her partner, he will not be prosecuted for rape. The 1998 Criminal Code also classifies rape as a war crime.[245]

Domestic violence

There are no specific laws regulating domestic violence. Instead, domestic violence is covered in the Criminal Code as any criminal offense which results in bodily harm: "Anyone who commits physical harm or harms another person or that person's health will be punished with a fine, or up to one year in prison."[246] For grievous bodily harm, the punishment is more severe.

Current regulations do not address police intervention in cases of domestic violence. It provides no training of police officers, lawyers or prosecutors. Police usually treat domestic violence as a less serious crime, or a private matter, and reluctantly respond to any complaint unless there is severe body injury.[247] In fact, there are repeated instances where women have sought police intervention, and as a result were, along with the abusive man, fined by the Court for Minor Offences, for disturbing the public peace and order. For all of these reasons, women rarely report domestic violence to the authorities.[248] A further deterrent to women who may desire to report domestic violence is the exceptionally long and complex nature of the court proceedings. In those rare cases where a woman does initiate a criminal proceeding, the statute of limitations often expires prior to the completion of the case. Courts of first instance are often overburdened with other criminal cases, and there is no separate court to deal with domestic violence. The result is a systematic failure of the judicial system to effectively address the issue of domestic violence.[249]

Sexual harassment

Sexual harassment in the workplace is not recognized as an offense by any laws or by the National Policy of Croatia for the Promotion of Equality. The extent of sexual harassment is considered to be so overwhelming that it has become standard behavior — expected and passed without comment.[250] There is, however, a growing civil society movement to make this issue visible. The Woman's Group "Transitions to Democracy" initiated a public education campaign and published a booklet "How to say 'NO' to Your Boss." Representatives of the Women's Labor union called for mandatory stipulations on sexual harassment in all collective labor contracts. The only company to do so is the pharmaceutical company Pliva.[251]

Trafficking in women

Trafficking in women occurs in Croatia, and women are usually the citizens of other countries in East Central Europe who have been brought illegally to the country. Unfortunately, there are no available official statistics or other data regarding the age or number of these women. Trafficking in women is defined as the criminal offense of "procuring," that is,

"anyone who receives money for organizing or enabling other person to engage in the provision of sexual services." Punishment for such a crime ranges from three months to three years imprisonment.[252] The Criminal Code sanctions international prostitution as well.[253]

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

Croatia gives special attention to the rights of children and young people. International standards of Convention on the Rights of the Child are incorporated into Croatian law.

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

According to the 1991 census, 6.5% of the female population can be considered adolescent.[254] There were 159,381 women between ages 15 and 19 in 1991. HIA regulates health insurance for minors. Family members of each policy holder are covered until reaching the age of 15; if minors pursue secondary or university education, coverage is extended until the end of regular schooling,[255] which is defined as education up to and including graduate studies.[256] If schooling is discontinued during the eight years of elementary school, or if after elementary school, adolescents cannot get a job, they have a right to health insurance provided they register themselves with the Employment Bureau within 30 days of their 15th birthday or of finishing primary school.[257] Family members of the students — spouses or children — have the right to health care on the basis of their status as family members.[258]

As health insurance beneficiaries, female adolescents have access to health services, contraception, and legal pregnancy termination under the same conditions as adult women. In cases when a termination of pregnancy is to be performed at the request of a minor under 16 years of age, the consent of parents or guardians is necessary, or in the alternative, the consent of the state's guardianship authorities.[259] There is no national program relating to reproductive health counseling. One children's hospital in Zagreb, however, conducts a counseling program for male and female adolescents. Within this program, adolescents are entitled to information about sexual activities, reproductive health, and contraception. This program includes lectures twice a week. Secondary schools in cities are notified about this program.

B. MARRIAGE AND ADOLESCENTS

In exceptional circumstances, a person who is between 16 and 18 years old can enter into marriage. Such a marriage needs permission from a court. The court will permit such a marriage providing the person has been found to be mentally and physically mature, or that the marriage is in that person's best interest.[260] According to the Criminal Code, "a person of age who lives in common law marriage with a minor over 14 but under 16 years of age, is punishable by imprisonment for a term not less than six months or not more than three years."[261] Marriage of adolescents is not a frequent occurrence in Croatia. Men younger than 19 rarely marry. In 1997, there were a total of 24,517 marriages. Of that, 3,116 brides were younger than 19, while only 272 grooms were between 15 and 19.[262]

C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

The Criminal Code defines an adolescent as a minor between the ages of 14 and 18 years, and a child as a person under 14 years of age.[263] Among other things, the Criminal Code prohibits various criminal offenses relating to the sexual abuse of children and adolescents.[264] Legal regulations of these criminal offenses are gender-neutral.

If criminal offenses have been committed against minors or children, the sentences are heavier than those for the same crimes against adults.[265] If female adolescents are victims of sexual criminal offenses, the criminal procedure against the perpetrators is held in a Juvenile Court.

D. SEX EDUCATION

There is no law requiring sex education in the schools, and elementary and secondary schools curricula do not include sex education. There is no government policy against sex education either. Basic knowledge about the human body and its reproductive functions is taught during biology classes. The National Institute for Maternity, Family and Youth conducted a survey among secondary school students, their teachers and parents which showed that only 20% of students, 10% of their parents and 50% of their teachers were familiar with the functioning of the human reproductive system. As a consequence, the National Institute for Maternity, Family and Youth has organized a two-day seminar, held four times per year, on parenthood, population politics, family and youth. These seminars enable women and men, especially adolescents, to gain some knowledge about their health, sexuality and reproductive systems. Likewise, the same institution monitors students' knowledge about sexuality, sexual habits and attitudes of adolescents relevant to sexuality. Preliminary results of their surveys show that female adolescents are more familiar with the facts about sexuality than male adolescents.[266]

E. TRAFFICKING IN ADOLESCENTS

According to the Criminal Code of the Republic of Croatia, trafficking in women of all ages is covered by the criminal

offense of "procuring."[267] Adolescents are defined as minors between 14 and 18 years of age. Anyone organizing or enabling minors to engage in providing sexual services will be punished by imprisonment from six months to five years.[268] If an adolescent is used for international prostitution, the Criminal Code prescribes harsher punishment, from one to ten years imprisonment.[269]

NOTE ON SOURCES

The information in this chapter is drawn from primary sources of law in Croatian and secondary sources in English. All primary sources of national law are in Croatian, available online at <www.nn.hr> (official site of the Croatian People's Journal). 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

USTAV HR: Ustav Republike Hrvatske [Constitution of Croatia]
NARODNE NOVINE: PEOPLE'S JOURNAL
KAZNENI ZAKON: Criminal Code
OBITELJSKI ZAKON: Family Law

ENDNOTES

1. CIA, CROATIA, 1999 WORLD FACTBOOK (visited Sept. 23, 1999) <http://www.odci.gov/cia/publications/factbook/hr.html> [hereinafter WORLD FACTBOOK].
2. *Id*.
3. Gabriel Partos, *Croatia Votes for Change,* BBC NEWS (visited Jan. 2, 2000)<http://news2.thls.bbc.co.uk/.
4. Ustav Republike Hrvatske [Constitution of Croatia] [USTAV HR], art. 1, NARODNE NOVINE [PEOPLE'S JOURNAL] No. 56/Dec. 22, 1990, Pub. No. 1092, amended on Dec. 15, 1997, NARODNE NOVINE No. 8/Jan. 26, 1998, Pub. No. 121.The English translation can be found at <http://www.uni-wuerzburg.de/law/> (visited Nov. 10, 1999).
5. *Id*. art. 1.
6. *Id*. art. 3.
7. *Id.* art. 4.
8. *Id*. art. 95(1).
9. *Id*. art. 98.
10. *Id*. art. 89.
11. *Id.* art. 108.
12. *Id.* art. 107.
13. *Id.* art. 111(1).
14. *Id.* art. 112.
15. *Id.* art. 110.
16. *Id.* art. 86.
17. *Id.* art. 2(4).
18. *Id*. art. 70(2).
19. *See* WORLD FACTBOOK, *supra* note 1.
20. USTAV HR arts. 71(1), 72(1).
21. *Id.* art. 80.
22. *Id.* art. 82.
23. *Id.* art. 83.
24. *Id.* arts. 71(2), 72(1).
25. *See* WORLD FACTBOOK, *supra* note 1; USTAV HR art. 71(4).
26. USTAV HR art. 81.
27. *Id.* art. 115.
28. *See* Marseille Maras, *Discover Croatia: Croatian Politics* (visited Sept. 13, 1999) <http://www.hr/maras/politics.html>.
29. USTAV HR art. 116(1).
30. *Id*. art. 121; *see also Core Document Forming Part of the Reports of States Parties: Croatia*. 01/10/98. HRI/CORE/1/Add.32/Rev.1, ¶ 41. (October 1, 1998), U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS (visited Nov. 11, 1999) <http://www.unhchr.ch> [hereinafter CORE DOCUMENT].
31. *See* WORLD FACTBOOK, *supra* note 1.
32. CORE DOCUMENT, *supra* note 30, ¶ 42.
33. USTAV HR art. 125.
34. *Id.* art. 122(1).
35. CORE DOCUMENT, *supra* note 30, ¶ 43.
36. USTAV HR art. 126.
37. CORE DOCUMENT, *supra* note 30, ¶ 60.
38. Zakon o lokalnoj samoupravi i upravi [The Law on Local Self-Government and Administration], art. 1, NARODNE NOVINE No. 90/Dec. 30, 1992, Pub. No. 2334 (English translation on file with The Center for Reproductive Law & Policy); *see also* WORLD FACTBOOK, *supra* note 1.
39. USTAV HR art. 128(2).
40. *Id*. art. 130(1).
41. The Law on Local Self-Government and Administration, arts. 16(2), 68-73.
42. *Id*. art. 20.
43. *Id*. art. 28.
44. *Id*. arts. 29, 31(1), 39(1).
45. *Id*. arts. 31(2), 32, 33.
46. *Id*. art. 41(1), 41(2).
47. *Id*. arts. 47(3), 51(3), 55(3).
48. *Id*. art. 57.
49. *Id*. art. 60(2).
50. USTAV HR art. 5.
51. *Id*. art. 20.
52. *Id*. arts. 14–69.
53. *Id*. art. 14(1).
54. *Id.* art. 16.
55. *Id*. art. 14(2).
56. BUDI AKTIVNA, BUDI EMANCIPIRANA [BE ACTIVE, BE EMANCIPATED] [B.a.B.e.], NGO REPORT ON THE STATUS OF WOMEN IN THE REPUBLIC OF CROATIA 2 (1997) (visited Nov. 12, 1999) <http://www.interlog.com/~moyra/cedaw1&2.html>.
57. *Id*. at 2-3.
58. USTAV HR art. 35.
59. *Id*. arts. 61, 62.
60. *Id*. art. 64(3).
61. *Id*. art. 58.
62. *Id*. arts. 21, 42, 43(1), 55(3), 65(1), 69.
63. *Id*. arts. 38-40.
64. *Id*. art. 15.
65. *Id.* art. 134.
66. CORE DOCUMENT, *supra* note 30, ¶ 56.
67. *Opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sept. 3, 1981).
68. *Opened for signature* Dec. 20, 1952, 193 U.N.T.S. 135 (*entry into force* July 7, 1954).
69. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976).
70. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976). The Protocol enables individuals to petition the Human Rights Committee set up by the Covenant about alleged violations of any of the rights set forth in the Covenant.The Protocol covers states party to both the Covenant and the Protocol.
71. *Adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Jan. 3, 1976).
72. *Opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969).
73. *Opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (*entry into force* Sept. 2, 1990).
74. Convention for the Protection of Human Rights and Fundamental Freedoms**,** ETS No. 5 (*entry into force* Sept. 3, 1953). Last amended by Protocol No. 11, ETS No. 155 (*entry into force* Nov. 1, 1998).
75. USTAV HR art. 58.
76. Zakon o zdravstvenoj zaštiti [Health Care Act] (Jul. 30, 1993), NARODNE NOVINE No. 75/13 Aug., 1993, Pub. No. 1534, amended on Dec. 4, 1996, republished NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 1.
77. Zakon o zdravstvenom osiguranju [Health Insurance Act] (Jul. 30, 1993), NARODNE NOVINE No. 75/13 Aug., 1993, Pub. No. 1535, amended on Dec. 4, 1996, republished NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 2.

78. *Id*. art. 2.
79. *Id*. art. 2(5), 61 - 64.
80. *Id*. art. 63.
81. *Id*. art. 61.
82. *Id*. art 5(11).
83. *Id*. arts. 5, 6.More specifically, the Health Insurance Act covers: children who are 15 years old and have not finished primary school or after finishing primary school had not found a job and are registered at the Employment Bureau (art. 5(12)); persons who lose their student status retain the right to health insurance within one year period (art. 5(13)); persons who are sent by their employers to further their education, professional specialization or graduate studies (art. 5(19)); persons who are sent to further their qualifications and training before they start work (art. 5(20)); persons sent abroad under technical, educational, or cultural collaboration (art. 5(21)).
84. Zakon o zdravstvenoj zaštiti [Health Care Act] (Jul. 30, 1993), art. 15, NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 1.
86. *Id*. art. 7.
86. *Id*. art. 8.
87. *Id.* arts. 33, 34.
88. DRŽAVNI ZAVOD ZA STATISTIKU [CENTRAL BUREAU OF STATISTICS], 1998 STATISTIČKI LJETOPIS [STATISTICAL YEARBOOK] 452 (1998).
89. Health Care Act, art. 141.
90. *Id.* art. 26.
91. 1998 STATISTICAL YEARBOOK, *supra* note 88, at 453.
92. Health Care Act, arts. 33(4), 40.
93. *Id*. art. 33(4).
94. *Id.* arts. 6, 20(3), 33, 63-72.
95. 1998 STATISTICAL YEARBOOK, *supra* note 88, at 454.
96. Health Care Act, art. 6.
97. 1998 STATISTICAL YEARBOOK, *supra* note 88, at 452.
98. There were 148 gynecologists registered in 1996. *Id*. at 461. *See also* B.a.B.e., ŽENSKO ZDRAVLJE UVID U STANJE [STATUS OF WOMEN'S HEALTH] 14 (Sept. 1998) (on file with The Center for Reproductive Law & Policy).
99. Zakon o zdravstvenom osiguranju [Health Insurance Act] (July 30, 1993), arts. 41, 50, NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 2.
100. *Id*. art. 50 (2).
101. *Id*. art. 41 (i).
102. Zakon o zdravstvenoj zaštiti [Health Care Act] (Jul. 30, 1993), art. 23, NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 1.
103. *Id*. art. 65(3).
104. Zakon o zdravstvenom osiguranju [Health Insurance Act] (July 30, 1993), art. 47, NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 2.
105. Communication with Nena Sudar, B.a.b.e., *Pitanja za WOW [Questions for Women of the World] - Women & Health* (Nov. 26, 1999) (on file with The Center for Reproductive Law & Policy).
106. *See* NGO REPORT ON THE STATUS OF WOMEN IN THE REPUBLIC OF CROATIA, *supra* note 56, at 12 (visited Nov. 12, 1999) <http://www.interlog.com/~moyra/cedawrr.html>.While in theory women have the right to a yearly mammogram, as well as some other medical services, the expense and lack of equipment are real obstacles. Communication with Nena Sudar, B.a.B.e., *Pitanja za WOW* [*Questions for Women of the World*] (Nov. 26, 1999) (on file with The Center for Reproductive Law & Policy).
107. Health Insurance Act, art. 50.
108. Zakon o zdravstvenoj zaštiti [Health Care Act] (Jul. 30, 1993), art. 108, NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 1.
109. *Id.* art. 110.
110. *Id*. art. 112.
111. *Id*. art. 118.
112. *Id*. art. 115.
113. *Id*. art. 120.
114. 1998 STATISTICAL YEARBOOK, *supra* note 88, at 453.
115. Health Care Act, arts. 171-174.
116. *Id*. art. 145(1).
117. *Id*. 143(2).
118. *Id*. art. 26(1) ¶ 3.
119. Otherwise family members or guardians make decisions, except in a case of a medical intervention that can not be postponed.
120. *Id*. art. 26.
121. Kazneni Zakon [Criminal Code] [KAZNENI ZAKON] (Sept. 19, 1997), arts. 347, 348, NARODNE NOVINE No. 110/Oct. 21, 1997, Pub. No. 1668.
122. Health Care Act, art. 27.
123. Communication with Jerina Malesevic, Croatian lawyer (Jan. 31, 2000) (on file with The Center for Reproductive Law & Policy).
124. MINISTARSTVO RAZVITKA I OBNOVE REPUBLIKE HRVATSKE [CROATIAN MINISTRY OF DEVELOPMENT AND RECONSTRUCTION], NACIONALNI PROGRAM DEMOGRAFSKOG RAZVITKA REPUBLIKE HRVATSKE [NATIONAL PROGRAM FOR DEMOGRAPHIC DEVELOPMENT FOR THE REPUBLIC OF CROATIA] 3-4 (1995).The Program was adopted by the Parliament of the Republic of Croatia on January 18, 1996.
125. 1998 STATISTICAL YEARBOOK, *supra* note 88, at 93.
126. *Id*. at 92.
127. NATIONAL PROGRAM FOR DEMOGRAPHIC DEVELOPMENT, *supra* note 124, at 17.
128. *Id*. at 37.
129. Id. at 45-46.
130. *Id*.
131. Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece [Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing] (Apr. 21, 1978), NARODNE NOVINE No. 18/May 4, 1978, Pub. No. 423. Art. 1 of the law states that "[i]n order to realize the right of a man/woman to decide freely on having children, this law governs rights and duties of the citizens which apply to prevention of unwanted pregnancy, interruption of unwanted pregnancy and medical aid to those who, due to health reasons, cannot have children of their own." Art. 2 provides that "[t]he right of a person to decide freely about having children can be limited in order to protect their health, under conditions set by this law." Art. 3 mandates that "[i]n order to achieve their right of citizens to be familiar with methods and advantages of family planning, different counseling centers are to be created within the sphere of health, education and social protection, to help citizens with family planning." Finally, art. 4 allows workers, "on the grounds of solidarity and togetherness, and in the sphere of their material capacities," to "create conditions to decide freely about having children."
132. Zakon o zdravstvenoj zaštiti [Health Care Act] (Jul. 30, 1993), art. 15(7), NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 1.
133. *Id*. art. 19(4).
134. As late as 1998 a Croatian Society for Breast Cancer had been established for the purpose of gathering experts in the field, as well as implementation of National Program for Fighting Breast Cancer. Currently, in all health institutions there are only 40,000 mammograph check-ups and 12,000 ultrasound examinations. Six Croatian counties do not have access to a mammograph machine. It has been estimated that in the next ten years 10,000 women will die in Croatia of breast cancer. The highest risk group (around 8%) are women between 50 and 60 years of age. More than 303,000 women in Croatia belong to this age group. *Svaka 14. žena oboljet će od raka dojke [Every Fourteenth Woman Will Get Breast Cancer*], VECERNJI LIST, Nov. 15, 1998.
135. Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece [Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing] (Apr. 21, 1978), art. 6(1), NARODNE NOVINE No. 18/May 4, 1978, Pub. No. 423.
136. *Id*. art. 6(2).
137. A survey from February 1997 showed that 80% pharmacies in Zagreb region had only two kinds of oral contraceptives, in 53% of pharmacies vaginal diaphragms were unavailable, and in 15% of the pharmacies not all sizes were available. *See* NGO REPORT ON THE STATUS OF WOMEN IN THE REPUBLIC OF CROATIA, *supra* note 56, at 12 (visited Nov. 12, 1999) <http://www.interlog.com/~moyra/ cedawrr.html>.
138. STATUS OF WOMEN'S HEALTH, *supra* note 98, at 11 n.18.
139. Communication with Nena Sudar, B.a.B.e. (Oct. 22, 1999) (on file with The Center for Reproductive Law & Policy).
140. Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece [Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing] (Apr. 21, 1978), art. 15, NARODNE NOVINE No. 18/May 4, 1978, Pub. No. 423.
141. *See Pobačaj po Svetom Duhu* [*Abortion per Holy Spirit]*, FERAL TRIBUNE nos. 3 & 4, Oct. 12, 1998; *Osobna tragedija ne muči moćne demagoge [Personal Tragedy Does Not Bother Demagogues]*, NOVI LIST, Oct. 11, 1998, at 35; B.A.B.E., CROATIAN PRO-LIFERS ATTACKING WOMEN'S RIGHTS (visited Nov. 15, 1999) <http://www.interlog.com/~moyra/prolifupd.html>.
142. Zakon o prekidu trudnoće [Proposition of the Law on Termination of Pregnancy], art. 5(2) (on file with The Center for Reproductive Law & Policy).
143. *Id*. art. 9(1).

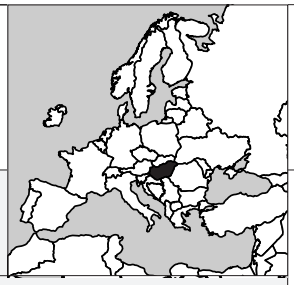
144. Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece [Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing] (Apr. 21, 1978), art. 18, NARODNE NOVINE No. 18/May 4, 1978, Pub. No. 423.
145. *Id*.
146. *Id*. art. 19.
147. *Id*. art. 21.
148. *Id*. art. 35.
149. *Id*. art. 22.
150. *Id*. art. 24(1).
151. *Id*. art. 36(1).
152. *Id*. art. 24(3).
153. *Id*. art. 20(1).
154. *Id*. art. 41.
155. *See* NGO REPORT ON THE STATUS OF WOMEN IN THE REPUBLIC OF CROATIA, *supra* note 56, at 12 (visited Nov. 12, 1999) <http://www.interlog.com/~moyra/cedawrr.html>.
156. Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing, art. 26.
157. HRVATSKI ZAVOD ZA JAVNO ZDRAVSTVO [CROATIAN NATIONAL INSTITUTE OF PUBLIC HEALTH], HRVATSKI ZDRAVSTVENO-STATISTIČKI LJETOPIS ZA 1996. GODINU [CROATIAN HEALTH SERVICE YEARBOOK 1996] 250, 251 (1997).
158. Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece [Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing] (Apr. 21, 1978), art. 42, NARODNE NOVINE No. 18/May 4, 1978, Pub. No. 423. Health care institutions must be approved to undertake different medical procedures.
159. *Id*. arts. 42–44; KAZNENI ZAKON art. 97.
160. Communication with Nena Sudar, B.a.B.e. (Oct. 22, 1999) (on file with The Center for Reproductive Law & Policy).
161. *See generally* B.a.B.e., CROATIAN PRO-LIFERS ATTACKING WOMEN'S RIGHTS (visited Nov. 15, 1999) <http://www.interlog.com/ ~moyra/prolifers.html>.
162. Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing, art. 5.
163. *Id*. arts. 8, 9.
164. *Id*. art. 10.
165. *Id*. art. 39.
166. Prijedlog zakona o dobrovoljnoj sterilizaciji [Draft Law on Voluntary Sterilization].The draft has not yet been read in Parliament.Communication with Nena Sudar, B.a.B.e. (Nov. 26, 1999) (on file with The Center for Reproductive Law & Policy).
167. Draft Law on Voluntary Sterilization, art. 4.
168. *Id*. art. 6. The Family Planning center is state run, but it is not a counseling center.Its activities are sporadic and poorly advertised.Communication with Nena Sudar, B.a.B.e. (Nov. 26, 1999) (on file with the Center for Reproductive Law & Policy).
169. There also have been reports of the experimental use of quinacrine, in a clinic in Rijeka, to sterilize 170 women.Communication with Nena Sudar, B.a.B.e. (Nov. 15, 1999) (on file with The Center for Reproductive Law & Policy).
170. 1998 STATISTICAL YEARBOOK, *supra* note 88, at 463.
171. *Daily Bulletin*, FOREIGN PRESS BUREAU ZAGREB, Dec. 1, 1998 (visited Feb. 22, 2000) < http://www.interaccess.com/intelweb/fpb/0423.html>.
172. UNAIDS & WHO, EPIDEMIOLOGICAL FACT SHEET ON HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES – CROATIA 3 (1998) (visited Feb. 22, 2000) <http:/www.unaids.org>.
173. *Id*. at 7.
174. Pravilnik o načinu obavljanja zdravstvenih pregleda osoba koje su kliconoše ili se sumnja da su kliconoše određenih zaraznih bolesti [Regulations on Medical Examination Procedure for Carriers or Persons Suspected to be Carriers of Certain Infectious Diseases] (Mar. 1, 1994), NARODNE NOVINE No. 23/Mar. 25, 1994, Pub. No. 406.
175. Zakon o zaštiti pučanstva od zaraznih bolesti [Law on Nationwide Protection Against Infectious Diseases] (Sept. 25, 1992), NARODNE NOVINE No. 60/Oct. 1, 1992, Pub. No. 1582.
176. Regulations on Infectious Diseases, art. 1.
177. *Id*. art. 8.
178. *Id*. art. 16(1).
179. Law on Infectious Diseases, art. 36.
180. The AIDS Committee is not very active, however. Communication with Nena Sudar, B.a.B.e. (Dec. 3, 1999) (on file with The Center for Reproductive Law & Policy).
181. USTAV HR art. 14(1).
182. Obiteljski zakon [Family Law] [OBITELJSKI ZAKON] (Dec. 11, 1998), NARODNE NOVINE No. 162/Dec. 22, 1998, Pub. No. 1993.
183. *Id*. art. 1.
184. *Id*. art. 24(1).
185. *Id*. arts. 26(1), 26(2). *See infra* Marriage and Adolescents.
186. *Id*. art.20.
187. *Id*. art. 8.
188. *Id*. art. 35.
189. Communication with Nena Sudar, B.a.B.e. (Dec. 3, 1999) (on file with The Center for Reproductive Law & Policy).
190. OBITELJSKI ZAKON art. 226(1).
191. *Id*. art. 226(2).
192. *Id*. art. 262.
193. *Id*. art. 5.
194. *Id*. art. 226(2).
195. *Id*. art. 213.
196. *Id*. art. 230.
197. *Id*. art. 43.
198. *Id*. art. 42(2).
199. *Id*. art. 221.
200.*Id*. art. 226(1).
201. *Id*. art. 253.
202. *Id*. art. 49.
203. Zakon o vlasništvu i drugim stvarnim pravima [Law on Property and Other Rights] (Oct. 2, 1996), art. (1), NARODNE NOVINE No. 91/Oct. 28, 1996, Pub. No. 1596.
204. Zakon o nasljeđivanju [Inheritance Law], first published in SFRJ OFFICIAL JOURNAL of May 11, 1955, *entry into force* July 11, 1955, amended and republished in NARODNE NOVINE No. 47/Nov. 28, 1978.
205. *See* B.a.B.e., LEGAL STATUS OF WOMEN IN CROATIA (visited Apr. 14, 2000) <http://www.interlog.com/~moyra/legal.html>.
206. Zakon o radu [Labor Act] (May 17, 1995), art. 82, NARODNE NOVINE No. 38/Jun. 8, 1995, Pub. No. 758.This discusses equal pay for men and women.
207. Arts. 52, 55, and 56 of the Labor Act specify that women may not perform strenuous physical jobs, underground work, underwater work, work that may endanger her life or health, as well as night work.
208. Pravilnik o poslovima nakojima ne smije raditi žena [Regulations on Jobs that Cannot Be Occupied by Women] (Apr.12, 1996), art. 1, NARODNE NOVINE No. 44/Jun. 5, 1996, Pub. No. 858.
208. *Id*. arts. 2, 3.
210. Labor Act art. 63(1).
211. *Id*. art. 63(2).
212. *See* Lj. Gatarič, *Mi majke petero djece, žrtve smo obečanja* [*We mothers of five children*], VECERNJI LIST, July 20, 1999.
213. *See* Ženske Stranice. Stranice za jednakost spolova [Women's Pages for Gender Equality] (visited Dec.13, 1999) <www.zenskestranice.hr>.
214. NGO REPORT ON THE STATUS OF WOMEN IN THE REPUBLIC OF CROATIA, *supra* note 56 (visited Apr. 14, 2000) <http://www.interlog.com/~moyra/cedawwl.html>.
215. Labor Act arts. 56, 57.
216. *Id*. art. 55.
217. *Id*. art. 58.
218. Compensation is 100% of the basic monthly salary. Zakon o zdravstvenom osiguranju [Health Insurance Act] (July 30, 1993), art. 34, NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 2, amended on Oct. 3, 1997, NARODNE NOVINE No. 109/Oct. 20, 1997, Pub. No. 1663.
219. Labor Act art. 61; Zakon o porodnom dopustu majki koje obavljaju samostalnu djelatnost i nezaposlenih majki [Act on Maternity Leave for Self-Employed and Unemployed Mothers] (Mar. 15, 1996), NARODNE NOVINE No. 24/Mar. 26, 1996, Pub. No. 429.
220. *E.g* Zakon o bankama [Banking Law] (Dec. 4, 1998), NARODNE NOVINE No. 161/Dec. 18, 1998, Pub. No. 1983.
221. USTAV HR art. 65.
222. Zakon o osnovnom školstvu [Law on Primary School System] (Dec. 28, 1990), NARODNE NOVINE No. 59/Dec. 31, 1990, Pub. No. 1159.
223. Zakon o srednjem školstvu [Law on Secondary School System] (Mar. 28, 1992), NARODNE NOVINE No. 19/Apr. 2, 1992, Pub. No. 423.
224. WORLDBANK, EDUCATION – CROATIA (visited Apr. 13, 2000) <http://genderstats.worldbank.org>.
225. POPULATION CENSUS, 1991.
226. B.a.B.e., WOMEN'S ACCESS TO WAGED EMPLOYMENT IN CROATIA 3 (1997) (on file with

The Center for Reproductive Law & Policy).
227. *See* Ženske Stranice. Stranice za jednakost spolova [Women's Pages for Gender Equality] (visited Dec.13, 1999) <www.zenskestranice.hr>.
228. *Id*.
229. *Id*.
230. *Id*.
231. KAZNENI ZAKON art. 188.
232. *Id*. art. 189.
233. *Id*. art. 190.
234. *Id*. art. 191.
235. *Id*. art. 192.
236. *Id*. art. 193.
237. *Id*. art. 194.
238. *Id*. art. 195.
239. *Id*. art. 196.
240. *Id*. art. 198.
241. *Id*. art. 214.
242. *Id*. art. 188(1).
243. *Id*.
244. *Id*. art. 188(5).
245. *Id*. art. 158(1).
246. *Id*. art. 98.
247. INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH, COUNTRY REPORT: CROATIA (visited Apr. 14, 2000) <http://www.igc.apc.org/iwraw/publications/countries/croatia.html>.
248. LEGAL STATUS OF WOMEN IN CROATIA, *supra* note 205.
249. *Id*.; *see also* INTERNATIONAL CHILD DEVELOPMENT CENTRE, UNICEF, WOMEN IN TRANSITION 77-93 (1999) (visited Apr. 10, 2000) <http://www.unicef-icdc.org/pdf/rmr6.shtml>.
250. NGO REPORT ON THE STATUS OF WOMEN IN THE REPUBLIC OF CROATIA, *supra* note 56 (visited Apr. 14, 2000) <http://www.interlog.com/~moyra/cedawwl.html>.
251. *Radnice Plive zaštičene od seksualnog uznemiravanja [Female Workers of Pliva Are Protected Against Sexual Harassment]*, JUTARNJI LIST, Jan. 1, 1999.
252. KAZNENI ZAKON art. 195(1).
253. *Id*. art. 178(1).
254. NATIONAL PROGRAM FOR DEMOGRAPHIC DEVELOPMENT, *supra* note 124, at 20-21. The anticipated female population trends for the 15-19 age group in 1991 was 161,956. Total female population in 1991 was 2,466,602, which translates into 6.5%.
255. Zakon o zdravstvenom osiguranju [Health Insurance Act] (July 30, 1993), art. 8(1), NARODNE NOVINE No. 1/Jan. 3, 1997, Pub. No. 2.
256. *Id*. art. 8(2).
257. *Id*. art. 5(12).
258. *Id*. art. 6.
259. Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece [Law on Health Care Measures for the Purpose of Effectuating the Right to Free Decision on Child Bearing] (Apr. 21, 1978), art. 18, NARODNE NOVINE No. 18/May 4, 1978, Pub. No. 423.
260. OBITELJSKI ZAKON art. 26(2).
261. KAZNENI ZAKON art. 214.
262. 1998 STATISTICAL YEARBOOK, *supra* note 88, at 101.
263. KAZNENI ZAKON arts. 89 (9), (10).
264. *Id*. arts. 188-198.
265. *Id*. arts. 195(3), 196, 198(2), 198(3), 214.
266. Communication with Nena Sudar, B.a.B.e. (Dec. 3, 1999) (on file with The Center for Reproductive Law & Policy).
267. KAZNENI ZAKON art. 195.
268. *Id*. art. 195(3).
269. *Id*. art. 178.

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

4. Hungary



GENERAL

Population

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

Territory

- The territory of Hungary is 35,919 square miles.[5]

Economy

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

Employment

- Women comprised 44% of the labor force in 1997, compared to 43% in 1990.[10]

WOMEN'S STATUS

- In 1999, the life expectancy for women was 74.9 years compared with 66.8 years for men.[11]
- In 1997, the illiteracy rate among youth between the ages of 15–24 was 0% for females and 0% for males.[12]
- 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.[13]

ADOLESCENTS

- 17% of the population is under 15 years of age.[14]

MATERNAL HEALTH

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

CONTRACEPTION AND ABORTION

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

HIV/AIDS AND STIs

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

ENDNOTES

1. United Nations Population Fund (UNFPA), The State of World Population 1999 (visited July 13, 2000) <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>.
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.[1] Its population in 1998 was approximately 10 million people. Hungary promotes equality before the law with measures aimed at eliminating inequalities[2] for all its 13 officially registered ethnic minorities — Bulgarian, Roma, Greek, Croat, Polish, German, Armenian, Romanian, Transcarpathian Ukrainian (Ruthen), Serbian, Slovakian, Slovenian and Ukrainian.[3] The largest ethnic minority is the Roma.[4]

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.[5] 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.[6] Within the limits of the law, the government has much flexibility to organize the executive branch.[7] The government consists of the prime minister, who is the head of the government, and ministers.[8] 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.[9] 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.[10] The prime minister can issue decrees so long as they do not conflict with existing law.[11] The government is also charged with annulling or amending all legally irreconcilable resolutions or measures taken by subordinate public authorities (excluding legal statutes).[12] 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.[13] The government "is responsible to the Parliament for its operation and is required to present the Parliament with regular reports of its work."[14] Members of the government are required to appear before parliamentary committees and provide information requested by those committees.[15]

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."[16] 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.[17] 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.[18] The president has some powers of appointment and dismissal and has the right to initiate national referenda and to petition Parliament to take action.[19] 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.[20] 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.[21] 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."[22] The president can veto legislation only in limited circumstances, but the final word on whether it becomes law remains with the Parliament.[23]

Legislative branch

The Constitution vests supreme power in the people "who exercise their sovereign rights directly and through elected representatives."[24] The Parliament is the "supreme body of state power and popular representation in the Republic of Hungary."[25] 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.[26] The last elections took place in 1998,[27] 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.[28]

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."[29] 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.[30] 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.[31] Parliament also controls the implementation of the annual budget.[32] 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.[33] 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,[34] to declare war,[35] to call a national plebiscite,[36] to elect the president of the republic,[37] to ratify the laws on the organization and operation of the Constitutional Court[38] and on the Ombudsman,[39] and to appoint the president of the Supreme Court.[40]

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.[41] 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.[42] If the president believes that the law is unconstitutional, he can refer the law to the Constitutional Court for review.[43] 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.[44]

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[45] and the parliamentary Commissioner for Citizens' Rights (Ombudsman)[46] serve as a control over all three branches. The parliamentary-elected Ombudsman protects the rights of ethnic minorities;[47] his or her job is to investigate abuses of national or ethnic minority rights and to initiate general or particular measures for redress.[48] 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.[49] It also examines whether a law is contrary to the international obligations of Hungary,[50] determines whether a constitutional complaint has merit,[51] eliminates unconstitutionality resulting from legislative omission,[52] eliminates conflicts of competence between state and/or local bodies,[53] and otherwise interprets the Constitution.[54] Constitutional Court decisions are binding, and there are no appeals.[55] The 11 members of the Constitutional Court are elected by a two-thirds majority of Parliament,[56] cannot be members of a political party, and may not engage in political activities. [57]

The Supreme Court, Boards of Justice, Municipal Court of Budapest, county courts, and local and labor courts have the task of administering justice.[58] 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.[59] Judges, appointed by the president of the republic, are independent and "answer only to the law."[60] Judges may not be members of political parties or participate in political activities.[61]

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

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

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

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.[69] Further administrative divisions are cities (which may have the same rights as counties), towns, and villages.[70]

Local governments — the mayors and the district assemblies — are elected by direct, secret, universal, adult suffrage. (Non-Hungarian citizens can vote, too.)[71] The local governments can be constituted in whole or in part by national or ethnic minority governments.[72] The members of local representative bodies are elected for four-year terms,[73] and the Mayor is the president of this representative body.[74] 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.[75]

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.[76] Local governments are legal entities and may pass laws,[77] although Parliament, in consultation with the Constitutional Court, can dissolve any local government acts contrary to the Constitution.[78] 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.[79] 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.[80] Individuals have the exclusive and inalienable right to decide and declare their minority status; no one can be forced to declare any such status,[81] and declaration of belonging to one minority does not exclude acknowledgement of double or multiple bonds.[82]

C. SOURCES OF LAW

Domestic sources of law

Hungary's Constitution states that it is the "supreme law of the Republic of Hungary."[83] 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.[84] Following this legal hierarchy, no inferior rule may contradict a superior rule.[85]

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.[86] 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.[87] These rights (along with the rest of the Constitution) are "equally binding for all social organizations, government bodies, and citizens of the country,"[88] 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."[89] The non-discrimination section also provides for punishment of those who discriminate.[90] 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."[91] The Constitution provides for special protection and support of mothers, before and after birth, and the protection of women and youth in the workplace.[92] There are also provisions for equal pay for equal work, equality before the law, and freedom of belief, thought, religion and expression.[93] The Constitution guarantees the right to human dignity, life, assembly, association, education, and the highest attainable level of health.[94] 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.[95]

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."[96] In 1980, Hungary ratified the Convention on the Elimination of All Forms of Discrimination Against Women.[97] It is also a party to the International Covenant on Civil and Political Rights,[98] the International Covenant on Economic, Social and Cultural Rights,[99] the

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

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[104] 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,[105] labor law,[106] criminal law,[107] and administrative law.[108] 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.[109] 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.[110]

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.[111] It is the task of the state to organize the health care system and health institutions according to this right.[112] The basic law governing health care is Act CLIV of 1997 on Public Health Care (Public Health Care Act).[113] The objectives of the law are to improve the health of the individual and therefore of the whole population;[114] to contribute to the equal access to health services for all members of the society;[115] to create the conditions necessary for all patients to maintain their human dignity, identity and self-determination and all other personal rights;[116] 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;[117] to define the rights and obligations of the providers of health services;[118] and to facilitate a harmonious balance of individual and community interests.[119] Basic principles guiding this law, such as equal opportunities[120] and patients' rights,[121] are mentioned, while prevention and health maintenance are to be the primary means for improving public health.[122] 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.[123] 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. [124] 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.[125] 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,[126] diagnostic screenings to protect the family, women and youth,[127] preventive dental services,[128] pediatric and adolescent services,[129] general and locally justified screening examinations,[130] and prenatal and maternal health care.[131] Health care treatments may be carried out at the patient's home,[132] outpatient clinics,[133] hospitals,[134] or emer-

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

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.[142]

In theory, every citizen is registered with a family doctor or pediatrician.[143] A GP has an average of 1,600 registered patients,[144] while a pediatrician has an average of 1,000 registered patients.[145] In 1998 Hungary had 36,000 physicians in active service, which translated into 358 doctors per hundred thousand inhabitants.[146] There were 5,210 GPs in 1998,[147] and it is projected that there will be 7,000 by the end of the year 2000.[148] 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.[149] 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.[150]

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.[151] 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.[152] Registration at the social security authority is automatic upon birth.[153] 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.[154] 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.[155] 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.[156]

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.[157] 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. [158] 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.[159] Given the range of tasks, MCH nurses often face difficulties in fulfilling all these demands.[160]

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.[161] 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.[162] 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.[163] All others not otherwise insured must contribute 11% of the established minimum wage to the state insurance fund.[164]

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.[165] 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.[166]

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.[167] State health insurance also pays for patient follow-ups, health education,[168] therapeutic treatment and rehabilitation,[169] and referrals to specialists.[170] The state health insurance also covers in full or in part [171] 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.[172] Article 18 (6) of the Health Insurance Act also lists health care services that are not covered by the health care system.[173] These are considered either to have little therapeutic value (for instance, plastic surgery), or to have little proven medical effect.[174] The Ministry of Health also has established a price list for certain other services that are not purely related to medical treatment,[175] such as the medico-legal attestation of injury needed to proceed with a domestic violence complaint.[176]

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.[177] 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.[178]

A Welfare Ministry order regulates the different types of health-care providers and facilities in 17 appendices, and it sets forth the minimum qualifications[179] each one has to fulfill.[180] 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.[181] (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.[182] All medical professionals must continue their education by enrolling in professional training courses at least once every five years.[183]

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,[184] 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,[185] 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.[186] The ministerial order[187] 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.[188] The quality of this education and its exams are supervised by the Institute for Health Care Studies,[189] while the activities of the traditional practitioners are regularly inspected by the Medical Officer's service.[190] 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.[191] Upon completing the required studies,[192] permission to practice is issued if the applicant is listed in a Ministry of Health registry.[193] The license to practice is valid for five years.[194] 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.[195] Ethics Committees, established by a Ministry of Health Order in February 1999,[196] determine if a complaint against a doctor should be forwarded to a court or to the relevant Chamber.[197]

Patients' rights

The Criminal Code contains nine sections relating to patients' rights in the context of health services.[198] 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.[199] 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.[200] 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.[201]

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,[202] human gamete usage,[203] sex selection techniques,[204] human experiment research protocols,[205] embryo and gamete research protocols,[206] health self-determination,[207] and transplantation sale of human body parts and cadavers.[208] 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.[209] Aggravating circumstances include the actual "success" of the intervention,[210] committing the crime as a health care worker[211] or as part of a criminal gang.[212]

Issues of medical malpractice generally are treated by judges as breaches of contract giving rise to liability.[213] 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,[214] methods of examination,[215] provision of information,[216] documentation,[217] secrecy,[218] and continuing professional education.[219] Stricter liability can attach if an activity is deemed "hazardous,"[220] 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[221] 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.[222] Malpractice damage awards are usually modest.[223]

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.[224] 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. [225] Patient rights include the right to health services,[226] to be treated with human dignity,[227] to keep in contact with their relatives,[228] to leave the health institution if not an endangerment to others,[229] to be informed,[230] to self-determination,[231] to refuse to consent to interventions,[232] to review his or her own medical records,[233] and to medical secrecy.[234] The rights of patients with mental health conditions are balanced against their heightened needs.[235]

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.[236] 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.[237] The Ethics Committee is composed of specialists from each field (legal, medical, psychological, religious, etc.) to ensure a thorough examination of the case.[238] The Supervisory Council is comprised of representatives of civic organizations and of the hospital, and is always chaired by a civil representative.[239]

The Hungarian Constitution affirms all human beings have an innate right to life[240] and to the highest attainable level of physical and mental health.[241] 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.[242] The Public Health Care Act details the precise meaning and content of consent.[243] The Penal Code defines the circumstances under which not obtaining consent from a patient is excused: where there was trivial harm done to society[244] and where there was an extreme necessity or emergency.[245]

The Public Health Care Act also regulates the right to refuse to consent to medical interventions.[246] 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.[247] 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.[248] The right to full information is absolute even if obtaining prior consent is not a precondition for treatment.[249] 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.[250]

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

time or place.[254] Health care service providers must inform patients of their right to complain about medical treatment,[255] 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.[256]

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.[257] The total population decreased from 10.71 million in 1980 to 10.16 million in 1997.[258] 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.[259] The crude birth rate decreased also — from 15 out of 1,000 people in 1970 to 10 in 1997.[260] The fertility rate decreased as well, from 1.9 in 1980 to 1.4 in 1997.[261] The average life expectancy at birth has remained steady for the last 30 years — 66 years for men and 74 for women.[262] 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.[263]

Given this demographic picture, it is suprising 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," [264] 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.[265] A new family policy proposed by the Ministry of Social and Family Affairs[266] 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,[267] 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,[268] 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,[269] 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.[270]

C. FAMILY PLANNING

Government delivery of family planning services

Principally, Hungarian health policy towards women focuses on maternity care.[271] The Constitution declares that the Republic of Hungary protects the institution of marriage and family,[272] and that mothers receive special support and protection before and after the births of their children.[273] The Public Health Care Act defines "Care for the Protection of Family and Women"[274] 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.[275] 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).[276]

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).[277] 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.[278]

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.[279] 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.[280] Some local NGOs offer personal medical and psychological consultations, and two NGOs will help find foster parents for unwanted infants.[281]

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.[282] 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).[283] There are no reliable numbers about the use of other contraceptive methods, such as condoms or intrauterine devices (IUDs).[284] 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.[285]

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[286] once the hospitals use up their stock. Some hospitals offer specialized gynecological services for adolescents.[287]

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,[288] but this option is seldom exercised.[289] 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,[290] 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.[291] 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.[292]

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.[293] The National Pharmaceutical Institution (NPI)[294] supervises the production of drugs, registers them, and issues licenses for their sale.[295] 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.[296] 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.[297] 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.[298] Prescription drugs may only be advertised in

specialized publications and other media targeted to physicians and pharmacists.[299] Non-prescription drugs may be advertised in the general mass media, provided the most important side effects are mentioned in the advertisement;[300] 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.[301] 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%.[302] An average of 76,000 abortions per year were officially recorded in Hungary up until 1996.[303] In 1998 only 68,900 abortions were recorded.[304] Eighty out of every 100 pregnancies end in abortion.[305] Half of all abortions in Hungary are requested by married women.[306]

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][307] and in Welfare Ministry Order No. 32/1992 (XII. 23) on the Implementation of Act LXXIX of 1992 [Implementing Order].[308] 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,[309] Hungary's Abortion Law will again be modified by the Parliament.

Before 1992 abortion was administratively regulated,[310] and was permitted for a range of medical and social indications, upon a sufficient showing to a committee.[311] 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.[312] The Court did affirm that, according to the Hungarian legal tradition, a fetus is not considered a legal subject.[313]

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.[314]

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.[315] 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."[316] This provision ensured women their unhampered right to terminate a pregnancy. Soon after the 1992 law was adopted, many challenges were filed.[317] 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,[318] but held that a fetus is entitled to some constitutional protection under art. 54(1) (the right to life) of the Constitution.[319]

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.[320] 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[321] if the health of the mother is at serious risk, the fetus has a serious impairment,[322] 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).[323] 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.[324] 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.[325] 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.[326] Foreign citizens living in Hungary may also obtain an abortion.[327]

Requirements for obtaining legal abortion

Abortions may only be performed by OB/GYN specialists in approved medical facilities.[328] In order to obtain an abortion, a woman must first fill out a written application — except for medical indications[329] — in person at the SPF.[330] For a woman with diminished legal capacity, her legal representative must make a "declaration of cognizance" as her legal representative.[331] 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.[332] There is a waiting period of three days from the date of application was first signed before the procedure may take place.[333] 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.[334] Medical reasons for abortion require the joint opinion of two specialists.[335] If an abortion is sought because the pregnancy resulted from a crime, there must be documentation from the authority investigating the case.[336]

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.[337]

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,[338] if the applicant is a minor living in a state institution, or if she receives state financial support on a regular basis.[339] 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.[340]

Penalties for abortion

The Penal Code makes the illegal performance of abortion a felony, punishable by imprisonment of up to three years.[341] 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.[342] If it causes death, the punishment is two years to eight years of imprisonment.[343] Abortion without the consent of the woman is classified as an aggravated assault and battery.[344] However, obtaining the consent of a woman for an abortion that is otherwise illegal does not make the intervention legal.[345] 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.[346]

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.[347]

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. [348]

F. STERILIZATION

Legal status of sterilization

Article 187 of the Public Health Care Act,[349] and Welfare Ministry Order No. 25/1998 (VI. 17) permit sterilization[350] 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,[351] but it may be revoked orally any time before the operation is actually carried out.[352] 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.[353] Illegal sterilization is punishable according to the same regulations of the Penal Code for unauthorized medical interventions[354] — 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.[355] 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.[356] 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.[357] Currently the fee is approximately USD $80.[358]

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.[359]

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.[360] The total number of AIDS cases in Hungary as of June 1999 was 328.[361] As of 1998 there were 763 cases of HIV-infected individuals in Hungary — 566 of them men, 70 women and 127 registered anonymously.[362] Between 1995 and 1998, 210 people died of AIDS in Hungary.[363] 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)*.[364]

About 6,500 people visited venereal wards in 1998.[365] In 1997 there were 1,907 new patients with venereal diseases, the majority diagnosed with gonorrhea (1,604).[366] 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.[367]

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.[368] It instructs the Ministry to specify a list of infectious diseases which entail mandatory screening.[369] The Public Health Care Act provision regarding a patient's rights to secrecy and confidentiality[370] 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.[371] This order requires all potentially infected persons to undergo an examination.[372] 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.[373] Any treating institution is obliged to report anonymously the infection to the relevant authorities.[374] Foreigners wishing to reside in or immigrate to Hungary are obliged to undergo examination for several infectious diseases, HIV included.[375] HIV screening is obligatory for all blood donations, organ transplantation, and in sperm used in artificial insemination.[376] HIV-positive persons with open wounds or bleeding have to be segregated within the hospital.[377] 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.[378]

Social and Health Ministry Order No. 5/1988 (V.31) lists those who must undergo AIDS screening:[379] 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.[380] 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.[381]

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[382] 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.[383] Throughout the years of its existence, the Committee has funded some programs, partially run by civic organizations, and partially by state institutions.[384] The effectiveness of the programs, particularly the public education campaigns, has not yet been objectively measured.[385]

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,[386] 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.[387]

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."[388]

One important amendment is the introduction of equal rights between the father and the mother in relation to their children.[389] 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[390] (on the basis of the expert opinion of the General Ombudswoman and pursuant to a decision of the Constitutional Court).[391] 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."[392] 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.[393] 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.[394] 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).[395]

The general clause on equal rights of partners was added to the Family Code in 1990.[396] 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.[397]

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."[398] 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.[399] The spouses are obliged to be faithful to, and to support, each other.[400] The wife has the right to use her husband's name or to keep her own.[401]

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.[402] 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.[403] 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.[404]

Divorce and custody laws

By law, marriages end only by the death of one of the spouses or by divorce authorized by the court.[405] 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.[406] 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.[407] 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.[408] 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.[409] 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."[410] 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.[411] 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.[412] 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.[413]

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.[414] All joint property is to be managed by mutual consent during marriage.[415] 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.[416] Property rights in the family are rather poorly elaborated by the Family Code, so judge-made law plays an important role in this field.[417] 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"[418]: "Work done in the household is considered to be a contribution to the acquisition of joint property."[419] 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.[420]

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,[421] 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).[422] The party leaving the apartment is entitled to compensation in proportion to the value of the loss.[423]

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.[424] 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.[425] Parents may jointly take care of their child(ren) after divorce.[426] Whether by mutual consent or court decision, when one parent is granted physical custody of the children,[427] 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."[428] Custody of children over the age of 14 may occur only according to their preference, unless such placement would endanger the child's development.[429] The court may restrict or withdraw

the custody rights from a parent if such restriction is in the best interest of the child.[430] 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.[431] 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.[432]

B. ECONOMIC AND SOCIAL RIGHTS

Property rights

There is no discrimination based on gender in the laws dealing with inheritance.[433] 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,[434] except when clearly stated in the deceased spouse's will.[435] Neither the regulations concerning intestate succession,[436] nor the articles dealing with "common law marriage,"[437] mention "common law" partners as entitled to inheritance by intestate succession.

Labor rights

The general constitutional provision on non-discrimination[438] 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."[439] In cases of alleged discrimination, the employer has to prove that it did not violate the non-discrimination provision of the Labor Code.[440]

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.[441] Maternity leave is 24 weeks, to begin four weeks prior to the expected date of birth.[442] 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.[443] 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.[444] 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 then men in those categories.[445]

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,[446] 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.[447]

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.[448]

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,[449] the right of parents to choose the kind of education their children are to receive,[450] the right to education[451] and parents' and guardians' obligations to see to the education of minor children.[452] 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.[453] 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.[454] The second is Act LXXIX of 1993 on Public Education.[455] This latter law was amended several times; a non-discrimination clause — prohibiting discrimination on the basis of sex — was added in 1996.[456]

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.[457] 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.[458]

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,[459] 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[460] as part of the new government's emphasis on the role of the women within the family.[461]

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.[462] 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.[463]

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."[464] As defined, rape is a felony punishable with imprisonment between two to eight years.[465] 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,"[466] instead of "forces a woman."[467] 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.[468]

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.[469] This parallels the crime of seduction, where the basis of crime is not force, but age.[470] Sexual intercourse with a person younger than 14 (seduction) — is punishable by one to five years in prison.[471]

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.[472]

Incest is defined as "sexual intercourse or fornication with a relative in direct line."[473] 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.[474] Among siblings, the crime is a misdemeanor punishable by imprisonment of up to two years.[475]

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.[476] More often, other regulations such as the Act on the Protection of Children[477] 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.[478] If the injury takes longer than eight days to heal the act is a felony, punished by up to three years in prison.[479] Aggravated battery is battery committed for a base reason, if the victim was defenseless or unable to express his or her will,[480] if the attack causes permanent physical disability or a grave injury to health, or if it is committed with extreme cruelty.[481] 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.[482] Aggravated battery due to negligence can be punished with imprisonment (the length depends on aggravating circumstances), community service, or a fine.[483]

To start a judicial proceeding for domestic violence, a woman must file a police report.[484] The proceedings can be civil or criminal in nature.[485] 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.[486] 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.[487] 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.[488]

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.[489] 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.[490] 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,[491] 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.[492] 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."[493] 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.[494] 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.[495]

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.[496] 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.[497] 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.[498] 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.[499]

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.[500] 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.[501] 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.[502]

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.[503]

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).[504] 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.[505]

B. MARRIAGE AND ADOLESCENTS

As a general rule, marriages may be contracted between a man and a woman of full legal capacity.[506] It is possible, though, for persons under age 18 to marry with the prior permission of the Public Guardianship Authority.[507] 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.[508] 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.[509] Marriage at a young age is more widespread in the Roma community than among other ethnic communities in Hungary.[510] Marriage confers majority status;[511] 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.[512] The Penal Code presumes children under age 12 to be incapable of self-defense,[513] 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.[514] Other aggravating factors include if the perpetrator is the caretaker of the child, or if the crime is committed by more than one person.[515]

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.[516] Being the caretaker of the child is an aggravating factor.[517] 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.[518] "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.[519] 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.[520]

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.[521] 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.[522] 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.[523] Hungary has ratified and enacted the International Convention on the Elimination of All Forms of Discrimination in Education,[524] which prohibits discrimination based on sex. The Public Education Act further reinforces the prohibition.[525] Nonetheless, a reality of Hungarian society is overt discrimination against Roma children.[526]

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.[527] 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.[528] 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.[529] 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.[530]

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.[531]

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> (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) <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>.
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 SZEREPVÁLTOZÁSOK, TÁRKI, SZOCIÁLIS ÉS CSALÁDÜGYI MINISZTÉRIUM NŐKÉPVISELETI TITKÁRSÁGA 40-51(Pongrátz & 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).

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 képviselôk 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.unhchr.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 kötelezô 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 currenly 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 kötelezô 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 obstretics 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 MINISZTÉRIUM [MINISTRY OF SOCIAL AND FAMILY AFFAIRS], CSALÁDPOLITIKAI KONCEPCIÓ [FAMILY POLICY CONCEPT] (visited Mar. 25, 2000) <http://www.meh.hu/szcsm/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 kötelezô 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. Zoltąn 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 törzskönyvbe 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 hatálybaléptetéséről [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 gyógyszernek nem minősülőgyógyhatású 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.CONST.REV., 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 védelmérôl [Act LXXIX of 1992 on the Protection of Fetal Life], art. 15 (JURIX).

348. Concurring opinion of Judge Kilényi, 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 meddővétételről [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 EPIDEMIOLÓGIAI KÖZPONT [NATIONAL EPIDEMIOLOGICAL CENTER], BEJELENTETT AIDS-ES BETEGEK MEGOSZLÁSA A MEGBETEGEDÉS 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 EPIDEMIOLÓGIAI 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 Millitary 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 meggátlása 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 LXIV. törvény a Gyermek 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 [V.16] AB h, *discussed in Constitution Watch: Hungary*, E.EUR.CONST.REV., 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 Crime 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>.

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 NŐKNEK EGÉSZSÉGMEGÖRZŐ 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 LXXIX 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).

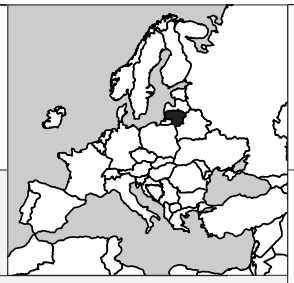
530. *Id.* art. 175/B (2)-(5). Other aggravating circumstances are: trafficking the person for work, sex-work, depriving the trafficked person of her or his personal freedom, the trafficked person is under the care of the perpetrator, or the perpetrator is a member of an organized crime.

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

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

5. Lithuania



Statistics

GENERAL

Population

- The total population of Lithuania is 3.7 million.[1]
- In 1995, the proportion of the population residing in urban areas was estimated to be 72%.[2]
- Between 1995 and 2000, the annual population growth rate is estimated to be -0.3%.[3]
- In 1999, the gender ratio was estimated to be 112 women to 100 men.[4]

Territory

- The territory of Lithuania is 25,213 square miles.[5]

Economy

- In 1997, the gross national product (GNP) was USD $8.3 billion.[6]
- In 1997, the gross domestic product (GDP) was USD $9,265 million.[7]
- Between 1990 and 1997, the average annual growth was –7.1%.[8]
- From 1990 to 1995, public expenditure on health was 5.1% of GDP.[9]

Employment

- Women comprised 50% of the labor force in 1997, compared to 48% in 1990.[10]

WOMEN'S STATUS

- In 1999, the life expectancy for women was 75.6 years, compared with 64.3 years for men.[11]
- In 1997, the illiteracy rate among youth between the age of 15-24 was 0% for females and 0% for males.[12]
- In 1999, gross primary school enrollment was 96% for girls and 100% for boys; gross secondary school enrollment was 85% for boys and 88% for girls.[13]

ADOLESCENTS

- 20% of the population is under 15 years of age.[14]

MATERNAL HEALTH

- Between 1995 and 2000, the total fertility rate is estimated at 1.43.[15]
- In 1999, there were 37 births per 1,000 women aged 15-19.[6]
- In 1998, the maternal mortality ratio was 36:100,000.[7]
- Infant mortality was at 13 per 1,000 live births.[18]
- 95% of births were attended by trained attendants.[19]

CONTRACEPTION AND ABORTION

- The contraceptive prevalence for any method (traditional, medical, barrier, natural) is estimated at 59%, and that for modern methods at 20%.[20]

HIV/AIDS AND STIs

- In 1999, the estimated number of people living with HIV/AIDS was <500.[21]
- In 1999, the estimated number of women aged 15-49 living with HIV/AIDS was <100.[22]
- In 1999, the estimated number of children aged 0-14 living with HIV/AIDS was <100.[23]
- In 1999, the estimated cumulative number of AIDS deaths among adults and children was <100.[24]

ENDNOTES

1. United Nations Population Fund (unfpa), The State of World Population 1999 (visited July 11, 2000) <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 794.
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, *supra* note 1.
12. The World Bank, World development indicators 1999, at 83.
13. *Id*.
14. CIA, Lithuania, World Factbook (visited Sept. 23, 1999) <http://www.odci.gov/cia/publications/factbook/lh.html>.
15. The State of World Population, *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 – lithuania 3 (2000) (visited July 11, 2000) <http://www.unaids.org>.
22. *Id*.
23. *Id*.
24. *Id*.

Lithuania borders the Baltic Sea, Latvia, Belarus, Poland and Russia.[1] With an ethnic composition of 80.6% Lithuanians, 8.7% Russians, 7% Poles, 1.6% Byelorussians and 2.1% other ethnic groups, Lithuania is primarily Roman Catholic. Residents practice a smattering of other religions as well: Lutheran, Russian Orthodox, Protestant, Evangelical Christian, Baptist, Islam and Judaism. The official language is Lithuanian, with Polish and Russian also spoken. According to July 1999 estimates, there are 3.58 million people living in Lithuania, including approximately 1.9 million women.[2] Lithuania gained independence from the former Soviet Union on March 11, 1990 when the Supreme Council of the Republic of Lithuania passed the Declaration of the Re-establishment of Lithuania's Independence.[3] A new Constitution was adopted by referendum on October 25, 1992,[4] with the first elections to Parliament ("*Seimas*") held the same month, followed by the first presidential election in January 1993.[5] Recently, the nation has taken a disciplined approach to market reform.

As of 1998, Lithuania has membership in 38 international organizations,[6] including the Organization for Security and Cooperation in Europe (OSCE), the United Nations,[7] the Council of Baltic Sea States,[8] and the Council of Europe.[9] Lithuania signed an Association Agreement with the European Union (EU) in 1995, which went into effect in February 1998.[10] It formally applied for EU membership in December 1995 and is currently awaiting admission.[11]

I. Setting the Stage: the Legal and Political Framework

The sovereignty of Lithuania rests in its people, who exercise this power through democratically elected representatives.[12] Referenda are another way Lithuanians express their views regarding significant issues of government. Referenda may be initiated either by the Parliament or by at least 300,000 eligible voters.[13]

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The Constitution divides state power among the legislative, executive and judicial branches.[14]

Executive branch

The president of the republic is the head of state.[15] The president is elected by universal, equal, direct suffrage by secret ballot for a term of five years and for no more than two consecutive terms.[16] The duties of the president are numerous: determining basic foreign policy issues and, with the government, implementing foreign policy; signing international treaties and submitting them to Parliament for ratification; appointing and removing, upon approval of the Parliament, the prime minister; appointing or dismissing individual ministers upon recommendation of the prime minister; proposing Supreme Court judicial candidates to the Parliament; naming Court of Appeals judges with the approval of the Parliament; appointing judges and chairpersons of district and local district courts; proposing candidates for three Constitutional Court judges to Parliament; imposing martial law and declaring states of emergency; presenting annual reports to the Parliament about domestic and foreign policies; and signing and promulgating laws enacted by the Parliament or referring them back to Parliament.[17] The president must sign and officially promulgate laws and acts adopted by referendum.[18] To implement his or her power, the president of the republic issues decrees that are valid only when signed by the prime minister or an appropriate minister.[19]

The government consists of the prime minister and ministers.[20] The prime minister is appointed or dismissed by the president with the approval of Parliament.[21] Ministers are appointed by the president on the nomination of the prime minister.[22] The government submits its program of activities to Parliament and is empowered to act after Parliament approves the program by a majority vote of sitting members.[23]

The duties of the executive branch of government include administering the affairs of the country; ensuring state security and public order;[24] implementing laws and resolutions of Parliament and decrees of the president;[25] coordinating the activities of the ministries;[26] preparing the national budget and submitting it to Parliament, as well as executing the budget and reporting on its implementation to Parliament;[27] drafting bills for submission to Parliament;[28] and establishing and maintaining diplomatic relations with foreign countries and international organizations.[29]

The Ministry of Health Care and Protection has a staff of 96[30] and is in charge of supervising the state health care system and managing the government's patients fund, with a total allocated expenditure of approximately 634 million Lithuanian litas (USD $158.5 million).[31]

Legislative branch

The legislative branch consists of a unicameral Parliament or *Seimas*, which is composed of 141 representatives elected by universal, equal, and direct suffrage[32] who serve four-year terms. Seventy-one members are elected directly by popular vote while 70 are elected by proportional representation.[33] The duties of Parliament are to consider and pass amendments to the Constitution; enact laws; adopt resolutions for the organization of referenda; announce presidential elections; form state institutions provided by law; approve or reject the candidacy of the prime minister; approve or reject the program of the

government submitted by the prime minister; establish or abolish ministries upon the recommendation of the government; supervise the activities of the government and exercise the option to vote no-confidence in the prime minister or individual ministers; appoint judges; approve the state budget and supervise its implementation; levy taxes; ratify or denounce international treaties and consider other issues of foreign policy; impose martial law; declare states of emergency; and adopt decisions to use the armed forces.[34]

Bills can be proposed by members of Parliament, the president, the executive branch of government, or by a petition signed by 50,000 eligible voters.[35] Laws are enacted by a majority vote of the sitting members of Parliament. Laws related to constitutional matters are adopted by a majority vote of all members of Parliament and are amended by a three-fifths majority vote of all members of Parliament.[36] If the president returns a law for reconsideration, the law becomes enacted if either the amendments of the president are adopted or if more than half of all Parliament members vote in its favor. Returned laws that relate to constitutional guarantees require at least a three-fifths parliamentary vote. The president must sign and officially promulgate all laws re-passed by Parliament.[37]

Judicial branch

Courts are independent and subject only to the law.[38] The Constitutional Court decides whether international agreements, laws adopted by the Parliament, and legal acts adopted by the president or the ministers are in conformity with the Constitution.[39] It consists of nine judges appointed for one, non-renewable, nine-year term. One-third of this Court is replaced every three years. Parliament appoints these judges from candidates nominated by the president, by the Chairperson of the Parliament, and by the Chairperson of the Supreme Court.[40] Decisions of the Constitutional Court are final and may not be appealed.[41] Besides the Constitutional Court, the court system of Lithuania consists of the Supreme Court, the Court of Appeals, district courts, and local courts.[42]

B. THE STRUCTURE OF TERRITORIAL DIVISIONS

Regional and local governments

The 1994 Law on Territorial-Administrative Units (No. I-558)[43] divided Lithuania into 10 counties, each managed by a governor appointed by the executive branch upon the recommendation of the prime minister.[44] The county governor is in charge of implementing state policy in the areas of social security, education, culture, health care, territorial planning, monument protection, land, agriculture, and environmental protection. He or she coordinates the activities of subdivisions of county ministries and develops plans for the county. The governor works together with a county council that includes a deputy governor and the heads of local governments.[45]

Local self-government in Lithuania[46] includes 44 administrative divisions and 56 municipalities. Local government councils are elected by universal, equal, secret ballots for terms of three years.[47] Local government councils form bodies to implement laws and decisions of the government and the local government council.[48]

Each municipal council elects a mayor for a three-year term by majority vote on a secret ballot. The mayor is responsible for the implementation of tasks assigned to the local government by the state, but local government institutions are not subordinate to state government institutions and enjoy some autonomy; for instance, they can approve their own annual budgets.[49]

C. SOURCES OF LAW

Domestic sources of law

Lithuania's law is based on the following hierarchy of sources, starting with the most authoritative: the Constitution; international agreements ratified by the *Seimas*; laws (constitutional and ordinary) and other acts adopted by the *Seimas*; decrees of the president; government resolutions; orders of the prime minister; orders and acts of other ministers; decisions of the representative bodies of local government; and orders of the governing bodies of the local government.[50] An order lower in the hierarchy cannot contradict a law higher in the hierarchy. The Constitution is a directly applicable statute and all citizens may directly defend their constitutional rights.[51]

The Constitution guarantees a number of fundamental human rights. Any person whose constitutional rights or freedoms are violated has the right to appeal to a court and be compensated for actual damages.[52] The Constitution includes a non-discrimination clause which states that all people are equal before the law and prohibits restriction of rights or granting of privileges on the basis of sex, race, nationality, language, origin, social status, religion, convictions, or opinions.[53] The Constitution recognizes that rights and freedoms inhere in individuals.[54] It establishes the right to life,[55] human dignity,[56] private life (including protection from arbitrary or unlawful interference in private or family life),[57] as well as the right for ethnic communities to foster their language, customs and culture.[58] Freedom of thought, conscience and religion,[59] expression,[60] association and assembly are also protected.[61] In addition, the Constitution places "family, motherhood, fatherhood and childhood" under the "care and protection" of the state.[62] It requires that marriage be entered into with the free consent of the man and woman and states that both spouses have equal rights in the family.[63] The Constitution also requires paid maternity leave before and after childbirth, as well as

"favorable working conditions and other privileges" to be provided by law.[64]

International sources of law

The Constitution requires that the *Seimas* ratify international treaties, after which they become "the constituent part of the legal system of the Republic of Lithuania."[65] Lithuania is also party to various international human rights instruments, including the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child, and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the European level, it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[66]

II. Examining Health and Reproductive Rights

A. HEALTH LAWS AND POLICIES

The Lithuanian Constitution obliges the state to take care of people's health and to guarantee medical aid and services in the event of illness.[67] The organization of the Lithuanian National Health Care System is governed by the Law on the Health Care System and the Law on National Health Policy and Health Program adopted by the Parliament in 1998.[68] The Law on the Health Care System defines and regulates the following types of health care activities: individual health care, public health care, pharmaceutical provision, traditional medicine, folk medicine, and non-medical methods of healing.[69] The Law on National Health Policy and Health Program establishes national goals and standards for the health care system.

