Annex - 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 Criminal code and Criminal procedure code.**

**Criminal Code** (Official Gazette no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19) prescribes following forms of serious sexual violence as criminal offences:

TITLE XVI CRIMINAL OFFENSES AGAINST SEXUAL FREEDOM

Rape

Article 153

1. Whoever engages in sexual intercourse or an equivalent sexual act with another person without this person's consent, or whoever induces another person to engage without this person’s consent in sexual intercourse or an equivalent sexual act with a third party or to perform without their consent a sexual act equated to sexual intercourse upon himself or herself, shall be punished by imprisonment for one to five years.
2. Whoever commits the offence referred to in paragraph 1 of this Article by the use of force or by threat of an imminent attack on the life or limb of the raped or other person, shall be punished by imprisonment for three to ten years.
3. A perpetrator who is avoidably mistaken as to the existence of consent referred to in paragraph 1 of this Article shall be punished by imprisonment not exceeding three years.
4. A perpetrator who is avoidably mistaken as to the existence of consent referred to in paragraph 2 of this Article shall be punished by imprisonment for one to five years.
5. Consent referred to in paragraph 1 of this Article shall exist if the person decided of their own free will to engage in sexual intercourse or an equivalent sexual act and was capable of making and expressing such a decision. It shall be deemed that no such consent exists in particular if the sexual intercourse or the equivalent sexual act was performed by the use of threat, by fraud, by abusing one's position towards a person who is in a situation of dependence with respect to the perpetrator, by exploiting a person's condition due to which the person was unable to express his or her refusal or if it was performed against a person unlawfully deprived of liberty.

Serious criminal offenses against sexual freedom

Article 154

1. The punishment of imprisonment for three to ten years shall be inflicted on whoever commits the offence referred to in Article 153, paragraph 1, of this Code:
2. against a close person,
3. against a victim especially vulnerable due to their age, illness, addiction, pregnancy, disability, a severe physical or mental disorder,
4. in an especially cruel or especially humiliating manner,
5. out of hatred,
6. together with one or more perpetrators, with several acts of sexual intercourse or equivalent sexual acts being committed against one and the same person,
7. by using weapons or dangerous instruments,

7. in such a manner that it resulted in serious bodily injury or pregnancy of the raped person.

1. Whoever commits the offence referred to in Article 153, paragraph 2, of this Code under the circumstances referred to in paragraph 1 of this Article, shall be punished by imprisonment for five to fifteen years.
2. If the criminal offence referred to in Article 153, paragraph 1 and 2 of this Code, results in the death of the raped person, the perpetrator shall be punished by imprisonment for not less than five years.

Lewd acts

Article 155

1. Whoever, under the conditions set forth in Article 153, paragraph 1, 3 and 5 of this Code when the criminal offence in question has not even been attempted, commits a lewd act, shall be punished by imprisonment not exceeding two years.
2. Whoever, under the conditions set forth in Article 153, paragraph 2 and 4 of this Code when the criminal offence in question has not even be attempted, commits a lewd act, shall be punished by imprisonment not exceeding three years.
3. Whoever, under the conditions set forth in Article 154 of this Code when the criminal offence in question has not even been attempted, commits a lewd act, shall be punished by imprisonment for six months to five years.

Sexual harassment

Article 156

1. Whoever sexually harasses another person who is their subordinate or who is in a situation of dependence with respect to them or who is especially vulnerable due to age, illness, disability, addiction, pregnancy, a severe physical or mental disability, shall be punished by imprisonment not exceeding two years.
2. Sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment.
3. The criminal offence referred to in paragraph 1 of this Article shall be prosecuted privately, unless perpetrated against a person especially vulnerable due to their age.

Prostitution

Article 157

1. Whoever for the purpose of making a profit or gaining some other benefit entices, solicits or incites another person to provide sexual services, or organizes or enables another person to provide sexual services shall be punished by imprisonment for six months to five years.
2. Whoever for the purpose of making a profit coerces or induces another person, by the use of force or threat, deception, fraud, abuse of authority or of a situation of hardship or dependence, to provide sexual services, or uses the sexual services of such a person in exchange for payment, where they knew or should and could have known about the above circumstances, shall be punished by imprisonment for one to ten years.
3. Whoever advertises prostitution via the media and other similar means, shall be punished by imprisonment not exceeding three years.
4. Whether the person being enticed, recruited, incited or used for prostitution has consented to it and whether they have already engaged in such activity shall be of no relevance to the existence of the criminal offence referred to in this Article.

TITLE XVII CRIMINAL OFFENCES OF SEXUAL ABUSE AND SEXUAL
EXPLOITATION OF CHILDREN

Sexual Abuse of a Child under the Age of Fifteen

Article 158

1. Whoever engages in sexual intercourse or an equivalent sexual act with a child under the age of fifteen, or induces a child to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon themselves a sexual act equated with sexual intercourse, shall be punished by imprisonment for three to twelve years.
2. Whoever commits a lewd act against a child under the age of fifteen, or induces a child to commit a lewd act with a third party or upon himself or herself shall be punished by imprisonment for one to eight years.
3. There shall be no criminal offence referred to in paragraphs 1 and 2 of this Article if the age difference between the persons engaging in sexual intercourse or an equivalent sexual act or a lewd act does not exceed three years.
4. A perpetrator who was avoidably mistaken that the child referred to in paragraph 1 of this Article was at least fifteen years old shall be punished by imprisonment for one to eight years, and if he or she were avoidably mistaken that the child referred to in paragraph 2 of this Article was at least fifteen years old, he or she shall be punished by imprisonment for six months to five years.
5. Whoever commits the offence referred to in paragraph 1 of this Article by use of force or threat, deception, fraud, abuse of authority or of a situation of hardship or dependence of the child on him or her shall be punished by imprisonment for three to fifteen years.
6. Whoever commits the offence referred to in paragraph 2 of this Article by use of force or threat, deception, fraud, abuse of authority or of a situation of hardship or dependence of the child on him or her shall be punished by imprisonment for one to ten years.

Sexual Abuse of a Child over the Age of Fifteen

Article 159

1. Whoever engages in sexual intercourse or an equivalent sexual act with a child over the age of fifteen with whose upbringing, education, custody, pastoral care or care they have been entrusted, or whoever induces a child over the age of fifteen with whose upbringing, education, custody, pastoral care or care they have been entrusted, to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon themselves a sexual act equated with sexual intercourse, shall be punished by imprisonment for one to eight years.
2. The punishment referred to in paragraph 1 of this Article shall be imposed on a relative by blood in direct line or by adoption, a step-father or step-mother or cohabiting partner or life partner who engages in sexual intercourse or an equivalent sexual act with a child over the age of fifteen or who induces a child over the age of fifteen to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon themselves a sexual act equated with sexual intercourse.

Satisfying Lust in the Presence of a Child Under the Age of Fifteen

Article 160

1. Whoever in the presence of a child under the age of fifteen commits sexual acts intended to satisfy their own or another person's lust shall be punished by imprisonment not exceeding three years.
2. Whoever in the presence of a child under the age of fifteen commits any of the criminal offences referred to in Articles 152 through 155, Articles 158 and 159 of this Code shall be punished by imprisonment for six months to five years.
3. The attempt of the criminal offence referred to in paragraph 1 of this Article shall be punishable.

