

Questionnaire on criminalization and prosecution of rape

Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

Chapter Nineteen of Criminal Code of the Republic of Slovenia CRIMINAL OFFENCES AGAINST SEXUAL INTEGRITY

Rape

Article 170

- (1) Whoever compels a person of the same or opposite sex to submit to sexual intercourse with him by force or threat of imminent attack on life or limb shall be sentenced to imprisonment for not less than one and not more than ten years.
- (2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.
- (3) Whoever compels a person of the same or opposite sex to submit to sexual intercourse by threatening him/her with large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not less than six months and not more than five years.
- (4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.

Sexual Violence

Article 171

- (1) Whoever uses force or threatens a person of the same or opposite sex with imminent attack on life or limb thereby compelling that person to submit to any lewd act not covered by the preceding Article or to perform such an act shall be sentenced to imprisonment for not less than six months and not more than ten years.
- (2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.
- (3) Whoever compels a person of the same or opposite sex to perform or submit to any lewd act by threatening him/her with a large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of

damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not more than five years.

(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.

Sexual Abuse of Defenceless Person

Article 172

(1) Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex by abusing the fact of his/her mental disease, temporary or graver mental disorder or sickness or any other state, owing to which that person is not capable of resisting, shall be sentenced to imprisonment for not less than one and not more than eight years.

(2) Whoever, under circumstances under the preceding paragraph, violates the sexual integrity of another person in any other way shall be sentenced to imprisonment for not more than five years.

Sexual Assault on a Person Below Fifteen Years of Age

Article 173

(1) Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to imprisonment for not less than three and not more than eight years.

(2) Whoever commits the offence under the preceding paragraph against the defenceless person under the age of fifteen or by threatening him/her with imminent attack on life or limb shall be sentenced to imprisonment for not less than five and not more than fifteen years.

(3) A teacher, educator, guardian, adoptive parent, parent, priest, doctor or any other person who through the abuse of his position has sexual intercourse or performs any lewd act with a person under the age of fifteen and whom he is entrusted to teach, educate, protect or care for shall be sentenced to imprisonment for not less than three and not more than ten years.

(4) Whoever, under circumstances under paragraphs 1, 2 or 3 of this Article, violates the sexual integrity of the person under the age of fifteen years shall be sentenced to imprisonment for not more than five years.

(5) The offences under paragraphs 1 of this Article shall not be unlawful if they were committed with a person of comparable age and if it corresponds to the level of his/her mental and physical maturity, it is not unlawfull.

Recruitment of persons under the age of fifteen for sexual purposes

Article 173a

(1) Whoever addresses a person under the age of fifteen through information or communication technologies for the purpose of committing the criminal offense referred to in the first paragraph of Article 173 of this Code or for producing images, audiovisual or other objects of pornographic or other sexual content, and the address was followed by concrete actions for the realization of the meeting, shall be sentenced to imprisonment for not more than one year.

(2) The offences referred to in the preceding paragraph shall not be unlawful if they were committed for the purpose of carrying out the act referred to in the first paragraph of Article 173 and under the conditions referred to in the fifth paragraph of Article 173 of this Code.

Violation of Sexual Integrity by Abuse of Position

Article 174

(1) Whoever, by abusing his position, induces his subordinate or a person of the same or different sex who depends on him to have sexual intercourse with him or to perform or submit to any lewd act shall be sentenced to imprisonment for not more than five years.

(2) A teacher, educator, guardian, adoptive parent, parent or any other person who through the abuse of his position has sexual intercourse or performs any lewd act with a person above the age of fifteen whom he is entrusted to teach, educate, protect or care for shall be sentenced to imprisonment for not less than one and not more than eight years.

Exploitation through Prostitution

Article 175

(1) Whoever participates for exploitative purposes in the prostitution of another or instructs, obtains or encourages another to engage in prostitution with force, threats or deception shall be given a prison sentence of between three months and five years.

(2) Whoever, for the purpose of exploitation, participates in the prostitution of a minor or intervenes in the prostitution of a minor, or who by force, threat, deception, recruitment or solicitation induces, acquires or incites a minor to prostitution, shall be sentenced to imprisonment for not less than one and not more than ten years.

(2) If the offences from the preceding paragraphs are committed against more than one person or as part of a criminal organisation, the perpetrator shall be sentenced to imprisonment for not less than one and not more than twelve years.