Since independence, the health care system has been reformed from a centralized one into a more varied system financed through health insurance set by law. The national health care system is organized into three sectors:

- Primary health care offering ambulatory care services and long-term/nursing home care;
- Secondary health care offering general hospital services; and
- Tertiary health care offering advanced diagnostic and treatment services delivered at university hospitals.

All primary and secondary public health care providers are employed by the municipalities and county councils. The Ministry of Health, in partnership with either the Vilnius University Faculty of Medicine or the Kaunas Medical University, ensures that tertiary health care is provided.[70]

During the early 1990s, the number of hospital beds in Lithuania declined slightly but the number of physicians remained constant. Both the number of hospital beds and physicians are close to levels in EU nations.[71] In 1998, there were 949 hospital beds and 395 physicians per 100,000 people. In 1997, there were 897 nurses and 58 pharmacists per 100,000 people.[72] Nationally, 60% of health care personnel are based in hospitals, 28% of personnel work in outpatient care, and 12% of health care personnel find work in other health services. The number of people admitted to hospital is 220.4 adults/1,000 and 179.1 children/1,000. The average length of stay in hospital is 14.1 days for adults and 9.3 days for children, on par with the highest average among EU countries.[73]

Objectives of the health policies

The total expenditure on health is a relatively low percentage of the GDP — approximately 5.1% in 1998.[74] The health goals of the government are outlined in the Lithuanian Health Program (Health Program); they are to reduce mortality and increase life expectancy, to ensure equity in health care, and to increase the quality of life.[75] Differences in health among all social groups are to be reduced by 25% by the year 2005.[76] The Health Program establishes priorities, including improving the population's health, preventing disease, developing primary health care, restructuring of medical education to conform to European standards, and concentrating highly specialized care in university hospitals. Lithuania's health care reform plan is one of the most ambitious; the World Health Organization has viewed Lithuania's reform as exemplary for health care policy reformulation in other post-Socialist countries.[77]

The Health Program and its reform efforts respond to two main problems characterizing Lithuanian health care: the lack of resources and the orientation toward hospital care. There are no specific sections of the Health Program that comprehensively address reproductive health, although it does include sections on maternal health and sexually transmissible infections (STIs).

The Maternal and Child Health Program, which predates the national Health Program, has been underway since 1992 and has several active subprograms that operate in close cooperation with the Ministry of Social Security and Labor, Ministry of Education, child rights agencies, family support and social care organizations, and non-governmental organizations.[78]

Sexually transmissible infections, meanwhile, are a priority in the Health Program. The goal is to reduce the incidence of syphilis to 25 cases per 100,000 inhabitants, gonorrhea to 80 per

100,000 inhabitants and to stop the spread of HIV/AIDS.[79] To realize these goals, the Health Program increases the availability and accessibility of treatment, particularly for adolescents, and aims to provide sex education to the general public.[80]

Implementing agencies

The Ministry of Health is the main implementing agency for health policies and programs. It also accredits healthcare and pharmaceutical developments and activities and issues licenses for medical and pharmacy practice.[81]

The Health Care Reform Management Bureau was established in 1993 and has played an important role in the development of the Health Program. In 1997, a new institution, the Center of Health Economics and Legislation, was created to further develop the Health Program.[82] Other institutions involved in health reform are the newly-established National Board of Health (an advisory institution formed of experts, NGOs and politicians),[83] the Health Council, the State Center of Public Health, and Regional Public Health Institutions.[84] On April 26, 1999 the report "Equity in Health and Health Care in Lithuania" (a situation analysis) was presented at the third Health Policy Conference in Kaunas.[85]

Health care system reform and decentralization

Since 1990, the health sector has been undergoing an extensive period of reform both to renovate an outdated health care system and to create an economically sustainable health care system that can provide high-quality services. Public health institutions are also being reorganized from a hygiene-based service to a Western-style public health service that acts to protect, promote and monitor health, educate the public and strategize about health care services.[86] The development and expansion of the primary health care network is crucial to the health care system reform.[87]

The restructuring is still ongoing and intends to refocus the provision of health care in the following ways: a new medical specialist — the general practitioner (GP)— will serve up to 80% of the consumers of health care services and act as "gatekeepers" to additional specialized care. Hospitals will be reorganized to concentrate advanced medical services at the university hospitals while county and community hospitals provide general medical services and some specialized services. The financing mechanisms will be readjusted to compensate primary health care providers on a per patient basis and to pay specialized health care providers based on the profile of services they provide to patients.

Quality of health care in health services provision is also an important goal. Toward that end, the State Medical Auditing Agency,[88] the State Service of Accreditation for Health Care Activities,[89] and internal quality assurance services will oversee the health care facilities.[90] A quality control infrastructure has not yet been established, and medical practice standards still need to be refined in accordance with EU's best practices.

Additionally, the health care system is being decentralized. Ownership of and responsibility for health care institutions has passed from the Ministry of Health to the municipalities, since 1990. By 1998, 63 health care institutions had been transferred from the Ministry to the jurisdiction of the counties. The Ministry of Health now operates only 13 out of 1990 health care institutions; eventually these 13 will be transferred to the Ministry and Medical Academies and provide advanced medical care services.[91]

Infrastructure of health services

The Law on the Health System defines the structure of the Lithuanian National Health Care System.[92] The health care system is managed at various government levels, in descending order by the following authorities: the Ministry of Health, County Governors, Municipal Councils and specialized supervisory institutions.[93] Specific laws and appropriate oversight agencies govern each provision of health care services in terms of kind of care and place of delivery.[94] Municipalities are responsible for all primary health care facilities, and most secondary health care facilities, although some are owned by county councils. Tertiary health care services are jointly operated by the Ministry of Health and by university medical schools.[95]

The Law on the Health System, the Law on Health Care Institutions and subsidiary legal instruments describe different types of primary health care centers.[96] Currently, there are 49 nursing and long-term care hospitals[97] with a total of 2,635 hospital beds,[98] 100 polyclinics, 66 primary health care centers, 226 outpatient clinics, and 1,015 first aid stations.[99] In 1997, there were 57 Emergency Medical Services (EMS) departments, 7 EMS stations,[100] and 2,153 dental care providers.[101] In 1998, one-third of all 4,667 physicians worked in the primary health care system, which provided 29.7 million physician's visits (7.2 visits per person, including 1.4 per person for dental care).[102] Approximately 29% of the population receive regular health care.[103]

Eventually the Ministry of Health would have GPs provide all of the primary health care services that are now provided by a variety of medical specialists.[104]

The Statutory Health Insurance (SHI) finances primary health care services on a per person basis (capitation), that is, a flat rate of compensation for each patient on the provider's list of registered patients. Nursing and long-term care hospitals are financed on a flat rate for each day of hospital bed occupancy.[105]

There are no specific provisions for reproductive health services in the primary health sector. These services are integrated into the GP's services and are provided at polyclinics. In urban areas, special "Women's Consultation Clinics" also provide obstetrical and gynecological services.[106] In rural areas, there is often no OB/GYN available, and a midwife provides care.[107] Specialized reproductive health services are provided only in the State Family Planning Center, located in the capital, Vilnius. The level of reproductive health care services provided in the primary health care system is inadequate to meet the population's needs.[108]

Cost of health services

Essential health care services are provided for all residents by the state.[109] Insured persons, as defined by the Law on Health Insurance, pay no fee for services considered essential.[110] Uninsured persons pay fees as defined in the services price list.[111]

With the introduction of health insurance-based financing in 1997, the cost of health care is covered by statutory insurance, managed by the State Patient Fund. Insurance premiums are collected in the form of personal income tax, combined with employer contributions and voluntary payments of self-employed workers. Unemployed people and those belonging to certain social groups — such as retirees, the disabled, and children — are insured by the state.[112] There is also the possibility of purchasing private health insurance.[113] Insurance companies have been selling voluntary health insurance since 1993, but have made few inroads.[114]

Reproductive health services, when provided as part of the "basic package" of general primary health care providers, are free to insured persons.[115] The State Family Planning Center provides services on a fee-for-service basis and are not covered by the basic package.[116] Certain specific reproductive health services are provided only on a fee-for-service basis as well, including abortions, supplementary obstetrical and/or gynecological care, and supplementary venereal treatment.[117]

Regulation of health care providers

Health providers fall into three major groups: medical doctors (including dentists), nursing professionals, and pharmacists. Each of these categories is regulated by law.

Medical practice is regulated by the Law on the Medical Practice of Physicians[118] and its subsidiary acts.[119] The Ministry of Health is responsible for all aspects of physician licensing.[120] The government approves all licensing regulations.[121] For licensing physicians, the Ministry of Health has set up a permanent commission composed of specialists from the Ministry of Health, the Union of Lithuanian Physicians, physician specialty associations, representatives of medical worker professional unions and experts from the Kaunas Medical Academy and the Faculty of Medicine of Vilnius University. Only those doctors with a valid license, issued in accordance with the procedures established by law, may engage in the practice of medicine (general and specialized) in the Republic of Lithuania.[122]

Illegal practice of medicine is defined as practicing without a valid license, without a certificate in cases where it is required, outside the licensed specialty, and practicing under an assumed name (posing as a physician).[123] Traditional medical practitioners also may not practice medicine in Lithuania.[124]

A person applying to the Ministry of Health for the purpose of obtaining a license for the general practice of medicine must be a citizen or a permanent resident of Lithuania. He or she must have a medical university diploma and a certificate of completion of a general medical practice residency. He or she must also have a health certificate.[125] There are some additional requirements, such as fluency in Lithuanian, and never having had a medical license revoked by court.[126] Non-citizens or resident aliens with the right to permanent residence in the Republic of Lithuania may obtain a license to practice, but are obliged to fulfill additional requirements specified by the Ministry of Health.[127] A license must be renewed every five years.[128] If the Ministry of Health refuses to issue a license, it must, within 15 days, present a written explanation of the reasons for the refusal. The person may appeal in court.[129]

To obtain a license in a medical specialty, procedures are similar to the general medical licensing procedures, with some additional requirements, including taking into consideration the opinion of the physicians' specialty association.[130] A refusal by the Ministry of Health to issue a license for the specialized practice of medicine may be appealed in court.[131] A license can be revoked if it is determined the application submitted was based on falsified or unsuitable documents, that a person's qualifications do not correspond with the requirements of the indicated specialty, or if that doctor has committed serious medical malpractice. The Ministry of Health, upon its own initiative or upon request, can revoke medical licenses based on a recognition of serious or frequently repeated malpractice, serious violation of the rights of patients, or an inability to perform professional duties, such as for health reasons.[132] Disputes concerning the revocation of a license can be resolved in court,[133] and a person whose license has been revoked may reapply for a license after one year.[134] Licenses may also be suspended during a revocation-of-license investigation,[135] and that suspension may also be appealed in court.[136]

Medical standards currently regulate nursing practice,[137] but a Law on Nursing Practice is under development. Currently, Lithuania has neither a central registry nor a licensing process for nursing professionals. All nurses must, however, obtain a diploma in nursing to practice.[138]

The Law on Pharmaceutical Activities covers the education, licensing, certification requirements and the regulation of pharmacists.[139] The minimum requirements for the issuance of a pharmacist permit are an appropriate diploma in pharmaceutical science, internship, work in the pharmaceutical sector, and possession of a qualification category (through examinations and meeting of specific requirements).[140]

Patients' rights

Lithuania has an extensive set of laws and regulations that promote patients' rights. One of the key laws in this area is the Law on the Rights of Patients and Compensation for Damage to their Health, which establishes the rights of patients in cases of medical malpractice.[141] It also guarantees the right to accessible health care services; the right to select a physician, nurse and health care institution; the right to information; the right to refuse treatment; the right to file complaints; and the right to personal privacy.[142] The rights of patients may not be restricted on the basis of gender, age, race, nationality, language, social status, or religion.[143] All treatment, diagnostic procedures and nursing care must be undertaken on behalf of a patient,[144] but access may be limited because of an institution's insufficient capacity to provide services. In this case, the institution must provide services on a medically sound and non-discriminatory basis.[145] Patients are guaranteed the right to pain relief and the right to die with dignity.[146]

The right to receive free care is guaranteed in Article 53(1) of the Constitution of the Republic of Lithuania, which holds that "the state shall take care of people's health and shall guarantee medical aid and services in the event of sickness. The procedure for providing medical aid to citizens free of charge at state medical facilities shall be established by law."

As defined in the Law on Health Insurance,[147] patients must receive medical assistance without delay and, if services are unavailable near the patient's place of residence, the treating physician must inform the patient about alternatives. In cases of medical need, health care providers must transport the patient to another institution where the patient can receive appropriate medical assistance.[148] Patients may choose their providers and whether to receive treatment at public or private health care institutions. SHI compensates health care services in public institutions and in those private institutions that have signed financing contracts with SHI.[149]

Patients have the right to receive specific information about the services available at health care institutions and how to make use of them; the full name, position and qualifications of doctors and nurses providing care; internal regulations and procedures of the health care institution; descriptions and information about their diagnosis and treatment; condition of their health, medical exam results, treatment methods and treatment prognosis.[150] This information must be presented to a patient in an understandable form. Patients must receive sufficient information to make an informed choice over whether to accept treatment, or to refuse it.[151] Patients also have the right to request copies of their case histories and other documents. The patient may dispute information contained in his or her medical records. If the dispute is justified, the records must be changed.[152]

Patients may not be treated without their consent. If they refuse a proposed treatment, they should be offered alternative forms of care.[153] Minors may not be treated against their will, with certain limitations defined in Lithuanian law,[154] and parental consent is required for most treatments of minors. Mentally ill patients' rights for refusing treatment are defined by the Law on Mental Health Care.[155]

Patients who are dissatisfied with their health care may complain to the administration staff member responsible for the quality of care services at the treatment institution. Complaints must be answered in five business days. Patients can then file complaints with the Ministry of Health, other supervising agencies and the courts.[156] Information about a patient's medical history and diagnosis may only be released with the patient's written consent or when stipulated by law.[157]

Medical malpractice per se is not defined as a crime by the Criminal Code, although it is regulated by the Law on the Rights of Patients and Compensation of the Damage to their Health. Patients may claim compensation under this law when they were injured in the course of treatment or of medical research.[158] Treatment executed according to standards of medical practice and science, the injurious consequences of which could not have been avoided by any other effective method of treatment, are not covered by this law. Injuries must be the result of culpable actions of a physician or nursing staff member. Health care institutions are required by law to have insurance to indemnify them for civil malpractice claims.

The Ministry of Health convenes a commission to evaluate the validity of patients' requests for damage compensation and establish the amount of such compensation. This committee is composed of representatives from the State Patients' Fund, the Compulsory Health Insurance Council, physician organizations, nursing staff members, and patient organizations.[159] They serve four-year terms. The decisions of the commission are obligatory and compensation is paid out of the State Patients' Fund.[160] Decisions of this commission may be appealed.[161]

The Medical Ethics Commission of the Ministry of Health handles questions of medical ethics.[162] This commission uses existing standards of medical ethics recognized by EU, Council of Europe and other international organizations, in making its

decisions and recommendations. Professional associations of doctors, health care providing institutions and nursing personnel also make recommendations to their members on ethical issues.

Conclusions

The organization, financing, and structure of the Lithuanian health care system has undergone considerable change since 1990. Nonetheless, the system needs further reform to meet the health needs of the population. The Lithuanian health system suffers from a lack of financing and a shortage of professionals trained in modern public health. The lack of specific reproductive health services raises serious concerns about the health care available to women of childbearing age and adolescents.

B. POPULATION POLICY

The total population of Lithuania has been in decline since 1992[163] as the socio-economic transition has led to a net emigration of the population, an increase in mortality, and a significantly diminished fertility rate.[164] Before 1991, Lithuania received immigrants from Belarus, Russia and other states of the Soviet Union. After 1991, ethnic Russians and others returned to Russia, Belarus, and other states of the Commonwealth.[165] Since the beginning of 1994, death rates have exceeded birth rates in Lithuania.[166] Although much public discussion has been devoted to the decreasing birth rate and overall demographics of Lithuania, no coherent population policy exists in Lithuania. In 1996, the Ministry of Health and the Ministry of Social Security and Labor proposed a draft Family Health Care Law, which would have established a reproductive health and population policy, but it was never submitted to Parliament.

Despite the lack of an explicit population policy, the health of pregnant women, birthing mothers and newborns is a declared priority in Lithuania.[167] Health care institutions guarantee every pregnant woman care during pregnancy and delivery, as well as treatment and prevention activities for mothers and newborns.[168] As of November 1997, families with three or more children receive benefits beyond the regular family allocation.[169] The allowances for foster children also have been substantially increased.[170] Families undergoing particularly difficult financial conditions can receive a grant from their municipality. Families receive housing subsidies, allocations for utilities and public transportation, tax rebates, various work guarantees for parents, and aid for preschool and school-age children.[171]

C. FAMILY PLANNING

In 1996, the government of Lithuania adopted the Family Policy Proposal and Action Plan.[172] In accordance with one of the plan's provisions, the Ministry of Health prepared a Draft Law on Family Health Care that sets forth a liberal definition of family planning and contraception, regulations covering abortion, sex education of children and youth, public sex education, artificial insemination and sterilization. The draft has not yet been submitted to Parliament.[173]

Government delivery of family planning services

Lithuanian legislation does not specifically regulate family planning services, although family planning consultations are listed in the Law on the Health System as part of public health promotion.[174] Family planning services are provided in public and private, primary and specialized health care institutions such as women's clinics, the State Family Planning Center, and private OB/GYN offices. The State Family Planning Center, founded in 1993, provides consultations to patients on family planning methods and infertility treatment. It also trains providers in the fields of reproductive health and family planning.[175]

Care for pregnant women, birthing mothers and newborns is regulated in accordance with the principles of the Perinatal Care Program.[176] A 1990 Decree of the Ministry of Health put into effect the World Health Organization's recommendations for the registration of premature newborns,[177] and a Newborn Health Registry was started in 1992, along with a Perinatology, Neonatology, Inherited Diseases and Birth Defects Prevention Program.[178] The Ministry of Health adopted a new Perinatology Program for 1997-2000 which extends the program's work toward reducing morbidity and mortality among newborns and mothers.[179]

Care for pregnant women, birthing mothers and newborns is provided at all levels of health care in Lithuania.[180] Primary health care providers, including OB/GYNS and qualified midwives, deliver ambulatory care to pregnant women and postpartum care through Women's Consultation Clinics. High-risk pregnancies can only be seen by an OB/GYN; care can occur at both public and private clinics.[181] If complications are detected, the woman is sent to a more specialized physician or an in-hospital obstetrics and neonatal service.[182] Highly specialized obstetrics and neonatal services are provided in university hospitals.[183] In 1994, a National Family Planning Program was developed and adopted by the Ministry of Health; however, no money was allocated to implement the program.[184]

Services provided by NGOs/private sector

Private family planning service providers exist (private OB/GYN offices), and must follow laws and decrees of the Ministry of Health. They provide mostly gynecological rather than obstetric services. The Family Planning and Sexual Health Association (hereinafter referred as "Association"), an International Family Planning Federation affiliate, was founded in

1995.[185] To date, it is the only NGO working in the field of sexual-reproductive rights. The Lithuanian Obstetric-Gynecological Society is a non-governmental organization working in the fields of obstetrics and gynecology. Additionally, every diocese of the Catholic Church has a "Family Center," which promotes natural family planning. These centers are invariably anti-choice.

D. CONTRACEPTION

Prevalence of contraceptives

The "Family and Fertility Survey"[186] revealed that 48% of urban and 44% of rural women — and 51% of urban males compared to 43% of rural males — use contraceptives.[187] The most popular contraceptive methods are condoms, abstinence, *coitus interruptus* and intrauterine devices. Young people predominantly use condoms, oral contraceptive pills, and *coitus interruptus*.[188] Contraceptives, including condoms, spermicides, oral contraceptive pills, injectable contraceptives and intrauterine devices, are available for purchase at public and private pharmacies. Family planning services providers and the Association provide contraceptive information and services. Modern forms of contraception are not widely used in Lithuania; oral and injectable contraceptives are disfavored.[189] Contraceptive implants and voluntary sterilization are not available.

Legal status of contraceptives

There are no laws restricting or regulating contraception. Prescriptions are needed for contraceptives, although in practice, oral birth control pills are available without one. Religious beliefs do not greatly influence the choice of contraception methods. Education and geographic location are better indicators for correlating contraceptive use.[190]

Regulation of medical technology

The State Drug Control Agency of the Ministry of Health[191] regulates the pharmaceutical industry in Lithuania. Drugs and pharmaceutical products intended for use must be registered[192] and the Ministry of Health regulates the sale of drugs and pharmaceutical products to residents.[193] Condoms, which must have been tested, are sold in public and private pharmacies, shops and kiosks.[194] Contraceptives, especially birth control pills, are costly, costing between USD $2.50 and USD $5.[195] One condom costs between USD $0.25 and USD $1.25.[196] As of November 1999, the average monthly Lithuanian salary was USD $270.[197]

Regulation of information on contraception

There are no special laws regulating the advertisement of contraception in Lithuania. In general, the Law on Pharmaceutical Activities allows prescription drugs to be advertised in specialized media meant for physicians and pharmacists.[198] Non-prescription drugs may be advertised to the general public, provided a disclaimer is printed in the advertisement.

Conclusions

The use of contraceptives is increasing due to better information. Oral contraceptive pills have increased in popularity and the use of condoms is increasing because of awareness regarding the spread of AIDS in Lithuania.[199] In general, more women than men use contraceptives. Family planning services are accessible to many women. Notwithstanding the improvements, the lack of an effective national policy makes these services ineffective and does not address numerous existing problems. As a result, much of the population does not receive accurate and competent information about the modern methods of contraception. Myths regarding the harm caused by hormonal contraceptives persist. Primary health care providers, however, do not provide quality family planning counseling services, if they provide such services at all. Therefore, even when minor problems occur, many women stop the use of hormonal contraceptives.[200] Family planning was not a priority area for the Ministry of Health in the preparation of the health program for 1999-2000.

E. ABORTION

Abortion is defined as the termination of a pregnancy, upon the request of the woman, up to the 12th week of gestation.[201] However, Lithuanian abortion statistics also include miscarriages, pregnancy terminations for medical reasons, and ectopic pregnancies. The abortion rate in Lithuania is therefore one of the highest in Europe. On average, 76 abortions are performed for every 100 births.[202] More abortions take place in urban areas than in rural ones (the rates are 85.59 and 64.20 per 100 infants born, respectively), and in some cities and regions, there are more abortions than births. The total number of abortions has been decreasing from 40,765 in 1991 to 22,680 in 1997.[203] Most abortions (73.5%) are performed upon the request of women; only 0.4% are performed for medical reasons, 19.2% are the result of spontaneous miscarriages, and 3.4% are for ectopic pregnancies.[204] Mini-abortions (uterine evacuations done up to eight weeks from the last menstrual period) constitute roughly half of all abortion procedures. The number of abortions performed for women younger than 19 is increasing. In 1995, 5.9% of abortions were performed for women under 19, while in 1996, the figure was 6.7%, and in 1997, 7.1%.[205]

Legal status of abortion

Until 1990, abortions in Lithuania were regulated by the 1955/11/23 Decree of the Presidium of the Supreme Council of the USSR, entitled "On the abolition of the prohibition on abortions."[206] This decree stated that abortions may be performed in hospitals upon the woman's request up to the 12th

week of gestation. They were permitted after the 12th week only under strict medical conditions. Abortions were performed in accordance with the implementing decree of the Soviet Ministry of Health,[207] which was valid in Lithuania until January 28, 1994. Thereafter, a Lithuanian national decree was promulgated on abortion.

Abortion is now regulated by a Decree of the Minister of Health (the "Abortion Decree"),[208] which is applicable to both public and private health care providers. In accordance with this decree, abortions may be performed upon the woman's request up to the 12th week of pregnancy. Abortion after the 12th week may only be performed if the woman's life and health are at risk.[209] In such cases, abortions may be performed regardless of the length of pregnancy.[210]

Requirements for obtaining legal abortion

Abortions must always be performed in the gynecology department of a hospital.[211] Prior to admission to the gynecology department, the woman must have an ambulatory OB/GYN consultation.[212] In this outpatient consultation, and before a referral is issued, the woman (and her husband, if applicable) are counseled as to the potential health, physical and psychological risks of abortion and pregnancy. This information is provided by the consulting physician; in cases of a first pregnancy, it is done by both the patient's OB/GYN and the chief of the consultative clinic. The Abortion Decree mentions that it is desirable to have a psychologist participate in this counseling.[213] The woman must inform the hospital in writing of her decision to terminate the pregnancy prior to the abortion.[214] Under all circumstances, the woman's consent is required. Consent of the husband is desirable, although not mandatory.[215] Parental consent of at least one parent is required when performing abortions on minors up to 16 years of age. Such consent is desirable, but not required for girls between the ages of 16 and 18.[216]

Policies regarding abortion

There is no official policy discouraging abortion, but an anti-choice movement has recently been working to severely limit or outlaw abortion. To counter this anti-abortion sentiment, the general public and medical professionals have become more outspoken. Groups such as Women's Issues Information Center (WIIC) promote the idea that the best way to reduce the number of abortions is to promote modern family planning methods.[217]

Government funding/subsidizing of abortion services

Termination of pregnancy for health reasons is performed free of charge. All other terminations are on a fee-for-service basis in accordance with prices set by the Ministry of Health.[218] At public health care institutions abortions cost between USD $15 and USD $25. Prices are higher in private clinics-USD $100 and more.[219] All abortions must be performed by OB/GYNs. OB/GYNs working in Women's Consultation Clinics and doctors in private practice may perform mini-abortions on an ambulatory basis.[220] There is no available data about illegal abortions in Lithuania, but the actual number of abortions is believed to be higher than the number officially reported.[221] There is no systematic, organized, post-abortion counseling.

Penalties for abortion

The Criminal Code specifies punishments for illegal abortion in the following cases: if an abortion is performed by a general physician, if an abortion is performed in unsanitary conditions, or if an abortion is performed by a person without university medical education. An illegal abortion performed by a physician is punishable by a fine or up to two years of community service.[222] Abortions performed in unsanitary conditions or by a non-doctor are punishable by up to three years imprisonment.[223] Repeat offenders or illegal abortions that result in serious health consequences or death can be punished more harshly — two to seven years imprisonment.[224]

Restrictions on abortion information and advertisement

There are no specific restrictions on the advertisement of abortions or other family planning methods.

Religious definition/restrictions

The Catholic Church has sought to severely restrict abortion, and has launched a campaign concentrating on the presumed negative physical, social and psychological consequences of abortion. Its influence, nonetheless, seems to be declining.[225]

F. STERILIZATION

Legal status and requirements

Although the Law on the Health Care System mandates that the procedures for sterilization be established by law,[226] there are no Lithuanian laws that either forbid or regulate sterilization. Most often, sterilization is performed for women only on medical grounds, such as after the second or third cesarean birth. Sterilization without any medical basis might be considered "infliction of serious bodily harm" and might, therefore, be punishable under the Criminal Code.[227] The 1996 first Draft Law on Family Health Care included a section legalizing and regulating voluntary surgical sterilization as a method of family planning, but in later drafts this section was deleted after pressure from anti-choice groups. Currently the Association is lobbying for this draft law to be reviewed and submitted to the Parliament, with the provision on voluntary sterilization.

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

Prevalence of HIV/AIDS and STIs

Syphilis is one of the most common STIs in Lithuania.[228] In 1997 there were 84.9 cases of syphilis per 100,000 inhabitants, a 1.47% increase from 1994 figures, and 17.7 times the 1991 rate.[229] After 1997, the incidence of syphilis began to drop, and in 1998, there were 62.8 cases per 100,000 inhabitants. The disease nevertheless persists and is more prevalent in the cities than in rural areas (68.0 and 52.9 cases per 100,000 inhabitants, respectively). Gonorrhea also occurs, but has decreased considerably since 1994.[230] In 1997, 2,021 new cases of gonorrhea were registered, 421 of which were women. The official number of gonorrhea cases for 1997 was 49.2 per 100,000 inhabitants, down from 70.7 in 1996.[231] In 1998, these diseases accounted for 36.3 and 3.8 per 100,000 inhabitants, respectively.[232] Because the private clinics do not report their STI figures, and many people are using private facilities, it is difficult to obtain accurate statistics. As a result, the morbidity figures may not reflect the actual infection rates.[233]

From 1988 to 1998, there were 128 cases reported of HIV infection and 20 AIDS cases.[234] The majority of HIV positive cases are men, and there are no registered HIV infections among children. The youngest registered case involves a 17 year old.[235]

High HIV infection rates in countries which neighbor Lithuania are of concern. In Lithuania, HIV infection typically originates through sexual relations and the sharing of needles by IV drug users.[236] Heterosexual transmission of HIV is most prevalent among Lithuanian sailors.[237]

Laws affecting HIV/AIDS

A number of laws in Lithuania deal with HIV/AIDS. The Criminal Code specifies that the intentional infection of another person with HIV is punishable by two to seven years imprisonment.[238] In addition, Lithuanian law requires HIV testing of those sentenced to prison and those prisoners about to be released.[239] A 1992 decree of the Ministry of Health also forbade HIV-positive persons from working as sailors, and the rules for health examinations of sailors specify an HIV blood test.[240] This decree was amended in 1994 to allow HIV-positive "A1" category seamen to work at sea.[241] There are no specific laws in Lithuania regarding discrimination against people who are HIV-positive.[242]

Laws affecting STIs

Although there are no specific laws regulating sexually transmissible infections, the Law on the Prevention and Control of Human Infectious Diseases regulates STIs as part of the general control of the spread of infectious diseases.[243] The Criminal Code specifies punishments for "causing intentional bodily injury, infection with a disease or causing other illness, dangerous to life or causing long-term organ dysfunction or other long-term health dysfunction."[244] This article also covers intentional infection with a sexually transmissible disease. "Legal and natural persons, who through their illegal activities" cause infection with gonorrhea, syphilis or HIV (and other specified infectious diseases) must compensate the "costs of diagnosis, treatment of infected persons, control measures, and the liquidation of the consequences of these diseases to health and the economy."[245]

Policies on prevention and treatment for HIV/AIDS and STIs

The 1990 Decision of the government "On the prevention of AIDS in the Republic of Lithuania" recognizes AIDS as a major problem and specifies methods for reducing the spread of HIV infection,[246] including testing all blood, semen and organ donors and guaranteeing privacy protection. In 1992, Lithuania created the position of National AIDS Coordinator responsible for national policy formation on AIDS. In 1996, the government adopted the AIDS Prevention Program and the Sexually Transmitted Disease Prevention Program. The government's 1998 National Lithuanian Health Program made AIDS and STI prevention one of its priorities. Syphilis infection rates are to be reduced to 25 cases per 100,000 people by 2010, and gonorrhea infection rates to 40 cases per 100,000 by 2010. The Health Program seeks to stop the spread of AIDS by 2010.[247] These goals are being achieved through National STI and AIDS prevention programs, which provide free diagnosis, testing, treatment, and public education.[248] A 1999 Decree of the Ministry of Health again made AIDS and STI prevention a priority area in its health programs for 1999-2000. [249]

The principal institution responsible for the control of HIV/AIDS is the Lithuanian AIDS Center. It was established in 1989 by a Decree of the Ministry of Health. The center educates the public, provides anonymous testing and counseling, undertakes epidemiological surveillance and data evaluation, and rehabilitates drug abusers.[250] All HIV-positive persons receive free care in appropriate state and municipal health care facility hospitals, in accordance with a Decree of the Ministry of Health.[251]

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

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

Article 29 of the Lithuanian Constitution provides that all people shall be equal before the law, the courts, state institu-

tions, and officers. A person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions. The Law on Equal Opportunities, which went into effect on March 1, 1999,[252] defines and prohibits sexual discrimination, regulates relationships in labor and education, and prohibits sexual harassment. To oversee this law, the Equal Opportunities Office of the Ombudsman was established.[253]

Over the last several years, women's NGOs have greatly increased their activities, with the goals of abolishing all forms of discrimination, improving the social standing of women, and protecting their reproductive rights. In 1992, based on the initiatives of the women's movement, Lithuania signed the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women. This Convention was ratified by Parliament on September 10, 1995.[254]

B. CIVIL RIGHTS WITHIN MARRIAGE

The family is considered to be the foundation of Lithuanian society; the state protects and cares for the family, which is defined as parents and children. Marriage is entered into by women and men of their own free will.[255] Marriages are performed in civil registration agencies.[256] The fourth part of article 38 of the Constitution provides for the state's recognition of church registration of marriages, but a system for church registration of marriages has yet to be implemented.

Currently, the minimum age for men and women to marry is 18.[257] If pregnancy is involved, a court may allow a person under 15 to get married.[258] Marriage partners may retain their last names, change them to the partner's or use both names (hyphenated).[259] Persons who are already married cannot enter into a new marriage. Close kinship or mental incapacity are also bars to marriage.[260]

The Matrimonial and Family Code, adopted in 1969, gives spouses equal rights to decide about educating children and about other matters of family life.[261] It creates a guardianship institution to settle disputes among spouses on issues related to the rearing of children.[262] Under the Matrimonial and Family Code and the Civil Code, spouses have equal rights to own, use or dispose of common property. All property acquired during the marriage is considered to belong to both spouses even if the property is registered in the name of only one of the spouses.[263] Spouses must mutually and materially support each other. During pregnancy and three years after the birth of a child, a wife has the right to receive maintenance (alimony) from the other spouse, provided the spouse can afford it. This right remains even after the termination of marriage.[264]

Marriage laws

Since the Matrimonial and Family Code is quite out of date, the *Seimas* is considering a new draft "family law." As part of a unified Civil Code, it is expected to be adopted in July 2000 and would cover the following areas of family law: the termination and dissolution of marriage, disposition and regulation of property of spouses, and the parent-child relationship.[265]

The draft includes innovative legal instruments such as prenuptial agreements, extra-judicial dissolution of marriage and reproductive technology, and men and women having equal rights and duties in the family.[266] The draft Civil Code states that a court may reduce minimum age for marriage by three years on the basis of a person's request. In the draft Civil Code it is also stipulated that the parents must ensure the rights of their child.[267]

Divorce and custody law

A divorce may be concluded either at the civil registration agency or in court. Out-of-court divorces require the mutual agreement of both parties to the divorce and to the property settlement. Divorce by mutual consent is allowed only if the couple has no children.[268] If one partner does not agree to the divorce and there are unresolved questions regarding division of property, alimony, or there are minor children, a divorce action must be filed with a court. Divorces are granted by the court only when it determines that continuation of the marriage is no longer possible.[269] The death of one partner, or the declaration of his or her death in accordance with court proceedings, also terminates a marriage.[270] A husband has no right to institute divorce proceedings against his wife if she is pregnant or within one year after the birth of a child.[271]

Divorce proceedings settle property-related matters such as alimony and division of community property, which is property acquired during the marriage.[272] It is usually divided equally, although it often is registered only in one partner's name. Under certain circumstances the courts may divide the property "unequally," so that the particular needs of a partner or of minor children are adequately met, should such a person be ill or disabled.[273]

Marriage partners have the same property rights even if one was unemployed or worked at home raising children.[274] If a dependent wife is in need of financial assistance, she may request alimony. Both parents have an obligation to financially support a child; upon divorce, child support is set by the court.[275] If the father does not pay child support, the mother has recourse to the courts to enforce the award.

Custody

The Code specifies that both parents have equal rights and responsibilities to their children, even after divorce.[276]

In practice, however, after a divorce, children most often live with their mother, and the father has visitation rights and child support obligations.[277] The Law on Child Guardianship establishes guardianship for a child deprived of parental care. Child guardians are supposed to ensure the child's upbringing and care in an environment that would facilitate his development and progress.[278] The law defines the procedure to establish, organize, and terminate guardianship, its types and forms, the rights, duties and responsibilities of the guardians. The Law also determines the personal property rights and interests of the child under guardianship.[279]

C. ECONOMIC AND SOCIAL RIGHTS

Property rights

There are no Lithuanian laws that discriminate against women with regard to property rights.

Labor rights

Until 1996, women comprised more than half of the workforce in Lithuania. By 1998, their participation in the labor market declined to somewhat less than half at 47.5%. In no economic sector do women earn more than men; in 1998, women earned an average of 77.2% of the amount earned by men.[280] Since 1994, the number of unemployed women has exceeded that of unemployed men; in 1998 51.2% of women were unemployed.[281] Women living in rural areas face difficult conditions as well. They have depressed incomes even though officially unemployment is less prevalent than in the cities. The majority of agricultural workers do not contribute to the social insurance schemes and cannot afford to pay voluntary social insurance. As a consequence, many elderly rural women will not be eligible for retirement pensions and do not receive appropriate health care.[282]

Lithuania's labor law specifies that employers must provide equal opportunities to men and women, set the same employment standards, provide equal opportunities for training, and allow them to fill the same positions at the same salary levels. Newspaper advertisements, however, still discriminate against women: they often express a preference for gender and age, sometimes stating that men will be given priority.[283] The 1999 Law on Equal Opportunities should help put an end to this practice as it prohibits employers from specifying gender-based preferences or for requesting information regarding an applicant's civil status, private life or family plans.[284]

There are additional laws regulating women's employment. The Law on Safety of People at Work states that employers must grant a shortened work day or work week if requested by a pregnant woman; a woman with children under 14 years of age or disabled children under 16 years of age; a father caring for a child by himself under 14, or a guardian caring for a child under 14; a disabled person; or a person caring for a sick family member.[285] Women have the right to choose to work on a full- or part-time basis, and to work under conditions that would not harm their health or that of their children.[286]

Special working conditions are also set for pregnant women and those caring for small children. Pregnant women who present a medical note have the right to reduced work and to be transferred to less hazardous work without prejudice to their pay. [287]

In practice, however, employers are reticent to employ pregnant women or women who have small children in the fear that they will miss too much work due to the illness of a child. In addition to all usual work breaks, additional breaks of no less than 30 minutes must be provided every three hours for nursing mothers.[288]

Pregnant women and women with children under three years of age cannot be assigned to work overtime or at night.[289] Women with children under 14 cannot be forced to work overtime or be sent on business trips without their agreement.[290] Women with children under 14, if possible, must be given priority in choosing their work shift.[291]

Maternity leave

Women are granted pregnancy and childbirth leave amounting to 70 calendar days prior to birth and 56 after birth. A woman experiencing a complicated or multiple birth is given 70 additional calendar days' leave after the birth. This leave is paid for in accordance with the rate set by the Law on State Social Insurance.[292] A mother can request child care leave until her child reaches the age of three.[293] Upon the family's decision, any family member — the mother, father, grandparent or other relative — may take the leave to care for the child,[294] and a child care allowance established by the state is paid to them; their future employment is guaranteed with no loss of seniority. [295] Usually women stay at home to take care of children until the age of 12 to 18 months, after which the amount of leave compensation decreases. Family benefits are paid in cash for each child under the age of three, in the amount of 75% of the minimum wage.[296]

Access to credit

There are no Lithuanian laws that discriminate against women in terms of their access to credit.

Access to education

Article 41(1) of the Constitution mandates education up to the age of 16. Education is free of charge at public secondary, vocational and higher schools and education is equally open to men and women.[297]

During the 1998-99 school year, 50.7% of all enrolled students were women. At the higher education levels, 65.2% of all

college students and 57.8% of all university students are women. In vocational schools women constitute a minority, amounting to only 39.2% of all enrolled students. Most women in colleges studied health care (91.9%), teaching (91.8%) and business (78.4%). In universities, most female students chose teaching (79.6%).[298] In 1999, 51.8% of all doctoral students were women. In spite of the non-discriminatory provisions established in the Law on Education, men are sometimes given priority in admission to university studies.[299] The 1999 Law on Equal Opportunities should change this practice. Any limitation on the choices of study on the basis of sex is prohibited.[300]

National machinery for the promotion of women's equality

In 1994, Lithuania was one of the first East Central European countries to set up a governmental office on women's issues — the office of State Counselor on Women's Issues. Currently, the State Counselor on Foreign Relations and Relations with NGOs oversees women's issues. The Ministry of Social Security and Labor and the Department of Statistics have set up offices devoted to gender analysis. The Ministry of Social Security and Labor formed an inter-ministerial commission for the monitoring of the implementation of the Action Plan for the Advancement of Women.[301]

In November 1996, the government adopted the Program for the Progress of Women and agreed to its implementation.[302] This program covers the most important aspects of a woman's life, both public and private, in accordance with the fundamental principles embodied in the Constitution, Civil Code and other legal acts. No financial allocation was made for implementation; nevertheless, parts of the program are being implemented through the mutual effort of governmental and non-governmental organizations.[303]

D. RIGHT TO PHYSICAL INTEGRITY

Rape

The Constitution of the Republic of Lithuania guarantees the security of the person. Article 21 states that it shall be prohibited to torture, injure, degrade, or maltreat a person. Rape is legally defined as sexual intercourse through physical violence or threat of imminent violence or by exploiting the state of the victim. It is punished by three to seven years imprisonment.[304] Repeat offenders are subject to five to ten years imprisonment.[305] Gang rape or the rape of a minor (14 - 18 years old) is punished by five to fifteen years imprisonment.[306] Rape by a particularly dangerous recidivist, which causes grave consequences, or of a child[307] is punishable by eight to fifteen years.[308] The Criminal Code makes no special provisions for rape by a spouse, and these offenses are punished under the general article covering rape. However, experience shows that it is very difficult to prove rape by a marital partner. Only in cases of severe physical violence do prosecutions result. Rape by a sibling might be considered incest, but the Matrimonial and Family Code only mentions it as a bar to marriage.[309] Neither the civil nor the criminal codes specify punishments for incest.

The existing classification of sexual crimes is soon to be revised. The draft Criminal Code prepared by the Ministry of Justice of the Republic of Lithuania (expected to be adopted by July 2000) redefines sex crimes as crimes and misdemeanors against freedom of sexual self-determination and sexual inviolability. The proposed categories are: rape,[310] sexual coercion,[311] sexual exploitation,[312] sexual harassment[313] and corrupting of minor.[314]

Domestic violence

Although there is no criminal provision specific to domestic violence, the Criminal Code would classify these acts as assault, battery, and torture. The length of criminal sentencing for domestic violence depends on the degree of harm caused to the injured person. For example, intentional bodily injury or infection with a disease, or any other way of causing illness that does not have long lasting health effects is punished by up to six months imprisonment, community service up to one year, or a fine.[315] A deliberate minor bodily injury is punished by up to three years imprisonment.[316] If a person is assaulted in a public place, the complaint of the survivor is not necessary to begin criminal proceedings. Only if the violence takes place within the home must the survivor make out a complaint to initiate the process.[317] As a result, few domestic violence complaints are filed. To make domestic violence proceedings more accessible, the Ministry of Health issued a decree in 1995[318] ordering health care facilities to report immediately all incidents of violence to the police. According to police data, the few complaints that are filed most often are for minor bodily injuries, battery or torture. Courts are reluctant to review domestic violence cases.

Women who reported domestic violence can now receive assistance from law enforcement authorities and from the active women's movement. NGOs and a handful of police stations have opened consultative offices that offer psychological, medical and legal assistance to domestic violence survivors. These consultative offices are often referred to as women's "Crisis Centers." Currently, there are a few (five) domestic violence refuges. Two shelters have been established by municipalities, one by the Church and two by municipal police departments.

Sexual harassment

Before 1999, sexual harassment was not generally prohibited by law. However, the new Law on Equal Opportunities

specifically protects people from sexual harassment, which it defines as offensive conduct of a verbal, physical or sexual nature, towards a person with whom there are work, business, or other relations of subordination.[319] Under the law, employers must ensure a working environment free from sexual harassment and take appropriate means to prevent retaliation against an employee who has lodged a complaint on grounds of discrimination.[320]

The law also prohibits sex-specific requirements in job advertisements or advertisements of educational opportunities (except in the cases where, for objective reasons, these posts may be filled by members of only one sex). Information from job seekers about their civil status, private life, or family plans cannot be requested.[321] Employers must also provide equal working conditions, equal opportunities for professional development training, and pay equal wages based on equal work quality evaluation criteria. A victim of sexual harassment has the right to submit a complaint to the responsible authorities. These complaints are to be filed in writing within three months of the offense. If sexual harassment is proven, the offender is punished by an administrative fine paid to the state, not to the victim.

Trafficking in women

Prostitution is illegal in Lithuania, and monetary fines of USD $75-125 can be levied against the person engaged in prostitution.[322] Repeat offenses incur higher fines or administrative arrest for up to 30 days.[323] Only the use of children in prostitution is a criminal offense. "Trafficking of persons" is defined by the Criminal Code as a crime. Trafficking is defined as "sale of a person or transfer or acquisition for the purpose of sexual exploitation, forced prostitution, or for material and other kinds of personal gain," as well as bringing of an individual in or out of Lithuania with the goal of using him or her for prostitution. Trafficking in persons is punishable by four to eight years imprisonment.[324] If the same offense is committed repeatedly, against minors, or through conspiracy, or by an especially dangerous recidivist, it is punishable by six to twelve years imprisonment.[325]

Lithuanian law does not primarily target punishment against the trafficker. More often, criminal charges are filed against the women who attempted to enter the country with forged travel documents. The Ministry of the Interior through the Department of Police has created a special division for combating trafficking in the Organized Crime Task Force.[326] According to the German Federal Crime Bureau, 125 women who have been trafficked from Lithuania into Germany for prostitution appealed to German authorities in 1997. The number of trafficked women from Lithuania into Germany surpasses that of its close neighbors with 32 per 100,000 population, compared to the Czech Republic with 15 and Poland with four.[327]

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

As of 1999, 20% of Lithuania's population, or 715, 219 people, were younger than 14 years. Almost half of this number were girls.[328] Under Lithuanian law, all persons under the age of 18 are classified as minors and those between 16-29 as young adults. The number of young adults has remained fairly stable, but the percentage of young adults in the society as a whole has decreased from 22.3% in 1989 to 20.5% in 1997.

Childbearing among adolescent mothers under 18 years of age is low. [329]

Within the Ministry of Social Security and Labor there is a service for the Protection of the Rights of the Child which organizes, controls and supervises the enforcement of laws and policies regulating children's rights. In 1996, the Children's Affairs Consultative Council was set up in the Office of the President, and a Commission of Family and Child Affairs was established under Parliament in 1997. Similar services function in the various cities and regions of Lithuania.[330]

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

Health policy and the health care system

The Lithuanian Health Program contains no specific section that deals with the health of adolescents.[331] Generally little attention has been paid to the reproductive health of young people; only recently have the issues of teenage pregnancy, abortion, and STIs been taken up by the government. Reproductive health policy for adolescents is largely the domain of NGOs, such as the Association. The Healthy Lifestyles Promotion Program, which was started in Lithuanian schools in 1993, is the only program addressing the reproductive health issues of teenagers. No other kind of sex education program exists.

Access to services

There are no Lithuanian laws or legal acts that limit adolescents' access to health care services. Young adults go to the same general clinics as adults. Services are provided free of charge in general polyclinics, but services at specialized centers (i.e., the State Family Planning Center) are provided on a fee-for-service basis, which are accessible only to the few young adults who have financial means.

Contraception

Accurate data about the use of contraceptives among Lithuanian youth is non-existent, but it is known that modern

methods of contraception are not widely used.

Various surveys and studies show that the most popular means of birth control among young adults is the condom: 26% of students regularly use condoms.[332] In studies of young couples between the ages of 18 and 19, 43.2% use contraceptives. Of these, 18.9% use condoms, 10.8% use *coitus interruptus*, and 5.4% hormonal oral contraceptives.[333] Oral birth control pills are generally unpopular with young adults but are increasing in use. The medical community encourages the use of condoms for the added benefit of prevention of STIs.

Access to doctor's consultations

Teenagers have access to doctor's consultations and information about sexually transmissible infections, family planning methods and contraceptives, although they are hesitant to do so. On the initiative of the Association, five youth health centers were opened in 1998. These centers, in Lithuania's five largest cities, provide a forum for young people to provide reproductive health consultations to their peers.

Abortion

Approximately 7.2% of all abortions in 1998 were performed on women under the age of 19, and 0.02% for women under 14 years of age.[334] Adolescents, like adults, must go to a primary health care provider for pregnancy tests and a referral to a hospital for an abortion. Abortions for women less than 16 years of age require parental consent. Consent is requested, but is not mandatory, for women between the ages of 16 and 18. The consenting adult must personally come to sign the consent, or the signature must be countersigned by a notary public.[335]

B. MARRIAGE AND ADOLESCENTS

Although the minimum age of consent for men and women to marry is 18,[336] the draft Civil Code would allow a court to reduce the minimum age by three years on the basis of a person's request. Also, in cases of pregnancy, courts may allow a person younger than 15 to get married.[337] In 1996, 4% of all marriages had a bride aged 17 or younger.[338] In recent years, more people have started living together without being married. There is a trend toward "living together" (domestic partnership) among 17 to 20 year olds.[339]

C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

The Criminal Code specifies a punishment of up to three years imprisonment for the molestation of persons less than 16 years of age.[340] Sexual intercourse with a sexually immature person is punished by up to five years imprisonment.[341] Rape of a minor (14 - 18 years old) is punished by five to fifteen years in prison.[342]

There are some pending amendments to the Criminal Code. These amendments will increase the penalties for sex offenses with minors, including forced sex and abuse, rape, sexual abuse of children, molestation, forcing individuals to provide sexual satisfaction, organizing prostitution, child pornography and the running of brothels.

D. EDUCATION AND ADOLESCENTS

Legal principles covering the education of children meet the requirements of the 1995 Vienna Declaration to ensure primary education of children. Between 1993 and 1997 there was a noticeable increase in the number of young people seeking education at all levels. Boys more often attend basic and vocational schools, while significantly more girls than boys seek a specialized secondary and higher education.[343]

E. SEX EDUCATION

Although sex education is part of the mandatory school curriculum, it is not a separate subject. Rather it is integrated into physical education, biology, and literature courses. Moreover, only a few schools offer organized sex education programs. Lithuanian universities have not trained teachers to teach sex education, although in 1998, the Lithuanian Pedagogical University created an elective program for health teachers that will qualify them to teach sex health classes. The Catholic Church and certain influential educators oppose the teaching of sex education in schools.

F. TRAFFICKING IN ADOLESCENTS

In recent years, the number of missing persons registered by the Lithuanian Ministry of the Interior has increased from 796 in 1995 to 402 registered cases in the first quarter of 1998 alone. Most of the missing persons are minor girls. It is believed that many have been forced to work abroad as prostitutes and have had their travel documents confiscated by their traffickers.[344] Trafficking in minors is punishable by six to twelve years imprisonment.[345]

NOTE ON SOURCES

The information in this chapter is drawn from primary sources of law in Lithuanian and secondary sources in English and Lithuanian. All primary sources of national law are in Lithuanian. Unless otherwise noted, they are available in LITLEX at <www.litlex.lt> (Teisinės informacijos centras [Legal Information Center] of the Lithuanian Ministry of Justice). Unofficial English translations of some laws and regulations 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

KONST.: Constitution of the Republic of Lithuania
VZ: State News
BAUDŽIAMASIS KODEKSAS: Criminal Code
SANTUOKOS IR ŠEIMOS KODEKSAS: Matrimonial and Family Code

ENDNOTES

1. CIA, LITHUANIA, 1998 WORLD FACTBOOK (visited Feb. 7, 2000) <http://www.odci.gov/cia/publications/factbook/lh.html> [hereinafter WORLD FACTBOOK].
2. *Id.*
3. *History of the Seimas, Supreme Council - Reconstituent Seimas 1990 - 1992* (visited Feb. 7, 2000) <http://www.lrs.lt>.
4. Lietuvos Respublikos Konstitucija [Constitution of the Republic of Lithuania] [KONST.], Valstybės žinios [State News] [VZ] No. 33/1992, Pub. No. 1014 (visited Feb. 7, 2000) <http://www.lrs.lt>. The official English translation can also be found at <http://www.lrs.lt>. The Constitution was twice amended in 1996, Law No. I-1390 of June 20, 1996, VZ No. 64/1996, Pub. No. 1501, and Law No. VIII-32 of Dec. 12, 1996, VZ No. 122/1996, Pub. No. 2863. *See* ADMINISTRATIVE LAW IN CENTRAL AND EASTERN EUROPE 1996-1998, at 196 (Denis J. Galligan & Daniel M. Smilov eds., 1999).
5. SIGMA, PUBLIC MANAGEMENT PROFILES, LITHUANIA: POLITICAL BACKGROUND (visited Feb. 7, 2000) <http://www.oecd.org/puma/sigmaweb>.
6. *Id.*
7. OSCE Participating States (visited Feb. 7, 2000) <http://www.osce.org>; United Nations Member States (visited Feb. 7, 2000) <http://www.un.org/Overview/unmember.html>.
8. Council of the Baltic Sea States (visited Feb. 7, 2000) <http://www.baltinfo.org/Default.htm>.
9. The 41 Member States of the Council of Europe (visited Feb. 7, 2000) <http://www.coe.fr/eng/std/states.htm>.
10. MINISTRY OF FOREIGN AFFAIRS OF LITHUANIA, INTEGRATION OF LITHUANIA INTO THE EUROPEAN UNION, LITHUANIA - EU RELATIONS: AN OVERVIEW (visited Feb. 7, 2000) <http://www.urm.lt/eu/over.htm>.
11. *Id.*
12. KONST. art. 4.
13. *Id.* art. 9.
14. *Id.* art. 5.
15. *Id.* art. 77(1).
16. *Id.* art. 78(2), (3).
17. *Id.* art. 84.
18. *Id.* art. 71(3).
19. *Id.* art. 85.
20. *Id.* art. 91.
21. *Id.* art. 92(1).
22. *Id.* art. 92(2).
23. *Id.* art. 92(3)-(5).
24. *Id.* art. 94(1).
25. *Id.* art. 94(2).
26. *Id.* art. 94(3).
27. *Id.* art. 94(4).
28. *Id.* art. 94(5).
29. *Id.* art. 94(6).
30. SIGMA, PUBLIC MANAGEMENT PROFILES, LITHUANIA: KEY STATISTICS 10.2 (visited Feb. 7, 2000) <http://www.oecd.org/puma/sigmaweb>.
31. *Id.* ¶10.1.
32. KONST. art. 55.
33. WORLD FACTBOOK, *supra* note 1.
34. KONST. art. 67.
35. *Id.* art. 68.
36. *Id.* art. 69(2), (3).
37. *Id.* art. 72.
38. *Id.* art. 109.
39. *Id.* arts. 102, 105.
40. *Id.* art. 103(1).
41. *Id.* art. 107(2).
42. *Id.* art. 111(1).
43. Teritorijos administracini vienetų ir jų ribų įstatymas [Law on Territorial Administrative Units] No. I-558 (July 19, 1994), art. 5, VZ No. 60/1994, Pub. No. 1183.
44. Apskrities valdymo įstatymas [Law on the Governing of Districts] No. I-707 (Dec. 15, 1994), VZ No. 101/1994, Pub. No. 2015.
45. SIGMA , PUBLIC MANAGEMENT PROFILES, LITHUANIA: SUBNATIONAL GOVERNMENT ¶5.1 (visited Feb. 7, 2000) <http://www.oecd.org/puma/sigmaweb>.
46. ADMINISTRATIVE LAW IN CENTRAL AND EASTERN EUROPE 1996-1998, *supra* note 4, at 181.
47. Lietuvos Respublikos konstitucijos 119 straipsnio pakeitimo įstatymas [Constitutional Law Amending Art. 119 of the Constitution] No. VIII-32 (Dec. 12, 1996), VZ No. 12/1996, Pub. No. 2863.
48. SIGMA, PUBLIC MANAGEMENT PROFILES, LITHUANIA: SUBNATIONAL GOVERNMENT, *supra* note 45, ¶5.3.
49. *Id.*; KONST. arts. 119-124.
50. SIGMA, PUBLIC MANAGEMENT PROFILES, LITHUANIA: LEGISLATIVE AUTHORITY ¶2.4 (visited Feb. 8, 2000) <http://www.oecd.org/puma/sigmaweb>.
51. KONST. art. 6.
52. *Id.* art. 30.
53. *Id.* art. 29.
54. *Id.* art. 18.
55. *Id.* art. 19.
56. *Id.* art. 21(2).
57. *Id.* art. 22.
58. *Id.* art. 37.
59. *Id.* art. 26.
60. *Id.* art. 25.
61. *Id.* arts. 35, 36.
62. *Id.* art. 38(2).
63. *Id.* art. 38(3), (5).
64. *Id.* art. 39(2).
65. *Id.* arts. 67(1)¶16, 138.
66. *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Initial Reports of States Parties Due in 1993: Lithuania CCPR/C/81/Add.10,* ¶ 6, (Sept. 10, 1997), HUMAN RIGHTS COMMITTEE (visited Feb. 7, 2000) <http://www.hri.ca> [hereinafter HUMAN RIGHTS REPORT].
67. KONST. art. 53(1).
68. Sveikatos sistemos įstatymas [Law on the Health Care System] No. I-552 (July 19, 1994), VZ No. 63/1994, Pub. No. 1231, amended by Sveikatos sistemos įstatymo pakeitimo įstatymas [Law Amending the Law on the Health Care System] No. VIII-946 (Dec. 1, 1998), VZ No. 112/1998, Pub. No. 3099. The National Health Program, initiated by the Lithuanian Physicians Association in 1990-1991, was adopted as law: Dėl Lietuvos sveikatos programos patvirtinimo [Lithuanian Health Program] No. VIII-833 (July 2, 1998), VZ No. 64/1998, Pub. No. 1842. The English translation can be found at <http://www.undp.lt/WHO/lhpen.html> (visited Feb. 8, 2000) [hereinafter LITHUANIAN HEALTH PROGRAM].
69. Law on the Health Care System, art. 4.
70. WORLD HEALTH ORGANIZATION, COUNTRY HEALTH REPORT FOR LITHUANIA 9 (1999) (visited Feb. 8, 2000) <www.undp.lt/WHO>.
71. *Id.* at 11.
72. *Id.* at 12 tbl.7.
73. *Id.* at 11.
74. *Id.* at 12.
75. LITHUANIAN HEALTH PROGRAM, *supra* note 68, at 3.
76. *Id.*
77. *Id.* at 1.
78. *Id.* at 8.
79. *Id.* at 23.
80. *Id.* at 23, 24.
81. *Ministry of Health* (visited Feb. 8, 2000) <http://www.randburg.com/li/minihealth.html>.
82. COUNTRY HEALTH REPORT FOR LITHUANIA, *supra* note 70, at 8.
83. *1999 Health Indicators and Main Public Health Issues* (visited Feb. 8, 2000) <http://www.undp.lt/WHO/wholitind.html>.
84. COUNTRY HEALTH REPORT FOR LITHUANIA, *supra* note 70, at 8, 9.
85. *1999 Health Indicators and Main Public Health Issues*, *supra* note 83.
86. P. BINDOKAS, LITHUANIAN HEALTH CARE: CURRENT AND FUTURE

PERSPECTIVES (1999).
87. LITHUANIAN HEALTH PROGRAM, *supra* note 68, at 1.
88. Sveikatos sistemos įstatymas [Law on the Health Care System] No. I-552 (July 19, 1994), art. 126, VZ No. 63/1994, Pub. No. 1231.
89. *Id.* art. 122.
90. Sveikatos priežiūros įstaigų įstatymas [Law on Health Care Institutions] No. I-1367 (June 6, 1996), arts. 52-60, VZ No. 66/1996, Pub. No. 1572, as amended by Law No. VIII-940 (Nov. 24, 1998), VZ No. 109/1998, Pub. No. 2995.
91. BINDOKAS, *supra* note 86, at 36.
92. Sveikatos sistemos įstatymas [Law on the Health Care System] No. I-552 (July 19, 1994), VZ No. 63/1994, Pub. No. 1231, as amended by Sveikatos sistemos įstatymo pakeitimo įstatymas [Law Amending the Law on the Health Care System] No. VIII-946 (Dec. 1, 1998), VZ No. 112/1998, Pub. No. 3099.
93. *Id.* art. 9.
94. *Id.* art. 11. Gydytojo medicinos praktikos įstatymas [Law on Medical Practice of Physicians] No. I-1555 (Sept. 25, 1996), VZ No. 102/1996, Pub. No. 2313, amended by Law No. VIII-748 (May 19, 1998), VZ No. 52/1998, Pub. No. 1423; Farmacinės veiklos įstatymas [Law on Pharmaceutical Activities] No. I-1025 (Jan. 31, 1991), VZ No. 6/1991, Pub. No. 161, amended by Law No. I-1442 (July 4, 1996), VZ No. 69/1996, Pub. No. 1667. The Law on Public Health is currently only in draft form.
95. Law on the Health Care System, art. 12.
96. Sveikatos sistemos įstatymas [Law on the Health Care System] No. I-552 (July 19, 1994), VZ No. 63/1994, Pub. No. 1231, amended by Sveikatos sistemos įstatymo pakeitimo įstatymas [Law Amending the Law on the Health Care System] No. VIII-946 (Dec. 1, 1998), VZ No. 112/1998, Pub. No. 3099; Sveikatos priežiūros įstaigų įstatymo pakeitimo įstatymas [Law on the Amendment of the Law on Health Care Institutions] No. VIII-288 (June 24, 1997), VZ No. 62/1997, Pub. No. 1462, amended by Law No. VIII-940 (Nov. 24, 1998), VZ No. 109/1998, Pub. No. 2995.
97. Jonas Kairys, *Demography, Health and Health Care - Health Care: the Role of the State and Private Initiative*, in LITHUANIAN HUMAN DEVELOPMENT REPORT 1998, at 84 (visited Feb. 10, 2000) <www.undp.lt/HDR/1998/default/htm>.
98. MINISTRY OF HEALTH OF LITHUANIA, PRIMARY HEALTH CARE IMPLEMENTATION PROGRAMME (draft in Lithuanian) (1999).
99. *Id.*
100. In accordance with the organizational structure defined in the Law of the Republic of Lithuania on the Health System, ambulance services are provided mostly out of specialized departments in polyclinics. However, large cities have separate EMS stations providing specialized ambulance services. Ambulances are staffed by nurse practitioners in rural areas, urban ambulances are staffed by physicians. *Id.*
101. Kairys, *supra* note 97, at 84. Dental services, for the most part, have been privatized. Public dental care is available in polyclinics and level II and III hospitals. It is very difficult to estimate how many private dentists there are.
102. Data provided by LIETUVOS SVEIKATOS INFORMACIJOS CENTRAS [HEALTH INFORMATION CENTRE] (1999).
103. *Id.*
104. LITHUANIAN HEALTH PROGRAM, *supra* note 68, at 49-52; Kairys, *supra* note 97, at 83.
105. Art. 77 of the Law on the Health Care System states that individual health care and services are provided free of charge to Lithuanian citizens and permanent residents, according to basic prices fixed for necessary diagnostic measures and medicines and other articles of medical purposes. The difference is covered by health insurance funds. Art. 8 of the Law on Health Insurance provides that the list and fees of individual health care services covered by the compulsory health insurance fund are proposed by the Compulsory Health Insurance Board and approved by the Ministry of Health. For 1997, fees at the primary health level, first and second level inpatient facilities and nursing hospitals were relatively low. At the primary health care level therapists were allocated 22 LTL per patient, paediatricians 33 LTL, dentists 13.2 LTL, obstetricians and gynecologists 11 LTL, surgeons 11 LTL and psychiatrists 2.75 LTL per registered patient per year. Kairys, *supra* note 97, at 85.
106. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl Lietuvos medicinos normos MN 11-2:1997 "Sveikatos priežiūros istaigų akreditavimo specialieji reikalavimai. 2 Dalis. Moterų konsultacija" [Lithuanian Medical Norm on Women's Consultations] No. 167 (Apr. 14, 1997), VZ No. 38/1997, Pub. No. 947.
107. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl Lietuvos medicinos normos MN 40:1997 "Akušerė (aku_eris). Funkcijos, kompetencija, pareigos, teisės ir atsakomybė" [Lithuanian Medical Norm on Midwifes] No. 401 (July 15, 1997), VZ No. 72/1997, Pub. No. 1868.
108. See Arūnas Liubšys, *Health and Health Care*, in LITHUANIAN HUMAN DEVELOPMENT REPORT 1999, at 101, 111; Kairys, *supra* note 97, at 80-88.
109. KONST. art. 53(1).
110. Art. 5(3), (4) of the Law on Health Insurance indicates persons covered by compulsory health insurance. The list of essential services is defined by the Ministry of Health. Although a draft of this list was due to be ratified in September 1999, it is still pending.
111. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl mokamų asmens sveikatos priežiūros paslaugų sarašo, kainų nustatymo ir jų indeksa vimo tvarkos bei šių paslaugų teikimo ir apmokėjimo tvarkos No. 357 (July 30, 1999), VZ No. 67/1999, Pub. No. 2175.
112. Sveikatos draudimo įstatymas [Law on Health Insurance] No. I-1343 (May 21, 1996), arts. 5, 16, VZ No. 55/1996, Pub. No. 1287, last amended by Law No. VIII-1287 (July 1, 1999), VZ No. 62/1999, Pub. No. 2035.
113. Law on Health Insurance, art. 2.
114. For a detailed analysis see Kairys, *supra* note 97, at 87-88.
115. Compulsory health insurance covers restorative treatment on the primary, secondary and tertiary levels of health activities. Law on Health Insurance, art. 8.
116. INTERNATIONAL PLANNED PARENTHOOD FEDERATION, COUNTRY PROFILE: LITHUANIA (visited Feb. 14, 2000) <http://www.ippf.org/regions/countries/ltu/index.htm>.
117. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl mokamų asmens sveikatos priežiūros paslaugų sarašo, kainų nustatymo ir jų indeksa vimo tvarkos bei šių paslaugų teikimo ir apmokėjimo tvarkos No. 357 (July 30, 1999), VZ No. 67/1999, Pub. No. 2175.
118. Gydytojo medicinos praktikos įstatymas [Law on Medical Practice of Physicians] No. I-1555 (Sept. 25, 1996), VZ No. 102/1996, Pub. No. 2313, amended by Law No. VIII-748 (May 19, 1998), VZ No. 52/1998, Pub. No. 1423.
119. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl Lietuvos Respublikos gydytojo medicinos praktikos įstatymas [On the Implementation of the Law on Medical Practice of Physicians] No. 361 (June 26, 1998), VZ No. 59/1998, Pub. No. 1688.
120. Law on Medical Practice of Physicians, art. 3(1).
121. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl gydytojų medicinos praktikos licencijavimo nuostatų patvirtinimo [Licensing Regulations for Medical Practice] No. 351 (June 19, 1998), VZ No. 59/1998, Pub. No. 1687; Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl sertifikatų atlikiti tam tikras asmens sveikatos priežiūros paslaugas išdavimo, perregistravimo, jų galiojimo sustabdymo, panaikinimo ir atnaujinimo tvarkos [Certification for Delivering Certain Kinds of Personal Health Care Services, the Issuance, Re-registration, Annulment and Renewal of Certificates] No. 91 (Feb. 27, 1999), VZ No. 21/1999, Pub. No. 609; Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl asmens sveikatos priežiūros specialybių ir subspecialybių sąrašo [List of Medical Specialities and Subspecialties] No. 61 (Feb. 5, 1999), VZ No. 15/1999, Pub. No. 404.
122. Law on Medical Practice of Physicians, art. 4.
123. *Id.* art. 16(1). Art. 237 of the Criminal Code provides for imprisonment of up to one year, community service of up to two years, or a fine. If the activity caused long lasting health effects or death, the punishment is one to five years in prison. Lietuvos Respublikos Seimas / kodeksas [Code of the Seimas of the Republic of Lithuania], Lietuvos Respublikos Baudžiamasis Kodeksas [Criminal Code of the Republic of Lithuania] [BAUDŽIAMASIS KODEKSAS] (Jan. 1, 1970), last amended by Law No. VIII-1439 (Nov. 25, 1999), VZ No. 106/1999, Pub. No. 3059.
124. Art. 1 of the Law on the Medical Practice of Physicians does not include traditional medical practitioners in the definition of physician.
125. *Id.* art. 5(1).
126. *Id.* art. 5(2).
127. *Id.* art. 5(3).
128. *Id.* art. 10(1).
129. *Id.* art. 5(5).
130. *Id.* art. 6(3).
131. *Id.* art. 6(5).
132. *Id.* art. 12.
133. *Id.* art. 13(3).
134. *Id.* art. 13(4).
135. *Id.* art. 14(1).
136. *Id.* art. 14(6).

137. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl Lietuvos medicinos normos MN 28:1996 "Bendrosios praktikos slaugytoja (slaugytojas)" [Lithuanian Medical Norm on General Practice Nurses] No. 634 (Dec. 4, 1996), VZ No. 123/1996, Pub. No. 2879; Lietuvos Respublikos sveikatos apsaugos ministerija / ∞sakymas [Decree of the Ministry of Health], Dòl Lietuvos medicinos normos MN 57:1998 "Bendruomenės slaugytoja (slaugytojas). Funkcijos, pareigos, teisės, kompetencija ir atsakomybė" patvirtinimo [Lithuanian Medical Norm on Community Nurses] No. 691 (Nov. 27, 1998), VZ No. 107/1998, Pub. No. 2939; Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl Lietuvos medicinos normos MN 60:1998 "Anestezijos ir intensyviosios slaugos slaugytoja (slaugytojas). Funkcijos, kompetencija, pareigos, teisės ir atsakomybė" patvirtinimo [Lithuanian Medical Norm on Anesthesia and Intensive Care Nurses] No. 692 (Nov. 27, 1998), VZ No. 107/1998, Pub. No. 2940; Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl Lietuvos medicinos normos MN 22:1997 "Psichikos sveikatos slaugytoja (slaugytojas). Funkcijos, teisės, pareigos, atsakomybė" [Lithuanian Medical Norm on Mental Health Nurses] No. 667 (Dec. 10, 1997), VZ No. 116/1997, Pub. No. 2972.

138. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl Lietuvos medicinos normos MN 28:1996 "Bendrosios praktikos slaugytoja (slaugytojas)" [Lithuanian Medical Norm on General Practice Nurses] No. 634 (Dec. 4, 1996), VZ No. 123/1996, Pub. No. 2879.

139. Farmacinės veiklos įstatymas [Law on Pharmacies] No. I-1025 (Jan. 31, 1991), VZ No. 6/1991, Pub. No. 161, last amended by Law No. VIII-258 (June 12, 1997), VZ No. 58/1997, Pub. No. 1332.

140. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health], Dėl leidimų (licencijų) verstis farmacine veikla (praktika) išdavimo tvarkos patvirtinimo [On the Licensing and Practice of Pharmacies] No. 535 (Oct. 9, 1997), § 5, VZ No. 93/1997, Pub. No. 2349.

141. Pacientų teisių ir žalos sveikatai atlyginimo įstatymas [Law on the Rights of Patients and Compensation for Damage to Their Health] No. I-1562 (Oct. 3, 1996), art. 2(1), VZ No. 102/1996, Pub. No. 2317, amended by Law No. VIII-755 (May 21, 1998), VZ No. 52/1998, Pub. No. 1425.

142. *Id.* arts. 3 (10).

143. *Id.* art. 3(1).

144. *Id.* art. 3(2).

145. *Id.* art. 3(3).

146. *Id.* art. 3(5), (6).

147. Sveikatos draudimo įstatymas [Law on Health Insurance] No. I-1343 (May 21, 1996), VZ No. 55/1996, Pub. No. 1287, last amended by Law No. VIII-1287 (July 1, 1999), VZ No. 62/1999, Pub. No. 2035.

148. Law on the Rights of Patients and Compensation for Damage to Their Health, art. 4(2).

149. *Id.* art. 5; Law on Health Insurance, art. 25.

150. Law on the Rights of Patients and Compensation for Damage to Their Health, art. 6(1) - (4).

151. *Id.* art. 6(4).

152. *Id.* art. 6(6).

153. *Id.* art. 8(1).

154. *Id.* art. 8(2).

155. Psichikos sveikatos priežiūros įstatymas [Law on Mental Health] No. I-924 (June 6, 1995), VZ NO. 53/1995, Pub. No. 1290, amended by Law No. VIII-1461 (Dec. 2, 1999), VZ No. 108/1999, Pub. No. 3127.

156. Law on the Rights of Patients and Compensation for Damage to Their Health, art. 9.

157. *Id.* art. 10(1), (3).

158. *Id.* art. 14(1).

159. *Id.* art. 20(1).

160. *Id.* art. 20(2).

161. *Id.* art. 23.

162. Sveikatos sistemos įstatymas [Law on the Health Care System] No. I-552 (July 19, 1994), art. 127, VZ No. 63/1994, Pub. No. 1231.

163. Virginija Eidukienė, *Demography, Health and Health Care - Overview of demographic situation*, *in* LITHUANIAN HUMAN DEVELOPMENT REPORT 1998, at 69 (visited Feb. 15, 2000) <http://www.undp.lt/HDR/1998/default.htm>.

164. This is the predominant explanation for the marked demographic decline all throughout the region.

165. *See The Principal Human Development Indicators, in* LITHUANIAN HUMAN DEVELOPMENT REPORT 166 (1999) (visited Feb. 15, 2000) <http://www.undp.lt/HDR/1999/default.htm>; *National Implementation of Agenda 21: Review of Progress Made Since the United Nations Conference on Environment and Development 1992, Lithuania Country Profile* (visited Feb. 15, 2000) <http://www.un.org/esa/earthsummit>; Liub_ys, *supra* note 108; Eidukien_, *supra* note 163, at 69-73; CHILDREN AND FAMILY: LITHUANIA 1998 (V.Stankûnienë, G.Dap_ienë eds.) 19-21 (1998).

166. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 19-20.

167. Eidukien_, *supra* note 163, at 61; Liub_ys, *supra* note 108, at 103.

168. Sveikatos sistemos įstatymo pakeitimo įstatymas [Law Amending the Law on the Health Care System] No. VIII-946 (Dec. 1, 1998), art. 61, VZ No. 112/1998, Pub. No. 3099.

169. Teodoras Medaiskis, *Social Security: Aspects and Trends, in* LITHUANIAN HUMAN DEVELOPMENT REPORT 1999, at 93 (visited Feb. 17, 2000) <http://www.undp.lt/HDR/1999/default.htm>.

170. *Id.*

171. *Id.* at 94.

172. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 33.

173. *Lietuvos Respublikos Šeimos sveikatos priežūrios įstatymas, Projektas [Family Health Care Law, Draft]*, LIETUVOS RYTAS, July 22, 1996, at 10.

174. Sveikatos sistemos įstatymo pakeitimo įstatymas [Law Amending the Law on the Health Care System] No. VIII-946 (Dec. 1, 1998), art. 32(1), VZ No. 112/1998, Pub. No. 3099.

175. Interview with Dr. V. Klimas, Director, State Family Planning Centre (May 1, 1999).

176. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania] No. 137 (Mar. 26, 1997).

177. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl naujagimio (vaisiaus) gyvybingumo vertinimo kriterijų ir registravimo tvarkos pakeitimų, No. 413 (Dec. 19, 1990).

178. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl perinatalinės, neonatalinės paveldimu ligų ir įgimtų vystymosi defektų profilaktikos programos vykdymo [Perinatalogy, Neonatalogy, Inherited Diseases and Birth Defects Prevention Program] No. 74 (Feb. 26, 1992).

179. Decree of the Ministry of Health of the Republic of Lithuania No. 137 (Mar. 26, 1997).

180. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl nėščiųjų, gimdyvių ir naujagimių sveikatos priežiūros tvarkos patvirtinimo [Regulation on Health Care for Pregnant Women, Birthing Mothers and Newborns] No. 117 (Mar. 15, 1999), VZ No. 28/1999, Pub. No. 811.

181. *Id.* § 2.1.

182. *Id.* §§ 1, 2.

183. *Id.*

184. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 70.

185. The Association is an IPPF affiliate. See INTERNATIONAL PLANNED PARENTHOOD FEDERATION, COUNTRY PROFILE: LITHUANIA (visited Feb. 14, 2000) <http://www.ippf.org/regions/countries/ltu/index.htm>.

186. The survey *Family and Fertility in Lithuania* is an integral part of the international project *Fertility and Family Surveys in the ECE Countries* co-ordinated by the United Nations Population Activities Unit of the Economic Commission for Europe. In Lithuania the fieldwork was conducted in 1994-1995, during which 5000 people aged 18-49 were surveyed. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 21 n.1.

187. *Id.* at 70.

188. *Id.*; ŠEIMA IR GIMSTAMUMAS LIETUVOJE [FAMILY AND FERTILITY IN LITHUANIA] 154-155 (V. Stank_nienë & A. Mitrikas eds., 1997).

189. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 70.

190. FAMILY AND FERTILITY IN LITHUANIA, *supra* note 188, at 155.

191. Farmacinės veiklos įstatymas [Law on Pharmacies] No. I-1025 (Jan. 31, 1991), art. 19, VZ No. 6/1991, Pub. No. 161.

192. *Id.* art. 5.

193. *Id.* art. 14.

194. SAULIUS ČAPLINSKAS, AIDS PROFILAKTIKA LIETUVOJE 1989 - 1994 METAI [AIDS PREVENTION IN LITHUANIA 1989-1994] 29 (1995).

195. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 70.

196. ČAPLINSKAS, *supra* note 194, at 29.

197. LITHUANIAN DEVELOPMENT AGENCY, POPULATION, LABOUR FORCE, EDUCATION AND HEALTH CARE (visited Feb. 16, 2000) <http://www.lda.lt/invest.bic.labourforce.html>.

198. Farmacin_s veiklos _statymas [Law on Pharmacies] No. I-1025 (Jan. 31, 1991), art. 17, VZ No. 6/1991, Pub. No. 161.

199. Vytas Klimas & Esmeralda Kuliešytė, *Šeimos planavimas Lietuvoje: problemos, tikslai ir keliai [Family Planning in Lithuania: Problems, Goals and Methods]*, in LIETUVOS ŠEIMA [LITHUANIAN FAMILY] 221 (Lietuvos Filosofijos ir Sociologijos Institutas ed., 1995).

200. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 70.
201. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl nėštumo nutraukimo operacijos atlikimo tvarkos [Regulation on the Performance of Abortions] No. 50 (Jan. 28, 1994), § 1.1, VZ No. 18/1994, Pub. No. 299.
202. Lyubšys, *supra* note 108, at 102.
203. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 69-70.
204. Liubšys, *supra* note 108, at 102.
205. NACIONALINĖS SVEIKATOS TARYBOS [NATIONAL HEALTH BOARD], METINIS PRANEŠIMAS [ANNUAL REPORT] 11 (1998).
206. USSR. Prezidium Verkhovnogo Sovieta SSSR [Presidium of the Supreme Council of the USSR], Decree on the Elimination of Abortion Prohibition (Nov. 23, 1955), in ORDERS OF THE CPSU AND THE SOVIET GOVERNMENT ON PUBLIC HEALTH PROTECTION 333 (1958). *See* Andrej A. Popov, *Family Planning and Induced Abortion in Post-Soviet Russia of the Early 1990s: Unmet Needs in Information Supply*, in RUSSIA'S DEMOGRAPHIC "CRISIS" (Julie DaVanzo & Gwendolyn Farnsworth eds., RAND, 1996) (visited Jan. 4, 2000) <http://www.rand.org/publications>.
207. USSR. Ministerstvo Zdravookhraneniya SSSR [Ministry of Health of the USSR], Order On Confirmation of the Instruction on Providing Surgical Artificial Interruption of Pregnancy No. 234 (Mar. 16, 1982), MZ SSSR (1982).
208. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl nėštumo nutraukimo operacijos atlikimo tvarkos [Regulation on the Performance of Abortions] No. 50 (Jan. 28, 1994), VZ No. 18/1994, Pub. No. 299.
209. *Id.* § 1.1.
210. *Id.*
211. *Id.* § 1.3.
212. *Id.* § 1.4.
213. *Id.* § 1.5.
214. *Id.* § 1.
215. *Id.*
216. *Id.* § 1.6.
217. Women's Issues Information Centre (visited Apr. 17, 2000) <http://www.undp.lt/wiic/apie_e.htm>.
218. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl nėštumo nutraukimo operacijos atlikimo tvarkos [Regulation on the Performance of Abortions] No. 50 (Jan. 28, 1994), VZ No. 18/1994, Pub. No. 299.
219. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 70.
220. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl nėštumo nutraukimo operacijos atlikimo tvarkos [Regulation on the Performance of Abortions] No. 50 (Jan. 28, 1994), § 1.10, VZ No. 18/1994, Pub. No. 299.
221. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 69.
222. BAUDŽIAMASIS KODEKSAS art. 124(1).
223. *Id.* art. 124(2).
224. *Id.* art. 124(3).
225. Interview with Esmeralda Kuliesyte, Executive Director, Family Planning and Sexual Health Association of Lithuania, in Vilnius, Lithuania (May 10, 1999).
226. Sveikatos sistemos įstatymas [Law on the Health Care System] No. I-552 (July 19, 1994), art. 3(1) ¶23, VZ No. 63/1994, Pub. No. 1231.
227. BAUDŽIAMASIS KODEKSAS art. 111(1).
228. Liubšys, *supra* note 108, at 109.
229. Jonas Kairys, *Demography, Health and Health Care - General Health Indicators, in* LITHUANIAN HUMAN DEVELOPMENT REPORT 1998, at 75 (visited Feb. 16, 2000) <http://www.undp.lt/HDR/1998/default.htm> [hereinafter Kairys, *General Health Indicators*].
230. *Id.*
231. *Id.*
232. Liubšys, *supra* note 108, at 109.
233. *Id.*; Kairys, *General Health Indicators*, *supra* note 229, at 75.
234. Liubšys, *supra* note 108, at 111.
235. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 67.
236. *Id.*; Kairys, *General Health Indicators*, *supra* note 229, at 75.
237. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 67.
238. BAUDŽIAMASIS KODEKSAS art. 111(1).
239. ČAPLINSKAS, *supra* note 194, at 50, 64.
240. *Id.* at 50.
241. *Id.*
242. *Id.* at 64.
243. Lietuvos Respublikos žmonių užkrečiamųjų ligų profilaktikos ir kontrolės įstatymas [Law on the Prevention and Control of Human Diseases] No. I-1553 (Sept. 25, 1996), VZ No. 104/1996, Pub. No. 2363, as amended by Law No. VIII-332 (June 26, 1997), VZ No. 66/1997, Pub. No. 1603.
244. BAUDŽIAMASIS KODEKSAS arts. 111, 112.
245. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl užkrečiamųjų ligų, kurių išlaidas kitiems asmenims privalo atlyginti juridiniai ir fiziniai asmenys, savo neteisėta veika jas sukėlę, sąrašo patvirtinimo, No. 580 (Nov. 15, 1996), VZ No. 113/1996, Pub. No. 2592.
246. ČAPLINSKAS, *supra* note 194, at 63.
247. LITHUANIAN HEALTH PROGRAM, *supra* note 68.
248. *Id.*; CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 68.
249. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl sveikatos programų rengimo ir įgyvendinimo 1999-2000 metais prioritetų [Health Program Priorities for 1999-2000] No. 55 (Feb. 3, 1999), VZ No. 18/1999, Pub. No. 479.
250. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 67-68.
251. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl ligų sąrašo tvirtinimo, No. 565 (Nov. 23, 1995), VZ No. 96/1995, Pub. No. 2165.
252. Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas [Law on Equal Opportunities of the Republic of Lithuania] No. VIII-947 (Dec. 1, 1998), VZ No. 112, Pub. No. 3100.
253. Id. arts. 2, 6-8; Giedrė Purvaneckienė, *Women in Lithuanian Society, in* LITHUANIAN HUMAN DEVELOPMENT REPORT 1999, at 123 (visited Feb. 17, 2000) <http://www.undp.lt/HDR/1999/default.htm>.
254. NETWORK OF EAST-WEST WOMEN, REPORT ON THE LEGAL STATUS OF WOMEN IN LITHUANIA (draft) (on file with The Center for Reproductive Law & Policy).
255. KONST. art. 38(1)-(4).
256. Lietuvos Respublikos santuokos ir šeimos kodeksas [Matrimonial and Family Code of the Republic of Lithuania] [SANTUOKOS IR ŠEIMOS KODEKSAS] No. VII-327 (Jan. 1, 1970), art. 11, last amended by Law No. VIII-1482 (Dec. 16, 1999), VZ No. 1/2000, Pub. No. 1.
257. *Id.* art. 16(1).
258. Lietuvos Respublikos civilinis kodeksas (projektas) [Draft Civil Code of the Republic of Lithuania], art. 3.14, 2 TEISES PROBLEMOS (1998).
259. SANTUOKOS IR ŠEIMOS KODEKSAS art. 18.
260. *Id.* art. 17.
261. HUMAN RIGHTS REPORT, *supra* note 66, ¶163; SANTUOKOS IR _EIMOS KODEKSAS art. 19.
262. HUMAN RIGHTS REPORT, *supra* note 66, ¶163.
263. *Id.* ¶166.
264. *Id.* ¶171.
265. Lietuvos Respublikos santuokos ir šeimos kodeksas (projektas) [Matrimonial and Family Code of the Republic of Lithuania (draft)] (on file with The Center for Reproductive Law & Policy).
266. *Id.* art. 3.26.
267. Lietuvos Respublikos civilinis kodeksas (projektas) [Draft Civil Code of the Republic of Lithuania], art. 3.165(2), 2 TEISES PROBLEMOS (1998).
268. SANTUOKOS IR ŠEIMOS KODEKSAS art. 37.
269. *Id.* art. 36.
270. *Id.* art. 33.
271. HUMAN RIGHTS REPORT, *supra* note 66, ¶172.
272. SANTUOKOS IR ŠEIMOS KODEKSAS art. 21(1).
273. *Id.* art. 23(2).
274. *Id.* art. 21(2).
275. HUMAN RIGHTS REPORT, *supra* note 66, ¶¶ 175, 176.
276. *Id.* ¶ 169.
277. *Id.* ¶ 176.
278. Lietuvos Respublikos vaiko globos įstatymas [Law on Child Guardianship] No. VIII-674 (Mar. 24, 1998), art. 3(1), VZ No. 35/1998, Pub. No. 933. Guardians may be temporary or permanent (art. 5(1)). Usually guardianships continue for the duration of the child's minority. The law mentions the following forms of guardianship: 1) family guardianship, 2) foster guardianship, 3) institutional guardianship (art. 5(2)). The family guardianship is established when no more than 5 children (the total number of children in the family together with the

parents' own children may not exceed 5) are placed under guardianship in a "natural" family environment (art. 12(1)). In the event of non-separation of siblings, the total number of children may exceed the aforementioned number (art. 12(2)). When appointing a guardian of the child priority is given to his close relatives provided they possess adequate living conditions and do not belong to the persons or the group of persons who may not be appointed as the child's guardian as stipulated in the article 23 of the aforementioned law (art. 12(3)).Foster guardianship as a form of guardianship can be established when a legal person (foster family) has under its guardianship six or more children (the total number of children in a foster family together with the parents' own children may not exceed 12) in a family environment, except the events of non-separation of siblings. (arts. 13(1), (2)). Foster guardianship of the child shall be established by laws of the Republic of Lithuania, the Foster Family Regulations approved by the government or its authorized institution, other legal acts (art. 13(3)). The wage and other conditions of remuneration for work of the child's guardian who has set up a foster family is based on laws of the Republic of Lithuania, government Decrees and other legal acts (art. 13(4)). The Law on Child Guardianship also provides for opportunity to place a child deprived of parental care in a public or non-governmental child guardianship institution when there is no possibility of taking the child into care in the family (art. 14(1)). Guardianship of the child is organized by the Agency for the Protection of the Rights of the Child of the district or city municipality in its territory, in cooperation with other local authorities and non-government organizations connected with the protection of the rights of the child (art. 19(1), (2)).

279. *Id.* art. 1(1).

280. Purvaneckienė, *supra* note 253, at 117-118.

281. *Id.* at 119.

282. *Id.* at 120.

283. Vida Kanopiene, *Labor Market and Social Security*, in WOMEN IN LITHUANIA (Women's Issues Information Centre ed., 1999) (visited Apr. 17, 2000) <http://www.undp.lt/wiic/women_in_lithuania/kanopiene2.html>.

284. Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas [Law on Equal Opportunities of the Republic of Lithuania] No. VIII-947 (Dec. 1, 1998), art. 8, VZ No. 112, Pub. No. 3100.

285. Lietuvos Respublikos žmonių saugos darbe įstatymas [Law on Labor Protection] No. I-266 (Oct. 7, 1993), art. 46(2), VZ No. 55/1993, Pub. No. 1064, last amended by Law No. VIII-561 (Dec. 9, 1997), VZ No. 117/1997, Pub. No. 3001.

286. *Id.* art. 62(1).

287. *Id.* art. 63(1).

288. *Id.* art. 63(3).

289. *Id.* art. 63(2).

290. *Id.* art. 63(4).

291. *Id.* art. 63(5).

292. Lietuvos Respublikos atostogų įstatymas [Law on Holidays] No. I-2113 (Dec. 17, 1991), art. 18, VZ No. 2/1992, Pub. No. 18, last amended by Law No. VIII-365 (July 1, 1997), VZ No. 67/1997, Pub. No. 1655.

293. *Id.* art. 19(1).

294. *Id.* art. 19(2).

295. *Id.* art. 19(3).

296. Medaiskis, *supra* note 169, at 92.

297. KONST. art. 41(2).

298. Purvaneckienė, *supra* note 253, at 116.

299. See THE WOMEN'S ISSUES INFORMATION CENTRE, ANNUAL REPORT (FEBRUARY 1999. DECEMBER 1999) (visited Apr. 17, 2000) <http://www.undp.lt/wiic/anualreport/index.html>.

300. Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas [Law on Equal Opportunities of the Republic of Lithuania] No. VIII-947 (Dec. 1, 1998), art. 7, VZ No. 112, Pub. No. 3100, official translation reprinted in Purvaneckienė, *supra* note 253, at 124.

301. Purvaneckienė, *supra* note 253, at 125.

302. *Id.* at 123.

303. *Id.* at 123-124.

304. BAUDŽIAMASIS KODEKSAS art. 118(1).

305. *Id.*

306. *Id.* art. 118(2).

307. The Code uses the term of "underage person" which means under the age of 14 years.

308. *Id.* art. 118(3).

309. SANTUOKOS IR ŠEIMOS KODEKSAS art. 17(1) § 2.

310. The draft defines rape along lines similar to the existing definition.

311. Defined as the act of a person, who against the will of victim, satisfies his or her sexual desires through anal, oral or inter-femural intercourse using physical violence or threats of imminent violence or exploiting the helpless state of victim.

312. Defined as the act of a person who, by using threats or blackmail or by taking advantage of a person's dependency, compels a person to have sexual relations with him/her or in some other fashion to satisfy the sexual desires of the perpetrator or a third person.

313. Defined as the act of a person who, in seeking sexual cooperation harasses a human being with vulgar or obscene acts, hints or suggestions.

314. Defined as the act of a person who performs sexual acts in the presence of a minor or encourages a minor to engage in sexual activity or demonstrates pornography to a minor or in other ways intellectually debauches him or her.

315. BAUDŽIAMASIS KODEKSAS art. 116(1).

316. *Id.* art. 116(3).

317. Giedre Purvaneckienė, *Violence against Women*, in WOMEN IN LITHUANIA (Women's Issues Information Centre ed., 1999) (visited Apr. 17, 2000) <http://www.undp.lt/wiic/women_in_lithuania/violence.html>.

318. Bendras kelių žinybų / įsakymas [Joint Decree of the Ministry of Health, Ministry of Interior and General Prosecutor's Office], Dėl informacijos apie sužalotus pateikimo tvarkos, No. 286/443/24 (May 28, 1996), VZ No. 55/1996, Pub. No. 1307.

319. Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas [Law on Equal Opportunities of the Republic of Lithuania] No. VIII-947 (Dec. 1, 1998), art. 2(3), VZ No. 112, Pub. No. 3100, official translation reprinted in Purvaneckienė, *supra* note 253, at 124.

320. Law on Equal Opportunities, art. 5.

321. *Id.* art. 8.

322. Lietuvos Respublikos administracinių teisės pažeidimų kodeksas [Administrative Law Offences Code] No. X-4449 (Dec. 13, 1984), art. 182[1](1), last amended by Law No. VIII-1486 (Dec. 21, 1999), VZ No. 113/1999, Pub. No. 3286 (the Code has been amended 113 times since its adoption).

323. *Id.* art. 182[1](2).

324. BAUDŽIAMASIS KODEKSAS art. 131[3](1).

325. *Id.* art. 131[3](2).

326. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOUR, U.S. DEPARTMENT OF STATE, LITHUANIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1998 § 5 (released Feb. 26, 1999) <http://www.state.gov/www/global/human_rights/1998_hrp_report/lithuani.html>.

327. Gintautas Sakalauskas, *Crime: Patterns and Trends*, in LITHUANIAN HUMAN DEVELOPMENT REPORT 1999, at 147 (visited Feb. 18, 2000) <http://www.undp.lt/HDR/1999/default.htm>.

328. WORLD FACTBOOK, *supra* note 1.

329. LITHUANIAN HUMAN DEVELOPMENT REPORT 1997, §1.1 (visited Feb. 17, 2000) <http://www.undp.lt/HDR/1997/chapter1/ch11_.htm>.

330. Irena Zaleskienė, *The Individual, Society and the State. Social Exclusion*, in LITHUANIAN HUMAN DEVELOPMENT REPORT 1998, at 21 (visited Feb. 18, 2000) <http://www.undp.lt/HDR/1999/default.htm>.

331. LITHUANIAN HEALTH PROGRAM, *supra* note 68.

332. ŠEIMOS POLITIKOS KONCEPCIJA [FAMILY POLICY CONCEPT] 38 (V.Stankûnienë ed., 1995).

333. CHILDREN AND FAMILY: LITHUANIA 1998, *supra* note 165, at 69.

334. LIETUVOS SVEIKATOS INFORMACIJOS CENTRAS [HEALTH INFORMATION CENTRE], ATASKAITA APIE ABORTUS [REPORT ON ABORTIONS] (1998).

335. Lietuvos Respublikos sveikatos apsaugos ministerija / įsakymas [Decree of the Ministry of Health of the Republic of Lithuania], Dėl nėštumo nutraukimo operacijos atlikimo tvarkos [Regulation on the Performance of Abortions] No. 50 (Jan. 28, 1994), §1.6, VZ No. 18/1994, Pub. No. 299.

336. SANTUOKOS IR ŠEIMOS KODEKSAS art. 16.

337. Lietuvos Respublikos civilinis kodeksas (projektas) [Draft Civil Code of the Republic of Lithuania], art. 3.14(3), 2 TEISES PROBLEMOS (1998).

338. STATISTIKOS DEPARTAMENTAS [DEPARTMENT OF STATISTICS], SANTUOKOS, ĮREGISTRUOTOS 1996 M., PAGAL JAUNAVEDŽIŲ AMŽIŲ [MARRIAGES CONTRACTED BY GROOM'S AND BRIDE'S AGE IN 1996] 9 (1997).

339. See LITHUANIAN HUMAN DEVELOPMENT REPORT 1997, *supra* note 329, §1.1.

340. BAUDŽIAMASIS KODEKSAS art. 121.

341. *Id.* art. 120.

342. *Id.* art. 118.

343. Violeta Rimkevičienė, Education, in LITHUANIAN HUMAN DEVELOPMENT REPORT 1998, at 89 (visited Feb. 18, 2000) <http://www.undp.lt/HDR/1999/default.htm>.

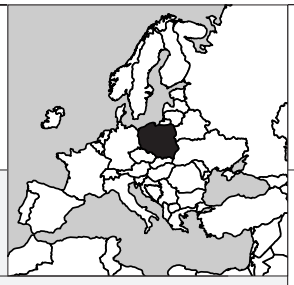
344. LITHUANIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1998, *supra* note 326, §§ 1, 5; INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS, LITHUANIA ANNUAL REPORT 1999 (visited Feb. 18, 2000) <http://www.ihf-hr.org/reports/ar99/ar99lit.htm>.

345. BAUDŽIAMASIS KODEKSAS art. 131[3].

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

6. Poland



Statistics

GENERAL

Population

- The total population of Poland is 38.7 million.[1]
- The proportion of the population residing in urban areas is estimated to be 65%.[2]
- Between 1995 and 2000, the annual population growth rate is estimated at 0.1%.[3]
- In 1999, the gender ratio was estimated to be 106 women to 100 men.[4]

Territory

- The territory of Poland is 120,728 square miles.[5]

Economy

- In 1997, gross national product (GNP) was USD $138.9 billion.[6]
- In 1997, gross domestic product (GDP) was USD $135,659 million.[7]
- The average annual growth between 1990 and 1997 was 4.1%.[8]
- From 1990 to 1995, public expenditure on health was 4.8% of GDP.[9]

Employment

- Women comprised 46% of the labor force in 1997, compared to 45% in 1990.[10]

WOMEN'S STATUS

- In 1999, the life expectancy for women was 76.9 years, compared with 68.2 years for men.[11]
- In 1997, the illiteracy rate among youth between the ages of 15 and 24 was 0% for females and 0% for males.[12]
- In 1998, gross primary school enrollment was 97% for girls and 99% for boys; gross secondary school enrollment was 81% for boys and 85% for girls.[13]

ADOLESCENTS

- 20% of the population is under 15 years of age.[14]

MATERNAL HEALTH

- Between 1995 and 2000, the total fertility rate is estimated at 1.53.[15]
- In 1998, there were 23 births per 1,000 women aged 15-19.[16]
- In 1998, the maternal mortality ratio was 10:100,000.[17]
- Infant mortality was at 15 per 1,000 live births.[18]
- 99% of births were attended by trained attendants.[19]

CONTRACEPTION AND ABORTION

- The contraceptive prevalence for any method (traditional, medical, barrier, natural) is estimated at 75%, and that for modern methods at 26%.[20]

HIV/AIDS AND STIs

- In 1999, the estimated number of people living with HIV/AIDS was 13,000.[21]
- In 1997, the estimated number of women aged 15-49 living with HIV/AIDS was 25.[22]
- In 1997, the estimated number of children aged 0-14 living with HIV/AIDS was 3.[23]
- In 1999, the estimated cumulative number of AIDS deaths among adults and children was 500.[24]

ENDNOTES

1. United Nations Population Fund (UNFPA), The State of World Population 1999 (visited July 13, 2000) <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 810.
6. The World Bank, World Development Report 1998/9, at 191.
7. *Id.* at 213.
8. *Id*. at 211.
9. *Id*. at 203.
10. *Id*. at 195.
11. The World Bank, World development indicators 1999, at 83.
12. *Id.*
13. *Id.*
14. CIA, Poland, World factbook (visited Sept. 23, 1999) <http://www.odci.gov/cia/publications/factbook/pl.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-Poland 3 (2000) (visited July 13, 2000) <www.unaids.org>.
22. UNAIDS & WHO, Epidemiological Fact Sheet on HIV/AIDS and Sexually Transmitted Diseases-Poland 3 (1998).
23. *Id.*
24. Epidemiological Fact Sheet on HIV/AIDS and Sexually Transmitted Diseases-Poland (2000), *supra* note 21, at 3.

In East Central Europe, Poland borders the Czech Republic and Slovakia to the south, Germany to the west, and Russia, Lithuania, Belarus, and Ukraine to the east.[1] The official language is Polish. Poland was among the first countries in East Central Europe to introduce open market reforms in 1990,[2] and it now possesses one of the most successful "transition" economies in the region.[3] Currently Poland is being considered for membership in the European Union (EU), and its prospects seem assured.

Poland is distinctive in the region for its strong Catholic affiliation, with 95% of the population being Roman Catholic and 75% defining themselves as practicing Catholics. The remaining 5% are a mix of Protestant, Eastern Orthodox and other denominations.[4] Ethnically, Poland is relatively homogeneous, with 97.6% of the population Polish, 1.3% German, 0.6% Ukrainian, and 0.5% Byelorussian. As of July 1999, there were 38.61 million people living in Poland — 19.85 million women.[5]

I. Setting the Stage: the Legal and Political Framework

Poland is a democratic republic[6] with a legal system that is a mixture of Continental (Napoleonic) civil law, with some persistence of the previous state socialist regime.[7] Its Constitution was ratified in October 1997.

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The government of Poland is based on a separation and balance of power between the executive, legislative and judicial branches.[8]

Executive branch

The power of the executive branch is vested in the president of the republic and the Council of Ministers (*Rada Ministrow*).[9] The president is elected by secret ballot in universal and direct elections and serves for a maximum of two five-year terms. A president must receive more than half of the valid votes.[10] The president of the republic reviews bills passed by the legislative branch and can either sign them, return them to the House of Representatives (*Sejm*) for reconsideration, or submit them to the Constitutional Tribunal for a review of their constitutionality. If a bill is returned to the *Sejm* and re-passed by a three-fifths majority vote of at least half the statutory number of deputies, then the president must sign the bill and may no longer refer it to the Constitutional Tribunal. If the Constitutional Tribunal finds that the bill conforms to the Constitution, the president must sign it. If the Tribunal finds the bill unconstitutional, the president cannot sign it.[11] As Poland's representative in foreign affairs, the president of the republic has the authority to ratify and renounce international agreements, appoint and recall representatives of Poland, and receive diplomatic representatives of other states, but the president is required to cooperate with the prime minister with respect to foreign policy.[12] The president of the republic is also the Supreme Commander of the Armed Forces.[13] He grants Polish citizenship and consents to its renunciation,[14] confers orders and decorations,[15] and has the power of pardon.[16]

The Council of Ministers conducts the internal affairs and foreign policy of Poland and is responsible for affairs of state not reserved to other state organs or local governments. In particular, the Council of Ministers implements statutes, issues regulations, ratifies international agreements, coordinates the organs of state administration, adopts a draft state budget, and implements the budget after its adoption by the House of Representatives.[17]

The president of the Council of Ministers is the prime minister, who is appointed by the president of the republic and the House of Representatives.[18] The prime minister proposes the composition of the Council,[19] manages the work of the Council, implements the Council's policies, and, like other ministers, issues regulations.[20] The *Sejm* oversees the activities of the Council of Ministers.[21] The Minister of Health and Social Assistance is responsible for health care policy and management.[22]

Legislative branch

The power of the legislative branch is vested in the House of Representatives and the Senate.[23] All representatives serve four-year terms that can be shortened by a vote of at least two-thirds of the statutory number of deputies or by order of the president of the republic.[24] The *Sejm*, which has much greater powers than the Senate, is composed of 460 deputies, elected by secret ballot in universal, direct, and proportional elections.[25] The Senate is composed of 100 senators elected by secret ballot in universal and direct elections.[26]

Legislation may be introduced by deputies, the Senate, the president of the republic, the Council of Ministers, or a petition signed by 100,000 citizens able to vote in *Sejm* elections.[27] The *Sejm* passes bills or resolutions by a simple majority vote of at least half of the statutory number of deputies, unless the Constitution requires a different majority for certain kinds of bills, or a statute or resolution requires a different majority for a given resolution.[28] Once passed by the *Sejm*, the Senate may amend it, adopt it, or reject it by simple majority vote.[29] The *Sejm* can amend or reject a Senate resolution by a majority vote.[30] The *Sejm*, by a majority vote of deputies present, can order a nationwide referendum on a matter of particular importance to the state. The president of the republic, with the consent of a majority vote of the Senate, can also order a referendum. A nationwide referendum is binding if more than half

of Poles eligible to vote have participated in it. A referendum's validity is subject to Supreme Court review.[31]

Judicial branch

The judicial branch consists of the Constitutional Tribunal,[32] the Tribunal of State,[33] the Supreme Court, the common courts, administrative courts and military courts.[34]

The Constitutional Tribunal adjudicates on the conformity to the Constitution of statutes, international agreements, actions of central state organs, and activities of political parties. It also hears individual complaints concerning constitutional infringements[35] and settles disputes over authority between central state organs.[36] The Constitutional Tribunal is composed of 15 judges chosen by the *Sejm* for non-renewable nine-year terms.[37] Rulings of the Constitutional Tribunal are final and binding.[38]

The Tribunal of State adjudicates cases involving normative acts initiated by the president of the republic, the prime minister, and certain other state officials.[39] The Supreme Court has appellate jurisdiction over common and military courts.[40] The Chief Administrative Court and other administrative courts exercise control over public administration and determine the conformity of local government resolutions.[41] Judges are appointed for an indefinite period by the president of the republic on the suggestion of the National Council of the Judiciary.[42]

The common courts are organized into three tiers below the Supreme Court: regional, provincial and appellate. Regional courts are courts of first instance, provincial courts have original jurisdiction over the most serious offenses, while also handling appeals from regional courts, and appellate courts handle only appeals from the provincial level. The Supreme Court handles appeals only about questions of law. In addition, common courts are divided into civil, criminal, labor and family jurisdictions.[43]

The government is further monitored by the Supreme Chamber of Control and the Commissioner for Citizen's Rights (Ombudsman). The Supreme Chamber of Control audits the organs of government administration, the National Bank of Poland, state legal entities, local government agencies, and other state organizational units to ensure the legality, economic prudence, efficacy and diligence of their activities.[44] The Ombudsman[45] reports annually to the *Sejm* and the Senate about the state of the freedoms and rights of the people of Poland.[46] The Commissioner is appointed by the *Sejm*, with the consent of the Senate, for a period of five years.[47] The Ombudsman may act when, upon the complaint of an individual or organization, violations of human rights and freedoms by public agencies and authorities are called to its attention.[48]

B. THE STRUCTURE OF TERRITORIAL DIVISIONS

Regional and local governments

The 1998 administrative reform significantly reduced the central government's administrative presence at the local level.[49] Local government has been reconstructed into 16 provinces (*Wojewodztwa*),[50] and the provinces are divided into districts (*Powiat*), each of which consist of several communes (*Gmina*), the basic units of local self-government.[51] Local governments perform all public tasks not reserved to other public authorities by the Constitution or statutes.[52] They have their own constitutive and executive organs,[53] property rights, and the right to levy local taxes.[54] Matters concerning the local community can be decided by referendum.[55] *Gmina*s have their own elections, which give them relative independence from central government. The *Gmina* Council is the legislative body, the mayor and municipal council are the executives.[56] The 350 democratically elected *Powiats* may also promulgate local regulations.[57] They also may execute at the local level some administrative and financial tasks of the state.[58] The *Powiat* is governed by its own legislative body (the Council), and an executive board.[59]

The highest level of local government is the *Voivod*, members of which are appointed partly by the central government and partly by newly created, democratically elected, regional assemblies (*Sejmiks*). The self-governing *Voivodship Sejmiks* are responsible for the development and implementation of regional economic policies and, like *Powiats*, have independent legal identities and independent budgets.[60] The *Voivod*s concentrate on regional policies that relate to cultural life and local activities, including health and pro-family policies.[61] Acts of local governments (*Gmina* and *Powiats*) are subject to review by the courts,[62] the prime minister, *Voivods*, and regional audit chambers.[63]

C. SOURCES OF LAW

Domestic sources of law

Poland has a civil law system.[64] The sources of universally binding law are the Constitution, statutes, regulations and ratified international agreements.[65] The Constitution is the supreme law and is directly applicable.[66] Ratified international agreements become part of the domestic law and are directly applicable.[67] They have precedence over domestic law and are second in the hierarchy of laws.[68]

Regulations implement statutes.[69] Resolutions of the government and orders of the premier and ministers are binding only on subordinate officials. They may not, therefore, constitute the basis of decisions concerning citizens, legal entities, and other subjects.[70] Resolutions and orders must comply with

universally binding law.[71] Acts of local bodies are a source of universally binding law in the territory of the organ issuing such acts.[72] According to Article 190(1) of the Constitution, judgments of the Constitutional Tribunal also have universal binding application. Finally, common law, when not in contradiction to statutory law, is another source of binding law.[73]

International sources of law

International agreements are concluded by the Council of Ministers[74] and are ratified by the president.[75] If an international agreement concerns peace, alliances, political or military treaties; constitutional freedoms, rights or obligations of citizens; Poland's membership in international organizations; considerable financial obligations; or matters normally regulated by statute, then consent must be granted by statute before the agreement can be ratified.[76] The state may, by virtue of international agreements, delegate to an international organization the competence of state organs in relation to certain matters.[77] The ratification of such international agreements requires consent through a statute passed by two-thirds of the *Sejm* and by two-thirds of the Senate.[78] Such statutes may also be passed by a nationwide referendum.[79]

Since 1980, Poland has been a state party to the Convention on the Elimination of All Forms of Discrimination Against Women.[80] Poland has also ratified the International Covenant on Civil and Political Rights,[81] the International Covenant on Economic, Social and Cultural Rights,[82] the First Optional Protocol to the International Covenant on Civil and Political Rights,[83] the Convention on the Rights of the Child,[84] the International Convention for the Elimination of All Forms of Racial Discrimination,[85] and the European Convention of Human Rights.[86] The European Agreement, signed on December 16, 1991 by the Republic of Poland to associate with the EU, obliges Poland to "harmonize" its law with that of the EU.[87]

II. Examining Health and Reproductive Rights

Reproductive rights were not discussed during the period of state socialist rule, and unfortunately, little has changed since the transition. Generally, all governments have ignored in official state strategies, policies and program issues of women's reproductive health and rights, with the exception of abortion. Access to abortion has become considerably more difficult since 1989.

A. HEALTH LAWS AND POLICIES

The Constitution guarantees every citizen the right to health care financed by the state.[88] The Constitution also obliges authorities to pay special attention to the health of children, pregnant women, disabled persons and the elderly.[89]

Reform of the health care system is one of four major reforms implemented in Poland since January 1, 1999. (The others are reform of the social security system, education and state administration). Its cornerstone is the elimination of direct state financing of the health service.[90] In 1998, there were 8,461 medical clinics and health care centers in Poland, 5,256 situated in urban areas and 3,205 in rural areas.[91] There are 715 general hospitals, and eight have specialized maternity departments,[92] representing a marked decrease since the early 1980s. Poland has a high ratio of health care professionals per inhabitants: one doctor is responsible for 424 persons, while one nurse is responsible for 178.[93] There are 6,341 gynecological specialists,[94] while 24,434 midwives work in hospitals and other medical centers.[95] In 1998 there were 727 hospital beds per 100,000 inhabitants.[96]

A number of laws regulate the provision of health care services: the law on health care institutions;[97] the law on national health insurance;[98] the law on the medical profession;[99] the law on care of the mentally disabled;[100] the law on family planning, protection of the human fetus and conditions of legal abortion;[101] and the law on the profession of nurse and midwife.[102]

Objectives of the health policies

The Polish government first set forth a National Health Program (NHP) in an interministerial document signed on September 3, 1996.[103] The NHP is based on the World Health Organization (WHO) strategy of "Health for All in the Year 2000."[104] The strategic goal of the NHP is to better public health by focusing on improving access to health care services and reforming lifestyle and environment risks.[105] The NHP addresses women's health and reproductive rights only insofar as two of its goals are to prevent premature births and to detect and prevent breast cancer.[106]

A women's health policy was taken up in the 1997 National Program of Actions for Women, under the governmental Office of Plenipotentiary for Family and Women.[107] The program was never implemented.[108] In 1997, the Office became the Plenipotentiary for Family Affairs, and according to the legal act adopted by the government on November 7, 1997, the new office's mandate no longer includes women's issues and gender equality.[109] As a result, the women's health policy has been left to languish.

Poland has had in place since 1993 a National Program for Development of Prenatal Care. Its goal is to reduce the number of illnesses and deaths among mothers and newborn children;[110] its actions are carried out on the regional level.[111] The national health policy of Poland therefore considers women

principally as mothers and devotes most of its women's health resources to pre-, peri- and postnatal care. The health care needs of women who wish to avoid childbearing and of postmenopausal women are not well met.

Implementing agencies

The Ministry of Health is charged with organizing and implementing public health care services and is in the process of reforming the health sector to promote decentralization and privatization. Under these reforms, responsibility for outpatient primary and specialty care services, as well as some inpatient care, has been transferred from the central government to large cities and local government service areas. Furthermore, authority previously held by central government officials has been delegated to managers of independent and relatively autonomous health institutions, including hospitals and publicly owned integrated health care maintenance organizations know as ZOZs.[112] The NHP is largely implemented by local governments, local communities and NGOs.[113] The National Health Institution is in charge of negotiating contracts with health care providers and paying for treatment provided to insurance holders.[114]

Infrastructure of health services

Almost all primary care services are provided through polyclinics. A polyclinic is typically staffed by a multi-specialist team, consisting of an internist, pediatrician, gynecologist, and a dentist,[115] with frequent use of referrals to other specialists after an initial consultation.[116] Clinics located in the urban areas have a larger number of physicians and support staff than rural facilities. Outpatient clinics in urban areas usually have superior equipment and facilities, such as analytical or diagnostic laboratories, and many have separate dispensaries for children and women. They may also have dental or other specialist dispensaries. In 1991, there were 3,311 outpatient clinics, 1,903 of which were in urban districts.[117]

Approximately 95,000 people — 14% of all public health service employees — work in primary health care. However, their distribution among health facilities is uneven. The number of doctors per 10,000 inhabitants ranges from 11.4 in the rural Siedlce *Vóivodship* to 38.4 in the Warsaw area. The ratio of physicians employed in primary health care relative to those working in hospitals or in specialized care appears to be insufficient: of all physicians in Poland, only 16% (14,000 doctors) are involved in the primary health care sector.[118]

Much of Polish health care is provided through publicly owned integrated health care maintenance organizations known as ZOZs, which combine primary and specialist care and, in some cases, inpatient services. The central government devolved ownership of public sector health care providers to local and provincial governments in 1993, so that now most hospitals are owned by provincial governments. Under a provision of a 1995 law, Poland's 46 large cities ("*Gmina*") were offered ownership over primary care providers, including polyclinics, specialist clinics, public health providers and a few hospitals that were included in the related ZOZs. Local governments outside of large cities (also called *Gmina*) were given authority over primary care facilities in their jurisdiction.[119] Inpatient care is provided by the *Vóivodships* through hospitals, and each hospital has a minimum of four wards: internal medicine, surgery, gynecology and obstetrics, and pediatrics.[120] Legislation from 1991 allowed hospitals to function as "independent units," operating according to commercial law.[121]

A significant development for patients in the current health care reforms is the creation of family practitioners (FPs) who act as "gatekeepers." Patients are no longer permitted to go straight to a specialist. They must first register with an FP, who will assess the need for additional services. Although patients can visit FPs and hospitals of their choice, they must select doctors and institutions within their own province.[122] This applies only to ZOZs, not to private clinics.

Cost of health services

Before 1989, the state socialist government provided all health care services. These were financed out of the national budget and managed by the Ministry of Health. Private practice was officially legal, but available only to those who had connections and could pay. Since 1989, government reforms created a system of national health insurance based on payment of premiums that entitle the contributor to a defined package of benefits. Eligibility is no longer automatic for all citizens, although coverage is intended to be virtually universal. Health care services are provided through state-owned or autonomous hospitals, clinics, and ZOZs that receive contracts and payments from a system of insurance funds. Private health care providers may also be approved and receive payments through insurance, under certain conditions.[123]

The government no longer fully finances the operations of the health care system. Since January 1999, all employed citizens were obliged to pay 7.5% of their income[124] in the form of a mandatory, tax-deductible health insurance premium.[125] Those who are unemployed must register at the Bureau of Unemployment and Social Welfare Centers in order to obtain a waiver and receive insurance coverage. Family members are considered dependents and receive coverage under the insured principal. Retired pensioners make no contribution but are covered. The Ministry of Health pays for the care of orphans, persons on permanent welfare, and the poorest agricultural workers.[126] Additionally, article 8 of the Law on Health

Insurance guarantees to every insured person the use of public health services at no charge. Under this article approximately 97% of the population is entitled to free medical care.

The new health insurance system is executed through 16 fully autonomous funds known as "Sick Funds" (*Kasa Choryc*h),[127] one for each *Vóivodship*. There is also one nationwide fund for individuals in the uniformed services. The Funds' main purpose is to provide the best possible medical care, as far as their budget will permit, to all insured persons,[128] and thus cover the costs of medical consultations, diagnostic services, medical treatment, medical rehabilitation, nursing assistance, pre-, peri- and postnatal care, preventive care, and basic medicines.[129]

While these health care reforms have been implemented only starting in 1999, already there are concerns related to accessibility of specialized medical services and the ability of the poor to access quality health services.[130] The Ombudsman has raised serious questions about the constitutionality of the Law on Health Insurance, and it is expected that the government will take up this matter eventually.[131] In 1994, the health budget was 13.8% of the total state budget, increasing to 15.4% in 1996 and falling to 13.3% in 1998. The health expenditure per capita increased from USD $111.50 in 1994 to USD $167 in 1996.[132] Total public expenditures for the health care system constituted 4.24% of Poland's GNP in 1997.[133] Private health insurance was not possible until 1999 — foreign companies were not allowed to sell it, and Polish companies did not offer health coverage.[134]

One irony in Poland's health care system reforms involves the government's inattention to EU directives.[135] Poland was among the first wave of East European countries to apply for EU membership, but it participates in none of the four EU projects on health: health promotion; prevention and treatment of AIDS; prevention of cancer; and prevention of alcoholism.[136] Moreover, there is limited financing of health clinics for women, particularly those specializing in the prevention of women's illnesses (including cancers). This limited financing directly affects the availability of professional counseling and treatment for such diseases.[137] Finally, although family planning services are included in the package of free health care services available to women, the government dropped five of the eight contraceptives designated for reimbursement from the schedule of covered medications.[138]

Regulation of health care providers

The Law on the Medical Profession[139] and the Code of Ethics[140] regulate health care professionals, who are obliged to respect human rights and protect the dignity of individuals who use their services.[141] The Law on the Medical Profession defines the conditions under which one may practice medicine. To become a physician, one must study medicine at a university, and upon graduation, pass the state examination. Physicians are required to register with the National Court of Physicians. They also have an obligation to continue their education and to take post-graduate courses designed for this purpose.[142]

All doctors are required to join the Chamber of Physicians, which is organized both nationally and regionally.[143] The highest authority in this medical self-government is the National Congress of Doctors; each regional chamber has its own congress as well. The National Court of Physicians, regional courts, the National Spokesman for Professional Responsibility and regional spokespeople also operate within the medical profession's self-governing structures.[144] The professional self-governing bodies of physicians are supposed to regulate the quality of work and ethics of medical services.[145] Any person dissatisfied with medical service rendered can complain and press charges with regional chambers or can directly exercise his or her rights in a court of law. The Ombudsman is also entitled to lodge a complaint or initiate any form of legal action where there is a possibility of a rights violation.[146]

The professions of nursing and midwifery are regulated by Law No. 410/1996 and the Midwifery regulations,[147] which were part of the broader health care reform. The law established a new three-year nursing curriculum that emphasized the professional aspects of the nurse's role and fostered the development of a curriculum that met European nursing and midwifery standards of education and training.[148] The new curriculum includes many new subject areas, such as mental illness, health promotion and research. In 1999 a new Institute of Postgraduate Education for nurses and midwives was established.[149]

Polish pharmacists are organized into the Polish Pharmaceutical Chamber, whose organization is regulated by a 1991 law.[150] The main bodies of this Chamber are its Council, Commission, Court and Spokesperson. Similarly to physicians, pharmacists in 1993 adopted their own Code of Ethics.[151]

Patients' rights

There is no single document concerning patients' rights. Regulations on specific rights are included in different documents: the laws on health care and insurance; the law on the medical profession; regulations for specific clinics and hospitals; and the general codes of medical ethics. Article 39 of the Constitution forbids scientific experimentation, including medical experimentation, without the voluntary consent of the individual.

The Law on the Medical Profession provides that the patients have the right to medical care, delivered in accordance with modern prevailing medical standards, treatment, and professional ethics.[152] Patients have the right to all information on

the state of their health, the physicians' diagnosis, and all possible courses of treatment; patients are entitled to know the possible negative consequences, as well as positive, of such treatments.[153] Patients have the right to consent to or refuse examination or other treatments.[154] The patient's informed consent for operations or other interventions must be obtained.[155] Patients have a right to any information about modifications a doctor has made during a course of treatment, due to risks of health or life.[156] A physician must respect the privacy and dignity of the patient.[157] Patients have the right to consent to, or refuse, the presence of persons other than a physician or medical staff.[158] All medical professionals must keep confidential any information about a patient gathered during the course of medical treatment.[159]

The consent of the patient is required for all diagnostic, therapeutic and preventive procedures. If the patient is unable to give informed consent, it should be given on his or her behalf by the patient's statutory representative or a person having permanent care of the patient. If the patient refuses to give consent for a proposed procedure, the physician should, as far as possible, continue to provide medical care for the patient.[160] Should a patient successfully prove that a violation of his or her rights has occurred, courts can fine doctors, although actual damages are limited to losses.[161] Responsibility for medical malpractice can be criminal and civil as well as involving discipline meted out through a professional body.[162]

The Criminal Code punishes any person who performs a medical procedure without the patient's consent with a fine, limitation of freedom, or imprisonment for up to two years.[163]

General provisions cover cases where serious harm was done to another person's health, and these carry possible prison terms of between one and ten years.[164] The provisions of the Criminal Code on battery, assault, manslaughter, murder, or physical or psychological mistreatment of family members or dependent persons also apply.

It is the duty of the Chamber of Physicians to supervise and discipline their members on issues of medical ethics.[165] Physicians must answer to medical courts for any conduct contrary to principles of professional ethics or laws regulating the practice of medicine.[166] Medical courts can issue a reprimand or a warning, can suspend the right to practice the medical profession for a period of six months to three years, and can permanently deprive the physician of the right to practice the profession.[167] Disciplinary proceedings do not exonerate doctors from separate civil or criminal responsibility.[168] An accused physician has the right to designate defending witnesses and to seek counsel from among physicians and attorneys.[169]

There are some policies that may conflict with the guarantee of patient rights, particularly where the right to information[170] concerning family planning is concerned.[171] The head of the National Court of Physicians has given clear direction that doctors may refrain from prescribing contraception if it is against the dictates of their consciences,[172] and doctors are under no obligation to refer or provide patients with additional information and alternatives.[173] There are additional concerns regarding patients' rights as rights to privacy and respect of patient's dignity are systematically violated.[174] Moreover, health care workers receive no human rights education in their professional training.[175]

B. POPULATION POLICY

As is the trend in many European nations, there is an observable decline in Poland's birth rate. Families are having fewer children: in 1980, there was an average of 2.27 children per family; in 1995, that dropped to 1.61 children per family,[176] a rate demographers estimate falls below the level needed to maintain current population numbers.[177] Since 1992 the average life expectancy of men and women has been increasing — in 1997, it was 77 years for women and 68.5 for men. Infant mortality has decreased. The number of infant deaths per 1,000 live births dropped from 19.3 in 1990 to 10.2 in 1997[178] and 9.5 in 1998.[179] In 1998, there were 22,000 more births than deaths.[180]

In response to a perceived population decline, the Polish government has adopted a pronatalist ideology. This ideology is reflected in the Polish Constitution, which states that "marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland."[181] Article 71 of the Constitution specifies that "(1) The state, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances — particularly those with many children or a single parent — shall have the right to special assistance from public authorities; and (2) A mother, before and after birth, shall have the right to special assistance from public authorities."

Poland's restrictive abortion and family planning laws constitute a de facto population policy that is both Catholic and pronatalist. Its employment laws and policies promote motherhood and make it difficult for women who do not take advantage of these state benefits to raise their children and to reenter the labor force on the same footing as men. Most recently, the government submitted a pro-family tax relief bill to the *Sejm*. The bill would reform the current tax code to give preferential treatment to families with at least two children and low incomes.[182]

The government's pronatalist position is also expressed through a very restrictive abortion law, a lack of policies that promote and subsidize family planning programs, and its

withdrawal of support for modern hormonal contraceptives for women while considering state-supported access to the male impotence drug Viagra. Family planning services are generally not provided in the public health system and sterilization is illegal.[183] There are inconsistencies in this position, however. For instance, the allowance for extremely poor pregnant women is symbolic, and not all entitled women have received it.

C. FAMILY PLANNING

The Polish government committed itself to the 1994 International Conference on Population and Development Programme of Action, but has taken no practical action to fulfill this commitment. Family planning is officially included on the list of basic health care services provided by the state, but there are no systematic family planning services offered in its public health care institutions.[184] The United Nations Human Rights Committee has recently noted the insufficiency of public family planning programs and recommended Poland introduce policies and programs that would promote full and non-discriminatory access to all methods of family planning and that it reintroduce sex education in public schools.[185]

The NHP aims to improve health in the sphere of women's reproduction, including in particular health services and counseling for women about family planning. Financed by the government and by funds from the United Nations Development Program (UNDP), a program called "Promotion of the Health of Mother and Child With Special Focus on Family Planning" was implemented by Poland. Its long-term aim is to improve the health of mothers and children as well as to reduce the number of unplanned pregnancies through the improvement of reproductive health services, including information, education, and communication about family planning.[186] NGOs were critical of this program due to its strong bias toward natural family planning. Another government program, "Perfecting Care of Mother and Child," seeks to reduce infant mortality to less than 10 deaths per 1,000 live births by the year 2000 (it was achieved in 1998). It also aims to reduce prematurity and the frequency of births of low-birth-weight babies. The program created local coordinated systems of care for pregnant women and newborn babies.[187]

Services provided by NGOs/private sector

The only institutions in Poland providing a full range of reproductive health services are non-governmental organizations: a small network of Centers for Family Development ("Towarzystwo Rozwoju Rodziny," an International Planned Parenthood Federation affiliate offices with 10 branches, five specialized clinics and eight counseling centers) and the Federation for Women and Family Planning.

The branches of the Centers for Family Development organize regular information and education courses for young people, teachers, parents, and professionals on different aspects of sexual health and human reproduction. Recently, youth groups have been set up in five branches, aiming to develop youth-to-youth activities. The clinics provide free-of-charge psychosexual, legal, and family counseling.[188] The Ministry of Health and Social Welfare partially subsidizes some of these services so they can be offered free of charge by the network.[189]

The Federation for Women and Family Planning defends women's reproductive rights through lobbying and advocacy activities. The Federation provides information and services on reproductive health — mainly family planning, prevention of sexually transmissible infections (STIs) and HIV/AIDS, reproductive tract infections, post-abortion counseling, and prevention of female cancers. Its publications on sexuality, women's reproductive rights and health, family planning, sex education, and other related issues are distributed through NGOs and health care centers.

D. CONTRACEPTION

Prevalence of contraceptives

Official data concerning the use of different family planning methods by married women older than 15 years reveal that 29.3% use no form of birth control, 27.4% use the rhythm method, 22.6% practice sexual intercourse without ejaculation (*coitus interruptus*), 14.2% use condoms, 5.1% use hormonal contraceptives, and 4.4% use IUDs.[190] Mass media opinion polls, on the other hand, indicate that most people favor *coitus interruptus* (45.8%) as their primary means of contraception.[191] They also found that natural family planning is used by 35% of all Poles and that 31.8% use condoms. Some less common methods are the basal body temperature method (7.7%), ovulation control (7.3%), and spermicidal IUD (7.1%). Hormonal contraceptive pills are used by 6.3% of women, spermicide by 5.3%.[192] Although there are no official statistics on the use of family planning services,[193] there are some data on the sale of contraceptives: in 1997 there were 3,321 packs of hormonal contraceptives sold in pharmacies; in 1998 this number grew about 27.8%, to 4,243 packs.[194]

Legal status of contraceptives

There are more than 20 hormonal contraceptives approved and registered for sale in Poland.[195] Up until 1998, eight brands of oral contraception were completely subsidized by the state budget. In 1998, the government withdrew subsidies for five of these contraceptives.[196] The types of oral contraceptives that receive subsidies are high estrogen and do not meet the needs of most women. The Federation for Women and Family Planning made an official complaint to the Polish Ombudsman for

Human Rights about the withdrawal of state subsidies. Despite the Ombudsman's finding that this withdrawal constituted a discriminatory practice, the government has not reversed its decision.[197]

The legal status and use of contraceptives is influenced by the position of the Catholic Church. Catholic media and organizations promote natural family planning and campaign against contraceptives by using the arguments that contraceptives are sinful and harmful.[198] The Church's propaganda against family planning in sermons, confessions, and religious classes affects even doctors, who do not prescribe contraceptives for fear of being criticized by the Church.

Contraceptives have the same legal status as any other pharmaceutical product.[199] All pharmaceutical products and medical articles, other than those specified, must be entered in a register overseen by the Commission on the Registration of Pharmaceutical Products and Medical Articles. Before they can be entered in the register, they must undergo laboratory and clinical trials. The manufacture of articles and products must be authorized by the Ministry of Health. The law also regulates the importation of products, requirements for pharmacies, the State Pharmacy Inspectorate, and penalties. Pharmacies can apply for a special exemption from carrying specific products, contraceptives included.[200]

Regulation of information on contraception

There are no formal restrictions on advertising contraception and birth control methods. However, there is not much of a climate for the dissemination of such information as there are no official programs or guidelines regulating professional counseling on family planning matters.[201] Many physicians do not know about, or are personally opposed to family planning and do not inform their patients about birth control methods.[202] Consequently, 45% of women have never been encouraged by their gynecologists to use birth control.[203] Physicians are shielded by the Code of Medical Ethics, which obliges them to inform patients about contraception only if asked directly.[204]

E. ABORTION

Statistics on the number of abortions conducted in Poland are not available. Official data comes only from public health care institutions, and most abortions take place in private clinics. Unofficial documents suggest that between 30,000 and 200,000 abortions are performed, most illegally. More accurate figures put the estimate at 40,000 to 50,000 illegal abortions.[205] Based on official documents alone, the number of abortions would appear to be declining. After implementation of the Abortion Law in 1994, the official number of abortions performed in public hospitals was 847; in 1995, it was 570; in 1996, 505.[206] When the law was liberalized in 1997, there were 3,047 officially registered abortions at public health care institutions,[207] but the official number of abortions declined abruptly again in 1998, to 310.[208] These statistics suggest that women go to private clinics for abortions, whether or not they are authorized by law, or terminate their pregnancies abroad.

Legal status of abortion

Abortion had been legal in Poland since 1956. From 1956 to the early 1990s, abortion in practice was available upon request up to 12 weeks from the presumed date of conception if the woman faced "hard life conditions," or had a "difficult personal situation."[209] Abortions were free of charge when performed in public hospitals and were subject to a fee if done in private clinics. [210]

In 1990, Catholic groups initiated a campaign against abortion. Physicians, too, declared themselves to be against abortion, and in 1992 adopted a Code of Medical Ethics that permitted abortion only to save the mother's life and health or when pregnancy resulted from a criminal act.[211] Because of these Code revisions, legal abortion became practically inaccessible in public hospitals and extremely expensive in private clinics. In 1993, the government adopted an anti-abortion law that was similarly restrictive. According to this law, abortion was legal only if a woman's life and health were threatened, when the pregnancy was the result of a crime, or in cases of severe fetal abnormality.[212] After more than three years of debate, however, the *Sejm* in 1996 passed the Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion, commonly known as the Polish Abortion Law.[213] It significantly liberalized the 1993 law, permitting abortion for social and economic reasons.[214] The Constitutional Tribunal in 1997 restricted the Polish Abortion Law,[215] reasoning that the "social indicators" mentioned were unconstitutional.[216]

Currently, abortion is allowed in Poland only in three situations:

1. The pregnancy endangers the health or life of the mother. This must be diagnosed by a physician who will not be conducting the abortion.

2. A prenatal examination shows a high probability that the fetus has irreversible and severe disabilities or an incurable disease which endangers its life. These conditions must be diagnosed by a physician who will not be conducting the abortion.