Child Enticement for the Purpose of Satisfying Sexual Needs

Article 161

1. An adult who, with the intention that they or a third party commits the criminal offence referred to in Article 158 or Article 163 paragraph 1 and 2 or Article 164 paragraph 1 of this Code against a person under the age of fifteen, proposes to this person, through information and communication technologies or in some other way, to meet up with them or a third party, where this proposal is followed by actions to make sure that such a meeting takes place, shall be punished by imprisonment for six months to five years.
2. Whoever collects, gives or transfers data on a person under the age of fifteen for the purpose of committing the criminal offence referred to in paragraph 1 of this Article shall be punished by imprisonment not exceeding three years.

Child Pandering

Article 162

1. Whoever for profit or gaining some other benefit entices, recruits or incites a child to provide sexual services, or organizes or makes possible the provision of child sexual services, where they know or should and could have known that the person in question was a child, shall be punished by imprisonment for three to twelve years.
2. Whoever uses the sexual services of a child who has reached the age of fifteen in exchange for any form of remuneration or compensation, where they know or should and could have known that the person in question is a child, shall be punished by imprisonment for one to eight years.
3. Whoever for the purpose of making a profit coerces or induces by use of force or threats, deception, fraud, abuse of authority or of a situation of hardship or dependence, a person they know, or could and should have known, is a child, to provide sexual services, or use the sexual services of this child in exchange for payment, where they know or should and could have known about the said circumstances, shall be punished by imprisonment from three to fifteen years.
4. Whoever advertises the exploitation of sexual services of a child shall be punished by imprisonment for one to eight years.

Exploitation of Children for Pornography

Article 163

1. Whoever entices, recruits or incites a child to participate in the child pornography or whoever organizes or makes production of child pornography possible shall be punished by imprisonment for one to ten years.
2. The punishment as referred to in paragraph 1 of this Article shall be imposed on whoever films child pornography or produces, offers, makes available, distributes, transmits, imports, exports, procures for themselves or for another person, sells, gives, presents or possesses child pornography or knowingly obtains access, through information and communication technologies, to child pornography.
3. Whoever by use of force or threats, deception, fraud, abuse of authority or of a situation of hardship or dependence coerces or induces a child to participate in child pornography shall be punished by imprisonment from three to twelve years.
4. Special devices, means, computer programs or data intended for, adapted to or used for committing or facilitating the commission of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be confiscated, while the pornographic material which was created by the perpetration of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be destroyed.
5. A child shall not be punished for producing and possessing pornographic material depicting themselves alone or them and another child, where this material is produced and possessed by them with their consent and solely for their own private use.
6. Child pornography shall mean any material that visually or otherwise depicts a real child or a realistic image of a non-existent child or a person appearing to be a child, involved or engaged in real or simulated sexually explicit conduct, or any depiction of a child's sexual organs for sexual purposes. For the purpose of this Article, any material depicting a child’s sexual organs or a realistic image of a non-existent child or a person appearing to be a child, and are artistic, medical or scientific in character shall not be deemed pornography.

Exploitation of Children for Pornographic Performances

Article 164

1. Whoever entices, recruits or incites a child to participate in pornographic performances shall be punished by imprisonment for one and ten years.
2. Whoever profits from pornographic performances involving the participation of a child or otherwise exploits a child for pornographic performances shall be punished by imprisonment for one to twelve years.
3. Whoever by use of force or threats, deception, fraud, abuse of authority or of a situation of hardship or dependence coerces or induces a child to participate in a pornographic performance shall be punished by imprisonment for three to twelve years.
4. The punishment as referred to in paragraph 1 of this Article shall be imposed on whoever watches a pornographic performance that is transmitted live or via means of communication, where they know or should and could have known that it involved the participation of a child.
5. Special devices, means, computer programs or data intended, adapted or used for committing or facilitating the commission of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be confiscated, while the pornographic material which was created by the commission of the criminal offences referred to in paragraphs 1 and 2 of this Article shall also be destroyed.
6. Pornographic performance shall mean presenting live or via means of communication a real child or a realistic image of a non-existent child or a person appearing to be a child, involved or engaged in real or simulated sexually explicit conduct, or any depiction of a child's sexual organs of a real child or a realistic image of a non-existent child or a person appearing to be a child, for sexual purposes.

Introducing Pornography to Children

Article 165

1. Whoever to a child under the age of fifteen sells, gives a gift, presents or publicly displays, by means of a computer system, network or media for storage of computer data or in some other way makes accessible the files, pictures, audio-visual content or other objects of pornographic content or shows them a pornographic performance shall be punished by imprisonment for six months to five years.
2. Objects, special devices, means, computer programs or data intended for, adapted to, or used for committing or facilitating the commission of a criminal offence referred to in paragraph 1 of this Article shall be confiscated, while the pornographic material shall also be destroyed.
3. For the purpose of this Article, pornography shall mean any material that visually or otherwise depicts a person in real or simulated sexually explicit conduct or any depiction of a person's sexual organs for sexual purposes. For the purpose of this Article, any material that is artistic, medical, or scientific in character shall not be deemed pornography.

Serious Criminal Offence of Child Sexual Abuse and Exploitation

Article 166

1. If as a result of the criminal offence referred to in Article 158, paragraph 1, Article 162, paragraph 1 or 2, Article 163, paragraph 1 or 2, or Article 164, paragraph 1, of this Code a child suffers serious bodily injury or their physical or emotional development is compromised or becomes pregnant, where a number of perpetrators participate in the offence, or the offence is committed against an especially vulnerable child, or is committed by a close person or a person the child lives with in a joint household, or is committed in an especially cruel or degrading manner, the perpetrator shall be punished by imprisonment for three to fifteen years.
2. If as a result of the criminal offence referred to in Article 158, paragraph 5, Article 162, paragraph 3, Article 163, paragraph 3, or Article 164, paragraph 3, of this Code a child suffers severe bodily injury or their physical or emotional development is compromised or becomes pregnant, where a number of perpetrators participate in the offence, or the offence is committed against an especially vulnerable child, or is committed by a close person or a person the child lives with in a joint household, or is committed in an especially cruel or degrading manner, the perpetrator shall be punished by imprisonment not less than five years.
3. If, as a result of the criminal offence referred to in Article 158, 162, 163 or 164 of this Code a child dies, the perpetrator shall be punished by imprisonment not less than ten years or long-term imprisonment.

TITLE X CRIMINAL OFFENCES AGAINST LIFE AND LIMB

Female Genital Mutilation

Article 116

1. Whoever partially or totally removes or permanently alters the external female genitalia shall be punished by imprisonment for one to eight years.
2. Whoever incites a woman to subject herself to procedures referred to in paragraph 1 of this Article or assists therein shall be punished by imprisonment not exceeding three years.
3. Whoever commits the offence referred to in paragraphs 1 and 2 of this Article out of hatred against a child or a close person, shall be punished by imprisonment for three to ten years.

