**Questionnaire on criminalization and prosecution of rape**

**Answered by: Association for Emancipation, Solidarity and Equality of Women- ESE, Republic of North Macedonia**

**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.**

a) In the **Criminal Code of the Republic of Northern Macedonia**, criminal liability is provided for the criminal offense "Rape" in Article 186. The full transcription of the crimes against gender and freedom (last amended on December 31, 2018, with Official Gazette 248/2018) is provided below.

**CRIMES AGAINST GENDER FREEDOM AND MORALITY**

Rape

Article 186

(1) Whosoever, by the use of force or threat to directly attack upon the life or body of another or upon the life or body of someone close to that person, forces him to intercourse, shall be sentenced to imprisonment of three to ten years.

(2) If the act referred to in paragraph (1) of this Article is committed against a child who turned 14, the offender shall be sentenced to imprisonment of at least ten years.

(3) If a severe bodily injury, death or any other severe consequences were caused because of the crime referred to in paragraph 1 or the crime was committed by several persons or in an especially cruel and degrading manner or out of hate, the offender shall be sentenced to minimum imprisonment of four years.

(4) Whosoever forces another to intercourse by a serious threat that he shall disclose something about him or about a person close to him, that would harm his honor and reputation, or which would cause some other serious evil, shall be sentenced to imprisonment of six months to five years.

(5) Whosoever in the cases referred to in paragraphs 1, 2 and 3 commits only some other sexual act, shall be sentenced for the crime referred to in paragraph 1to imprisonment of six months to five years, for the crime in paragraph 2 imprisonment from one to ten years, and for the crime in paragraph 3 imprisonment from three months to three years.

Sexual assault of a helpless person

Article 187

(1) Whosoever commits sexual assault of another, abusing the mental illness, mental disorder, helplessness, mental handicap, or some other condition due to which this person is unable to resist, shall be sentenced to imprisonment of minimum eight years.

(2) If the crime referred to in paragraph (1) of this Article is committed against a child who turned 14, the offender shall be sentenced to imprisonment of at least ten years.

(3) If a severe bodily injury, death or any other severe consequence was caused because of the crime referred to in paragraph 1 and paragraph (2), or the crime was committed by several persons, in an especially cruel or degrading manner or out of hate, the offender shall sentenced to imprisonment of minimum ten years or a life imprisonment.

(4) Whosoever in the cases referred to in paragraphs 1 and 2 commits only some other sexual act shall be sentenced for the crime referred to in paragraph 1 to imprisonment of three to five years, and for the crime referred to in paragraph 2 to imprisonment of three to ten years.

Sexual assault upon a child who has not turned 14 years of age

Article 188

(1) Whosoever commits statutory rape or some other sexual act upon a child who has not turned 14 years of age, shall be sentenced to imprisonment of minimum 12 years.

(2) If a severe bodily injury, death or any other severe consequences have been caused because of the crime referred to in paragraph (1) or the crime has been committed by several persons or in an especially cruel and degrading manner or out of hate, the offender shall be sentenced to imprisonment of minimum 15 year or to life imprisonment.

(3) The court shall impose the offender of the crime referred to in paragraph (2) of this Article prohibition to perform profession, activity or duty under the conditions of Article 38-b of this Code.

Sexual assault by position abuse

Article 189

(1) Whosoever by abusing his position induces another, who is subordinated or dependent, to sexual intercourse or some other sexual act, or with the same intention abuses, intimidates or acts in a way that humiliates the human dignity and the human personality against another, shall be sentenced to imprisonment of minimum five years.

(2) If the crime referred to in paragraph (1) of this Article is committed by a blood relative in direct line or a brother, i.e. sister, teacher, tutor, adoptive parent, guardian, stepfather, stepmother, doctor or another person by abusing their position or by committing family violence commits a statutory rape or other sexual act with a child who has turned 14 years of age and who is entrusted to him/her for education, tutoring, care, shall be sentenced to imprisonment of at least ten years.

(3) The court shall impose the offender of the crime referred to in paragraph (2) prohibition to perform profession, activity or duty under the conditions of Article 38-b of this Code.

Gratifying sexual urges in front of another

Article 190

(1) Whosoever performs a sexual act in front of another, in a public place, shall be fined or sentenced to imprisonment of up to one year.

(2) Whosoever performs a sexual act in front of a child who has turned 14 years of age or who induces a child to perform such an act in front of him or in front of another, shall be sentenced to imprisonment of three to eight years.