3. The pregnancy is due to a criminal act. This must be established by the state prosecutor.[217]

Abortions for reasons of life and health or fetal impairment are permissible only until the fetus is capable of living outside the

womb. Abortions where pregnancy results from a criminal act are possible only during the first 12 weeks of the pregnancy.[218]

Requirements for obtaining legal abortion

The woman must consent in writing to have an abortion.[219] In case of a minor girl or a completely "incapacitated" woman, the written consent of her legal guardian is necessary. Girls over 13 years of age can give their own written consent. Incapacitated women must give their written consent as well, unless their mental state renders them incapable of consenting. If there is no consent of the legal representative, the consent of the guardianship court is required.[220]

Abortion is legal only if conducted by a doctor in a hospital, except when the pregnancy was due to a criminal act. In such cases, abortions may be performed in private clinics.[221] Women who are insured have the right to an operation free of charge in a public health care institution.[222] Abortions can be also conducted in a private clinic provided they meet the legal criteria.[223] Doctors who perform abortions and doctors who ascertain the necessity of abortion must meet professional qualifications set by decree of the Ministry of Health.[224]

There is room for interpretation of the law; however, hospital administrators often narrowly construe provisions.[225] There is no central or effective mechanism for overseeing hospital policies, and hospital administrators who do not approve of abortion may ignore the opinion of doctors. Sometimes directors promulgate policies that make it nearly impossible for women to access abortion services.[226] The conscience clause gives an individual doctor the right to refuse to perform abortion. Although it requires the doctor to direct the woman to a physician who will perform one, in practice, these referrals are rarely made.[227]

Prenatal testing

The Polish Abortion Law also requires authorities to provide information and free prenatal screenings for all pregnant women, particularly if there are high risks of genetic defects or possibilities of incurable diseases.[228] Prenatal examinations that do not significantly enhance the risk of miscarriage are permitted if the child comes from a family with genetically transmitted defects, if it is suspected that the fetus suffers from a genetic disease that can be cured, controlled or limited during the fetal period, or if it is suspected that the fetus is seriously injured.[229]

Nonetheless, prenatal screenings are rare, as most physicians do not refer women to those examinations for a variety of reasons, including objections on the basis of conscience. Moreover, a provision to punish anyone (including physicians) who threatens or provokes physical harm to a fetus was signed into law on July 29, 1999. It carries a sentence of up to two years in prison.[230]

Government funding/subsidizing of abortion services

Legal abortion for women who are insured is covered by health insurance when it takes place in public health care institutions.[231] Since the law on abortions is so restrictive, however, most abortions that take place are illegal. Women seeking abortion either find a doctor who will perform it illegally, or they go abroad. The average price of an illegal abortion is USD $400, but the procedure can cost as much as USD $800. Abroad, an abortion can be as much as USD $1,300.[232]

Penalties for abortion

Performing an abortion outside of the framework of the Polish Abortion Law is illegal.[233] Anyone who conducts an abortion with the prior consent of a woman, or who assists a pregnant woman in obtaining an illegal abortion or persuades her to do it,[234] can be punished with up to three years of imprisonment.[235] If an illegal abortion causes a woman's death, the jail term is between one and ten years.[236] If an abortion is performed on a fetus capable of living outside of the womb, the sentence is increased up to an additional eight years of imprisonment.[237]

Anyone who uses physical or psychological force upon a pregnant woman to cause a miscarriage or abortion, without her prior consent, can be sentenced to between six months and eight years in prison.[238] If such force causes the death of a fetus capable of living outside of the womb, an additional sentence of between one and ten years of imprisonment is imposed.[239] If such actions cause the death of the woman, the sentence may be increased to up to 12 years of prison.[240] A woman who seeks or undergoes an illegal abortion cannot be criminally prosecuted.[241] A mother can be punished if she kills her child while giving birth.[242]

Should an abortion seriously damage a woman's capacity to procreate, there can also be criminal liability.[243] Harming the body of the fetus or upsetting its health and endangering its life is subject to a fine or imprisonment of up to two years.[244] These acts are not crimes if they are performed by a doctor during medical procedures that are carried out to remove the threat to the life or health of the pregnant mother.[245]

Regulation of information on abortion

There is no specific legislative prohibition on advertising legal abortions, and hidden advertisements exist. Individual doctors and cooperatives regularly place advertisements such as "Gynecological services — full range" in both the national and the local press.[246]

Religious definitions/restrictions

The Catholic Church has been the driving force of the campaign against abortion and family planning. It has also

played a crucial role in the failure to implement sex education programs. The Church acts through sermons, media campaigns, and close cooperation with Christian National parties and pro-life organizations. The crusade against abortion began during the state socialist period. Between 1970 and 1980, the Church established organizations such as Concern for Life and Gaudium Vitae (Joy of Life), which launched a campaign against abortion and family planning. In the 1980s, these organizations were supported by trade unions and Lech Walesa.[247]

The key role the Church played in bringing down state socialism assured its lasting influence on legislators and the government. The majority of the society, despite its Catholicism, does not support the ban on abortion. However, the direct involvement of the Church — particularly the role of Pope John Paul II — obstructs the establishment of a stronger, better organized and more effective pro-choice movement.[248] An amendment has been offered to the Law on the Medical Profession that would replace the world "fetus" with "conceived child." Along with other proposed amendments to establish a definition of "life" from the moment of conception, this is an attempt to criminalize all abortions.[249]

F. STERILIZATION

Sterilization as a method of family planning is illegal. Even with the written consent of the patient, sterilization is considered to be a criminal injury, and carries a penalty of up to 10 years in prison.[250] However, sterilization operations used to be performed under various pretenses, usually when the doctor viewed the patient's situation as non-conducive to having children, such as when the mother has a mental disability.[251]

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

Prevalence of HIV/AIDS and STIs

There were 5,591 cases of HIV infection officially registered in Poland by the end of 1998.[252] Of the 794 people diagnosed with AIDS by June 30, 1999, 431 have died.[253] The Ministry of Health officially estimates that there are between 25,000 and 30,000 people in Poland living with HIV/AIDS,[254] most not officially registered. Women make up 24.9% of HIV-positive individuals;[255] 86% of HIV-positive individuals are drug addicts.[256] Official statistics report 2,152 cases of STIs for 1998, out of which 843 are women.[257] The number of STIs has decreased in the last three years — from 2,788 in 1996 to 2,340 in 1997, and 2,152 in 1998.[258]

Laws affecting HIV/AIDS and STIs

The revised Criminal Code makes it a crime to directly and knowingly expose a person to HIV infection or another sexually transmissible infection.[259] Individuals with HIV/AIDS, identified by anonymous testing, must be informed about their status, and about legal consequences of infecting other people. Anyone who knowingly infects another person with the HIV virus can face three years of imprisonment.[260] Any person who knowingly infects another person with an STI can be fined or imprisoned for up to one year.[261]

Mandatory screening for HIV takes place whenever blood is donated[262] and during all hospital and clinic admissions,[263] even though there are no legal requirements to do so. Examination is also obligatory for people working in schools and other educational institutions.[264] Some employers demand that employees be tested. A doctor has no legal or ethical right to refuse to treat an infected patient. Women infected with HIV/AIDS do have a right to be informed about consequences for children should they become pregnant.[265] Presumably, positive HIV status should be grounds to obtain a legal abortion.

Policies on prevention and treatment of HIV/AIDS and STIs

In 1996, the Ministry of Health introduced the National Program for the Prevention of HIV Infection and the Care of Persons Living with or Suffering from HIV/AIDS (National Program). The National Program's main task is to prevent transmission of HIV.[266] An order of the Ministry of Health and Social Welfare established the AIDS Council as an advisory body to the Ministry of Health. The Council's functions include implementing the National Program, analyzing epidemiological data and social needs with regard to diagnosis, treatment, prevention and social issues, and formulating systems for evaluating the quality of programs. It is also to serve as a coordinating body between the Polish government and NGOs.[267] The work of the Council and of the National Program leaves something to be desired. There are no public education campaigns promoting condom use and safe sex. There is no sex education in the schools. There is no reliable source of information about immediate prevention of HIV/AIDS, or how to behave when there is a possibility of infection.

Conclusions

Reproductive health care in Poland is in a particularly critical situation. Abortion remains effectively illegal under the 1993 law, and although such a restriction should make access to family planning services a high priority, such services are generally not provided in the public health care system. Women do not have adequate access to contraception due to lack of the state subsidies, insufficient knowledge of the medical community, and the lack of any public education programs.

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

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

The Polish Constitution grants men and women full and equal rights and freedom from discrimination on the basis of sex. Article 32(1) affirms the principle of equality before the law and public authorities. The second paragraph bans discrimination in political, social, or economic life "for any reason whatsoever." Article 33 guarantees equality between men and women: "(1) Men and women shall have equal rights in family, political, social, and economic life in the Republic of Poland. (2) Men and women shall have equal rights, in particular, regarding education, employment, and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honors and decorations." To implement these provisions, the Parliamentary Group of Women introduced a bill on the equal status of the sexes, but it was rejected in March 1999 by the Polish Parliament.

B. CIVIL RIGHTS WITHIN MARRIAGE

Marriage laws

The Polish Constitution defines marriage as "a union of a man and a woman, as well as the family, motherhood and parenthood."[269] The Family and Custody Code, dating from February 25, 1964, is still in force.[270]

The legal age for first marriage is 18 years of age.[271] With court permission, however, girls may be married at age 16.[272] Prohibited from marrying are individuals who are deprived of civil rights, who are mentally ill or disabled, who are already married, who want to marry those within two degrees of relation, or who want to marry an adopted child.[273] An exception can be made for an individual with mental or physical disability if it can be shown that the disability will not affect any future children's health.[274] Bigamy is punished with a fine or up to two years of imprisonment.[275] A 1998 Concordat with the Vatican has put religious marriage on the same footing as civil marriage.[276] Other religious marriage ceremonies can have the same status as civil ones provided they are so authorized by the law. Priests are obliged to report church weddings to the registrar's office.

Both the Constitution and the Family Code affirm the equality of men and women in marriage.[277] This includes sharing responsibility for the home and property, earning a living, and making important decisions together.[278] Decisions regarding property must be made by both spouses together.[279] Spouses are obligated to cohabitation (including physical relationship),[280] mutual help and faithfulness, and cooperation for the benefit of the family.[281] Each spouse has to contribute to the family needs according to his or her earnings.[282] Spouses have equal rights and obligations with regard to their children.[283] A woman may retain her family name or add her husband's family name to her own, provided that she declares so when she agrees to marry; a man need not make such a declaration.[284] Children of a married couple automatically receive the father's family name unless a declaration is otherwise made.[285] Children born to unmarried couples take the mother's family name unless the father otherwise agrees.[286]

The Polish Family Code does not regulate the status of a heterosexual couple living together outside of marriage. There are no specific regulations concerning the rights of these domestic partners with regard to property or custody,[287] but some legal protections exists. For example, the housing law permits a partner to assume the lease of his or her deceased partner.[288] If both partners legally acknowledge parenthood, they both have custody over their children.[289] If either partner dies without a will, however, the property will not pass to the surviving partner.[290]

Divorce and annulment laws

Under the Family Code, marriage ends when one of the partners dies, the marriage has been annulled, or the parties divorce. Annulment is possible only if the marriage, when contracted, was unlawful (see list in previous section).[291] The result of the annulment with regard to children and financial matters is determined according to principles set out for divorce cases.[292]

Divorce is the most common way to end a marriage. A divorce is granted only after a trial in a provincial court.[293] Legal grounds for divorce require that there is a complete and permanent rupture between the spouses.[294] "Permanent rupture" is generally understood to mean that all economic, psychological and physical relations have ceased, but the Polish Supreme Court has allowed that there can be permanent rupture even when economic ties are ongoing.[295] Generally, fault is an element of any legal action for divorce and a spouse who is at fault for breaking up the marriage (for example, by having an extramarital relationship) may not file for divorce.[296] Only the wronged party may initiate a suit for divorce. There is "no fault" divorce if both parties mutually consent, or on the basis of overriding social norms.[297] Women who seek divorce because of domestic and sexual violence often find themselves in a bitterly paradoxical situation. To obtain a divorce, there must be proof

that all physical and sexual relations have stopped, but courts have sometimes considered rape in marriage as evidence of an ongoing conjugal relationship. The rape, although a criminal offense, could bar an action for divorce.[298] A court may also refuse to grant a divorce if it decides that it is in the children's best interests that the parents remain together.[299]

The court, in its divorce order, determines who was at fault in the marriage, who has custody of the children, who pays child support, and who retains the family apartment.[300] A court may also decide about spousal maintenance, housing matters, and division of property.[301]

Article 43(1) of the Family Code says that "both spouses have the right to an equal share of the joint marital property," but article 43(2) allows the property to be unequally divided if one of the spouses demands an evaluation by the court of his or her contribution to the marital property. This evaluation includes wages and housework.[302] Parties can also divide marital property by contractual agreement. If there is no agreement, a civil court will decide on the division of property after the divorce. Article 58 uses the "best interest of the child" standard to direct the disposition of the family apartment. In case of domestic violence, women can seek eviction of the abusive spouse during divorce proceedings.[303] Similarly, articles 133 and 135 of the Family Code define the needs of the child as paramount when deciding child custody, visitation, and support matters. The non-custodial parent retains his or her parental rights with regard to the children's upbringing.[304] According to the Constitution, limitation or deprivation of parental rights may be effected only in cases specified by statute and only on the basis of a final court judgment.[305]

The Family Code obliges spouses to support their children and ex-spouses. Parents have an obligation to financially support their children until the children are able to do so themselves (unless the children's property is enough for their needs).[306] The level of imposed child support depends on the needs of the child and on the potential earnings and property of the parent. Needs of the child include food, shelter, clothing, medical costs and education.[307] Alimony for ex-spouses can be decided during or after the divorce. The entitlement to alimony depends upon whether there was a finding of fault in the divorce proceedings.[308] A wronged ex-spouse who is in financial need is generally entitled to claim alimony.[309] Upon divorce, the former spouses are considered to be single persons. The regime of common property ends. The former spouses may change their surnames.[310]

Separation

In April 1999, the *Sejm* passed a law on marital separation. The conditions for separation are identical to those of divorce,[311] and the only difference from divorce is that neither separated party may remarry.[312] For instance, courts can reject an application for separation if there will be harm to minor children.[313] Many suspect the law on marital separation to be a concession to the Catholic Church as an alternative to divorce.[314]

C. ECONOMIC AND SOCIAL RIGHTS

Property rights

The Polish Constitution protects private property ownership and the right of succession.[315] The Civil Code states that every owner has the right to freely use, profit from, and dispose of his or her own property.[316] Polish law does not discriminate on the basis of gender regarding property ownership or inheritance.

Labor rights

The Constitution guarantees equal rights for men and women with regard to employment and promotion. Men and women have the right to equal compensation for work of similar value.[317] Everyone is free to choose and pursue his or her occupation and to choose his or her place of work.[318] The Constitution pays special attention to families in difficult material and social situations, especially families with many children or a single parent, by entitling them to special assistance from public authorities.[319] Mothers, before and after birth, also have the constitutional right to special assistance from public authorities.[320]

The guarantee of constitutional equality is translated into employment relations through the Labor Code.[321] The Labor Code guarantees women and men equal rights when engaged in comparable work.[322] The Code clearly bans discrimination on the basis of sex, age, disability, race, nationality, religious and political beliefs, and trade union membership in labor relations.[323] The Labor Code, however, lacks specific provisions and mechanisms to enforce legal claims. Moreover, it does not specifically cover discrimination in hiring.[324]

While discrimination is forbidden, exceptional or protective labor regulations are permitted. The Labor Code prohibits the employment of women in work that is particularly onerous or harmful to their health,[325] and the Council of Ministers has enumerated such occupations. A 1979 order of the Council of Ministers banned women from more than 90 occupations in 20 fields of employment (including bus and truck driving). The list was changed in September 1996[326] and divides professions into those prohibited for all women and those prohibited only for pregnant women. All women are banned from professions that require intensive physical labor, exposure to high noise, vibration, electromagnetic fields or radiation, work underground, or work at high altitudes. Pregnant and breastfeeding women are barred from work in areas of extreme

climate changes, as well as jobs that would expose them to even low levels of electric energy, such as from unfiltered computer screens. In addition, they cannot work around chemicals or biological matter that may cause injury to their physical or mental health.[327]

Pregnant women enjoy special protection under the Labor Code. A woman who is pregnant or on maternity leave cannot be fired unless she defaults in complying with the terms of her contract; her labor union must agree to her firing.[328] A pregnant woman also can be dismissed if her company goes bankrupt or out of business.[329] Pregnant women cannot work overtime or at night. A pregnant woman cannot work outside her usual work place without her consent.[330] Employers must transfer a pregnant woman to another position if she performs work forbidden to pregnant women[331] or if she presents a medical certificate stating that her condition requires a transfer of duty.[332]

Until 2000, the Labor Code granted women the right to paid maternity leave for a duration of 16 weeks for the first birth, 18 weeks for the second birth, and 26 weeks in the case of a multiple birth.[333] Women who are raising adopted children are also entitled to 18 weeks of maternity leave for the birth of their first biological child.[334] Women who adopt children and who have filed with the guardianship court for adoption are entitled to leave amounting to 14 weeks or until the child reaches four months of age.[335] In 1999, the *Sejm* amended the maternity leave to six months, to be phased in over two stages: in 2000, women are entitled to four weeks of additional leave. In 2001, they can take nine weeks for a multiple birth.[336] Maternity leave begins two weeks prior to a woman's due date.[337] The law also grants a breast-feeding mother the right to two 30-minute breaks (or two 45-minute breaks in the case of twins) from work, included in her working time.[338] During maternity leave, women are entitled to maternity benefits[339] of symbolic value paid from a maternity leave fund established by the government.[340]

The Labor Code states that at the request of the employee, the employer has to grant unpaid parental leave of up to three years to parents employed for a period of at least six months. Both parents, while employed, are equally entitled to this leave, but they cannot take advantage of parental leave at the same time. Parental leave may be taken once the maternity leave period ends. The three-year leave — until the child turns four years old — can be extended for another three years if the child has a chronic disease, disability, or mental deficiency which requires parental care.[341] Employers may not terminate an employee's contract during parental leave.[342]

A woman raising a child under four years old cannot be forced to work overtime, at night, or outside her usual work place.[343] Furthermore, the woman is entitled to health benefits for herself and her family members.[344] In addition, some women are entitled to a child care financial benefit.[345] Parents of children up to age 14 are also entitled to two days of paid leave per year.[346] A 1995 Social Security Law also grants both parents leave with 80% pay if they are caring for a sick child for up to 60 days.[347] Despite legal guarantees of equal treatment, many practices to the contrary are so prevalent and tolerated that they are the general rule in Poland. Employers prefer to hire men whom, given all the potential leaves, are perceived as costing them less money.[348] Women are frequently asked about their marriage plans and their plans for having children,[349] and there are documented cases of women who have been forced to submit to gynecological examinations before job offers were made. Such practices contradict many laws and regulations of the Ministry of Health, which expressly forbid examination in order to verify a woman's state of non-pregnancy for employment purposes.[350] Additionally, one of the main causes for the pervasiveness of sex discrimination in Polish employment is a lack of legal means for addressing rights violations.[351]

The economic transition brought an overall increase in unemployment.[352] The number of women employed in 1988 and 1995 decreased from 57% to 51%, while the number of men employed in that period dropped from 74% to 67%. In 1990, women made up 51% of the overall unemployment rate, with this number growing to 57% by 1996[353] and 61% by June 1998.[354] Another trend is that women aged 35 to 44 risk losing their jobs at a higher rate than younger women.[355] Women over 35 years old face sharply limited employment opportunities.[356] In addition, employment patterns have not changed over the last few years. As in the past, female employment is concentrated in the service sector and in light industries. Many women working in agriculture are unpaid family workers.[357]

Retirement

A 1999 pension system reform reestablished different retirement ages: 60 years of age for women and 65 years of age for men. (Women must also have an employment history of at least 20 years; men, 25 years.)[358] The new system links the amount of retirement pension to the years of employment and amount of savings. The new legislation also forbids employers from dismissing women who reach retirement age but who still want to work. Instead, employers must employ them on the same basis as men.[359]

Access to credit

The 1997 Bank law defines credit relationships.[360] Access to bank credit depends upon the personal ability to repay one's obligations, irrespective of sex.[361] Each bank has its own specific requirements which are gender neutral.

Access to education

The Polish Constitution guarantees each person, regardless of gender, the right to education.[362] Education is compulsory until 18 years of age,[363] and public education is free of charge.[364] There is a choice between public and non-public schools, and public funding is provided for educational institutions.[365]

Among the employed, women attain higher levels of education than men: 66% of employed women and only 39% of employed men have a mid-level or higher education.[366] Women constituted 60% of university students in 1998-99.[367] Nonetheless, the educational system perpetuates gender stereotypes by promoting women's roles in the family as primary.[368] In a majority of public grammar schools, boys and girls take separate practical knowledge classes, where boys learn ironwork and carpentry, and girls learn cooking, baking and knitting.[369] Textbooks are rife with gender stereotypes.[370] Many vocational schools for women have been closed in recent years, and some technical schools do not accept girls. As a result, more girls than boys attend schools that do not prepare them for any particular profession.[371]

National machinery for the promotion of women's equality

Currently, no national executive office exists for the advancement of women. In 1986, a decree of the Council of Ministers created the Government Plenipotentiary for Women, renamed in 1991 the Plenipotentiary for Women and Family. The office was last filled in May 1995. The plenipotentiary's tasks included analyzing the social situation of women, participating in projects related to improving social and economic conditions of families, supporting women's organizations and activities, cooperating with international organizations, and securing the execution of international obligations as written in ratified conventions and documents.[372] The Plenipotentiary also initiated a program on domestic violence prevention.

In 1995, the office was renamed Plenipotentiary for Family and Women, and it functioned until October 1997, when it was closed down by the new government. In November 1997, the Plenipotentiary for the Family Affairs was established,[373] but its mandate does not include working for the advancement of women and instead advises the government mainly on matters relating to the family and children. The office may not initiate legislation, but with the consent of the Council of Ministers, it may submit draft legislation. The Plenipotentiary is responsible for implementation of conventions and international agreements; there is a separate budget for the implementation of selected programs. It is also responsible for implementing the government's Nation Plan of Action, and in 1999 it launched a program to assist victims of domestic violence.[374]

The only group working on behalf of women's equality in the *Sejm* is the Parliamentary Group of Women (PGW). The group is currently composed of 34 deputies and four senators — 64% of all women parliamentarians, drawn mainly from the Democratic Left Alliance and the Freedom Union.[375] Women currently make up 13% of the *Sejm* deputies.[376] The current Parliament has rejected a draft law on the equal status of men and women as well as a bill on establishment of the parliamentary commission on equal status, both proposed by the PGW.

D. RIGHT TO PHYSICAL INTEGRITY

Among the goals of the National Plan of Action are working to eliminate acts of violence against women; analyzing the causes and effects of violence against women and the effectiveness of preventive methods; eliminating trafficking in women; and providing assistance to victims of violence linked with this trade and prostitution. Many ministries and governmental institutions share responsibility for meeting these goals. The Ministry of Justice monitors the crimes against family and women and also trains *Vóivodship* family trustees. A special group in the Main Police Office was set up to deal with violence issues. The police do participate in the implementation of the Program of the Foundation against Trafficking in Women. The Polish Telecommunication Company created special, toll-free telephone numbers for the victims of violence and sexual molestation.[377]

Rape

Rape is defined as the use of force, threats, or deceit to force another person to engage in sexual intercourse.[378] It carries a penalty of between one and ten years imprisonment.[379] Additionally, anyone who uses force, threats, or deceit to force a person to engage in any kind of sexual activity, not necessarily sexual intercourse, may be sentenced to jail from three months to five years.[380] If the rape is committed with particular cruelty or with the aid of another, the penalty is two to twelve years.[381] Murders in connection with rape carry a sentence of 12 to 25 years in prison or penal servitude for life.[382] If the perpetrator takes advantage of a person's mental disablility in order to bring about sexual activity, the sentence can be six months to eight years of imprisonment.[383] Sexual relations between brother and sister incur a sentence of three months to five years of imprisonment.[384] Abuse of power to force sexual relations can also be a criminal offense, carrying up to three years in prison.

Marital rape exists as a criminal offense,[385] but remains difficult to prove because of cultural stereotypes. If a woman decides

to report a marital rape, it is usually in the context of domestic violence.[386] Cases of rape and enforced sexual intercourse occur fairly often in marriages, but many women do not report the crime, and convictions for marital rape are rare.[387]

To initiate a criminal investigation of rape, the woman must lodge a written complaint with the police. The district attorney's office can then open an investigation.[388] This procedural requirement presents a needless impediment to the prosecution of rape. For example, even if an eyewitness to the rape reports the crime to the police, the police cannot begin an investigation until the woman herself presses the charges.[389] In the case of rape, once a complaint has been filed, the charges may not be withdrawn.[390] There have been some modifications in legal procedures and methods of investigation to render the process more "woman-friendly." Generally, however, there is little effective legal advice and psychological and social counseling offered to rape survivors.[391] There are other problems with the administration of justice in rape trials. Stereotypes abound, and testimony relating to how the woman was dressed, whether she behaved "provocatively" or was intoxicated is frequently admitted as evidence.[392]

There is no accurate data, but it is estimated that the number of rapes is actually 10 times higher than what is reported to the police, although this too is an unavailable figure. The only statistics available concern sentencing.[393] Most rapists receive the minimal statutory sentences.[394]

Domestic violence

The Penal Code classifies domestic violence as a crime of abuse against family members[395] and states: "Whoever abuses physically or psychologically a member of a family, a dependent of the perpetrator, a physically or mentally disabled person, or a juvenile may be found guilty and sentenced to three months to five years in jail."[396] If the perpetrator acts with cruelty, the punishment is from one to ten years.[397] If the woman attempts suicide because of the abuse, the punishment is from two to twelve years.[398] Abuse is defined as behavior intended to cause either physical or mental (emotional) injury to another person.[399] "Physical abuse" is defined as, among other things, punching, kicking, slapping, stabbing, or grabbing another person with the intent to harm. "Mental abuse" may be threats, insults, and words that degrade and humiliate, which are intended to create low self-esteem and a sense of worthlessness in another person.[400] An "intimate relation" is a person whom the perpetrator is either materially or emotionally connected to in some way. Men and women who live in domestic partnerships without marrying, divorced couples who still live together, as well as married couples are covered by this code provision.

Domestic violence is publicly prosecuted in Poland and there is a legal obligation for the police and/or prosecutor to begin an investigation when they suspect domestic violence has occurred. The survivor need not press charges, but, in fact, domestic violence cases tend to be prosecuted only at the request of the survivor. The police have erected many obstacles, such as obtaining numerous medical certificates (which women have to obtain and often pay for themselves). But at the same time, police and prosecutors who are unwilling to develop a case against the perpetrator usually base their decision on the lack of evidence.

There is no "order of protection" to keep the perpetrator away, and there are very few shelters where survivors of domestic violence can go during the court procedures. The unresponsiveness and ineffectiveness of the criminal justice system means that there is serious underreporting of domestic violence.[401] When a case goes to trial and ends in conviction, the sentence is often suspended or is of extremely short duration. Domestic violence is considered a normal element of family life.[402]

As already mentioned, a government program against domestic violence was launched by the former Plenipotentiary for the Family and Women's Affairs in 1997. The new Plenipotentiary for Family Affairs suspended its implementation without any substantive reason,[403] but in 1999 it initiated a new project to help domestic violence survivors and perpetrators, including proposing the creation of 12 Crisis Intervention Centers to assist women, children, and men find safe housing and counseling. Only a few of the Centers have been opened and run by local governments to date.[404] Since 1997, the Polish government has cooperated with United Nations Development Program (UNDP) in the execution of the program "Counteracting Violence — Equalizing Chances" to try to eliminate some of the causes of family violence.[405]

Sexual harassment

Sexual harassment is not recognized by law in Poland.[406] However, the Criminal Code places criminal liability on any person who takes advantage of his or her power in a relationship with the intent to obtain sexual gratification.[407] The sentence for a violation can range from six months to three years.[408] Use of these criminal provisions is rare; the Ministry of Justice has no record of any cases.[409] This crime is investigated only if the victim reports it, and only where there is a relationship of dependency and a power differential, such as with a supervisor and an employee.[410]

The Labor Code obliges employers to respect the dignity of an employee and to create a friendly work environment.[411] It would be more likely for sexual harassment claims to be

brought under that provision, as a 1980 Supreme Court ruling stated that employers had a broad obligation to provide their workers with a safe environment.[412] In a 1999 poll by the Warsaw-based newspaper *Gazeta Wyborcza*, 67% of women reported that they experienced sexual harassment during social occasions — 52% in public places and 43% at work.[413]

Trafficking in women

Poland is highly visible in international trafficking[414] and is a sending country, a country of destination and a transit country, all at the same time. The Criminal Code defines trafficking in women as using a position of power to lead a person into prostitution by means of violence, threat, or trickery. [415] It carries a penalty of one to ten years of imprisonment.[416] Coercing another person into prostitution or facilitating this activity for financial gain is subject to a prison term of up to three years.[417] Enticing or abducting another person to perform prostitution abroad can bring a prison term of one to ten years.[418] Trafficking in individuals, even with consent, can be punished by up to three years in prison.[419] To "entice" is defined as coercing or tricking another person into moving to a new town, or relinquishing his or her passport or other important documents, by promising legitimate employment and then forcing that person into prostitution. The term "abduct" means taking a person somewhere against his or her will.[420] Under Polish Law, these two terms are used interchangeably. It does not matter if this person was previously a prostitute.

Very few cases have been prosecuted under the trafficking provisions of the Criminal Code. It is known that organized crime plays a large role in trafficking in women. Since 1995, an NGO called La Strada has worked exclusively on the issue of trafficking.[421]

Prostitution is not a crime in Poland, but forcing someone else into prostitution or "pimping" is criminal.[422] Pimping is defined as using violence, threats, deceit, or a relation of dependence to force someone into prostitution. It carries a penalty of one to ten years of imprisonment.

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

Currently, 20% of the Polish population consists of children 15 years of age or younger.[423] The Constitution of the Republic of Poland guarantees all children equal protection of their rights,[424] and all citizens have the right to demand that the state protect children from violence, neglect, and immorality.[425] The Constitution bans the permanent employment of children under the age of 16.[426] As a special measure of protection, the Constitution established an office of the Commissioner for Children's Rights.[427] In January 2000 the Parliament passed a new law regulating the Commissioner for Children's Rights.[428] That law could have grave implications for women's reproductive autonomy and health as it grants to a fetus rights that could be interpreted to constrain women's choice.

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

The state is obliged to provide appropriate medical and health care services for children.[429] All pediatric and adolescent health care services occur in local hospitals and clinics, and nurses, rather than physicians, are stationed in educational institutions, but not uniformly.[430]

Every year, teenagers — defined as people under 19 years of age — give birth to about 40,000 to 50,000 children.[431] Since 1993, the number of teenage pregnancies significantly increased so that in 1994 the number of births by mothers under age 18 constituted almost 4% of all births.[432] There is a growing concern that young, unmarried girls are abandoning their unwanted infants and are more prone toward committing infanticide. It should be noted that the penalty for infanticide has been increased.[433] A woman can now be sentenced from between three months to five years in prison.

B. MARRIAGE AND ADOLESCENTS

By law, a person under 18 years of age cannot consent to marriage,[434] however, a court can grant permission for a 16-year-old girl to marry, provided there are indications that marriage will serve the welfare of the future family.[435] A marriage may be annulled if a man is younger than 18 or a woman younger than 16, and if there was no permission from the court. Annulment can be demanded by either spouse.[436] In the case of pregnancy, however, a husband seeking to end the marriage cannot use the legal age requirement as grounds for an annulment.[437]

C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

Polish Law criminalizes sexual activity with children. Sexual molestation of a minor under 15 years of age carries up to 10 years of imprisonment,[438] as does using children in pornography.[439] Under a bill passed by Parliament on March 3, 2000, criminal penalties for child pornography were increased but the law was subsequently vetoed.[440] Showing pornography to a child under 15 years of age can result in a fine and imprisonment of up to two years.[441] Anyone who induces a minor into prostitution can be imprisoned for up to 10 years.[442] Anyone who mistreats or neglects a minor can face up to five years of imprisonment.[443]

D. EDUCATION AND ADOLESCENTS

Since Poland's political and economic transition, enrollment in secondary schools has increased and enrollment in vocational schools has decreased — a result of the government's policy to eliminate vocational schools whose curricula are not adapted to the needs of the new market.[444] Children and adolescents living in rural areas tend to be disadvantaged in their education in post-primary schools.[445] Boys and girls have equal access to schools. More girls than boys attend secondary schools, but technical schools are more often chosen by boys. In 1997-98, girls represented 48.7% of primary schools pupils, 66.1% percent of secondary school pupils, 44.6% of pupils in technical schools, and 41% of students in specialized schools.[446] Schools must assist a pregnant student in completing her education.[447]

As already mentioned, the educational system in many ways perpetuates gender stereotypes and promotes the patriarchal model of the family and the world.[448] The 1999 education reforms did not address the issue of gender-sensitive revision of text books.

E. SEX EDUCATION

The Abortion Law had required the Minister of Education to prepare and introduce special school curricula on sex education,[449] and on April 21, 1998, the Ministry of Education introduced a new curriculum on "Human Sex Life."[450] However, after the elections in December 1998, Parliament removed the educational provisions from the Abortion Law,[451] and sex education has been amalgamated into a Catholic "pro-family" curriculum. Before introducing any course on sex education, the local school authorities must organize at least one meeting for all parents where the goals and content of a proposed course are presented, and parental approval for participation in the course is necessary.[452]

The government has made no attempt to provide secular, neutral information. Instead, all curricula and manuals present the Catholic Church's views of human sexuality, gender roles and contraception. [453] Nevertheless, a 1997 survey found that 88% of respondents favored sex education in school, focused on teaching children, among other things, about how to avoid STIs and unwanted pregnancy.[454]

F. TRAFFICKING IN ADOLESCENTS

There has been a growth of trafficking in teenaged women, especially those between the ages of 15 and 18. Coercing a minor into prostitution, facilitating prostitution for financial gain, or gaining financially from the prostitution of a minor is subject to one to ten years in prison.[455] Enticing or abducting a person to perform prostitution abroad is subject to the same punishment, regardless of the victim's age.[456]

Conclusions

Numerous forms of gender discrimination exist in Polish legislation as well as in the government's policies and programs. This has been noted independently by two United Nations committees on human rights — the Committee on Economic, Social, and Cultural Rights in 1998 and the Human Rights Committee in 1999[457] — which both recommended the Polish government take action to stop and prevent gender discrimination.

NOTE ON SOURCES

The information in this chapter is drawn from primary sources of law in Polish and secondary sources in English and Polish. All primary sources of national law are in Polish. Unless otherwise noted, they are available at <http://orka.sejm.gov.pl/PRAWO.nsf?OpenDatabase> (database of the Polish Parliament). Unofficial English translations of some laws and regulations provided by The Federation for Women and Family Planning 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

KONST.: Constitution of the Republic of Poland
Dz.U.: Journal of Laws
K.K.: Criminal Code
K.R.: Family and Custody Code
K.P.: Labor Code

ENDNOTES

1. CIA, POLAND, 1999 WORLD FACTBOOK (visited Jan. 17, 2000) <http://www.odci.gov> [hereinafter WORLD FACTBOOK].
2. THE WORLD BANK GROUP, POLAND (visited Jan. 17, 2000) <http://www.worldbank.org/html/extdr/offrep/eca/pl2.htm>.
3. WORLD FACTBOOK, *supra* note 1.
4. *Id.*
5. *Id.*
6. Konstytucja Rzeczypospolitej Polskiej [The Constitution of the Republic of Poland] [KONST.], art. 2. The Constitution was adopted by the National Assembly on April 2, 1997, was passed by national referendum on May 23, 1997, and entered into force on October 16, 1997 (visited Jan. 17, 2000) <http://www.sejm.gov.pl/prawo/konstytucja/kon1.htm>; official English translation at <http://www.sejm.gov.pl/english/konstytucja/kon1.htm> (visited Jan. 17, 2000); see also WORLD FACTBOOK, *supra* note 1.
7. WORLD FACTBOOK, *supra* note 1.
8. KONST. art. 10.
9. *Id.* art. 10(2).
10. *Id.* art. 127.
11. *Id.* art. 122.
12. *Id.* art. 133.
13. *Id.* art. 134(1).
14. *Id.* art. 137.
15. *Id.* art. 138.
16. *Id.* art. 139.
17. *Id.* art. 146.
18. *Id.* art. 154.

19. *Id.* art. 154(1).
20. *Id.* art. 148.
21. *Id.* art. 95(2).
22. SIGMA, PUBLIC MANAGEMENT PROFILES, POLAND: DELIVERY SYSTEM (visited Jan. 17, 2000) <http://www.oecd.org/puma>.
23. KONST. art. 10(2).
24. *Id.* art. 98.
25. *Id.* art. 96.
26. *Id.* art. 97.
27. *Id.* art. 118. The third paragraph of this article mandates the sponsors of bills in the *Sejm* to indicate the financial consequences of the implementation of the bill.
28. *Id.* art. 120.
29. *Id.* arts. 121(2), 124.
30. *Id.* art. 121(3).
31. *Id.* art. 125.
32. *Id.* arts. 188 – 197.
33. *Id.* arts. 198 – 201.
34. *Id.* arts. 175 – 185.
35. *Id.* art. 188.
36. *Id.* art. 189.
37. *Id.* art. 19(1).
38. *Id.* arts. 190(1), 239(1).
39. *Id.* art. 198.
40. *Id.* art. 183(1).
41. *Id.* art. 184.
42. *Id.* art. 179.
43. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, POLAND COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1998 (released Feb. 26, 1999) <http://www.state.gov> [hereinafter STATE DEP'T REPORT].
44. KONST. art. 203.
45. *Id.* art. 208(1).
46. *Id.* art. 212.
47. *Id.* art. 209(1).
48. *Id.* art. 80; Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich [Law of July 15, 1987 on the Ombudsman], Dziennik Ustaw [Journal of Laws] [Dz.U.] No. 109/1991, position [Pos.] 471; *see Other Areas Submitted to the Control of the Sejm* (visited Jan. 17, 2000) <http://www.sejm.gov.pl/english/prace/cf5.htm>; *see generally* Piotr Przybysz, *Polish Ombudsman Works for a Democratic Society*, PUBLIC MANAGEMENT FORUM, Vol. II, No. 3 (1996) (visited Jan. 17, 2000) <http://www.oecd.org/puma>.
49. *Core document forming part of the reports of States Parties : Poland. 16/04/99*. HRI/CORE/1/Add.25/Rev.1., ¶ 24 (Apr. 16, 1999) U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS (visited Jan. 19, 2000) <http://www.unhchr.ch> [hereinafter CORE DOCUMENT].
50. *See Constitution Watch - Poland Update*, E.EUR.CONST.REV., Vol. 7, No. 3, Summer 1998.
51. *Id.*; KONST. art. 164(1).
52. KONST. art. 163.
53. *Id.* art. 169.
54. *Id.* art. 168.
55. *Id.* art. 170.
56. CHANCELLERY OF THE PRIME MINISTER OF POLAND, GMINA - WHERE BASIC NEEDS ARE MET (visited Apr. 4, 2000) <http://www.kprm.gov.pl/menu/menueng.html>.
57. Ustawa z dnia 5 czerwca 1998 r. o samorządzie Powiatowym [Law of June 5, 1998 on the Organization of Powiats], art. 12(1), Dz.U. 91/1998, Pos. 578.
58. CHANCELLERY OF THE PRIME MINISTER OF POLAND, POVIAT - WHERE EQUAL OPPORTUNITIES ARE GUARANTEED (visited Apr. 4, 2000) <http://www.kprm.gov.pl/menu/menueng.html>.
59. Law of June 5, 1998 on the Organization of Powiats, art. 8(2).
60. CORE DOCUMENT, *supra* note 49, ¶ 24.
61. Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa [Law of June 5, 1998 on the Organization of *Voivodships*], arts. 11(1), 11(2), 14, Dz.U. No. 91/1998, Pos. 576.
62. KONST. art. 184.
63. *Id.* art. 171.
64. WORLD FACTBOOK, *supra* note 1.
65. KONST. art. 87(1).
66. *Id.* art. 8.
67. *Id.* art. 91(1); *see generally* Ewa Letowska, *A Constitution of Possibilities*, E.EUR.CONST. REV., Vol. 6, Nos. 2 & 3, Spring/Summer 1997.
68. KONST. art. 91(2).
69. *Id.* art. 92(1).
70. *Id.* art. 93; *see generally* Wiktor Osiatynski, *A Brief History of the Constitution*, E. EUR. CONST. REV., Vol. 6, Nos. 2 & 3, Spring/Spring 1997.
71. KONST. art. 93(3).
72. *Id.* art. 87(2).
73. TERESA A. FILIPIAK ET AL., ZARYS PRAWA CYWILNEGO I RODZINNEGO [CIVIL LAW AND FAMILY LAW] 51 (1998).
74. KONST. art. 146(4).
75. *Id.* art. 133(1).
76. *Id.* art. 89(1). For international agreements that do not require consent, the prime minister must inform the *Sejm* of an intention to submit the agreement for ratification by the president of the Republic. *Id.* art. 89(2).
77. *Id.* art. 90(1).
78. *Id.* art. 90(2).
79. *Id.* art. 90(3).
80. *Opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* September 3, 1981).
81. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976, *for Poland* Jun. 18, 1977).
82. *Adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Jan. 3, 1976, *for Poland* Jun. 18, 1977).
83. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976, *for Poland* Feb. 7, 1992). The Protocol enables individuals to petition the Human Rights Committee set up by the Covenant about alleged violations of any of the rights set forth in the Covenant. The Protocol covers states that are a party to both the Covenant and the Protocol.
84. *Opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (*entry into force* Sept. 2, 1990, *for Poland* Jul. 7, 1991).
85. *Opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969).
86. Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (*entry into force* Sept. 3, 1953). Last amended by Protocol No. 11, ETS No. 155 (*entry into force* Nov. 1, 1998).
87. Umowa Przejściowa dotycząca handlu i spraw związanych z handlem między Rzecząpospolitą Polską a Europejską Wspólnotą Gospodarczą i Europejską Wspólnotą Węgla i Stali, sporządzona w Brukseli dnia 16 grudnia 1991r. [Interim Agreement on Trade and Trade-Related Matters between the Republic of Poland and the European Economic Community and the European Coal and Steel Community], Dz.U. No. 17/1992, Pos. 69.
88. KONST.art. 68(1), (2).
89. *Id.* art. 68(3).
90. CORE DOCUMENT, *supra* note 49, ¶ 29.
91. *Sytuacja Demograficzna I Zdrowotna Ludności Polski w 1998 Roku [The Demographic and Health Status of People in Poland for 1998]*, at 3 tbl. 16 (visited Jan. 19, 2000) <http://www.mzios.gov.pl/zdrowie/opis3.pdf>.
92. *Id.* at 4.
93. *Zdrowie w Polsce [Health in Poland]* (visited Jan. 19, 2000) <http://www.mzios.gov.pl/zdrowie/index.html>.
94. *Lekarze specjaliści wg posiadanej specjalizacji [Distribution of Physicians according to Specialization]* (visited Jan. 19, 2000) <http://www.mzios.gov.pl/zdrowie/zatrudnienie/lekarze/lekarze.html>.
95. *Zatrudnienie kadr medycznych [Occupation of Medical Staff]* (visited Jan. 19, 2000) <http://www.mzios.gov.pl/zdrowie/zatrudnienie/zatr_kadr/zatr_kadr.html>.
96. *The Demographic and Health Status of People in Poland for 1998*, *supra* note 91, at 4 – 6; Maja Korzeniewska & Urszula Nowakowska, Women's Health, in POLISH WOMEN IN THE 90S, at 188 (Urszula Nowakowska, Women's Rights Center eds., 2000) [hereinafter *Women's Health*].
97. Ustawa z dnia 30 sierpnia 1991 r. o zakładach opieki zdrowotnej [Law of August 30, 1991 on Public Medical Care], Dz.U. No. 91/1991, Pos. 408; Ustawa z dnia 20 czerwca 1997 r. o zmianie ustawy o zakładach opieki zdrowotnej oraz o zmianie niektórych innych ustaw [Law of June 20, 1997 Amending the Law on Public Medical Care], Dz.U. No. 104/1997, Pos. 661; Ustawa z dnia 10 grudnia 1998 r. o zmianie ustaw: o zakładach opieki zdrowotnej, o zawodzie lekarza, o zawodach pielęgniarki i położnej, o szkolnictwie wyższym oraz o zmianie niektórych innych ustaw [Law of December 10, 1998 Amending the Public Medical Care, the Medical Profession, the Profession of Nurse and Midwife], Dz.U. No. 162/1998, Pos. 1115.
98. Ustawa z dnia 6 lutego 1997 r. o powszechnym ubezpieczeniu zdrowotnym [Law of February 6, 1997 on National Health Insurance], Dz.U. No. 28/1997, Pos. 153; Ustawa z

dnia 18 lipca 1998 r. o zmianie ustawy o powszechnym ubezpieczeniu zdrowotnym oraz o zmianie niektórych ustaw [Law of July 18, 1998 Amending the National Health Insurance Act], Dz.U. No. 117/1998, Pos. 756.

99. Ustawa z dnia 5 grudnia 1996 r. o zawodzie lekarza [Law of December 5, 1996 on the Medical Profession], Dz.U. No. 28/1997, Pos. 152.

100. Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego [Law of August 19, 1994 on Care of Mentally Disabled], Dz.U. No. 111/1994, Pos. 535.

101. Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [Law of January 7, 1993 on Family Planning, Human Embryo Protection and Conditions of Legal Termination of Pregnancy], Dz.U. No. 17/1993, Pos. 78; Ustawa z dnia 30 sierpnia 1996 r. o zmianie ustawy o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży oraz o zmianie niektórych innych ustaw [Law of August 30, 1996 Amending the Law on Family Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination], Dz.U. No. 139/1996, Pos. 646 (English translations provided by The Federation for Women and Family Planning, on file with The Center for Reproductive Law & Policy); Orzeczenie Trybunału Konstytucyjnego z dnia 28 maja 1997 r. (Sygn.akt K.26/96)./78 [Decision of the Constitutional Tribunal from May 28, 1997]. The Tribunal ruled that the 1996 law violated the Constitution by allowing abortion in cases of "difficult conditions or difficult personal situations." According to the Tribunal decision and the 1993 law, abortion is allowed only when a pregnancy results from rape, endangers the woman's life or health, or when the embryo is irreversibly damaged. With the 1996 liberalized abortion law declared unconstitutional, Parliament voted back in place the stricter 1993 law. *Constitution Watch - Poland Update*, E.EUR.CONST.REV., Vol. 7, No. 1, Winter 1998 (visited Jan. 19, 2000) <http://www.law.nyu.edu/eecr>.

102. Ustawa z dnia 5 lipca 1996 r. o zawodach pielęgniarki i położnej [Law of July 5, 1996 on the Profession of Nurse and Midwife], Dz.U. No. 91/1996, Pos. 410.

103. NARODOWY PROGRAM ZDROWIA 1996-2005 [NATIONAL HEALTH PROGRAMME] (visited Oct. 27, 1998) <www.mzios.gov.pl/npz-wste.htm>.

104. WORLD HEALTH ORGANIZATION, GLOBAL STRATEGY FOR HEALTH FOR ALL BY THE YEAR 2000 (visited Jan. 19, 2000) <http://policy.who.int>.

105. NATIONAL HEALTH PROGRAMME, *supra* note 103.

106. *Id.* "Inequality in Health" focuses on the gender gap in mortality rates–men live 8.6 years less on average than women; *see Poland - Church and State Assail Reproductive Rights*, in RISKS, RIGHTS AND REFORMS 164-165 (WOMEN'S ENVIRONMENT AND DEVELOPMENT ORGANIZATION WEDO) (1999).

107. *See* INFORMATION ON THE IMPLEMENTATION IN POLAND OF THE DIRECTIVES INCLUDED IN THE FINAL DOCUMENTS OF THE 1995 FOURTH UNITED NATIONS WORLD CONFERENCE ON WOMEN: THE BEIJING DECLARATION - PLATFORM FOR ACTION 2000: GOVERNMENT'S PLENIPOTENTIARY FOR FAMILY AND WOMEN, OFFICE OF THE COUNCIL OF MINISTERS, THE NATIONAL PROGRAM OF ACTIONS FOR WOMEN (visited Jan. 19, 2000) <http://www.un.org/esa/gopher-data/conf/fwcw/natrep/NatActPlans/poland.txt>. The national program was the result of the cooperation between the office of the Plenipotentiary and 38 NGOs. 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 43RD SESSION OF THE COMMISSION ON THE STATUS OF WOMEN 17 (1999).

108. *Church and State Assail Reproductive Rights*, *supra* note 106, at 168.

109. THE POLISH FEDERATION FOR WOMEN AND FAMILY PLANNING, POLAND - INDEPENDENT REPORT SUBMITED TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE ON GENDER DISCRIMINATION (1999) (visited Jan. 20, 2000) <http://www.waw.pdi.net/~polfedwo/english/english1.htm> [hereinafter INDEPENDENT REPORT].

110. MIĘDZYRESORTOWY ZESPÓŁ DO OPRACOWANIA RZĄDOWEGO PROGRAMU POLITYKI PRORODZINNEJ [INTERMINISTERIAL GROUP FOR PRESENTATION OF PROGRAMMES OF PROFAMILY POLICIES], PROGRAM POLITYKI RODZINNEJ [THE PROGRAMMME OF FAMILY POLICIES], 37, 38/39 GAZETY PRAWNEJ (1997).

111. *Id.*

112. *Poland: Health Policy and Systems Development* (visited Jan. 20, 2000) <http://www.hsph.harvard.edu/organizations/ddm/country/country.html#2>.

113. *Church and State Assail Reproductive Rights*, *supra* note 106, at 164.

114. *Id.*

115. Mukesh Chawla et al., *Economics of A Family Practice in Krakow* (visited Jan. 20, 2000) <http://www.hsph.harvard.edu/ihsg/publications/pdf/No-67.PDF>, at 4.

116. Peter Berman, *National Health Insurance in Poland: A Coach without Horses?* (visited Jan. 20, 2000) <http://www.hsph.harvard.edu/ihsg/publications/pdf/No-63.PDF>, at 10.

117. Chawla, *supra* note 115, at 4.

118. *Id.*

119. Berman, *supra* note 116, at 10.

120. Chawla, *supra* note 115, at 4.

121. Berman, *supra* note 116, at 10.

122. Charlotte Gray, *Polish Health Care Morphs into New System at Breakneck Speed*, CMAJ 161:739 (Sept. 21, 1999) (visited Jan. 20, 2000) <http://www.cma.ca>.

123. Berman, *supra* note 116, at 8.

124. Ustawa z dnia 6 lutego 1997 r. o powszechnym ubezpieczeniu zdrowotnym [Law of February 6, 1997 on National Health Insurance], art. 19, Dz.U. No. 28/1997, Pos. 153.

125. *Poland: Leading Sectors for U. S. Export and Investment* (visited Jan. 20, 2000) <http://tradeport.org/ts/countries/poland/sectors.html>.

126. *Id.*

127. Krzysztof P. Jasiutowicz, *Health Care Reform in Poland* (visited Jan. 20, 2000) <www.friko.onet.pl/ez/kpjaslen/nhs_reform.html>.

128. CORE DOCUMENT, *supra* note 49, ¶ 29.

129. *Women's Health*, *supra* note 96, at 191.

130. *Church and State Assail Reproductive Rights*, *supra* note 106, at 164.

131. Andrzej Malanowski, Legislacyjny knot [Legislative Botch] GAZETA UBEZPIECZENIOWA No. 10, Apr. 7-13, 1999, at 21.

132. *Church and State Assail Reproductive Rights*, *supra* note 106, at 164.

133. Ministerstwo Zdrowia i Opieki Społecznej [Ministry of Health and Social Welfare] (visited Jan. 20, 2000) <http://www.mzios.gov.pl/zdrowie/wydatki/wydatki-b/wydatki-b.html>.

134. *Church and State Assail Reproductive Rights*, *supra* note 106, at 164.

135. *See* MINISTERSTWO FINANSÓW [MINISTRY OF FINANCE], CZARNA KSIĘGA MARNOTRAWSTWA W OCHRONIE ZDROWIA [THE BLACK BOOK OF WASTE IN THE MEDICAL CARE SECTOR] 171 (1998).

136. *Id.* at 172. 97% of the financing comes from EU, 3% from the state budget.

137. PEŁNOMOCNIK RZĄDU DS. RODZINY I KOBIET [GOVERNMENTAL PLENIPOTENTIARY FOR FAMILY AND WOMEN], RAPORT NA IV ŚWIATOWĄ KONFERENCJĘ NARODÓW ZJEDNOCZONYCH W SPRAWACH KOBIET, PEKIN 1995 [REPORT PREPARED FOR THE FOURTH WORLD CONFERENCE ON WOMEN] 104 (1995).

138. KARAT COALITION FOR REGIONAL ACTION, *supra* note 107, at 11.

139. Ustawa z dnia 5 grudnia 1996 r. o zawodzie lekarza [Law of December 5, 1996 on the Medical Profession], Dz.U. No. 28/1997, Pos. 152.

140. KODEKS ETYKI LEKARSKIEJ [MEDICAL CODE OF ETHICS] (unified wording containing the amendments passed at the III National Convention of Physicians; Warsaw, December 12-14, 1993), Oficyna Wydawnicza Naczelnej Izby Lekarskiej [Publications Office of the Chamber of Physicians] (1994) (visited Jan. 20, 2000) <http://www.nil.org.pl/prawo/bbab.htm>.

141. Law on the Medical Profession, art. 36; Ustawa z dnia 30 sierpnia 1991 r. o zakładach opieki zdrowotnej [Law of August 30, 1991 on Public Medical Care], art. 9(4), Dz.U. No. 91/1991, Pos. 408; MEDICAL CODE OF ETHICS arts. 1(2), 12(1).

142. Law on the Medical Profession, arts. 5-20.

143. Ustawa z dnia 17 maja 1989 r. o izbach lekarskich [Law on the Chamber of Physicians], Dz.U. No. 30/1989, Pos. 158 (visited Jan. 21, 2000) <http://www.nil.org.pl/prawo/bbcb.htm>.

144. *Id.*

145. *Id.* art. 4(1).

146. *See* Przybysz, *supra* note 48.

147. Ustawa z dnia 5 lipca 1996 r. o zawodach pielęgniarki i położnej [Law of July 5, 1996 on the Profession of Nurse and Midwife], Dz.U. No. 91/1996, Pos. 410.

148. The previous curriculum was of two years duration and did not meet the health care needs of an increasingly elderly population. THE BRITISH COUNCIL HEALTH NEWS (visited Jan. 20, 2000) <http://www.britcoun.org/health/news.htm>.

149. *Id.*

150. Ustawa o Izbach Aptekarskich z dnia 19 kwietnia 1991 r. [Law of April 19, 1991 on the Chamber of Pharmacists], Dz. U. No.41/1991, Pos. 179.

151. See KODEKS ETYKI APTEKARZA RZECZYPOSPOLITEJ POLSKIEJ [CODE OF ETHICS OF PHARMACISTS] (visited Jan. 21, 2000) <http://www.nia.org.pl>.

152. Ustawa z dnia 5 grudnia 1996 r. o zawodzie lekarza [Law of December 5, 1996 on the Medical Profession], art. 4, Dz.U. No. 28/1997, Pos. 152.

153. *Id.* art. 31.

154. *Id.*
155. *Id.* art. 34(1), (2).
156. *Id.* art. 35.
157. *Id.* art. 36(1).
158. *Id.* art. 36.
159. *Id.* art. 40.
160. *Id.* art. 15.
161. Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny [Law of April 23, 1964 - Civil Code] [K.C.], arts. 415, 416, 448, Dz.U. No. 16/1964, Pos. 93.
162. *See State Treasury to Pay Compensation in Medical Malpractice Case*, POLISH NEWS BULLETIN, Nov. 10, 1999, *available in* LEXIS, Poland Country Files. On 27 October 1999, the Krakow District Court awarded a 5-year-old boy zl 80,000 plus a monthly zl 500 annuity for losing his sight as a result of the negligence of the Gabriel Narutowicz Memorial Hospital staff in Krakow. The child was admitted to the hospital in January 1995 and was not diagnosed with an advanced eye disease until several months later. A prosecutor filed criminal charges against the director of the ward and two doctors for not ordering the proper eye examination. The criminal court found two of the defendants guilty, but the verdict was overturned on appeal on a procedural technicality. An appeal to the Supreme Court by the prosecutor is pending. Since the event took place before the health care reform carried out in 1999, the State Treasury, must pay the judgement in the civil case.
163. Ustawa z dnia 6 czerwca 1997 r. - Kodeks karny [Law of June 6, 1997 - Criminal Code] [K.K.], art. 192(1), Dz.U. No. 88/1997, Pos. 553, *translated in* INTERNATIONAL DIGEST OF HEALTH LEGISLATION, Vol. 49, No. 4, 607-608 (1998).
164. *Id.* art. 156(1).
165. CODE OF MEDICAL ETHICS art. 5.
166. Ustawa z dnia 17 maja 1989 r. o izbach lekarskich [Law of May 17, 1989 on the Chamber of Physicians], art. 41, Dz.U. No. 30/1989, Pos. 158. Members of medical courts are independent regarding adjudication in professional responsibility cases and subject only to legal acts and binding principles of professional ethics (art. 54). The Minister of Health and Social Welfare, together with the Minister of Justice and the Head Physician's Council define by means of decree specific regulations on the organization and makeup of medical courts, conduct of professional responsibility proceedings, rights and obligations of parties and witnesses, procedure of executing punishments and the costs of proceedings (art. 57(2)).
167. *Id.* art. 42(1).
168. *Id.* art. 48.
169. *Id.* art. 53.
170. Patients' right to information is also provided by art. 13 of the CODE OF MEDICAL ETHICS. Also relevant are other provisions of the Code. Under art. 23, the duty of confidentiality does not end with the death of the patient. Art. 25 states cases when a physician may be released from the duty of confidentiality: if the patient expresses his or her consent, if the maintenance of confidentiality constitutes a threat to health or life of the patient or other persons, or if this is a duty in law. There is no violation of confidentiality to agencies with statutory authority (art. 26). Physicians have the right to reveal any human rights violations which are a threat to health or life and which come to their notice (art. 27). Physician and persons who collaborate with them have the duty to ensure confidentiality of information contained and stored in DNA samples taken from patients and their families (art. 29).
171. FEDERACJA NA RZECZ KOBIET I PLANOWANIA RODZINY [FEDERATION FOR WOMEN AND FAMILY PLANNING], ZDROWIE REPRODUKCYJNE KOBIET W POLSCE [REPRODUCTIVE HEALTH OF WOMEN IN POLAND] (1997) (visited Jan. 21, 2000) <http://www.waw.pdi.net/~polfedwo/pl.htm>.
172. *See* Romuald Krajewski, *Obowiązki i prawa w praktyce lekarskiej [Rights and Obligations in Medical Practice]*, GAZETA LEKARSKA No. 4, 1999 at 38.
173. REPRODUCTIVE HEALTH OF WOMEN IN POLAND, *supra* note 171, at 9-10.
174. *Id.* at 14.
175. *Id.*
176. FUNDACJA OŚKa, WOMEN'S HUMAN RIGHTS 18 (1998).
177. THE BUREAU OF INFORMATION OF THE NATIONAL AGENCY OF STATISTICS, PODSTAWOWE INFORMACJE O ROZWOJU DEMOGRAFICZNYM POLSKI W 1998 ROKU [THE BASIC INFORMATION OF DEMOGRAPHIC DEVELOPMENT IN POLAND IN 1998, at 2 (1999).
178. CORE DOCUMENT, *supra* note 49, ¶¶ 9-10.
179. *Questionnaire on the Implementation of the Beijing Platform of Action by the Government of the Republic of Poland*, U.N. Division for the Advancement of Women, at 4 (visited Mar. 7, 2000) <www.un.org/womenwatch/daw/followup/poland.pdf> (Nov. 8, 1999) [hereinafter *Implementation of the Beijing Platform of Action*].
180. DEMOGRAPHIC DEVELOPMENT IN POLAND, *supra* note 177, at 1.
181. KONST. art. 18.
182. *Polish Coalition Agrees on Pro-Family Tax Relief*, RFE/RL NEWSLINE, Nov. 8, 1999 <http://www.rferl.org/newsline/1999/11/081199.html>.
183. *Church and State Assail Reproductive Rights, supra* note 106, at 165.
184. See WOMEN'S HUMAN RIGHTS, *supra* note 176, at 34.
185. *Concluding Observations of the Human Rights Committee - Poland, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant*, U.N. Human Rights Committee, 66th Sess., CCPR/C/79/Add.110, July 29, 1999.
186. *Implementation of the Beijing Platform of Action, supra* note 179, at 14.
187. *Id.* at 14-15.
188. The Centers are IPPF affiliates, see <http://www.ippf.org/regions/countries/pol/index.htm> (visited Jan. 25, 2000).
189. TOWARZYSTWO ROZWOJU RODZINY [ASSOCIATION FOR FAMILY DEVELOPMENT], 1998 ANNUAL REPORT (1999) (on file with The Center for Reproductive Law & Policy).
190. GŁÓWNY URZĄD STATYSTYCZNY [CENTRAL STATISTICAL OFFICE], STAN ZDROWIA LUDNOŚCI [THE STATE OF HEALTH OF THE POPULATION] 196 (1996).
191. THE FEDERATION FOR WOMEN AND FAMILY PLANNING, ANTYKONCEPCJA: PRAWO, WYBÓR, JAKOŚĆ ŻYCIA [CONTRACEPTION: THE RIGHT, THE CHOICE, THE QUALITY OF LIFE] (visited Jan. 25, 2000) <www.waw.pdi.net/~polfedwo/pl.htm>.
192. *Id.*
193. INTERNATIONAL CENTER FOR RESEARCH ON WOMEN & THE CENTRE FOR DEVELOPMENT AND POPULATION ACTIVITIES, ADVOCAY FOR WOMEN'S REPRODUCTIVE RIGHTS: DEVELOPING A GRASSROOTS STRATEGY IN POLAND (1999) (visited Jan. 25, 2000) <http://www.icrw.org>.
194. Sprawozdanie Rady Ministrów z realizacji w roku 1997 Ustawy z dnia 7 stycznia 1993 o planowaniu rodziny, rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [The Report of the Council of Ministers on the Realization of the Antiabortion Law] No. 592 (1998).
195. *Id.*; see Kobiety OnLine–Internet Media (visited Jan. 25, 2000) <http://www.kobiety.com/antyh1.htm> (listing the types of pills women can buy in pharmacies: Anteovin, Cilest, Diane 35, Femoden, Gravistat, Gestigen, Lynomin (subsidized), Loveston, Lyndiol, Marvelon, Mercilon, Microgynon, Minisiston, Minulet, Noclogynon (subsidized), Postinor, Restovar, Rigevidon (subsidized), Stediril, Trinovum, Trisiston, Triquilar, Trionordiol, Tri-Regol).
196. Rozporządzenie Ministra Zdrowia i Opieki Społecznej z dnia 26 lutego 1998 r. w sprawie wykazu leków podstawowych, uzupełniających i środków antykoncepcyjnych [Decree of the Ministry of Health and Social Welfare of February 26, 1998 on Basic Medicines and Contraceptives], Dz.U. No. 31/1998, Pos. 166.
197. INDEPENDENT REPORT, *supra* note 109.
198. *Church and State Assail Reproductive Rights, supra* note 106, at 165.
199. Ustawa z dnia 10 października 1991 r. o środkach farmaceutycznych, materiałach medycznych, aptekach, hurtowniach i nadzorze farmaceutycznym [Law of October 10, 1991 on Pharmaceutical Products, Medical Articles, Pharmacies, Wholesale Pharmaceutical Establishments, and Pharmaceutical Inspection], Dz.U. No. 105/1991, Pos. 452, *summarized in* INTERNATIONAL DIGEST OF HEALTH LEGISLATION, Vol. 45, No. 4, at 516-518 (1994).
200. *Id.*
201. INDEPENDENT REPORT, *supra* note 109.
202. *Id.*
203. CONTRACEPTION: THE RIGHT, THE CHOICE, THE QUALITY OF LIFE, *supra* note 191.
204. The majority of doctors follow the instructions of the Doctors' Council to offer contraceptives only on women's request, *see* THE FEDERATION FOR WOMEN AND FAMILY PLANNING, THE EFFECTS OF THE ANTI-ABORTION LAW 8 (1996) (visited Jan. 25, 2000) <http://www.waw.pdi.net/~polfedwo/english/english1.htm>.
205. *Id.* at 4.
206. Report of the Council of Ministers on the Realization of the Abortion Law, *supra* note 194.
207. *Id.*
208. Urszula Nowakowska & Maja Korzeniewska, *Women's Reproductive Rights*, in POLISH WOMEN IN THE 90S, at 228 (Urszula Nowakowska, Women's Rights Center eds., 2000) [hereinafter *Women's Reproductive Rights*].
209. Ustawa z dnia 27 kwietnia 1956 r. o warunkach dopuszczalności przerywania ciąży [Law of April 27, 1956 on the Termination of Pregnancy], Dz.U. No. 12/1956, Pos. 61.

210. *See* CHILDBIRTH BY CHOICE TRUST, ABORTION IN LAW, HISTORY & RELIGION 24 (visited Jan. 25, 2000) <http://www.cbctrust.com/abortion.html#top>.
211. THE CODE OF MEDICAL ETHICS, KENNEDY INSTITUTE OF ETHICS JOURNAL, Vol. 2, No. 4, art. 37 (1992).
212. Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [Law of January 7, 1993 on Family Planning, Human Embryo Protection and Conditions of Legal Termination of Pregnancy], art.7(2)§3, Dz.U. No. 17/1993, Pos. 78; see Wanda Nowicka, *Poland: Case Study on Legal Instability Concerning Abortion* (WHO, 1997) (visited Jan. 26, 2000) <http://www.waw.pdi.net/~polfedwo/english/english1.htm>.
213. Ustawa z dnia 30 sierpnia 1996 r. o zmianie ustawy o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży oraz o zmianie niektórych innych ustaw [Law of August 30, 1996 Amending the Law on Family Planning, Human Embryo Protection and Conditions of Legal Pregnancy Termination], Dz.U. No. 139/1996, Pos. 646.
214. *Id.* art. 4a.1.
215. Orzeczenie Trybunału Konstytucyjnego z dnia 28 maja 1997 r. (Sygn.akt K.26/96)./78 [Decision of the Constitutional Tribunal from May 28, 1997]. At the time of the decision, there were in force the "Little Constitution" from Oct. 17, 1992 (visited Jan. 26, 2000) <http://www.uni-wuerzburg.de/law/pl02000_.html> and selected provisions from the 1952 Constitution (visited Jan. 26, 2000) <http://www.uni-wuerzburg.de/law/pl01000_.html>. The Tribunal argued that, even though the Constitution contained no provisions relating directly to the protection of life, the constitutional protection of life could be deduced from art.1, that stated that Poland was a democratic state ruled by law. The Tribunal concluded that in a democratic state of law, life at every stage of its development, must be protected by the Constitution.
216. *Id.*
217. Law of 1993 on Abortion, art. 4a.
218. *Id.* art. 4a.2.
219. *Id.* art. 4a.4.
220. *Id.*
221. *Id.* art. 4a.1, 4a.3.
222. *Id.* art. 4b.
223. *Id.* art. 4a.8. Private clinics have to meet certain standards with regard to professional and sanitary conditions, medical documentation and management.
224. *Id.* art. 4a.9.
225. *See* THE EFFECTS OF THE ANTI-ABORTION LAW, *supra* note 204, at 6.
226. *Id.*
227. *Id.* Often, women are sent from hospital to hospital while the twelve-week period when abortion is legal elapses. *Women's Reproductive Rights*, *supra* note 208, at 226, 228.
228. Law of 1993 on Abortion, art. 2(1), 2(2a).
229. *Id.* art. 7(2).
230. Ustawa z dnia 8 lipca 1999 r. o zmianie ustawy - Kodeks karny oraz ustawy o zawodzie lekarza [Law of July 8, 1999 Amending the Criminal Code and the Law on Medical Profesion], Dz.U. No. 64/1999, Pos. 729; *see Constitution Watch - Poland Update*, E. EUR. CONST. REV., Vol. 8, No. 4, Fall 1999, at 35.
231. Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [Law of January 7, 1993 on Family Planning, Human Embryo Protection and Conditions of Legal Termination of Pregnancy], art.4b, Dz.U. No. 17/1993, Pos. 78.
232. EFFECTS OF THE ANTI-ABORTION LAW, *supra* note 204, at 3.
233. In January 2000, police raided two doctors' private offices and arrested them as they finished performing an abortion. It is the first time the police arrested doctors while performing an illegal abortion. *See Poland Abortion Doctors Office Raided*, ASSOCIATED PRESS, Jan. 26, 2000.
234. K.K. art. 152.
235. *Id.*
236. *Id.* art. 154.
237. *Id.* art. 152(3).
238. *Id.* art. 153(1).
239. *Id.* art. 153(2).
240. *Id.* art. 154(2).
241. *Id.* art. 157a(3).
242. *Id.* art. 149. The sentence is three months to five years imprisonment.
243. *Id.* art. 156(1).
244. *Id.* art. 157a(1).
245. *Id.* art. 157a(2).
246. EFFECTS OF THE ANTI-ABORTION LAW, *supra* note 204, at 3.
247. *See* Ann Snitow, *Poland's Abortion Law - The Church Wins, Women Lose*, THE NATION, Apr. 26, 1993, at 556-559.
248. *See* Nowicka, *supra* note 212, at 2.
249. *Women's Reproductive Rights*, *supra* note 208, at 225.
250. K.K. art. 156.
251. *Women's Reproductive Rights*, *supra* note 208, at 237.
252. EUROPEAN CENTRE FOR THE EPIDEMIOLOGICAL MONITORING OF AIDS, HIV/AIDS SURVEILLANCE IN EUROPE: REPORT NO. 61, June 30, 1999, at 37.
253. EUROPEAN CENTRE FOR THE EPIDEMIOLOGICAL MONITORING OF AIDS, COUNTRY PROFILE: POLAND (source: National Institute of Hygiene, Warsaw) (visited Jan. 27, 2000) <http://www.ceses.org/eurosurv>.
254. ZBIGNIEW IZDEBSKI, ZACHOWANIA PROZDROWOTNE I SEKSUALNE W ASPECKCIE HIV/AIDS W POLSCE [PROHEALTH BEHAVIOR AND SEXUAL ACTIVITY REGARDING HIV/AIDS IN POLAND] 6 (1997).
255. T. NIEMIEC, NATIONAL AGENCY FOR COORDINATION OF ACTIONS FOR PREVENTION OF HIV/AIDS, ZAKA_ENIE HIV/AIDS U KOBIET W OKRESIE PROKREACJI. PORADNIK DLA LEKARZA PRAKTYKA [HIV/AIDS INFECTIONS FACED BY WOMEN IN PROCREATION STATE] 3 (1996).
256. HIV/AIDS SURVEILLANCE IN EUROPE, *supra* note 252, at 32.
257. Ministerstwo Zdrowia i Opieki Społecznej [Ministry of Health and Social Welfare], Zachorowania na choroby weneryczne [Situation of STIs] (visited Jan. 27, 2000) <http://www.mzios.gov.pl>; GŁÓWNY URZĄD STATYSTYCZNY [CENTRAL STATISTICAL OFFICE], ROCZNIK STATYSTYCZNY 1997 [STATISTICAL YEARBOOK] 259 (1997).
258. *Id.*
259. K.K. art. 161.
260. *Id.* art. 161(1).
261. *Id.* art. 161(2).
262. MINISTERSTWO ZDROWIA I OPIEKI SPO_ECZNEJ [MINISTRY OF HEALTH AND SOCIAL WELFARE], KRAJOWY PROGRAM ZAPOBIEGANIA ZAKAŻENIOM HIV I OPIEKI NAD ŻYJĄCYMI Z HIV I CHORYMI NA AIDS [THE NATIONAL PROGRAMME FOR PREVENTION OF HIV INFECTIONS AND THE CARE OF PERSONS LIVING WITH OR SUFFERING FROM HIV/AIDS] 12 (1996).
263. *Id.*
264. *Id.*
265. Ustawa z dnia 5 grudnia 1996 r. o zawodzie lekarza [Law of December 5, 1996 on the Medical Profession], art. 31, Dz.U. No. 28/1997, Pos. 152.
266. NATIONAL PROGRAM FOR PREVENTION OF HIV INFECTIONS AND THE CARE OF PERSONS LIVING WITH OR SUFFERING FROM HIV/AIDS, *supra* note 262, at 5.
267. Ministerstwo Zdrowia i Opieki Społecznej [Ministry of Health and Social Welfare], Centrum Diagnostyki i Terapii AIDS [Order of 30 April, 1996 Establishing the AIDS Council], Dziennik Urzedowy Ministerstwa Zdrowia i Opieki Spolecznej No. 6/May 29, 1996, Issue No. 16, at 65-66, *translated in* INTERNATIONAL DIGEST OF HEALTH LEGISLATION Vol. 48, No. 1, 14 (1997).
268. INDEPENDENT REPORT, *supra* note 109.
269. KONST. art. 18.
270. Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy [Law of February 25, 1964 Family and Custody Code] [K.R.], Dz.U. No. 9/1964, Pos. 59.
271. *Id.* art. 10(1).
272. *Id.*
273. *Id.* arts. 11-15.
274. *Id.* art. 12(1).
275. K.K. art. 206.
276. Ustawa z dnia 17 maja 1989 r. o stosunku Państwa do Kościoła Katolickiego w Polskiej Rzeczypospolitej Ludowej [Law of May 17, 1989 on the Relations between the State and the Catholic Church], Dz.U. No. 29/1989, Pos. 154.
277. KONST. art. 33(1); K.R. art. 23.
278. *See* THE WOMEN'S RIGHTS CENTER, POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE (visited Jan. 28, 2000) <http://free.ngo.pl/temida/rapfam.htm>.
279. K.R. art. 36(1).
280. According to a Supreme Court ruling establishing a legal obligation for a married couple to cohabit (including sexual relations), any agreement to exclude cohabitation is illegal.

