**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 218 of Law no. 286/2009 on the Criminal Code with subsequent amendments and completions, published in the Official Gazette no. 510 of July 24, 2009, rape is regulated as follows:

(1) Sexual intercourse, oral or anal intercourse with a person, committed by constraint, by rendering the person in question unable to defend themselves or to express their will or by taking advantage of such state, shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(2) The same penalty shall apply to any act of vaginal or anal penetration committed under par. (1).

(3) It shall be punishable by no less than 5 and no more than 12 years of imprisonment and a ban on the exercise of certain rights, when:

a) the victim is entrusted to the perpetrator for care, protection, education, guard or treatment; b) the victim is a direct-line relative, a brother or sister; c) the victim is a minor; d) the act was committed for the production of pornographic materials; e) the act resulted in bodily harm; f) the act was committed by two or more individuals, acting together.

4) If such act resulted in the victim's death, it shall be punishable by no less than 7 and no more than 18 years of imprisonment and a ban on the exercise of certain rights.

(5) Criminal action for the act set by par. (1) and par. (2) shall be initiated based on a prior complaint filed by the victim.

(6) The attempt to commit the offenses set out in par. (1) - (3) shall be punishable.

Aspects regarding the rules applicable to surveillance or investigation techniques in case of committing rape or the possibility of ordering the measure of preventive arrest of the defendant in case of committing rape are regulated by Law no. 135/2010 on the Code of Criminal Procedure with subsequent amendments and completions, published in the Official Gazette no. 486 of July 15, 2010.

Article 139 (2) of the Code of Criminal Procedure provides:

(2) Electronic surveillance may be ordered in case of offences against national security stipulated by the Criminal Code and by special laws, as well as in case of drug trafficking, unlawful transactions with precursors or other products liable to have psychoactive effects, offences of failure to observe the law on firearms, ammunition, nuclear materials and explosive materials and restricted explosive precursors, trafficking and exploitation of vulnerable persons, acts of terrorism, money laundering, counterfeiting of currency stamps or securities, counterfeiting electronic payment instruments, offences committed by means of computer systems or electronic communication devices, offences against property, blackmail, **rape**, illegal deprivation of freedom, tax evasion, corruption offences and offences assimilated to corruption, offences against the European Union’s financial interests, or in case of other offences in respect of which the law sets forth a penalty of no less than 5 years of imprisonment..

Article 223 (2) of the Code of Criminal Procedure provides:

(2) Pre-trial arrest of the defendant can also be ordered if the evidence generate reasonable suspicion that they committed an offence with direct intent against life, an offence having caused bodily harm or death of a person, an offence against national security as under the Criminal Code and other special laws, an offence of drug trafficking, unlawful transactions with precursors or other products liable to have psychoactive effects, an offence of failure to observe the law on firearms, ammunition, nuclear materials and explosive materials and restricted explosive precursors, trafficking and exploitation of vulnerable persons, acts of terrorism, money laundering, counterfeiting of currency stamps or securities, blackmail, **rape**, illegal deprivation of freedom, tax evasion, assault of an official, judicial assault, a corruption offence, an offence committed by means of computer systems or electronic communication device or an offence in respect of which the law sets forth a penalty of no less than 5 years of imprisonment and, based on an assessment of the seriousness of facts, of the manner and circumstances under which it was committed, or the entourage and the environment from where the defendant comes, of their criminal history and other circumstances regarding their person, it is decided that their deprivation of liberty is necessary in order to eliminate a threat to public order.

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 YES
	4. Based on the use of force or threat  YES
	5. Some combination of the above.  YES
	6. Does it cover only vaginal rape?  NO
	7. Does it cover all forms of penetration? YES If yes, please specify (Sexual intercourse, oral or anal intercourse with a person; any other acts of vaginal or anal penetration committed)
	8. Is marital rape in this provision explicitly included? NO
	9. Is the law silent on marital rape? YES
	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?**

In the Romanian Criminal Code the age for sexual consent is not explicitly specified. However, the criminal legislation seeks to protect minors in view of their increased vulnerability to potential coercion acts to which they may be subjected for the purpose of sexual acts. Taking into account these aspects, articles 220-222[[1]](#footnote-1) of the Criminal Code regulate specific offences (sexual intercourse with a minor, sexual corruption of minors and recruitment of minors for sexual purposes) that seek to protect the social values owned by minors.

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

According to the provisions of Art. 221-220[[2]](#footnote-2) of the Criminal Code, sexual intercourse with a minor and sexual corruption of minors are not punishable if the age difference does not exceed 3 years.