**Criminal Procedure Act** (Official Gazette 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19; hereinafter referred to as Criminal Procedure Act)

Article 19 c

County courts shall have jurisdiction:

1) to trial in the first instance:

…

c) criminal offences against the Republic of Croatia (Title XII), criminal offences against values protected under international law (Title XIII), with the exception of the criminal offence of abuse of narcotics referred to in Article 173, paragraphs 1 and 4 through 6, voluntary manslaughter (Article 92), kidnapping (Article 125, paragraph 2), rape (Article 188, paragraph 1), sexual intercourse with a child (Article 192, paragraph 1), fraud against the financial interests of the European Communities (Article 224 b), robbery (Article 218, paragraph 2), violent theft (Article 219, paragraph 2), money laundering (Article 279), abuse of position and authority (Article 337, paragraph 4), laid down in the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 77/11);«.

d) criminal offences against the Republic of Croatia (Title XXXII), genocide (Article 88, paragraph 3), crime of aggression (Article 89, paragraph 3), command responsibility (Article 96, paragraphs 1 and 4), terrorism (Article 97, paragraph 2), financing of terrorism (Article 98), public incitement to terrorism (Article 99), recruitment for terrorism (Article 100), training for terrorism (Article 101), terrorist association (Article 102, paragraph 2), manslaughter (Article 112, paragraph 1), rape (Article 153, paragraph 1), child pandering (Article 162, paragraph 1), robbery (Article 230, paragraph 2), violent theft (Article 231, paragraph 2), abuse of trust in business dealings (Article 246, paragraph 2), subsidy fraud (Article 258, paragraph 3), abuse of position and authority (Article 291, paragraph 2), kidnapping of an internationally protected person (Article 353, paragraph 1), attack to an internationally protected person (Article 354, paragraph 1);

Article 43

1. In accordance with this Act, the victim of a criminal offence shall have:
2. the right to access services providing support to victims of criminal offences,
3. the right to effective psychological and other professional assistance and support of the authority, organization or institution for assistance to victims of criminal offences in accordance with the law,
4. the right to protection against intimidation and retaliation,
5. the right to protection of dignity during the examination of the victim as a witness,
6. the right to be heard without undue delay after filing a criminal report and that further hearings are conducted only to the extent necessary for the purposes of criminal proceedings,
7. the right to be accompanied by a person of trust in taking action in which the/she participates,
8. the right that medical treatment of the victim be kept at minimum extent and only if it is extremely necessary for the purposes of criminal proceedings,
9. the right to file a motion for prosecution and a private lawsuit pursuant to the provisions of the Criminal Code, the right to participate in criminal proceedings as an injured party, the right to be informed of the dismissal of criminal charges (Article 206 paragraph 3 of this Act) and the withdrawal of the State Attorney from prosecution and the right to assume prosecution instead of the state attorney,
10. the right to be notified by the State Attorney about the actions taken regarding their criminal report (Article 206a of this Act) and to submit a complaint to a senior state attorney (Article 206b of this Act),
11. the right to be informed at their request without undue delay of the termination of custody or pre-trial detention, the defendant’s escape and the dismiss of the convict from serving the prison sentence and the measures taken for their protection,
12. the right to be informed at their request of any decision ending the criminal proceedings with a final verdict,
13. other rights prescribed by the law.
14. Where a victim of a criminal offence punishable by a term of imprisonment of at least five years if suffering from severe psychophysical harm or severe consequences of the criminal offence, he/she shall be entitled to professional assistance of a counsellor, charged to the state budget, prior to giving testimony in criminal proceedings and when submitting a property claim.
15. A victim of a violent criminal offence committed with intent shall be entitled to financial compensation charged to the state budget in accordance with a special act. Where the victim has previously won a property claim, this amount shall be taken into consideration when determining the amount of financial compensation, they are to receive, and the court shall act likewise when ruling the property claim where the victim has previously been awarded financial compensation charged to the state budget.
16. When taking the first action in which the victim is involved, the court, the State Attorney, the investigator and the police are obliged to notify the victim in a manner comprehensible to them of:
17. the rights referred to in paragraphs 1, 2 and 3 of this Article and in Article 44 of this Act,
18. the rights they have as the injured party.
19. The authorities referred to in paragraph 4 of this Article shall treat the victim with care and ensure that the victim understood the rights read to him/her.
20. The authorities referred to in paragraph 4 of this Article shall notify the victim in a manner comprehensible to them regarding the significance of his/her participation in the proceedings as the injured party. The issued notification and the victim’s statement regarding his/her wish to participate in the proceedings as the injured party shall be put on record.
21. The rights referred to in paragraph 1, items 8, 9 and 11 of this Article also refer to legal entity against which the criminal offence has been committed. The provisions of this Act regulating the exercise of the said rights by the victim of a criminal offence shall apply accordingly to the legal entity against which the criminal offence has been committed.

Article 43a

1. Prior to the examination of the victim, the authority carrying out the examination shall, in cooperation with authorities, organizations or institutions providing assistance and support to victims of crime, make an individual assessment of the victim. The individual assessment of the victim shall include determining whether there is a need to apply special protection measures in relation to the victim, and if so, which specific protection measures should be applied (special method of examining the victim, the use of communication technologies to avoid visual contact with the perpetrator and other measures prescribed by the law). When the victim of a crime is a child, it will be assumed that there is a need to apply special protection measures and determine which specific protection measures should be applied.
2. In making the individual assessment of the victim, the personal characteristics of the victim, the type or nature of the crime and the circumstances in which the criminal offence has been committed shall be particularly taken into account. In doing so, special attention shall be paid to victims who have suffered significant harm due to the severity of the crime, to victims of the criminal offence committed because of a personal characteristic of the victim, and victims whose relationship with the perpetrator make them particularly vulnerable.
3. For the purpose of paragraph 2 of this Article, the individual assessment of the victim shall appropriately include in particular victims of terrorism, organized crime, trafficking in human beings, gender-based violence, violence in close relationships, sexual violence and sexual exploitation or hate crime, and victims with disabilities.
4. The individual assessment of the victim shall be carried out with the participation of the victim and taking into account his/her wishes, including his/her wish for the special protection measures prescribed by the law not to be used.
5. The authority carrying out the proceedings shall minimize the number of examinations of the victim for whom the specific need for protection has been determined. The State’s Attorney may propose that such a witness be questioned at an evidence-collecting hearing.
6. The minister responsible for judiciary affairs shall, with prior consent of the minister responsible for internal affairs, adopt rules on the manner of performing the individual assessment of the victim referred to in paragraph 1 of this Article.