Urszula Nowakowska & Emilia Piwnik, *Women in the Family, in* POLISH WOMEN IN THE 90S, at 117 (Urszula Nowakowska, Women's Rights Center eds., 2000) [hereinafter *Women in the Family*].
281. K.R. art. 23.
282. *Id.* art. 27.
283. *Id.* arts. 93(1), 97.
284. *Id.* art. 25
285. *Id.* art. 88.
286. *Id.* arts. 89(6), 89(2), 89(3).
287. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 15. The Supreme Court has issued an advisory opinion stating that lower courts should not hear these types of cases and should not consider them the same way they consider property cases among married couples. Courts usually apply the Civil Code provisions on "close friends" in these cases, or arts. 860-875 on division of property between small business partners.
288. Ustawa z dnia 2 lipca 1994 r. o najmie lokali mieszkalnych i dodatkach mieszkaniowych [Law of July 2, 1994 on Housing], art. 8, Dz.U. No. 105/1994, Pos. 509.
289. Additionally, each parent has an equal right to custody and an equal obligation to support the children. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 16.
290. If one partner dies or is terminally ill, the other partner is entitled to support or maintenance if the court agrees that the surviving partner is a "close friend." Under art. 923(1) of the Civil Code, a close friend who lived with the deceased is entitled to remain in the shared apartment for a period of three months. *Id.* at 15.
291. A marriage can also be annulled if one of the spouses, for whatever reason, was unable to consciously declare his or her true will, or due to an error of identity of the other person, or under threat that unless the marriage was concluded, serious personal injury might come to one of the spouses or another person. K.R. art. 151(1).
292. *Id.* art. 21.
293. *Id.* art. 56(1).
294. *Id.*
295. JAN WINIARZ, PRAWO RODZINNE [FAMILY LAW] 129-130 (1994).
296. K.R. art. 56(3).
297. *Id.* The most common reason in divorces based on mutual consent is the incompatibility of spouses' personalities. In fault based divorces, the most common reasons are domestic violence, alcoholism, and adultery. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 9.
298. *Id.* at 10.
299. K.R. art. 56(2).
300. WINIARZ, *supra* note 295, at 131.
301. *Id.* at 135.
302. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 10. This is rare in practice. *See Women in the Family*, *supra* note 280, at 123.
303. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 10-11.
304. *Id.* at 11.
305. KONST. art. 48(2). The constitutional regulation of termination of parental rights is a rare occurrence. In practice, it is very difficult to terminate parental rights. Usually some kind of joint custodial or visitation scheme is approved. Very rarely, in the most extreme cases of negligence or abuse, the court can grant sole custody to only one parent. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 11-12.
306. K.R. art. 133; POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 13.
307. POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 13. According to an advisory opinion of the Supreme Court, both parents are obliged to use their income to support their children, regardless of how much they earn. A parent may not be relieved of this obligation unless he or she is incapacitated and not earning money at all.
308. K.R. art. 60.
309. *Id.*; POSITION OF WOMEN IN THE FAMILY: LAW AND PRACTICE, *supra* note 278, at 14.
310. K.R. art. 59.
311. *Id.* arts. 611 - 616.
312. *Id.* art. 614(2).
313. *Id.* art. 611(2).
314. Women in the Family, *supra* note 280, at 122.
315. KONST. art. 21(1).
316. K.C. art. 140. *See generally Razem, ale osobno* [*Together, but Separately*], _YCIE, April 24, 1999.
317. KONST. art. 33(2).
318. *Id.* art. 65(1).
319. *Id.* art. 71(1).
320. *Id.* art. 71(2).
321. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy [Law of June 26, 1974 Labor Code] [K.P.], Dz.U. No. 24/1974, Pos. 141.
322. *Id.* art. 112.
323. *Id.* art. 113.
324. THE WOMEN'S RIGHTS CENTER, WOMEN ON THE LABOR MARKET (visited Jan. 31, 2000) <http://free.ngo.pl/temida/jobreport.htm>. There has been a recent amendment introducing a ban on sex specific advertisements. Also, claims of gender discrimination can be addressed in Labor Courts. *Implementation of the Beijing Platform of Action, supra* note 179, at 13.
325. K.P. art. 176.
326. Rozporządzenie Rady Ministrów z dnia 10 września 1996 r. w sprawie wykazu prac wzbronionych kobietom [Order of 10 Sept. 1996 of the Council of Ministers Concerning Occupations Prohibited for Women], Dz.U. No. 114/1996, Pos. 545; *see Poland - Women* (visited Jan. 31, 2000) <http://natlex.ilo.org>.
327. WOMEN ON THE LABOR MARKET, *supra* note 324 (observing that these provisions are inconsistent with EU standards).
328. K.P. art. 177(1).
329. *Id.* art. 177(4). In this case, the employer has to agree with the trade union on the date of the dissolution of the contract with the pregnant woman. If there is no possibility of providing another job for a woman she is entitled to temporary benefits and the time without employment is included in her tenure.
330. *Id.* art. 178(1).
331. *Id.* art. 179(1).
332. In this case, the woman is entitled to compensatory allowance if the transfer to another job results in lower remuneration (art. 179(2)).
333. *Id.* art. 180(1).
334. *Id.* art. 180(2).
335. *Id.* art. 183(1).
336. Urszula Nowakowska & Anna Swędrowska, *Women in the Labor Market*, in POLISH WOMEN IN THE 90S, at 47 - 48 (Urszula Nowakowska, Women's Rights Center eds., 2000).
337. K.P. art. 180(3).
338. *Id.* art. 187(1).
339. *Id.* art. 184.
340. WOMEN ON THE LABOR MARKET, *supra* note 324.
341. *Id.*
342. Rozporządzenie Rady Ministrów z dnia 28 maja 1996 r. w sprawie urlopów i zasiłków wychowawczyc [Order of May 28, 1996 of the Council of Ministers Concerning Parental Leave and Family Benefit], Dz.U. No. 60/1996, Pos. 277; see *Poland - Maternity Protection* (visited Jan. 31, 2000) <http://natlex.ilo.org>.
343. K.P. art. 178(2).
344. Order of May 28, 1996 of the Council of Ministers on Parental Leave and Family Benefit.
345. The qualification requirement is that the family income per person should not exceed 25% of the average monthly income in the past year. The assessment of the benefit is based on the average remuneration from the year before the leave. The period for which the benefit is granted varies, and amounts to: 24 months in the case of a one child under parental care, 36 months if there is more than one child born at the same time, and for single parents. Payment of the benefit can be extended for up to 72 months if a child, under care, suffers from a chronic disease or mental deficiency. The child care benefit cannot be granted if income per person in the family exceeds 25% of an average salary from the previous year. WOMEN ON THE LABOR MARKET, *supra* note 324.
346. K.P. art. 188. Until 1996 men were entitled to this right only if they were the sole guardians of children. WOMEN ON THE LABOR MARKET, *supra* note 324.
347. WOMEN ON THE LABOR MARKET, *supra* note 324. For many years, however, fathers were entitled to this benefit only in exceptional situations: when the mother was absent or if she was not able to care for the child because of sickness or birth.
348. *Id.*
349. *Id.*
350. Nowakowska & Sw_drowska, *supra* note 336, at 60.
351. WOMEN ON THE LABOR MARKET, *supra* note 324.
352. Between 1992 and 1996, the overall unemployment rate ranged from a minimum of

13.6% in 1996 to a maximum of 16.4% in 1993. Since the beginning of 1997, the overall unemployment rate has been approximately 13%. *Id.*

353. *Id.*

354. Maria Anna Knothe, *Social and Economic Rights of Women in Poland in Light of the Universal Declaration of Human Rights*, WOMEN'S HUMAN RIGHTS (O_KA) Vol. 4, No. 5 (1998), at 19.

355. WOMEN ON THE LABOR MARKET, *supra* note 324.

356. However, women are starting their own business at increasing rates. The number of women entrepreneurs has increased from 3.7% of the total female workforce in 1989 to about 11% in 1993, and of those the number who owned their business were 27% in 1989, 33% in 1991 and approximately 39% in 1993. *Id.*

357. *Written Statement Submitted by the Federation for Women and Family Planning and the International Planned Parenthood Federation*. 14/04/98. E/C.12/1998/NGO/2. (Info from Non-governmental Sources), U.N. Committee on Economic, Social and Cultural Rights, 18th Sess. (27 April - 15 May 1998), ¶ 7 (visited Jan. 20, 2000) <http://www.unhchr.ch>, also available at <http://www.waw.pdi.net/~polfedwo/english/english1.htm> [hereinafter FEDERATION REPORT].

358. Ustawa z dnia 17 grudnia 1998 r. o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych [Law of December 17, 1998 on Retirement Age and Retirement Pension], art. 27, Dz.U. No. 162/1998, Pos. 1118.

359. *Implementation of the Beijing Platform of Action*, *supra* note 179, at 4. This direction has been confirmed by decisions of the Constitutional Court.

360. Ustawa z dnia 29 sierpnia 1997 r. - Prawo bankowe [Law of August 29, 1997 - Banking Law], Dz.U. No. 140/1997, Pos. 939.

361. *Id.* arts. 69, 70.

362. KONST. arts. 33(2), 70(1), 70(4).

363. *Id.* art. 70(1).

364. *Id.* art. 70(2).

365. *Id.* art. 70(3), (4).

366. FEDERATION REPORT, *supra* note 357, ¶ 5. Among employed persons, women with higher education represented 10%, while men nine 9 % . Five percent of women have post-college education as opposed to 1% of men. Twenty-four percent of women graduated a vocational college, with only 21% of men in the same situation. Eleven percent of women have general college education, while only 3% of men are in the same position. WOMEN ON THE LABOR MARKET, *supra* note 324.

367. *Implementation of the Beijing Platform of Action*, *supra* note 179, at 3.

368. FEDERATION REPORT, *supra* note 357, ¶ 22.

369 Joanna Wóycicka & Andrzej Dominiczak, *Education of Women*, in POLISH WOMEN IN THE 90S, at 91 (Urszula Nowakowska, Women's Rights Center eds., 2000).

370. *Id.* at 92.

371. FEDERATION REPORT, *supra* note 357, ¶ 23.

372. Urszula Nowakowska, *Government Mechanism for the Advancement of Women*, in POLISH WOMEN IN THE 90S, at 12 (Urszula Nowakowska, Women's Rights Center eds., 2000).

373. Rozporządzenie Rady Ministrów z dnia 7 listopada 1997 r. w sprawie zniesienia urzędu Pełnomocnika Rządu do Spraw Rodziny i Kobiet [Decree of the Council of Ministers for the Establishment of the Plenipotentiary for Family and Women], Dz.U. No. 138/1997, Pos. 928; see KARAT COALITION FOR REGIONAL ACTION, *supra* note 107, at 6.

374. Nowakowska, *supra* note 372, at 13.

375. *Id.* at 16.

376. *Id.* at 20.

377. *Implementation of the Beijing Platform of Action, supra* note 179, at 15-16.

378. K.K. art. 197(1); see WOMEN'S RIGHTS CENTER, VIOLENCE AGAINST WOMEN - RAPE (visited Feb. 1, 2000) <http://free.ngo.pl/temida/violrape.htm>.

379. K.K. art. 197(1). The *Sejm* has just passed an amendment to the Criminal Code raising the penalty for rape to two to twelve years in prison.

380. *Id.* art. 197(2).

381. *Id.* art. 197(3). The Criminal Code does not explain the term "unnecessary cruelty", but based on the guidelines of the Supreme Court, this term means behavior that is not essential to overcome the resistance of the victim, or a kind of behavior intended to humiliate the victim, or to make her feel physical or moral pain or suffering, or to cause serious injuries or disfigurement to the victim. VIOLENCE AGAINST WOMEN - RAPE, *supra* note 378.

382. K.K. art. 148(2).

383. *Id.* art. 198.

384. *Id.* art. 201.

385. Urszula Nowakowska & Magdalena Jabłońska, *Violence against Women, in* POLISH WOMEN IN THE 90S, at 163 (Urszula Nowakowska, Women's Rights Center eds., 2000).

386. VIOLENCE AGAINST WOMEN - RAPE, *supra* note 378.

387. *Id.*

388. Nowakowska & Jabłońska, *Violence against Women, supra* note 385, at 164.

389. VIOLENCE AGAINST WOMEN - RAPE, *supra* note 378.

390. Ustawa z dnia 6 czerwca 1997 r. - Kodeks post_powania karnego [Law of June 6, 1997 - Code of Criminal Procedure], art. 12(3), Dz.U. No. 89/1997, Pos. 555.

391. Nowakowska & Jabłońska, *Violence against Women, supra* note 385, at 167.

392. *Id.* at 164.

393. *Id.* at 165 - 167.

394. *Id.*

395. WOMEN'S RIGHTS CENTER, VIOLENCE AGAINST WOMEN - DOMESTIC VIOLENCE (visited Feb. 1, 2000) <http://free.ngo.pl/temida/violdom.htm>.

396. K.K. art. 207(1).

397. *Id.* art. 207(2).

398. *Id.* art. 207(3).

399. VIOLENCE AGAINST WOMEN - DOMESTIC VIOLENCE, *supra* note 395.

400. *Id.*

401. *Id.*

402. *Id.*; *see* Jane Perlez, *Dark Underside of Polish Family Life: Violence*, N.Y. TIMES, May 8, 1998, at A1; see also STATE DEP'T REPORT, *supra* note 43.

403. FEDERATION REPORT, *supra* note 357, ¶ 19.

404. Nowakowska & Jabłońska, *Violence against Women*, *supra* note 385, at 161.

405. *Implementation of the Beijing Platform of Action*, *supra* note 179, at 16.

406. WOMEN'S RIGHTS CENTER, VIOLENCE AGAINST WOMEN - SEXUAL HARASSMENT (visited Feb. 1, 2000) <http://free.ngo.pl/temida/violsex.htm>.

407. K.K. art. 199.

408. *Id.*

409. Novakowska & Swędrowska, *supra* note 336, at 53.

410. VIOLENCE AGAINST WOMEN - SEXUAL HARASSMENT, *supra* note 406.

411. K.P. arts.111, 15, 94(4); see also Novakowska & Swędrowska, *supra* note 336, at 53.

412. Novakowska & Swędrowska, *supra* note 336, at 53.

413. *Id.* at 54.

414. FEDERATION REPORT, *supra* note 357, ¶ 20.

415. K.K. arts. 203, 204.

416. *Id.* art. 203.

417. *Id.* art. 204(1).

418. *Id.* art. 204(4).

419. *Id.* art. 253.

420. WOMEN'S RIGHTS CENTER, VIOLENCE AGAINST WOMEN - TRAFFICKING IN WOMEN (visited Feb. 2, 2000) <http://free.ngo.pl/temida/violtraf.htm>.

421. Nowakowska & Jabłońska, *Violence against Women, supra* note 385, at 172. La Strada cooperates with Interpol and other similar organizations abroad to combat trafficking in women. It runs a hotline, monitors investigations and helps individual women. The organization is also trying to educate the public, especially young women. The problem of trafficking especially concerns regions in poorer parts of Poland and near the border with Germany.

422. K.K. art. 203.

423. WORLD FACTBOOK, *supra* note 1.

424. KONST. art. 72(1).

425. *Id.*

426. *Id.* art. 65(3).

427 .*Id.* art. 72(4).

428. Ustawa z dnia 6 stycznia 2000 r. o Rzeczniku Praw Dziecka [Law of Jan. 6, 2000 on the Commissiner for Children's Rights], Dz.U. No. 6/2000, Pos. 69.

429. KONST. art. 68(3).

430. PEŁNOMOCNIK RZĄDU DO SPRAW RODZINY [GOVERNMENTAL PLENIPOTENTIARY FOR FAMILY], RAPORT O SYTUACJI POLSKICH RODZIN [THE REPORT ON THE SITUATION OF POLISH FAMILIES] 117 (1998).

431. *Id.* at 151.

432. FEDERATION REPORT, *supra* note 357, at <http://www.waw.pdi.net/~polfedwo/english/english1.htm>.

433. K.K. art. 149.

434. K.R. art. 10(1).

435. *Id.* art. 10.

436. *Id.* art. 10(2).

437. *Id.* art. 10(4).

438. K.K. art. 200(1).

439. *Id.* art. 200(2).

440. *Polish Parliament Bans All Pornography*, RFE/RL NEWSLINE Vol. 4, No. 46, Part II, March 6, 2000. The bill was adopted 210 to 197 votes, with 19 abstentions. It was promoted by pro-Catholic legislators from the ruling Solidarity Electoral Action (AWS), and was opposed by the leftist Democratic Left Alliance and the liberal Freedom Union, the AWS's coalition. *Polish President Vetoes Ban on All Pornography*, RFE/RL NEWSLINE Vol. 4, No. 62, Part II, March 28, 2000. The president's aide said the president decided to veto the draft law because he believed its provisions were so far-reaching that it would have been ignored, thereby damaging the prestige of the state and the law. A recent poll showed that 48 % of Poles disapproved of the ban on pornography, while 42 % supported it.

441. K.K. art. 202 (2).

442. *Id.* art. 204 (3).

443. *Id.* art. 207 (1).

444. *Initial reports of States parties due in 1993 : Poland. 31/01/94. CRC/C/8/Add.11. (State Party Report),* U.N. Committee on the Rights of the Child, ¶ 205 (visited Feb. 1, 2000) <http://www.unhchr.ch>.

445. *Id.* ¶ 207.

446. *Implementation of the Beijing Platform of Action, supra* note 179, at 10.

447. Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [Law of January 7, 1993 on Family Planning, Human Embryo Protection and Conditions of Legal Termination of Pregnancy], art. 2(3), Dz.U. No. 17/1993, Pos. 78.

448. FEDERATION REPORT, *supra* note 357, ¶ 22.

449. Law of 1993 on Abortion, art. 4.

450. Rozporządzenie Ministra Edukacji Narodowej z dnia 21 kwietnia 1998 r. w sprawie wprowadzenia do nauczania szkolnego przedmiotu "Wiedza o życiu seksualnym człowieka" oraz zakresu jego treści programowych [Decree of the Ministry of Education of April 21, 1998 on the Introduction of the Program on Human Sexual Life in the Curriculum], Dz.U. No. 58/1998, Pos. 369.

451. Ustawa z dnia 16 grudnia 1998 r. o zmianie ustawy o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [Law of December 16, 1998 Amending the Law on Family Planning, Human Embryo and Legal Termination of Pregnancy], Dz.U. No. 5/1999, Pos. 32.

452. *See Women's Reproductive Rights, supra* note 208, at 238 -241.

453. FEDERATION REPORT, *supra* note 357, ¶ 24.

454. IZDEBSKI, *supra* note 254, at 98.

455. K.K. art. 204(3).

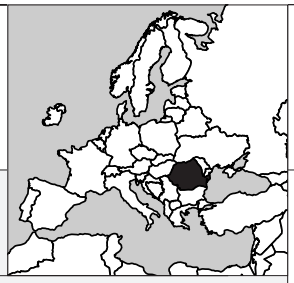
456. *Id.* art. 204(4).

457. *Concluding Observations of the Human Rights Committee - Poland, supra* note 185.

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

7. Romania



Statistics

GENERAL

Population

- The total population of Romania is 22.4 million.[1]
- The proportion of population residing in urban areas is 55%.[2]
- Between 1995 and 2000, the annual population growth rate is estimated at –0.4%.[3]
- In 1999, the gender ratio was estimated to be 104 women to 100 men.[4]

Territory

- The territory of Romania is 92,043 square miles.[5]

Economy

- In 1997, gross national product (GNP) was USD $32.1 billion.[6]
- In 1997, gross domestic product (GDP) was USD $35,204 million.[7]
- Between 1990 and 1997, the average annual growth was -0.3%.[8]
- From 1990 to1995, public expenditure on health care was 3.6% of the GDP.[9]

Employment

- Women comprised 46% of the labor force in 1997, compared to 44% in 1990.[10]

WOMEN'S STATUS

- In 1999, the life expectancy for women was 73.9 years compared with 66.2 years for men.[11]
- In 1997, the illiteracy rate among youth between the ages of 15–24 was 0% for females and 1% for males.[12]
- In 1998, gross primary school enrollment was 87% for boys and 86% for girls; gross secondary school enrollment was 83% for boys and 82% for girls.[13]

ADOLESCENTS

- 19% of the population is under 15 years of age.[14]

MATERNAL HEALTH

- Between 1995 and 2000, the total fertility rate is estimated at 1.17.[15]
- In 1998, there were 36 births per 1,000 women aged 15–19.[16]
- In 1998, the maternal mortality ratio was 41:100,000.[17]
- The infant mortality rate was at 23 per 1,000 live births.[18]
- 99% of births were attended by trained attendants.[19]

CONTRACEPTION AND ABORTION

- The contraceptive prevalence for any method (traditional, medical, barrier, natural) is estimated at 57%, and that for modern methods at 14%.[20]

HIV/AIDS AND STIs

- In 1999, the estimated number of people living with HIV/AIDS was 7,000.[21]
- In 1999, the estimated number of women aged 15–49 living with HIV/AIDS was 750.[22]
- In 1999, the estimated number of children aged 0–14 living with HIV/AIDS was 5,000.[23]
- In 1999, the estimated cumulative number of AIDS deaths among adults and children was 4,000.[24]

ENDNOTES

1. United Nations Population Fund (UNFPA), The State of World Population 1999 (visited July 14, 2000) <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 811.
6. The World Bank, World Development Report 1998/9, at 191.
7. *Id*. at 213.
8. *Id*. at 211.
9. *Id*. at 203.
10. *Id*. at 195.
11. The State of World Population 1999, *supra* note 1.
12. The World Bank, World development indicators 1999, at 83.
13. *Id*.
14. CIA, Romania, World factbook (visited Sept. 23, 1999) <http://www.odci.gov/cia/publications/factbook/ro.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-Romania 3 (2000) (visited July 14, 2000) <www.unaids.org>.
22. *Id*.
23. *Id*.
24. *Id*.

Romania is located in Southeastern Europe and borders the Black Sea, Bulgaria, Ukraine, Hungary, Serbia and Moldavia.[1] As of July 1999, there were 22.33 million people living in Romania, slightly more than half of them women — 11.42 million.[2] Romania is the second most populous country in East Central Europe and is larger than 10 of the 15 members of the European Union (EU), to which it has applied for admission.[3] It is one of the poorer countries in the region, and since 1989 it has lagged behind its neighbors in transitioning to an open-market economy. In 1997, a new democratic coalition government launched a reform program that may accelerate the transition.[4]

Legislative activity in Romania has been complicated by ethnic politics, particularly conflicts between Romanian and Hungarian communities.[5] The population of Romania is 89.1% Romanian, 8.9% Hungarian, 0.4% German, and 1.6% other (Ukrainians, Serbs, Croats, Russians, Turks and Roma). The country is 70% Romanian Orthodox, 6% Roman Catholic, and 6% Protestant. Another 18% of the population is unaffiliated with any religion.[6]

I. Setting the Stage: The Legal and Political Framework

A. THE STRUCTURE OF NATIONAL GOVERNMENT

Romania is a multiparty democratic state.[7] The current legal system of Romania is modeled after the Fifth Republican Constitution of France.[8] The Romanian Constitution, ratified in 1991, declares that national sovereignty resides with the Romanian people, who exercise it through representatives and through referenda.[9]

Executive branch

The president of Romania represents the Romanian state, oversees the observance of the Constitution, and acts as a mediator among powers in the state and between the state and society.[10] The president is elected by majority vote through universal, equal, direct, secret and free elections. The president serves for no more than two four-year terms.[11] The president nominates the prime minister and appoints the government with a vote of confidence from Parliament.[12] The president may participate in meetings of the government concerning foreign policy, national defense, public order, or on other topics by request of the prime minister.[13] The president concludes international treaties and submits them to Parliament for ratification,[14] acts as commander-in-chief of the armed forces,[15] declares states of emergency,[16] makes appointments to public offices, confers decorations and titles, and grants pardons.[17] In exercising his powers, the president of Romania issues decrees that must be countersigned by the prime minister.[18]

The government consists of the prime minister, ministers, and other members established by law;[19] its duty is to implement domestic and foreign policy and to generally administer and manage the public affairs of the country.[20] The prime minister directs government actions and submits reports and statements on government policy to Parliament for debate.[21] The government exercises its power and executes laws through decisions and statutory orders, which take effect once published.[22] Parliamentary control over the government is expressed in the following forms: presentation of information,[23] questions and interpellations,[24] motion of censure[25] and provoked motion of censure.[26]

The national health care system is managed by the Health Insurance National Fund, an independent agency set up by the government in 1993. This agency negotiates with the Ministry of Finance and the Ministry of Labor and Social Protection for funding approved by Parliament. It then allocates funds to various health care services at the county level.[27]

Legislative branch

The legislative branch is bicameral, consisting of the Senate (*Senat*) and the Chamber of Deputies (*Adunarea Deputaților*). The Senate has 143 members elected for terms of four years by direct popular vote based on proportional representation. The Chamber of Deputies has 343 members also elected for four-year terms by direct popular vote based on proportional representation.[28]

Parliament passes constitutional, organic and ordinary laws.[29] Constitutional laws revise the Constitution.[30] Organic laws regulate, *inter alia*, the electoral system, political parties, referenda, the organization of the government and governmental agencies, the courts (criminal and administrative), the legal status of property and inheritance, and general rules covering labor relations, social security, education, and the organization of local administration.[31] Ordinary laws cover the remainder of issues and make up the largest sector of legislation. In addition, Parliament approves the state budget proposed by the government.[32]

Laws can be initiated by the government, deputies, senators, or a petition signed by 250,000 citizens with the right to vote, with at least 10,000 supporters coming from each of at least one quarter of the country's counties.[33] Organic laws are passed by a majority vote of the members of each Chamber, while ordinary laws need only the majority vote of the members present in each Chamber.[34] Laws are promulgated by the

president of Romania, who may return the law to Parliament for reconsideration or may ask the Constitutional Court to rule on constitutionality.[35] Laws come into force on the day of their publication in the Official Gazette of Romania.[36]

Judicial branch

The judicial branch consists of the Constitutional Court, the Supreme Court of Justice, courts of appeal, departmental (county) courts and the court of the municipality of Bucharest, and courts of first instance. The number of courts of first instance has been fixed by law at 179 (between three and six courts of first instance are located in each county), with eight in Bucharest. Each of the forty counties of Romania and the municipality of Bucharest has one county court, which acts as an appellate court to the local lower courts of first instance.[37] Each of 15 courts of appeal, which are the courts of third instance, have jurisdiction over two to five county courts. Final appeals are heard by one of the four sections (civil, criminal, military, or administrative) of the Supreme Court of Justice.[38] There is also a parallel system of military justice, composed of military courts, territorial military courts and the military court of appeal.[39]

The president of Romania appoints judges to the Supreme Court of Justice for six-year terms; judges can serve more than one term.[40] The Superior Council of Magistracy, whose members are elected for four-year terms by Parliament,[41] nominates judges and public prosecutors who are then appointed by the president of Romania.[42]

The Constitutional Court adjudicates the constitutionality of laws both after and before promulgation. The Court decides the constitutionality of laws before promulgation only upon request of the president of Romania, the president of either chamber of Parliament, the government, the Supreme Court of Justice, at least 50 deputies or at least 25 senators.[43] The Constitutional Court consists of nine judges appointed for one nonrenewable term of nine years. Three judges are appointed by the Chamber of Deputies, three by the Senate and three by the president of Romania. One third of the Court is replaced every three years.[44] If the Constitutional Court rules a potential law to be unconstitutional, that ruling can be overturned if Parliament reconsiders the law and passes the measure again by a two-thirds vote of each chamber.[45]

The Constitution also provides for an Ombudsman, or Advocate of the People, to defend the rights and freedoms of citizens.[46] The Ombudsman is appointed by the Senate for a term of four years.[47] While the judicial branch is meant to be independent, subject only to the law,[48] in practice, it is still subject to influence by the executive branch.[49]

B. THE STRUCTURE OF TERRITORIAL DIVISIONS

Romania is divided into 40 counties, or *judeţe* (singular form is *judeţ*) and the Municipality of Bucharest.[50] Territorial-administrative subdivisions are communes and cities.

Regional and local governments

Local administration is based on the principle of local autonomy and decentralization of public services.[51] Communes are administered by elected local councils, cities are administered by elected mayors and city councils, and an elected county council co-ordinates the activities of commune and city councils.[52] The government appoints a prefect to each of the 40 counties to represent the government at the local level and to direct the decentralized public services of the ministries or other central agencies. The prefect can challenge in administrative court acts of the county council, local council or mayor.[53]

C. SOURCES OF LAW

Domestic sources of law

Romania has a civil law system. The hierarchy of domestic laws is as follows: the Constitution; laws, resolutions and motions adopted by Parliament; decrees and statutory orders adopted by the executive branch to ensure enforcement of legislation; decisions of the prime minister; orders and instructions of ministers; decisions of local councils and orders of mayors for public administration; and orders of public services of ministries operating in counties.[54]

Chapter II of the Constitution establishes fundamental rights and liberties. Among them, the Constitution guarantees the rights to life, physical and mental integrity of a person,[55] and the protection of health.[56] It is the responsibility of the state "to take measures to ensure public hygiene and health."[57] "The organization of the medical care and social security systems in case of sickness, accidents, maternity and recovery, the control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of persons" are established by law.[58] Working conditions for women and youth are constitutionally protected,[59] and women are entitled to equal pay with men for equal work.[60] Subsumed under the state's constitutional obligation to ensure a decent living standard for its citizens are the rights to paid maternity leave, to medical care in public health establishments, and to social security.[61]

Children and youth also enjoy special constitutional protection.[62] The state is obliged to grant allowances to parents raising children and to pay benefits to people who care for sick or disabled children.[63] The Constitution prohibits the

exploitation of minors and their employment in activities that might be harmful to their health or morals or that might endanger their lives and normal development.[64] The Constitution also prohibits the paid employment of minors under the age of 15.[65]

International sources of law

International treaties ratified by Parliament become national law.[66] Constitutional provisions concerning citizens' rights and freedoms must conform with the Universal Declaration of Human Rights and with covenants and other treaties to which Romania is a party. Where there are inconsistencies between national laws and international human rights agreements, the international regulations take precedence.[67]

Romania ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1982.[68] Romania is also a party to the International Covenant on Civil and Political Rights[69] and its First Optional Protocol,[70] the International Covenant on Economic, Social and Cultural Rights,[71] the Convention on the Rights of the Child,[72] the International Convention for the Elimination of All Forms of Racial Discrimination,[73] and the European Convention of Human Rights.[74]

II. Examining Health and Reproductive Rights

A. HEALTH LAWS AND POLICIES

Objectives of the health policies

As presented in the Governing Program of the current government,[75] the health policy is mainly focused on reforming the health system — primarily to increase accessibility to health care services.[76] This reform has been planned since 1990, but it is only since 1998 that significant legal changes have occurred. The reforms propose to reorganize the Ministry of Health to reduce its responsibility for service provision and instead to emphasize its role in strategic planning and health policy.[77] The physicians' and pharmacists' organizations of Romania would be primarily responsible for ensuring a fair distribution of medical and pharmaceutical services throughout the country.[78] Included in the governmental reform is a Reproductive Health Promotion Strategy. Its principal aim is to reduce abortion as a means of family planning, and to increase the use of modern types of contraceptives, particularly targeting adolescents. Health reforms also emphasize ways to reduce the incidence of sexually transmissible infections (STIs).[79]

Implementing agencies

The Ministry of Health is to carry out the implementation of the new Law on Health Insurance,[80] in addition to continuing its work managing the entire health care system. The National House for Health Insurance (NHHI) and the Romanian Board of Physicians are also involved in health care system reform.[81]

A series of public institutions, such as the Institute of Public Hygiene and Health, the Institute for Health Services and Management, and the Institute for Maternity and Child Protection, which provide counseling and undertake scientific research, work with the Ministry of Health.[82] The National Center for Health Promotion, an arm of the National Institute for Health Services Management in Bucharest, is responsible for planning and development, training, research, and technical assistance at the national, regional, and local levels.[83]

Operating within the Ministry of Health are County Directorates of Public Health for each county and Bucharest. Their job is to implement national policies and programs at local levels, including preventive medicine, medical inspection, statistical review and financial accountability.[84] In cooperation with the local authorities, education institutions, governmental and non-governmental organizations, these directorates organize educational activities in the field of reproductive health.[85] They are also in charge of all activities relating to the treatment and prevention of STIs.[86]

The Ministry of Health is the central authority in the field of public health assistance.[87] It works in cooperation with the Romanian Board of Physicians in several important national programs that relate to reproductive health:[88] the National Program of HIV/AIDS supervision and control; the National Program on Family Planning and Protection of Mother and Child Health Status; and the National Program for the Evaluation of Population Health Status and Demographic Supervision.[89] Within the Ministry of Health are also the Institutes for Public Health in Bucharest, Cluj-Napoca, Iasi and Timisoara, and Centers of Public Health in Târgu-Mureş and Sibiu.

Romania's 1997 Health Insurance Act established compulsory social health insurance for all Romanian citizens, foreigners, and stateless persons who legally reside in the country.[90] Members of foreign diplomatic missions and foreign citizens who are temporarily in the country do not have to participate in the health insurance program.[91] All insured persons must contribute 7% of their monthly gross income towards health care insurance.[92] To these contributions are added subventions from the state budget and local budgets, as well as from other income sources.[93] Children and people under 26 do not contribute to insurance if they are students or apprentices and if they are not earning income. Other non-contributing individuals are disabled persons who do not earn income or are in their family's care; spouses, parents and grandparents who do

not earn their own incomes and are cared for by an insured person; persons who were politically persecuted under the post-World War II dictatorship, as well as deported people, prisoners, war veterans, heroes of the 1989 Revolution and their successors.[94]

The health insurance system permits the insured to freely choose their doctors, medical institutions and health insurance institutions.[95] The law permits voluntary (private) health insurance for special individual situations.[96] The NHHI is the autonomous public institution that manages the social health insurance system of Romania.[97] It is divided into a network of regional health insurance groups, one for each county and for Bucharest. The NHHI is governed by a Board of Administration which is responsible for the smooth financing of the network and for financial oversight.[98]

Health care is principally regulated by the Health Insurance Act.[99] The Health Insurance Act sets the framework and general principles of health insurance, including who can be insured,[100] the rights of the insured persons,[101] the relations between health care providers and health insurance companies,[102] funding of health care,[103] and the structure of health insurance companies.[104]

Infrastructure of health services

Health services in Romania are organized locally. Urban and rural dispensaries (primary health care centers) provide primary health care services to children and adults, including pre- and postnatal care. Secondary health care consists of polyclinics located in urban areas which provide specialized health services, including obstetrical, pediatric and lab services on an outpatient basis. Tertiary health care consists of hospitals, also located in urban areas, with one or more polyclinics attached.[105] In addition to this public health care system, many companies and factories have dispensaries on their premises, as well as special polyclinics that look after the health of their employees. Twenty-one university hospitals act as referral centers for the most difficult, high-risk cases, but they also serve their local districts. Similarly, county hospitals also serve as referral hospitals and, at the same time, provide services for the surrounding communities. Hospitals and their subordinate polyclinics and dispensaries serve approximately 100,000 people in each area.[106] This translates to 5,883 medical dispensaries and 540 polyclinics operating throughout the country.[107] A typical dispensary is staffed by two physicians — usually a general practitioner and a pediatrician — and two medical assistants such as nurses, a midwife and one auxiliary staff member. The health reform proposals would modify the staffing of dispensaries by merging general practitioners (GPs) and pediatricians into a new "specialty" of family physician. A family practitioner would be posted to the dispensary and manage an average caseload of 1,500 patients.[108]

Reproductive health services are considered to fall within primary health care. Dispensaries have consultations for family planning, obstetrics-gynecology, and services for maternal health care. Family planning services have been authorized since 1990 by the Ministry of Health. These services were initially organized within maternity wards and in obstetrics-gynecology services offered in polyclinics; gynecologists were the only physicians designated to dispense family planning advice and services. In January 1991, however, the Loan Agreement between the government of Romania and World Bank (IBRD) provided funds for the improvement of reproductive health,[109] and NGOs began to provide counseling and contraceptive services.

Cost of health services

The Romanian health care system has much to be commended for, although both providers and patients voice much dissatisfaction with it. Officially, the national budget pays for universal care. In actual practice, however, the Romanian health care system is under tremendous strain stemming from decades of insufficient investment and management difficulties. Before 1989, Romanians were entitled to free health care, but individuals often paid for services under the table. Today, there continues to be mixed elements of public and private practice, and this arrangement determines, in part, what kinds of services are rendered and to whom.[110]

Most health care services are free of charge, although abortion upon request is an important exception. Other medical services for which payment is not covered by health insurance are those for occupational diseases, work accidents, some highly specialized medical treatments, and dental services. Even for services that ought to be covered, it is still a common practice for patients to offer money or gifts in exchange for services. There are state subsidies for some drugs depending on the person's employment status and for certain diseases (i.e., cancer, tuberculosis, and diabetes mellitus). Pregnant women and children under the age of 16 benefit from free medication.[111] Pharmacies have recently been privatized, and discussions are underway to develop a system of pharmaceutical insurance.[112]

Payment for medical services provided by the public/private system comes from the health insurance fund administered by the NHHI. In cases of private medical services, payments from the health insurance fund come only if there is a contract between the physician providing the service and the NHHI.[113] Services provided outside of this contract are the responsibility of the patient. When medical services are provided through public dispensaries, polyclinics and hospitals, they are always

free of charge, with the exception of hospital services, where a 2% fee is charged as contribution to the special health fund.[114]

Of the budgetary funds spent on health care, 75.3% are spent as wages of the medical staff,[115] even though these wages are among the lowest in Romania. The funds allocated to health care centers for repair and investment are extremely small. In 1995, the average household spent 7.9% of monthly income on medicine, dentistry and other health care. For retirees, that figure is 12%.[116]

Regulation of health care providers

The Romanian Board of Physicians (Physicians' Board) was established by Law No. 74/July 6, 1995[117] and is a non-governmental, non-political professional organization that represents the interests of the medical profession.[118] By law, the Physicians' Board includes all physicians, practicing or retired, who are Romanian citizens and reside in Romania.[119] They are registered in a published periodical.[120] The Physicians' Board not only defends physicians' rights and interests, it interprets and implements the Code of Medical Ethics and advises the Ministry of Health on admission to practice and awarding of medical degrees. It also supervises, investigates, and rules on the professional behavior of physicians.[121] Physicians may only practice their specialty with Physicians' Board authorization.[122] The Physicians' Board has offices at national and county levels and in Bucharest.[123] There are similar boards for pharmacists[124] and medical assistants.[125]

To become a physician, one must finish a six-year program at an accredited public or private medical school (Faculties of Medicine).[126] After graduation, physicians have to complete a year of compulsory practice.[127] Only after the completion of that internship may a physician obtain the right to practice. To specialize, a physician has to train as a resident for three to seven years and pass an exam in the respective specialization.[128] The residence exams are coordinated by the Ministry of Health, in cooperation with the Physicians' Board and the Ministry of Education.[129]

Decision of government No. 312/1999 states that primary health care services are provided only by authorized or accredited *cabinete medicale* [doctors' offices].[130] GPs are not allowed to perform routine pre-natal services, such as blood and urine tests.

Physicians work with medical assistants, nurses and hospital attendants. Medical assistants and nurses are post-lyceum and high school graduates who pass an exam by the Ministry of Health,[131] and their responsibilities are no longer different, although medical assistants earn more than nurses do. Nurses' training has been upgraded in the past three years to correspond to European standards; curriculum revisions place more emphasis on primary care, preventative care, and maternal and child health.[132] In order to work as a medical assistant, a person has to obtain a license from the Romanian Board of Medical Assistants. The profession of medical assistant is regulated by the Decision of government No. 463/1990.[133]

Specialized studies are not necessary for medical attendants. Training takes place on the job. Formally, no midwives have been trained in Romania since 1978. Most practicing midwives were trained as hospital nurses, and then specialized in obstetrics and gynecology. Midwives have recently formed an association in order to support their work and are advocating for post-secondary training and certification.

Graduates of public or private accredited universities for pharmaceutical education (Faculties of Pharmacy) may be licensed as pharmacists. The requirements are similar to those for physicians, except that the Romanian Board of Pharmacists reviews and approves candidates.[134]

Patients' Rights

Physicians are obliged to respect human life and to exercise their profession correctly and with devotion.[135] Physicians are independent in the exercise of their profession. They have the right to initiate and prescribe courses of medical action; they are responsible for their medical decisions and actions[136] under disciplinary, criminal and civil provisions of various codes.[137] There are no specific provisions in Romanian law concerning medical malpractice, but general rules on negligence apply.[138] The Health Insurance Act has delegated to the NHHI responsibility for organizing a system of medical malpractice insurance.[139]

The Physicians' Board, acting through the National Council, can file a civil action or complaint to the legal authorities and demand an investigation of anyone suspected of practicing medicine illegally.[140] The Physicians' Board has disciplinary power over physicians who violate the legal provisions on the exercise of the medical profession and the Code of Medical Ethics.[141] The Board may censure, suspend, or revoke a physician's license to practice.[142]

Quality control of medical services is the responsibility of the health insurance groups and special committees of the Physicians' Board.[143] The criteria for quality control are to be elaborated by the NHHI and the Physicians' Board, on the basis of the criteria set by articles 31 and 32 of Law No. 145/1997.[144] A patient's right to confidentiality is guaranteed by law.[145] Article 30 ensures that a patient's health records will be kept by the County Directorate of Public Health and that information only be released if the patient agrees, if the information is needed to prevent the sickness of other persons, if such information is necessary for criminal investigation, or if it is otherwise authorized by law.[146] Employers and all other persons who have access to records must also respect the

confidentiality of health records.[147] Within the Romanian legislation, there are no special rules regarding consent of the patient to medical acts.

Conclusions

The Romanian health care system's medical staff is well trained. The number of doctors per capita (one doctor for 494 inhabitants in 1997)[148] appears to be on par with other European countries, although less so regarding specialists.[149] Equipment, medical centers and hospital beds, however, suffer in comparison due to lack of resources. Efforts have been made over the last few years to improve the general health of the population but the situation, particularly relating to the quality of medical services, leaves much to be desired. Insufficient budget resources and increasing poverty among certain sectors of the population can be partially attributed to Romania's failure to promote public health. Private medical practices do not yet offer a realistic alternative to public services; they are a viable solution only for an extremely small proportion of the population, as the fees for service are prohibitive. Private dentistry practices are the most common private practice, and there now exist a growing number of private pharmacies. Health insurance can not, at least in the short and medium terms, resolve the growing sense of insecurity in the provisioning of health services. It is expected that the state will need to increase its health budget, particularly to cover the fundamental health care needs of the population, to finance preventive medicine programs, and to improve basic medical assistance.

B. POPULATION POLICY

Romania does not have an explicit population policy and there are no specialized institutions devoted to this field. However, various state institutions have articulated objectives related to the population and family, particularly responding to the demographic decline.[150]

In 1999, the population of Romania was estimated at 22.3 million inhabitants in comparison with 23.2 million in 1990.[151] The average annual population growth between 1990 and 1997 has been -0.4, due both to a declining birth rate (registered after 1991) and to emigration.[152] Women outnumber men, noticeably those aged 45 and over. The male death rate is twice as high as the female death rate for people between 15 and 64 due to stress, injuries, alcoholism, tobacco addiction and suicide. Female deaths are higher in cases of circulatory system diseases and cancer.[153] Overall, there is a "graying" and a "feminization" of the population.[154] Despite a large proportion of women of childbearing age, the birth rate has been declining. The birth rate has fallen below the population replacement rate: there were 10.8 babies born for every 1,000 inhabitants in 1998, up slightly from 10.5 in 1997 and 10.2 in 1996.[155]

These overall demographic trends are reflected in recent policies of the Ministry of Health and the Ministry of National Education, which have presented programs to increase public awareness of reproductive health and sexual behavior among young persons. The major objectives of this policy are to promote reproductive health; to reduce the maternal death rate, especially those related to abortion; to reduce the number of abortions and abortion-related complications; to disseminate modern contraceptive methods; to increase the population's awareness of sexual activity and STI prevention; to reduce the number of unwanted pregnancies, the number of abandoned children, and the incidences of teenage pregnancies; and to increase the number of healthy newborn children.[156] The state also actively promotes family formation. Law No. 61/1993 as modified by Law No. 261/1998 establishes a state child allowance.[157] The state's principal motivation is to encourage the birth of children, as those with more than two children receive financial support[158] and extended parental leave.[159] Also, families in need of financial assistance in supporting their children may receive state allocations.[160] There is no comprehensive reproductive health policy that promotes women's health throughout their lives.

C. FAMILY PLANNING

Government delivery of family planning services

A loan agreement with the World Bank, signed in 1991, provided the impetus for the state's family planning services.[161] Some of the agreement's principal points were to improve reproductive health care services, to focus on maternal and child health, to increase access and choice in family planning services, and to decentralize the primary health care system. The organizational structure of family planning and reproductive health activity was partially established by Law No. 79/1991.

In 1992, the Ministry of Health established the Family Planning and Sex Education Unit (FPSEU),[162] and currently there are 230 family planning and reproductive health clinics run by the state and 11 referral centers operating in the university centers.[163] The Ministry of Health maintains a network of 40 Health Promotion Departments — one per county — that in part work to promote issues of family planning and reproductive health. At the regional level, there are, within the Ministry of Health's Institutes of Public Health, Health Promotion Teams that review and provide information about family planning and reproductive health to the population.[164] As a component of the primary health care reform initiated by the Ministry of Health in 1997, family planning has been integrated in 1999 into the basic 'package' of services provided to the population.[165] Reproductive health is one element of GP skill

upgrading, and will be carried out in part through a United Nations Population Fund (UNFPA)-financed Family Planning Project by the Ministry of Health.[166]

Dispensaries, as already mentioned, deliver some reproductive health services: counseling, oral contraceptives prescriptions, and recommendations for contraceptive devices. Unfortunately, in most dispensaries, contraceptive pills, condoms, and IUDs are not available. Most dispensaries have no educational materials on family planning methods. OB/GYNs in public hospitals, maternities and in private practice provide family planning services and counseling. They have been less active, however, in family planning programs than their colleagues who work in family planning clinics.

A World Bank Health Rehabilitation Loan provides UNFPA technical assistance and procurement services which supply contraceptives for the National Family Planning Program.[167] Under this project, which started in 1997 with expenditures of about USD $322,397, demand for contraceptive pills was so high, that an emergency order was filled to cover the shortage. In November 1998, the National Consultative Council for Family Planning met to decide on a new order for modern contraceptives, including more condoms, in order to meet the estimated needs for a period of two to three years.[168] Thanks to the World Bank agreement, the Ministry of Health is able to sell its imported contraception through a public network at lower prices than do pharmacies or private clinics. The price difference is considerable; oral birth control pills distributed through this network are 10 to 30 times cheaper; IUDs are 60 to 80 times cheaper than the cost on the free market. The medical assistance provided within these consultations is free of charge.[169]

The Ministry of Health guidelines for prenatal care are explicit. Healthy pregnant women should receive 10 prenatal consultations. Women with risk factors or complications may have more visits and tests, as well as specialist care at polyclinics or, if necessary, hospitals. All women are to receive at least one home visit during pregnancy (by a nurse) to assess their social circumstances and to receive prenatal education. The Ministry of Health also specifies the content of prenatal care.[170] Women who work outside the home receive maternity benefits and child support but must first register at the local dispensary. Women must use the maternity care services available within their residential area unless they are receiving services from special polyclinics or a company's dispensary. Home deliveries are not recommended, and nearly all deliveries take place in the hospital.

The Ministry of Health guidelines for prenatal care do not guarantee the quality of the services. In fact, the system's organization makes it difficult to assure quality. Since pregnant women see GPs for their prenatal visits in dispensaries, there are cases of women being admitted to the hospital in labor, and the attending obstetrician never having seen her before, let alone having access to her medical records. Ordinarily women do not bring their own medical records to the hospital. Since most maternal deaths occur during labor, delivery and the postpartum period, the quality of hospital obstetrical services is of key importance.

Services provided by NGOs/private sector

NGOs and the private sector have taken on increasing importance in the provision of family planning services.[171] For example, the private sector has become increasingly active in the sale of contraceptive products. Currently, the private sale of birth control pills accounts for over half the total pills distributed in the country, and it is estimated that the proportion is increasing dramatically. Recent figures show that commercial sale of oral contraceptives more than doubled in 1997 over the 1996 level.

Also, the network of NGOs providing services such as counseling, contraception, and training has been growing. Family planning consultations are also provided by Societatea de *Educaţie Contraceptivăçi Sexuală* (The Society for Contraceptive and Sex education — SECS), a non-governmental organization with 20 consultation centers throughout the country. SECS can provide imported contraceptives with the financial support of the International Planned Parenthood Federation (IPPF). In contrast to the state system, the consultations at SECS are not free of charge,[172] but they are affordable, at approximately USD $2. Other major international organizations, such as IPPF and Medecins Sans Frontier (MSF) Belgium-France, have been active in this field. There are 11 clinics of family planning organized by NGOs; all NGO family planning consultations are located in urban areas.[173]

UNFPA's assistance over the last few years has been crucial to the status of family planning services. UNFPA provides a total budget of about USD $700,000 as a national program support package.[174] It also supports Reproductive Health (RH) Information, Education, and Communication (IEC) activities. A joint UNFPA/UNICEF-supported project to strengthen women's health services in three counties of Romania was agreed to in principle by the Ministry of Health in 1997. UNFPA and UNICEF approved it in July 1999, but there is an ongoing need to solicit donors. UNFPA and UNICEF promised to jointly support the Romanian government in finding additional donor sources.[175]

Conclusions

The lack of a national strategy concerning women's health is part of the lack of a general health care policy for underserved or marginalized individuals. Women who live in rural

areas have increasingly less access to high-quality medical service because of several factors: the "migration" of doctors from rural medical dispensaries, the lack of up-to-date information and training available to rural doctors, and insufficient financial resources, poor equipment and ambulance services.[176] These factors combine to make the maternal and infant mortality rate in Romania one of the highest in Europe. In Romania the risk for a woman to die from a pregnancy-related cause is 14 times higher than in Austria and four times higher than in the Czech Republic, Poland or Hungary.[177] The neglect of women's health is furthermore attributable to women's lack of influence in political circles and their poor representation in international health institutions.

D. CONTRACEPTION

Prevalence of contraceptives

According to a 1993 survey on reproductive health in Romania, 41% of women of childbearing age indicated that they used contraceptive methods. The percentage of married women using contraceptive methods was 57%, 43% using traditional methods and only 14% using modern methods. The utilization of modern contraceptive methods by single women was negligible.[178]

The most frequent method of family planning is withdrawal (*coitus interruptus*) (34%), followed by the rhythm/calendar method (8%). The modern contraceptive methods used are IUDs (4%), condoms (4%) and oral pills (3%). Less than 1% of women use spermicides, and only 0.3% use injectible contraceptives, diaphragms, or other modern methods. Only 1.4% of married women have been sterilized.[179] More women in urban areas used modern contraceptive methods compared with rural areas.[180] Women between the ages of 30 and 34 (69%) used contraceptive methods more frequently than women between the ages of 25 to 29 (66%).[181]

In Romania, most modern contraception is imported from other countries. Birth control pills, both the COC (combined oral contraceptive) and the POP (progesterone only pill) types, are available under the brand names Minidril, Varnoline, Diane 35, Mercilon, Phaeva, and Microgynon 30. RU-486 (Mifepristona) as a method of early abortion is not available. Diaphragms and spermicides are difficult to procure. Both pills and intrauterine contraceptive devices require prescriptions, and insertions are performed only by OB/GYNs. There are no accurate sources of information about emergency contraception and emergency contraception is not readily available.

A 1999 Reproductive Health Survey shows an increase of contraceptive use (to 64% from 57% in 1993). The most important feature is that modern contraceptive use grew as follows: condoms (8.5%), oral pills (7.9 %), IUDs (7.3%), spermicides (2.8%) and female sterilization (2.5%). Other modern methods accounted for only 0.5%.[182]

Legal status of contraceptives

There are no specific laws regarding the sale and distribution of contraceptives. However, the future of the governmental birth control pill subsidy is uncertain.[183] Contraceptive products have the same legal status as any other drug used in Romania. To be imported or sold, all drugs need the approval of the Ministry of Health, through the Pharmaceutical Directorate and the Institute for State Control of Drug and Pharmaceutical Research. According to the Order of the Ministry of Health No. 1988/1996, any pharmaceutical product or product for human use may be distributed only after a quality verification, the issuance of a quality certificate and its registration by the Commission for Drugs, within the Institute for State Control of Drug and Pharmaceutical Research. The importing agency must cover the expenses relating to quality verification. The products imported and produced within the member states of the Convention for Mutual Recognition of Pharmaceutical Inspection are exempted from this control.

Regulation of information on contraception

There are no direct regulations governing the advertisement of contraceptives. Possible threats to potentially limit information concerning contraception are provisions of the Criminal Code on obscenity and provisions of the Audio-Visual Law.[184] The law against obscenity in the Romanian Criminal Code imposes a prison term from six months to four years, or a fine, for selling, distributing, making or possessing with a view to distribute objects, pictures, written materials or other materials having obscene character.[185] The respective law neither defines what "material having obscene character" is, nor specifies if medical material is included. To date, there have been no prosecutions under this law.

An information campaign on reproductive health, called "Women Choose Health," has been launched in recent years. The campaign is widely supported by the Ministry of Health through Health Promotion departments, and by the NGO Coalition for Reproductive Health.[186]

E. ABORTION

Immediately after the legalization of abortion in 1989, Romania had the highest number of abortions in the region. The absolute number of abortions leaped from 192,500 in 1989 to 992,300 in 1990. It has been steadily decreasing since then, reaching 347,100 in 1997.[187] In 1998 there were 207,117 induced abortions and in 1999 there were 198,846 induced abortions. Even though induced abortions are widely available throughout the country, both in public and private facilities, there are still some illegal induced abortions (224 in 1998 and 207 in

1999).[188] The abortion rate also increased initially to 300 abortions per 100 live births. The rate has since decreased, but is still high at 150 abortions per 100 live births. As a result of the liberalization, the registered number of maternal deaths caused by abortion declined from 545 in 1989 (out of a total of 627 maternal deaths) to 51 in 1996, leading to a drop of 76 percent in the maternal mortality rate.[189]

Legal status of abortion

Under the Criminal Code, induced abortion is legal if it is performed by a medical doctor upon a woman's request up to 14 weeks from the presumed date of conception.[190] If the abortion is necessary to save the life, health or bodily integrity of the pregnant woman, or if the pregnant woman for physical, mental, or legal reasons, cannot express her will and the abortion is necessary for therapeutic reasons, it can be performed at any time by a medical doctor.[191] Abortion is the predominant form of managing unwanted pregnancy.[192]

Requirements for obtaining legal abortion

The only absolute condition the law places on abortion is that it must be performed by a doctor.[193] There is neither a spousal consent requirement nor any other mandatory counseling or waiting periods. Public abortion services are organized within hospital-based OB/GYN clinics/departments on a one-day care basis. Private OB/GYN clinics provide induced abortions on an outpatient basis. Abortion services provide safe procedures, and post-abortion complication rates (both immediate and late) are low. Still, the quality of abortion care is sometimes wanting because of large caseloads and limited time. Abortion counseling and post-abortion family planning counseling are not routinely offered in all abortion clinics.[194]

Policies on abortion

Under the dictatorship of Ceauçescu, with its forced and brutal pronatalist policies, abortion was illegal and there were mandatory work place pregnancy screenings. The old anti-abortion law was among the first laws to be abolished in December 1989.[195] To give women an alternative to abortion, the Ministry of Health has developed an "Operative Plan to Promote Reproductive Health for the period 1998-2003." The plan is essentially a public education campaign to promote family planning and contraceptive methods and to encourage women to avoid abortions as a method of family planning.[196] Governmental public education efforts and those of NGOs, such as the Center for Development and Population Activities (CEDPA) in Bucharest, are limited in their reach. In rural areas, access to family planning consultation centers is almost non-existent; more than 45% of the population lives in rural areas.

Government funding/subsidizing of abortion services

Public facilities that offer abortions and post-abortion counseling services provide their services either for free or at nominal cost. Free abortions are available to students, the unemployed, women who are destitute, mothers with four or more children, women with life-threatening pregnancy-associated diseases, pregnancies occurring in parents with congenital or inherited disabilities, women who are severely physically or psychologically disabled, and women pregnant due to rape or incest.[197]

Private medical facilities charge substantially more. Induced abortions provided in private clinics are entirely paid for by the patients, and the charge varies depending on the clinic. Family planning consultations in polyclinics and at maternity hospitals are free of charge.

Penalties for abortion

The Criminal Code attaches penalties of six months to three years[198] for the illegal performance of abortions "either by a non-physician, outside an authorized facility, or beyond fourteen weeks (with no legal indication)." Also, if an abortion occurs without the consent of the pregnant woman, it is punishable with a prison term of two to seven years.[199] If a woman is injured during an illegal abortion procedure, there is a three to ten year prison term, and if the abortion leads to the death of the pregnant woman, the punishment is five to 15 years imprisonment.[200] Physicians who illegally perform abortions can lose their medical license.[201] A woman who undergoes an illegal abortion is not subject to punishment.

Regulation of abortion information

There are no regulations on advertising abortion services or information, or information on family planning methods. In rural areas, the Orthodox Church is strong, but because of Romania's recent history, the anti-choice movement is still in its infancy. The Association of Orthodox Christian Students under the control of the Orthodox Church occasionally organize violent anti-abortion and anti-gay actions.[202] In 1998, draft legislation outlawing abortion was co-sponsored by the Orthodox Church and the Catholic-Greek Unitarian Church.

F. STERILIZATION

Legal status of sterilization

There are no specific laws in Romania regulating voluntary sterilization as a family planning method. A small percentage of the population uses this method: 1.4% of women were sterilized in 1993 [203] and 2.5% in 1999.[204] There is no specific provision of the Criminal Code that would punish illegal sterilization.

Requirements for sterilization

Normally, anyone seeking to be sterilized as a contraceptive method must undergo preliminary counseling, and notice to both spouses concerning the permanence of sterilization must be given.[205] The National Health Insurance Fund covers voluntary sterilization. There is no policy that encourages Romanians to choose sterilization as a contraceptive method.

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

STI rates are of much concern in Romania, especially primary and secondary syphilis. The reported syphilis rate increased by almost five times between 1986 and 1996, from 7.1 to 32.2 per 100,000 inhabitants,[206] but since many cases are not declared, official statistics are considered inaccurate. The public health sector is in charge of STI services, organized within the dermatology and venerology units in polyclinics and hospitals. GPs are, in theory, not authorized to treat STIs, but in reality they do, without reporting the cases.

HIV/AIDS has become an increasingly important concern in Romania, but as yet there has been no integrated approach to address it. Through the efforts of UNAIDS a National AIDS Commission was established in 1995.[207] This Commission, which is still in formation, will be responsible for establishing HIV/AIDS policy, identifying programs, and soliciting funds from United Nations members of UNAIDS.

The National AIDS Commission has two major responsibilities: AIDS education and prevention, and data collection. With the support of UNICEF, training courses in the field of sex education and AIDS prevention have been organized for teachers, nurses, physicians, and community leaders,[208] but STI and AIDS prevention education is really only beginning. STI and HIV/AIDS cases detected by primary health care providers are referred to hospital infectious diseases departments and reported to the Country Directorates of Public Health. The reporting is strictly confidential. The Ministry of Health coordinates this activity and centralizes data from the territorial network for infectious diseases. The prevention of STIs — excluding HIV/AIDS — has been almost non-existent.[209]

Prevalence of HIV/AIDS

In Romania the reporting of HIV, syphilis, and gonorrhea is mandatory by law, but statistics reflect only the patients who seek medical care.[210] The situation is particularly bad regarding children. As reported in March 1999, one- to four-year-old children accounted for 37.3% of registered AIDS cases, and five- to nine-year-old children for 38.7%.[211] There were 5,097 AIDS cases among children, including 2,105 girls.[212] In 1997, more than half of all European cases of children with HIV/AIDS were in Romania. Most children were infected as a result of injections with contaminated blood and needles. A high number of children with AIDS have been institutionalized.[213] Of adult HIV infections, the most frequent transmission path is heterosexual sex, accounting for 48.8% of the total infections.[214]

Laws affecting HIV/AIDS and STIs

A 1998 Order of the Minister of Health establishes the AIDS reporting system. This Order specifies the categories of persons who submit to mandatory testing and reporting for HIV/AIDS: STI patients, pregnant women, long-distance truck drivers, sailors, Romanian citizens working abroad for more than six months, or coming back after travel longer than six months, those wanting to marry after working abroad, and foreign students.[215]

There are a number of laws which affect STIs and HIV/AIDS. Many govern the handling of blood and blood products.[216] Others concern intentionally transmitting HIV/AIDS, which carries a prison term of five to fifteen years and court-ordered medical treatment.[217] Evading the treatment carries a penalty of three months to year in prison, or a fine.[218] Same-sex activity which knowingly leads to the transmission of STIs is subject to one to five years imprisonment.[219] Other laws concern the protection of children with HIV/AIDS, such as guaranteeing their access to education.[220]

Persons with AIDS are entitled to a small "disability" pension. In the case of children, the caretaker receives the funds. Anti-retroviral drugs are provided free of charge in a limited quantity by the public health system (USD $2.2 million for 7,900 registered HIV/AIDS cases in 1997). However, pharmaceuticals, including AZT and medications for opportunistic infections, are often not available at the local level. In institutions, people with AIDS are isolated. Understaffing and poor training of the staff result in poor care. Social services for families are also understaffed, with individual social workers carrying caseloads of up to 130 families.[221]

Policies on prevention and treatment of HIV/AIDS and STIs

The National Program for AIDS that is organized and funded by the Ministry of Health should ensure access to medical care, diagnosis, and prevention, but it is grossly underfunded.[222] Still, there is a commitment to treating HIV/AIDS. AIDS is included in the group of 18 diseases the Ministry of Health has designated as worthy of free medications.[223] The treatment is to be in accordance with the disease's progress and the location of the patient (in a hospital or at home). There are outpatient clinics at hospitals throughout the country. Every three months an assessment of the patient's condition is made, after a clinical exam and lab investigation.[224] The medical personnel, physicians and nurses, involved in the medical

assistance of AIDS attend special training sessions organized by NGOs.[225] The territorial directorates of public health have their own labs for HIV testing. There is a great willingness to introduce HIV/AIDS and STI prevention programs into the youth education system. Nonetheless, inaccurate information circulates freely about HIV infection and transmission. The limited ability of the state to act in this field is a function of its precarious economic situation, and the ever-shrinking health budget. Physicians often face shortages of lab materials and medications, and those with HIV/AIDS usually have few financial resources at their disposal.

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

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

Romania guarantees the equality of all its citizens, regardless of "race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property, or social origin."[226] Women are constitutionally entitled to equal pay for equal work.[227] Equality between the spouses in marriage is also constitutionally secured.[228] Both the Family Code and the Labor Code implement the constitutional guarantees.[229]

B. CIVIL RIGHTS WITHIN MARRIAGE

Marriage laws

Both the Constitution and the Family Code establish the principle of equality between spouses, relations of mutual respect,[230] common rights and obligations of the spouses to each other,[231] over their common assets,[232] and towards their children.[233] Only marriages that are freely consented to are valid.[234] The minimum age of consent for marriage is 18 years for a man, 16 years for a woman.[235] If there are solid grounds, a woman may marry at the age of 15 with the approval of the executive committee of the town council of her residence, after a physician's examination.[236]

Women's freely given consent to marriage is undermined by a provision of the Criminal Code, known as "reparatory marriages." [237] Women who are raped may remove their "shame" by "consenting" to marry the rapist. Under such circumstances, the crime of rape is construed as never having occurred. Particularly in rural parts of Romania, the stigma of rape is very strong and believed to ruin a single woman's marriage prospects.

Only marriages concluded in the presence of the public official in charge of the civil state office are valid.[238] By law, the mayor or one of his representatives officiates at the marriage.[239] There is no law elevating religious marriages to the same status as civil ones; however, the Romanian Constitution does guarantee freedom of belief,[240] and allows religious marriages to be celebrated after the civil ceremony.[241]

Sexual relations outside of marriage (adultery) is a crime,[242] as is bigamy. [243]

Domestic partnership (concubinage), in spite of its growing frequency, is not very significant. Unmarried couples living together, however, do not have the same rights as they would have in marriage. In this kind of partnership, there are no succession rights. In addition, if one partner wants to divide the property acquired while living together, the rules of any ordinary division of property apply, and not those pertaining to spouses. As a result, a woman's housework and child rearing is not valued as "property investment." Women are the ones who are usually disadvantaged in such cases, since men generally work outside the home and can prove their practical contribution to the unit. The lack of legal recognition of such relationships perpetuates women's subordinate economic status.

Divorce and custody laws

Divorce is permitted in Romania,[244] and it is regulated by the Code of Civil Procedure.[245] Divorce lawsuits are regularly adjudicated in public sessions; however, the court may exclude the public from the proceedings.[246] Lawsuits for divorce require the presence of both spouses.[247]

Grounds for divorce

The court determines whether the marriage should be dissolved based on "solid grounds" that the relationship between the spouses is irreparably damaged.[248] The law does not define the term "solid grounds," yet courts routinely recognize the following practices as sufficient: the violent actions of one spouse against the other; adultery (stipulated by the Criminal Code); physical discrepancies between spouses such as illness; non-fulfillment of spousal obligations (including household and sexual duties).[249]

"No fault" divorce does not exist in Romanian law; fault must be alleged and proved. However, the Family Code, modified by Law No. 59/1993, provides the possibility of divorce on mutual consent without lengthy proceedings.[250] Evidence proving the guilt of a spouse often reflects the paternalistic stereotype concerning marriage; women are commonly blamed for not doing the housework, for example.

