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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the combined seventh and eighth periodic reports of Hungary

Addendum

Information provided by Hungary in follow-up to the concluding observations*

[Date received: 9 February 2015]

* The present document is being issued without formal editing.

1. The honourable Committee is hereby informed that Hungary submits the following answers in relation to the discussions on the combined seventh and eight periodic reports of the Government on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women held on 14 February 2013, regarding the measures taken to implement the recommendations listed in Paragraph 44 of the concluding observations adopted by the Committee (Paragraphs 21 (a), (b) and (g), Paragraphs 31 (b) and (c) and Paragraph 33 (b)).

> "*21. In accordance with its general recommendation No. 19 (1992) on violence against women and the recommendations contained in its previous concluding observations, the Committee urges the State party to:*
>
> > *a) Adopt a law on domestic violence and criminalize different types of violence against women, including economic and psychological violence and stalking;"*

2. On 17 September 2012, the Parliament adopted a decision (Decision 60/2012. (IX. 18.) OGY), in which it agreed with the popular initiative to regulate domestic violence as an independent criminal law offence. As a result of the above-mentioned Parliament Decision, a working committee was set up with the main objective of developing the criminal law offence of domestic violence, and a separate codification workgroup was established for this purpose.

3. The description of the offence was formulated with the involvement of professional bodies and NGOs, also taking into consideration the traditional system of criminal law in Hungary, the constitutional and international requirements, and, as a result, the crime of domestic violence was inserted in Act C of 2012 on the Criminal Code (hereinafter, the "new Criminal Code") with effect of 1 July 2013 (Section 212/A).

4. Having regard to the special nature of the victims and the frequency of committal, the character of the new offence is also strengthened by the more stringent punishments linked to the new offence compared to the already existing offences as well as that it includes the criminalisation of new conducts that had not been included in the Criminal Code before. Accordingly, the new Criminal Code orders to punish violent behaviours that do not reach the level of physical violence, yet severely injure the victim's human dignity, and causing economic impossibility. At the same time, the new criminal conducts bring forward criminal law protection in so much as the authority may only take action on the basis of an official notice, as only the victim of the conflict can judge whether or not he/she requires intervention from the authorities. It is clearly obvious to the outside world that initiating criminal proceedings is still not conditional on making an official notice in the case of conducts that qualify as the aggravated instances of the new offence.

5. Creating a separate criminal law offence is justified mostly by the group of the special passive subjects of this criminal act, which the legislator determined with a view to the social relationships where this crime is an actual threat violating marriage, family and children. Accordingly, the new Criminal Code extends the group of victims with the concept of relative as defined in point 14 of Section 459 of the new Criminal Code, by including former spouses, former life-partners, custodians, persons under custody, guardians and persons under guardianship.

6. Besides the special subjects of the defined group of victims, the Act requires cohabitation as a condition of committing this crime. Pursuant to the law, the

criminal act can be established also if the victim were not living together at the time of committal, but earlier. However, removing all forms of cohabitation would eliminate an additional element of the offence which would justify the creation of a separate criminal offence since the trust or, as the case may be, defencelessness resulting from cohabitation or previous cohabitation make the victims more vulnerable to abuse by the offender. It should be noted that proving the fact of cohabitation is not particularly difficult, since it can be traced in the register of addresses and proven by witnesses.

7. To accomplish the criminal offence, an additional condition is that the committal must be on a regular basis. Given the subject of the victim and the circumstances of the committal, committing the default acts specified in Paragraph (1) a) becomes a crime punishable by imprisonment up to 3 years, while committing the default acts specified in Paragraph (1) b) becomes a crime punishable by imprisonment up to 5 years. Eliminating the criterion of committal on a regular basis, similar to cohabitation, would also mean that a special element of the offence would be annulled, which professionally justifies the creation of an independent offence.

8. Paragraph (2) of the offence defines the conducts of the offence by reference to criminal offences already included in the Criminal Code. The new Criminal Code punishes the conducts, which are collectively called as domestic violence, in a strict manner in the context of other separate offences. Nevertheless, the intention of the Code is to deter the offender, hence it orders more severe punishments for offences that can be included in the context of domestic violence, which are punished by less severe imprisonment (certain forms of bodily harm, defamation, illegal restraint and coercion).

9. The punishability of the conducts specified in Paragraph (2) of the offence definition is not subject to an official notice, even though some of the conducts forming the basis of the conduct (assault and battery, actual defamation) are normally subject to an official notice. However, in the context of the new offence, the proceedings can be initiated in the absence of an official notice with regard to the special or more severe nature of the conduct (relationship of next of kin, frequency, cohabitation at the time of committal or earlier). However, it should be remembered that, owing to the nature of the conduct and the circumstances of the committal, the cooperation of the victim with the authority is essential to establishing the offence.

> *b) Amend its legislation concerning restraining orders with a view to providing adequate protection to victims in all types of cohabitation and extend the duration of restraining orders;*

10. Where the victim of the violence is a relative of the offender, then the restraining order to be issued prior to the criminal proceedings is governed by Act LXXII of 2009 on restraining orders applicable due to violence between relatives (hereinafter “Act LXXII of 2009”), which enables issuing a so-called preventive restraining order. The primary objective thereof is to handle the phenomenon of domestic violence before a more severe situation or a crime triggering, in many cases, irreparable consequences occurs.

