

SRVAW Questionnaire on criminalization and prosecution of rape

**Organization: National Network to end violence against women and domestic violence-
Republic of North Macedonia**

Definition and scope of criminal law provisions

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.

National legislation in North Macedonia only partially covers some forms of sexual violence. Rape and forced prostitution are recognized as criminal offences. Rape is criminalized in Article 186 of the Criminal Code, which forbids coercion, intercourse or other sexual acts, and acts that include both the use of force and threat, as well as threat of harming the honour and reputation of the victim or another close person. In this case, a prosecution is ex-officio, regardless of the relationship between the victim and the perpetrator. Other forms of rape are also criminalized, more precisely the rape of a helpless person (Article 187), and rape by abusing one's position (Article 189). Prostitution is criminalized in Article 191 of the Criminal Code, specifically defined as the act of forcing a person to provide sexual services; acts of engaging voluntarily in any prostitution acts are also criminalized. Other types of violence, such as sexual abuse, are not clearly defined and are left to the interpretation of the criminal courts and prosecutors.

Criminal Code-Republic of North Macedonia¹

Chapter nineteen - 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

¹ https://www.legislationline.org/download/id/8145/file/fYROM_CC_2009_am2018_en.pdf



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 1 to 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 be 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.

Mediation in prostitution Article 191

- (1) Whosoever recruits, instigates, stimulates or entices another to prostitution, or whosoever in any way participates in handing over a person to someone for the purpose of prostituting, shall be sentenced to imprisonment of five to ten years.
- (2) Whosoever because of profit enables another to use sexual services shall be sentenced to imprisonment of three to five years. (3) Whosoever organizes the commission of the crimes referred to in paragraphs (1) and (2) or commits the crimes while performing family violence shall be sentenced to imprisonment of minimum ten years.
- (5) If the crime referred to in this Article is committed by a legal entity, it shall be fined.
- (6) The immovables used and the items applied while committing the crime shall be seized.

Criminal procedure law²

1. Based on the wording of those provisions, is the provided definition of rape:
1. Gender specific, covering women only YES/NO✓
 2. Gender neutral, covering all persons YES✓/NO
 3. Based on the lack of consent of victim YES/ NO✓
 4. Based on the use of force or threat YES✓/ NO
 5. Some combination of the above. YES / NO✓
 6. Does it cover only vaginal rape? YES /NO✓

² https://www.legislationline.org/download/id/6377/file/FYROM_CPC_am2010_en.pdf



7. Does it cover all forms of penetration? YES/NO✓
8. Is marital rape in this provision explicitly included? YES / NO✓
9. Is the law silent on marital rape? YES✓/NO
10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO✓-**But it is taking in concern when the crime happened from a close person as an aggravating circumstances Article 189-Criminal Code.**
11. Is marital rape excluded in the provisions, or is marital rape not considered a crime? YES/NO✓-**every crime that is reported as rape must be taken into consideration regardless if is happened in marriage or not.**

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? **NO, as mentioned previously if the rape is reported it must be taken by a public prosecutor ex officio.**

3. What is the legal age for sexual consent?- **According to Macedonian law it is forbidden to have sexual intercourse with a child. A child is considered a person up to 18 years old. But according to our Family law with the permission of parents and the Inter-Municipal Center for social work, marriage can also be concluded with a child who has reached 16 years of age before a competent court.**

4. Are there provisions that differentiate for sexual activity between peers? If so, please provide them. **According to Law for Juvenile justice-North Macedonia in Article 13 is predicted that *No sanction determined by this Law may be applied to a juvenile who at the time of commitment of the act which according to the law is determined as a criminal act or offense is younger than fourteen years – child at risk.*** Except for the limitation predicted in Article 13 in Part three from this law are predicted sanctions for criminal acts and misdemeanors who are general rules for sanctions imposed on juveniles. According to Article 27, *The provisions from the general part of the Criminal Code and the Law on Misdemeanors and other laws shall be applied for the acts which, according to the law, contain features of criminal acts or misdemeanors committed by juveniles. The special provisions applicable for the juveniles –perpetrators of criminal acts - shall be applied under the conditions defined in the provisions of this chapter and for the adults who are on trial for criminal acts that they had committed as juveniles and as an exception for persons who had committed crime as younger adults.*

5. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape. **Article 186 from the Criminal Code regulates the punishment for perpetrators.**

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 a minimum imprisonment of four years.

(4) Whosoever forces another to intercourse by a serious threat that he shall disclose something about him or 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 1 to 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.

