



CONTRIBUTION
OF THE EUROPEAN WOMEN'S NETWORK
AGAINST SEXUAL VIOLENCE
TO THE UN SRVAW THEMATIC REPORT ON RAPE

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QUESTIONNAIRE ON CRIMINALIZATION AND PROSECUTION OF RAPE

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Acronyms for included countries

Croatia	HR
Ireland	IE
Montenegro	ME
Serbia	RS
Slovenia	SI



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.

Country	Criminal law provision/s on rape
Croatia	<p>CRIMINAL CODE HR¹</p> <p>Title: XVI criminal offenses against sexual freedom</p> <p>Article 153 Rape</p> <p>(1) Whoever engages with another person in sexual intercourse or performs a sexual act equated with sexual intercourse without the person's consent, or whoever induces another person to engage without her/his consent in sexual intercourse or to perform, without her/his consent, a sexual act equated with sexual intercourse with a third party or to perform without her/his consent a sexual act equated with sexual intercourse upon himself/herself shall be sentenced to imprisonment for a term of one to five years.</p> <p>(2) Whoever commits the offense referred to in Paragraph 1 of this Article by the use of force or threats of an imminent attack on the life or body of the raped or other person shall be sentenced to imprisonment for a term of three to ten years.</p> <p>(3) A perpetrator who is avoidably mistaken as to the existence of consent referred to in Paragraph 1 of this Article shall be sentenced to imprisonment for a term of up to three years.</p> <p>(4) A perpetrator who is avoidably mistaken as to the existence of consent referred to in Paragraph 2 of this Article shall be sentenced to imprisonment for a term of one to five years.</p>

¹ HR - Criminal Code (Official Gazette, no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19)



	<p>(5) Consent referred to in Paragraph 1 of this Article shall exist if the person decided of her/his own free will to engage in sexual intercourse or perform a sexual act equated with sexual intercourse 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 sexual act equated with sexual intercourse was performed by the use of threats or 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 her/his refusal or if it is performed against a person unlawfully deprived of liberty.</p>
<p>Ireland</p>	<p>There are two rape provisions in Irish law, one in Section 2 Criminal Law (Rape) Act 1981 as amended, which describes only “traditional” man on woman vaginal rape by penis:</p> <p style="padding-left: 40px;">2. - (1) A man commits rape if -</p> <p style="padding-left: 80px;">(a) he has sexual intercourse with a woman who at the time of the intercourse does not consent to it, and</p> <p style="padding-left: 80px;">(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it,</p> <p>and references to rape in this Act and any other enactment shall be construed accordingly.</p> <p>(2) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.</p> <p>The second provision is gender-neutral and covers several forms of non-consensual penetration. It is known simply as “Section 4” rape: see Section 4 Criminal Law (Rape)(Amendment) Act 1990 as amended:</p> <p>4. - (1) In this Act “rape under Section 4” means a sexual assault that includes -</p>



(a) penetration (however slight) of the anus or mouth by the penis, or

(b) penetration (however slight) of the vagina by any object held or manipulated by another person.

(2) A person guilty of rape under section 4 shall be liable on conviction on indictment to imprisonment for life.

Both provisions attract the same maximum penalty of life imprisonment and both should be read alongside **Sections 5 and 9 of the Criminal Law (Rape) (Amendment) Act 1990** as amended, which cover consent:

Section 5:

5.— (1) Any rule of law by virtue of which a husband cannot be guilty of the rape of his wife is hereby abolished.

Section 9 as inserted by Section 48 Criminal Law (Sexual Offences) Act 2017:

“9. (1) A person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act.

(2) A person does not consent to a sexual act if —

(a) he or she permits the act to take place or submits to it because of the application of force to him or her or to some other person, or because of the threat of the application of force to him or her or to some other person, or because of a well-founded fear that force may be applied to him or her or to some other person,

(b) he or she is asleep or unconscious,

(c) he or she is incapable of consenting because of the effect of alcohol or some other drug,

(d) he or she is suffering from a physical disability which prevents him or her from communicating whether he or she agrees to the act,

