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.

See Attachment no. 1 (the content of Art. 197 of the Criminal Code (hereinafter C.C.) and additionally Art. 199-200 of the C.C.)

1. Based on the wording of those provisions, is the provided definition of rape:
2. Gender specific, covering women only YES/**NO**
3. Gender neutral, covering all persons **YES**/NO
4. Based on the lack of consent of victim **YES**/NO
5. Based on the use of force or threat **YES**/NO
6. Some combination of the above. **YES**/NO. If yes, please specify.

The offence has the features of rape if the injured party is subjected to sexual intercourse by force, illegal threat or deceit. A condition of meeting the criteria of this criminal act is the lack of consent of the injured party.

1. Does it cover only vaginal rape? YES/**NO**
2. Does it cover all forms of penetration? **YES/**NO. If yes, please specify.

Art. 197 of the C.C. refers to sexual intercourse in general. The provision does not limit rape to any specific forms. Apart from sexual intercourse, forcing another person to submit to another sexual act, or to perform such an act is also punishable.

1. Is marital rape in this provision explicitly included? YES/**NO**
2. Is the law silent on marital rape? YES/**NO**
3. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**/NO

k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES/**NO**.

1. 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.

There are no provisions excluding criminalisation in the aforementioned cases.

1. What is the legal age for sexual consent?

 15 years of age.

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

There are no such provisions.

1. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.
2. C.C. Art. 197 § 1 (forcing to sexual intercourse) provides for imprisonment for between two and 12 years.
3. C.C. Art. 197 § 2 (forcing another person to submit to another sexual act, or to perform such an act) provides for imprisonment for between six months and eight years.
4. Art. 197 § 3 (rape: in concert with another person, of a minor under the age of 15, of a descendent, ascendant, adopter, adoptee, brother or sister) provides for imprisonment for at least three years.
5. Art. 197 § 4 (if the offender commits the rape specified in items a-c, with particular cruelty) provides for the penalty of imprisonment for at least five years.

**See attachment no. 1 and Attachment – statistical data.**

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?
2. **Criminal procedure:**
3. In the event the perpetrator is convicted in the course of criminal proceedings, the court may order the following measures with respect to the aggrieved party:
* compensatory measure – the offender is obliged to partially or fully remedy any damage caused by the offence, or compensate for any injury; this happens at the request of the aggrieved party or another authorised party, such order is obligatory and the court applies civil law provisions (C.C. Art. 46§ 1).
* compensatory measure – in the form of exemplary damages in the amount of up to PLN 200,000 for the aggrieved party in the event it is particularly difficult to issue the order to remedy the damage caused by the offence, fully or partially, or to compensate the injury suffered; in the event of death of the aggrieved party as a result of the offence committed by the convicted party, the court may order exemplary damages for a close relative, whose life situation as a result of the aggrieved party’s death significantly deteriorated, and if there are more such persons, exemplary damages are awarded to each of them (C.C. Art. 46 § 2),
* probation measure - in the form of an obligation to remedy the damage, fully or partially, unless the court ordered a compensatory measure (C.C. Art. 72§ 2).

2. Penitentiary court:

- pursuant to Art. 43nb. § 1. of the Executive Criminal Code (hereinafter referred to as E.C.C.) the court may oblige the offender who is serving the sentence of imprisonment in the electronic surveillance system to remedy the damage.

- pursuant to E.C.C. Art. 159 § 1 the court may also oblige the offender who is released on parole, if the damage resulting from the offence, for which the sentenced person is serving a penalty, was not remedied.

 **II. Civil procedure:**

**1.** The aggrieved party has the right to seek compensation from the offender according to general rules (Art. 415 of the Civil Code).

In the event of bodily injury or health disorder, remedy of damage includes all resulting costs. On the aggrieved party’s demand, the person obliged to remedy the damage should pay in advance the sum necessary for medical costs and if the aggrieved party becomes disabled, also the sum needed to train him or her for another occupation. If the aggrieved party becomes completely or partially incapable of working or if his or her needs have increased or his or her future perspectives have diminished, he or she may demand an appropriate annuity from the person obliged to remedy the damage (Civil Code Art. 444). The court may also award an appropriate sum to the aggrieved party as pecuniary recompense for the harm suffered (Civil Code Art. 445§ 1).