Presentation, Manufacture, Possession and Distribution of Pornographic Material

Article 176

(1) Whoever sells, presents or publicly exhibits documents, pictures or audiovisual or other items of a pornographic nature to a person under fifteen years of age, enables them to gain access to these in any other way or shows them a pornographic or other sexual performance shall be given a fine or a prison sentence of up to two years.

(2) Whoever abuses a minor in order to produce pictures or audiovisual or other items of a pornographic or other sexual nature, or uses them in a pornographic or other sexual performance or is knowingly present at such performance, shall be given a prison sentence of between six months and eight years.

(3) Whoever produces, distributes, sells, imports or exports pornographic or other sexual material depicting minors or their realistic images, supplies it in any other way, or possesses such material, or discloses the identity of a minor in such material shall be subject to the same sentence as in the preceding paragraph.

(4) If an offence from paragraphs 2 or 3 of this Article was committed within a criminal organisation for the committing of such criminal offences, the perpetrator shall be given a prison sentence of between one and eight years.

(5) Pornographic or other sexual material from paragraphs 2, 3 or 4 of this Article shall be seized or its use appropriately disabled.

2. Based on the wording of those provisions, is the provided definition of rape:
- Gender specific, covering women only YES/NO
 - Gender neutral, covering all persons YES/NO
 - Based on the lack of consent of victim YES/ NO
 - Based on the use of force or threat YES/ NO
 - Some combination of the above YES / NO
 - Does it cover only vaginal rape? YES /NO
 - Does it cover all forms of penetration? YES/NO.
 - Is marital rape in this provision explicitly included? YES/ NO
 - Is the law silent on marital rape? YES/NO
 - Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO. **It is covered in the general provisions.**
 - Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO **Marital rape is considered as a crime.**

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

No. In practice however some acts against sexual integrity of a victim are not persecuted separately if a person is also a victim of other forms of violence in the family.

4. What is the legal age for sexual consent?

The age of consent is 15 years of age.

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

Yes, see above the fifth paragraph of article 173: Sexual Assault on a Person Below Fifteen Years of Age (the offences under paragraphs 1 of this Article shall not be unlawful if they were committed with a person of comparable age and if it corresponds to the level of his/her mental and physical maturity, it is not unlawful).

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Slovenian law provides different sanctions for different criminal offences against sexual integrity. The prescribed sanction is imprisonment (fine is prescribed only for offences under first paragraph of article 176: Presentation, Manufacture, Possession and Distribution of Pornographic Material), the maximum sanction in this chapter of Criminal Code is 15 years imprisonment (see the text of the article provided in the answer to first question).

In practice, the courts do not sentence the perpetrator to the maximum prescribed sentence – the courts often prescribe the lowest possible sanction or the sanction just above the lowest possible.

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

The victim can claim compensation for damages in criminal procedure. In practice, the claim for non-pecuniary damage is not granted in criminal procedure and the victim must file a lawsuit in civil procedure. If the victim does not receive compensation (even after enforcement procedure because for example the perpetrator does not have assets to pay), if the victim is a child or disabled person or if the perpetrator is not known or found, the victim can get compensation from the state according to Crime Victim Compensation Act.

Aggravating and mitigating circumstances

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

a. Is rape by more than one perpetrator an aggravating circumstance? **YES/NO**

b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **YES/NO**

c. Is rape by spouse or intimate partner an aggravating circumstance? **NO**

Other aggravating circumstances are: a cruel or extremely humiliating manner of committing an offence, offence committed against offenders serving sentence or other persons whose personal freedom was taken away, offence committed against defenceless person. Besides these other general aggravating circumstances are taken into account when sentencing (article 49 of Criminal Code in second paragraph gives examples of aggravating and mitigating circumstances: the degree of the perpetrator's criminal liability; the motives, for which the offence was committed; the intensity of the danger or injury caused to the property protected by law; the circumstances, in which the offence was committed; the perpetrator's past behaviour; his personal and pecuniary circumstances; his conduct after the committing of the offence and especially, whether he recovered the damages caused by the committing of the criminal offence).

9. Does the law foresee mitigating circumstances for the purposes of punishment? **YES/NO**
If yes, please specify.

If the offence is committed by threatening the victim with large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation, the perpetrator is sentenced to not more than five years imprisonment. Besides that other general aggravating circumstances are taken into account when sentencing (article 49 of Criminal Code in second paragraph gives examples of aggravating and mitigating circumstances: the degree of the perpetrator's criminal liability; the motives, for which the offence was committed; the intensity of the danger or injury caused to the property protected by law; the circumstances, in which the offence was committed; the perpetrator's past behaviour; his personal and pecuniary circumstances; his conduct after the committing of the offence and especially, whether he recovered the damages caused by the committing of the criminal offence).