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

The crime of rape, regulated by Article 218, paragraph 1 of the Criminal Code, is punishable by imprisonment from 3 to 10 years and a ban on the exercise of certain rights.

In the aggravated version of this type of crime provided by Article 218, paragraph 3 of the Criminal Code, we refer to the rape committed in the following cases: a) the victim is entrusted to the perpetrator for care, protection, education, guard or treatment; b) the victim is a direct-line relative, a brother or sister; c) the victim is a minor; d) the act was committed for the production of pornographic materials; e) the act resulted in bodily harm; f) the act was committed by two or more individuals, acting together., rape is punishable by imprisonment from 5 to 12 years and a ban on exercising certain rights.

If the victim died because of the rape (hypothesis provided for in Article 218 paragraph (4), the penalty is imprisonment from 7 to 18 years and a ban on the exercise of certain rights.

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 Law no. 211 of May 27, 2004 on some measures to ensure the protection of victims of crimes, published in the Official Gazette of Romania no. 505 of June 4, 2004, in order to ensure the protection of victims of crime, regulates some measures to inform victims of crime about their rights, as well as about psychological counselling, free legal assistance and financial compensation provided for victims by the state. Articles 14 and 21 of the Law specify the measures for the protection of victims of rape and the conditions for granting protection measures.

ARTICLE 14

1. Free legal assistance shall be granted, on request, to the following categories of victims:

a) the persons on whom an attempt was made in the offenses of murder, aggravated murder provided by Art. 188 and 189 of the Criminal Code, an offence of bodily harm, provided in art. 194 of the Criminal Code, an intentional offence that resulted in bodily harm to the victim, a crime of rape, sexual assault, sexual intercourse with a minor, sexual corruption of minors provided in art. 218-221 of the Criminal Code;

b) the spouse, children and dependents of the deceased persons following the committing of offences of murder, aggravated murder, provided in art. 188 and 189 of the Criminal Code, as well as intentional offences that resulted in the death of the person.

(2) The free legal assistance is granted to the victims provided in par. (1) if the offence was committed on the territory of Romania or, if the crime was committed outside the territory of Romania, if the victim is a Romanian or foreign citizen who legally resides in Romania and the criminal trial takes place in Romania.

**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?  YES/NO
	2. 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
	3. Is rape by spouse or intimate partner an aggravating circumstance? NO
2. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO **If yes, please specify.**
3. **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?**
	1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

Although the reconciliation of the parties is not expressly provided as part of the procedure for investigating the crime of rape, for initiating criminal proceedings against the perpetrator, in case of committing the crime of rape in the forms provided by art. 218, para. (1) and (2) of the Criminal Code, the prior complaint of the victim is provided as a condition of admissibility.

For crimes for which criminal action implementation is conditional on the introduction of a prior complaint from the injured party, the absence of such complaints removes criminal liability. If the injured person is a person with limited legal capacity, criminal proceedings can move on its own accord.

At the same time, it is necessary to take into account the provisions of Article 67 of Law no. 192/2006 on mediation and organization of the mediator profession. These provisions do not expressly regulate the crime of rape, but through the method of systemic interpretation we conclude that the crime of rape having as a requirement of procedure the prior complaint of the injured person, can be included in the category of crimes subject to mediation (as an alternative means of solving of disputes).

According to Law no. 192/2006:

(2) On the criminal side of the case, the provisions on mediation are only applied in cases of offenses for which, according to the law, the withdrawal of the prior complaint or the reconciliation of the parties removes criminal liability, if the perpetrator has confessed to the courts or, if the mediation procedure takes place before the beginning of the criminal trial and it is terminated by resolving the conflict and concluding an agreement with the mediator.

(2 ^ 1) In criminal cases where mediation is possible under the conditions provided in par. (1) and (2), it must be carried out so that the victim is not in contact with the perpetrator, unless the parties express their agreement at the conclusion of the mediation agreement.

(2 ^ 2) Concluding a mediation agreement in the criminal side of an offense, according to par. (1), is a sui generis case that removes criminal liability. The conclusion of a mediation agreement in the criminal side, under the conditions of this law, can take place until the reading of the act referring a case to court.

Mediation is an option and not an obligation for the parties. Thus, if the rape victim refuses mediation, the criminal investigation is continued, and the perpetrator is tried and convicted. No one is obliged to participate in mediation, and participation can only take place with the consent and under the conditions of the injured party.[[3]](#footnote-3)

1. **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?** YES/NO **If yes, please specify.**
	1. if the perpetrator marries the victim of rape? YES/NO
	2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

**Prosecution**

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

In the aggravated form provided for in Article 218, paragraph 3 of the Criminal Code, the criminal action in the case of the crime of rape is initiated *ex officio* (according to the principle of formality of criminal law proceedings).