(e) he or she is mistaken as to the nature and purpose of the act,



	<p>(f) he or she is mistaken as to the identity of any other person involved in the act,</p> <p>(g) he or she is being unlawfully detained at the time at which the act takes place,</p> <p>(h) the only expression or indication of consent or agreement to the act comes from somebody other than the person himself or herself.</p> <p>(3) This section does not limit the circumstances in which it may be established that a person did not consent to a sexual act.</p> <p>(4) Consent to a sexual act may be withdrawn at any time before the act begins, or in the case of a continuing act, while the act is taking place.</p> <p>(6) In this section – ‘sexual act’ means –</p> <p>(a) an act consisting of –</p> <p>(i) sexual intercourse, or</p> <p>(ii) buggery,</p> <p>(b) an act described in section 3(1) or 4(1) of this Act, or</p> <p>(c) an act which if done without consent would constitute a sexual assault;</p> <p>‘sexual intercourse’ shall be construed in accordance with Section 1(2) of the Principal Act.”</p>
Montenegro	<p>The Criminal Code of ME²</p> <p>Chapter 18 <u>Criminal acts against sexual freedom.</u></p> <p><u>Article 204. Rape</u></p> <p>“(1) Anyone who commits non-consensual intercourse or a non-consensual act equated with it, shall be punished by a prison term of one to eight years.</p>

² ME - See at <https://www.paragraf.me/propisi-crnegore/krivicni-zakonik-crne-gore.html>



(2) Anyone who forces another person to sexual intercourse or an act equal to it by using coercion or by threats to attack the life or body of that or some other person, shall be punished by a prison sentence of two to ten years.

(3) If a person commits an act referred to in Paragraph 1 and 2 of this Article against somebody under threats of doing something that would harm his/her honor or reputation or by serious threat of some other severe evil, s/he shall be punished by prison sentence of one to eight years.

(4) If due to acts referred to in Paragraphs 1, 2 and of this Article a severe bodily injury is inflicted on a person, or if the act is committed by more persons in an especially cruel manner or in an especially humiliating manner, or to a juvenile, or the consequence of the act is pregnancy, the perpetrator shall be punished by a prison sentence of five to fifteen years.

(5) If due to acts referred to in Paragraphs 1, 2 and 3 of this Article, a person died or the act is committed against the child, the perpetrator shall be punished by prison sentence of ten years at least.”

The Criminal Code of Montenegro³ does not contain special provisions relating exclusively to the criminal offense of rape, but it does have provisions relating to the criminal offense of sexual freedom:

- ✓ **Article 58. Right to present the evidence, Paragraph 4** “The injured party who is the victim of crime against sexual freedom shall have the right to be heard and to have the proceedings be conducted by a judge of the same sex, if so allowed by the existing staff composition of the Court.”
- ✓ **Article 113. Manner of examination of witnesses and instructions by the Court Paragraph 5** “An injured party who is the victim of crime against sexual freedom and violence, as well as a child being examined as a witness, shall be entitled to testify in separate premises before the judge and the Court clerk, whereas the Prosecutor, defendant and defense attorney shall be given the possibility to view the course of the examination from other premises and to put questions to the witness, after having been duly instructed by the Court of that possibility. The instruction shall be entered into the records.”

³ ME - See at <https://www.paragraf.me/propisi-crnegore/zakonik-o-krivicnom-postupku.html>



<p>Serbia</p>	<p>Criminal Code RS⁴</p> <p>Rape</p> <p>Article 178</p> <p>Whoever forces another to sexual intercourse or an equivalent act by use of force or threat of direct attack against the life or body of such or other person, shall be punished by imprisonment for a term of five to twelve years.</p> <p>If the offence referred to in paragraph 1 hereof is committed under threat of disclosure of information against such person or a person close to him or her that would damage such person's reputation or honour, or by threat of other grave evil, the offender shall be punished by imprisonment for a term of two to ten years.</p> <p>If the offence referred to in paragraphs 1 and 2 hereof resulted in grievous bodily harm of the person against whom the offence was committed, or if the offence was committed by multiple persons or in a particularly cruel or particularly degrading manner or against a juvenile or the act resulted in pregnancy, the offender shall be punished by imprisonment for a term of five to fifteen years.</p> <p>If the offence referred to in paragraphs 1 and 2 hereof resulted in death of the person against whom it was committed or if was committed against a child, the offender shall be punished by imprisonment for a term of at least ten years or life imprisonment.</p>
<p>Slovenia</p>	<p>Criminal Code SI⁵</p> <p>CRIMINAL OFFENCES AGAINST SEXUAL INTEGRITY</p> <p>Rape</p> <p>Article 170</p> <p>(1) Whoever compels a person of the same or opposite sex to submit to sexual intercourse with him by force or threat of imminent attack on life or limb shall be sentenced to imprisonment for not less than one and not more than ten years.</p>

⁴ RS - Official Gazette of RS, nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019)

⁵ SI - (KZ-1). Official Gazette of the RS, 50/12 – consolidated text, 6/16 – OG., 54/15, 38/16 in 27/17. Available at: [http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050;](http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050)



(2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.