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **YES/NO** If so, at what stage and what are the consequences?
a. Regardless of the law, is reconciliation permitted in practice? **YES/NO** and what is the practice in this regard?
11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **YES/NO** If yes, please specify.
a. if the perpetrator marries the victim of rape? **YES/NO**
b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **YES/NO**

Prosecution

12. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES/NO**
13. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES/NO**
14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **YES/NO**
15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **YES/NO**
16. Please provide information on the statute of limitations for prosecuting rape.
Statute of limitations depends on the penalty imposed for each offence. For offences against sexual integrity statute of limitations is between 10, 20 or 30 years, depending on the offence that was committed. Article 90 of Criminal Code provides:
(1) Except where otherwise determine in this Penal Code, criminal prosecution is barred from taking place:
1) fifty years from the committing of a criminal offence, for which a prison sentence of thirty years may be imposed under the statute unless non-applicability of statute of limitations applies to the offence;
2) thirty years from the committing of a criminal offence, for which a prison sentence of over ten years may be imposed under the statute;
3) twenty years from the committing of a criminal offence, for which a prison sentence of over five years may be imposed under the statute;
4) ten years from the committing of a criminal offence, for which a prison sentence of over one year may be imposed under the statute;
5) six years from the committing of a criminal offence, for which a prison sentence of up to one year or a fine may be imposed under the statute.
(2) If more than one sentence is prescribed for a criminal offence, the time limit referring to the most severe sentence shall apply to the offence in question.
(3) Irrespective of paragraph 1 of this Article, the time limit for statute of limitations in criminal offences against sexual inviolability and criminal offences against marriage, family or youth, committed against a minor, shall begin when the injured person becomes an adult.

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? **YES/NO**

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? **YES/NO** If yes, please specify.

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? **YES/NO**

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **YES/NO**. If yes, please specify.

Slovenia implemented Victims' Rights Directive (Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA). Victims have the right to get information about medical and psychological support, the right for obtaining protection measures, the right to receive information about the case, the right to access victim support services, the right to avoid contact between victim and offender (unless criminal proceeding require such contact), the right to protection of victims during criminal investigation (minimum number of interviews and medical examinations, victims may be accompanied by their legal representative and a person of their choice, interviews with the victim can be carried out or through professionals, hearings take place without the presence of the public, avoiding unnecessary questioning concerning the victim's private life) ...

War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity? **YES/NO**

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **YES/NO**

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **YES/NO**

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **YES/NO**

Data

25. Please provide data on the number of cases of rape* that were reported, prosecuted and sanctioned, for the past two to five years.

	Reported cases	Prosecuted cases	Convictions
2016	54	24	10
2017	69	26	13
2018	66	27	10

*The numbers show only the cases of rape and not the number of other criminal offences against sexual integrity. The statistic about reported, prosecuted cases and convictions for the year 2019 is not available yet.

Other

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

In practice, victims of sexual violence often do not choose to report the crime because they fear a lengthy and tough procedure. They also sometimes think that the perpetrator will not be convicted at the end because too much time has passed since the event, because the case is obsolete and because they have no material evidence. Some women are also unaware that sexual violence in a relationship is a crime. Court proceedings are not tailored to victims of sexual violence and further victimize victims because they are lengthy and require victims to repeatedly describe the events that happened to them. In one case of reporting rape, the victim had to wait 12 hours (until three in the morning) for an examination in the emergency room, where they did not have suitable facilities and the victim was not provided with any privacy or discretion (several times the medical staff in front of other people addressed “did you come to report the rape?” or “aha, you’re still waiting for the detective, aren’t you?”). Already in the emergency room, the victim had to describe the event to both the doctor and the policewoman, and then she will have to describe the event several more times (at least before the investigating judge and at the main hearing). The perpetrators sometimes avoid hearings and only after some time the court orders to the police to forcibly bring the perpetrator to the court.

If there was no physical force used during sexual violence (and there is no other circumstance, for example the victim is defenseless or subordinate to the perpetrator), there is no crime and the perpetrator will not be prosecuted. Working group of Ministry of Justice proposed the change in Criminal Code but at the moment it is still uncertain how the actual text of the new law will look like and whether the change will be in accordance with the principle “no means no” or “only yes means yes”.