(3) Whosoever performs a sexual act in front of a child who has not turned 14 years of age or who induces a child to perform such an act in front of him or in front of another, shall be sentenced to imprisonment of at least four years.

b) The **Criminal Procedure Code[[1]](#footnote-1)** guarantees special rights during the criminal procedure for the victims of rape or other criminal act against the gender freedom and gender morality, as well as special measures for process protection for the vulnerable categories of victims, including children victims of rape and sexual abuse (last amended on October 31, 2018, with Official Gazette 198/2018). The concrete articles are provided below.

Special rights of victims of crimes against gender freedom and gender morality, humanity and international law

Article 55

(1) Apart from the rights established in Article 53, the victim of crimes against gender freedom and gender morality, humanity and international law, shall also have the following rights:

1) before the interrogation, to speak to a counselor or a proxy free of charge, if he or she participates in the procedure as an injured party;

2) to be interrogated by a person of the same gender in the police and the public prosecution office;

3) to refuse to answer questions that refer to the victim’s personal life, if those are not related to the crime;

4) to ask for an examination with the use of visual and audio means in a manner established in this Law; and

5) to ask for an exclusion of the public at the main hearing.

(2) The court, the Public Prosecutions Office and the police shall be obliged to advise the victim of his or her rights referred to in paragraph 1 of this Article, prior to the very first examination at the latest and to prepare an official note or record accordingly.

Special rights of victims of vulnerable categories of victims

Article 54

(1) The victims shall have the right to special measures of process protection when giving statement or being interrogated during all stages of the procedure:

1) if, at the time when giving the statement, the victim is less than 18 years of age;

2) if giving a statement or an answer to a certain question would mean exposing themselves or another close person to a serious threat for their life, health or physical integrity (endangered victims);

3) if, because of their age, the nature and consequences of the crime, the physical or psychological disability or another significant health condition, the social or cultural history, family circumstances, religious beliefs and the ethnic affiliation of the victim, the behavior of the defendant, members of the defendant’s family or friends towards the victim, there might be harmful consequences for their psychological or physical health or if it has a negative effect on the quality of the statement provided (especially vulnerable victims).

(2) The special measures of process protection shall be determined by the court, upon proposal from the public prosecutor or the victim, or upon its own initiative, when it is necessary to protect the endangered and especially vulnerable victims.

(3) When deciding on the determination of the special measures of process protection referred to in paragraph 2 of this Article, the court shall have to take into account the victim’s will.

(4) The court shall have to assign special measures of process protection in the cases as referred to in paragraph 1, item 1 of this Article:

1) when a child victim has a need for special care and protection; or

2) when the child is a human trafficking victim, victim of violence or sexual abuse.

(5) In cases as referred to in paragraph 4, individually or along with another special measure of protection, the court has to ask for a video and audio recording of the statement and interrogation of the child, so that it can be used as evidence in the procedure. In exceptional cases, because of newly established circumstances in the case, the court may order additional interview of the child victim, once more at the most, through the use of technical means of communication.

(6) The manner of implementation of the special measures of process protection of child victims is regulated with a separate law.

1. **Based on the wording of those provisions, is the provided definition of rape:**
   1. Gender specific, covering women only **NO**
   2. Gender neutral, covering all persons   **YES**
   3. Based on the lack of consent of victim **NO**
   4. Based on the use of force or threat  **YES**
   5. Some combination of the above.  **NO**
   6. Does it cover only vaginal rape?  **NO**
   7. Does it cover all forms of penetration? **YES.** If yes, please specify. Every touch on the body of the victim in order to satisfy the sexual passions of the perpetrator (kissing the chest, placing the genitals in any cavity of the victim, caressing the body of the victim, etc.)
   8. Is marital rape in this provision explicitly included? **NO**
   9. Is the law silent on marital rape? **NO**
   10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**
   11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   **NO**
2. **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.

1. **What is the legal age for sexual consent?**

16 years of age.

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

NO.

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

The minimum sentence for "Rape" is six months and the maximum is 20 years imprisonment.

1. **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 of rape may claim damages from the convicted person and if the victim is a child who has been subjected to domestic violence, the damage may be requested from a special fund established for that purpose.

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
   1. Is rape by more than one perpetrator an aggravating circumstance?