(3) Whoever compels a person of the same or opposite sex to submit to sexual intercourse by threatening him/her with large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honor and reputation shall be sentenced to imprisonment for not less than six months and not more than five years.

(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.

Sexual Violence

Article 171

(1) Whoever uses force or threatens a person of the same or opposite sex with imminent attack on life or limb thereby compelling that person to submit to any lewd act not covered by the preceding Article or to perform such an act shall be sentenced to imprisonment for not less than six months and not more than ten years.

(2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.

(3) Whoever compels a person of the same or opposite sex to perform or submit to any lewd act by threatening him/her with a large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honor and reputation shall be sentenced to imprisonment for not more than five years.

(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.



Sexual Abuse of Defenseless Person

Article 172

(1) Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex by abusing the fact of his/her mental disease, temporary or graver mental disorder or sickness or any other state, owing to which that person is not capable of resisting, shall be sentenced to imprisonment for not less than one and not more than eight years.

(2) Whoever, under circumstances under the preceding paragraph, violates the sexual integrity of another person in any other way shall be sentenced to imprisonment for not more than five years.

Sexual Assault on a Person Below Fifteen Years of Age

Article 173

(1) Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to imprisonment for not less than three and not more than eight years.

(2) Whoever commits the offence under the preceding paragraph against the defenseless person under the age of fifteen or by threatening him/her with imminent attack on life or limb shall be sentenced to imprisonment for not less than five and not more than fifteen years.

(3) A teacher, educator, guardian, adoptive parent, parent, priest, doctor or any other person who through the abuse of his position has sexual intercourse or performs any lewd act with a person under the age of fifteen and whom he is entrusted to teach, educate, treat, protect or care for shall be sentenced to imprisonment for not less than three and not more than ten years.

(4) Whoever, under circumstances under paragraphs 1, 2 or 3 of this Article, violates the sexual integrity of the person under the age of fifteen years shall be sentenced to imprisonment for not more than five years.

(5) The Act referred to in the first paragraph of this article is not unlawful if it has been committed by a person of comparable age and if it meets the level of its mental and physical maturity.

Violation of Sexual Integrity by Abuse of Position

Article 174



	<p>(1) Whoever, by abusing his position, induces his subordinate or a person of the same or different sex who depends on him to have sexual intercourse with him or to perform or submit to any lewd act shall be sentenced to imprisonment for not more than five years.</p> <p>(2) A teacher, educator, guardian, adoptive parent, parent or any other person who through the abuse of his position has sexual intercourse or performs any lewd act with a person above the age of fifteen whom he is entrusted to teach, educate, protect or care for shall be sentenced to imprisonment for not less than one and not more than eight years.</p>
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2. Based on the wording of those provisions, is the provided definition of rape:

In provisions, is the provided definition of rape:	HR	IE	ME	RS	SI
Gender specific, covering women only	No	No ⁶	No	No	No
Gender neutral, covering all persons	Yes	Yes ⁷	Yes	Yes	Yes
Based on the lack of consent of victim	No	Yes ⁸	Yes	No	No
Based on the use of force or threat	No	Yes ⁹	Yes	Yes	Yes
Some combination of the above.	Yes	Yes	No	-	No
Does it cover only vaginal rape?	No	No	No	No	No
Does it cover all forms of penetration?*	Yes	No	Yes	No	Yes

⁶ IE - unless specifically charged as such

⁷ IE - unless it is charged as "Section 2" or "traditional" vaginal rape by penis

⁸ IE - in every case of Section 2 or Section 4 rape

⁹ IE - not in every case. There is an open list of circumstances in which there is no consent, and the use of force/threat is one of these. See above Section 9 Criminal Law (Rape) (Amendment) Act 1990 as amended



Is marital rape in this provision explicitly included?	Yes	Yes ¹⁰	Yes	No	Yes
Is the law silent on marital rape?	No	No	Yes	No	No
Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?	Yes	Yes ¹¹	No	Yes	Yes
Is marital rape excluded in the provisions, or is marital rape not considered as a crime?	No	No	No	No	No

