

**Autonomous Women's Centre submission to the UN SRVAW
thematic report on rape as a grave and systematic human
rights violation and gender-based violence against women**

Republic of Serbia

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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.

Criminal Code

Rape

Article 178

(1)

Whoever forces another to sexual intercourse or an equal act by use of force or threat of direct attack against the body of such or other person, shall be punished with imprisonment from five to twelve years.

(2)

If the offence specified in paragraph 1 of this Article is committed under threat of disclosure of information against such person or another that would discredit such person's reputation or honor, or by threat of other grave evil, the offender shall be punished with imprisonment from two to ten years.

(3)

If the offence specified in paragraphs 1 and 2 of this Article resulted in grievous bodily harm of the person against whom the offence is committed, or if the offence is committed by more than one person or in a particularly cruel or particularly humiliating manner or against a juvenile or the act resulted in pregnancy, the offender shall be punished with imprisonment from five to fifteen years.

(4)

If the offence specified in paragraphs 1 and 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of at least 10 years or life imprisonment.

2. Based on the wording of those provisions, is the provided definition of rape:

- a. Gender specific, covering women only YES/NO
- b. Gender neutral, covering all persons YES/NO
- c. Based on the lack of consent of victim YES/ NO
- d. Based on the use of force or threat YES/ NO
- e. Some combination of the above. YES / NO
- f. Does it cover only vaginal rape? YES /NO
- g. Does it cover all forms of penetration? YES/NO

The act of the criminal offence of rape can consist of sexual intercourse or "an equal act" (as worded in the Law) which theoretically can include any act aiming to satisfy the sexual urge, undertaken against the body of a person, including anal and oral penetration of sexual nature, by using any body parts of the perpetrator or an object.

Unfortunately, for the crime of rape or other forms of forced sexual acts judicial practice often requires penetration by a male sexual organ, even in cases against children. All other cases of penetration by hand or foreign objects, or forcing someone to oral sexual act, are not considered rape or forced sexual acts, but prohibited sexual acts (art. 182), for which is still proscribed monetary fine.

- h. Is marital rape in this provision explicitly included? YES / **NO****
 - i. Is the law silent on marital rape? YES/**NO****
 - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES/NO****
 - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /**NO****
- 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, there are no any provisions of that kind.

4. What is the legal age for sexual consent?

Legal age for sexual consent is 14.

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

Criminal Code proscribes a specific criminal act Sexual Intercourse with a Child¹ (Article 180). Paragraph 4 of Article 180 states that the offender of this act shall not be punished for this act if there is no considerable difference between the offender and the child in respect of their mental and physical development.

Criminal Code
Sexual Intercourse with a Child
Article 180

(1)

Whoever has sexual intercourse or commits an equal act against a child, shall be punished with imprisonment from five to twelve years.

(2)

If the offence specified in paragraph 1 of this Article results in grievous bodily harm of the child against whom the act was committed or if the act is committed by several persons or the act resulted in pregnancy, the offender shall be punished with imprisonment from five to fifteen years.

¹ A child is a person under 14 years of age.

(3)

If death of the child results due to the offence specified in paragraphs 1 and 2 of this Article, the offender shall be punished with imprisonment of at least ten years or life imprisonment.

(4)

An offender shall not be punished for the offence specified in paragraph 1 of this Article if there is no considerable difference between the offender and the child in respect of their mental and physical development.

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

As stated previously, rape is defined in Article 178 of the Criminal code, as a sexual intercourse or an equal act committed by use of force or threat of direct attack against the body of such or other person, for which the offender shall be punished with **imprisonment from five to twelve years** (Paragraph 1).

If the offence specified in paragraph 1 of this Article is committed under threat of disclosure of information against such person or another that would discredit such person's reputation or honour, or by threat of other grave evil, the offender shall be punished with **imprisonment from two to ten years** (Paragraph 2).

If the offence specified in paragraphs 1 and 2 of this Article resulted in grievous bodily harm of the person against whom the offence is committed, or if the offence is committed by more than one person or in a particularly cruel or particularly humiliating manner or against a juvenile or the act resulted in pregnancy, the offender shall be punished with **imprisonment from five to fifteen years** (Paragraph 3).

If the offence specified in paragraphs 1 and 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of **at least 10 years or life imprisonment** (Paragraph 4).

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?

Victims of violent offences, included rape, have the right to receive **compensation from the perpetrator**, as the Law on Contracts and Torts stipulates for cases of violation of individual rights. They may receive compensation by filing a property legal request against the perpetrator during the criminal procedure or in a separate lawsuit.

The criminal court decides on property legal request if it assesses that it will not substantially prolong the criminal procedure. If the data from the criminal procedure do not provide reliable grounds to rule a judgment on the property legal request, the court shall refer the victim to file a lawsuit for compensation of damage.