Article 44

1. In addition to the rights enjoyed by the victim referred to in this Article and the other provisions of this Act, a child victim of a criminal offence shall be entitled to:
2. plenipotentiaries to be charged to the budget,
3. confidentiality of personal data,
4. the exclusion of the public.
5. The Court of Justice, the State Attorney’s Office, the investigator and the police must treat the child as a victim of a criminal offence with special consideration in view of his/her age, personality and other circumstances in order to avoid harmful consequences for the upbringing and development of the child. When treating the child victim, the competent authorities must primarily be led by the best interest of the child.
6. If the age of the victim is unknown, it shall be presumed that it is a child if there is a likelihood that the victim has not yet reached the age of eighteen.
7. In addition to the rights enjoyed by the victim referred to in Article 43 of this Act, a victim of a criminal offence against sexual freedom and a victim of the criminal offence of trafficking in human beings shall be entitled to:
8. talk to a counsellor charged to the budget, before being examined,
9. plenipotentiaries to be charged to the budget,
10. be interviewed by a person of the same sex in the police and prosecution services and, if appropriate and necessary, to have the same person re-examine them,
11. refuse to answer questions that are unrelated to the criminal offence but are strictly related to the victim’s personal life,
12. request to be questioned via an audio-video device (pursuant to Article 292, paragraph 4 of this Act),
13. confidentiality of personal data,
14. request the exclusion of the public from the hearing.
15. In addition to the rights enjoyed by the victim referred to in Article 43 of this Act, a victim for whom special protection measures have been determined pursuant to Article 43a of this Act shall be entitled to:
16. talk to a counsellor charged to the budget, before being examined,
17. be interviewed by a person of the same sex in the police and prosecution services and, if appropriate and necessary, to have the same person re-examine them,
18. refuse to answer questions that are unrelated to the criminal offence but are strictly related to the victim’s personal life,
19. request to be questioned via an audio-visual device (pursuant to Article 292 paragraph 4 of this Act),
20. confidentiality of personal data,
21. request the exclusion of the public from the hearing.

Article 46

1. The victim and the legal entity against which the criminal offence has been committed shall be entitled to register as injured party to the police or the State Attorney’s Office before the indictment has been filed, and to the court of justice before the hearing has been completed.
2. The registration referred to in paragraph 1 of this Article shall be dismissed by the court if it has not been filed in due time or if it has been filed by an unauthorized person.

Article 47

(1) For criminal offences prosecuted privately, the motion for prosecution must be submitted within three months of the date when the authorized natural or legal person learned about the criminal offence and the offender.

(2) The motion for prosecution is submitted to the State Attorney’s Office.

1. If the victim or the legal entity against which the criminal offence has been committed has pressed criminal charges or the injured party has submitted a property claim in the criminal proceedings, it shall be considered that the proposal for prosecution has been filed.
2. A private lawsuit filed in due time shall be considered as a motion of the victim filed in due time if it has been established during the proceedings that it had been a criminal offence which is privately prosecuted.
3. A child who has reached the age of sixteen may submit the motion for prosecution by himself/herself.

Article 48

1. If the victim dies in the course of the time set for submitting motions to prosecute or if the injured party dies in the course of the proceedings, their spouse and cohabiting partner, life partner or informal life partner and descendant, and if they have none, their ascendant, brother, sister and a person who the victim and/or the injured party was obliged by the law to take care of, may submit a motion for prosecution or a private lawsuit within three months after the victim’s or the injured party’s death or give a statement that they are to continue the proceedings.
2. If the legal entity against which the criminal offence has been committed ceases to exist in the course of the time set for submitting motions to prosecute or in the course of the proceedings, the successor of the entity may, within three months after the legal entity against which the criminal offence has been committed ceased to exist, submit a motion for prosecution or a private lawsuit or give a statement that they are to continue the proceedings.

Article 49

If several persons have been harmed by the criminal offence, the prosecution will be undertaken or continued as per the proposal of any of the victims.

Article 50

The victim may withdraw his/her motion for prosecution by giving a statement to thar effect to the authority carrying out the proceedings before the end of the hearing. In that case, they forfeit their right to re-submit the motion.

Article 334

The special evidentiary actions referred to in Article 332, paragraph 1, of the present Act may be ordered for the following criminal offences set forth in the Criminal Code:

…

3) public incitement to terrorism (Article 99), unlawful deprivation of liberty (Article 136), rape (Article 153), serious criminal offences against sexual freedom (Article 154), prostitution (Article 157), abduction of a child (Article 174), neglect and abuse of the rights of a child (Article 177), falsification of medicinal products or medical devices (Article 185), unauthorized manufacture of and traffic in illicit drugs (Article 190), enabling the use of illicit drugs (Article 191, paragraphs 2 and 3), unauthorized manufacture of and traffic in substances banned in sports (Article 191a), extortion (Article 243), receiving or giving bribes during bankruptcy proceedings (Article 251), giving bribes in business dealings (Article 253), producing, procuring, possessing, selling or giving to another for use forgery tools (Article 283), giving a bribe (Article 294), giving a bribe for trading in influence (Article 296), disclosure of official secret (Article 300) if the offence represents a violation of the secrecy of the inquiry and fact-finding activity, giving false testimony (Article 305), preventing the presentation of evidence (Article 306), violation of secrecy of proceedings (Article 307) if the offence represents a violation of secrecy in criminal proceedings, disclosing the identity of a person in danger or protected witness (Article 308), coercion against a judicial official (Article 312), illegal entry into, movement and residence within the Republic of Croatia (Article 326), unlawful possession, making and procurement of weapons and explosive substances (Article 331), murder of an internationally protected person (Article 352), kidnapping of an internationally protected person (Article 353), attack on an internationally protected person (Article 354), threat to an internationally protected person (Article 355) and for criminal offences against computer systems, programs and data (Title XXV) and against intellectual property (Title XXVII) if committed by the use of computer systems or computer networks.

1. **Based on the wording of those provisions, is the definition of rape provided:**
2. **Gender specific, covering women only** – No.
3. **Gender neutral, covering all persons** – Yes.
4. **Based on the lack of consent of victim** – Yes.
5. **Based on the use of force or threat** – Yes.
6. **Some combination of the above** - Yes. Paragraph 1 of the Article 153 represents basic form of rape, established upon lack of consent, while paragraph 2 of the Article 153 represents qualified form of rape, which includes the use of force or threat of an imminent attack on the life or limb of the raped or other person, and is punishable by a more severe punishment.

Either the lack of the victim’s consent or the use of force or threat is sufficient; however, the combination is also possible.

1. **Does it cover only vaginal rape** – No.
2. **Does it cover all forms of penetration** – Yes, it covers all forms of penetration - sexual intercourse and equivalent sexual act (with another person (victim), and also victim performing a sexual act equated to sexual intercourse upon himself or herself).
3. **Is marital rape in this provision explicitly included** – Yes. Marital rape is covered by the Article 154 Paragraph 1 Item 1 of the Criminal Code. It prescribes a qualified form of rape committed against a close person. Close person is defined by Article 87 Paragraph 9 of the Criminal Code and it includes, among others, a spouse, common-law spouse, life partner, informal life partner, ex- spouse, ex- common-law spouse, ex- life partner and ex- informal life partner, persons living in the same household and persons having a child together.
4. **Is the law silent on marital rape** – No.Marital rape is qualified form of rape, prescribed by Article 154 Paragraph 1 Item 1 of the Criminal Code (serious criminal offences against sexual freedom). See answer 2.h).
5. **Is marital rape covered in the general provisions or by legal precedent event if it is not explicitly included** – Yes. See answers 2.h) and i).
6. **Is marital rape excluded in the provisions, or is marital rape not considered as a crime** – No. Marital rape is not excluded in the provisions and it is considered a crime.
7. **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 with corresponding translations**

No, there are no such provisions.