Maintenance

The Family Code provides mutual rights and obligations of spouses both during marriage and after its termination.

Concurrent to declaring the divorce, the court must settle the issues of the names of spouses after divorce (a problem especially for women), custody of minor children and their financial support, and property division.

Under the Family Code, a spouse who did not work outside of the home can receive a third of the net revenue of the other spouse, but together with any child support, the total support may not exceed half of a spouse's net revenue.[251] After divorce, either ex-spouse may sue for the payment of alimony if he or she is in need due to an inability to work related to their time as a couple.[252] Non-married partners cannot request this alimony after their relationship has ended.

The Family Code establishes the criteria for awarding child custody. The court consults with the parents and with children over 10 years of age, taking into account the interests of the minor children.[253] Although formally parents have equal rights, in fact children are entrusted, in most of cases, to the mother. In special cases, custody may be awarded to relatives, other consenting individuals or child-protection institutions. The court sets the financial contribution to cover the expenses of rearing and educating the children.[254] Non-custodial parents are entitled to visitations with minor children. Where parents disagree, a court may be asked to establish a visitation schedule.

C. ECONOMIC AND SOCIAL RIGHTS

Property rights

The Constitution guarantees the right to private ownership of property.[255] The right to inheritance is also constitutionally guaranteed,[256] and there is to be no discrimination on the basis of gender in the ownership, transfer or inheritance of property. In practice, however, there are procedures that favor men regarding inheritance or transfers, especially in rural areas. Women often have difficulties asserting control over their own property and usually are "watched over" by men, even if the women are the sole owners.

Labor rights

Article 16 of the Constitution provides the equal rights of citizens and article 38 the right to work. The principle "equal pay for equal work" in case of women and men is provided in the Constitution,[257] as well as in the Labor Code. The Labor Code generally affirms a woman's right to occupy any position based on her education and training.[258]

The Labor Code specifies special treatment for women during pregnancy and when breastfeeding their children.[259] Pregnant and breastfeeding women are prohibited from working during the night or where there are dangers and risks to health.[260] If a pregnant or lactating woman must change her workplace to conform with the code, her pay may not be reduced.[261] For childbirth, women are entitled to a paid leave of 112 days (52 days before the birth and 60 days afterwards).[262] The rate of pay during maternity leave depends on the woman's length of service, monthly wage, and number of children, ranging from 50% to 94% of her monthly base wage. For employees with three or more children, the pay during maternity leave is 94% of the monthly wage, regardless of the length of employment, thus providing incentives for giving birth to more children.[263]

Maternity leave may be combined with family leave to take care of children under the age of two.[264] This leave may be taken by either parent.[265] Provided the parent has worked at least six months, the amount of paid leave is 85% of the monthly base wage and is paid out of the social insurance budget.[266]

Women are granted the right to paid medical leave for taking care of a sick child up to the age of three.[267] Women taking care of children up to six years old may work half time without losing any seniority.[268] A woman's employment contract may not be terminated while she is pregnant, breastfeeding or taking a medical leave to tend to a sick child.[269] Teachers may take a break of up to three years in order to raise children with a guarantee of keeping their job.[270] In practice, private employers avoid paying for maternity and other leaves simply by hiring women without a contract. This is obviously illegal and prejudicial, and deprives women of their social security, health care, and record of employment for pensions, unemployment and other benefits. This "illegal" labor market does, however, observe some rules such as the minimum wage law in order to avoid overt governmental intervention. Temporary or short-term work contracts are other devices used to avoid paying maternity leave.[271] It should also be noted that those self-employed in agriculture, along with their family members over 15 years of age who perform unpaid household work (or other unpaid work) are entitled to birth and maternity benefits.[272]

A very recent victory for women's rights was the adoption by Parliament of the Law on Paternal Leave.[273] The law aims to ensure the effective participation of fathers as caretakers for their newborns.[274] The father of a newborn is entitled to five business days of leave.[275] If he participates in the state social insurance system, the paternal leave is paid.[276] If the father does compulsory military service, he is entitled to seven days of leave.[277] If the mother dies during childbirth or maternity leave, the father is entitled to the remainder of the maternal leave, benefits included.[278]

Social insurance and other related benefits are assured only in the public sector, and, given the deteriorating economic situation, collective bargaining agreements between public employers and employees are tending to include concessions regarding benefits.

Recent studies show that the average wage of women is only 75% of the average wage earned by men.[279] Women who raise their children alone are in an especially difficult position. Women perform the majority of unpaid work like household, child and elder care. But even when they work for wages, they are more likely to be employed in low-paying occupations. Women are overrepresented in the fields of health and social assistance (77%), education (70.8%), finance, banking and insurance (65.3%), hotels and restaurants (63.6%), and postal services and telecommunications (52.9%).[280]

Protective legislation focused exclusively on maternity protection at work and payment of some financial benefits (for instance, allowance for children) has resulted in an increase in inequality of opportunities and of discrimination against women in the labor market. The precarious position of women in the labor market serves to reduce the constitutional rights of equality and non-discrimination.

Unemployment/pension benefits

Laws regarding unemployment make no distinction on the basis of gender,[281] except to specify that women who interrupt their work to raise children are entitled to receive unemployment benefits based on the date when they were first officially enrolled at the Labor Offices.[282]

Official retirement age differs on the basis of gender. Men may voluntarily retire at 60, and women at 55, provided they have worked at least 30 and 25 years, respectively.[283] Until year 2000, mandatory retirement was 62 for men and 57 for women, with a possibility to extend the age of retirement by three years,[284] but the new Law on Retirement and other forms of State Social Insurance, adopted in March 2000, raised the mandatory retirement age to 65 for men and 60 for women,[285] to be phased in over the next 13 years.[286] The Constitutional Court has upheld distinct retirement ages for men and women.[287]

Access to credit

There are no laws relating to credit that discriminate on the basis of gender. If anything, the law is designed to impede access for both men and women.[288] Self- employment and the creation of small businesses are not perceived as solutions to unemployment and poverty. As a result there are no programs providing information and support to women seeking to start businesses, and there are no favorable conditions for grants or loans.

Access to education

The Constitution of Romania guarantees free public education to all[289] and the right of persons belonging to national minorities to learn and be educated in their mother tongue.[290] The right to education extends from compulsory general education to "education in high schools and vocational schools, by higher education, as well as other forms of instruction and post-graduate refresher courses."[291] The equal right of access to education, regardless of social status, gender, race, nationality, political or religious belief is also guaranteed by law.[292]

Women are involved in the education system both as students and teachers. In 1997, the enrollment rate at all levels of education was nearly the same for women (63.5 %) as for men (62.3 %), although the level of adult literacy is higher for men (98.7%) than for women (95.4%).[293] Certain gender disparities do exist within the educational system regarding access to and attainment of specific qualifications, skills and opportunities. There tends to be gender stratification as a result of socialization and training in accordance with gender-stereotyped curricula and extracurricular activities. Women predominate as students in the social sciences, humanities, health, law and education, which coincides with the sex segregation found in the labor market. There are also no special programs to combat female illiteracy, re-train older women who wish to enter the labor market, or assist adult women with limited education and women with disabilities. No attention has been given to gender-neutral curricula or to ensuring women better access to and participation in technical and scientific areas, as suggested by the Fourth World Conference on Women's Platform for Action.[294]

National machinery for the promotion of women's equality

There are a number of national organizations working for women's rights, directly or indirectly. Within Parliament's Commission for European Integration, there is the Subcommittee on Equal Opportunities, created in September 1997.[295] The Subcommittee is composed of members of political parties represented in Parliament and of independent experts. The Subcommittee disseminates rules, recommendations, and international standards with regard to women's rights, and drafts legislation to promote equal opportunities in light of European Union standards.[296] The Subcommittee's most important activities to date are the draft Law on Equal Opportunity Law, [297] the 1999 Law on Paternal Leave,[298] and the draft Law on the Legalization of Prostitution.[299]

Pursuant to the 1995 Fourth World Conference on Women (Beijing), the government of Romania established the Department for the Advancement and Protection of Women's Rights within the Ministry of Labor and Social Protection.[300] The Department studies the condition of women and proposes solutions for the elimination of discrimination, supervises the realization of family policies, proposes legal measures for the harmonization of legislation, and ensures equal access of women on the labor market. In addition, there are 41

inspectors in charge of the advancement and supervision of women rights and family policies, one in each county and Bucharest.[301] The Ministry of Labor and Social Protection was reorganized in early 1999; its staff was reduced and the Directorate for Equal Opportunities[302] was established to promote gender equality. The Directorate coordinates the activity of two centers: the Pilot Center for Assistance and Protection of Domestic Violence Victims[303] and the Information Center for Family Counseling.[304] In 1998 the Ministry of Labor and Social Protection allocated USD $63,476 for programs to advance women's rights.[305]

Other national institutions include the Department for Children, Women and Family Protection (within the Ombudsman's Office, since February 1998), the Presidential Counselor for Relations with NGOs (since December 1996, indirectly dealing with women's issues),[306] and the Consultative Council of the Prime Minister for Relations with NGOs (since September 1998, indirectly dealing with women's issues).[307]

In September 1996, pursuant to Beijing, the Romanian government presented its plan for implementing the Beijing Platform for Action. The Romanian plan, not yet implemented, aims to develop institutional mechanisms to advance women's rights and equal opportunities for men and women; to improve the participation of women in public life and decision-making; to better the economic situation of women (to ensure their equal access to the labor market and to ensure their control and use of economic resources); to improve women's health; to prevent and diminish domestic violence, especially against women and children; to encourage the participation of women in environmental protection activities; and to cooperate with NGOs.[308]

Currently, there are approximately 60 women's rights organizations, including NGOs and groups affiliated with political parties or trade unions. They focus on everything from women's participation in public life, social protection of women and assistance for the elderly, training, Christian moral education, and feminist philosophical and sociological research.[309] No legal restrictions hinder the participation of women in government or politics, but they are underrepresented due to cultural attitudes. Unofficial statistics estimate women's participation in political parties at between 20% and 50%, usually in subordinate positions.[310]

D. RIGHT TO PHYSICAL INTEGRITY

Rape

The Romanian Criminal Code considers rape and other sexual assaults as "violations related to sexual life." Rape is defined as sexual intercourse by use of force or by taking advantage of a woman's inability to defend herself or to express her will. Rape is punishable by a three- to 10-year prison term.[311] Aggravated rape, punishable by five to 15 years in prison,[312] includes gang rape, when the woman suffers serious physical and health injuries, or when the girl or woman was in the aggressor's care, protection, education, supervision or treatment. The punishment grows to 10 to 20 years in prison if the victim was under 14 years old, or if the woman dies or commits suicide as a result of the rape.[313] Attempted rape is a crime as well.[314]

A criminal action for rape is initiated only upon the complaint of the woman.[315] If the complaint is withdrawn or marriage between the perpetrator and the woman occurs, the investigation is dropped. The so-called "reparatory marriage" between the perpetrator and the victim exonerates the perpetrator from criminal responsibility.[316] Such cases of marriage are frequently the result of family pressure. Article 197 of the Criminal Code does not distinguish between married or unmarried women. Statutorily, a married woman can be raped by her husband and could therefore pursue criminal charges against him. However, legal jurisprudence maintains that the existence of a marriage implies the woman's consent to sexual intercourse with her husband. As no case dealing with rape within marriage has come before the court to settle the matter, the criminality of rape within marriage remains a disputed area of law. Other factors contribute to such a presumption. The reconciliation clause in article 197 indirectly implies that a marriage exempts the criminal responsibility of the defendant. Furthermore, it is argued that rape within a marriage should be dealt with under a different chapter of the criminal code that addresses crimes against the family. Incest is defined by the Criminal Code as sexual intercourse between next-of-kin or between brother and sister, and it is punished by imprisonment from two to seven years.[317] Attempted incest is also a crime.[318]

Domestic violence

There is no specific legislation concerning domestic violence and violence against women. Rather, laws relating to assault, public order, and divorce apply. Verbal abuse and cruelty that leads to mental and emotional injury affecting the person's dignity can be treated criminally as an insult or as defamation.[319] Chasing away from the common home one of the spouses, the children or other members of the family is a misdemeanor under the law.[320] Domestic violence actions are most commonly charged under battery, murder or manslaughter.[321]

For all domestic violence actions, the extent of the person's injuries determine the severity of punishment. The Criminal Code mandates that the longer it takes an individual to heal, the heavier the penalty, and if the injured person is the perpetrator's spouse, the criminal penalty can be even more severe.[322]

All survivors of domestic violence, therefore, need to see a medical examiner, who must establish the approximate date of the injuries, how they were caused, and how long it will take to heal. The medical examination is ordered by the criminal investigator or the public prosecutor.[323]

There are varying legal procedures depending on the degree of the injuries. Certain categories of domestic violence, such as aggravated battery or murder,[324] do not require the survivor's prior complaint in order to start a criminal investigation. Others, however, such as simple battery, cannot be initiated by the police and prosecuted without the survivor's involvement.[325] In practice, few survivors of domestic violence file criminal complaints and even when the accusations are proved, the criminal penalties often do not deter the behavior. Furthermore, since courts cannot issue an "order of protection" during the period the case is pending before the court, the survivor often must continue to live with the perpetrator. Because of the onerous nature of the proceedings and the ineffective remedies, survivors of domestic violence often withdraw their complaints or reconcile with the aggressor.

Domestic violence is a common fact in Romania. According to a September 1999 UNICEF report, the country has an average of 108 sexual assaults per 1,000 women and 41 non-sexual assaults per 1,000 women. Police are reluctant to intervene in cases of domestic violence.[326] There are no specialized police units to deal with domestic abuse, and there are no special training sessions or guidelines for police officers. Police, prosecutors, judges, teachers, health workers, social workers, doctors and many other professional groups do not receive mandatory regular training sessions on domestic violence.

Sexual harassment

There is no specific legislation pertaining to sexual harassment. However, there is a draft Law on Equal Opportunities Between Women and Men, initiated by the Directorate for Equal Opportunities within the Ministry of Labor and Social Protection. This law would sanction sexual harassment on the job. The draft law is currently being debated within the Senate and the Commission for Human Rights. [327]

Trafficking in women

Trafficking in women is much overlooked by the authorities. The existing law is not capable of responding to the problem. Trafficking may be prosecuted under offenses such as prostitution and procurement, falsifying documents, aiding persons to cross borders illegally, blackmail, forced labor, or kidnapping.[328]

Prostitution is defined as the action of a person who earns his or her living by performing sexual intercourse with different people. It is punishable by imprisonment of three months to three years.[329] Pandering is defined as persuading or coercing someone to prostitute himself or herself, facilitating prostitution, taking advantage from that activity as practiced by someone else, or recruiting or trafficking for prostitution. Trafficking and recruiting for prostitution are sanctioned with imprisonment from two to seven years and loss of civil rights. When minors are recruited for prostitution, the criminal penalty is higher.[330] Recently, a bill on establishing "intimate houses" was submitted to the Chamber of Deputies; its principal purpose is to decriminalize and regulate prostitution performed in certain places and under certain conditions. This bill is still being debated in a parliamentary special commission.[331]

Romania is both a source and a transit country for trafficked women and girls. The full extent of the problem is not known, since neither the government nor NGOs collect statistics, but NGOs that work on women's issues suspect that several thousand women are trafficked to other countries each year. It is estimated that there are between 20,000 to 22,000 illegal immigrants and that part of this total is a result of illegal trafficking. Several domestic prostitution rings are also active.[332]

Conclusions

The Ministry of Justice is in the process of drafting a new Criminal Code[333] that is expected to include a specific provision on domestic violence. This revision is welcomed, as the current situation does little to prevent such violence. Still, there are no procedures to remove a violent person from a home, no judicial orders of protection, and few shelters. Domestic violence is still considered to be acceptable as a legitimate exercise of a man's authority as the head of the household. There is a great need for public, non-sexist education so that survivors can seek justice and not simply "reconcile" because procedures are burdensome.

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

In Romania, children represent a segment of the population that has suffered greatly during the political and economic transition of the last decade. Following the collapse of salaries and family benefits, larger families with low incomes have suffered disproportionately.[334] Children and adolescents comprise 19% of Romania's population.

To comply with the principles and provisions of the United Nations Convention on the Rights of the Child, the government in 1997 established the Department for Child Protection and reorganized the local administration of child protection services and the National Committee for Adoptions.

The vast number of legal reforms Romania has undertaken regarding children is most encouraging.[335] However, the government still has a number of problems to resolve. According to official statistics, there are 33,000 orphans in state institutions, and the number of institutionalized children reportedly has increased by 20% since 1989. Large numbers of impoverished and apparently homeless, but not necessarily orphaned, children are seen on the streets of the larger cities.[336]

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

There are no separate family planning services for adolescents. The Ministry of Education allows students access to family planning services, including gynecological consultations, premarriage consultations, contraceptives and consultations for young families.[337]

The biggest suppliers of contraceptives for adolescents are public and private pharmacies, followed by the public sector through contraceptive offices set up in hospitals, polyclinics, and dispensaries. Private physicians also supply adolescent users. The principal family planning NGO is SECS (IPPF affiliate).[338] To focus on adolescent reproductive health in Romania, in 1997 the Ministry of Health approved a new UNFPA project entitled "Reproductive Health and Sexual Education for Adolescents."[339] It is administered by the national NGO Youth for Youth, and aims to educate adolescents through volunteer peer sex education in schools, STI/HIV prevention videos, and print materials.

There has been considerable debate about whether promoting abstinence is effective for preventing unwanted pregnancies and STIs. There is already an extremely low rate of sexual activity among teenagers relative to rates in the West. According to the 1996 Young Adult Reproductive Health Survey, 91% of 15- to 17-year-old girls have had no sexual experience. The figure for men is 76%. Of women aged 18-19, 63% have had no sexual experience. Some observers have suggested that if these rates can be maintained, there could be a significant slowing of rates of abortion and STIs among teenagers.[340] Despite Romania's generally conservative culture, this may be difficult to accomplish. With all the social changes occurring in the country, there is no reason to suspect that sexual behavior will be spared. The 1999 Reproductive Health Survey already shows changes in sexual activity among teenagers, with a slight decrease in the numbers of adolescents who have not have sex: 88% of women and 54.6% of men age 15-17, and 61% of women aged 18-19. The government endorses condom usage at least until marriage; certain NGOs have also begun to look at ways to promote reproductive health information and condom usage in schools and elsewhere.

B. MARRIAGE AND ADOLESCENTS

Girls may legally marry at age 16; boys at age 18.[341] The average age of women at first marriage is 22.9 years, while for men it is 26.2 years.[342] As of 1996, 9% of girls 15 to19 years old are married.[343]

C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

The Criminal Code punishes rape more severely if the victim is younger than 14.[344] If the woman is under the age of 14, sexual intercourse is punishable regardless of whether there was consent.[345] Sexual intercourse between a girl under the age of 18 and her tutor, supervisor, physician, professor, or instructor who uses his rank to obtain sexual intercourse is also a crime.[346] The sentences are higher if the aggressor is someone to whom the girl had been entrusted (teacher, doctor, or supervisor), if the girl was badly injured, or if she died.[347] Seduction is a separate crime; it entails obtaining sexual intercourse from a woman under age 18 in exchange for promises of marriage.[348]

Consensual sexual relations between same-sex adults and minors are considered crimes and are punishable by imprisonment of two to seven years.[349] If serious injury to bodily integrity or health of the minor results from the act, the sentence is five to 15 years. If the minor dies or commits suicide, the sentence is imprisonment of 15 to 25 years.[350] Obscene acts performed upon a minor or in his or her presence can carry a prison sentence of three months to two years, or a fine.[351] Attempts to commit any of these crimes are also punishable.[352] The law does not outlaw pedophilia expressly. Instead, pedophiles are charged with rape, corporal harm, and sexual corruption.[353]

D. EDUCATION AND ADOLESCENTS

Traditionally, especially in rural areas, women marry and start their childbearing at young ages, which can lead to young women leaving school and limiting their future job prospects. Despite socio-economic changes and an increasing number of young people living in urban areas who are more informed about lifestyle options, there are still many young women who have little education and low-level incomes. Compared with their counterparts who have better educational and job opportunities, poor women have less control over their lives, less understanding of their bodies and less knowledge about and access to family planning.

E. SEX EDUCATION

There are no laws either restricting or permitting sex education in schools. Under the dictatorship of Ceaucescu, elements of reproductive biology were taught in high school biology and anatomy classes, and lectures about venereal diseases were

sometimes taught by visiting health professionals, usually separately for boys and girls.[354] According to a recent survey, the few efforts that have been made to introduce sex and contraceptive education in secondary school curricula have been hindered by the resistance of both teachers and parents and the lack of adequate teacher training. The first source of information on contraception for young women is a friend (27%) or a colleague (13%), followed by media (17%) and health providers (12%). Ten percent have heard about contraception first from their mothers, and 6% from their partners. Only 4% cited school courses.[355]

After 1990, with the continuous support of several international agencies, local NGOs started to send volunteers to lecture in high schools about methods of birth control and sexually transmissible infections. These lectures must be approved by the local school boards, and their content varies. Thus, sex education in some areas is sporadic or non-existent (especially in rural areas) and the amount of information is variable. In surveys, both young women and men — regardless of their age, residence, education, or social-economic status — overwhelmingly support sex education in school. More than 93% felt that reproductive biology, birth control methods, and STIs should be part of the school curriculum.[356]

Romania formally entered the "European Network of Schools Promoting Health" in March 1994. Participating schools receive funds from the government of Switzerland, and specially developed courses concerning food, alcohol abuse, sexuality, AIDS, family life and education.[357] The NGO Youth to Youth has published, with the support of USAID and CEDPA, a "Manual for Education of Life" that includes chapters on communication about sexuality, contraception, and birth control. The manual may be used in schools with Ministry of Education and school board approval. This organization, with UNFPA support, also launched in 1999 a program entitled "The reproductive health of youth — STI prevention."

F. TRAFFICKING IN ADOLESCENTS

The law pertaining to pandering prescribes a harsher punishment when minors are recruited or trafficked into prostitution.[358]

NOTE ON SOURCES

The information in this chapter is drawn from primary sources of law in Romanian and secondary sources in English and Romanian. All primary sources of national law are in Romanian. Unless otherwise noted, they are available in SUPERLEX at <http://domino2.kappa.ro/mj/superlex.nsf> (database of the Romanian Ministry of Justice), and at <http://www.cdep.ro> (database of the Chamber of Deputies). 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

CONST.: Constitution of Romanian
M.Of.: Official Gazette of Romania
C.PEN.: Criminal Code
C.PROC.PEN.: Code of Criminal Procedure
C.CIV.: Civil Code
C.PROC.CIV.: Code of Civil Procedure
C.FAM.: Family Code
C.MUNCII: Labor Code

ENDNOTES

1. CIA, ROMANIA, 1999 WORLD FACTBOOK (visited Nov. 30, 1999) <http://www.odci.gov/cia/publications/factbook/ro.html> [hereinafter WORLD FACTBOOK].
2. *Id.*
3. THE WORLD BANK GROUP, ROMANIA (visited Nov. 30, 1999) <http://www.worldbank.org/html/ extdr/offrep/eca/ro2.htm>.
4. *Id.*; see also WORLD FACTBOOK, *supra* note 1.
5. *Constitution Watch - Romania*, EAST EUROPEAN CONSTITUTIONAL REVIEW, Fall 1998, vol.7, No.4, at 1, 45-47 (visited Nov. 30, 1999) <http://www.law.nyu.edu/eecr>.
6. WORLD FACTBOOK, *supra* note 1.
7. CONSTITUȚIA ROMÂNIEI [CONSTITUTION OF ROMANIA], art. 1 [CONST.]. The Constitution was adopted on Nov. 21, 1991, was approved by referendum and entered into force on Dec. 8, 1991, and was published in the MONITORUL OFICIAL [OFFICIAL GAZETTE OF ROMANIA] [M.Of.] Part I, No.233/Nov. 21, 1991. The English translation can be found at <http://www.uni-wuerzburg.de> (visited Nov. 30, 1999).
8. WORLD FACTBOOK, *supra* note 1.
9. CONST. art. 2(1).
10. *Id.* art. 80.
11. *Id.* art. 81(4).
12. *Id.* art. 85(1).
13. *Id.* art. 87(1).
14. *Id.* art. 91(1).
15. *Id.* art. 92(1).
16. *Id.* art. 93(1).
17. *Id.* art. 94.
18. *Id.* art. 99(1).
19. *Id.* art. 101(3).
20. *Id.* art. 101(1).
21. *Id.* art. 106(1).
22. *Id.* art. 107(1).
23. *Id.* art. 110.
24. *Id.* art. 111.
25. *Id.* art. 112.
26. *Id.* art. 113.
27. SIGMA PUBLIC MANAGEMENT PROFILES, ROMANIA: DELIVERY SYSTEM (visited Nov. 30, 1999) <http://www.oecd.org/puma/sigmaweb/profiles/romania/rom6.htm>.
28. WORLD FACTBOOK, *supra* note 1.
29. CONST. art. 72(1).
30. *Id.* art. 72(2).
31. *Id.* art. 72(3).
32. *Id.* art. 137(2).
33. *Id.* art. 73(1).
34. *Id.* art. 74(1), (2).
35. *Id.* art. 77.
36. *Id.* art. 78.
37. Legea pentru organizarea judecătorească [Law on the Judiciary] No. 92/1992, M.Of. No. 197/Aug.13, 1992.
38. *Core document forming part of the reports of States Parties: Romania*. 23/06/97. HRI/CORE/1/Add.13/Rev.1., ¶¶ 51-58. (June 23, 1997), U.N. HIGH COMMISSIONER FOR

HUMAN RIGHTS (visited Nov. 30, 1999) <http://www.unhchr.ch> [hereinafter CORE DOCUMENT]; *see also* SIGMA PUBLIC MANAGEMENT PROFILES, ROMANIA: JUDICIAL AUTHORITY (visited Nov. 30, 1999) <http://www.oecd.org/ puma/sigmaweb/profiles/romania/rom2.htm>.

39. CORE DOCUMENT, *supra* note 38, ¶¶ 59-61.

40. CONST. art. 124(1).

41. *Id.* art. 132.

42. *Id.* art. 133(1).

43. *Id.* art. 144(a).

44. *Id.* art. 140.

45. *Id.* art. 145(1).

46. Lege privind organizarea şi funcţionarea instituţiei Avocatul Poporului [Law on the Ombudsman], No. 35/1997, M.Of. No.48/Mar. 13, 1997.

47. CONST. art. 55(1).

48. *Id.* art. 123(2).

49. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, ROMANIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1998 (released Feb. 26, 1999) (visited Nov. 30, 1999) <http://www.state.gov>.

50. WORLD FACTBOOK, *supra* note 1.

51. CONST. art. 119.

52. *Id.* arts. 120, 121.

53. *Id.* art. 122.

54. SIGMA, ROMANIA: JUDICIAL AUTHORITY, *supra* note 38.

55. CONST. art. 22(1).

56. *Id.* art. 33(1).

57. *Id.* art. 33(2).

58. *Id.* art. 33(3).

59. *Id.* art. 38(2).

60. *Id.* art. 38(4).

61. *Id.* .art. 43.

62. *Id.* art. 45(1).

63. *Id.* art. 45(2).

64. *Id.* art. 45(3).

65. *Id.* art. 45(4).

66. *Id.*, art. 11(2).

67. *Id.* art. 20.

68. The Convention on the Elimination of All Forms of Discrimination against Women, *Opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sept. 3, 1981) (*ratified* Jan. 7, 1982, *entry into force for Romania* Feb. 6, 1982).

69. The International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976).

70. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976). The Protocol enables individuals to petition the Human Rights Committee set up by the Covenant about alleged violations of any of the rights set forth in the Covenant. The Protocol covers states party to both the Covenant and the Protocol.

71. The International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Jan. 3, 1976).

72. The Convention on the Rights of the Child, *Opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (*entry into force for Romania* Oct. 28, 1990).

73. The International Convention for the Elimination of all Forms of Racial Discrimination, *Opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* for Romania Oct. 15, 1970).

74. Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (*entry into force* Sept. 3, 1953). Last amended by Protocol No. 11, ETS No. 155 (*entry into force* Nov. 1, 1998).

75. GOVERNMENT OF ROMANIA, GOVERNMENT PROGRAM, POLICIES REGARDING HUMAN CAPITAL - HEALTH CARE (visited Nov. 30, 1999) <http://domino.kappa.ro/guvern/home.nsf>.

76. *Id.* ¶ 2.

77. *Id.* ¶ 3. A number of other reforms are envisioned, relating to the privatization of the health care sector, private health insurance, disease prevention, and population policy. *Id.* ¶¶ 4-18.

78. *Id.* ¶ 2.

79. NATIONAL CENTER FOR HEALTH PROMOTION, MINISTRY OF HEALTH, REPRODUCTIVE HEALTH PROMOTION: OPERATIONAL PLAN 1998 - 2003, at 1 (1998).

80. Legea asigurărilor sociale de sănătate [Health Insurance Act] No. 145/1997, art. 34, M.Of. No.178/Jul. 31, 1997. As of 2000, however, the health insurance system is still in the process of total reorganization. The implementation of the Health Insurance Act No. 145/1997 has been delayed, as have the Law No. 100/1998 on public health assistance, and the reform of the medical system.

81. Law No. 145/1997 on Health Insurance, art. 34. The provision provides that "the Ministry of Health designs, implements and coordinates programs of public health, in order to achieve the objectives in the field of health, with the participation of all responsible institutions in the area of implementation of the state's health care policy. The objectives are determined in cooperation with the National House of Health Insurance, the Physicians Board of Romania, the representatives of the hospitals, university clinics, research institutes, NGOs, trade unions and population."; *see also* Legea privind asistenţa de sănătate publică [Law on Public Health Assistance] No. 100/1998, arts. 8, 12, M.Of. No. 204/Jun. 1, 1998.

82. INSTITUTE FOR MOTHER AND CHILD CARE, MINISTRY OF HEALTH & DIVISION FOR REPRODUCTIVE HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, ROMANIA REPRODUCTIVE HEALTH SURVEY 1993, FINAL REPORT 1 (1995) [hereinafter REPRODUCTIVE HEALTH SURVEY].

83. REPRODUCTIVE HEALTH PROMOTION: OPERATIONAL PLAN 1998 - 2003, *supra* note 79, at 1; Interview with Mrs. Dincă, Executive Director, National Centre for Health Promotion (December 1999) (on file with AnA - Societatea de Analize Feministe [Society for Feminist Analyses]).

84. Law No. 100/1998 on Public Health Assistance, art. 13(1).

85. *Id.* art. 16.

86. *Id.* art. 15(h), (i).

87. *Id.* art. 12.

88. *Id.* art. 33.

89. *Id.* app. 1, Nos. 4, 12, 26.

90. Legea asigurărilor sociale de sănătate [Health Insurance Act] No. 145/1997, art. 4(1), M.Of. No.178/Jul. 31, 1997.

91. *Id.* art. 7.

92. *Id.* art. 52(2), as amended by Ordonanţa de urgenţă [Emergency Statutory Order] No. 30/1998, art. 1(4), M.Of. No. 421/Nov. 6, 1998.

93. Law No. 145/1997 on Health Insurance, art. 51.

94. *Id.* art. 6, as amended by Emergency Statutory Order No. 30/1998, art. 1(1).

95. Law No. 145/1997 on Health Insurance, art. 1(2).

96. *Id.* art. 1(3).

97. Statutul Casei Naţionale de Asigurări de Sănătate [Rules of the National House for Health Insurance], art. 1, M.Of. No. 114/Mar. 19, 1999.

98. *Id.* arts. 10-23.

99. Legea asigurărilor sociale de sănătate [Health Insurance Act] No. 145/1997, M.Of. No.178/Jul. 31, 1997, amended by Ordonanţa de urgenţă [Emergency Statutory Order] No. 30/1998, M.Of. No. 421/Nov. 6, 1998. Other major acts include Legea privind exercitarea profesiunii de medic, înfiinţarea, organizarea şi funcţionarea Colegiului Medicilor din România [Law Concerning the Exercise of the Profession of Physician, the Creation, Organization and Functioning of the Romanian Board of Physicians] No. 74/1995, M.Of. No. 149/Jul. 14, 1995; Legea privind asistenţa de sănătate publică [Law on Public Health Assistance] No. 100/1998, art.8, M.Of. No. 204/Jun. 1, 1998; Ordonanţa privind organizarea şi funcţionarea cabinetelor medicale [Statutory Order Concerning the Organization and Functioning of Medical Facilities] No. 124/1998, M.Of. No. 328/Aug. 29, 1998.

100. Law No. 145/1997 on Health Insurance, arts. 4-10.

101. *Id.* arts. 11-39.

102. *Id.* arts. 40-50.

103. *Id.* arts. 51-61.

104. *Id.* arts. 62-81.

105. As of 1995, there were 243 hospitals in Romania. REPRODUCTIVE HEALTH SURVEY, *supra* note 82, at 1.

106. THE NATIONAL COMMITTEE FOR CHILD PROTECTION & UNICEF ROMANIA COUNTRY OFFICE, THE SITUATION OF CHILD AND FAMILY IN ROMANIA 41 (1997).

107. REPRODUCTIVE HEALTH SURVEY, *supra* note 82, at 1. By 1997, there remained only 511 polyclinics and 5, 205 dispensaries. CENTRUL DE CALCUL, STATISTICĂ SANITARĂ ŞI DOCUMENTARE MEDICALĂ [THE CENTER FOR CALCULUS, MEDICAL STATISTICS AND DOCUMENTATION], MINISTERUL SĂNĂTĂŢII [MINISTRY OF HEALTH], ANUARUL DE STATISTICĂ SANITARĂ [ANNUAL REPORT OF MEDICAL STATISTICS] (1997). For a comprehensive study, *see* OBSERVATORUL NAŢIONAL ROMÂN [ROMANIAN NATIONAL OBSERVATORY], STRATEGIA NAŢIONALĂ DE DEZVOLTARE A RESURSELOR UMANE [NATIONAL STRATEGY OF HUMAN RESOURCES DEVELOPMENT] (1999)

(visited Dec. 14, 1999) <http://servernt1.exec.gov.ro> [hereinafter NATIONAL STRATEGY OF HUMAN RESOURCES DEVELOPMENT].

108. Communication with Dr. Marius Mărginean, Head of Family Medicine Department, Institute of Public Health Timişoara, Member of the National Council of the National Society of General &Family Practice of Medicine, Romania (Jan. 17, 2000) (on file with The Center for Reproductive Law & Policy).

109. Law No. 79/1991, app. 2, M.Of. No. 267/Dec. 31, 1991; *see also* Alin Stănescu & Luminiţa Marcu, *Politica sănătăţii reproducerii: evaluarea disponibilităţii serviciilor de planificare familială în România, Raport Final [The Policy on Reproductive Health: The Assessment of Family Planning Services Availability in Romania, Final Report*] 3 (CEDPA, 1997).

110. *See* WORLD HEALTH ORGANIZATION, REGIONAL OFFICE FOR EUROPE, HEALTH CARE SYSTEMS IN TRANSITION, ROMANIA (PRELIMINARY VERSION) (1996) (visited Jan. 14, 2000) <http://www.who.dk>.

111. Communication with Dr. Mihaela Poenariu, Programme Director, East European Institute of Reproductive Health (Apr. 27, 2000) (on file with The Center for Reproductive Law & Policy).

112. Legea asigurărilor sociale de sănătate [Health Insurance Act] No. 145/1997, art. 14(1)(a)-(c), M.Of. No.178/Jul. 31, 1997; THE SITUATION OF CHILD AND FAMILY IN ROMANIA, *supra* note 106, at 41.

113. Law No. 145/1997 on Health Insurance, arts. 44-45.

114. UNITED NATIONS DEVELOPMENT PROGRAMME, NATIONAL HUMAN DEVELOPMENT REPORT: ROMANIA (1997) (visited Jan. 14, 2000) <http://www.undp.ro/nhdr97/ch_03_04.html>.

115. *Id.*

116. *Id.*

117. Legea privind exercitarea profesiunii de medic, înfiinţarea, organizarea şi funcţionarea Colegiului Medicilor din România [Law Concerning the Exercise of the Profession of Physician, the Creation, Organization and Functioning of the Romanian Board of Physicians] No. 74/1995, M.Of. No. 149/Jul. 14, 1995.

118. *Id.* art. 12(1).

119. *Id.* arts. 12(3), 14(2), (3).

120. *Id.* art. 14(1).

121. *Id.* art. 13.

122. *Id.* art. 8.

123. *Id.* art. 18.

124. Lege privind exercitarea profesiunii de farmacist, înfiinţarea, organizarea şi funcţionarea Colegiului Farmaciştilor din România [Law Concerning the Exercise of the Profession of Pharmacist, the Establishment, Organization and Functioning of the Pharmacists Board of Romania] No. 81/1997, M.Of. No. 89/May 14, 1997.

125. Hotărâre de Guvern privind aprobarea principiilor de bază ale Statutului asistentului medical în România [Government Decision on the Approval of the Basic Principles of the Romanian Medical Assistants Status and Organization] No. 379/July 10, 1992, M.Of. No. 172/July 22, 1992.

126. Legea privind exercitarea profesiunii de medic, înfiinţarea, organizarea şi funcţionarea Colegiului Medicilor din România [Law Concerning the Exercise of the Profession of Physician, the Creation, Organization and Functioning of the Romanian Board of Physicians] No. 74/1995, arts. 1, 4, M.Of. No. 149/Jul. 14, 1995.

127. Hotărâre privind introducerea stagiului de pregătire practică cu durata de un an pentru absolvenţii facultăţilor de medicină şi farmacie [Decision on the Introduction of the Practical Training Stage of One Year for Graduates of Medicine and Pharmacy Schools] No. 325/1997, art. 1, M.Of. No. 157/Jul. 16, 1997, amended by government Decision No. 41/1999, M.Of. No. 48/Jan. 30, 1999.

128. Ordin pentru aprobarea nomenclatorului specialităţilor medicale şi farmaceutice, precum şi a duratei de pregătire în fiecare specialitate [Order Approving the List of Medical and Pharmaceutical Specialties and the Duration of the Training Period] No. 990/1993, app., M.Of. 214/Aug. 15, 1994.

129. Law No.74/1995 on the Profession of Physician, art. 13(g), (h); Hotărâre privind organizarea şi funcţionarea Ministerului Sănătăţii [Decision on the Organization and Functioning of the Ministry of Health] No. 244/1997, art.2(17),(23), M.Of. No. 110/Jun. 03, 1997.

130. Hotărâre pentru aprobarea Contractului-cadru privind condiţiile acordării asistenţei medicale în cadrul sistemului asigurărilor sociale de sănătate pe anul 1999 [Government Decision for the Approval of the Frame-Contract Regulating the Conditions for Medical Assistance within the Health Insurance System for 1999] No. 312/1999, app. art. 6, M.Of. No. 176/Apr. 26, 1999. Art. 8 further sets the obligations of the medical associations: to respect the insured person's right to free choice of the physician and his right to change his family physician; to update his own list of insured persons when modifications occur and to communicate these communications to houses of health insurance; to establish its own activity agenda and to communicate it to insured persons and to the house of health insurance; to request to insured persons, the documents of justification proving the coverage of the insured person.

131. Hotărârea Guvernului privind organizarea, coordonarea şi finanţarea învăţământului sanitar postliceal [Government Decision on the Organization, Coordination and Financing of Vocational Medical Training] No. 253/1992, art. 7, M.Of. No. 108/May 27, 1992. Up to 1992, studies took place at a medical high school, but such schools have since been suppressed.

132. THE SITUATION OF CHILD AND FAMILY IN ROMANIA, *supra* note 106, at 42.

133. Hotărârea Guvernului privind reînfiinţarea funcţiei de asistent medical [Government Decision on Re-establishing the Profession of Medical Assistant] No. 463/1990, M.Of. No. 75/Apr. 24, 1992.

134. Lege privind exercitarea profesiunii de farmacist, înfiinţarea, organizarea şi funcţionarea Colegiului Farmaciştilor din România [Law Concerning the Exercise of the Profession of Pharmacist, the Establishment, Organization and Functioning of the Pharmacists Board of Romania] No. 81/1997, art. 1, M.Of. No. 89/May 14, 1997.

135. Legea privind exercitarea profesiunii de medic, înfiinţarea, organizarea şi funcţionarea Colegiului Medicilor din România [Law Concerning the Exercise of the Profession of Physician, the Creation, Organization and Functioning of the Romanian Board of Physicians] No. 74/1995, art. 3(2), M.Of. No. 149/Jul. 14, 1995.

136. *Id.* art. 4(2); *see also* Ordonanţa privind organizarea şi funcţionarea cabinetelor medicale [Statutory Order Concerning the Organization and Functioning of Medical Facilities] No. 124/1998, art. 6(2), M.Of. No. 328/Aug. 29, 1998: "Physicians and other medical staff who work in a doctor's office are personally responsible for their professional decisions, in conformity with the law, with regard to possible injuries against patients."

137. Law No. 74/1995 on the Profession of Physician, art. 39.

138. Codul civil [Civil Code] [C.CIV.], arts. 998-1003 (3rd ed. ALL 1994); the recent Hospitals Act also provides that hospitals are responsible for injuries caused to patients, including medical malpractice. Lege privind organizarea, funcţionarea şi finanţarea spitalelor [Law on the Organization, Functioning and Financing of Hospitals] No. 146/1999, M.Of. No. 370/Aug. 3, 1999.

139. Legea asigurărilor sociale de sănătate [Health Insurance Act] No. 145/1997, art. 41(2), M.Of. No.178/Jul. 31, 1997.

140. Law No. 74/1995 on the Profession of Physician, art. 11(2).

141. *Id.* art. 36. The Code of Medical Ethics was adopted in 1997 by the General Assembly of the National Board of Physicians.

142. *Id.* art. 37(1).

143. Law No. 145/1997 on Health Insurance, art. 33.

144. *Id.* art. 32(1).

145. Legea privind asistenţa de sănătate publică [Law on Public Health Assistance] No. 100/1998, arts. 30, 31, M.Of. No. 204/Jun. 1, 1998.

146. *Id.* art. 30(1) (a)-(d).

147. *Id.* art. 30(2).

148. NATIONAL STRATEGY OF HUMAN RESOURCES DEVELOPMENT, *supra* note 107, at 140 tbl.19.

149. *Id.* at 142.

150. See COMISIA NAŢIONALĂ PENTRU STATISTICĂ [THE NATIONAL COMMISSION FOR STATISTICS], CONDIŢIA FEMEII ÎN ROMÂNIA 1990-1994 [WOMEN'S STATUS IN ROMANIA 1990-1994] (1995).

151. INFOSTAT - INFORMAŢII ALE COMISIEI NAŢIONALE PENTRU STATISTICĂ [INFORMATION OF THE NATIONAL COMMISSION FOR STATISTICS] 1 tbl. 1 (Mar. 8, 1999), *reprinted in* NATIONAL STRATEGY OF HUMAN RESOURCES DEVELOPMENT, *supra* note 107, at 49 tbl.10.

152. NATIONAL HUMAN DEVELOPMENT REPORT, *supra* note 114, at 132 tbl. 10.

153. AnA - SOCIETATEA DE ANALIZE FEMINISTE [SOCIETY FOR FEMINIST ANALYSES], STATUTUL FEMEII ÎN ROMÂNIA. 1998: FAPTE ŞI CIFRE [THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS] (visited Feb. 29, 2000) <http://www.anasaf.ro/index(rom).html>.

154. INFOSTAT, *supra* note 151, at 1; NATIONAL STRATEGY OF HUMAN RESOURCES DEVELOPMENT, *supra* note 107, at 46, 54 tbl.11.

155. NATIONAL HUMAN DEVELOPMENT REPORT, *supra* note 114, at 132 tbl.10.

156. On file with AnA - Societatea de Analize Feministe [Society for Feminist Analyses].

157. Lege privind alocaţia de stat pentru copii [Law Concerning the State Allowance for Children] No. 61/1993, M.Of. No. 233/Sept. 28, 1993, amended by Law No. 261/1998, M.Of. No. 523/Dec. 31, 1998.

158. Lege privind alocaţia suplimentară pentru familiile cu copii [Law Concerning the Suplimentary Allowance for Families with Children] No. 119/1997, art. 1, M.Of. No.149/Jul.

11, 1997.

159. Lege privind concediul plătit pentru Îngrijirea copiilor în vârstă de până la doi ani [Law Concerning the Paid Parental Leave for the Benefit of Children up to Two Years Old] No. 120/1997, M.Of. 149/Jul. 11, 1997.

160. Lege privind ajutorul social [Law on Social Welfare] No. 67/1995, art. 3, M.Of. No. 131/Jun. 29, 1995.

161. *See* Health Sector Rehabilitation Project (visited Jan. 14, 2000) <http://www.worldbank.org.ro>; Law No. 79/1991, M.Of. No. 267/Dec. 31, 1991.

162. Under the World Bank Health Rehabilitation loan project, Law No. 79/1991 art. 1. WORLD HEALTH ORGANIZATION & UNITED NATIONS POPULATION FUND, FAMILY PLANNING AND REPRODUCTIVE HEALTH IN CCEE AND CIS 81 (1997).

163. Stănescu & Marcu, *supra* note 109, at 3.

164. REPRODUCTIVE HEALTH PROMOTION: OPERATIONAL PLAN 1998 - 2003, *supra* note 79, at 10.

165. Communication with Dr. Mihaela Poenariu, Programme Director, East European Institute of Reproductive Health (Apr. 27, 2000) (on file with The Center for Reproductive Law & Policy).

166. REPRODUCTIVE HEALTH PROMOTION: OPERATIONAL PLAN 1998 - 2003, *supra* note 79, at 7; Support to the Romanian National Family Planning Programme (visited Jan. 14, 2000) <http://www.unfpa.ro/2.html>.

167. World Bank Office Romania, Health Sector Rehabilitation Project (visited Feb. 26, 2000) <http://www.worldbank.org.ro>.

168. UNITED NATIONS POPULATION FUND, OVERVIEW OF UNFPA ASSISTANCE TO: ROMANIA, RUSSIA, MOLDOVA, BELARUS, UKRAINE (1998).

169. Stănescu & Marcu, *supra* note 109, at 17.

170. THE SITUATION OF CHILD AND FAMILY IN ROMANIA, *supra* note 106, at 42.

171. REPRODUCTIVE HEALTH PROMOTION: OPERATIONAL PLAN 1998 - 2003, *supra* note 79, at 1, 10.

172. MANAGEMENT SCIENCES FOR HEALTH, ENTREPRENEURIAL FAMILY PLANNING CLINICS IN ROMANIA (visited Apr. 5, 2000) <http://www.msh.org/projects/fpmd26_72ro.html>.

173. REPRODUCTIVE HEALTH PROMOTION: OPERATIONAL PLAN 1998 - 2003, *supra* note 79, at 7.

174. Support to the Romanian National Family Planning Programme, *supra* note 166.

175. UNFPA ONGOING PROJECTS (visited Feb. 28, 2000) <http://www.unfpa.ro>.

176. Communication with Dr. Mihaela Poenariu, Programme Director, East European Institute of Reproductive Health (Apr. 27, 2000) (on file with The Center for Reproductive Law & Policy).

177. INSTITUTUL PENTRU OCROTIREA MAMEI ŞI COPILULUI [THE INSTITUTE FOR MOTHER AND CHILD CARE], WHY REPRODUCTIVE HEALTH IS IMPORTANT IN ROMANIA 4 (1999).

178. REPRODUCTIVE HEALTH SURVEY, *supra* note 82, at 69.

179. *Id.*

180. *Id.* at 71.

181. *Id.* at 72.

182. REPRODUCTIVE HEALTH SURVEY 1999, PRELIMINARY REPORT; Communication with Dr. Mihaela Poenariu, Programme Director, East European Institute of Reproductive Health (Apr. 27, 2000) (on file with The Center for Reproductive Law & Policy).

183. The subvention is underwritten by the World Bank Rehabilitation Program which allows the pills to be purchased below their market value. NGOs are actively at work to maintain the integral financing of reproduction health services from the Health Insurance Fund and/or from the state budget in order to make contraception affordable for all.

184. Legea audiovizualului [Audio-Visual Law] No. 48/1992, art. 2(4), M.Of. No. 104/May 25, 1992 (forbidding the broadcast of obscene materials).

185. Codul penal [Criminal Code] [C.PEN.], art. 325, BULETINUL OFICIAL [OFFICIAL BULLETIN] [B.Of.] No. 79-79bis/Jun. 21, 1968. The Criminal Code has been successively amended since 1968. The most important recent changes were adopted by Law No. 140/1996, M.Of. 289/Nov. 14, 1996.

186. Communication with Dr. Mihaela Poenariu, Programme Director, East European Institute of Reproductive Health (Apr. 27, 2000) (on file with The Center for Reproductive Law & Policy).

187. INTERNATIONAL CHILD DEVELOPMENT CENTRE, UNICEF, WOMEN IN TRANSITION 117 tbl.2.8 (1999) (visited Apr. 10, 2000) <http://www.unicef-icdc.org>.

188. REPRODUCTIVE HEALTH SURVEY 1999, *supra* note 182, at 12.

189. WOMEN IN TRANSITION, *supra* note 187, at 64.

190. C.PEN. art. 185. This means 12 weeks from the date of conception or alternatively 14 weeks from the last menstrual period.

191. *Id.* art. 185(3).

192. See REPRODUCTIVE HEALTH SURVEY, *supra* note 82, at 45-60. For a comparative perspective, see *Stanley K. Henshau, Susheela Singh and Taylor Haas, The Incidence of Abortion Worldwide*, INTERNATIONAL FAMILY PLANNING PERSPECTIVES, 1999, 25(Supplement):S30-S38, <http://www.agi-usa.org> (visited Dec. 8, 1999).

193. Under punishment by art. 185(1)(b) of the Criminal Code.

194. Communication with Dr. Mihaela Poenariu, Programme Director, East European Institute of Reproductive Health (Apr. 27, 2000) (on file with The Center for Reproductive Law & Policy).

195. Decret pentru reglementarea întreruperii cursului sarcinii [Decree to Regulate Abortion] No. 770/1966, B.Of. No. 60/Oct. 1, 1966. Abrogated by Decret-lege [Decree-Law] No. 1/1989, M.Of. 4/Dec. 4, 1989.

196. In 1997, the parliamentary Commission for Human Rights submitted for public debate a bill against the legalization of abortion (initiated by the governmental coalition at the time). Women's NGOs voiced their opposition and the project was dropped. THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.

197. Hotărârea Ministerului Sănătăţii [Health Ministry Order] No. 206/1997 on Abortion Exemptions.

198. C.PEN. art. 185(1).

199. *Id.* art. 185(2).

200. *Id.* art. 185(3).

201. *Id.* arts. 185(4), 64(1)(c).

202. The Orthodox Patriarch has regularly condemned homosexuality as the "acceptance of the degrading abnormal and unnatural as a natural and legal style of living." EVENIMENTUL ZILEI, Dec. 16, 1993.

203. REPRODUCTIVE HEALTH SURVEY, *supra* note 82, at 69.

204. REPRODUCTIVE HEALTH SURVEY 1999, *supra* note 182; Communication with Dr. Mihaela Poenariu, Programme Director, East European Institute of Reproductive Health (Apr. 27, 2000) (on file with The Center for Reproductive Law & Policy).

205. Information on file with AnA - Societatea de Analize Feministe [Society for Feminist Analyses].

206. FLORINA ŞERBĂNESCU & LEO MORRIS, NATIONAL INSTITUTE FOR MOTHER AND CHILD CARE ET AL., YOUNG ADULT REPRODUCTIVE HEALTH SURVEY ROMANIA 1996, at 165 (1998) [hereinafter YOUNG ADULT REPRODUCTIVE HEALTH SURVEY].

207. The Commission's members come from different fields of activity, representing various ministries involved in the prevention and fighting against AIDS' activity (Ministry of National Education, Ministry for Interior, Ministry of Labor and Social Protection, Ministry of Health, Ministry of Youth and Sports, Ministry of Justice, Ministry for National Defence, Department for Cults, etc.) and NGOs developing programs in this area.

208. JULIA SOUTH, UNAIDS, SNAPSHOT OF EXTERNAL SUPPORT FOR NATIONAL RESPONSES TO THE EPIDEMIC OF HIV/AIDS IN CENTRAL & EASTERN EUROPE (INCLUDING CENTRAL ASIA) AS REPORTED BY CO-SPONSORS, BILATERAL AGENCIES AND NGOS 54 - 60(1999); UNAIDS, ELEMENTS OF NATIONAL RESPONSES TO HIV/AIDS (1999).

209. YOUNG ADULT REPRODUCTIVE HEALTH SURVEY, *supra* note 206, at 165-166.

210. *Id.* at 165. The new health insurance system mandates that doctors are paid based on the number and age of patients, the realization of preventative activities, and the number and value of points. For example, for each patient between 19 and 44 years, the doctor receives 4 points. Sexually transmissible infections are also worth 4 points. Thus, doctors have an incentive to keep track and report all diseases. Hotărâre privind introducerea experimentală a unui nou sistem de acordare a asistenţei medicale şi de alocare a resurselor în acest domeniu [Decision on the Introduction of an Experimental System of Health Assistance] No. 370/1994, M.Of. No. 185/July 20, 1994; Communication with Dr. Marius Mărginean, Head of Family Medicine Department, Institute of Public Health Timişoara, Member of the National Council of the National Society of General &Family Practice of Medicine, Romania (Jan. 17, 2000) (on file with The Center for Reproductive Law & Policy).

211. See MINISTRY OF HEALTH STATISTICS, tbl. 3.1 (March 1999) (on file with The Center for Reproductive Law & Policy).

212. *Id.*

213. UNITED NATIONS DEVELOPMENT ASSISTANCE FRAMEWORK (UNDAF), COMMON COUNTRY ASSESSMENT OF ROMANIA 38 - 41 (1998) [hereinafter COMMON COUNTRY ASSESSMENT].

214. MINISTRY OF HEALTH STATISTICS, *supra* note 211, tbl. Distribuţia cazurilor SIDA la adulţi după calea de transmitere *[Distribution of AIDS Cases for Adults Taking into*

Account the Mode of Transmission].

215. Hotărâre privind şcolarizarea cetăţenilor din alte ţări în România, în anul de învăţământ 1991/1992 [Decision Regarding the Education in Romania of Foreign Citizens for 1991/1992] No. 627/1991, M.Of. No. 195/Sept. 27, 1991. Article 7 requires applicants to submit to a medical and epidemiological test, including AIDS. The cost of the AIDS test is covered by the applicants.

216. Legea privind asistenţa de sănătate publică [Law on Public Health Assistance] No. 100/1998, art.15(h), (i), M.Of. No. 204/Jun. 1, 1998. The provision charges the Directorates of Public Health at the county level and in Bucharest to organize, guide and control the detection, treatment and prevention of STIs according to norms set out by the Ministry of Health, to ensure the detection of HIV, HBV, HCV and other viral infections transmitted by blood and to control the implementation of the legal norms in force concerning the medical assistance and correct treatment; Lege privind donarea de sânge, utilizarea terapeutică a sângelui uman şi organizarea transfuzională în România [Law Concerning Blood Donation, the Therapeutical Use of Human Blood and the Organization of Transfusion in Romania], M.Of. No. 9/Jan. 18, 1995. The law designates the Ministry of Health as the main authority in the field of blood donation and transfusion.

217. C.PEN. art. 309(2), (3). The first paragraph of this provision imposes a prison sentence of one to five years for the transmission of STIs.

218. *Id.* art. 3091.

219. *Id.* art. 309(1).

220. Hotărâre privind acordarea de burse şi alte facilităţi financiare şi materiale pentru copii, elevii, studenţii şi cursanţii din învăţământul de stat [Decision Concerning Scholarships and Other Financial and Material Benefits for Children and Students Attending State Schools] No. 859/1995, app. 1 pt. III (A)(1)(a), M.Of. 250/Nov. 1, 1995. ; Hotărâre privind aprobarea Planului naţional de acţiune în favoarea copilului [Decision for the Approval of the National Plan for Children] No. 972/1995, app. pts. I (A)(10), IV(11), M.Of. 290/Dec. 14, 1995.

221. COMMON COUNTRY ASSESSMENT, *supra* note 213, at 39.

222. ELEMENTS OF NATIONAL RESPONSES TO HIV/AIDS, *supra* note 208, at 7 - 8.

223. Health Ministry Orders No. 493/1995, 1423/1993 (on file with AnA - Societatea de Analize Feministe [Society for Feminist Analyses]).

224. *Id.*

225. Communication with Liana Velica, Consultant, Asociaţia Română Anti Sida (on file with AnA - Societatea de Analize Feministe [Society for Feminist Analyses]).

226. CONST. art. 4(2).

227. *Id.* art. 38(4).

228. *Id.* art. 44(1): "The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children."

229. Legea No. 4/1953 [Family Code] [C.FAM.], B. Of. No. 1/Jan. 4, 1954; amended by Legea No. 59/1993, M.Of. No. 177/Jul. 26, 1993. Article 1 provides that men and women have equal rights with regard to their children. Article 25 establishes that men and women have equal rights and obligations in their marriage. Furthermore, they decide by common agreement everything concerning their marriage (art. 26). Legea No. 10/1972 [Labor Code] [C.MUNCII], art. 14, B.Of. 140/Dec. 1, 1972 asserts that women must have broad possibilities of affirmation, on the basis of full social equality to men. Furthermore, women have the right to occupy any job or function, as well as the right to all conditions necessary to raise children.

230. C.FAM. arts. 1, 2.

231. *Id.* arts. 25, 26.

232. *Id.* art. 30.

233. *Id.* art. 97(1).

234. CONST. art. 44(1); C.FAM. art. 1(3).

235. C.FAM. art. 4(1).

236. *Id.* art. 4(2).

237. C.PEN. art. 197(5).

238. C.FAM. art. 16(1), as amended by Law No. 23/1999, art. 2, M.Of. No. 35/Jan. 28, 1999.

239. Legea administraţiei publice locale [Law on Local Public Administration] No. 69/1991, arts. 44(1)(t), 46(2), (3), M.Of. No. 79/Apr. 18, 1996.

240. CONST. art. 29.

241. *Id.* art. 44(2).

242. C.PEN. art.304.

243. *Id.* art. 303.

244. C.FAM. arts. 37 - 44. as amended by Law No. 59/1993, art. VIII, M.Of. No. 177/Jul. 26, 1993.

245. Codul de procedură civilă [Code of Civil Procedure] [C.PROC.CIV.], arts. 607 - 619, as amended by Law No. 59/1993 art. I (34)-(41).

246. C.PROC.CIV. art. 615.

247. *Id.* art. 614.

248. C.FAM. art. 38(1) as amended by Law No. 59/1993, art. VIII(1).

249. It is because of this interpretation of the law that the draft law on marital rape was rejected.

250. C.FAM. art. 38(2) as amended by Law No. 59/1993, art. VIII(2).

251. C.FAM. art. 41(3).

252. *Id.* art. 41(2).

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

254. *Id.* arts. 42(2), (3).

255. CONST. art. 41.

256. *Id.* art. 42.

257. *Id.* art. 38(4).

258. C.MUNCII arts. 14, 151(1).

259. *Id.* arts. 151-158. According to article 156 of the Labor Code, women who are breast-feeding are entitled to reduce their work load and take breaks of up to two hours per day in order to breast-feed. This is permitted until the child is nine months, with the possibility to extend it up to 12 months.

260. *Id.* art. 152(1).

261. *Id.* art. 152(2).

262. *Id.* art. 155(1); *see also* Lege privind concediul plătit pentru Îngrijirea copiilor în vârstă de până la doi ani [Law Concerning the Paid Parental Leave for the Benefit of Children up to Two Years Old] No. 120/1997, art. 1, M.Of. 149/Jul. 11, 1997.

263. Lege pentru modificarea şi completarea unor reglementări din legislaţia de asigurări sociale [Law to Amend Some Provisions of the Social Insurance Legislation] No. 49/1992, art. IV(5), M.Of. No. 107/Jun. 26, 1992.

264. Law No. 120/1997 Concerning the Paid Parental Leave for the Benefit of Children up to Two Years Old, art. 2.

265. *Id.* art. 6.

266. *Id.* arts. 3, 7.

267. Legea privind pensiile de asigurări sociale de stat şi asistenţă socială [Social Security Law] No. 3/1977, art. 72, B.Of. 82/Aug. 6, 1977, as amended by Law No. 49/1992, art. III(8), M.Of. No. 107/Jun. 26, 1992; C.MUNCII art. 157.

268. C.MUNCII art.158.

269. *Id.* art. 146.

270. Lege privind Statutul personalului didactic [Law Concerning Rules that Govern the Status of Teachers] No. 128/1997, art. 106(1), M.Of. No. 158/Jul. 16, 1997.

271. Lege privind unele măsuri de protecţie a persoanelor încadrate în muncă [Law Concerning Some Measures of Protection for Employees] No. 83/1995, M.Of. No. 166/Jul. 31, 1995. Art. 4(1) provided that part-time and temporary employees are not covered by social security and unemployment benefits. Law No. 83/1995 was abrogated by the new law on social protection for employees No. 130/199, M.Of. No. 355/Jul. 27, 1999. In an attempt to correct some of the problems created by the old law, Law No. 130/1999 provides that part-time employees can be covered by social security (art. 5), but not by unemployment benefits (art. 6).

272. Lege privind pensiile şi alte drepturi de asigurări sociale [Law Concerning Pensions and Other Social Security Rights] No. 80/1992, art. 1, M.Of. No. 180/Jul. 29, 1992.

273. Legea concediului paternal [Law on Paternal Leave] No. 210/1999, M.Of. No. 654/Dec. 31, 1999.

274. *Id.* art. 1(1).

275. *Id.* art. 1(2).

276. *Id.* art. 2(1).

277. *Id.* art. 3(1).

278. *Id.* art. 5.

279. ACADEMIA ROMÂNĂ [ROMANIAN ACADEMY], RAPORTUL NAŢIONAL AL DEZVOLTĂRII UMANE ÎN ROMÂNIA [NATIONAL REPORT OF HUMAN DEVELOPMENT IN ROMANIA] 34 (1997).

280. THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153. However, women teachers or nurses have experienced job losses and wage freezes as the budgets for education and health care have been cut back. STATISTIC DOCUMENTARY ON EDUCATION IN ROMANIA, in UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), NATIONAL HUMAN DEVELOPMENT REPORT: ROMANIA 1998.

281. Lege pentru protecţia socială a şomerilor şi reintegrarea lor profesională [Law on the Social Protection of the Unemployed and Their Professional Reintegration] No. 1/1991,

M.Of. No.257/Sept. 9, 1994.
282. *Id.* art. 7(4).
283. Minimum retirement age is fifty-five for men and fifty for women. Lege privind pensionarea anticipată [Law on Early Retirement] No. 2/Jan. 10, 1995, art. 1(3), M.Of. No. 5 /Jan. 13, 1995.
284. Legea privind pensiile de asigurări sociale de stat şi asistenţă socială [Social Security Law] No. 3/1977, art. 8(1), 8(3), B.Of. 82/Aug. 6, 1977.
285. Lege privind sistemul public de pensii i alte drepturi de asigurări sociale [Law on the Public System of Pensions and Other Social Insurance Rights] No.19/2000, art. 41(2), M.Of. No.140 / Apr. 1, 2000.
286. *Id.* app. 3.
287. Decizie nr. 20 din 2 februarie 2000 referitoare la sesizarea de neconstituţionalitate a art. 41 alin. (2) din Legea privind sistemul public de pensii şi alte drepturi de asigurări sociale şi a dispoziţiilor art. 198 din aceeaşi lege prin care a fost abrogat art. 103 din Legea nr. 92/1992 pentru organizarea judecătorească, republicată [Decision on the Constitutionality of art. 41(2) of the Law on the Public System of Pensions and Other Social Insurance Rights, and on the Constitutionality of art. 198 of the Same Law] No. 20/Feb. 2, 2000, M.Of. No.72/Feb. 18, 2000.
288. UNITED NATIONS DEVELOPMENT PROGRAMME, THE STATUS OF WOMEN IN ROMANIA 1997 - 1998, at 76 (1999) ; *see also* Law No. 114/1996 on Housing, M.Of. No. 393/Dec. 31, 1997, as amended by Emergency Statutory Order No. 44/1998 and Law No. 145/1999, M.Of. No. 439/Sept. 9, 1999 (credits for young couples).
289. CONST. art. 32(4).
290. *Id.* art. 32(3).
291. *Id.* art. 32(1).
292. Legea învăţământului [Education Law] No. 84/1995, art. 5(1), M.Of. No. 167/Jul. 31, 1995.
293. THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.
294. COMMON COUNTRY ASSESSMENT, *supra* note 213, at 59.
295. SUBCOMISIA PENTRU OPORTUNITĂŢI EGALE [SUB-COMMITTEE ON EQUAL OPPORTUNITIES] (visited Feb. 28, 2000) <http://www.cdep.ro>; *see also* KARAT COALITION FOR REGIONAL ACTION, REGIONAL REPORT ON INSTITUTIONAL MECHANISMS FOR THE ADVANCEMENT OF WOMEN IN THE COUNTRIES OF CENTRAL AND EASTERN EUROPE 6 (1999).
296. SUB-COMMITTEE ON EQUAL OPPORTUNITIES, *supra* note 295; THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.
297. The bill guarantees equal opportunities for men and women in all fields of society, mandates public authorities to observe the provisions of the law, regulates the activities of local public administration and social partners, defines direct and indirect gender-based discrimination, forbids employers to condition job offers by gender and marital status and regulates sexual harassment. THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.
298 Legea concediului paternal [Law on Paternal Leave] No. 210/1999, M.Of. No. 654/Dec. 31, 1999.
299. THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.
300. KARAT COALITION FOR REGIONAL ACTION, *supra* note 295, at 6; Hotărâre privind organizarea şi funcţionarea Ministerului Muncii şi Protecţiei Sociale [Decision for the Organization and Functioning of the Ministry for Labor and Social Protection] No. 448/1994, app. 1, M.Of. No. 219/Aug. 16, 1994; Decision of government No. 816/1995, M.Of. No. 247/Oct. 31, 1995 added new responsibilities for the Ministry in the area of women rights; Decision of government 890/1997, M.Of. No. 3/Jan. 7, 1998 added the General Directorate for the Coordination of Efforts for the Promotion of Women Rights.
301 THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.
302. Hotărâre privind organizarea şi funcţionarea Ministerului Muncii şi Protecţiei Sociale [Decision for the Organization and Functioning of the Ministry for Labor and Social Protection] No.188/1999, app. 1, M.Of. No. 122/Mar. 24, 1999.
303. Established by Hotărârea privind înfiinţarea Centrului Pilot de Asistenţă şi Protecţie a Victimelor Violenţei în Familie [Decision for the Establishment of the Pilot Center for Assistance and Protection of Victims of Domestic Violence] No. 852/1996, M.Of. No. 241/Oct. 3, 1996.
304. Hotărârea Guvernului privind înfiinţarea Centrului de Informare şi Consultanţă pentru Familie [Government Decision on the Establishment of the Centre for Information and Family Planning Consultations] No. 938/1998, M.Of. No. 509/Dec. 29, 1998.
305. THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.
306. Decret al Preşedintelui României pentru numirea unor consilieri prezidenţiali [Decree of the President of Romania for the Appointment of Presidential Counsellors] No. 590/1996, M.Of. No. 343/Dec. 12, 1996.
307. THE STATUS OF WOMEN IN ROMANIA. 1998: FACTS AND STATISTICS, *supra* note 153.
308. *Id.*
309. *Id.*
310. Seven percent of members of the Chamber of Deputies are women, and only 2.1% of senators are women. There are no women ministers. There are no women in key positions in some other major institutions, such as the Constitutional Court, the Legislative Council, and the Court of Audit. Women are better represented in local public administration. Seventy percent of the officers in public administration are women. *Id.*
311. C.PEN. art. 197(1).
312. *Id.* art. 197(2).
313. *Id.* art. 197(3).
314. *Id.* art. 204.
315. *Id.* art. 197(4). Prosecution of rape is difficult because it requires both a medical certificate and a witness. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: ROMANIA §5 (released Feb. 25, 2000, visited Apr. 18, 2000) <http://www.state.gov> [hereinafter STATE DEP'T REPORT].
316. C.PEN. art. 197(5).
317. *Id.* art. 203.
318. *Id.* art. 204.
319. *Id.* arts. 205, 206.
320. Lege pentru sancţionarea faptelor de încălcare a unor norme de convieţuire socială, a ordinii şi liniştii publice [Law for the Punishment of Acts that Infringe on Norms of Social Behaviour, on Public Order and Tranquillity] No. 61/1991, art. 2(_), M.Of. No. 196/Sept. 9, 1991.
321. C.PEN. arts. 174-176, 178, 180-184.
322. *Id.* art. 175(c).
323. Codul de procedură penală [Code of Criminal Procedure] [C.PROC.PEN.], art. 114, M.Of. No. 78/Apr. 30, 1997. The medical examination and expertise is further regulated by arts. 115-127.
324. C.PEN. arts. 174-176, 178, 182, 183.
325. *Id.* arts. 180, 181, 184. Articles 279-286 of the Code of Criminal Procedure regulate the criminal complaint procedure. The complaint, addressed to the court, the police or the public prosecutor, depending on the specific charge, must present the facts, the perpetrator, the evidence, and whether the woman asks for damages. The complaint must be submitted within two months from the date the woman could identify the perpetrator.
326. Under a government pilot project begun in 1997, a shelter for victims of domestic violence opened in Bucharest in 1997. The shelter can accommodate only four persons. It received 490 calls for help during 1998 on a hot line, and registered 230 walk-in victims. STATE DEP'T REPORT, *supra* note 315, §5.
327. GOVERNMENT OF ROMANIA, NATIONAL PLAN FOR ACTION OF THE IMPLEMENTATION OF THE MAIN OBJECTIVES PROVIDED FOR BY THE FINAL DOCUMENTS OF THE BEIJING FOURTH CONFERENCE ON WOMEN 3 (June 24, 2000) [hereinafter NATIONAL PLAN FOR ACTION].
328. STATE DEP'T REPORT, *supra* note 315, §6.f.
329. C.PEN. art. 328.
330. *Id.* art. 329.
331. NATIONAL PLAN FOR ACTION, *supra* note 327, at 5.
332. STATE DEP'T REPORT, *supra* note 315, §6.f.
333. In March 2000, the government introduced to Parliament a set of laws meant to promote major reforms in the Romanian legal system in order to harmonise it with European standards. The amendments concern the Criminal Code, the Code of Criminal Procedure, the Code of Civil Procedure, the Civil Code, the Family Code, and the law of administrative proceedings.
334. *See* ELENA ZAMFIR & CĂTĂLIN ZAMFIR, POLITICI SOCIALE. ROMÂNIA ÎN CONTEXT EUROPEAN [SOCIAL POLICY: ROMANIA IN THE EUROPEAN CONTEXT] (1995).
335. Romania ratified the Convention on the Rights of the Child through Law No. 18/1990, M.Of. No. 109/Sept. 28, 1990. Other major acts regarding children are Ordonanţa de urgenţă privind înfiinţarea Agenţiei Naţionale pentru Protecţia Drepturilor Copilului şi reorganizarea activităţilor de protecţie a copilului No. 192/1999, M.Of. No. 599/Dec. 8, 1999; Legea concediului paternal [Law on Paternal Leave] No. 210/1999, M.Of. No.