There is no reliable data about the number of criminal procedures in which the victims of any form of violence received the compensation of damage, but in practice the courts usually

refer the victims to file lawsuits for compensation of damage, which additionally complicates the victims' position, since these lawsuits come with high costs and may last long. In such lawsuits, the victim must cover the costs of the procedure in advance, and if the victim is not capable to do so, she can file a request and the court may exempt her from advanced payment of costs of the procedure, bearing in mind her property status. The current practice, that after the end of the criminal proceedings the victim files a civil lawsuit for compensation of damages, only multiplies her victimization before the institutions, as in that case there is no possibility to obtain the status of protected or particularly sensitive witness, so she is exposed to the direct presence of the perpetrator of the crime and often to the representation of evidence, which further traumatizes her.

There is no data about the number of lawsuits initiated for the compensation of damage.

When it comes to the **compensation from the state**, there is no opportunity for victims of violent criminal offences to seek it. This includes victims of rape, who have suffered serious bodily harm or health impairment. As the State noted in the Comments submitted by Serbia on GREVIO's final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence – “Due to the poor economic situation and the substantial deficit in the state budget, there is no national fund established for this purpose, and no budgetary funds were allocated. This is why, when ratifying the Istanbul Convention, Serbia was forced to put on hold Article 30, paragraph 2, which refers to the national fund for providing compensation of damage for grave injuries or grave health impairment resulting from criminal offences included in the Convention. For the same reason, Serbia still hasn't ratified the European Convention on Compensation of Victims of Violent Crimes which it signed in October 2010”.

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? **YES / NO**

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

The law does not present an exhausting list of aggravating and mitigating circumstances, but gives examples of some circumstances that the court particularly takes into consideration,

such as: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behavior after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender.

The court is obliged to take into consideration all the circumstances relevant to the offence, the perpetrator and the victim, including past behavior and criminal record of the perpetrator, his past relationship with the victim, his history of violence towards the victim, the circumstances under which the offence was committed, the gravity of physical and psychological consequences of the act to the victim, any third persons who may have attended the commission of the offence, etc.

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.

The statute of limitations for the basic act of rape (paragraph 1 of Article 178) occurs 15 years after it occurs.

The statute of limitations does not occur when it comes to the most serious form of the criminal offense of rape, for which a sentence of life imprisonment can be imposed - paragraph 4 of Article 178 - if the death of the person who was raped occurred.

The statute of limitations also does not occur when the act was committed against a minor - paragraph 3 of Article 178.

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.

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.

	2018	2017	2016	2015
No of reported persons (adults)	76	77	91	88
No of accused persons (adults)	31	46	68	73
No of convicted	35	39	51	50

persons (minors)				
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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.

Statistical data on rape show that this criminal offence is still rarely reported and that statistics has not changed in the last decade. There are no general or specialized protocols for actions of the institutions in rape cases. Rape victims give statements to the police and are then sent to the gynecologists for examinations, where vaginal swabs are taken. During the gynecological examination the victims are not tested for sexually transmitted diseases or HIV, are not given pills for immediate contraceptive protection nor are they offered to speak with a psychologist. Additionally, if the victims have other injuries on their body, those injuries will not be properly examined by the doctor of forensic medicine, other biological traces will not be collected from the victim's body or clothes, and the victim will not be tested for rape drugs. If victims choose to be examined by the doctor of forensic medicine they will be obligated to pay for that examination – minimum 42 euro.

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When it comes to survivors of sexual violence in conflict, they are still not recognized as civil victims of war, as the Law on the Rights of Soldiers, Disabled Veterans, Civilian Disabled Veterans and Family Members define the civil victim of war only a person who suffered psychical injury of 50%, without taking into account that consequences of sexual violence are usually very different. This also means that survivors of rape, or other sexual crimes, can't be provided with a status of civil victim, which disables them from the range of benefits and compensations. Serbia is the only country in the region that has not recognized by its laws survivors of sexual violence during the war and has not provided any form of reparation for them.

Consulted literature

- IMPROVED LEGISLATION – FAILED PROTECTION: Independent Report on the Implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. 2018. Autonomous Women’s Centre. Belgrade
- Comments submitted by Serbia on GREVIO’s final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report). 2018. Republic of Serbia Coordination Body for Gender Equality. Belgrade
- Smernice za unapređenje sudske prakse u postupcima za naknadu štete žrtvama teških krivičnih dela u krivičnom postupku (eng. *Guidelines for the Improvement of Judicial Practice in Proceedings for Compensation to Victims of Serious Crimes in Criminal Proceedings*). 2019. Republic of Serbia Supreme Court of Cassation and OSCE Mission to Serbia. Belgrade
- Kaznena politika u Srbiji – zakon i praksa (eng. *Criminal policy in Serbia - Law and practice*). 2018. US Department of Justice - Office for International Assistance, Training and Professional Training in the Judiciary. Belgrade