NO. If the rape is committed by several persons, a qualified responsibility for the perpetrators is envisaged and harsher punishment is envisioned because the committed crime is considered a qualified type of "Rape" under Article 186, paragraph 3 of the Criminal Code, for which sentence may range 5 to 20 years imprisonment.

* 1. 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)

NO. There is specific criminal liability for these types of sexual assaults envisioned with the criminal acts: “Sexual assault of a helpless person” Article 187; “Sexual assault upon a child who has not turned 14 years of age” Article 188; and “Sexual assault by position abuse” Article 189. For these crimes, a more severe prison sentence is provided, and if the victim is helpless, either a child under the age of 14 and as a result of the crime severe bodily injury, death or other serious consequences occurred or the crime was committed by more than one person, in a particularly cruel or degrading manner, the perpetrator will be sentenced to at least 10 years in prison or life imprisonment.

* 1. Is rape by spouse or intimate partner an aggravating circumstance?

NO.

1. **Does the law foresee mitigating circumstances for the purposes of punishment? If yes, please specify.**

NO.

1. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response? If so, at what stage and what are the consequences?**

NO.

* 1. **Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**

NO. Whether the victim wants to reconcile with the perpetrator, the criminal prosecution against the perpetrator is undertaken ex officio, the perpetrator is brought before a court, the court finds him guilty and punishes him according to the law. It is possible that the victim and the perpetrator voluntarily entered into an intimate relationship or got married after the crime "Rape", but such circumstances do not release the perpetrator from criminal liability.

1. **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? If yes, please specify.**

 NO.

* 1. if the perpetrator marries the victim of rape?

NO.

* 1. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? NO

**Prosecution**

1. **Is rape reported to the police prosecuted ex officio (public prosecution)?**

YES.

1. **Is rape reported to the police prosecuted ex parte (private prosecution)?**

NO.

1. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?**

NO.

1. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?**

NO.

1. **Please provide information on the statute of limitations for prosecuting rape.**

The statute of limitations is 5 to 20 years from the moment of committing the crime.

1. **Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?**

YES, but only if there is no absolute or relative statute of limitations for criminal prosecution of the perpetrator of the crime because the statute of limitations starts to run from the moment of committing the crime.

1. **Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  If yes, please specify.**

NO, but in any case, the police, the prosecution and the injured party gather evidence of the crime, most often the victim is taken to the gynecological or other starvation, to provide evidence to more easily prove the criminal responsibility of the perpetrator, because if no evidence is provided it is possible for the accused to be released from criminal liability for failing to prove beyond a reasonable doubt that the defendant committed the crime. If the crime was committed with a threat, the threat can be proved from all circumstances of the case, and especially from the statement of the victim.

1. **Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?**

NO. There are no specific legal norms, but the judge has been given the legal opportunity not to allow such questions on the complaint of the prosecution's representative because the perpetrator's criminal history is irrelevant to the perpetrator's criminal responsibility for this crime.

1. **Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.**

NO. However, there is a legal possibility that if the victim is a child, the examination of the child should be performed specially by applying technical means.

**War and/or conflict**

1. **Is rape criminalized as a war crime or crime against humanity?**

YES.

War crimes against the civil population

Article 404

(1) Whosoever during war, armed conflict or occupation, by violating the rules of the international law, orders an attack on the civil population, on a settlement, on certain civil individuals or on persons disabled for battle, which resulted in death, serious bodily injury or serious deterioration of the human health; an attack without choosing the target that inflicts the civil population; committing murders of civil population, tortures, non-human treatment, biological, medical or other scientific experiments, taking tissues or organs for transplantation, causing great suffering or injuries to the bodily integrity or to the health; emigration or migration or forced losing nationality or changing religions; forced prostitution or rape, sexual slavery or causing forced pregnancy, forced sterilization or other type of sexual violence; applying measures of fearing and terror, taking hostages, collective punishing, unlawful taking in to concentration camps and other unlawful closings, depriving of the right to correct and impartial trials; or enforcement of punishment or execution without prior verdict adopted by legally based court in a procedure with all the generally acknowledged court limits provided; forcing to service in the armed forces of the enemy’s force or within its intelligence service or administration, enlisting and recruitment of juveniles younger than the age of 15 in the armed forces of the state or recruitment of persons younger than 18 years of age in the armed forces that are not the armed forced of the state and their use by their active participation in armed activities contrary to the conditions determined by the international law; use of the presence of the civil population or other protected persons as alive shield in certain places or areas of action of the armed forces; forcing to forced labor, starvation of the population, rendering the access to humanitarian aid more difficult, confiscating property, theft on the property of the population, illegal and willful destruction or acquisition to greater extent of property which is not justified by the military needs, taking illegal and not proportionally great contribution and requisition, decrease of the value of the domestic currency and illegal issuance of money or whosoever commits any of the listed crimes, shall be sentenced to imprisonment of at least ten years or to life imprisonment.