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

Legal age for sexual consent is fifteen, which is evident from the Article 158 of the CC.

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

Yes. Sexual activity between peers is regulated by the Article 158 paragraph 3 of the CC.

1. **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized of the perpetrator?**

Prescribed criminal sanction for criminal offences referred to in Articles 153, 154, 158 and 166 of the CC is imprisonment. Regarding prescribed length/duration of the sanction please see answer 1.

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 a criminal offence punishable by more than five years in prison or if they suffer grave consequences, in accordance with Article 43(2) of the Criminal Proceedings Act, is entitled to a counsellor and charged to the budget when submitting a property claim, whereas paragraph 3 of the same article sets out the right of the victim to a financial compensation charged to the budget in accordance with a specific act.

**Criminal Procedure Act**

Article 43

…

(2) Where the victim of a criminal offence punishable by imprisonment for more than five years has suffered severe harm as a result of a criminal offence, he/she is entitled to the professional assistance of an advisor appointed at government expense when bringing a civil claim.

(3) The victim of an intentional crime of violence is entitled under a special act to compensation from the state budget. If the victim has won a civil claim, the amount awarded shall be taken into account when determining the amount of compensation. If the victim has already been awarded state compensation, the court shall act likewise when determining the amount to be awarded on the basis of the civil claim made.

Article 153

(1) A claim for indemnification arising out of the commission of a criminal offence shall be considered in criminal proceedings upon the motion of injured parties, provided that this does not considerably delay proceedings.

(2) The claim for indemnification may consist of an issue which may be litigate in a civil action.

Article 154

(1) The indemnification motion made in a criminal proceeding may be filed by the injured party.

(2) When making the said motion, the injured party shall state whether he/she was awarded compensation or filed a claim under Article 43, paragraph 3, of this Act.

Article 155

(1) A motion to assert the claim for indemnification in criminal proceedings shall be submitted to the authority charged with receiving crime reports or to the court conducting the proceedings.

(2) The motion referred to in paragraph 1 of this Article may be submitted before the conclusion of evidentiary proceedings before the court at first instance.

(3) The person entitled to submit a motion must specify his claim and offer supporting evidence.

(4) If the authorized person fails to submit a motion for indemnification in criminal proceedings until the indictment is preferred, he shall be informed of his right to make the motion until the conclusion of evidentiary proceedings.

Article 157

The authority conducting the proceedings shall examine the defendant with respect to the facts set out in the motion and explore the circumstances which are of importance for the decision on the claim for indemnification.

Article 158

(1) The court shall have jurisdiction to decide on claims for indemnification.

(2) The court may in a judgement of conviction satisfy the claim of the injured person fully, or it may satisfy it partially while directing the injured person to assert the rest of the claim in a civil action. If the data established in criminal proceedings furnish no reliable basis for either full or partial adjudication, the court shall direct the injured person to assert his claim in a civil action.

(3) When rendering a judgement of acquittal, a judgement rejecting the charge, or a ruling discontinuing criminal proceedings, the court shall direct the injured person to assert his claim for indemnification in a civil action. When the court declares itself incompetent, it shall instruct the injured person that he may assert his claim for indemnification in criminal proceedings, which shall be instituted or continued by a court having jurisdiction.

Aggravating and mitigating circumstances

1. **Does the law foresee aggravating circumstances when sentencing rape case?**

**If so what are they?**

Yes. For aggravating circumstances, please see Articles 153 (2), 154, 158(5) and 166 of the Criminal Code. It is defined in Article 154 of the Criminal Code.

1. **Is rape by more than one perpetrator an aggravating circumstance?** Yes.
2. **Is rape of 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 **-** Art. 153(5).
3. **Is rape by spouse or intimate partner an aggravating circumstances?** Yes,rape by spouse is aggravating circumstance, please see also answers 2.h) and i).
4. **Does the law foresee mitigating circumstances for the purposes of punishment?**

Yes. The Criminal Code contains general provision (applicable to all criminal offences) on determination of punishment prescribed by Article 47., which states:

Determination of Punishment

Article 47

(1) When determining the type and range of punishment, the court shall, starting from the degree of culpability and the purpose of punishment, assess all the circumstances affecting the severity of punishment by type and range (mitigating and aggravating circumstances), and especially the degree of threat to or violation of a legally protected good, motives for having committed the criminal offence, degree to which the perpetrator's duties have been violated, manner of commission and the inculpatory consequences arising from the commission of the criminal offence, perpetrator's prior life, his or her personal and pecuniary circumstances and his or her conduct following the commission of the criminal offence, relationship to the victim and efforts to compensate for the damage.

(2) The severity of punishment shall not exceed the degree of culpability.

See also Art. 153(3) and (4), Art. 158(3) and (4).

1. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response?**
2. **Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**

Reconciliation between the victim and the perpetrator is allowed as part of legal response in case the perpetrator is a juvenile.

According to the Juvenile Courts Act (Official Gazette no. 84/11, 143/12, 148/13, 56/15 and 126/19) for a criminal offense punishable by imprisonment for a term not exceeding five years or a fine, the State Attorney may decide that there are no grounds for conducting criminal proceedings even though there is a reasonable suspicion that the juvenile committed the criminal offense, if he considers conducting proceedings against a juvenile not to be purposeful with regard to the nature of the criminal offense and the circumstances in which the offense was committed, the previous life of the juvenile and his personal characteristics.

The State Attorney may condition this decision with the readiness of the juvenile to, amongst other:

a) apologize to the injured party

b) repair, according to his own capabilities, the damage caused by the criminal offense

c) to be involved in the mediation procedure through an out-of-court settlement

After the juvenile, with the cooperation and supervision of the social welfare center, fulfills the obligations, the State attorney shall make a final decision not to initiate proceedings against the juvenile.

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

There is no such provision in Criminal Code. However, regarding the Criminal Procedure Act we state as follows:

 Yes.

 a. No.

 b. Yes.

The provision, from the Criminal Procedure Act, can be applied solely and only to the criminal offence of rape described in the Article 153 Paragraph 1 of the Criminal Code, for which is provided that the punishment by imprisonment up to five years may be imposed, under certain obligations.

Article 206d

(1) After first having obtained the consent of the victim or the injured party, the State Attorney may issue an order conditionally deferring or abandoning criminal prosecution despite there being reasonable grounds for suspicion that a criminal offence prosecuted ex officio and punishable by a fine or by imprisonment for a term of up to five years was committed if the suspect or the defendant takes on the obligation to:

1) carry a prestation for the purpose of making good or compensating a loss resulting from the criminal offence;

2) pay a certain amount of money to a public institution or for humanitarian or charitable purposes;

3) pay outstanding statutory maintenance and meet on a regular basis all liabilities that fall due;

4) carry out community service at liberty;

5) undergo treatment for drug abuse or other addictions pursuant to special regulations;

6) undergo psychosocial treatment aimed at treating violent behavior without living apart from one’s family or subject to the suspect’s consent to live apart from his family for the duration of the treatment.

(2) In his order the State Attorney shall set the time limit within which the suspect or the defendant has to fulfil the obligations assumed pursuant to paragraph 1 of this Article, which time limit shall not exceed one year.