654/Dec. 31, 1999; Lege privind alocaţia de stat pentru copii [Law Concerning the State Allowance for Children] No. 61/1993, M.Of. No. 233/Sept. 28, 1993, amended by Law No. 261/1998, M.Of. No. 523/Dec. 31, 1998; Ordonanţa de urgenţă cu privire la adopţie [Emergency Statutory Order on Adoption] No. 25/1997, M.Of. No. 120/Jun. 11, 1997, approved and amended by Legea No. 87/1998, M.Of. No. 168/Apr. 29, 1998; Ordonanţa de urgenţă privind protecţia copilului aflat în dificultate [Emergency Statutory Order Concerning the Protection of Children in Distress] No. 26/1997, M.Of. No. 120/Jun. 11, 1997, approved and amended by Law No. 108/1998, M.Of. No. 205/Jun. 2, 1998; Lege privind alocaţia suplimentară pentru familiile cu copii [Law Concerning the Suplimentary Allowance for Families with Children] No. 119/1997, art. 1, M.Of. No.149/Jul. 11, 1997; Lege privind concediul plătit pentru îngrijirea copiilor în vârstă de până la doi ani [Law Concerning the Paid Parental Leave for the Benefit of Children up to Two Years Old] No. 120/1997, M.Of. 149/Jul. 11, 1997; Lege privind ajutorul social [Law on Social Welfare] No. 67/1995, art. 3, M.Of. No. 131/Jun. 29, 1995; Lege privind protecţia specială a persoanelor handicapate [Law on the Special Protection of Persons with Disabilities] No. 53/1992, M.Of. No. 119/Jun. 4, 1992; Hotărâre cu privire la criteriile de autorizare a organismelor private care desfăşoară activităţi în domeniul protecţiei drepturilor copilului prin adopţie [Decision of government on the Authorization of Private Bodies Active in the Field of Adoption] No. 245/1997, M.Of. No. 112/Jun. 5, 1997; Hotărâre privind aprobarea Planului naţional de acţiune în favoarea copilului [Decision for the Approval of the National Plan for Children] No. 972/1995, M.Of. 290/Dec. 14, 1995; Hotărâre cu privire la organizarea activităţii autorităţilor administraţiei publice locale în domeniul protecţiei drepturilor copilului [Decision of government on the Activities of Local Public Administration Authorities in the Field of Children's Rights], M.Of. No. 100/June 26, 1997; Hotărâre pentru modificarea Hotărârii Guvernului nr. 591/1993 privind măsurile pentru aplicarea dispoziţiilor Legii nr. 61/1993 referitoare la gestionarea fondurilor, stabilirea şi plata alocaţiei de stat pentru copii [Decision of government on the Administration of Child Allowance Funds] No. 425/1999, M.Of. No. 250/Jun. 2, 1999.

336. STATE DEP'T REPORT, *supra* note 315, §5.

337. Nota privind reforma asistenţei medicale pentru elevi si studenţi [Note on the Reform of Medical Assistance for Students] No. 10364/April 21, 1999 (visited Feb. 26, 2000) <http://www.edu.ro>.

338. YOUNG ADULT REPRODUCTIVE HEALTH SURVEY, *supra* note 206, at 86–88.

339. UNFPA, REPORT OF THE EXECUTIVE DIRECTOR FOR 1998: REGIONAL OVERVIEW ¶¶ 32, 33 (visited Feb. 27, 2000) <http://www.unfpa.org>. This project, ROM/97/P01, having a total budget of USD $265,000 for the period 1997-99, will have close links with ROM/97/P02, and will make use of common and coordinated technical assistance.

340. YOUNG ADULT REPRODUCTIVE HEALTH SURVEY, *supra* note 206, at 43.

341. C.FAM. art. 4. In special cases, girls are allowed to marry at 15, *see above* Marriage Laws.

342. WOMEN IN TRANSITION, *supra* note 187, at 127-128 tbls. 5.2, 5.3.

343. UNITED NATIONS STATISTICS DIVISION, AGE AT MARRIAGE AND PERCENTAGE MARRIED AMONG 15-19 YEAR-OLDS, BY SEX, 1985/96 (visited Apr. 18, 2000) <www.un.org>.

344. The sentence is ten to twenty years in prison. C.PEN. art. 197(3).

345. *Id.* art. 198(1). The sentence is one to five years in prison.

346. *Id.* art. 198(2).

347. *Id.* art. 198(3), (4). In the first two cases, the sentence is three to twelve years in prison. If the victim dies, it is seven to fifteen years in prison.

348. *Id.* art. 199. The sentence is one to five years in prison, but reconciliation between the two parties removes criminal responsibility.

349. *Id.* art. 200(2).

350. *Id.* art. 200(4).

351. *Id.* art. 202.

352. *Id.* art. 204.

353. STATE DEP'T REPORT, *supra* note 315, §5.

354. YOUNG ADULT REPRODUCTIVE HEALTH SURVEY, *supra* note 206, at 15.

355. *Id.* at 37. However, as the study shows, there has been a slight increase in the contribution of health providers (from 9% to 12%) and mothers (from 7% to 10%).

356. *Id.* at 16.

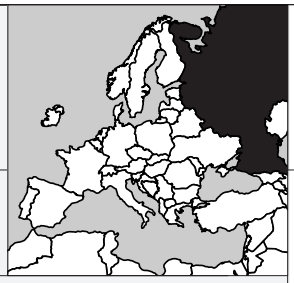
357. COMMON COUNTRY ASSESSMENT, *supra* note 213, at 45–47; *see generally* European Network of Health Promoting Schools (visited Feb. 29, 2000) <http://www.who.dk/enhps/page/info.html>.

358. C.PEN. art. 329(2). The sanction is prison between three and ten years.

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

8. Russia



Statistics

GENERAL

Population

- The total population of Russia is 147.2 million.[1]
- The proportion of population residing in urban areas is estimated to be 76%.[2]
- Between 1995 and 2000, the annual population growth rate is estimated at –0.2%.[3]
- In 1999, the gender ratio was estimated to be 114 women to 100 men.[4]

Territory

- The territory of Russia is 6,592,800 square miles.[5]

Economy

- In 1997, the gross national product (GNP) was USD $403.5 billion.[6]
- In 1997, the gross domestic product (GDP) was USD $440,562 million.[7]
- The average annual growth between 1990–1997 was –7.7%.[8]
- From 1990–1995, public expenditure on health was 4.1% of the GDP.[9]

Employment

- Women comprised 49% of the labor force in 1997, compared to 49% in 1990.[10]

WOMEN'S STATUS

- In 1999, the life expectancy for women in Russia was 72.8 years compared with 60.6 years for men.[11]
- In 1997, the illiteracy rate among youth between the ages of 15–24 was 0% for females and 0% for males.[12]
- In 1998, gross primary school enrollment was 84% for girls and 87% for boys; gross secondary school enrollment was 101% for boys and 104% for girls.[13]

ADOLESCENTS

- 19% of the population is under 15 years of age.[14]

MATERNAL HEALTH

- Between 1995 and 2000, the total fertility rate is estimated at 1.35.[15]
- In 1998, there were 45 births per 1,000 women aged 15–19.[16]
- In 1998, the maternal mortality ratio was 53:100,000.[17]
- Infant mortality was at 18 per 1,000 live births.[18]
- 99% of births were attended by trained attendants.[19]

CONTRACEPTION AND ABORTION

- The contraceptive prevalence for any method (traditional, medical, barrier, natural) is estimated at 21%, and that for modern methods at 13%.[20]

HIV/AIDS AND STIs

- In 1997, the estimated number of people living with AIDS was 268.[21]
- In 1997, the estimated number of women aged 15–49 living with AIDS was 31.[22]
- In 1997, the estimated number of children aged 0–14 living with AIDS was 102.[23]
- In 1997, the estimated cumulative number of AIDS deaths among adults and children was 190.[24]

ENDNOTES

1. United Nations Population Fund (UNFPA), The State of World Population 1999 (visited July 14, 2000) <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 812.
6. The World Bank, World Development Report 1998/9, at 191.
7. *Id*. at 213.
8. *Id*. at 211.
9. *Id.* at 203.
10. *Id*. at 195.
11. The State of World Population 1999, *supra* note 1.
12. The World Bank, World development indicators 1999, at 83.
13. *Id*. *No explanation in the source for the greater than 100% figures.*
14. CIA, Russia, World factbook (visited Sept. 23, 1999) <http://www.odci.gov/cia/publications/factbook/rs.html>.
15. The State of World Population 1999, *supra* note 1.
16. *Id*.
17. *Id*.
18. *Id*.
19. *Id*.
20. The State of World Population 1998, *supra* note 5, at 67.
21. unaids & who, epidemiological fact sheet on HIV/AIDS and sexually transmitted diseases – russia 6 (1998).
22. *Id*.
23. *Id*.
24. *Id*.

Russia is located in Eastern Europe and Northern Asia, bordering the Arctic Ocean, Finland, Estonia, Latvia, Lithuania, Belarus, Ukraine, Tibet, Mongolia, Japan, and the North Pacific Ocean.[1] The official language is Russian. As of July 1999, there were 147.2 million people living in Russia, 78 million of whom are women.[2]

The former Soviet Union dissolved on August 24, 1991 with the Russian Declaration of Independence and the formation of the Russian Federation. Nearly a decade later, Russia is still undergoing a painful transition that is far from complete. As Russia struggles to achieve democracy, a market economy and the rule of law, internal clashes and ethnic conflicts persist. Contradictory and confusing economic and political regulations and practices have been the result.[3] A major impediment to Russia's democratic evolution since 1994 has been the ongoing conflict with Chechnya. In 1991, after the breakup of the Soviet Union, Chechnya declared its independence. Three years later, Russia tried to regain control of Chechnya and started a war, which ended in 1996.[4] The belligerents, however, decided to defer a decision about Chechnya's formal status until 2001.[5] Nonetheless, Chechnya considers itself independent, with an elected president.[6] Russian forces re-invaded Chechnya in October 1999, a move which has lead to another violent conflict.

Russia is multi-ethnic: 81.5% of the population is Russian, 3.8% Tatar, 3% Ukrainian, 1.2% Chuvash, 0.9% Bashkir, 0.8% Byelorussian, 0.7% Moldavian, and 8.1% other. The major religion is Russian Orthodox, followed by Islam.[7]

I. Setting the Stage: The Legal and Political Framework

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The Constitution of the Russian Federation was adopted by referendum on December 12, 1993.[8] It is the supreme law of the land[9] and defines Russia as a democratic state with a republican form of government.[10] The Constitution establishes a system of separation of powers among three separate branches of government-the executive, the legislative, and the judicial branches.[11]

Executive branch

The executive branch consists of the president of the Russian Federation and the government of the Federation. The president is the head of state[12] and commander-in-chief of the armed forces.[13] Elected by popular vote for no more than two successive four-year terms,[14] the president defines the basic domestic and foreign policy objectives of the state.[15] He appoints the prime minister subject to the consent of the State Duma (*see below*), presides over the meetings of the government and can call for its resignation.[16] The president also appoints and dismisses most important state officials.[17] The president forms and heads the security council of the Federation, and endorses the military doctrine of the Federation.[18] The president plays an active role with the State Duma. He calls its elections, has the right to initiate legislation there and must sign its laws.[19] The president also has the power to call referenda[20] and to impose a state of emergency.[21]

The role of the government is to implement the general policy of the Russian Federation[22] as articulated through the Constitution, federal laws and decrees of the president of the Federation.[23] If the State Duma expresses "no confidence" in the government, the president chooses whether to dismiss the government or to dissolve the State Duma.[24]

Legislative branch

The legislative branch consists of a bicameral Federal Assembly, or Parliament, which is the paramount legislative body of the Russian Federation.[25] The Federal Assembly consists of two bodies — the Federation Council and the State Duma.[26] The State Duma approves the appointment of the prime minister by the president of the republic[27] and passes federal laws.[28] Federal laws that are adopted by the State Duma are passed on to the Federation Council for approval.[29] If the Council rejects a law, a conciliatory commission may be set up by the chambers to reconsider the law, which afterwards is sent back to the State Duma.[30] If the State Duma disagrees with the Federation Council's decision, it may call for a second vote and can approve the law with a two-thirds majority of the total number of deputies of the State Duma.[31] Adopted laws are sent to the president for signature and publication.[32] If the president rejects the law, it is sent to the Federal Assembly for reconsideration. If the law is approved by a two-thirds vote of the State Duma and the Federation Council, it is sent back to the president for signature and publication within seven days.[33]

The Federation Council calls the elections for the president of the Russian Federation,[34] and has the power to impeach him.[35] The Federation Council is also charged with the appointment of judges of the Constitutional Court, the Supreme Court, and the Supreme Court of Arbitration.[36]

Judicial branch

The judicial system is established by the Russian Constitution[37] and consists of the Constitutional Court, the Supreme Court, the Supreme Court of Arbitration,[38] supreme courts of the republics, regions and territories, courts of the autonomous cities and provinces, district courts, military courts, specialized courts, federal courts of arbitration of the regions and courts of

arbitration of the subjects of the Federation.[39] The courts of the subjects of the Federation include constitutional courts of the subjects and district judges, who serve as judges of general jurisdiction.[40]

Judges of the Constitutional Court, the Supreme Court, and the Supreme Court of Arbitration are nominated by the president of the republic and appointed by the Federation Council.[41] Lower court federal judges are also appointed by the president.[42] The Prosecutor-General of the Federation is appointed and removed by the Federation Council after nomination by the president of the republic.[43]

The federal Constitutional Court rules on the constitutionality of federal laws, as well as on the constitutionality of republican constitutions, charters, and laws, agreements between federation bodies, and international agreements. The Court also resolves jurisdictional disputes between federation bodies, and constitutional complaints on alleged violations of constitutional rights and freedoms, and interprets the Constitution.[44]

The Supreme Court is the highest legal body for civil, criminal, administrative and other cases.[45] It monitors lower-court decision-making, and many of its decisions arise out of this supervisory function. The Supreme Court also exercises original jurisdiction over certain cases and serves as an appellate court in cases where an intermediate court has acted as a court of first instance.[46]

The Supreme Court of Arbitration is the highest judicial body competent to settle economic disputes and other cases examined by arbitration courts, to exercise judicial supervision over their activities and to provide explanations of court proceedings.[47] The arbitration courts are specialized courts for settling property and commercial disputes between enterprises, including tax, land and other disputes arising from administrative, financial and other legal relations. The arbitration courts can consider cases where a litigant is a non-Russian.[48]

The Supreme Court of Arbitration of the Russian Federation acts as a court of first instance for specific categories of cases, including those involving acts endorsed by the President of the Russian Federation, the Federation Council and the State Duma of the Federal Assembly of the Russian Federation, and the government of the Russian Federation. It also decides economic disputes between the Russian Federation and its constituent parts or between constituent parts of the Russian Federation.[49]

The ordinary court system is multi-tiered.[50] The district courts serve as courts of first instance in all civil and criminal cases within their territorial jurisdiction except for those matters reserved for higher-level courts.[51] Intermediate-level courts are designated as the courts of the Federation's constituent units.[52] They review district-court decisions and act as courts of first instance in certain civil and criminal cases. In the republics, the intermediate courts are known as "supreme courts." They are the highest authority on matters of republican law except for those matters within the jurisdiction of republican constitutional courts (if one has been established in the particular republic). However, they are subordinate to the Russian Supreme Court on issues of federal law.[53]

Russia does not have a separate system of administrative courts. Complaints about alleged illegality of sub-legislative governmental acts are heard in the ordinary courts. The ordinary court system also includes military courts with specialized jurisdiction.[54]

B. STRUCTURE OF TERRITORIAL DIVISIONS

The Russian Federation is divided into 21 autonomous republics, 49 regions (*oblasts*), six territories (*krays*), 10 autonomous provinces (*okrugs*), two federal cities and one autonomous *oblast*.[55] Republics have their own constitutions and legislation, while territories, regions, federal cities, autonomous regions and areas have their own charters and legislation.[56] State power in the federal entities of the Russian Federation is exercised by the organs of state authority formed by them.[57] The status of these entities of the Federation may be changed only with the Federation's consent.[58] Articles 71 and 72 of the constitution establish the exclusive jurisdiction of the Federation[59] and the joint jurisdiction of the Federation and its federal entities,[60] with the residual jurisdiction belonging to the federal entities of the Federation.[61] Federal law prevails over all other acts issued by the entities of the Federation.[62] The president of the Federation may suspend the acts of a region, city or territory if they violate the Constitution and federal laws, international treaties, human rights, and liberties.[63]

Regional and local governments

The Constitution guarantees the right to local self-government and allows such a government to operate independently within the bounds of its authority.[64] The Constitution does not specify the structure of local self-government, but instead delegates its formation to its local population.[65] Local governments resolve local issues, but may also be invested with certain state powers, subject to the state's supervision.[66] Local self-government is exercised through referenda, elections and through elected and other bodies of local self-government.[67] The rights of local self-government can only be restricted in accordance with law.[68]

C. SOURCES OF LAW

Domestic sources of law

The legal system of the Russian Federation includes laws and other regulatory acts of both federal and local government.

On the federal level, the hierarchy of legal sources is the Constitution, federal constitutional laws, federal laws, resolutions of the State Duma and the Federation Council, decrees and executive orders of the president of the Federation, decrees and orders of the government of the Federation, and administrative acts of the federal ministries and other federal organs.

The Constitution is the supreme law, has direct effect, and is applicable throughout the entire Russian Federation. Laws and other legal acts adopted by the Russian Federation cannot contravene the Constitution.[69] Laws must be officially published in order to be effective.[70] Federal constitutional laws and federal laws have direct effect throughout the territory of the Russian Federation,[71] and federal laws cannot contravene constitutional laws.[72] All other matters are regulated on the local level.[73] In cases of contradiction between federal and local acts, federal acts prevail unless the matter regulated falls outside the exclusive jurisdiction of the Federation or the joint jurisdiction of the Federation and the federal entities.[74]

On the federal level, the president of the Federation can issue decrees and executive orders that are binding throughout the territory of the Federation[75] so long as they do not contravene the Constitution or federal laws.[76] The government of the Russian Federation issues decrees and orders on the basis of the Constitution, federal laws and presidential decrees,[77] which also are binding throughout the Russian Federation,[78] but which may be repealed by the president of the Federation if they contravene the Constitution, federal laws and the decrees of the President of the Russian Federation.[79] The Federation Council and the State Duma adopt resolutions for matters falling under their jurisdiction.[80] Judicial decisions, especially decisions of the Constitutional Court, Supreme Court and Supreme Court of Arbitration, play an increasing role as sources of law.[81]

Non-state entities or social organizations such as trade unions, collective farms, and consumer cooperatives no longer have much influence in the development of law and policy; however, Russian legal doctrine vests some of these organizations with the right to enact "normative legal acts" called local acts. These acts pertain to all workers and can be adopted for determinate or indeterminate lengths of time.[82]

International sources of law

The Constitution changed the status of international treaties and international law[83] so that now "commonly recognized principles and norms of the international law and the international treaties of the Russian Federation" are considered an integral part of the Russian legal system; if an international treaty conflicts with the Constitution, the international treaty will apply.[84] The Commonwealth of Independent States, despite its relatively short duration, has generated international treaties and agreements, decisions of CIS organs, and protocols.[85]

Russia is a party to the International Covenant on Economic, Social and Cultural Rights,[86] the International Covenant on Civil and Political Rights[87] and its First Optional Protocol,[88] the Convention on the Rights of the Child,[89] the Convention on the Elimination of All Forms of Discrimination Against Women,[90] the International Convention for the Elimination of All Forms of Racial Discrimination,[91] and the European Convention of Human Rights.[92]

II. Examining Health and Reproductive Rights

In Russia, issues related to the reproductive health of women fall under national programs related to health and population.

A. HEALTH LAWS AND POLICIES

The Constitution guarantees to all Russian citizens the right to medical assistance and health care.[93] Medical assistance in state and municipal health care institutions is free of charge, however as will be described below, this does not mean that all health care services are available to everyone.[94] There are 38 physicians and 95 nurses for every 10,000 inhabitants,[95] but their distribution varies greatly throughout the different regions of the Russian Federation. In the capital city of Moscow, for example, there are 67.7 physicians per 10,000 residents, while in the rural region of Ingushetia, only 20.8 physicians per 10,000.[96] Overall, there are 117.9 hospital beds per 10,000 inhabitants, but for rural areas the ratio drops substantially to 70.8 beds per 10,000 inhabitants. In addition, the number of multi-specialty health care centers (polyclinics) devoted to caring for the rural population shows steady decreases[97] as does that of clinics devoted to reproductive health matters. From 1991 to 1995, the number of special clinics for women (gynecological consultations) declined by half. Maternity homes and children's clinics have been closing at a much higher rate; there was only one-fourth the number of these institutions in 1995 that there had been in 1991.[98] Even the relatively good ratio of hospital beds to inhabitants is deceptive. Since 1991, the lack of financing and continual budget deficits has meant that those who cannot pay for medical treatment go without it, as it is necessary to come up with the money to procure instruments and medication. Patients usually must bring all necessary supplies — medicine, clothes and food — for their hospitalization.[99]

Objectives of the health policies

The Constitution of the Russian Federation directs the state to "encourage activities contributing to improving the individual's health, to the development of physical culture and sport, and to ecological, sanitary and epidemiologic welfare."[100] In an effort to realize its commitment to public health, the legislature passed the "Fundamentals of Legislation on Public Health Care" (Fundamentals) in 1993.[101] All of the previous legislation and other normative actions are codified in the Fundamentals. Its objective is to guarantee the right to healthcare, to public health, and to medical and social assistance; the Fundamentals also assigns responsibility for these objectives to the appropriate state and private authorities.[102]

The Fundamentals establishes a tripartite system for delivering public health services, divided among the state, municipal, and private sectors. The overall duty of supervising and implementing national health programs is vested in the Federal Ministry of Health, which cooperates with various component agencies of the Russian Federation. Municipal administrations directly supervise public health agencies and institutions.[103] Private services are offered in conjunction with state and local ones.

The Russian health care system is undergoing a transition from one fully financed by the state to one of mixed state and private financing.[104] The principal objectives of this financial reform are set forth in a 1993 policy paper entitled, "Proposal on developing the health care system and medical science."[105] The Proposal consists of fourteen articles which connect the declining birth rate and overall aging of Russia's population to the consequences for the health care system and pharmaceutical industry.

Implementing agencies

The Ministry of Health is the principal implementing agency of Russia's health care system. The state public health system also includes the Ministries of Health of the republics of the Russian Federation; administrative organs of public health of the autonomous regions, autonomous areas, krays, regions, and the cities of Moscow and St. Petersburg; the Russian Academy of Medical Science; the State Committee of Sanitary-Epidemiological Inspection; and all other medical institutions located on state property.[106]

The municipal public health system includes municipal administrative organs and medical, preventative, and research institutions, pharmacies, offices of forensic experts, and other medical institutions that carry out their activities on municipal property. These organs are responsible for the sanitary-hygienic education of the population, accessibility of medical care, development of a municipal health care network, and quality control. Their jurisdiction is over both the municipal system and over private practices.[107]

Infrastructure of health services

Health care in Russia consists of federal, municipal, and private health care systems. The federal health care system includes public health institutions to prevent and treat epidemic diseases and to provide primary health care for women and children, among others. It also encompasses the medical education and research infrastructure, the pharmaceutical industry, rest homes and sanatoriums and compulsory medical insurance. Primary health care includes polyclinics, women's clinics or gynecological consultation offices, sanitary-epidemiological stations, maternity homes, ambulance services and specialized services for industrial workers.[108] As of 1995, the Ministry of Health sponsored 10,280 health centers, 1,601 hospitals, 6,107 polyclinics, 938 dental clinics, and 413 ambulance stations. There are 47 universities, seven continuing medical education institutes, 450 colleges and 87 research institutes that train medical professionals.[109] In 1998, in addition to 682,000 physicians, Russia had 1.6 million medical assistants and nurses, 11,200 hospitals, 21,900 medical institutions providing outpatient services, 15,400 maternity/gynecological consultation offices, children's polyclinics, outpatient departments and institutions with maternity centers and children's sections, and 45,100 medical and obstetrical stations.[110] In 1995, there were only 491 family practitioners.[111] In 1997, there were 38,000 gynecologists in Russia (4.9 per 10,000 women).[112] All municipal and private health care entities must be licensed by the state.[113]

Cost of health services

The Constitution guarantees free health care, dispensed by the state and municipal health care systems, to all Russian Federation citizens. However not everyone is entitled to free health care. Even during Soviet times, when health care services were underwritten by the state, these services were not available to everyone. Health care services and providers were unevenly distributed. The majority of individuals could only receive treatment in the areas in which they resided (the notorious *propiska* system). They could not change the doctor to whom they were assigned or get treatment from a different clinic. Special health services existed for the elites (*nomenklatura*). With the demise of the Soviet Union, the availability and financing of the health care system now comes from a variety of sources—primarily the state budget, health insurance, and other public and private contributors.[114] The sources of revenue are detailed in the Fundamentals and in the law on "Medical Insurance of the Citizens of the Russian Federation" (Medical Insurance Law).[115]

Allocations from the state budget, meanwhile, do not meet the needs of the Ministry of Health. In 1996, for instance, the Ministry of Health asked for 23.9 billion rubles, but the Ministry of Finance approved only 4.6 billion rubles, less than 20% of the requested sum. The system of mandatory health insurance is supposed to be financed by a new tax of 3.6% on the salaries paid by enterprises and organizations plus payments from local government administrations for insuring non-working citizens.[116] This fund is managed by the Federal Medical Insurance Fund, with offices all over Russia. There are certain conditions attached to insurance pay-outs. For example, in order to enjoy 100% medical coverage, a person must be employed for at least eight years or have three or more dependent children.[117]

Compulsory medical insurance for all Russian citizens was supposed to be implemented starting on October 1, 1991,[118] but this did not happen for economic and organizational reasons. The 1991 Medical Insurance Law was supplemented by the 1993 "List of Services Guaranteed by the System of Social Insurance."[119] Under the law and its supplement, all covered services are basic.[120] There is a system of annual health examinations for Russian citizens. Family planning materials — birth control pills and IUDs — and counseling are provided free of charge.[121] Pensioners, war veterans, and the disabled are also eligible for free medical care.[122] Primary health care in Russia includes special health care for workers employed in heavy state industries.[123]

There are still limitations to health care insurance coverage. Health insurance only covers expenses for medical services provided in the city or the region where the person lives.[124] In other cases, only ambulance services are free of charge. There are several companies offering voluntary supplemental medical insurance that covers more medical services, but premiums are costly. Furthermore, a number of medical services beyond basic, medically necessary services are not covered.[125] State support for abortion has been significantly reduced; the basic program of medical insurance does not fully cover expenses for abortion upon request.[126] The Ministry of Health classifies abortion in three categories: abortion upon request, abortion for medical reasons, and abortion for social reasons: eight out of 10 abortions are classified as "abortion upon request."

Regulation of health care providers

Health care providers include doctors, dentists, and nurses trained at 47 state medical and pharmaceutical educational establishments, including 15 universities, 28 academies, five institutes, and 13 medical departments of universities within the system of the Ministry of Education. Since 1992, eight private medical colleges and departments have also received state licenses.[127]

According to the Fundamentals, a medical doctor must have a degree from a medical university or college. Additional qualifications, such as specialized diplomas, certificates, and licenses are necessary to practice in certain areas.[128] As an undergraduate in medicine, a student can get training in seven main specialties: family medicine, curative medicine, pediatrics, dentistry, hygiene, sanitation, and epidemiology. Medical students receive their diplomas after six years of study and passing through the attestation commission, which consists of oral and written exams on the theory and practice of medicine.[129] Post-graduate internships (*internatura*) last for one year and in-depth specialized residencies (*ordinatura*) take two to three years. There are also PhD studies as well as special training courses.[130]

There are four academies, three continuing education training institutes, and 48 departments that offer post-graduate courses. To maintain the level of care provided to Russians, the Ministry of Health introduced a continuing education examination for the medical profession, and annually 150,000 doctors take post-graduate training.[131] Every five years medical professionals have to pass an "attestation,"[132] that is, a series of theoretical and practical exams. Physicians receive special qualifications upon passing the attestation.

The Fundamentals established, for the first time in Russia, independent professional medical and pharmaceutical associations. These associations have the right to participate in the elaboration and implementation of principles of professional ethics, in the development of quality standards, in the licensing of medical activities, in the examination of professions, in the certification of specialists, and in the resolution of disputes regarding salaries and payments.[133]

Patients' rights

Patients' rights are secured by several laws. The Fundamentals guarantees health protection to all citizens regardless of sex, race, nationality, language, social status, position, place of residence, religious belief or association.[134] Special protection is given to particular groups, including families,[135] pregnant women and mothers,[136] minors,[137] military servants,[138] the elderly[139] and disabled people,[140] people in emergency situations,[141] and prison inmates.[142]

Health care for non-citizens of the Russian Federation is guaranteed under applicable international treaties between Russia and various nations. Refugees have access to the same health services as Russian citizens.[143]

The Fundamentals guarantees that a patient must be treated with human dignity and respect. The patient has the right to choose his or her own doctor. The patient has the right to a diagnosis, to a consultation upon request, to pain relief, and to confidentiality when consulting a physician or health care

provider for medical advice.[144] A patient has the right to refuse medical interventions;[145] medical interventions can only be performed after informed consent is obtained.[146] Exceptions are made for socially dangerous individuals, individuals with diseases that present a hazard to others, or for people with a mental disability.[147] A patient has the right to information on the rights and duties of health care and medical professionals, and has the right to control with whom information on his or her condition is shared, or to whom it is transferred.[148] Finally, a patient has the right to consult a lawyer or a priest.[149] There is the right to receive all information that might impact one's health, such as information about epidemic diseases, through the local authorities and mass media.[150] Information about a patient's illness, diagnosis and treatment is confidential.[151] Exceptions are that public health institutions must report information about a citizen's illness if potential impact on public health requires it, or if police or judicial bodies request it.[152]

The Fundamentals also addresses issues of medical malpractice. Patients can complain about violations of their rights to the administrator or other officials of the medical institution, to medical associations and licensing commissions, and in court.[153] Damages caused to the health of a person by medical or pharmaceutical workers must be compensated in accordance with the Civil Code.[154] The court decides the amount and type of compensation,[155] and compensation does not exonerate medical or pharmaceutical personnel from disciplinary, administrative, or criminal liability.[156] Possible sanctions range from a fine to imprisonment. The court can also deprive a person of the right to be engaged in the medical profession for a term of one to five years.[157]

B. POPULATION POLICY

Depopulation is a problem in Russia. The birth rate is extremely low, at 9.64 per 1,000 people in 1999, and children under 15 years of age represent only 19% of the population.[158] Most commentators attribute the dramatic decline of population growth to the social and economic changes taking place in Russia since 1985.[159] In addition to low birth rates, there are high death rates, decreasing immigration and an aging population.

There has also been a demoralizing drop in life expectancy. In 1999, the average life expectancy at birth was an average of 65.12 years for the total population, with 58.8 years for men and 71.7 years for women[160] — below the level of the mid-1950s.[161] But between 1978 and 1998, the average life expectancy at birth did not change much: 62 years for men and 73 years for women in 1978, compared to 61 years for men and 73 years for women in 1998.[162] In 1999, Russia's population took its largest drop in the post-Soviet era. The latest population figure counts 145.3 million, down by 0.5% from 146.4 million in 1999 and 0.2% in the first four months of 2000.[163] According to expert estimates, Russia's population will continue to decline in the future.[164]

As a consequence of these developments, Russia's population policy might be described as pronatalist. Maternity leaves from work for all women are covered by the state.[165] Additional benefits accrue to women who have more than three children.[166] In reality, most of these benefits are illusory as the value of the ruble is very depressed and/or the government is unable to provide them. Indicative of a pronatalist policy is the reported pressure gynecologists working in the state clinics for women (so called "gynecological consultations") are under to convince women seeking abortions to carry the pregnancies to term; the quality of the gynecologists' work is evaluated on the number of pregnant women registered and monitored in their service.[167]

C. FAMILY PLANNING

Government delivery of family planning services

There are several sources of regulations relating to family planning services in Russia. The Constitution guarantees state protection of motherhood and childhood.[168] The Fundamentals guarantees free advice on family planning issues, medico-genetic diagnostics, and medical and psychological aspects of family relations.[169]

At the moment, there is no comprehensive reproductive health policy, although there are attempts at creating one. For example, there is some interest in introducing in the Russian Parliament in 2000 a draft law "On Reproductive Rights of the Citizens and Guarantees of Their Provision." It would comprehensively regulate all reproductive health services throughout Russia and ensure universal accessibility. Some comprehensive regional policies do exist: the Ivanovsky region was the first to adopt a law entitled "On Rights and Gurantees of Citizens on Family-Creation and Maintaining Its Health."[170] On the federal level, a 1991 Ministry of Health directive ordered family planning services to be provided at centers of family planning and reproductive health.[171] Due to financial limitations, however, these services have only been made partially available. There is also a federal "Proposal for Protecting Reproductive Health." It would define broad state policy in this area, including the improvement of the organization of health care and medicine, training and advanced training of medical personnel, and information support in the field of reproductive health and research.[172]

There were two specific programs in health protection, and in the prevention and reduction of abortions, illness and the death rate; they were the federal target programs "Family Planning" and "Safe Maternity," in effect from 1994 to 1998,[173] and

now defunct. The "Family Planning" program had been part of the presidential program called "Children of Russia."[174] The program's main goals were to create a system of family planning services in Russia and establish the legal framework for their activities; train medical professionals, teachers and social workers working in family planning centers; meet the population's need for contraceptives; and create an information system that would provide the population with up-to-date information on sexual and reproductive matters. Since 1994, 36.9 billion rubles were spent on the state program for family planning. In 1994, 214 family planning centers were opened, accounting for 41% of the budget set for this program, while in 1995, planning centers made up 11% of the budget. The "Family Planning" program was quite effective in helping to promote contraceptive use — in 1994, 42% of the budget was used for purchase of oral contraceptives, and in 1995 that percentage was up to 63%.[175] The number of abortions declined by 29% in the four years the program was active.[176] Despite its effectiveness, the program was dropped from the state budget in 1998. Because of the reduction of funding, a number of regions have no funding sources for family planning and reproductive health programs.[177]

Services provided by NGOs/private sector

Because government support for family planning has been unreliable, NGOs have been supplementing the governmental services. Today there are several NGOs working in the field of reproductive health, along with governmental and non-governmental funders and pharmaceutical companies. One is the Russian Family Planning Association (RFPA), an International Planned Parenthood Federation affiliate, founded in 1991 with the approval of the Russian Federation government. Its mission is to develop public support for family planning and to promote family planning methods and reproductive health.[178]

D. CONTRACEPTION

Since the transition to a more open society, access to information and materials related to contraception has improved. More then 50% of women reported in 1992 and 1993 that they used traditional methods of contraception, such as *coitus interruptus* or the rhythm method, to limit their family's size; 18.7% of women reported using modern contraceptives such as the pill, and 20% of women reported no use of contraception.[179]

In 1996, 77.7% of all sexually active Russian women surveyed in Ivanovo reported the use of contraception — 60.3% using modern contraceptives and only 17.4% employing traditional methods. Of those using modern methods, 35.2% used the IUD, 12.8% used condoms, 8.6% used oral birth control pills, 2.2% of the women were sterilized, 1.3% used barrier methods, 0.2% used the "morning after pills," 0.1% used a combination of methods, and 0.2% used other methods.[180] Use of female condoms is not widespread, nor are they sold in Russia.

Only contraceptives that are registered by the Ministry of Health may be used in Russia, and the following contraceptive methods are currently registered: monophase, two-phase, and three-phase combined oral contraceptives; oral contraceptives with progestin (for continual use); Depo-provera and Norplant for injections; IUDs; vaginal contraception; and Postinor for emergency contraception.[181] Virtually no oral contraceptives are manufactured in Russia. The Ministry of Health purchases contraception from private pharmaceutical companies, which import most of their offerings. The country also receives them as a part of humanitarian aid. The availability of contraceptives is not reliable, as it depends upon budget resources, legislation, taxation, and foreign manufacturers. The Ministry of Health purchases approximately 13-17 million oral contraceptives, which covers the demand of only 3-5% of women in Russia.[182] Compared to the monthly minimum wage of 83 rubles (USD $3.00), the cost of contraception is very high.[183] For example, oral contraceptives cost about USD $80-100 per year, Depo-Provera injections run around USD $100 annually, and an average cost of abortion is USD $230.[184] Contraceptives are legally available only with a medical prescription. However, a 1995 study of pharmacies in the city of Ekaterinburg demonstrated that only three out of 10 oral contraceptive purchases were made with written medical prescription.[185]

Legal status of contraceptives

Only contraceptives that are registered by the Ministry of Health may be used in Russia, as already mentioned, and contraception is in theory only available with a medical prescription.

Regulation of information on contraception

A presidential edict proposed a system for dissemination of up-to-date information on sexual and reproductive issues.[186] Pursuant to the order, the RFPA, the Ministry of Health and some international organizations have conducted public education campaigns, including radio spots, TV commercials, and special films for adolescents on modern contraception methods. A number of programs have been initiated and conducted on a regional level as well.

Despite these activities, a patriarchal, traditional mindset prevails on matters of sexual relations. Women are considered to be solely responsible for birth control. While women's "right" to choose is commendable, most women do not feel free to discuss contraception with their partners. N. Vaganov (1995) reports that only 32.6% of men discuss means of contraception with their partners, while 22.2% consider it purely as "women's business."[187] Male involvement and participation in family planning decisions is neither equal nor shared.

E. ABORTION

In 1994, there were 3.1 million registered abortions, which is two times greater than the number of live births. There are 83.4 abortions per 1,000 women.[188] However, the number of abortions is declining. According to the official statistics, there was a 23% reduction over the period of 1992-1996: 235 abortions for every 100 births in 1993 and 203 in 1996; the number of abortions per 1,000 women (15-49 years old) was respectively 88 and 70. The reduction in the number of abortions was mainly due to an increase in the number of women using modern means of contraception.[189]

Mini-abortion is officially considered a "regulation of menstrual cycle by vacuum aspiration" and is defined as an induced abortion. Vacuum aspiration is performed between 20 days, but no later than eight weeks, after the last expected menstruation.[190] Despite the common name of "mini-abortions," this type of abortion is not incorporated into the official statistics.[191] The Ministry of Health has not legalized RU-486.

Legal status of abortion

The Fundamentals is the main law regulating a woman's right to abortion.[192] Termination of pregnancy is legal upon request up to the 12th week of pregnancy from presumed conception. An abortion performed for medical reasons is legal at any point in the pregnancy. In case of pregnancies up to 22 weeks, it is legal if the woman has valid social reasons.[193] The Ministry of Health order has defined "social reasons" as follows: the illness of the husband; the death of the husband; imprisonment of either wife or husband; unemployment of wife or husband; loss or restriction of parental rights due to court order; the woman's marital status; criminal origin of the pregnancy; inadequacy of living space; woman's status as migrant or forced migrant; existence of three or more children; disability of a child; or income below the regional poverty line. [194]

Requirements for obtaining legal abortion

Induced abortions should be performed only in licensed clinics, by trained medical practitioners.[195] As already discussed, a woman may obtain an abortion within the time limits established by law.

Policies regarding abortion

The large-scale provision of early safe abortion (mini-abortions) began in the early 1980s, and in 1988 the Ministry of Health of Russia legalized the performance of commercial induced abortions.[196] Since 1991, commercial gynecology clinics provide abortion services with state financing.[197]

Government funding of abortion services

Abortion may be legal, but the introduction of the social insurance system in Russia has in fact restricted women's ability to choose to terminate their pregnancies. Abortion upon request is not funded by basic medical insurance. However, abortion as a medical service was supposed to be covered by municipal funds. In fact, it is difficult for women to get coverage. Moreover, the Ministry of Health stressed in a letter to the concerned authorities that all abortion services including mini-abortions and abortions for social and medical reasons should be covered by municipal funds. To date, the situation has remained ambiguous. Abortion can be free in state facilities, but even there, women must pay for anesthesia. The cost of abortion varies greatly across Russia, ranging from free to very expensive; mini-abortions are less likely to require out-of-pocket payment than conventional abortions.[198] Most women choose private clinics where the standard of hygiene is rigorous and the standard of care is much more humane; however, women must pay for these services, and the average cost of an abortion is USD $230.[199]

Penalties for abortion

Punishment for the illegal termination of pregnancy is regulated by the Criminal Code. An abortion performed by an unauthorized individual without medical education is punishable by a fine, and mandatory community work of 100 to 240 hours, up to one year.[200] Repeat offenders may be imprisoned for up to two years. Should an abortion performed by an unauthorized individual result in the impairment of the woman's health or loss of life, the general Criminal Code provisions for assault and murder would apply. When a physician performs an illegal abortion that leads to serious health consequences or the death of the woman, the penalty can include suspension from medical practice for up to three years.[201]

Regulation of abortion information

There is no restriction on advertisement of abortion. Advertisements for private, commercial clinics can be found in many newspapers and women's journals.

Conclusions

While there is concern over the high rate of abortion, there remains a need to establish the actual rate through reliable statistics. For example, off-clinic abortions, which begin outside of a clinic (for example, self-induced), are excluded from the total number of induced abortions, and are registered as "spontaneous." Methods of cooking the figures to show a decline in the number of induced abortions by "transferring" clandestine induced abortion into the category of abortion with undetermined cause is commonplace.[202] In other words, there is reason to suspect that there is a continued high rate of abortion.

Conversely, it has been established that the program on family planning did reduce the number of abortions while increasing the use of contraceptives. The lack of federal financing for family planning and the dire economic situation since August 1998, however, has meant an end to that program. One result has been an increase in the number of abortions in the first half of 1999.[203] The relative price of contraceptives, moreover, has increased due to the devaluation of the ruble.

One alarming development has been the growing influence of religion over the exercise of women's reproductive autonomy. In Russia there is an official separation of church and the state.[204] The majority of believers belong to the Russian Orthodox Church.[205] Within the Russian Orthodox perspective, the tendency is to view abortion as murder of an unborn child. There are anti-choice associations officially connected to the Orthodox Church.[206] Gaining in popularity since the early 1990s, these organizations distribute printed materials, lecture at schools and hospitals, teach in medical schools, and stage public events.[207] Some organizations receive financial and other support from U.S. based anti-choice groups.

F. STERILIZATION

Medical sterilization is permitted for those older than 35, for those who have two or more children, or for those who have medical reasons (determined by the Ministry of Health). Non-surgical sterilization may be performed in licensed state facilities. The Criminal Code punishes illegally performed sterilizations.[208]

Voluntary surgical contraceptive sterilization became legal in the early 1990s. Before that, starting in the 1930s, voluntary surgical contraceptive sterilization was strictly illegal by Order of Narcomzdrav of the USSR, "On the Prohibition of Cutting or Ablation of the Healthy Fallopian Tubes of the Uterus."[209] Between the end of the 1930s and the early 1990s, this method of contraception was not officially performed, although operations obtained by payment or through an "acquaintance" did occur.

The 1990 order of the Ministry of Health permitted sterilization for contraceptive purposes, but on the whole it was very restrictive, allowing voluntary surgical contraceptive sterilization only in limited cases. For a woman to obtain a voluntary sterilization, she must have had three or more children in the family, or be 30 years old or older with two children. Other indicators included: repeated caesarian sections, an injury to the uterus after a removal of fibroids, any evidence of uterine cancer, any blood disease, any mental disorder.[210] When this order proved to be too restrictive, a new 1993 order was published.[211] The 1993 Order officially declared its goal to be "the protection of public health, realization of rights for specialized medical treatments, and decreasing number of abortions and post-abortion mortality."

The 1993 order permitted sterilization, understood as a permanent method of contraception, as long as the written informed consent of the woman or man was obtained. Additionally, the individual seeking sterilization had to be over 35 years of age or have at least two children. The age and child requirement could be overcome, however, if there were medical indications for the sterilization.[212] The choice of contraceptive sterilization remains a rare one. In the years for which there are reported statistics, 0.3% of all women of reproductive age in Russia chose this method.[213]

However, sterilization for medical reasons is permitted more generally. Individuals with mental disabilities, for example, can be sterilized. In such instances, the consent of the patient may be substituted with that of the physician.[214]

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

Prevalence of HIV/AIDS and STIs

For the Russian Federation 1999 has been the worst year since HIV infection rates have been tracked. Nearly half of all cases were reported in the first nine months of 1999 alone. The virus seems to have been recently introduced into networks of intravenous (IV) drug users in Russian metropolitan areas and smaller provincial cities where HIV was previously unknown. In Moscow, more than 2,700 cases of HIV were reported in the first nine months of 1999, representing three times as many as in all previous years combined. In the towns and cities around Moscow, more than five times as many infections were reported in the first nine months of 1999 as in all other years combined.[215]

Given the illegality of IV drug use, there are no accurate figures for HIV transmission rates. Sexually transmissible infections (STIs) such as syphilis and gonorrhea are indicators for HIV transmission and these rates suggest that many IV users have unprotected sex. An outreach service providing support and clean needles for drug users in St. Petersburg reported that 10% of 1,800 clients tested positive for syphilis. Among 100 female drug users who make a living as sex workers and who attended the outreach service, 32% had syphilis.[216]

Preliminary studies suggest that IV drug use is becoming prevalent among unemployed young people in many of the industrial cities of the Russian Federation and can be found even among schoolchildren. The St. Petersburg outreach program reported clients as young as 12, with the percentage of clients aged 14 or less rising from 0.1% in 1997 to 2% in the first quarter of 1999.[217]

The majority of HIV-positive people are between the ages of 20 and 40.[218] According to the data supplied by the Russian Center for Prophilaxy and Averting AIDS, as of January 1, 1999, 10,952 persons registered as infected with HIV, out of which 357 persons were ill with AIDS. There were 450 children infected with the virus, out of which 115 were ill with AIDS.[219] In 1987, there were no reported cases of HIV. In 1988, there were 23; in 1989, the number increased to 69, in 1990 to 337, and in 1991 to 440. In 1992, there were 521 HIV-positive cases; in 1993 there were 712, in 1994 there were 863, in 1995 there were 1,060, in 1996 there were 2,459, in 1997 there were 6,926, and in 1998 there were 9,863.[220]

Laws affecting HIV/AIDS and STIs

A 1993 federal program to prevent the spread of AIDS in the Russian Federation (AIDS Control) takes preventative steps to address "sexual and blood transmission of AIDS; diagnosis, treatment, and screening; legal and social safeguards; refinement of the epidemiological oversight system; research on the AIDS problem and furnishing of information and personnel."[221]

In 1996, another federal program was adopted to further slow the spread of HIV and AIDS for the period 1996 to 2000.[222] This program provides legal support for measures for the prevention and control of HIV infection; development of a system of information dissemination to the public on ways to prevent HIV transmission; improved epidemiological oversight; improved technical handling of blood and tissue preparations; improved diagnosis and treatment of HIV; social protection for HIV-positive persons and their family members and for individuals subject to the risk of infection during the performance of their duties; and cooperation with international organizations. The program stresses the need to improve sex education, to target high-risk groups, to accommodate the needs of infected children, to ensure adequate health insurance, and to sponsor more research. Recently, the Russian Ministry of Health has issued an order setting up special centers in different cities for pregnant women and children who are HIV-positive.[223]

Policies on prevention and treatment of HIV/AIDS and STIs

The "Law on the Prevention of the Spread in the Russian Federation of the Disease Caused by the Human Immunodeficiency Virus (HIV)" was passed in 1995.[224] It guarantees respect for the rights and freedoms of HIV-positive Russian citizens. It also requires compulsory testing of blood, tissue and organ donors, and persons working in certain professions or in certain activities.[225] It requires foreigners and stateless persons residing in the Russian Federation for more than three months to present a certificate confirming that they are not HIV-positive.[226] Finally, it guarantees the right of HIV-positive individuals to medical care and to financial compensation for damage caused to their health as a result of medical negligence while undergoing medical treatment.[227] Voluntary medical testing may be carried out on an anonymous basis.[228] A presidential decree provides for social aid to children being raised by single mothers, the exact amount of which is dependent upon the age of the child and situation of the mother; an additional amount is allocated to children suffering from AIDS.[229]

The Criminal Code punishes the knowing transmission of HIV. A person who is aware of her or his illness, and infects another may be punished by imprisonment of up to five years. If the person infects two or more individuals, or someone under the age of 14, the prison term is up to eight years. HIV infection which results from medical malpractice is punishable by imprisonment of up to five years, or by the loss of the medical, nursing or other professional license for up to three years.[230] A person who marries and conceals from the spouse his or her venereal disease or HIV infection can have the marriage annulled by the spouse's petition to the court.[231]

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

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

The Russian Constitution guarantees equal rights, liberties and opportunities for men and women.[232] Motherhood and childhood are protected by the Constitution,[233] the Fundamentals,[234] and the Labor Code.[235] Guarantees for motherhood include free medical care, welfare, and work leaves for all pregnant women. There are a number of documents that specifically address the status of women in Russia: the decree of the president of the Russian Federation No. 337 from March 4, 1993, "On the Primary Goals of the State Policy in respect to Women," was intended to improve women's participation in state policy and in public organizations;[236] the decree of the government of the Russian Federation No. 6 from January 8, 1996, "Proposal on the Improvement of Position of Women in the Russian Federation," defines general strategy and priorities for the state policy with respect to women's equal rights and liberties within the constitutional framework. It addresses women's political participation at all levels and enables the establishment of commissions for women, family and children under the president of the Federation and government offices.

Its goals are to provide equal opportunities for women in the labor market, to protect women's health, and to reduce violence against women (prostitution, rape, domestic violence).[237]

B. CIVIL RIGHTS WITHIN MARRIAGE

The absolute number of marriages has continually declined since 1992: from 1.05 million in 1992 to 848,300 in 1998, which represents a drop from 7.1 to 5.8 marriages per 1,000 people. The same is true about divorces: from 639,200 in 1992 to 501,400 in 1999, a drop of 4.3 to 3.4 divorces per 1,000 people.[238]

Marriage laws

Marriage is regulated by the Family Code of the Russian Federation. A marriage is valid only when it is officially registered in the appropriate governmental office.[239] Marriage is based on the principle of equality between the spouses and mutual decision-making concerning the raising of children.[240] Mutual consent is required for marriage.[241] The minimum age allowed for a first marriage for both men and women is 18. [242] In certain cases, an official may permit marriage for someone aged 16.[243]

Under the law, religious ceremonies do not legally validate a marriage. A civil ceremony is both necessary and sufficient. However, the Russian Constitution stipulates that all family matters fall within the joint competence of the Russian Federation and its regional entities (*oblasts*).[244] The Family Code sets out that family legislation consists of this Code, other federal laws adopted in accordance with the Code, and the laws of the Russian Federation *oblasts*. The Russian Federation *oblasts* are competent to adopt laws on matters which expressly fall within their competence in accordance with the Code and on matters which are not covered by the Code.[245] Thus, in Ingushetia — a region in Russia where many inhabitants are Muslim — a law allowing polygamy was adopted; in the region of Bashkiria, such a law was discussed two years ago but was not adopted.[246] The Ingushetia law legalizing polygamy, however, contradicts federal legislation and is likely invalid, although it has not yet been challenged.[247]

Divorce and custody laws

Divorce, like marriage, is regulated by the Family Code. Divorce is defined as the termination of marriage during the lives of the spouses.[248] One of the spouses must demand a divorce.[249] The marriage registration bureau may approve divorces in cases where the spouses' consent is mutual and they have no children under 16 years old.[250] If a law court has pronounced one of the spouses mentally incompetent, missing, or imprisoned for more than three years, the marriage registration bureau can also approve the divorce, even if there are children less than 16 years old.[251] In cases where the parties consent to the divorce, there are no inquiries into their reasons, and a divorce is granted as a matter of course.[252] In all other cases a court of law presides over the divorce.[253] A court may end a marriage at the unilateral request of one spouse if it can be proven that there are irreconcilable differences.[254] A husband, however, may not divorce his wife when she is pregnant, or for up to one year after the child is born.[255]

Property

All property that was acquired during the marriage is considered to be mutual property. Mutual property is usually divided evenly between the spouses, subject to maintenance and child support duties. A spouse who has worked inside of the home, and raised the children, is considered to have contributed to the mutual property of the couple.[256] Property that belonged to one of the spouses before the marriage, or was given as a gift during the marriage, is considered to be his or her individual property. [257] Individual items (such as clothing, but not including jewelry) purchased during the marriage are also considered to be individual property of the spouse who uses them.[258]

Maintenance

In case of a divorce, a spouse may obtain maintenance from the other spouse under certain circumstances: a) if the wife is pregnant, she is entitled to maintenance for the first three years after the birth of their common child; b) either spouse who takes care of their disabled child is entitled to maintenance until the child is 18 years old; c) either spouse who was unable to work during the marriage and continues to be unable may receive maintenance for one year after the divorce; d) either spouse who reaches retirement age within five years after the divorce and is in need may receive maintenance if the marriage was of long duration.[259]

Child custody

With respect to child custody and support, the Family Code prevails upon the divorcing couple to come to a mutual agreement.[260] Where they are unable, the court establishes a custody, visitation, and support schedule.[261] The Family Code also establishes the presumption that a child born to a woman while she was the lawful wife of a specified man is the child of that man, provided that the child was born within 300 days of the divorce.[262] It is common practice that courts routinely grant custody to the mother.

B. ECONOMIC AND SOCIAL RIGHTS

Property rights

The right to property is guaranteed by the Constitution[263] and is regulated by the Civil Code of the Russian Federation.[264] The Civil Code does not explicitly specify that women have the right to property, but it is presumed that the constitutional

guarantee of equality before the law and non-discrimination on the basis of gender prohibits discrimination against women with respect to property.[265]

The Family Code of the Russian Federation explicitly provides that spouses shall have equal access to property jointly acquired during marriage and that assets acquired jointly shall be distributed equitably upon dissolution of marriage.[266] Inheritance law is equally gender-neutral.

Labor rights

There are 34.9 million working women in Russia, and they constitute half of the active workforce. Since the transition to a market economy, however, women have been discriminated against in the labor market. Overall, women earn one-third less than men for comparable work. The number of unemployed women has increased both absolutely and in comparison to men. At the end of 1998 there were 1.25 million unemployed women in Russia, which constitutes 64.6% of all the unemployed.[267]

Of the total employed population, 22.7 percent of women have a university or professional education, and 38.4 percent have secondary professional education.[268] Women predominate in certain fields, such as biology, agricultural sciences, public health, education, finance and banking, and administrative services.[269] Since 1995 there has been a decrease of the number of women employed in state heavy industries. The number of women employed in traditionally male-dominated fields (small and family business, management, marketing), however, did increase.[270]

All the citizens of the Russian Federation have a constitutional right to work, to choose their activity, and their profession.[271] Moreover, several legislative documents, principally the governmental regulation, "On the Improvement of the Position of Women in the Russian Federation,"[272] were put into effect to improve women's position in the labor market, and to maintain and provide equal rights and opportunities.

In 1997 Russia ratified the International Labor Organization (ILO) Convention No. 156, "Equal Treatment and Opportunities for Working Men and Women: Working People with Family Duties," which prompted a number of changes and additions to the Labor Code.[273] In 1997, the Target Program of Promoting the Employment of the Russian Population for 1998-2000 covered specific activities and measures to assist women's employment and the development of enterprises to provide social services to women who find themselves in difficult situations, such as crisis centers.[274]

The Labor Code guarantees equal rights to all citizens regardless of gender when applying for work.[275] However, the Code extends certain labor protections to women. The Labor Code prohibits employers from either reducing a pregnant woman's salary or firing her.[276] Pregnant women also have the right to change the nature of their job to one that is "less difficult and not harmful to their health, while maintaining the average salary of their previous work."[277] Night work, overtime, and business trips are prohibited for pregnant women and for women with children under three years of age.[278] According to the Russian legislation, women have a right to fully paid maternity leave after childbirth. This leave consists of 70 days before and 70 days after delivery (80 days in case of complications during delivery).[279] Moreover, the federal law "On State Welfare for Citizens with Children" provides "state support for motherhood, fatherhood and childhood."[280] The state provides welfare in cases of pregnancy and delivery to women on state social insurance, when pregnant women are dismissed from work due to the liquidation of the enterprise, when they are studying at universities, technical colleges, postgraduate studies, and when they have contracts with the military. Welfare is also provided to women who adopt children.[281] There are a number of social guarantees to women in case of pregnancy and delivery, such as monthly allocations for children under one and one-half years of age.[282] There is legislation also that guarantees nursing mothers extra time and breaks during working hours.[283]

Access to credit

Russian legislation does not make specific reference to women's access to credit; there is no formal discrimination in law or policy.

Access to education

The Russian Constitution provides that every child has a right to an education. Free public education exists from infancy to university.[284] The Law on Education guarantees the right to free education regardless of gender.[285] The program "On the Improvement of the Position of Women in the Society" emphasizes the necessity to maintain the right to education for women.[286]

Primary and secondary education is compulsory in Russia; therefore, all young women are enrolled in the education system. In the higher educational establishments, women traditionally constitute the majority of students. In the early 1990s, however, there was a marked fall in the absolute numbers of female students. The number fell from 1.43 million in 1990 to 1.33 million in 1992.[287] Women's enrollment in higher education has recently rebounded and for the academic year 1998-99, there were 2.02 million women students enrolled in higher educational institutions.[288]

National machinery for the promotion of women's equality

Since the 1995 UN Fourth World Conference on Women (Beijing), the government has taken a variety of steps to work

for women's equal status in society, and it adopted a National Plan of Action on the Improvement of the Position of Women and Their Role in the Society up to 2000.[289] The law calls for the elaboration of regional plans; there is also the Resolution of the government of the Russian Federation No. 1032 from August 29, 1996, "On the Approval of the National Program of Action on the Improvement of the Status of Women and Their Role in the Society up to 2000."[290] In 1999, the Decree of the government of the Russian Federation on "Additions to the National Plan of Action on the Improvement of the Status of Women and Their Role in Society up to 2000"[291] calls for a bill to end violence against women by the end of 2000.[292]

The decree of the government of Russian Federation No. 91 from Jan. 28, 1997, "On the Commission on the Improvement of the Status of Women,"[293] establishes a commission on the improvement of the status of women; the resolution of the State Duma of the Russian Federation No. 1929-11 from Nov. 20, 1997, "White Paper to Uphold Equal Rights and Opportunities for Men and Women," defines a strategy for developing Russian legislation on the prevention of sex discrimination. The Commission on Human Rights, established in 1996, protects women's rights by considering the constitutional guarantees of women's rights as international human rights.[294] In 1999, under the Chairman of the Federation Council, a Commission on Women's Affairs was established to advise the Federation Council on how to improve the socio-economic status of women.[295]

The Ministry of Labor and Social Development has coordinated a permanent Roundtable of Women's Associations and NGOs since 1997. Its major tasks include the coordination of activities on the interaction of state structures and NGOs in the area of women's rights.[296] Under its auspices, national conferences and congresses on the status of women have encouraged active participation of both governmental and non-governmental actors, and have thus far resulted in common decisions on gender equality, participation of women in decision-making, and other urgent problems facing women.[297] Within the Ministry of Labor and Social Development is the Department for Women, Family and Demography. Similar parallel commissions exist at the presidential and parliamentary level.[298]

There are more than 650 women's rights NGOs at federal and regional levels, and more than 15,000 women's rights NGOs at municipal and local levels. They cooperate with governmental bodies in areas such as allocation of grants to public associations to solve problems of social and economic priority and attract partners for the implementation of federal programs such as "Children of Russia."[299]

D. RIGHT TO PHYSICAL INTEGRITY

Official government statistics on violence against women are sparse. In 1994, according to the published statistics, women were the victims in 565,300 reported crimes, 39,600 of which were labeled as "jealous quarrels." For that same year, 13,900 reported rapes and attempted rapes were reported. Nevertheless, there has been a 13% decline in the absolute number of reported rapes and attempted rapes — from 14,073 in 1991 to 10,888 in 1996.[300] As most women do not report rape, these figures are not accurate reflections of the real rate.[301]

Rape

The Constitution guarantees a right to personal dignity,[302] and sexual violence is considered to violate personal dignity. Article 132 of the 1996 Criminal Code defines the crime of "violent acts of a sexual nature" as including "sodomy, lesbianism or any other acts of a sexual nature." Penalties run from three to six years in prison, with two categories of various aggravating circumstances extending that time to four to ten years, or eight to fifteen years. Two other categories of sexual violence are "coercion in acts of a sexual nature" as defined by Article 133, and "sexual intercourse or other acts of a sexual nature with persons who have not reached 16 years of age," as defined by article 134. Article 133 also includes cases of sexual harassment in the workplace.

Finally, rape is defined as "sexual intercourse through the use of force, or through the threat of its use toward the victim or to other persons, or through taking advantage of the helpless state of the victim." [303] The penalty for rape is three to six years in prison. In case of repeated rape, gang rape, or when the rape includes a threat to kill the woman or cause serious damage to her (such as an STI), or if the target is an adolescent, the sentence is increased to between four and ten years.[304] A rape of a girl under 14, or one that causes death or grievous harm to health (such as HIV), is punishable by prison term of eight to fifteen years.[305] Statutory rape is defined as sexual relations between a person 18 years or older and one who has clearly not reached the age of 16. If such relations occur with a person under the age of 14, it is classified as an indecent sexual assault.[306] There is no specific law on marital rape.[307]

In order to prosecute a rape case, the survivor must lodge a complaint, and the police are often unwilling to register the woman's complaint.[308] Police are also known to frustrate the filing of complaints by shaming the survivor or by trying to make her rescind her report.[309] The police intimidate women by interrogating them repeatedly and by holding them for hours of questioning.[310]

Having filed a complaint, there must be forensic evidence of the rape. A woman must go to a forensic doctor (often at a

state-run evidence center) to gather such evidence. The purpose of the exam is to collect physical evidence of the assault along with any materials that might identify the assailant. The police, again, are known to impede evidence gathering by delaying the issuance of official referrals to the forensic centers.[311] While there is no law that requires women to have the evidence collected by a state-run center, in practice, courts only accept evidence from these sources.[312] Commercial evidence-gathering centers charge a substantial sum, about USD $20. Evidence gathered at commercial centers is not admissible in court alone; the survivor must undergo a second examination at a state center to corroborate the findings.[313]

After the police have accepted a complaint and arranged for the forensic examination, investigators from the prosecutor's office usually take over. During this preliminary investigation, the investigators interview the survivor, the assailant, other witnesses, evaluate the signs of violence and analyze the crime scene. It is at this point that decisions to proceed are made, and the majority of cases are usually closed.[314] There is an unwillingness of prosecutors, as well as investigators, to prosecute, even when there is sufficient evidence.[315] Should a case make it to trial, tactics to undermine the woman are legion; discussions of her sexual life, psychological evaluations, face-to-face confrontations, and overall failure to protect the survivor from the rapist are just some of the hurdles rape survivors intent on justice must face.[316]

Domestic violence

The terms "domestic violence" and "sexual harassment" do not appear in Russian law. Nevertheless, some provisions of the Criminal Code cover the concepts.[317] Acts of domestic violence that do not involve claims of sexual violence are covered under articles 115 and 116 of the 1996 Criminal Code. Chronic, long-term situations of domestic violence can be prosecuted under article 113 of the Code, which prohibits the "systematic infliction of blows or other acts bearing the nature of torture." "Light" assaults that do not cause serious harm are punishable by a fine, community service (from 180 to 240 hours, up to one year), or imprisonment from two to four months.[318] Beatings or other violent actions causing physical suffering are also punishable.[319] A behavior which causes suicide (or attempted suicide) as a result of violent systematic action that denigrates the personal dignity of the woman is punishable by up to five years imprisonment.[320]

In 1995, the Duma's Committee on Women and Youth began drafting Russia's first law focusing on domestic violence, "On the Fundamentals of Social-Legal Defense Against Violence in the Family." To date, the law has gone through over 40 drafts and is still being deliberated.[321] The resolution of the Ministry of Work and Social Development of the Russian Federation on the establishment of domestic violence crisis centers also has failed to pass.[322] There is, however, a federal law, "On the Guarantee of Children's Rights,"[323] which affirms the right of children to be free from violence.