(2) The sentence referred to in paragraph 1 shall be imposed to whosoever by violating the rules of international law orders: an attack of cultural goods being under intensive protection or other objects under special protection, objects specially protected by the international law, builds, transport means, materials and medical units that use recognizable marks determined by the international law or personnel, installations, materials, units or vehicles included in the provision of humanitarian help or peace corps and on objects or plants with dangerous power such as are the dams, banks and nuclear power stations, without choosing the target to aim at hospitals or places where sick or wounded people are gathered and other civil facilities being under special protection of the international law, prohibited places and demilitarized zones, cities, villages, settlements or buildings that are not being defended and are not considered military target; long-term and to great extent to damage the natural environment which may cause harm to the health and life of the population and to the cultural goods under intensive protection or to its direct surrounding to be used as backing in a military action, destruction or adoption of the cultural goods to  a greater extent, protected by international law, stealing or transferring or vandalistic attacks to cultural goods protected by international law, to whosoever commits one of the abovementioned crimes.

(3) Whosoever, by violating the rules of international law during war, armed conflict or occupation, as an occupier, orders or executes migration or deportation of the whole or part of the civil population on the occupied territory or settles part of his own civil population to the occupied territory, shall be sentenced to imprisonment of at least five years.

1. **Is there a statute of limitations for prosecuting rape in war or in conflict contexts?**

NO.

1. **Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?**

NO.

1. **Has the Rome Statute of the International Criminal Court (ICC) been ratified?**

YES. Macedonia deposited its instrument of ratification to the Roma Statute on 6 March 2002.

**Data**

1. **Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**Data presented in the table below originates from the State Statistical Office, Perpetrators of criminal offences for 2015[[2]](#footnote-2), 2016[[3]](#footnote-3) , and 2017[[4]](#footnote-4). The data for 2018 is not yet available in full, only a press release[[5]](#footnote-5) was issued so far. In the press release, there is no specific data related to individual criminal offences and therefore these data was not used.

**Table: Reported, accused and convicted adult perpetrators for rape and children perpetrators for Rape for 2015, 2016 and 2017 by year and in total by category**

|  |  |  |  |
| --- | --- | --- | --- |
| **Rape** | **2015** | **2016** | **2017** |
| Reported adult perpetrators | 23 | 27 | 29 |
| Accused adult perpetrators | 26 | 16 | 13 |
| Convicted adult perpetrators | 24 | 14 | 13 |
| Reported children perpetrators | 8 | / | / |
| Accused children perpetrators | 1 | / | / |
| Convicted children perpetrators | 1 | 2 | / |
| **TOTAL REPORTED** | **31** | **27** | **29** |
| **TOTAL ACCUSED** | **27** | **16** | **13** |
| **TOTAL CONVICTED** | **25** | **16** | **13** |

**Other**

1. **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.**

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1. Criminal Procedure Code (Official Gazette 150/2010) <https://sherloc.unodc.org/res/cld/document/mkd/1996/criminal-procedure-code-of-the-republic-of-macedonia-as-of-2010_html/FYROM_Criminal_procedure_code_as_of_2010_English.pdf> [↑](#footnote-ref-1)
2. Perpetrators of criminal offences for 2015 available at <http://www.stat.gov.mk/Publikacii/2.4.16.08Kor.pdf> [↑](#footnote-ref-2)
3. Perpetrators of criminal offences for 2016 available at <http://www.stat.gov.mk/Publikacii/2.4.17.09.pdf> [↑](#footnote-ref-3)
4. Perpetrators of criminal offences for 2017 available at <http://www.stat.gov.mk/Publikacii/2.4.18.07.pdf> [↑](#footnote-ref-4)
5. News release on reported, accused and convicted adult perpetrators of criminal offences and children in conflict with the law, 2018 <http://www.stat.gov.mk/pdf/2019/2.1.19.17_mk.pdf> [↑](#footnote-ref-5)