(3) The State Attorney shall serve the order referred to in paragraph 1 of this Article on the suspect or the defendant, the victim and the person that filed the crime report. In the case of the victim, the said order shall also contain a notification that he may bring his pecuniary claim within the framework of civil proceedings. The order of the State Attorney shall not be subject to appeal.

(4) If the suspect or the defendant fulfils his obligation within the time limit referred to in paragraph 2 of this Article, the State Attorney shall issue an order dismissing the crime report or withdrawing the charges and shall inform the court thereof.

(5) The single judge shall issue an order staying criminal proceedings if the State Attorney declares that he is conditionally withdrawing the charges.

**Juvenile Courts Act** (Official Gazette No. 84/11, 143/12, 148/13, 56/15, 126/19)

Article 71

(1) For a criminal offence punishable by imprisonment for up to five years or a fine, the State Attorney may decide that there are no grounds for criminal proceedings even though there is a reasonable suspicion that the juvenile committed the criminal offence, if he considers that it would not be expedient to conduct proceedings to the juvenile with regard to the nature of the criminal offence and the circumstances in which the offence was committed, the previous life of the juvenile and his personal characteristics. In order to determine these circumstances, the State Attorney may request information from the parents, ie the minor's guardian, other persons and institutions, and may request that this information be collected by an expert associate in the State Attorney's Office; when necessary, it may summon these persons and minors to the State Attorney's Office for the immediate collection of information.

(2) When a juvenile has been reported for several criminal offences, but it is expedient to impose a juvenile sanction for only one because initiating proceedings for other criminal offences would not significantly affect the choice of juvenile sanction, the State Attorney may decide that there are no grounds for criminal proceedings for other offences. This decision may be made by the State Attorney only in relation to criminal offences for which a fine or imprisonment of up to five years is envisaged.

(3) About the decision referred to in paragraphs 1 and 2 of this Article the State Attorney shall notify, stating the reasons, the social welfare center and the injured party with instructions that he may exercise his property claim in litigation, and also the police if that body has filed a report.

Article 72

(1) The State Attorney may condition the decision referred to in Article 71, paragraph 1 of this Act with the readiness of the minor:

a) to apologize to the injured party (in terms of Article 10, paragraph 2, item 1),

b) to repair the damage caused by the criminal offence according to his own capabilities (within the limits referred to Article 10, paragraph 2, item 2),

c) to be involved in the mediation procedure through an out-of-court settlement (within the limits referred to Article 10, paragraphs 5 and 9),

d) to be involved in the work of humanitarian organizations or in jobs of communal or ecological significance (within the framework referred to Article 10, paragraph 2, item 8),

e) to undergo treatment for drug abuse or other addictions with the consent of the minor's legal representative (in terms of Article 10, paragraph 2, item 10),

f) to be involved in individual or group psychosocial treatment in a youth counseling center (in terms of Article 10, paragraph 2, item 11),

g) to be referred to the competent institution for driver training in order to check the knowledge of traffic regulations (in terms of Article 10, paragraph 2, item 14),

h) other obligations that are appropriate in view of the committed criminal offense and the personal and family circumstances of the juvenile (in terms of Article 10, paragraph 2, item 16).

(2) After the juvenile, with the cooperation and supervision of the social welfare center, fulfills the obligations, the State Attorney shall make a final decision not to initiate proceedings against the juvenile.

(3) About the decision referred to in paragraphs 1 and 2 of this Article the State Attorney shall notify, stating the reasons, the social welfare center and the injured party with instructions that he may exercise his property claim in litigation, and also the police if that body has filed a report.

(4) Detailed instructions on the application of the provisions of paragraphs 1 and 2 of this Article shall be issued by the State Attorney General of the Republic of Croatia.

Article 73

(1) When the execution of a sentence or correctional measure is in progress or these sanctions have been legally imposed or the juvenile has been placed in a social welfare institution by a decision of the social welfare center, the State Attorney may decide that there are no grounds for criminal proceedings for another offence committed by the juvenile if it would not be expedient to conduct proceedings and to impose a sanction for that act with regard to the gravity and the nature of the criminal offence and the motives from which the offence was committed.

(2) About the decision referred to in paragraph 1 of this Article the State Attorney shall notify, stating the reasons, the social welfare center and the injured party with instructions that he may exercise his property claim in litigation, and also the police if that body has filed a report.

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?**

Plea bargaining as an institute is prescribed in the Articles 360 – 364 of the Criminal Procedure Act. According to the Article 360 paragraph 1 the parties may negotiate on the conditions of pleading guilty and agreeing on a sanction.

According to the Criminal Procedure Act, the State Attorney has a right and duty to negotiate with the suspect/defendant on the conditions of pleading guilty and also to agree on a sanction.

Criminal Procedure Act does not specify the manner of conducting negotiations for the purpose of agreeing with the suspect/defendant on a guilty plea and sanction, and also does not prescribe cases in which the agreement with the suspect / defendant should be rejected. However, stated is prescribed in the Instruction of the State Attorney's Office No. O-2/09 dated 17 February 2010, which was issued on the basis of Article 75 of the State Attorney's Office Act (Official Gazette No. 76/09 and 153/09) and is obligatory for all county and municipal state attorney's offices, because of the uniform application of the law and uniform treatment.

Criminal offenses in which State Attorney cannot agree on rendering a judgement on the basis of the parties’ agreement are not listed exhaustively by mentioned Instruction of the State Attorney's Office, but in the chapter IV „Cases where no agreement needs to be reached“ is explicitly stated that State Attorney will refuse to agree in cases of particularly serious crimes, especially those in which the victims are severely traumatized, or children or minors, in which cases it can be concluded in advance that any sanction agreed would not be accepted by the victims themselves, by their family, as well as by the public.

If any of the criminal offenses of rape, other serious forms of sexual violence against women or children would be committed by a minor (a person under 18 years of age), there is no possibility for agreement, because of the provision of Article 84 paragraph 5 of the Juvenile Courts Act (Official Gazette No. 84/11, 143/12, 148/13, 56/15, 126/19; hereinafter referred to as Juvenile Courts Act) which excludes the application of the provision of the Criminal Procedure Act on the conditions of pleading guilty and agreeing on a sanction.

However, if a juvenile commits any of the criminal offenses punishable by imprisonment for up to five years (in relation to the criminal offenses from the questionnaire – criminal offense of rape referred to in Article 153, paragraphs 1, 3, 4 of the Criminal Code (Official Gazette No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19)), the State Attorney may decide on the expediency of initiating criminal proceedings pursuant to the provisions of Articles 71, 72, 73 of the Juvenile Courts Act.

**Criminal Procedure Act**

Article 360

(1) The parties may negotiate on the conditions of pleading guilty and agreeing on a penalty and the other measures referred to in Article 360, paragraph 4, item 3, of this Act. During negotiations the defendant must have a defense counsel.

(2) The panel may postpone a session for fifteen days at the most in order for the parties to complete negotiations.

(3) If prior to the commencement of the session or during the session of the indictment panel, the State Attorney and the defendant and the defense counsel have signed a statement for rendering a judgement on the basis of the parties’ agreement, they shall submit their statement to the panel immediately upon opening of the session.