The court may, for good cause and at the aggrieved party’s demand, award one-off compensation to the aggrieved party, instead of an annuity or part thereof. This applies especially to the case where the aggrieved party has become disabled, and the one-off compensation will help him take up a new occupation.

**2.** In the event of infringement of one’s personal interests the injured person can seek compensation for the harm suffered. Personal interests include, among others, health (Civil Code Art. 448).

**III. Compensation**

Pursuant to the *Act of 7 July 2005 on State compensation granted to victims of certain prohibited acts* compensation is awarded to a person, who suffered serious detriment to health, disturbance of the functioning of a bodily organ, or disorder of health, which lasted more than seven days, and to the closest relation of the person who suffered death as a result of a prohibited act. The compensation may be awarded in the amount covering lost income or other means of subsistence, costs related to treatment or rehabilitation and costs of a funeral which resulted from prohibited acts specified in the statute. The compensation cannot exceed PLN 25,000, and if the victim suffered death – PLN 60,000. If the court, while deciding on the award of the compensation, concludes that it is impossible or exceedingly difficult to determine an exact amount of the demanded amount, it may decide to award a sum which is appropriate according to its assessment, based on a consideration of all circumstances of a case.

The compensation is awarded only when and only in the amount the entitled person cannot cover the loss of earnings, other means of sustenance or other costs specified in the statute from the perpetrator or perpetrators of the prohibited act, from insurance or social assistance, irrespectively whether the perpetrator or perpetrators of the prohibited act have been identified.

The compensation is awarded if the prohibited act was perpetrated in the territory of the Republic of Poland to the detriment of a person with a permanent residence in this territory or the territory of another European Union member state.

Aggravating and mitigating circumstances

8. 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 **OTHER**
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? YES/NO **OTHER**

In that regard, general provisions apply. In accordance with Art. 53§ 2 of the Criminal Code, when passing a sentence, the court will primarily take into account the motivation of the offender and the way he or she acted, in particular in the event the offence was committed to the detriment of a person who is helpless due to his or her age or health, whether the offence was committed together with a minor, the type and degree of the breach of duties the offender is charged with, the type and degree of any negative consequences of the offence, the features and personal conditions of the offender, his or her lifestyle before committing the offence, and his or her conduct afterwards, and in particular any efforts to redress the damage or to satisfy the public sense of justice in any way. The court will also take the behaviour of the aggrieved party into account.

The list is an example and a Polish court may consider other circumstances aggravating or mitigating.

1. **OTHER** – according to the Polish Criminal Code, rape by more than one person is not, in the strict sense of the word, considered an aggravating circumstance. It is, however, a qualified form of rape, the so-called group rape (it is a special type of offence referred to in C.C. Art. 197§ 3 item 1), it is an indictable offence and is liable to a penalty of imprisonment for at least three years.
2. **YES** – acting to the detriment of a particularly vulnerable person:

 - with disability, may be considered by a court as an aggravating circumstance.

- Furthermore, in accordance with C.C. Art. 197 § 3 item 2, raping a minor under the age of 15 is a qualified type of offence for which the offender is liable to imprisonment for at least three years.

1. **OTHER** - it is not explicitly indicated as aggravating circumstance, but the court may take it into consideration as part of C.C. Art. 53 § 2 and under the assessment of the degree of social consequences of the act (C.C. Art. 53 § 1 in connection with C.C. Art. 115 § 2)
2. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

**OTHER** - While issuing a sentence, the court applies the general directives of punishment set out in Art. 53 of the Criminal Code. After concluding that the accused did commit the act as charged, the court decides on the punishment. At this point, the court assesses, among others, whether circumstances explicitly referred to in § 2 of this article or other circumstances applied (the catalogue in this article is open) and decides whether these are mitigating circumstances.

1. 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?
2. Regardless of the law, is reconciliation permitted in practice? **YES**/NO and what is the practice in this regard?

