

## **Hungarian Domestic Violence Case before CEDAW: Victory or Another Pile of Papers for the Archives**

*Julia Spronz, Lawyer, activist, Habeas Corpus Working Group and NANE Women's Rights Association*

On 26 January 2005, the UN Committee on the Elimination of Discrimination against Women rendered a decision in a case submitted by a Hungarian woman under the Optional Protocol to CEDAW. The author of the communication (Ms. A.T.) claimed that Hungary violated the Convention on the Elimination of Discrimination against Women because it had failed in protecting her from her former common law husband.

The views of the Committee adopted in the Hungarian case will be of utmost importance in the advocacy work of Hungarian NGOs acting on the field of domestic violence. Not only because this is the first communication against Hungary, but also because this is the first time that the CEDAW Committee considered a claim in the merits. (In the previous incident, Ms. B.-J. vs. Germany, the Committee declared the communication inadmissible). Taking into consideration the lack of experience regarding the effect of CEDAW's Optional Protocol, the development after the adoption of views cannot be limited to private affairs of Hungary, but it has its international influence, as well.

Even though Ms. A.T., the author of the communication had been in contact with several NGOs and experts, who dedicate their activities to combating violence against women and children, who provided emotional support and attended some of the trials in her case, formally she submitted the communication to CEDAW Committee by herself 2003. Her case follows the average patterns of domestic violence proceedings taking place thousands of times a year in Hungary.

Armed with a firearm and usually drunk, the former common law husband kept the woman and their two children in constant terror for years. The woman has been unable to escape as the very few "shelters" that exist in Hungary are not equipped to accommodate her brain-damaged son. The perpetrator could not be removed from the flat, because of the lack of availability of any protection order or restraining order.

The woman has initiated legal proceedings in three directions: 1. civil proceeding on division of their common property (the apartment they lived in together), 2. "trespass proceeding" on the exclusive use and possession of their common flat, 3. criminal procedure concerning two incidents of battery and assault resulting her hospitalization. After the exhaustion of all domestic remedies the situation looked as follows: the man was fined in the criminal procedure (cca. USD 365), the procedure over the couple's ownership of the flat has been suspended due to the lack of official registration of the property and the man received authorisation by the Hungarian courts to return and use the flat. By passing a judgement of shared access to the apartment, the court neglected the fact of domestic violence and put the woman's and the children's lives, physical and mental health to constant risk. For this reason, the plaintive asked for urgent interim measures of protection together with submitting her claim. Instead of the immediate and effective protection, which the Committee had requested

from the Hungarian Government, all what had happened was that the Government Office for Equal Opportunities made some recommendations concerning the case. They drafted the possibilities of rendering a legal representative for the woman, convening a case-conference with the participation of all authorities affected to determine further actions to be performed to solve the situation and contacted the competent family-and child-care service at the local level. Apart from the recommendations no concrete steps have been done as interim measures to avoid irreparable damage to A.T.

After consideration of her claim, the CEDAW Committee found that the Hungarian Government had committed a violation of the woman's rights under the Convention. To remedy the situation, it called the Hungarian Government to take immediate and effective measures to secure the protection of the woman and her children by providing her with a safe home, appropriate child support and legal assistance. In addition she should get reparations for physical and mental harm she suffered.

In its general recommendations, the Committee suggested that the Government take the necessary steps to protect victims of domestic violence in Hungary by promoting women's human rights, by fully complying with its legislative obligation under national and international norms, by providing training on the requirements of CEDAW for legal professionals, by implementing the Committee's former comments of the Hungarian country report, by accurately investigating all allegations of domestic violence, by providing women with safe access to the judicial system and by assuring rehabilitation programmes for offenders. The Committee also required the Hungarian Government to translate and distribute its views and recommendations country-wide.

The Hungarian Government was given six months to comply with the decision of the Committee. It has now been four months since the decision was rendered and so far no notable steps have been made by the Government. Our scepticism is heightened by the Government's failure to comply with the Committee's request for interim measures. We believe it is useless to wait any longer.

The CEDAW decision gives us a perfect opportunity to expand the present legal measures available to protect victims of domestic violence. Apparently the Hungarian Government will not act of its free will and CEDAW recommendations are legally not binding.

Women NGOs therefore need to increase their activities demanding the enforcement of the implementation of the recommendations concerning both the individual case and general requirements. It is also our responsibility to ensure that the Convention shall not remain a formal declaration but effective legal tool in our hands. Publicity should be utilized not only to make the Convention known and to propagate the Optional Protocol, but also to draw the attention to the sabotage of the Hungarian Government concerning domestic violence legislation. By our actions we hope to induce the Hungarian Government to execute the CEDAW recommendations which will have a positive impact on international community as well.