(4) The statement referred to in paragraph 3 of this Article shall contain the following:

1) a description of the criminal offence that is the subject of the charge;

2) the defendant’s guilty plea to the criminal offence in question;

3) the agreement on the type and measure of penalty, judicial admonition, suspended sentence, partial suspended sentence, special obligations, protective supervision, seizure of objects, and the costs of proceedings;

4) the defendant’s statement of position on the civil claim filed within the framework of criminal proceedings;

5) the statement by the defendant on his acceptance of the State Attorney's proposal for the imposition of a safety measure and the confiscation of the pecuniary advantage obtained by the commission of the criminal offence;

6) the signatures of the parties and the defense counsel

(5) After signing the statement referred to in paragraph 3 of this Article, the State Attorney shall notify the victim or the injured person thereof.

(6) If the criminal offence in question is a criminal offence against life and limb or against sexual freedom which is punishable by more than five years' imprisonment, the State Attorney must obtain the consent of the victim for the reaching of an agreement. If the victim is deceased or unable to give his consent, consent shall be sought from the persons referred to in Article 55, paragraph 6, of the present Act.

Adjudication based on Agreement of the Parties

Article 361

(1) Upon receipt of the written statement on adjudication on the basis of the agreement reached between the parties, referred to in Article 360, paragraph 3, of the present Act, the panel shall first determine and state for the record whether the parties agree with the contents of the statement and then decide on the indictment's confirmation (Article 354, paragraph 1, Article 355 and Article 356).

(2) If it confirms the indictment, the panel shall decide on the acceptance of the statement on adjudication on the basis of the agreement reached between the parties, referred to in Article 360, paragraph 3, of the present Act and shall sentence the accused to a penalty or other measure referred to in Article 360, paragraph 4, of the present Act.

(3) The panel shall not accept the statement on adjudication on the basis of the agreement reached between the parties, referred to in Article 360, paragraph 3, of the present Act if in view of the circumstances its acceptance is not in accordance with the determination of penalty provided for by law or the agreement is otherwise not in accordance with the law. By an order against which no appeal shall be possible the panel shall reject the statement on adjudication on the basis of the agreement reached between the parties.

(4) After the issuance of the order referred to in paragraph 3 of this Article, the indictment shall be delivered together with the case file to the president of the panel for the purpose of scheduling the trial.

Article 362

(1) The parties may decide to withdraw the statement on adjudication on the basis of the agreement reached between the parties, referred to in Article 360, paragraph 3, until the moment the judgment is to be passed.

(2) In the case referred to in paragraph 1 of this Article the statement on adjudication on the basis of the agreement reached between the parties, referred to in Article 360, paragraph 3, of the present Act and any other information relating thereto shall be removed pursuant to an order from the case file and handed over to the judge of investigation. It shall not be possible to either examine them or use them in evidence in the criminal proceedings.

Article 363

(1) A judgement based on the agreement of the parties shall have the contents from Article 455 of this Act.

(2) A judgement from paragraph 1 of this Article shall be pronounced immediately and put into writing and delivered to the parties within eight days from the pronouncement. A statement of reasons shall include a reference to the statement on the basis of which the judgement was pronounced.

(3) A judgement from paragraph 1 of this Article may, apart from the sentence of imprisonment and a precautionary measure, also impose a security measure from Articles 75, 76, 77, 79 and 80 of the Penal Code, as well as safety measures from the Act on Criminal Accountability of Legal Persons and a measure of confiscating pecuniary benefits.

(4) The panel may in the decision on the costs of the proceedings (Article 145) order that the defendant be fully exempt from paying the costs of the criminal proceedings.

Article 364

(1) The judgment referred to in Article 361, paragraph 2, of this Act cannot be challenged on any of the grounds for appeal laid down in Article 471 of this Act.

(2) The judgment from Article 361 paragraph 2 of this Act may not be challenged by an appeal for erroneous or incomplete determination of the factual situation (Article 470), except if the evidence on the exclusion of illegality and guilt came to the defendant’s attention after adjudication.

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

For the detailed answer on the possibility of plea bargaining of a case in the cases of rape of children see our answer on the question marked as 14.

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

Articles 81 and 82 of the Criminal Code prescribe statute of limitations for criminal prosecution.

Article 81

Statute of limitations for criminal prosecution

(1) Criminal prosecution shall become statute-barred after:

- 40 years for criminal offences for which sentences of long-term imprisonment or imprisonment for terms exceeding 15 years may be imposed;

- 25 years for criminal offences for which imprisonment for terms exceeding 10 years may be imposed;

- 20 years for criminal offences for which imprisonment for terms exceeding 5 years may be imposed;

- 15 years for criminal offences for which imprisonment for terms exceeding 3 years may be imposed;

- 10 years for criminal offences for which imprisonment for terms exceeding one year may be imposed and

- 6 years for other criminal offences.

(2) No statutory limitation shall apply to the criminal prosecution of the crime of genocide (Article 88), crime of aggression (Article 89), crimes against humanity (Article 90), war crimes (Article 91), terrorism (Article 97 paragraph 4), aggravated murder (Article 111), serious criminal offence of child sexual abuse and exploitation (Article 166 paragraph 3), murder of an internationally protected person (Article 352) and other offences that are not subject to the statute of limitations under the Constitution of the Republic of Croatia or the international law.

(3) If, before the end of the periods of limitation referred to in paragraph 1 of this Article, a first-instance judgment has been rendered, the period of limitation on criminal prosecution shall be extended for two years.

Article 82

Running of the statute of limitations for criminal prosecution

(1) The period of limitation for criminal prosecution commences on the date a criminal offence is committed. If a consequence which is a material element of a criminal offence arises later, the statute of limitations commences from that moment.

(2) The period of limitation for criminal prosecution shall not run during the time criminal prosecution cannot be instituted or continued pursuant to the law.

(3) The statute of limitations for criminal prosecution of the criminal offences referred to in Article 105 paragraph 3, Article 106 paragraphs 2 and 3, Articles 110, 111, Article 112 paragraph 1, Article 114 paragraph 2, Article 115, Article 116 paragraph 3, Articles 118, 119, Article 154, Article 155 paragraph 2, Article 156, Articles 158, 159, 160, 162, 163, 164, 166 paragraphs 1 and 2, Articles 169, 170, 171, 176 and 177 of this Code committed against a child shall start running when the victim reaches legal age.

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

This is prescribed by Article 82 Paragraph 3 of the Criminal Code. A person who was a rape victim as a child may report the crime at any time. The statute of limitations starts running as the child turns 18.

1. **Are the mandatory requirements for proof of rape, such as medical evidence or need for witnesses?**

These actions may be undertaken during the criminal investigations in accordance with the circumstances but are not mandatory.

1. **Are the rape shield provisions aimed at preventing judges and defense lawyers from exposing a women's sexual history during the trial?**

Yes.

**Criminal Procedure Act**

Article 422

(1) No facts related to the former sexual behavior of the victim or his sexual preference may be used as evidence in the proceedings.

1. **Are procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?**

Yes.