Reconciliation with the perpetrator is possible at every stage of the proceedings. The court can consider it a mitigating circumstance while deciding on the penalty. Reconciliation does not result in the conclusion of the proceedings. While deciding on the punishment, the court can consider reconciliation a mitigating circumstance.

Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

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

b, if the perpetrator loses his "socially dangerous" character or reconciles with the victim? YES/**NO**

Marrying the perpetrator of rape does not result in the aggrieved party gaining the right to abandon the prosecution. However, pursuant to Art. 182 § 1 of the Code of Criminal Procedure (hereinafter C.P.C.), the closest relation of the accused can refuse to testify. This right can be exercised until the first hearing during a trial before the court. Therefore, if the aggrieved party, as the closest relation, refuses to testify, his or her previous testimony cannot be used (C.P.C. Article 186)[[1]](#footnote-1). If there is no other evidence (testimonies of witnesses, expert opinions as to the type and origin of bodily injury), the accused may be acquitted.

The criminal proceedings may be discontinued only when the conditions specified in C.P.C. Art. 17 § 1 are met.

Prosecution

1. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES**/NO
2. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/**NO**
3. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women? **YES**/NO

The parties can be referred to mediation with their mutual consent. However, this does not automatically conclude the ongoing proceedings [[2]](#footnote-2), but may be taken into consideration by the court while adjudicating.

1. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children? YES/NO **OTHER**

As a rule, it is possible to refer the case to mediation proceedings. In this case, a minor is represented by his or her guardian (a parent, legal guardian, a guardian appointed by a family court). Reconciliation does not result in the conclusion of the proceedings. While passing a sentence, the court can consider reconciliation a mitigating circumstance.

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

In accordance with the Criminal Code, the statute of limitation for prosecuting an act is linked with the penalty range for a given offence. For term of imprisonment for rape see item 6.

 Pursuant to C.C. Art. 101 § 1, an offence stops being punishable if, from the moment it was committed, the following number of years have passed:

1) (…)

2) 20 - where the act constitutes a different indictable offence;

2a) 15 - where the act constitutes a summary offence subject to imprisonment exceeding five years; (…)

The offence defined in C.C. Art. 197 § 3 and § 4 is an indictable offence, therefore C.C. Art. 101 § 1 item 2 applies with reference to the statute of limitation.

The offence defined in C.C. Art. 197 § 1 and § 2 is a summary offence liable to punishment of imprisonment of more than five years, therefore item 2a applies.

If during this period, proceedings are initiated, the offence stops being punishable after ten years (therefore, the period indicated in C.C. Art. 101 § 1 is extended by ten years).

1. Which are the provisions allowing a child who was the victim of rape and to report it after reaching adulthood, if any? **YES**/NO

Pursuant to C.C. Art. 101 § 4 item 2, in the case of offences specified in chapter XXV (offences against sexual freedom, including rape), where the aggrieved party is a minor, or if pornographic content involves a minor, the offences cannot stop being punishable before the aggrieved party reaches the age of 30.

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

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

**Yes** - C.P.C. Art. 366 § 1 in connection with C.P.C. Art. 370 in connection with C.P.C Art. 171 § 6.[[3]](#footnote-3)

1. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings ? **YES**/NO. If yes, please specify.

In order to avoid re-victimisation, the examination of rape victims follows a special procedure set out in Art. 185a and 185c-185d of the Code of Criminal Procedure (see Attachment no. 1).

War and/or conflict

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

In principle, rape is penalised based on general provisions. However, there are also special regulations that apply.

Pursuant to C.C. Art. 124§1, a perpetrator who, in violation of international law, uses deceit to force the following persons to perform sexual intercourse, to submit to another sexual act or to perform such an act:

1. anyone who has surrendered, laid down their arms or is unable to defend themselves,
2. the wounded, sick, shipwrecked persons, medical personnel or clergy,
3. prisoners of war,

4) civilians in an occupied, annexed or war-torn area, or anyone else who is protected by international law during warfare,

is liable to imprisonment for a minimum term of three years (therefore, it is an indictable offence).