Country	*Does it cover all forms of penetration? If Yes, please specify.
Croatia	YES. Currently applicable Criminal Code does not explicitly state all forms of penetration. That area is regulated by case-law. Rape is defined as sexual intercourse or a sexual act equated with sexual intercourse. According to the interpretation of Croatian case-law, an act equated with sexual intercourse will exist in a situation where penetration into the body happened (penetration with perpetrator body parts or objects into the body of victim, forcing the victim into committing acts involving penetration upon her/him and forcing victim to penetrate with her/his body parts into perpetrator's body. In judicial practice, acts without penetration show the least uniformity when it comes to determining whether it is a sexual act that is equated with sexual intercourse (for example, in some cases touching the victim's genitals with the perpetrator's tongue was qualified as a sexual act equated with sexual intercourse, i.e. rape, regardless of whether there was penetration with tongue, and in some cases it was crucial that there was no penetration with tongue and the act was qualified as lewd acts).
Ireland	NO.
Montenegro	YES.

¹⁰ IE - see Section 5 Criminal Law (Rape) (Amendment) Act 1990

¹¹ IE - see last but one answer and statutory provisions cited



	It is not explicitly defined in the law, but is covered through the practice of injury expertise.
Serbia	<p>NO. The definition of the rape is forced sexual intercourse or an equivalent act. For a long time, legal theory and judicial practise treated sexual intercourse as a penetration of the male sex organ into the female sex organ, partially or fully. At the same time, an equivalent act had been understood only as the penetration of male sex organ into female body, but not into her sex organ (oral or anal penetration). Newer practice however slowly shifted to treating “an equivalent act” as a penetration of any part of perpetrator’s body into the body of the victim (for example, finger).</p> <p>However, penetration of objects for sexual purpose into the victim’s body is still not treated as “an equivalent act”.</p>
Slovenia	YES. It is not explicitly defined in the law, but is covered through the case law.

3. 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.

HR	IE	ME	RS	SI
No	No	No	No	No

4. What is the legal age for sexual consent?

Country	What is the legal age for sexual consent?
Croatia	<p>15 years</p> <p>Article 158 of Criminal Code defines a Sexual Abuse of a Child under the Age of Fifteen.</p>



	<p>(1) Whoever engages in sexual intercourse or performs a sexual act equated with sexual intercourse with a child under the age of fifteen, or induces a child under the age of fifteen to engage in sexual intercourse or perform a sexual act equated with sexual intercourse with a third party or to perform upon herself/himself a sexual act equated with sexual intercourse shall be sentenced to imprisonment for a term of three to twelve years.</p>
Ireland	<p>17 unless the sexual acts in question could be charged as sexual assault if done with consent. Only then, the age of consent is 15.</p>
Montenegro	<p>14 years</p>
Serbia	<p>The legal framework has no specific provision on the legal age for sexual consent. However, The Criminal Code, defines the criminal act Sexual Intercourse with a Child. As this Law defines a child as a person younger than 14, and prohibits any sexual intercourse with a child (person younger than 14), it serves as implicit legal norm which defines legal age for sexual consent.</p> <p>Sexual Intercourse with a Child</p> <p>Article 180</p> <p>Whoever has sexual intercourse or commits an equivalent act against a child, shall be punished by imprisonment for a term of five to twelve years.</p> <p>If the offence referred to in paragraph 1 hereof results in grievous bodily harm of the child against whom the act was committed or if the act is committed by multiple persons or the offence resulted in pregnancy, the offender shall be punished by imprisonment for a term of five to fifteen years.</p> <p>If the offence referred to in paragraphs 1 and 2 hereof resulted in death of the child, the offender shall be punished by imprisonment for a term of at least ten years or life imprisonment.</p> <p>An offender shall not be punished for the offence referred to in paragraph 1 hereof if there is no considerable difference between the offender and the child in respect of their mental and physical maturity.</p>