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

For the simple aspects of this type of crime regulated in paragraphs 1 and 2 of Article 218 of the Criminal Code, the criminal proceedings are initiated upon prior complaint of the victim.

1. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?** YES/NO

If the rape is committed in simple forms, regulated by par. 1 and 2 of art. 218, the investigation of the rape is conditioned by the filing of the preliminary complaint; in case of withdrawal of the preliminary complaint, the criminal liability of the perpetrator cannot be engaged. It is also possible to access the mediation procedure if there is a manifestation of will of the victim and the perpetrator in this regard.

For people with limited legal capacity withdrawal is done with the consent of the persons specified by law. In case of offenses for which the initiation of criminal proceedings is conditional on the introduction of a prior complaint, but criminal proceedings were set in motion ex officio by law, withdrawal of the complaint takes effect only if it is endorsed by the prosecutor.

1. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?** YES/NO
2. **Please provide information on the statute of limitations for prosecuting rape.**

According to Article 218 of the Criminal Code, the sanctions applied in the case of the crime of rape are different, if the simple form of the crime is considered (imprisonment from 3 to 10 years), or if aggravated forms of the crime are considered (imprisonment from 5 to 12 years, respectively imprisonment from 7 to 18 years if the act resulted in the victim's death).

Regarding the limitations for criminal liability, according to article 154 of the Romanian Criminal Code, the prescription terms will act differently, depending on the severity of the sanction applied.

Thus,

The statute of limitations term for criminal liability is as follows:

a) 15 years, when the penalty provided by the law for the offense committed is life imprisonment or a term of imprisonment exceeding 20 years;

b) 10 years, when the penalty provided by the law for the offense committed is a term of imprisonment exceeding 10 years, but no more than 20 years;

c) 8 years, when the penalty provided by the law for the offense committed is a term of imprisonment exceeding 5 years, but no more than 10 years;

d) 5 years, when the penalty provided by the law for the offense committed is a term of imprisonment exceeding one year, but no more than 5 years;

e) 3 years, when the penalty provided by the law for the offense committed is a term of imprisonment not exceeding one year or a fine. Therefore, once the criminal liability of the perpetrator who committed the act of rape is individualized, the limitation period of criminal liability will be established.

In case of offenses against freedom and sexual integrity, of the trafficking and exploitation of vulnerable persons and the crime of child pornography committed against a minor, the limitation term runs as of the date on which it became major. If the underage person dies before reaching adulthood, the limitation period runs as of the date of death.[[4]](#footnote-4)

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

According to the Criminal Code: in case of offenses against freedom and sexual integrity, of the trafficking and exploitation of vulnerable persons and the crime of child pornography committed against a minor, the limitation period runs from the date on which they became major.

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

ART. 15 of the Code of Criminal Procedure establishes the conditions for initiating or exercising criminal proceedings, establishing this aspect in close connection with obtaining evidence: The criminal action is initiated and exercised when there is evidence that results in the reasonable presumption that a person has committed an offense, and when there are no circumstances preventing its initiation or use. Given that the criminal law does not distinguish between offences, we accept this legal premise for the initiation of criminal proceedings for the crime of rape (except for forms of rape for which the prior complaint of the victim is required; for these, it is necessary to include fulfilment of the condition of the prior complaint).

1. **Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?** YES/NO
2. **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**

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

**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.

According to the information provided by the General Inspectorate of the Romanian Police at the request of the FILIA Center, in the first 6 months of 2016, at the national level, 81 cases of domestic rape were recorded. The victim was the aggressor`s partner in 21% of cases and son or daughter of the aggressor in 44.4% of reported cases. Police data show that all the perpetrators were men.

In 2017, 181 rapes, 44 sexual assaults, 108 sexual acts with a minor and 84 murders were reported. In the case of rape and sexual assault reported to the police, most of the victims were underage girls. In 2017, 46 women, 26 men and 12 children (6 girls and 6 boys) lost their lives due to violence by former or current partners or other family members; in 73 of 84 cases the perpetrator was a male adult.

For 2018, the Romanian Police reports 887 cases of rape.

According to the NGO Alianța Română fără Orfani (Romanian Alliance without Orphans) which centralized statistics on rape, for 2018 the Romanian Police recorded an average of 2.5 rapes every day, and the recidivism rate for those released from prison was 70%, some recurrences taking place only 3 days after release.