6. 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? **Nothing in this moment, but a new draft law for the payment of financial compensation to victims of crime is being prepared but has not yet been adopted. The reason for the adoption of the law arises from the need for harmonization with the international standards and Article 53 paragraph 3 item 2 of the Law on Criminal Procedure ("Official Gazette of the Republic of Macedonia" no. 150/10 and 100/12), where it is prescribed that under the special regulations, the victim of a crime for which a prison sentence of at least 4 years is prescribed, inter alia, is entitled to compensation for material and non-material damage from a state fund under conditions and in a manner prescribed by a special law if the compensation is not can be provided by the convict.**

7. Aggravating and mitigating circumstances

Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they? **YES. First is the main definition of rape „*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*”**

- **If the act is committed against a child who turned 14, the offender shall be sentenced to imprisonment of at least ten years.**
- **If a severe bodily injury, death, or any other severe consequences were caused**

because of the crime 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 a minimum imprisonment of four years.

- **Whosoever forces another to intercourse by a serious threat that he shall disclose something about him or 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.**
- **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 1 to 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.**

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

13. 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

14. Is rape by spouse or intimate partner an aggravating circumstance? **YES/NO**

8. Does the law foresee mitigating circumstances for the purposes of punishment? **YES.**
According to our law on criminal procedure, every judge, when assessing the sentence and when pronouncing the verdict, takes into account the aggravating and mitigating circumstances of the condition of the defendant and the circumstances under which the crime was committed.

9. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **YES/NO -the procedure is conducted by ex officio.**

10. 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. if the perpetrator marries the victim of rape? **YES/NO**√

- if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **YES/NO**√

Prosecution

2. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES**√/NO

3. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES/NO**√

4. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of



5. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO✓
6. Please provide information on the statute of limitations for prosecuting rape.
7. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES✓/NO
8. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES✓ **It is based on forensic medicine..**
9. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO
10. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. **It is regulated in Criminal procedure law**

Chapter V - VICTIM, INJURED PARTY AND PRIVATE

Article 53 Victim’s rights

(1) The victim of a crime shall have the following rights: 1) to participate in the criminal procedure as an injured party by joining the criminal prosecution or for the purpose of a legal-property claim for damages; 2) to get special care and attention by the bodies and entities that participate in the criminal procedure; and 3) to get an effective psychological and other professional assistance and support by bodies, institutions, and organizations that provide for help to crime victims.

(2) The police, the public prosecutor, and the court shall act with special care towards the victims of criminal offenses, advising them of their rights as referred to in paragraph 1 of this Article and Articles 54 and 55 of this Law and they shall take care of their interests when making decisions for criminal prosecution of the accused, i.e. when undertaking actions during the criminal procedure when the victim has to be present in person when they have to draft an official note or record.

(3) In accordance with the special regulations, any victim of a crime, which entails a prison sentence of at least four years, shall have the right to 1) get a councilor paid by the state budget before giving a statement, i.e. declaration or filing the legal-property claim, if the victim has a serious psychophysical impairment or if there are serious consequences as a result of the crime; and 2) be compensated for material and non-material damages from a state fund, under conditions and in a manner as prescribed in a separate law, if the damage caused cannot be compensated from the convicted person.

Article 54 Special rights of victims of vulnerable categories of victims

(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, 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 a 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 requires special care and protection; or 2) when the child is a human trafficking victim, a 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 interviews 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.

Article 55 Special rights of victims of crimes against gender freedom and gender morality, humanity and international law

(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 the 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, before the very first examination at the latest and to prepare an official note or record accordingly.

War and/or conflict



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

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

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

Has the Rome Statute of the International Criminal Court (ICC) been ratified? **YES³/NO**

Data

Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years. **This data are not publicly available. The National network to end VAW and DV, send request for public information to the ministry of interior, but to the day of submitting this report the answer is not received. These information are regarding reported cases. For prosecuted and sanctioned cases, data is in jurisdiction of the Courts and Public prosecution, which institution doesn't collect gender-disaggregated data.**

Other

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.

The biggest barrier to not reporting sexual violence and rape is the insensitivity of the police, blaming the victim and focusing on the cause, i.e. what she did to be raped (how she was dressed, whether she drank alcohol or not, etc.). Macedonian police tend to protect the perpetrator, especially if it is an individual who has a public position.

The great and still existing influence and beliefs of the patriarchal system, according to which a woman has an obligation to satisfy the needs of her husband when he wants that, whether the need is mutual, makes it almost impossible to report marital rape or rape in intimate partner relationship. The long duration of court proceedings, the multiple exposure of the victim and her re-victimization in the process, as well as the low sentences for the perpetrators, are another reason that discourages victims from reporting.

Finally, the lack of specialized support for victims (such as crisis centers, counseling centers, etc.) is just another confirmation that Macedonian institutions are ignoring this problem.

³ https://asp.icc-cpi.int/en_menus/asp/states%20parties/eastern%20european%20states/Pages/the%20former%20yugoslav%20republic%20of%20macedonia.aspx