Slovenia	<p>There is no specific law on the legal age for sexual consent. But the Criminal Code defines the criminal act Sexual act with a person, younger than 15 years (Sexual Assault on a Person Below Fifteen Years of Age, Article 173).</p> <p>Sexual Assault against a Person Below Fifteen Years of Age</p> <p>Article 173</p> <p>(1) Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to imprisonment for not less than three and not more than eight years.</p> <p>(2) Whoever commits the offence under the preceding paragraph against the defenseless person under the age of fifteen or by threatening him/her with imminent attack on life or limb shall be sentenced to imprisonment for not less than five and not more than fifteen years.</p> <p>(3) A teacher, educator, guardian, adoptive parent, parent, priest, doctor or any other person who through the abuse of his position has sexual intercourse or performs any lewd act with a person under the age of fifteen and whom he is entrusted to teach, educate, treat, protect or care for shall be sentenced to imprisonment for not less than three and not more than ten years.</p> <p>(4) Whoever, under circumstances under paragraphs 1, 2 or 3 of this Article, violates the sexual integrity of the person under the age of fifteen years shall be sentenced to imprisonment for not more than five years.</p> <p>(5) The Act referred to in the first paragraph of this article is not unlawful if it has been committed by a person of comparable age and if it meets the level of its mental and physical maturity.</p>
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5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

Country	Are there provisions that differentiate for sexual activity between peers?
Croatia	There shall be no criminal offense referred to in Article 158 of Criminal Code (Sexual Abuse of a Child under the Age of Fifteen) if the age difference between the persons engaging in sexual intercourse or performing a sexual act equated with sexual intercourse or a lewd act does not exceed three years.
Ireland	<p>YES, there is a proximity in age exception which may apply if the other person (not accused) is over 15, the person accused is either younger or no more than two years older than that person, the person accused is not in a position of authority with regard to that person, there was actual consent to the sexual activity, and there is no evidence of an intimidatory or exploitative relationship. See Section 17(8) Criminal Law (Sexual Offences) Act 2017 as amended - full text below:</p> <p>17 (8) Where, in proceedings for an offence under this section against a child who at the time of the alleged commission of the offence had attained the age of 15 years but was under the age of 17 years, it shall be a defence that the child consented to the sexual act of which the offence consisted where the defendant –</p> <p>(a) is younger or less than 2 years older than the child,</p> <p>(b) was not, at the time of the alleged commission of the offence, a person in authority in respect of the child, and</p> <p>(c) was not, at the time of the alleged commission of the offence, in a relationship with the child that was intimidatory or exploitative of the child.”.</p>
Montenegro	NO.
Serbia	As noted above, in the criminal offence Sexual Intercourse with a Child , the Criminal Code provided that “An offender shall not be punished for the offence referred to in paragraph 1 hereof if there is



	no considerable difference between the offender and the child in respect of their mental and physical maturity.”
Slovenia	YES. As noted above: Article 173/5 in 173/1 Criminal Code.

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

Country	Provide information on criminal sanctions
Croatia	<p>Article 153 Rape</p> <p>(1) Whoever engages with another person in sexual intercourse or performs a sexual act equated with sexual intercourse without the person's consent, or whoever induces another person to engage without her/his consent in sexual intercourse or to perform, without her/his consent, a sexual act equated with sexual intercourse with a third party or to perform without her/his consent a sexual act equated with sexual intercourse upon himself/herself shall be sentenced to imprisonment for a term of one to five years.</p> <p>(2) Whoever commits the offense referred to in Paragraph 1 of this Article by the use of force or threats of an imminent attack on the life or body of the raped or other person shall be sentenced to imprisonment for a term of three to ten years.</p> <p>(3) A perpetrator who is avoidably mistaken as to the existence of consent referred to in Paragraph 1 of this Article shall be sentenced to imprisonment for a term of up to three years.</p> <p>(4) A perpetrator who is avoidably mistaken as to the existence of consent referred to in Paragraph 2 of this Article shall be sentenced to imprisonment for a term of one to five years.</p> <p>(5) Consent referred to in Paragraph 1 of this Article shall exist if the person decided of her/his own free will to engage in sexual intercourse or perform a sexual act equated with sexual intercourse 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 sexual act equated with sexual intercourse was performed by the use of threats or fraud, by abusing one's position towards a person who is in a situation of dependence with respect to</p>