11. It is important to note with regard to the extension of the duration of such restraining orders, that Recital 15 of Regulation No. 606/2013/EU of the European

Parliament and Council on mutual recognition of protection measures in civil matters (hereinafter, the "EU Regulation") explicitly acknowledges the diversity of protection measures under the laws of the Member States, in particular in terms of their duration, and the fact that the Regulation will typically apply in urgent situations.

12. Please note that courts may order a preventive injunction to stay away for 60 days (Section 16 (2) of Act LXXII of 2009), which provision is effective as of 15 March 2014; previously, this period was 30 days only. The justification of the amendment includes the following: "Based on the experience of the law enforcement bodies, the preventive injunction to stay away that, for the time being, can be ordered for 30 days, is not always a sufficiently effective sanction to prevent violence between relatives. This is the reason for allowing the court to order a preventive injunction to stay away for a period not to exceed 60 days." We are not aware of any international rule that recommends a period beyond 60 days of respect of preventive injunctions to stay away and the EU Regulation does not contain such a provision, either.

13. The other specific direction of the suggestion of the CEDAW Committee is "ensuring sufficient protection". The instruments of civil law are limited in terms of applying constraint against a person who fails to comply with a specific court ruling as that field of law typically applies financial "sanctions" to ensure voluntary fulfilment.

14. A restraining order can be issued also after the start of criminal proceedings, regardless the family ties between the offender and the victim, since Act XIX of 1998 on Criminal Proceedings (hereinafter, the "Criminal Proceedings Act") contains restraining order, as a coercive measure in criminal proceedings, since 1 July 2006 (Sections 138/A-139 of the Criminal Proceedings Act).

15. The restraining order in criminal proceedings is an alternative to pre-trial detention and as such aims to prevent that the injured witness is influenced or intimidated, which would jeopardize taking evidence or prevent the accomplishment of an attempted or prepared criminal act or of another offence on the victim.

16. Since 2009, the court may issue a restraining order for ten to sixty days, instead of the previous ten to thirty days. It can be repeatedly ordered thereafter if the conditions of issuing a restraining order are still present. An offender who wilfully violates the rules of restraining may be remanded in pre-trial detention or, where that is not necessary, may be fined.

g) Amend its Criminal Code to ensure that rape is defined on the basis of the lack of voluntary consent of the victim;

17. Pursuant to Act IV of 1978 on the Criminal Code (hereinafter, the "old Criminal Code"), rape and sexual assault were punishable if coercion for sexual intercourse or fornication was carried out by violence and threat against the life or physical integrity. The former legal practice held that a sexual intercourse with the non-voluntary consent of the injured party, however not under the influence of qualified threat, qualified as coercion (Section 174 of the Criminal Code).

18. The new Criminal Code changed this, as it orders a more severe punishment on the co-called sexual extortion, qualifying as sexual coercion (Section 196) and, as a result, the regulation moves towards the direction set by recommendations of

the national and international women rights associations and bodies, including, in particular, the CEDAW Committee dealing with the elimination of all forms of discrimination against women.

19. As the coercion to perform or tolerate sexual activities encompasses all conducts when the injured party did not give voluntary and freely consent to the sexual activity, but under constraint, this offence is also suitable for the implementation of the provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO Convention), since that Convention requires the lack of consent as an element of the offence.

31. The Committee urges the State party to:

b) Provide adequate access to family planning services and affordable contraceptives, including emergency contraception, to all women including women with disabilities, Roma women, women living with HIV/AIDS and migrant and refugee women, i.e. by covering the costs of a range of modern contraceptives under the public health insurance and eliminating the prescription requirement for emergency contraception;

c) Ensure access to safe abortion without subjecting women to mandatory counselling and a medically unnecessary waiting period as recommended by WHO;

20. In accordance with the Fundamental Law, Act LXXIX of 1992 on the protection of foetal life approaches the issue of abortion from the aspect of ensuring the conditions of the healthy development of the foetus and the protection of foetal life. In the spirit of this approach, the law declares that abortion is not a tool of family planning or birth control, and can only be admitted if the mother or the foetus is in danger or the mother is in a severe emergency (not health-related). The basic concept of the Act is to provide full understanding of the circumstances and the factors influencing abortion for making a decision on abortion other than for health reasons, in order to enable the persons involved to make a responsible decision.

21. Besides the procedure related to the application for an abortion, the staff of the Family Protection Service provide all necessary clarifications and the three-day grace period between making the decision and the carrying out the intervention also ensures that the decision, which has irreversible consequences, is well grounded. In contrast with the recommendation in the document, we are of the opinion that this three-day grace period and mandatory consultation cannot be deemed as unreasonable, since their aim is to ensure the fundamental right to obtain information and self-determination.