Furthermore, pursuant to C.C. Art. 118a § 2 item 4:

anyone who, taking part in a mass attack or one of repeated attacks directed against a group of people taken to implement or support the policy of a state or organisation:

1) (…)

4) commits rape or uses violence, an unlawful threat or deceit or in any other way violates a person's sexual freedom, (…)

is liable to imprisonment for not less than five years or imprisonment for 25 years (therefore, it is an indictable offence).

The offences specified in C.C. Art. 118a and Art. 124 are included in Chapter XVI of the Criminal Code “Offences against peace, and humanity, and war crimes.”

1. Is there a statute of limitations for prosecuting rape in war or in conflict contexts ? YES/**NO**
2. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **YES**/NO

**YES** – Art. 105 § 1 of the Criminal Code stipulates that Art. 101-103 is relating to the period of limitation do not apply to crimes against peace, humanity, and war crimes.

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

Poland ratified it on 9 October 2001 (Polish Journal of Laws of 2003 No. 78 item 708).

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.

See Attachment – statistical data on adults finally sentenced for offence typified in Art. 197 of the Criminal Code – including the type and details of punishment, as well as gender and age of persons convicted in 2014-2018.

In 2018, common prosecution organizational units recorded 4,419 cases relating to offence specified in Art. 197 of the Criminal Code, out of which 2,199 cases received through offence notification. In 3,497 cases, proceedings were initiated. In 2019, 4,620 cases relating to the offence specified in Art. 197 of the Criminal Code were recorded, in 2,244 cases the offence was reported, and proceedings were initiated in 3,611 cases.

1. The Code of Criminal Procedure: Art. 186. § 1. A person who has the right to refuse testimony or is released from this obligation pursuant to Article 185 may declare that he wishes to use this right, however no later than before the commencement of his first testimony in the judicial proceedings. In such a case, the previous testimony of such a person cannot be used as evidence or reproduced.

§ 2. Records from physical examinations made in criminal proceedings are disclosed at the trial, even if the examined person refused to provide testimonies or explanations, or was released from this obligation pursuant to Article 182 or Article 185. [↑](#footnote-ref-1)
2. Art. 23a § 1 of the Code of Criminal Procedure: The court or the court referendary, and in preparatory proceedings the public prosecutor or another agency conducting these proceedings, may - on the initiative or with the consent of the aggrieved party and of the accused - refer the case to an authorised institution or person for the purpose of conducting mediation between the aggrieved party and the accused. [↑](#footnote-ref-2)
3. Art. 366. § 1. The presiding judge presides over the trial and ensures its proper course, bearing in mind that all significant circumstances of the case be clarified. (…)

Art. 171.§ 1. A person giving testimony should have the possibility of expressing himself freely, within the limits resulting from the purpose of a given procedure, and only then may questions intended to supplement, clarify or control the testimony be asked.

§ 2. Apart from the agency conducting the examination, questions may only be asked by the parties, defence counsels, attorneys, and experts. Questions are asked to the testifying person directly, unless the agency conducting the examination orders otherwise.

§ 3. If the person giving testimony is not yet fifteen years old, procedures in which he takes part should, if possible, be conducted with the attendance of a legal representative or a de facto guardian, unless it is contrary to the interest of the proceedings.

§ 4. A testifying person should not be asked questions suggesting the answer.

§ 5. It is prohibited to:

1) influence the statements of the testifying person by means of force or illicit threat,

2) use hypnosis, chemical substances or technical means in order to influence psychical processes in the body of the testifying person or allow control of the unconscious reactions of the body in connection with the examination.

§ 6. The agency conducting the examination disallows questions mentioned in § 4, as well as questions irrelevant to the case.

§ 7. Explanations, testimonies and statements made in circumstances precluding freedom of speech or obtained against the prohibitions mentioned in § 5, may not constitute evidence.

Art. 370  § 4. The presiding judge disallows questions referred to in Article 171 § 6, or those that he finds irrelevant for other reasons. [↑](#footnote-ref-3)