In the first 6 months of 2019, 88 rapes were reported, 43 sexual assaults, 33 sexual acts with a minor, according to FILIA Center reports based on data from the General Inspectorate of Police. The General Inspectorate of Police reported 918 rape offences throughout the year 2019 (according to the definition of the offence provided by art. 218 from the new Criminal Code). [[5]](#footnote-5),

**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.**

Given the scale of domestic violence, legislative loopholes regarding the express criminalization of marital rape as an offenceare a barrier to protecting the victim in the event of rape and prosecuting perpetrators. We note that by Law no. 174/2018 on amending and supplementing Law no. 217/2003 for the prevention and combating of domestic violence, steps were taken in the sense of introducing, in the sphere of criminal wrongdoing, the act of rape committed against the spouse / life partner. Thus, in accordance with the Law no. 174/2018, domestic violence means any inaction or intentional action of physical, sexual, psychological, economic, social or spiritual violence that occurs in the family or domestic environment or between spouses or ex-spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim. "

However, the wording used by Law no. 174/2018 “sexual violence” is not made explicit in the content of the law nor can it be associated *de plano* with the crime of rape.

1. Article 220

Sexual intercourse with a minor

(1) Sexual intercourse, oral or anal intercourse and other acts of vaginal or anal penetration committed with a minor aged between 13 and 15 years shall be punishable by no less than 1 and no more than 5 years of imprisonment.

(2) act in para. (1) committed against a minor who has not attained the age of 13 years shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights.

(3) The act set by par. (1), committed by a person of age with a juvenile aged 15 to 18 shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights, when:

a) the child is a family member of the person of age;

b) the child is in care, protection, education, protection or treatment of the perpetrator or they abused of their recognised position of trust or authority over the minor or the particular vulnerability of the latter resulting from a mental or physical disability or as following a dependent;

c) the act endangered the life of a minor;

d) has been committed for the purpose of producing pornographic material.

(4) the act set by par. (1) and (2) shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights when:

a) the child is a family member;

b) the child is in care, protection, education, protection or treatment of the perpetrator or they abused a recognized position of trust or authority over the minor;

c) the act endangered the life of a minor;

d) has been committed for the purpose of producing pornographic material

(5) The acts set out in paragraph. (1) and. (2) shall not be punishable if the age difference does not exceed 3 years.

(6) The attempt to commit offences set out in par. (1) ¬ (4) shall be punished.

Article 221

Sexual corruption of minors

(1) The commission of a sexual act other than the one set out in Art. 220 against a minor who has not turned 13 of age, as well as determining a juvenile to endure or carry out such an act shall be punishable by no less than 1 and no more than 5 years of imprisonment.

(2) The punishment shall be no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights, when:

a) the minor is a direct-line relative, a brother or sister;

b) the child is entrusted to the perpetrator for care, protection, education, security or treatment;

c) the act was committed for the production of pornographic materials.

d) the act endangered the life of the child.

(3) The sexual act of any nature, committed by a person of age in the presence of a juvenile who has not turned 13 shall be punishable by no less than 6 months and no more than 2 years of imprisonment or by a fine.

(4) Determination of a juvenile who has not yet turned 13 years of age, by a person of age, to assist to the commission of acts that are exhibitionist in nature or to shows or performances in which sexual acts of any kind are committed, and making materials that are pornographic in nature available to the juvenile shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine.

(5) The acts set out in par. (1) shall not be punishable if the age difference does not exceed 3 years.

(6) The attempt to commit offences set out in par. (1) ¬ (4) shall be punished.

ART. 222

Recruitment of minors for sexual purposes

The act of an individual of age to propose that a minor who has not yet turned 13 years of age to meet for the purposes of the commission of one of the acts set out in Art. 220 or Art. 221, including when such proposal has been made using remote communication means, shall be punishable by no less than 1 month and no more than 1 year of imprisonment or by a fine. [↑](#footnote-ref-1)
2. *Idem* [↑](#footnote-ref-2)
3. Par. (3) of art. 67 of Law 192/2006: The parties and main litigants cannot be obliged to accept the mediation procedure. [↑](#footnote-ref-3)
4. Par. (4) Art 154 Criminal Code. It amended by section 154. 1 of art. I Emergency Ordinance no. 18 of May 18, 2016 published in the Official Gazette. 389 of 23 May 2016 [↑](#footnote-ref-4)
5. <https://www.politiaromana.ro/files/pages_files/DATE_INTERNET_2019.xls> [↑](#footnote-ref-5)