



**TO  
MS. DUBRAVKA ŠIMONVIĆ  
SPECIAL RAPPORTEUR ON  
VIOLENCE AGAINST WOMEN**

**DEAR MRS. ŠIMONVIĆ,**

In my capacity as Ombudsman of the Republic of Bulgaria I highly appreciate your efforts and contribution for the protection of women' rights in line with international human rights standards.

Please find attached the answers to the questionnaire on rape as a grave and systematic human rights violation and gender-based violence against women regarding the report for the 75th session of the General Assembly.

With confidence that the good cooperation between the Ombudsman and the Special Rapporteurs on the rights of women will continue, I remain at your disposal.

Sofia, 20<sup>th</sup> of May 2020

**ASSOC. PROF. DR. DIANA KOVATCHEVA  
OMBUDSMAN OF THE REPUBLIC OF BULGARIA**



## 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.*

According to article 152 of the Special Part of the Criminal Code of the Republic of Bulgaria the rape is defined as following:

- (1) Whosoever copulates with a female person:
    1. unable to defend herself and without her consent;
    2. by compelling her to it by force or threat;
    3. by bringing her to a helpless state,shall be punished for rape by imprisonment of two to eight years.
  - (2) The penalty for rape shall be imprisonment of three to ten years:
    1. if the raped has not accomplished eighteen years of age;
    2. if she is a descending kinswoman;
    3. if it is committed for a second time.
  - (3) The penalty for rape shall be imprisonment of three to fifteen years:
    1. if it has been committed by two or more persons;
    2. if an average bodily harm has been caused;
    3. if a suicide attempt has followed;
    4. if it has been committed for the purpose of engagement in subsequent lewd activities or prostitution;
    5. if it represents a dangerous recidivism.
  - (4) The penalty for rape shall be imprisonment of ten to twenty years:
    1. if the raped has not accomplished fourteen years of age;
    2. if severe bodily harm has been caused;
    3. if a suicide attempt has followed;
    4. if it represents a particularly severe case.
2. *Based on the wording of those provisions, is the provided definition of rape:*
    - a. *Gender specific, covering women only.* **YES**
    - b. *Gender neutral, covering all persons.* **NO**
    - c. *Based on the lack of consent of victim.* **YES**
    - d. *Based on the use of force or threat.* **YES**
    - e. *Some combination of the above.* **YES** *Please specify.* **Combination between a helpless state/force or threat and lack of consent of the victim.**
    - f. *Does it cover only vaginal rape?* **YES**
    - g. *Does it cover all forms of penetration?* **/NO**  
*Please specify:* **According to criminal law and case law in the Republic of Bulgaria, copulation means: sexual intercourse in which the male penis penetrates the vagina of the woman. This is related to the completion of the crime. Before that moment the attempt is unfinished, and after it the action is completed.**
    - h. *Is marital rape in this provision explicitly included?* **NO**
    - i. *Is the law silent on marital rape?* **YES**



- j. *Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?* **YES**
- k. *Is marital rape excluded in the provisions, or is marital rape not considered as a crime?* **NO**

*\*Note for j. and. k: Although the marital rape is not explicitly included in Criminal Code, in the case of marital rape will apply the general provisions of the rape.*

- 3. *To what extent legislation in your country excludes 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 relevant articles with corresponding translations.*

The Bulgarian criminal law doesn't exclude criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship.

- 4. *What is the legal age for sexual consent?*

According to the laws of the Republic of Bulgaria, at the age of 18, the person becomes of age and can understand the nature and significance of their actions and to manage them. Persons who are 14 or under 18 are juveniles. They are judged on a case-by-case basis whether they have been able to understand the nature and significance of their actions and to guide them. Persons under 14 are minors. For them, there is a presumption that, as a rule, they cannot understand the nature and significance of their actions and guide them.

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

No, there aren't.

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

The basic composition referred to in Article 152, paragraph 1 of the Criminal Code, the crime of rape shall be punished by imprisonment for two to eight years. On the qualified forms of rape referred to in Article 152 (2), (3) and (4) of the Criminal Code, the penalties are imprisonment of three to ten years, imprisonment of three to fifteen years and imprisonment of ten to twenty years.

- 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 has the right to participate in the proceedings as a civil claimant and a private prosecutor. In this way, a civil claim is made for property and non-pecuniary damage for joint consideration in criminal proceedings. When rendering the verdict, the court also rules on the civil claim.



**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*
  - 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*
  - c. *Is rape by spouse or intimate partner an aggravating circumstance? NO*
9. *Does the law foresee mitigating circumstances for the purposes of punishment? NO*
10. *Is reconciliation between the victim and the perpetrator allowed as part of a legal response? NO*
  - a. *Regardless of the law, is reconciliation permitted in practice? NO*
11. *Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? NO*
  - a. *if the perpetrator marries the victim of rape? NO*
  - b. *if the perpetrator loses his “socially dangerous” character or reconciles with the victim? NO*

**Prosecution**

12. *Is rape reported to the police prosecuted ex officio (public prosecution)? YES*
13. *Is rape reported to the police prosecuted ex parte (private prosecution)? NO*
14. *Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? NO*
15. *Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? NO*
16. *Please provide information on the statute of limitations for prosecuting rape.*

According to art. 79 of Criminal Code: The criminal prosecution and the fulfilment of the penalty shall be excluded:

1. when the perpetrator dies;
2. due to running of the statute of limitations;
3. for subsequent pardon.

17. *What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?*

In Bulgarian law there is no explicit provision about the case for child – victim of rape and the general rules apply. The victim may report at any time, only assessing before the start of investigation if the elapse of time limitation has been terminated.

18. *Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? NO*

There are no mandatory requirements for proof of rape – applicable evidence means may include medical evidence or/and the need for witnesses.

19. *To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?*



Penal Procedure Code provides the possibility of hearing the case in camera. These are precisely art. 263, namely, the hearing of the case or performance of concrete Court procedural actions shall be performed behind closed doors, if is needed for the keeping the state secret and morality, as well as in cases of witness protection. This provision may also be applied where necessary to prevent the disclosure of facts from the private life of citizens. A juvenile or juvenile witness - a victim of a crime - may be questioned in camera.

In all cases, the sentence shall be made public.

20. *What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.*

According to Art. 280, par. 6 of Penal Procedure Code: Minor witnesses, or a witness with specific needs of protection, who have been questioned during a penal proceeding shall be questioned again only if their testimonies cannot be read out under the conditions and order of Art. 281 or the second questioning is of significant importance for revealing the truth. The questioning shall be conducted while taking measures for avoiding contact with the defendant, including in especially equipped premises.

In addition, according to art. 139, par. 10 of Penal Procedure Code: Interrogation of a witness with specific needs of protection shall be conducted in taking measures for avoiding conflict with the defendant, including by video – conference or telephone conference.

#### **War and/or conflict**

21. *Is rape criminalized as a war crime or crime against humanity?* **NO**  
22. *Is there a statute of limitations for prosecuting rape in war or in conflict contexts?* **NO**  
23. *Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?* **NO**  
24. *Has the Rome Statute of the International Criminal Court (ICC) been ratified?* **YES**

The Rome Statute of the International Criminal Court has been ratified by a law adopted by the 39th National Assembly on March 15, 2002 - SG, No. 31 of 2002 with effect from 1 July 2002.

#### **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.*

The ombudsman institution does not collect such information.

#### **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 its position, presented to the attention of CEDAW committee on 19.02.2020, the Ombudsman of the Republic of Bulgaria recommended to the by Bulgarian authorities to consider the incrimination of marital rape.