	<p>the perpetrator, by exploiting a person's condition due to which the person was unable to express her/his refusal or if it is performed against a person unlawfully deprived of liberty.</p>
<p>Ireland</p>	<p>Any rape conviction may result in a sentence of imprisonment for life, the maximum penalty. The presumptive sentence for rape is a prison sentence and in practice sentences under 5 years are rare. Various ancillary orders are or may be made at the time of sentence also, such as: fine, compensation order (see below), post-release supervision order (supervision is provided by the Probation Service and the police working together, and all convicted rapists will become subject to the requirements of the Sex Offenders Act 2001 (they will have to notify their addresses/any change of address to the Garda station nearest where they live, give notice of any intention to travel outside Ireland, and so on). An anti-harassment order may also be made on sentence, preventing perpetrators from contacting victims and/or keeping them out of certain areas after release, for a period of up to a year.</p>
<p>Montenegro</p>	<p>The crimes of rape are punishable by imprisonment. The range of prison sentences is from one year onwards and is graded through 5 paragraphs:</p> <ol style="list-style-type: none"> 1) Anyone who commits non-consensual intercourse or non-consensual act equated with it without his/her consent, shall be punished by <u>prison sentence of one to eight years</u>. 2) Anyone who forces another person to sexual intercourse or an act equal to it by using coercion or by threats to attack the life or body of that or some other person, shall be punished by <u>prison sentence of two to ten years</u>. 3) If a person commits an act referred to in Paragraph 1 and 2 of this Article against somebody under threats of doing something that would harm his/her honor or reputation or by serious threat of some other severe evil, s/he shall be punished by <u>prison sentence of one to eight years</u>. 4) If due to acts referred to in Paragraphs 1, 2 and 3 of this Article a severe bodily injury is inflicted on a person, or if the act is committed by more persons in an especially cruel manner or in an especially humiliating manner, or against a juvenile, or the consequence of the



	<p>act is pregnancy, the perpetrator shall be punished by <u>an prison sentence of three to fifteen years.</u></p> <p>5) If due to acts referred to in Paragraphs 1, and 3 of this Article a person died or the act is committed against a child, the perpetrator shall be punished by <u>a prison sentence of five to eighteen years.</u></p>
<p>Serbia</p>	<p>1. Basic form (Whoever forces another to sexual intercourse or an equivalent act by use of force or threat of direct attack against the life or body of such or other person) - imprisonment of five to twelve years.</p> <p>2. Lenient form (If the offence referred to in paragraph 1 hereof is committed under threat of disclosure of information against such person or a person close to him or her that would damage such person's reputation or honour, or by threat of other grave evil) - imprisonment of two to ten years.</p> <p>3. Qualified form (If the offence referred to in paragraphs 1 and 2 hereof resulted in grievous bodily harm of the person against whom the offence was committed, or if the offence was committed by multiple persons or in a particularly cruel or particularly degrading manner or against a juvenile or the act resulted in pregnancy) - imprisonment of five to fifteen years.</p> <p>4. Most qualified form (If the offence referred to in paragraphs 1 and 2 hereof resulted in death of the person against whom it was committed or if was committed against a child) - imprisonment of at least ten years or life imprisonment.</p>
<p>Slovenia</p>	<p>Please see the answer at the question no. 1: par. 170:</p> <p>Basic form (170/1): imprisonment of 1 do 10 years;</p> <p>Qualified form (170/2): imprisonment of 3 do 15 years;</p> <p>Lenient form (170/3): imprisonment of 6 months to 5 years.</p>



7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Country	Reparation to the victim
Croatia	<p>In the Title XI of the Criminal Procedure Code procedure for reparation is described (Articles 153-162). The victim of a criminal offence, who has committed to participating in the proceeding as an injured party, has the right to submit a claim for indemnification during the criminal proceeding, at the latest by the completion of the evidentiary proceeding (hearing), if that will not significantly delay the proceedings (in which case the court instructs to pursue the claim in civil litigation). In this claim the injured party can seek compensatory damages from the defendant, the return of items, or the annulment of a particular legal transaction. If the victim files the request during the criminal proceeding, the prerequisite for its acceptance is that the court finds the defendant guilty. If the victim does not obtain compensatory damages from the defendant in the criminal proceeding, the court will instruct her to seek compensatory damages in a civil proceeding by filing a lawsuit.</p> <p>Victim of a crime with elements of violence intentionally committed on Croatian territory after 1 July 2013 has the right to claim financial compensation:</p> <ul style="list-style-type: none"> -if he/she is a Croatian citizen, or a citizen of the European Union or resides on its territory -if he/she suffered a serious personal injury or serious deterioration of health as a result of the offense -if the offense is reported or recorded at the police or state attorney's office within six months from the date of the offense, whether the offender is known or not -if a written application is submitted on the official form and required documents enclosed <p>According to this law (THE VICTIMS' RIGHTS PURSUANT TO THE CRIME VICTIMS COMPENSATION ACT (Official Gazette 80/08 and 27/11)), victim has right the cost of medical treatment, loss of earnings and if victim is deceased, close blood relative is entitled</p>