22. By virtue of the Act, any person who is entitled for free pregnancy care may request an abortion, that is, any person with the right of free movement and stay for more than three months, as well as any persons falling within the scope of the Act on the entry and stay of third country nationals who have the legal status of immigrants or residents. In addition, abortion may be requested by foreigners with a valid residence permit who have been staying in the country for more than 2 months, persons who applied for being recognized as a refugee, persons who have been recognized as asylum-seekers or admitted persons by the immigration authority, as well as persons who may not be expelled from the territory of the country or may not be returned under the provisions of an international treaty.

Accordingly, we believe the Act provides a wide range of opportunities to apply for abortion in a non-discriminating manner.

23. The elimination of mandatory consultation would, in our view, result that the applicant would not receive sufficient information on the conditions, possibilities and methods of abortion, and would not be given information on how to avoid abortion, the possibilities of requesting support after the abortion or subsequent personalized birth control options, either. The Act also stipulates that the information shall be given in the presence of the father, if possible, which ensures a responsible decision-making.

24. All the above provisions on information and the grace period apply to interventions requested by women in a severe emergency. Where abortion is applied due to the health condition of the pregnant woman or the foetus, the intervention is carried out without a separate request on the basis of a specialist opinion.

25. In our view, contraceptives are available at affordable prices (HUF 2,300-3,000, 7-9 EUR). The budget to be spent on supported medicine in Hungary is quite tight, and the government has to take serious efforts to contribute to the medicine demand of the part of the population suffering from illnesses.

26. However, legal regulations enable the National Health Insurance Fund to support, exercising discretion on a case-by-case basis, the purchase of contraceptives by women living in extraordinary conditions upon request.

27. It is important to take into consideration the significant health risks related to emergency contraception without the need for a prescription. Emergency contraception should be a last resort and under close medical control.

33. The Committee urges the State party to:

b) Eliminate forced sterilization of women with disabilities by training health professionals, raising their awareness toward their own prejudices, and repeal or amend Act CLIV of 1997 which enables doctors to perform forced sterilizations on very wide grounds, contrary to international health standards on free and informed consent of persons with disabilities;"

28. Act CLIV of 1997 on health (*hereinafter, the "Health Act"*) recognises two forms of artificial sterilization for the purposes of family planning and medical reasons. Pursuant to Section 187 of the Health Act, sterilization which prevents capability of reproduction for health related reasons may be performed upon the written request of the affected person who has legal capacity, who is over the age of eighteen and whose legal capacity is partially limited in any groups of matters, in case of minors with limited legal capacity under the age of eighteen, or in respect of Section 187/B in case of persons with legal incapacity, but not including persons in a state of incapacity.

29. When the application for surgical sterilisation is submitted, the designated physician of the health service provider informs the applicant verbally and in writing on other possible methods of contraception, the nature of the surgical intervention and its potential risks and consequences, and on the chances of restoring the conceptive ability respectively potency. If the intervention is performed to sterilise a person with limited capacity or an incapable person, the information shall be given in a way that is understandable by the affected person,

taking into account the nature of the reason limiting the capacity either in part or in full. The health-related reason for performing the intervention shall be certified by a specialist, which can be recommended if pregnancy directly endangers the life, physical integrity or health of the woman or the child to be born out of the pregnancy is assumed to suffer from some sort of severe deficiency and the application of another method of contraception is not possible or not recommended due to health reasons.

30. In case of a person with limited capacity, the approval of the guardianship authority is required for performing the intervention. In such case, the guardianship authority examines if the application of the affected person is in accordance with his/her will and if the affected person is aware of the consequences of his/her decision.

31. An intervention to sterilise a person with limited capacity under Section 187/B of the Health Act may only be carried out on the basis of a final court decision, after the affected person has come to the age of fertility. In such case, the legal representative of the affected person or, in the case of an incapable affected person who has not yet turned eighteen, the legal representative of the affected person and the guardianship authority jointly, may bring an action at the Metropolitan Tribunal. The court judges the application in non-litigious proceedings after hearing the incapable person, the legal representative and the guardianship authority. The court approves the performance of the intervention for the sterilisation of an incapable person if the application of another method of contraception is not possible or not recommended due to health reasons, and the incapable person is unable to raise the child, or if the child to be born out of the pregnancy is assumed by doctors to be severely disabled and the intervention is in accordance with the will of the incapable person or if the pregnancy would directly endanger the life, physical integrity or health of the incapable person.

32. Due to its irreversible nature and also for demographic reasons, the Health Act makes the application of sterilisation through intervention for the purposes of family planning (rather than for health reasons) subject to conditions related to the age and the social situation. The text of the Act attempts to highlight the other methods of contraception that do not cause irreversible sterilisation instead of the fundamentally irreversible sterilisation through intervention, also considering the unfavourable demographic trends of the country. Accordingly, since 15 March 2014, the Health Act limits sterilisation for the purposes of family planning for those who are either over the age of 40 or have three own children.

33. In light of the above, also based on the relevant practise of the Constitutional Court and other courts, we are of the opinion that multiple guarantees are imposed that limit the performance of sterilisation on disabled persons both in respect of giving consent and considering the will of the affected person, as well as providing information and giving approval.