As with rape, the police can only investigate a charge of domestic violence if a woman files a complaint, and filing a proper complaint is very difficult.[324] To begin with, there is no civil protection mechanism that would allow a woman to obtain a restraining order, nor is there adequate alternative shelter.[325] Since women who file complaints often withdraw them out of fear of retaliation from their abuser, the police have an excuse not to take domestic violence claims seriously, referring to the common practice of women withdrawing their complaints.[326]

Also compounding women's reluctance to bring charges is the fact that there are no routine civil remedies available; their only recourse is criminal prosecution,[327] and women frequently are reluctant to see their partner, or the father of their children, put in jail. There is one reported instance of a successful civil case. In April 1997, a divorced woman with three children who occupied an apartment with her ex-husband had continually suffered his violent abuse. Even though the police refused to press charges, she was able to sue him for approximately USD $5,000 in court after he struck their 14-year-old son. The court eventually fined him USD $693, which he did pay.[328]

The Criminal Code does contain special provisions aimed at protecting pregnant women. For example, the commission of a crime against a pregnant woman is considered to be an aggravating circumstance and the perpetrator's sentence is increased.

Sexual harassment

There is no specific law on sexual harassment. Forcing a person to perform acts by threats, or by taking property, or taking advantage of any kind of dependence, is considered a crime against physical integrity of the person and his or her rights.[329] Violation of equality of individuals in respect to sex, race, nationality, language, origin, and social and economic status is punishable also by the Criminal Code.[330]

Trafficking in women

Illegal export abroad of women and girls for sexual exploitation is an increasingly serious problem for Russia. The Security Committee of the State Duma debated this problem in 1997 and is cooperating with NGOs, domestic and foreign experts, and the general public in order to solve this problem.[331] As a result of these efforts, a 1999 bill on trafficking has been drafted and is being debated in the State Duma.

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

As of January 1, 1997, there were 36.7 million children up to 18 years of age in the Russian Federation, representing 25 percent of the total population.[332] As in other countries in transition, children and young people are most vulnerable to economic and social hardships.[333]

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

The Constitution guarantees free health care to all citizens, legal residents, and refugees for services provided by the state and municipal health care system.[334] The Fundamentals is the comprehensive legislation that guarantees health protection to all citizens, including minors, on the basis of non-discrimination.[335] Pregnant women, nursing women, and children under the age of three are guaranteed complete nutrition including, when recommended by a doctor, the provision of food.[336]

The Soviet Union was one of the first countries to provide specialized gynecological care for children and adolescents. Currently there are special units for youth within health clinics in cities with populations between 300,000 and 500,000. In 1993, the government adopted a family-planning policy under the presidential program entitled "Children of Russia,"[337] but this federal program is no longer being funded. Under that program, approximately 12 family planning centers were intended to serve adolescents and youth.[338]

It is reported that 71% of all Russian adolescents start sexual relations between the ages of 15 and 19 and that 2% begin as early as 10-14 years old.[339] Available statistics on the reproductive health of adolescent girls in Russia are disturbing: 61.4% have irregular menstrual cycles and 14.6% suffer from infections of the reproductive tract.[340]

Pregnancy rates

The incidence of pregnancy among women under age 20 has increased over the last 30 years from 28.4% to 47.8%. In 1995, 1,500 children were born to girls under 15 years, 10,000 to those under 16 years and more than 30,000 to those under 17 years. Between the years 1984 and 1994, in some Russian cities the number of pregnancies among adolescents increased 20 times over : from 0.5% to 10%.[341]

Women aged 18 to 19 account for 13% of all births. A survey of 5,815 adolescent girls registered between 1992 and 1996 at a special clinic for pregnant adolescents in St. Petersburg[342] revealed that 1% to 3% gave birth at the age of 14, 11% to 14% at the age of 16, and 45% to 57% at 18. Of these adolescent girls, 53% to 59% were married; 41% to 47% were single mothers.[343]

Access to services

While Russian adolescents are increasingly sexually active, reproductive health services and information available to them are insufficient. For example, in the city of Ivanovo, 86% of school boys and 78% of school girls aged 15-16 consider their knowledge of contraceptives sufficient, but only 9% could accurately answer a questionnaire on contraception and 50% were unaware of where to obtain family planning information.[344] Young women have low levels of awareness of modern contraceptive methods; one-third were totally unaware of effective contraceptive methods. Most adolescents use unreliable methods such as douches, spermicides, and, more rarely, Postinor, a brand of emergency contraception.[345] Primarily as a consequence of inadequate knowledge regarding contraception, 36.6% of adolescents have had late-term abortions.[346]

There is a discrepancy between the quality of health services in rural regions and those in the cities. Research conducted in rural areas shows that 10% of girls aged 15 to 17 years have had an abortion. This proportion rises to 26.5% among girls aged 18-19 and to 30.9% among those aged 20 to 24. The insufficient number of family planning centers and financial difficulties are the primary obstacles faced by adolescents in accessing contraceptive information and services. The price for oral contraceptives varies from USD $3.2 to USD $9.[347] Basic medical insurance does not cover the cost of these contraceptives.

In principle, pregnant teens have access to maternal health care, although there are very few specialized clinics for them. There is only one clinic dedicated to adolescent prenatal, childbirth, and postnatal care in St. Petersburg.[348]

Abortion

Adolescents over 15 years of age have the right to give their informed consent, which includes consent for abortion.[349] Adolescents under 15 years of age must obtain the consent of their parents.[350]

Official statistics on abortion are known to be incomplete and unreliable. The abortion rate among adolescent girls has been estimated at 31.5 abortions for every 1,000 adolescent girls. Furthermore, it is also estimated that two-thirds of all pregnancies among adolescents are terminated by abortion.[351] Broken down by age category, statistics on the number of abortions provided by the State Statistical Bureau shows decreases in the numbers of procedures done: for girls under 15, the number of abortions dropped from 4,800 in 1991 to 1,800 in 1996; and for girls between 15-19 years, the number of abortions dropped from 350,400 in 1991 to 207,500 in 1996.[352] In 1997, 0.1% of all abortions were performed on adolescent girls under age 15; 10.2% were performed on girls aged 15-19 years. The majority of abortions were performed on women

20-34 years old (68.9%).[353] According to data reported from the Ivanovo region, mini-abortions were performed on 0.4% of girls under 15 years, 21% of girls aged 15-18 years, and 45% of girls aged 19-25 years.[354]

There is no routine post-abortion counseling. Women and adolescent girls generally receive no advice on contraception after they undergo an abortion.[355]

B. MARRIAGE AND ADOLESCENTS

The Family Code provides that partners intending to marry must be 18 years old.[356] However, the age of marriage may be reduced to 16 if there are justifying circumstances. The law allows the regions of the Russian Federation to adopt such legislation.[357] Such laws were adopted in the central regions of Russia, including Moscow, arguably in response to widespread teenage pregnancies.[358] The majority of these regional laws consider it permissible for a girl child as young as 14 to marry if she is pregnant, or if she has already given birth to a child. Parental consent usually must be given when either spouse is younger than 18, but local authorities have the power to lower the minimum age of marriage without the consent of the parents.[359]

C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

Under the 1996 Criminal Code, "sexual intercourse or other acts of a sexual nature with persons who have not reached 16 years of age," as defined by article 134, is considered sexual violence.

Statutory rape is defined as sexual relations between a person 18 years or older, and one who has clearly not reached the age of 16. If such relations occur with a person under the age of 14 it is classified as an indecent sexual assault.[360]

D. EDUCATION AND ADOLESCENTS

Although the federal Law on Education guarantees the right to free access to education to all citizens of the Russian Federation regardless of sex, race, nationality, language, origin, place of residence, religious belief, age, health, or social or economic status[361] and both primary and secondary education are compulsory, from the beginning of the 1990s there has been a marked fall in the absolute numbers of female students. In specialized secondary educational establishments, the number of women fell from 1.33 million in 1990 and 1.24 million in 1992[362] to 1.16 million in 1998.[363] In 1985-86, the proportion of female students was 56%; in 1990-91, it was 51%; [364] in 1994-95, it reached 60%, only to fall to 57% in 1998-99.[365]

E. SEX EDUCATION

In the recent past, there had been a sex education program specifically geared to adolescents. It was part of the now-defunct federal program, "Children of Russia." Goals of this program were to elaborate new approaches for teaching adolescents and their parents about sexual and reproductive matters, to strengthen family and school responsibility for the sex education of adolescents, to create a system of family planning and train specialists, to provide family planning facilities with modern equipment and methods of contraception, and to conduct scientific inquiries into family planning usage, with respect to regional and national peculiarities.

In 1999, the Ministry of Health ordered that sex education be provided in health clinics for children under 17.[366] Currently, however, there is no requirement that sex education be taught in schools, and courses on biology and hygiene do not cover the subject.[367] Although an experimental sex education program was launched in seven Russian regions in 1995,[368] in 1997 the introduction of sex education programs in schools was halted.[369] Less than 5% of adolescents have received sex education from schools, less than 5% from medical professionals; 20% received information on sex from parents and 70% from their peers.[370]

There is opposition to sex education in contemporary Russian society. Surveys show that negative attitudes toward the inclusion of sexual education in schools is highly correlated to levels of education, with those having low levels of formal education most opposed to sex education in schools.[371] In addition, the lower the level of urbanization, the less likely women are to approve of sexual health courses for teenagers: there is a 65% approval rate in Moscow and in St. Petersburg, and only 37% in rural areas.[372]

F. TRAFFICKING IN ADOLESCENTS

The 1996 Criminal Code outlaws the sale and/or trafficking of children.[373] Producing, distributing, selling, and advertising child pornography is illegal.[374] The law of the Russian Federation on mass media regulates the sale of erotic material. It requires that such material be sold in special packaging and only in designated outlets, but these requirements are frequently disregarded.[375] A draft federal law concerning the sale of sexual services, spectacles and products is under consideration; it has a special provision regarding the protection of juveniles against sexual assault in the family.[376]

NOTE ON SOURCES

The information in this chapter is drawn from primary sources of law and secondary sources in English and Russian. When available, primary sources of national law in Russian were used. They are available at <http://src-home.slav.hokudai.ac.jp/eng/Russia/legal-e0.html> (database of the Slavic Research Center of Hokkaido University) and in KODEKS at <http://www2.kodeks.net/index.html> (commercial data-

base). The chapter follows as closely as possible THE BLUE-BOOK (16th ed. 1996). Blue book footnote style may show variations due to production incompatibilities with certain character fonts.

GLOSSARY OF ABBREVIATED TERMS

KONST. RF: Constitution of the Russian Federation
Ross. Gazeta: Russian Gazette
Sobr. Zakonod.: Journal of the Parliament
GK RF: Civil Code
GPK RF: Code of Civil Procedure
UK RF: Criminal Code
UPK RF: Code of Criminal Procedure
SK RF: Family Code
KZoT RF: Labor Code

ENDNOTES

1. CIA, RUSSIA, 1999 WORLD FACTBOOK (visited Dec. 21, 1999) <http://www.odci.gov/cia/ publications/factbook/rs.html> [hereinafter WORLD FACTBOOK].
2. *Id.*; UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF WORLD POPULATION 1999 (visited July 14, 2000) <www.unfpa.org>.
3. WORLD FACTBOOK, *supra* note 1.
4. Sarah K. Miller, *Russia vs. Chechnya: Round Two. The Crisis Moves West* (visited July 11, 2000) <http://www.infoplease.com/spot/chechnya1.html>.
5. *Id.*
6. *Id.*
7. WORLD FACTBOOK, *supra* note 1.
8. Konstitutsia Rossiiskoi Federatsii [Constitution of the Russian Federation] [KONST. RF], *adopted* Dec. 25, 1993, amended Feb. 23, 1996. The RUSSIAN CONSTITUTION was published in ROSSIISKAIA GAZETA [RUSSIAN GAZETTE] [Ross. Gazeta], Dec. 25, 1993. The English translation can be found at <http://www.uni-wuerzburg.de/law/rs00000_.html> (visited Dec. 21, 1999).
9. *Id.* arts. 4(2), 15(1).
10. *Id.* art. 1.
11. *Id.* art. 10.
12. *Id.* art. 80(1).
13. *Id.* art. 87(1).
14. *Id.* art. 81(3).
15. *Id.* art. 80(3).
16. *Id.* art. 83(a)-(c).
17. *Id.* art. 83(d)-(f), (i)-(l).
18. *Id.* art. 83(g), (h).
19. *Id.* art. 84(a), (b), (d), (e).
20. *Id.* art. 84(c).
21. *Id.* art. 88.
22. *Id.* art. 114.
23. *Id.* art. 113.
24. *Id.* art. 117.
25. *Id.* art. 94.
26. *Id.* art. 95(1).
27. *Id.* art. 103(1).
28. *Id.* art. 105(1).
29. *Id.* art. 105(3).
30. *Id.* art. 105(4).
31. *Id.* art. 105(5).
32. *Id.* art. 107(1).
33. *Id.* art. 107(3).
34. *Id.* art. 102(e).
35. *Id.* art. 102(f). Recently, a bill attempted to minimize the role of the Federation Council by depriving the members of the Council of their seats in Parliament and replacing them with full-time representatives from the executive and legislative branches of all the regions. The Federation Council rejected it. See Sarah Karush, *Duma Votes to Weaken Governors*, THE MOSCOW TIMES, July 1, 2000, at 2. It has been vetoed, and repaired into law.
36. KONST. RF art. 102(g).
37. *Id.* art. 118(3). There are also offices of Ombudsman at the Federal and regional levels that in theory should function to guarantee the respect of human rights.
38. *Id.* arts. 125-128.
39. ADMINISTRATIVE LAW IN CENTRAL AND EASTERN EUROPE 1996-1998, at 281 (Denis J. Galligan & Daniel Smilov eds., 1999).
40. *Id.*
41. KONST. RF art. 128(1).
42. *Id.* art. 128(2).
43. *Id.* art. 129(2).
44. *Id.* art. 125(2)-(5).
45. *Id.* art. 126.
46. Peter Krug, *Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control of Legislation*, 37 VA. J. INT'L L. 725, 732 (1997); Federal'nyi konstitutsionnyi zakon o sudebnoi sisteme Rossiiskoi Federatsii [Federal Constitutional Law on the Judicial System of the Russian Federation] N 1-FKZ, art. 19(3), Sobranie Zakonodatel'stva RF [Sobr. Zakonod.], 1997, No. 1, Item 1.
47. KONST. RF art. 127.
48. *The Supreme Arbitration Court of the Russian Federation* (visited Mar. 1, 2000) <http://www.arbitr.ru/english.htm>. At present, the activity of the Supreme Arbitration Court of the Russian Federation is regulated by the Federal Constitutional Law On the Arbitration Courts in the Russian Federation and the Arbitration Procedural Code of the Russian Federation, both of which were promulgated on April 5, 1995, as well as the 1996 Federal Constitutional Law On the Judicial System of the Russian Federation.
49. *Id.*
50. Zakon o sudoustroistve RSFSR [Law on the Court Organization of the RSFSR], Vedomosti RSFSR, 1981, No. 28, Item 976, established the current three-tiered system. The 1996 Federal Constitutional Law on the Judicial System of the Russian Federation introduced a new basic level of courts: Justice of the Peace courts. According to this Act, the district courts will act as courts of first and second instance. Krug, *supra* note 46, at 731 nn.24, 26.
51. According to figures compiled by the Ministry of Justice, there were 2,454 district courts in operation in Russia in the first half of 1995, staffed by some 12,700 judges. *Id.* at 731 n.25.
52. In the first half of 1995, according to the Ministry of Justice, there were 85 intermediate level courts in operation in the Russian Federation, staffed by 2,800 judges. *Id.* at 731 n.27.
53. *Id.* at 731.
54. *Id.* at 729 n.15.
55. *Core document forming part of the reports of States Parties: Russian Federation*. 27/03/96. HRI/CORE/1/Add.52/Rev.1., ¶ 3. (July 31, 1995), U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS (visited Dec. 21, 1999) <http://www.unhchr.ch> [hereinafter CORE DOCUMENT].
56. KONST. RF art. 5(2).
57. *Id.* art. 11(2).
58. *Id.* art. 66(5).
59. The exclusive jurisdiction of the Federation includes, *inter alia*, the regulation and protection of human rights and liberties; determining the basic principles of federal policy and federal programs in the field of social, cultural and national development of the Russian Federation; federal taxes and levies; law courts; Prosecutor's Office; criminal, criminal-procedural and criminal-executive legislation; civil, civil-procedural and arbitration-procedural legislation; federal conflict of laws.
60. The joint jurisdiction includes, *inter alia*, protection of human rights and freedoms; general questions of upbringing, education, science, culture, physical culture and sports; coordination of health issues, protection of family, motherhood, fatherhood and childhood; social protection including social security; administrative, administrative-procedural, labor, family and housing legislation.
61. *Id.* art. 73.
62. *Id.* art. 76.
63. *Id.* art. 85(2). However, the autonomy of regions has been under constant attack by the federal government. On June 30, 2000, the State Duma voted to give the Russian President the right to suspend regional leaders. Regional Parliaments that refuse to harmonize their legislation with the federal laws could also be dissolved. Karush, *supra* note 35, at 1.
64. KONST. RF art. 12.
65. *Id.* art. 131(1).
66. *Id.* art. 132.
67. *Id.* art. 130(2).

68. *Id.* art. 133.
69. *Id.* arts. 15(1), 76(3).
70. *Id.* art. 15(3).
71. *Id.* art. 76 (1).
72. *Id.* art. 76(3).
73. *Id.* art. 76(4).
74. *Id.* art. 76(5), (6).
75. *Id.* art. 90(1), (2).
76. *Id.* art. 90(3).
77. *Id.* art. 115(1).
78. *Id.* art. 115(2).
79. *Id.* art. 115(3).
80. *Id.* arts. 102(2), 103(2).
81. *See* e.g. Krug, *supra* note 46; Tamara G. Morshchakova, *The Competence of the Constitutional Court in Relation to That of Other Courts of the Russian Federation*, 42 ST. LOUIS L.J. 733 (1998).
82. WILLIAM ELLIOTT BUTLER, RUSSIAN LAW 97 (1999).
83. *Id.* at 98.
84. KONST. RF art. 15(4).
85. BUTLER, *supra* note 82, at 98.
86. *Adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Jan. 3, 1976).
87. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976).
88. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976). The Protocol enables individuals to petition the Human Rights Committee set up by the Covenant about alleged violations of any of the rights set forth in the Covenant. The Protocol covers states party to both the Covenant and the Protocol.
89. *Opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (*entry into force* Sept. 2, 1990).
90. *Opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sept. 3, 1981).
91. *Opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969).
92. Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (*entry into force* Sept. 3, 1953). Last amended by Protocol No. 11, ETS No. 155 (*entry into force* Nov. 1, 1998).
93. KONST. RF art. 41(1).
94. *Id.*
95. MINISTERSTVO ZDRAVOOKHRANENIIA ROSSIISKOI FEDERATSII [MINISTRY OF HEALTH OF THE RUSSIAN FEDERATION] ET. AL, GOSUDARSTVENNYI DOKLAD O SOSTOIANII ZDOROV'IA NASELENIIA ROSSIISKOI FEDERATSII V 1995 GODU [STATE REPORT ON HEALTH OF THE CITIZENS OF THE RUSSIAN FEDERATION IN 1995] 129-130 (1996).
96. *Id.*
97. *Id.* Between 1993 and 1995, the number of rural health care centers declined 4.7%.
98. *Id.* at 132.
99. PETER ROUDIK, LAW LIBRARY OF CONGRESS, RUSSIA, 212 LL 97-1, 96-2559 (January 1997).
100. *Id.*
101. Fundamentals of the Legislation on Public Health Care, N 5487-1, Vedomosti S'ezda Narodnih deputatov I Verhovnogo Soveta RSFSR [Ved. V.S.], 1993, No. 33, Item 1318, amended Dec. 24, 1993, Mar. 2, 1998, *translated in* JOINT PUBLICATIONS RESEARCH SERVICE, Document No. JPRS-UST-94-002, January 25, 1994.
102. ROUDIK, *supra* note 99, at 213.
103. *Id.*
104. Zakon RSFSR o meditsinskom strakhovanii grazhdan v RSFSR [Law on Medical Insurance of the Citizens of Russian Federation], June 28, 1991, Ved. V.S., 1993, No. 21, Item 947, amended Apr. 2, 1993.
105. Ukaz Prezidenta RF o neotlozhnykh merakh po obespecheniiu zdorov'ia naseleniia RF Aprel' 20, 1993 [Edict of the President of Russian Federation On Urgent Measures on Protection of Health of the Population of the Russian Federation from April 20, 1993], Sobranie Aktov Presidenta I Pravitelstva RF, 1993, No. 20, Item 668.
106. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 12.
107. *Id.* art. 13.
108. Ob organizatsii meditsinskoi pomoshchi rabotaiushchim na predpriiatiiakh promyshlennosti, stroitel'stva, transporta, sviazi v usloviiakh obiazatel'nogo meditsinskogo strakhovaniia naseleniia Prikaz Minzdravmedproma RF [Order of the Ministry of Health On the Organization of the Health Care for Those Working in Industry, Transport, Construction and Communication, Within the System of Medical Insurance] No. 130, June 23, 1994, 6 SOCIAL PROTECTION (1994).
109. STATE REPORT ON HEALTH OF THE CITIZENS OF THE RUSSIAN FEDERATION IN 1995, *supra* note 95, at 128.
110. GOSKOMSTAT, HANDBOOK: RUSSIA IN FIGURES 1999, tbl. 10.1 Main Public Health Indicators (visited Mar. 3, 2000) <http://www.gks.ru>.
111. STATE REPORT ON HEALTH OF THE CITIZENS OF THE RUSSIAN FEDERATION IN 1995, *supra* note 95, at 130-131.
112. MINISTERSTVO ZDRAVOOKHRANENIIA ROSSIISKOI FEDERATSII ROSSIISKAIA AKADEMIIA MEDITSINSKIKH NAUK PIS'MO [MINISTRY OF HEALTH OF THE RUSSIAN FEDERATION, LETTER OF THE RUSSIAN MEDICAL ACADEMY OF SCIENCE], GOSUDARSTVENNYI DOKLAD O SOSTOIANII ZDOROV'IA NASELENIIA ROSSIISKOI FEDERATSII V 1997 GODU [STATE REPORT ON HEALTH OF THE CITIZENS OF RUSSIAN FEDERATION IN 1997] 29 tbl. 3.2 (1998).
113. Fundamentals of the Legislation on Public Health Care, arts. 7(13), 15.
114. *Id.* art. 10. Other sources include allotments from special funds intended for the public health protection, funds provided by state and municipal enterprises, organizations and social institutions, profits from securities, bank and other credits, donations and other sources not prohibited by law. See ROUDIK, *supra* note 99, at 213-214.
115. Law on Medical Insurance of the Citizens of Russian Federation, Ved. V.S., 1993, No. 21, Item 947.
116. There is already a proposal to increase the 3.6% tax to 8.6%. ROUDIK, *supra* note 99, at 217.
117. *Id.* at 215-216. There is 80% coverage if the person worked between five and eight years, and 60% coverage if the person worked less than five years. For a brief analysis of the many shortcomings of this system, see ROUDIK at 216-217.
118. October 1, 1991 was declared to be the date for the introduction of the voluntary medical insurance and January 1, 1993 the date for the introduction of the compulsory medical insurance by Decree of the Supreme Court of RSFSR O poriadke vvedeniia v deistvie zakona RSFSR o meditsinskom strakhovanii grazhdan v RSFSR [On the Order of Introduction of the Law RSFSR On Medical Insurance of Citizens of RSFSR], June 28, 1991, Vedomosti SND i VS, 1991, No. 27, Item 921.
119. Ministerstvo zdravookhraneniia Rossiiskoi Federatsii [Ministry of Health of the Russian Federation], Prikaz ob utberzhdenii Perechnia vidov meditsinskoi pomoshchi, profilakticheskikh, lechebno-diagnosticheskikh meropriiatii, vkhodiashchikh v bazovuiu programmy obiazatel'nogo meditsinskogo strakhovaniia razlichnykh kontingentov naseleniia Rossiiskoi Federatsii na 1993 god], [List of Services Guaranteed by the System of the Social Insurance] No. 146, June 21, 1993, *available in* KODEKS.
120. Under the mandatory medical insurance, the state health care system provides certain medical services: general, preventive and emergency care, hospitalization, laboratory services, dental care, maternity care, vaccination and transportation. Medicines are free if they come with the hospitalization for disabled persons or children under the age of three. Other medical services (specialized care, expensive medicines and appliances) can be covered by voluntary medical insurance. ROUDIK, *supra* note 99, at 216.
121. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, arts. 22-24.
122. Federal'nyi Fond Obiazatel'nogo meditsinskogo Strakhovaniia Pismo o l'gotakh po uplate strakhovykh vznosov na obiazatel'noe meditsinskoe strakhovanie [Letter of the Federal Fund of the Compulsory Medical Insurance on Discounts on the Payment of Taxes for Medical Insurance] N 680/80-1/I, February 9, 1999.
123. Ob organizatsii meditsinskoi pomoshchi rabotaiushchim na predpriiatiiakh promyshlennosti, stroitel'stva, transporta, sviazi v usloviiakh obiazatel'nogo meditsinskogo strakhovaniia naseleniia Prikaz Minzdrabmedproma RF [Order of the Ministry of Health On the Organization of the Health Care for Those Working in Industry, Transport, Construction and Communication, Within the System of Medical Insurance] No. 130, June 23, 1994, 6 SOCIAL PROTECTION (1994).
124. The SPASSK-MED Health Insurance Certificate is a typical example of the Health Insurance Certificate that has been distributed by companies to Russian citizens. The form of the Certificate has been approved by Utverzhden Postanovleniem Pravitel'stva Rossiiskoi Federatsii [Decree of the government of Russian Federation] No. 42, January 23, 1992. This certificate states that if an individual leaves the territory of St. Petersburg, the cost of primary medical services are reimbursed by the Territory Fund of compulsory medical insurance.
125. In practice medical services like cosmetic dentistry are not covered by the compulsory medical insurance, although they are supposed to be covered according to the List of Services. Indirect evidence for this situation can be found in the increase in units that charge for these services. STATE REPORT ON HEALTH OF THE CITIZENS OF THE RUSSIAN FEDERATION IN 1995, *supra* note 95, at 130.
126. V. Borisov et al., *Aborty i planirovanie sem'i v Rossii: pravovye i nravstvennye aspekty. Opros ekspertov [Abortions and Family Planning in Russia: Legal and Ethnical Aspects. Poll of Experts*], 3

VOPROSY STATISTIKI 77-78 (1997).
127. STATE REPORT ON HEALTH OF THE CITIZENS OF THE RUSSIAN FEDERATION IN 1995, *supra* note 95, at 126; SOTSIAL'NAIA GIGIENA (MEDITSINA) I ORGANIZATSIIA ZDRAVOOKHRANENIIA: UCHEBNOE RUKOVODSTVO [SOCIAL HYGIENE (MEDICINE) AND ORGANIZATION OF HEALTH CARE] 445 (Iu.P. Lisitsyn et. al eds., 1998).
128. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 54; *see also* ROUDIK, *supra* note 99, at 214.
129. SOCIAL HYGIENE AND ORGANIZATION OF HEALTH CARE, *supra* note 127, at 450.
130. *Id.* at 452.
131. *Id.* at 453.
132. *Id.* at 464-465.
133. ROUDIK, *supra* note 99, at 214.
134. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 17(2).
135. *Id.* art. 22.
136. *Id.* art. 23.
137. *Id.* art. 24.
138. *Id.* art. 25.
139. *Id.* art. 26.
140. *Id.* art. 27.
141. *Id.* art. 28.
142. *Id.* art. 29.
143. *Id.* art. 18.
144. Id art. 30(1).
145. *Id.* art. 33.
146. *Id.* art. 32(1).
147. *Id.* art. 34(1).
148. Id arts. 30(1)(9), 31, 61.
149. *Id.* art. 30(1)(12), (13).
150. *Id.* art. 19.
151. *Id.* art. 61. See ROUDIK, *supra* note 99, at 215.
152. Fundamentals of the Legislation on Public Health Care, art. 61(4).
153. *Id.* art. 30(2).
154. Id art. 68(1).
155. ROUDIK, *supra* note 99, at 214.
156. Fundamentals of the Legislation on Public Health Care, art. 68(2).
157. ROUDIK, *supra* note 99, at 214-215.
158. WORLD FACTBOOK, *supra* note 1.
159. For a comprehensive analysis see Sergei V. Zakharov & Elena I. Ivanova, *Fertility Decline and Recent Changes in Russia: On the Threshold of the Second Demographic Transition, in* RUSSIA'S DEMOGRAPHIC "CRISIS" (Julie DaVanzo & Gwendolyn Farnsworth eds., RAND, 1996) (visited Jan. 11, 2000) <http://www.rand.org/publications>. *See also* Sergei Blagov, *Population-Russia: Birth Rate Figures Show Steady Decline*, INTER PRESS SERVICE, Dec. 28, 1999.
160. WORLD FACTBOOK, *supra* note 1.
161. *See* WHO REGIONAL OFFICE FOR EUROPE, HEALTH IN EUROPE 1997, at 17-23 (visited Jan. 13, 2000) <http://www.who.dk>; Vladimir M. Shkolnikov & France Meslé, *The Russian Epidemiological Crisis as Mirrored by Mortality Trends, in* RUSSIA'S DEMOGRAPHIC "CRISIS" tbl. 1.14 (Julie DaVanzo & Gwendolyn Farnsworth eds., RAND, 1996) (visited Jan. 4, 2000) <http://www.rand.org/publications>.
162. WORLD HEALTH ORGANIZATION, WORLD HEALTH REPORT 1999, BASIC INDICATORS FOR ALL MEMBER STATES (visited Jan. 13, 2000) <http://www.who.org/whr/1999/en/annex1.htm>.
163. *Russian Population Keeps Shrinking*, RUSSIA TODAY, June 21, 2000 (visited July 11, 2000) <http://www.russiatoday.com>.
164. Oksana Yablokova, *Population Takes Biggest Plunge Yet*, THE MOSCOW TIMES, Jan. 26, 2000.
165. Kodeks Zakonov o Trude Rossiiskoi Federatsii [Labor Code of the Russian Federation] [KZoT RF], N 3543-1, arts. 165, 167, 168. The Code was adopted on Sept. 25, 1992, last amended July 31, 1998. Visited Jan. 7, 2000 <http://www.minstp.ru/docs/uri/95/70_103.htm>; see also ELENA BALLAYEVA, GENDERNAIA EKSPERTIZA ZAKONODATEL'STVA RF: REPRODUKTIVNYE PRAVA ZHENSHCHIN V ROSSII [GENDER EXPERTISE OF THE RUSSIAN LEGISLATION: REPRODUCTIVE RIGHTS OF THE RUSSIAN WOMEN] 72-96 (1998).
166. BALLAYEVA, *supra* note 165, at 57-61.
167. *Id.* at 29.
168. KONST. RF art. 38(1).
169. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 22(1).
170 .Grebesheva Inga & Kamsuk Ludmila, *Okhrana reproduktivnogo zdorov'ia podrostkov: problemy, zadachi, perspektivy [Protection of the Adolescents' Health: Problems, Tasks and Perspectives*], 2 PLANIROVANIE SEM'I [FAMILY PLANNING] 7-12, 10 (1999).
171. Ministerstvo Zdravookhraneniia RSFSR Prikaz o merakh po dal'neishemu razvitiiu ginekologicheskoi pomoshchi naseleniiu RSFSR [Order of the Ministry of Health on Further Improvement of Gynecological Services for the Russian Population] No. 186, November 15, 1991.
172. *See Russian Federation National Report on Implementation of the Beijing Platform for Action Adopted by the IV World Conference on the Status of Women*, Special Session of the UN General Assembly "Women by the Year 2000: Equality of Men and Women, Development and World in the XXI Century", at 18 (1999) [hereinafter NATIONAL REPORT].
173. *Id.*
174. THE CENTER FOR REPRODUCTIVE LAW & POLICY (CRLP) & OPEN DIALOGUE FOR REPRODUCTIVE RIGHTS (ODRR), REPRODUCTIVE RIGHTS OF YOUNG GIRLS AND ADOLESCENTS IN RUSSIA. A SHADOW REPORT 5 (1999) [hereinafter SHADOW REPORT]; Ukaz Prezidenta Rossiiskoi Federatsii o prezidentskoi programme "Deti Rossii" [Edict of the president of the Russian Federation on the presidential Programme "Children of Russia"] No. 1696, August 18, 1994, Sobranie Zakonodatel'stva RF [Sobr.Zakonod. RF], 1994, No. 17, Item 1955, prolonged by Deti Rossii: Prezidentskaia Programma 1996-1997 [Children of Russia: Presidential Program 1996-1997], Edict of the president of the Russian Federation No. 210 from Feb. 19, 1996, Sobr. Zakonod. RF, 1996, No. 9, Item 799.
175. V.N. SEROV & S.V. PAUKOV, ORAL'NAIA GORMONAL'NAIA KONTRATSEPTSIIA [ORAL HORMONAL CONTRACEPTION] 146 (1998).
176. Obrashchenie v Sovet bezopasnosti Rossiiskoi Federatsii obshchestvennosti i spetsialistov v oblasti okhrany reproduktivnogo zdorov'ia [An addressee to the Security council of Russian Federation of Public and Specialists in Reproductive Health], 1 PLANIROVANIE SEM'I [FAMILY PLANNING] 5 (1999).
177. *Id.*
178. INTERNATIONAL PLANNED PARENTHOOD FEDERATION, COUNTRY PROFILE - RUSSIA (visited Dec. 28, 1999) <http://www.ippf.org/regions/countries/rus/index.htm>.
179. I. A. MANUILOVA, SOVREMENNYE KONTRATSEPTIVNYE SREDSTVA [CONTEMPORARY MEANS OF CONTRACEPTION] 9 (1993).
180. CENTERS FOR DISEASE CONTROL AND PREVENTION ET AL., 1996 RUSSIA WOMEN'S REPRODUCTIVE HEALTH SURVEY: A STUDY OF THREE SITES tbl. VI.3 (1998) [hereinafter REPRODUCTIVE HEALTH SURVEY].
181. MINISTERSTVO ZDRAVOOKHRANENIIA ROSSIISKOI FEDERATSII [MINISTRY OF HEALTH OF THE RUSSIAN FEDERATION], SOVREMENNYE METODY KONTRATSEPTSII. SPRAVOCHNOE POSOBIE DLIA VRACHEI [MODERN MEANS OF CONTRACEPTION. HANDBOOK FOR DOCTORS] 134-135 (1998).
182. STATE REPORT ON HEALTH OF THE CITIZENS OF RUSSIAN FEDERATION IN 1997, *supra* note 112, at 29.
183. SHADOW REPORT, *supra* note 174, at 7. However, the actual average monthly wages are closer to USD $80 - 200. See Youcef Ghellab & Michel Sollogoub, *Assistance Provided by the ILO to the Russian Federation in the Field of Wage Policy: Analytical Report Containing Recommendations to the Minister of Labor, Mr. Kalashnikov, in* INTERNATIONAL CONFERENCE ON SOCIAL AND LABOR ISSUES: OVERCOMING ADVERSE CONSEQUENCES OF THE TRANSITION PERIOD IN THE RUSSIAN FEDERATION (visited Aug. 2, 2000) <www.trud.org>.
184. MOSKOVSKII TSENTR GENDERNYKH ISSLEDOVANII [MOSCOW CENTER FOR GENDER STUDIES], 2 BIULLETEN' PROEKTA GENDERNAIA EKSPERTIZA [GENDER BULLETIN EXPERTIZE] 5 (1997).
185. SEROV, *supra* note 175, at 33-34. See also REPRODUCTIVE HEALTH SURVEY, *supra* note 180, at 98 (finding that between 69% and 87% of users of oral contraceptives stated that they had at some time received them without a prescription).
186. SHADOW REPORT, *supra* note 174, at 6; Ukaz Prezidenta Rossiiskoi Federatsii ob osnovnykh napravleniiakh gosudarstvennoi semeinoi politiki [Edict of the President of the Russian Federation on the Basic Directions of the State Family Policy] No. 712, May 14, 1996, art. 20(e).
187. N. Vaganov, *Molodye muzchiny i planirovanie semiy [Young Men and Family Planning], in* THESIS OF THE SECOND RUSSIAN CONFERENCE ON FAMILY PLANNING,

REPRODUCTIVE HEALTH AND SEXUAL EDUCATION OF TEENAGERS 160-164 (1995).

188. *See* Anatoly G. Vishnevsky, *Family, Fertility, and Demographic Dynamics in Russia: Analysis and Forecast, in* RUSSIA'S DEMOGRAPHIC "CRISIS" tbl. 1.14 (Julie DaVanzo & Gwendolyn Farnsworth eds., RAND, 1996) (visited Jan. 4, 2000) <http://www.rand.org/publications>. However, Barbara Entwisle and Polina Kozyreva , using data from the Russian Longitudinal Monitoring Survey, show women having fewer induced abortions than official data indicated: for 1994, only 56 abortions per 1, 000 women. *See New Estimates of Induced Abortion in Russia*, STUDIES IN FAMILY PLANNING Vol.28, No. 1, at 14-23 (1997).

189. *Periodic reports of States parties due in 1997: Russian Federation. 20/11/98. CRC/C/65/Add.5. (State Party Report*) CRC/C/65/Add.5 (Nov. 20, 1998), ¶ 267 (visited Jan. 4, 2000) <http://www.unhchr.ch>.

190. USSR. Ministerstvo Zdravookhraneniya SSSR, [Ministry of Health of the USSR], Order of the Minister of Health of the USSR on Confirmation of the Instruction on Artificial Interruption of Early Pregnancy by Vacuum Aspiration, No. 757, June 5, 1987, Moscow: MZ SSSR. See Andrej A. Popov, *Family Planning and Induced Abortion in Post-Soviet Russia of the Early 1990s: Unmet Needs in Information Supply, in* RUSSIA'S DEMOGRAPHIC "CRISIS" (Julie DaVanzo & Gwendolyn Farnsworth eds., RAND, 1996) (visited Jan. 4, 2000) http://www.rand.org/publications.

191. Only the number of vacuum-aspirated abortions within the first two weeks of pregnancy are included in official statistics. Popov, *supra* note 190. There seems to be some dispute as to whether or not mini-abortions are included in the official statistics. Communication with O. Khazova (on file with The Center for Reproductive Law & Policy).

192. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 36.

193. *Id.* art. 36(1).

194. Ministerstvo Zdravookhranenia i Meditsinskoi Promyshlennosti Rossiiskoi Federatsii Prikaz o perechne sotsial'nykh pokazanii i utverzhdenii instruktsii po iskusstvennomu preryvaniiu beremennosti [Order of the Ministry of Health On the List of Social Indicators and Adoption of Instructions for the Artificial Termination of Pregnancy] No. 242, June 11, 1996.

195. Fundamentals of the Legislation on Public Health Care, art. 36(2).

196. Order of the Minister of Health of the Russian Federation on Organizing of Commercial Clinics and Free-of-Charge Clinics with State Financing for Patients Who Require Permanent Care and Commercial Gynecologic Clinics for Provision of Operations for Artificial Interruption of Pregnancy, No. 250, Moscow: MZ RF, March 29, 1988. See Popov, *supra* note 190.

197. Order of the Ministry of Health On the List of Social Indicators and Adoption of Instructions for the Artificial Termination of Pregnancy No. 242.

198. *See* REPRODUCTIVE HEALTH SURVEY, *supra* note 180, at 39. Abortion can be very expensive, up to 122, 000 rubles in Yekaterinburg or 1.5 times the average monthly wage in Novocherkassk. REPRODUKTIVNYE PRAVA GRAZHDAN V ROSSII: REAL'NOST' I OZHIDANIIA. MATERIALY MEZHREGIONAL'NOGO SEMINARA [REPRODUCTIVE RIGHTS OF CITIZENS IN RUSSIAN FEDERATION: EXPECTATIONS AND REALITY, INTERNATIONAL SEMINAR DOCUMENTS] 35 (E. Dmitrieva & E. Ballayeva eds., 1995).

199. *See* Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 36.

200. Ugolovnyi Kodeks Rossiiskoi Federatsii [Criminal Code of the Russian Federation] [UK RF], art. 123(1). The Code was adopted on May 24, 1996, entered into force on Jan. 1, 1997, and was last amended Feb. 9, 1999 (visited Mar. 3, 2000) <http://www.marvelm.ru/law/kodeks/uk.htm>.

201. *Id.* art. 123(3).

202. This can explain the abortion decrease from 3.9 million in 1990 to 3.5 million in 1992, and 2.9 million in 1993 (over 25% in two years). See Popov, *supra* note 190.

203. Grebesheva & Kamsuk, *supra* note 170, at 7-12.

204. KONST. RF art. 14.

205. Other Christian denominations are present, such as Catholicism, Lutheranism, and Baptism. Islam and Judaism are also practiced.

206. *See* e.g. Medical Educational Pro-Life Center LIFE (ZHIZN) Moscow (visited Jan. 9, 2000) <http://www.zhizn.orthodoxy.ru/english/index.html>.

207. *Id.*

208. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 37.

209. Prohibition of contraceptive sterilization was officially established by the Order of the Narodnyi' Comissariat Zdravookhranieniya [Peoples' Comissariat of Public Health Services] of the USSR on the Prohibition of the Operation of Cutting or Ablation of Healthy Fallopian Tubes of the Uterus, No. 303, August 7, 1939. See Popov, *supra* note 190.

210. The possibility of male voluntary surgical contraceptive sterilization was not mentioned at all in that order. Order No. 484 included very detailed instructions for performing the sterilization operation. Popov, *supra* note 190.

211. Ministerstvo Zdravookhraneniia Rossiiskoi Federatsii Prikaz o primenenii meditsinskoi sterilizatsii grazhdan [Order of the Ministry of Health of the Russian Federation on Providing Medical Sterilization for Citizens], No. 303, December 28, 1993.

212. Order No. 303 also included instructions concerning permitting medical sterilization; a list of medical indications for providing medical sterilization; instructions concerning medical technology for sterilization of women; instructions concerning medical technology for sterilization of men. Popov, *supra* note 190.

213. *Id.*

214. Medical sterilization of citizens who have mental disabilities is conducted only after a judicial order. Instruktsiia o poriadke razresheniia operatsii meditsinskoi sterilizatsii grazhdan [Instruction on Provision of the Operation of Medical Sterilization of Citizens], in Order No. 303. Mental disorder as a ground for medical sterilization is mentioned in Perechen' meditsinskikh pokazanii dlia provedeniia meditsinskoi sterilizatsii zhenshchin [List of Medical Grounds of Medical Sterilization of Women] ¶ 49.

215. UNAIDS, Joint United Nations Programme on HIV/AIDS, *AIDS Epidemic Update: December 1999* (visited Jan. 7, 2000) <http://www.unaids.org/hivaidsinfo/documents.html>.

216. *Id.*

217. *Id.*

218. Pravitel'stvo Rossiiskoi Federatsii Postanovlenie o federal'noi tseleboi programme po preduprezhdeniiu rasprostraneniia v Rossiiskoi Federatsii zabolevaniia, vyzyvaemogo virusom immunodefitsita cheloveka (VICH-infektsii), na 1996-1997 gody i na period do 2000 goda "Anti-VICH/SPID" (s izmeneniiami na 5 aprelia 1999 goda) [Decree of the government of the Russian Federation on the Curative Federal Program for the Prevention of the Spread of HIV in the Russian Federation for 1996-1997 and for the Year 2000, with Amendment No. 374 from April, 5, 1999] No. 540, May 1, 1996.

219. GOSUDARSTVENNYI KOMITET ROSSIISKOI FEDERATSII PO STATISTIKE [STATE COMMITTEE OF THE RUSSIAN FEDERATION ON STATISTICS] [GOSKOMSTAT], MORBIDITY WITH ACUTE AND CHRONIC DISEASES BY MAIN DISEASE CLASSES tbl. 10.2 (visited Mar. 3, 2000) <http://www.gks.ru>; see also V. Aloyan, *Nikolai Kolesnikov Gets Rid of Aids!*, KOMSOMOLSKAYA PRAVDA 6 (May 21, 1999). The Ministry of Health announced that 12,500 new HIV cases were registered in the first nine months of 1999 alone. *AIDS, Older Diseases Continues to Spread across Russia*, RFE/RD NEWSLINE, December 1999.

220. GOSKOMSTAT, ROST CHISLA ZAREGISTRIROVANNYKH SLUCHAEV BICH-INFEKTSII V 1987-1998 GG. [INCREASE OF THE NUMBER OF REGISTERED CASES OF HIV INFECTIONS FOR 1987-1998 (on file with The Center for Reproductive Law & Policy).

221. Special Purpose 1993-1995 Federal Program to Prevent the Spread of AIDS in the Russian Federation (1993), 147 ROSS. VEST 6 (Aug. 3, 1993), *translated in* JOINT PUBLICATIONS RESEARCH SERVICE, 1994/Jan/25, 25-9, Document No. JPRS-UST-94-002; see SHADOW REPORT, *supra* note 174, at 8 n.44.

222. Pravitel'stvo Rossiiskoi Federatsii Postanovlenie o federal'noi tseleboi programme po preduprezhdeniiu rasprostraneniia v Rossiiskoi Federatsii zabolevaniia, vyzyvaemogo virusom immunodefitsita cheloveka (VICH-infektsii), na 1996-1997 gody i na period do 2000 goda "Anti-VICH/SPID" (s izmeneniiami na 5 aprelia 1999 goda) [Decree of the government of the Russian Federation on the Curative Federal Program for the Prevention of the Spread of HIV in the Russian Federation for 1996-1997 and for the Year 2000, with Amendment No. 374 from April, 5, 1999] No. 540, May 1, 1996; *see* SHADOW REPORT, *supra* note 174, at 8-9.

223. Ministerstvo Zdravookhraneniia Rossiiskoi Federatsii Prikaz o nauchno-prakticheskom tsentre profilaktiki i lecheniia vich-infektsii u beremennykh zhenshchin i detei [Ministry of Health Order on the Scientific and Applied Center for the Prevention and Treatment of HIV-infected Pregnant Women and Children] No. 133, April 19, 1999, *available in* KODEKS; *see* SHADOW REPORT, *supra* note 174, at 9.

224. Federal Law No. 38, March 30, 1995. Ross. Gazeta , Apr. 12, 1995, No. 72, *translated in* INTERNATIONAL DIGEST OF HEALTH LEGISLATION Vol. 46, No. 3, at 318-322. The law came into force on Aug. 1, 1995.

225. *Id.* art. 9.

226. *Id.* art. 10(1).

227. *Id.* arts. 4(1), 14, 20. The legislation of the Russian Federation does not contain special rules on compensation for being infected with HIV by the medical personnel while undergoing medical treatment, thus it may be possible that in such cases the general civil law rules

on compensation apply.

228. *Id.* art. 8(1). The previous law on the prevention of AIDS guaranteed the right to anonymous and confidential testing. Law No. 1447-1 of April 23, 1990, On the Prevention of AIDS, Vedomosty Verkhovnogo Soveta SSSR, 1990, No. 19. Discussed in Svetlana V. Polubinskaya & Elena Vassilieva, *HIV-Specific Legislation in the Russian Federation*, 18 MED. LAW 351, 352 (1999). Currently, Decree No. 1017 of October 13, 1995 on Approving the Rules Governing Compulsory Medical Screening for the HIV Virus mandates medical personnel and other people who become aware of the results of the testing in the course of their official duties to keep the information secret (art. 14). Ross. Gazeta, November 9, 1995, *translated in* FOREIGN BROADCAST INFORMATION SERVICE, Document No. FBIS-TEN-95-016, Nov. 9, 1995.

229. Decree No. 5, 151, RECHT IN OST UND WEST (Feb.13, 1993); see SHADOW REPORT, *supra* note 174, at 9.

230. UK RF art. 122.

231. Semeinyi Kodeks Rossiiskoi Federatsii [Family Code of the Russian Federation] [SK RF], art. 15(3), *adopted* Dec. 8, 1995, N 223-F3, 29.12.1995 (visited Jan. 3, 2000) <http://www.minstp.ru/docs/uri/96/70_179.htm>.

232. KONST. RF art. 19.

233. *Id.* art. 38.

234. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, arts. 22-23.

235. KZoT RF arts. 48(3), 49(1), 54(3), 54(4), 162, 164, 169, 170-172.

236. Ukaz Prezidenta Rossiiskoi Federatsii o pervoocherednykh zadachakh gosudarstvennoi politiki v otnoshenii zhenshchin [Edict of the President of the Russian Federation on the Primary Goals of the State Policy with respect to Women] No. 337, March 4, 1993, *available in* KODEKS.

237. Postanovleniem Pravitel'stva Rossiiskoi Federatsii [Decree of the government of the Russian Federation], Kontseptsiia uluchsheniiu polozheniia zhenshchin v Rossiiskoi Federatsii [Proposal on the Improvement of the Position of Women in the Russian Federation] No. 6, January 6, 1996, *translated in* NATIONAL REPORT, *supra* note 172, at 27-32.

238. GOSKOMSTAT, HANDBOOK: RUSSIA IN FIGURES 1999, tbl. 6.6 Marriages and Divorces (visited Mar. 3, 2000) <http://www.gks.ru>.

239. SK RF art. 1(2).

240. *Id.* art.1(3).

241. *Id.* art. 12(1).

242. *Id.* art. 13(1).

243. *Id.* art. 13(2).

244. KONST. RF art. 72(g).

245. SK RF art. 3.

246. *See Rossiiane Khotiat Mnogozhenstva [Russians Want Polygamy]* ARGUMENTY I FAKTY, Aug. 17, 1999, at 16; *see also Russian Regional Leader Defends his Decree on Polygamy*, ASSOCIATED PRESS, July 29, 1999. Ingushetia borders on Chechnya (Western border) and is giving shelter to many fleeing the violence there. Because of the fighting, not much attention is being paid to the polygamy law.

247. According to the sociological pool 50% of citizens of Russia do not see any crime in introducing polygamous marriages for Muslims. *Russians Want Polygamy*, *supra* note 246, at 16.

248. SK RF art.16(1).

249. *Id.* art.16(2).

250. *Id.* art.19(1).

251. *Id.* art. 19(2).

252. *Id.* art.23(1).

253. *Id.* art.21.

254. *Id.* art.22(1).

255. *Id.* art.17.

256. *Id.* art.34.

257. *Id.* art.36.

258. *Id.* art. 34.

259. *Id.* art.90(1).

260. *Id.* art.20.

261. *Id.*

262. *Id.* art. 48(2).

263. KONST. RF art. 35(1).

264. Grazhdanskii Kodeks RF [Civil Code of the Russian Federation] [GK RF], First Part N 51-F3 from Nov. 30, 1994, Second Part N 14-F3 from Jan. 26, 1996 (visited Jan. 7, 2000) <http://www.mednet.com/zakoni/fzgk/kodex.htm>.

265. KONST. RF art. 35(2).

266. SK RF arts. 35, 38.

267. GOSKOMSTAT, HANDBOOK: RUSSIA IN FIGURES 1999, tbl. 7.7 Number of Unemployed (visited Mar. 3, 2000) <http://www.gks.ru/scripts/eng/1c.exe?XXXX12F8.8.1/010530R>. Other sources say 70% of all unemployed (2.3 million) are women. They represent two-thirds of the unemployed in Moscow. HUMAN RIGHTS WATCH, RUSSIA: TOO LITTLE, TOO LATE: STATE RESPONSE TO VIOLENCE AGAINST WOMEN, Vol. 9, No. 13 (D) (Dec. 1997), at 8-9.

268. GOSKOMSTAT, HANDBOOK: RUSSIA IN FIGURES 1999, tbl. 7.5 Distribution of Employed by Age and Education Level in 1998 (visited Mar. 3, 2000) <http://www.gks.ru/scripts/eng/1c.exe?XXXX12F8.6.1/010510R>.

269. *Id.* tbl. 7.4 Employment by Sex and Occupation in 1998 (visited Mar. 4, 2000) <http://www.gks.ru/scripts/eng/1c.exe?XXXX12F8.5.1/010500R>.

270. NATIONAL REPORT, *supra* note 172, at 11.

271. KONST. RF art. 37.

272. Postanovlenie Pravitel'stva Rossiiskoi Federatsii [Decree of the government of the Russian Federation], Kontseptsiia uluchsheniia polozheniia zhenshchin v Rossiiskoi Federatsii [Proposal on the Improvement of the Position of Women in the Russian Federation] No. 6, January 6, 1996; Pravitel'stvo Rossiiskoi Federatsii Postanovlenie ob utverzhdenii Natsional'nogo plana deistvii po uluchsheniiu polozheniia zhenshchin i povysheniiu ikh roli v obshchestve do 2000 goda [Decree of the government of the Russian Federation on the Approval of the National Plan of Action on the Improvement of the Position and Role of Women in Society up to 2000] No. 1032, August 29, 1996, *available in* KODEKS.

273. NATIONAL REPORT, *supra* note 172, at 13.

274. *Id.* at 16.

275. KZoT RF art. 16(2).

276. *Id.* art. 170(1).

277. *Id.* art. 164.

278. *Id.* art. 162.

279. *Id.* art. 165(1).

280. Federal'nyi Zakon Rossiiskoi Federatsii o gosudarstvennykh posobiiakh grazhdanam, imeiushchim detei (s izmeneniami na 17 iiulia 1999 goda) [Federal Law on State's Assistance to Citizens with Children with amendments from July 17, 1999] No. No. 81-FZ, May 19, 1995, pmbl., Ross. Gazeta, July 23, 1999, No. 142.

281. *Id.* art. 6.

282. *Id.* art. 13.

283. *Id.* art. 169.

284. KONST. RF art. 43.

285. Zakon Rossiiskoi Federatsii ob Obrazovanii (v redaktsii, vvedennoi v deistvie s 15 ianvaria 1996 goda Federal'nym zakonom ot 13 ianvaria 1996 goda N 12-FZ)(s izmeneniami na 16 noiabria 1997 goda) [Law of the Russian Federation on Education as adopted by Federal Law No. 12-FZ from January 13, 1996 and with the amendments from November 16, 1997], Ross. Gazeta, November 22, 1997, No. 226.

286. Postanovlenie Pravitel'stva Rossiiskoi Federatsii [Decree of the government of the Russian Federation], Kontseptsiia uluchsheniia polozheniia zhenshchin v Rossiiskoi Federatsii [Proposal on the Improvement of the Position of Women in the Russian Federation] No. 6, January 6, 1996.

287. Dmitrieva E., *School-leavers' expectations of the future, in* GENDER, GENERATION AND IDENTITY IN CONTEMPORARY RUSSIA 75-76 (H.Pilkington ed., 1996), *discussed in* SHADOW REPORT, *supra* note 174, at 11.

288. GOSKOMSTAT, HANDBOOK: RUSSIA IN FIGURES 1999, tbl. 9.8 Higher Educational Institutions (visited Mar. 4, 2000) <http://www.gks.ru/scripts/eng/1c.exe?XXXX12F10.9.1/010910R>.

289. See Decree of the President of the Russian Federation No. 932 from June 1996 "On the Development of a National Plan of Action to Improve the Position of Women and Raise their Role in Society Before the Year 2000", HUMAN RIGHTS WATCH, *supra* note 267, at 5. See also Order of the Ministry of Health of Russian Federation No. 355 from October 7, 1996, "On the National Program of Actions on the Improvement of the Position of Women and their Role in the Society up to 2000 (Ministerstvo Zdravookhraneniia Rossiiskoi Federatsii Prikaz Natsional'nom Plane Deistvii po Upuchsheniiu Polozheniia Zhenshchin i Povysheniiu ikh Roli v Obshchestve do 2000 Goda [Order of the Ministry of Health of the Russian Federation on the National Plan of Action on the Improvement of the Position and Role of Women in Society], No. 355, October 7, 1996).

290. Pravitel'stvo Rossiiskoi Federatsii Postanovlenie ob utverzhdenii Natsional'nogo plana deistvii po uluchsheniiu polozheniia zhenshchin i povysheniiu ikh roli v obshchestve do 2000 goda [Decree of the government of the Russian Federation on the Approval of the National Plan of Action on the Improvement of the Position and Role of Women in Society up to 2000] No. 1032, August 29, 1996, *available in* KODEKS, *translated in* NATIONAL

REPORT, *supra* note 172, at 33-37.

291. Prilozhenie k postanovlenie Pravitel'stva Rossiiskoi Federatsii "Dopolneniia, kotorye vnosiatsia v Natsionalnyi plan deistvii po uluchsheniiu polozheniia zhenshchin i povysheniiu ikh roli v obshchestve do 2000 goda [Additions to the Decree of the government of the Russian Federation on the National Plan of Action on the Improvement of the Status of Women and Their Role in Society up to 2000] No. 1083, September 22, 1999, *translated in* NATIONAL REPORT, *supra* note 172, at 37.

292. The draft legislation has recently been introduced and voted down in the Duma.

293. Pravitel'stvo Rossiiskoi Federatsii Postanovlenie o Komissii po Voprosam Upuchsheniia Polozheniia Zhenshchin [Decree of the government of Russian Federation on the Commission for the Improvement of the Position of Women] No. 91, January 28, 1997.

294. NATIONAL REPORT, *supra* note 172, at 13.

295. *Id.* at 21.

296. *Id.* at 21-22.

297. *Id.* at 22.

298. KARAT COALITION FOR REGIONAL ACTION, REGIONAL REPORT ON INSTITUTIONAL MECHANISMS FOR THE ADVANCEMENT OF WOMEN IN THE COUNTRIES OF CENTRAL AND EASTERN EUROPE 6 (1999).

299. NATIONAL REPORT, *supra* note 172, at 22.

300. HUMAN RIGHTS WATCH, *supra* note 267, at 11.

301. *Id.*

302. KONST. RF art. 21.

303. UK RF art. 131(1).

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

305. *Id.* art. 131(3).

306. *Id.* art. 134; *see also Periodic reports of States parties due in 1997: Russian Federation*, *supra* note 189, ¶ 462.

307. Legally, there is no marital rape exception, therefore rape within marriage is covered (the objective elements of the crime of rape are completed even if the rapist is the husband). However, marital rape is never prosecuted. See HUMAN RIGHTS WATCH, *supra* note 267, at 44-45; communication from Martina Vandenberg, Europe Researcher, Human Rights Watch, to Mindy Roseman, Staff Attorney, CRLP (on file with the Center for Reproductive Law & Policy).

308. HUMAN RIGHTS WATCH, *supra* note 267, at 21.

309. *Id.* at 23.

310. *Id.*

311. *Id.* at 24-25.

312. *Id.* at 26.

313. *Id.* at 27.

314. *Id.* at 30.

315. *Id.* at 31-32.

316. *Id.* at 32-40. In order to better protect crime victims, the Duma adopted, in May 1997, the State Protection of Victims and Other Individuals Cooperating with Court Proceedings. *Id.* at 39.

317. UK RF art. 133 covers cases of sexual harassment in the workplace. It extends to coercion through blackmail, threats of destroying, damaging or confiscating property or by making use of the material or other dependence of the victim; see HUMAN RIGHTS WATCH, *supra* note 267, at 17.

318. UK RF art. 115.

319. *Id.* arts. 116, 117.

320. *Id.* art. 110.

321. HUMAN RIGHTS WATCH, *supra* note 267, at 18.

322. Ministerstvo truda i sotsial'nogo razvitiia Rossiiskoi Federatsii [Ministry of Health and Social Development of the Russian Federation], Utverzhdenie Primernogo polozheniia o Krizisnom tsentre pomoshchi zhenshchinam [Proposition on the Establishment of the Crisis Centers for Women's Help] No. 40, July 10, 1997, EKONOMIKA I ZHIZN', No. 23, June 1998; SHADOW REPORT, *supra* note 174, at 12.

323. Ob osnovnykh garantiiakh prav rebenka v Rossiiskoi Federatsii Priniat Gosudarstvennoi Dumoi 3 iiulia 1998 goda Odobren Sovetom Federatsii 9 iiulia 1998 goda [Basic Guarantees for Children's Rights in the Russian Federation Adopted by the State Duma on July 3, 1998 and Approved by the Federation Council on July 9, 1998], Ross. Gazeta, August 5, 1998, No. 147.

324. HUMAN RIGHTS WATCH, *supra* note 267, at 41.

325. *Id.* at 42.

326. *Id.* at 44.

327. *Id.* at 45.

328. *Id.* at 46.

329. UK RF art. 133.

330. *Id.* art. 136(1).

331. NATIONAL REPORT, *supra* note 172, at 20-21.

332. *Periodic reports of States parties due in 1997: Russian Federation, supra* note 189, ¶ 8.

333. NATIONAL REPORT, *supra* note 172, at 10.

334. KONST. RF art. 41(1).

335. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 17.

336. *Id.* art. 23(5).

337. SHADOW REPORT, *supra* note 174, at 5; Ukaz Prezidenta Rossiiskoi Federatsii o prezidentskoi programme "Deti Rossii" [Edict of the President of the Russian Federation on the Presidential Programme "Children of Russia"] No. 1696, August 18, 1994, Sobranie Zakonodatel'stva RF [Sobr.Zakonod. RF], 1994, No. 17, Item 1955, prolonged by Deti Rossii: Prezidentskaia Programma 1996-1997 [Children of Russia: Presidential Program 1996-1997], Edict of the President of the Russian Federation No. 210 from Feb. 19, 1996, Sobr. Zakonod. RF, 1996, No. 9, Item 799.

338. Ballayeva, *supra* note 165, at 15.

339. E.I. Nikolaeva & E.M. Vikhliaeva, *K epidemiologii iskusstvennykh abortov: pilotazhnoe issledovanie [On the Epidemiology of Induced Abortions: Results of the Pilot Study]*, 3 PLANIROVANIE SEM'I [FAMILY PLANNING] 2 (1997).

340. V.I. Kulakov, *Reproduktivnoe zdorov'e molodezhi - budushchee natsii [Reproductive Health of Youth isthe Future of the Nation], in* REPRODUKTIVNOE ZDOROV'E I SEKSUAL'NOE VOSPITANIE MOLODEZHI, VTORAIA ROSSIISKAIA KONFERENTSIIA PO PLANIROVANIIU SEM'I [REPRODUCTIVE HEALTH AND SEXUAL EDUCATION OF YOUTH, SECOND RUSSIAN CONFERENCE ON FAMILY PLANNING] 16, 19 (1995).

341. *Id.*

342. Irina Savelieva, *Tragedy That Could Happen to Anybody*, 14 THE WOMEN'S DIALOGUE 14, 15 (1997) (in Russian).

343. *Id.*

344. T. P. Vasil'eva, K voprosu o formirovanii reproduktivnogo i kontratseptivnogo povedeniia molodezhi [*Of the Question of Formation of Reproductive and Sexual Behavior of Youth*], in REPRODUKTIVNOE ZDOROV'E I SEKSUAL'NOE VOSPITANIE MOLODEZHI, VTORAIA ROSSIISKAIA KONFERENTSIIA PO PLANIROVANIIU SEM'I [SECOND RUSSIAN FAMILY PLANNING ASSOCIATION CONFERENCE ON REPRODUCTIVE HEALTH AND SEXUAL BEHAVIOR OF YOUTH] 188 (1995).

345. N.D. Treshcheva, *Osobennosti formirovaniia reproduktivnogo zdorov'ia devochek v orkhangel'skoi oblasti [State of the Reproductive Health of Girls and Experience of Sexual Education in Arkechangelskoi Oblast*], in REPRODUKTIVNOE ZDOROV'E I SEKSUAL'NOE VOSPITANIE MOLODEZHI, VTORAIA ROSSIISKAIA KONFERENTSIIA PO PLANIROVANIIU SEM'I [SECOND RUSSIAN FAMILY PLANNING ASSOCIATION CONFERENCE ON REPRODUCTIVE HEALTH AND SEXUAL BEHAVIOR OF YOUTH] 124-128 (1995).

346. Kulakov, *supra* note 340, at 21.

347. Communication with E. Dmitrieva, (on file with The Center for Reproductive Law & Policy) (September 3, 1999). Author notes that the Duma is currently debating a draft law that would increase the minimum monthly wage to 280,000 rubles.

348. Elena Shevchenko, *Legko li byt' molodoi, ili kak zabotit'sia o malen'kikh [Is It Easy to Be Young or Who Takes Care of the Children?]*, 12 PARENTS 20 (1999).

349. Fundamentals of the Legislation on Public Health Care, N 5487-1, Ved. V.S., 1993, No. 33, Item 1318, art. 24(2).

350. *Id.* art. 32(3).

351. Kulakov, *supra* note 340, at 20.

352. SHADOW REPORT, *supra* note 174, at 8.

353. *Id.*

354. I.K. Bogatova & L.V. Posiseeva, *Mini-abort i reproduktivnoe zdorov'e zhenshchin [Mini-abortion and Women's Reproductive Health]*, 1 PLANIROVANIE SEM'I [FAMILY PLANNING] 33-35 (1998).

355. I.L. Alesina, Govoriat uchastniki konferentsii. Iz stenogrammy seminara Reproduktivnye prava grazhdan v Rossii: real'nost' i ozhidaniia. Materialy mezhregional'nogo seminara [Abortion from Women's Perspective, Address at Reproductive Rights of the Citizens of Russian Federation: Expectations and Reality] 37, 39 (1995) (on file with The Center for Reproductive Law & Policy).

356. SK RF art. 13(1).

357. *Id.* art. 13(2).

358. O. Khazova, *The New Codification of Russian Family Law*, in THE CHANGING FAMILY 82 (J. Eekelaar & Nh. Thandabantu eds., 1998). Currently there are more than twelve

regions that adopted such laws.

359. *Id.*

360. *Periodic reports of States parties due in 1997: Russian Federation, supra* note 189, ¶ 462.

361. Zakon Rossiiskoi Federatsii ob Obrazovanii (v redaktsii, vvedennoi v deistvie s 15 ianvaria 1996 goda Federal'nym zakonom ot 13 ianvaria 1996 goda N 12-FZ)(s izmeneniami na 16 noiabria 1997 goda) [Law of the Russian Federation on Education as adopted by Federal Law No. 12-FZ from January 13, 1996 and with the amendments from November 16, 1997], Ross. Gazeta, November 22, 1997, No. 226, art. 5.

362. Dmitrieva, *supra* note 287, at 75-76.

363. GOSKOMSTAT, HANDBOOK: RUSSIA IN FIGURES 1999, tbl. 97 Public Secondary Specialized Educational Institutions (visited Mar. 4, 2000) <http://www.gks.ru/scripts/eng/1c.exe?XXXX12F.10.8.1/010900R>.

364. Dmitrieva, *supra* note 287, at 75-76.

365. GOSKOMSTAT, HANDBOOK: RUSSIA IN FIGURES 1999, tbl. 97 Public Secondary Specialized Educational Institutions (visited Mar. 4, 2000) <http://www.gks.ru/scripts/eng/1c.exe?XXXX12F.10.8.1/010900R>.

366. SHADOW REPORT, *supra* note 174, at 11.

367. *Id.*

368. *Id.*

369. Information Center of the Independent Women's Forum *cited in* WEDO, RISKS, RIGHTS AND REFORMS 170 (1999).

370. A.V. Sharonov, Gosudarstvennaia molodezhnaia politika v Rossii i puti resheniia problem podderzhki i planirovaniia molodoi sem'i [*State Youth Policy in Russia and Models of Supporting and Planning Young Family*], in REPRODUKTIVNOE ZDOROV'E I SEKSUAL'NOE VOSPITANIE MOLODEZHI, VTORAIA ROSSIISKAIA KONFERENTSIIA PO PLANIROVANIIU SEM'I [SECOND RUSSIAN FAMILY PLANNING ASSOCIATION CONFERENCE ON REPRODUCTIVE HEALTH AND SEXUAL BEHAVIOR OF YOUTH] 22, 27 (1995).

371. L.V. Gavrilova, *Sostoianie i perspektivy razvitiia spetsializirovannoi ginekologicheskoi pomoshchi detiam i podrostkam v Rossii [State and Perspectives of the Development of Special Gynecological Care to Children and Adolescents in Russia*], 4 PLANIROVANIE SEM'I [FAMILY PLANNING] 21 (1996).

372. V. Bodrova, *Russian Attitudes on Sex and Youth*, CHOICES, Vol. 25, No. 1, at 9 (1996).

373. UK RF art. 135; *see also Periodic reports of States parties due in 1997: Russian Federation*, *supra* note 189, ¶ 467.

374. UK RF art. 134; *see also Periodic reports of States parties due in 1997: Russian Federation, supra* note 189, ¶ 464.

375. *Periodic reports of States parties due in 1997 : Russian Federation, supra* note 189, ¶ 464.

376. *Id.* ¶ 466.