	<p>to compensation for loss of statutory maintenance and funeral expenses.</p> <p>If the victim has previously obtained a property claim, its amount will be taken into account when determining the financial compensation and the court will do the same when awarding the property claim if the victim has previously obtained a financial compensation from the state budget.</p>
<p>Ireland</p>	<p>The prosecutor may apply on behalf of the victim at sentence for an order obliging the convicted perpetrator to pay the victim a sum in compensation. The judge will set the sum and it is open to the perpetrator to apply later to pay the balance of the sum in instalments and/or to have the whole amount reduced if his circumstances do not permit him to pay it, or to stop paying it altogether. In practice he is usually in prison and/or too poor to pay it anyhow.</p>
<p>Montenegro</p>	<p>There are no explicit provisions relating to the crime of rape. Compensation may be sought through some other legal provisions.</p> <p>The Law on compensation to victims of violent crimes has been adopted, but will apply from the day of Montenegro's accession to the European Union. The law in question regulates the victim's right to compensation for lost earnings, compensation for the costs of treatment and hospital stay, and compensation for funeral expenses. Funds for the payment of compensation are provided from the budget of Montenegro.</p> <p>Victims in Montenegro can obtain compensation from the perpetrator, in accordance with the provisions of the Criminal Procedure Code or the Law on Civil Procedure. The Code of Criminal Procedure enables the injured party to obtain compensation for damages within the criminal procedure through a property-legal claim.</p> <p>The decision on a property claim depends on the determination of certain circumstances that may not have anything to do with establishing the facts related to the decision in criminal proceedings, that is why in previous practice courts generally did not decide on property claims in criminal proceedings, but referred injured parties to litigation in order to obtain damages. The realization of</p>



	<p>compensation is based on the provisions of the Law on Obligations, which provide for compensation in case of bodily injury or impairment of health and / or monetary compensation for physical pain, mental pain due to impaired life activity, impairment, damage to reputation, honor, freedom or the rights of a person, the death of a loved one, as well as for fear. The competent courts are the ones who determine fair compensation for the damage suffered by the victim of violence.</p>
<p>Serbia</p>	<p>Victim is authorized to submit restitution claim in the criminal proceeding (Article 252 Criminal Procedure Code). This claim can be submitted from the very beginning of the procedure up to the very end (the last moment is conclusion of the main hearing) – Article 254. According to the Article 258, the court decides on a claim for restitution. When a court issues a judgment acquitting a defendant or rejecting the charges or discontinues criminal proceedings by a ruling, it will refer an authorized person to pursue a claim for restitution in civil litigation. In a judgment convicting a defendant or ruling pronouncing a security measure of compulsory psychiatric treatment, the court will award the claim for restitution to the authorized person in full or in part, and refer him to civil litigation for the remaining part. If the facts of the criminal proceedings do not provide a reliable basis either for full award of partial award, the court will refer the authorized person to pursue the claim for restitution in full in civil litigation.</p> <p>In practice however, victims are mostly referred to civil litigation to submit restitution claim. Then, this matter is adjudicated according to the general provisions on damage compensation.</p>
<p>Slovenia</p>	<p>Victim is authorized to submit restitution claim in the criminal proceeding (Article 100 Criminal Procedure Code). This claim can be submitted from the beginning of the procedure up to the very end. The last moment is conclusion of the main hearing (Article 102). The claim can be about the restitution (Article 100/2).</p> <p>In practice victims are mostly referred to civil litigation to submit restitution claim. Victim must pursue the claim for restitution in full in civil litigation under the Obligations Code (Article 131) according to the general provisions on damage compensation. The damage is</p>



	<p>also the infliction of physical or mental distress or fear on another person.</p> <p>Victims also have a special right to compensation, which is recognized by the state in a special procedure to victims of deliberate acts of violence and their relatives. Crime Victim Compensation Act provides (the citizens of EU) with the possibility to submit a claim compensation to the Ministry of Justice. Victims of domestic violence, victim minors, and victims of unknown perpetrators (or if the perpetrator cannot be persecuted) are eligible to claim compensation even before they claim it from the perpetrator and before the criminal proceedings start if there is reasonable suspicion that the crime has been committed. The reimbursement of non-pecuniary damage amounting from 50 to 10,000 euros may be requested for physical pain, injury to health, and emotional pain. In 2018, there was one such request for the criminal offence of rape which got approved. (https://rm.coe.int/grevio-inf-2019-15-eng/pdfa/1680989a54)</p>
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AGGRAVATING AND MITIGATING CIRCUMSTANCES