Article 43

(1) Under this Act the victim of a criminal offence shall have:

1) the right to access services providing support to victims of criminal offences;

2) the right to efficient psychological and other professional assistance and support of the body, authority or institution providing assistance to victims of criminal offences as provided for by law;

3) the right to protection from intimidation and retaliation;

4) the right to protection of the dignity of the victim when testifying;

5) the right to be heard without unjustified delay after the complaint with regard to a criminal offence has been made and to be further heard only insofar as this is necessary for the purposes of the criminal proceeding;

…

Article 43 a

See above our answer on the question marked as 1.

Article 44

1) In addition to the rights enjoyed by the victim under this Article and the other provisions of this Act, a child victim of a criminal offence shall have the right to:

1) an attorney-in-fact appointed at government expense;

2) the confidentiality of personal information;

 3) the exclusion of the public.

(2) The court, the state attorney's office, the investigators and the police shall treat the child victim of a criminal offence with special consideration, taking into account his/her age, personality and other circumstances so as to avoid any adverse effects on its upbringing and development. In taking any action in respect of the child victim the competent authorities shall primarily keep in mind the best interests of the child.

(3) Where the age of the victim is unknown and it is probable that the victim has not yet turned eighteen, it shall be presumed that the victim is a child.

(4) In addition to the rights enjoyed by the victim under Article 43 of this Act, victims of the criminal offence against sexual freedom and victims of the criminal offence of human trafficking have the right:

1) before being questioned, to counselling services at government expense;

2) to an attorney-in-fact appointed at government expense;

3) to be questioned at the police and the state attorney's by a person of the same sex and that in case of any further questioning he/she be questioned, where possible, by that same person;

4) to refuse to answer any strictly private questions not related to the criminal offence;

5) to demand to be questioned via an audio-video link (Article 292, paragraph 4, of this Act);

6) to the confidentiality of personal information;

7) to demand that the hearing be closed to the public.

(5) In addition to the rights enjoyed by the victim under Article 43 of this Act, a victim with specific protection needs as provided for in Article 43 a of this Act shall have the right to:

1) before being questioned, to counselling services at government expense;

2) to be questioned at the police and the state attorney's by a person of the same sex and that in case of any further questioning he/she be questioned, where possible, by that same person;

3) to refuse to answer any strictly private questions not related to the criminal offence;

4) to demand to be questioned via an audio-video link (Article 292, paragraph 4, of this Act);

5) to the confidentiality of personal information;

6) to demand that the hearing be closed to the public.

Article 292

(1) Unless otherwise prescribed by a special law, the examination of a child under the age of fourteen years as a witness shall be carried out by the investigating judge. The examination shall be carried out in the absence of the judge and parties in the room where the child is situated through audio and video devices which are operated by an expert assistant. The examination is carried out with the assistance of a psychologist, educator or other expert person and unless this is contrary to the interests of proceedings or the child, parents or a guardian may be present during the examination. The parties may ask the child- witness questions authorized by the investigating judge through an expert. The examination shall be video-taped and audio-taped and the recording shall be sealed immediately and enclosed with the record. The child may be examined again only in exceptional cases and in the same manner.

 (2) Unless otherwise prescribed by a special law, the examination of a child over fourteen and under eighteen years of age as a witness shall be carried out by the investigating judge. During the examination of a child, especially if the child is the injured person of the criminal offence, special care shall be taken lest the examination have a harmful effect on the mental condition of the child. According to circumstances, the examination may be conducted in the manner referred to in paragraph 1 of this Article, paying special attention to the protection of the minor.

(3) Witnesses who cannot obey the summons due to their old age, state of health or a disability may be examined in their dwellings or other premises where they are situated. These witnesses may be questioned by means of audio and video devices which are operated by an expert assistant. If required so by the condition of the witness, the questioning shall be organized in such a manner that the witness can be questioned by the parties without their presence in a room where the witness is situated. If necessary, the interrogation shall be video-taped and audio-taped, and the recording sealed and enclosed with the record.

(4) In the manner referred to in paragraph 3 of this Article, upon the witness’ request, the examination may be carried out as the examination of a witness of a criminal offence against sexual freedom and the criminal offence of trafficking in human beings or if a criminal offence is committed in the family. Such witness may be re-examined only exceptionally and where deemed necessary by the court. The victim in respect of whom specific protection needs have been identified as provided for in Article 43a of this Act shall also be questioned in the manner set out in paragraph 3 of this Article where he/she so requests.

(5) If the examination of a witness is carried out pursuant to paragraph 3 of this Article, it shall be proceeded pursuant to Article 297 paragraph 3 of this Act.

War and/or conflict

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

Yes. It is prescribed by Articles 90 and 91 of the Criminal Code.

Crime against Humanity

Article 90

(1) Whoever, in violation of the rules of international law, as part of a widespread or systematic attack directed against any civil population, with knowledge of the attack:

…

7. rapes another person, holds another person in sexual slavery, forces a person into prostitution, unlawfully confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law, without the consent of another person and when this is not justified by medical reasons deprives the person of biological reproductive capability or inflicts on a person any other form of sexual violence of comparable gravity,

…

shall be punished by imprisonment for no less than five years or to long-term imprisonment.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever orders any of the criminal offences set out above.

War Crime

Article 91

(2) Whoever, in violation of the rules of international law, in times of war, occupation, international armed conflict or non-international armed conflict commits other serious violations of the laws and customs applicable in international armed conflict or non-international armed conflict, namely, any of the following acts:

…

22. committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

…

shall be punished by imprisonment for no less than three years.

(3) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever commits any of the offences set out in paragraph 2 of this Article against a large number of persons or in an especially cruel or treacherous way, out of greed or other base motives.

(4) Whoever orders the commission of an offence set out in paragraphs 1, 2 or 3 of this Article shall be punished as if he himself or she herself has committed it.

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

No. According to Article 81 paragraph 2 of the Criminal Code no statutory limitation shall apply to the criminal prosecution of, among others, crimes against humanity (Article 90 of the Criminal code) and war crimes (Article 91 of the Criminal Code).

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

No. Please see answer to the question 22.

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

Yes.It was ratified on 02.04.2001, by the Act on Ratification of the Roma Statute of the International Criminal Court (Official Gazette- International Agreements no. 5/2001).

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.**

The table represents the number of final convicting judgements for the criminal offences referred to in this Questionnaire in the last five years.

As of 1.1.2020. criminal offence prescribed by Article 152 of the CC (Non-Consensual Sexual Intercourse) ceased to exist as separate criminal offence and its legal description was incorporated under Article 153. Paragraph 1 of the CC.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Article of the CC** | **2015.** | **2016.** | **2017.** | **2018.** | **2019.** |
| **152.** | **20** | **15** | **11** | **10** | **10** |
| **153.** | **22** | **12** | **12** | **13** | **6** |
| **154.** | **20** | **13** | **17** | **15** | **13** |
| **158.** | **35** | **41** | **59** | **61** | **45** |
| **166.** | **10** | **12** | **8** | **13** | **16** |

Other

1. **Please explain any particular and additional barriers to the reporting and prosecution of rape and the accountability of perpetrators in your legal and social context not covered by the above.**

A high level of dark numbers of cases of rape that go unreported by the victim for the fear of retaliation or re-victimization.