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

Country	Aggravating circumstances
Croatia	<p>Criminal Code, Article 154 Serious Criminal Offenses against Sexual Freedom</p> <p>(1) The sentence of imprisonment for a term of three to ten years shall be imposed on whoever commits the offense referred to in Article 153, Paragraph 1, of Criminal Code:</p> <ol style="list-style-type: none"> 1. against a close person; 2. against a victim especially vulnerable due to her/his age, illness, addiction, pregnancy, disability, a severe physical or mental disorder; 3. in an especially cruel or especially humiliating manner; 4. out of hatred;



	<p>5. together with one or more perpetrators, with several acts of sexual intercourse or sexual acts equated with sexual intercourse being committed against one and the same person;</p> <p>6. by using weapons or dangerous tools;</p> <p>7. in such a manner as to inflict severe physical injuries on the raped person or to make her pregnant.</p> <p>(2) Whoever commits the offense referred to in Article 153, Paragraph 2, of Criminal Code under the circumstances referred to in Paragraph 1 of this Article shall be sentenced to imprisonment for a term of five to fifteen years.</p> <p>(3) If the criminal offense referred to in Article 153, Paragraph 1 and 2 of Criminal Code, results in the death of the raped person, the perpetrator shall be sentenced to imprisonment for a term of at least five years.</p>
Ireland	<p>There is no exhaustive list because the sentencing judge can and will take the individual circumstances of the case into account. That said, if there is evidence that the rape took place within an intimate relationship that should always be regarded as “aggravating” unless there are exceptional circumstances. Also, a conviction for a subsequent sexual offence within a qualifying period after a first such conviction may result in a presumptive minimum sentence being imposed, depending on the circumstances. See generally Criminal Law (Sexual Offences) (Amendment) Act 2019.</p>
Montenegro	-
Serbia	-
Slovenia	-



a. Is rape by more than one perpetrator an aggravating circumstance?

HR	IE	ME	RS	SI
Yes	Yes	No ¹²	Yes	Yes

b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)

HR	IE	ME	RS	SI
Yes	Yes	Yes*	No**	Yes

Additional explanation:

Country	Is rape of a particularly vulnerable individual an aggravating circumstance
*Montenegro	<p>The Criminal Code of Montenegro recognizes the following as an aggravating circumstance: Non-consensual intercourse with a helpless person (Article 205), Sexual intercourse with a child (Article 206) and Non-consensual intercourse by abuse of position (Article 207). These Articles read:</p> <p><u>Article 205. Non-consensual intercourse with a helpless person</u></p> <p>(1) Anyone who performs non-consensual intercourse or an equal act taking advantage of a person's mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which s/he is not capable of resistance, shall be punished by a prison sentence of two to ten years.</p> <p>(2) If due to acts referred to in Paragraph 1 of this Article a severe bodily injury is inflicted on a disabled person or if the act is committed by more persons or in a specially cruel or humiliating manner or it is committed against a juvenile or the act resulted in a</p>

¹² ME - Explicitly not legally, but through judicial practice rape involving multiple perpetrators is considered an aggravating circumstance.



pregnancy, the perpetrator shall be punished by a prison sentence of five to fifteen years.

(3) If due to an act referred to in Paragraphs 1 and 2 of this Article a person suffering the act died or it is committed against a child, the perpetrator shall be punished by a prison sentence of ten years at least.

Article 206. Sexual intercourse with a child

(1) Anyone who performs sexual intercourse or an equal act with a child shall be punished by a prison sentence of three to twelve years.

(2) If due to an act referred to in Paragraph 1 of this Article a severe bodily injury is inflicted to a person, or the act is performed by more persons or it resulted in pregnancy, the perpetrator shall be punished by a prison sentence of five to fifteen years.

(3) If due to acts referred to in Paragraphs 1 and 2 of this Article a child died, the perpetrator shall be punished by a prison sentence of ten years at least.

(4) The perpetrator of an act referred to in Paragraph 1 of this Article shall not be punished provided that there exists no significant difference between the perpetrator and the child in respect to their mental and physical development.

Article 207. Non-consensual intercourse by abuse of position

(1) Anyone who by abuse of his/her position induces to non-consensual intercourse or an equal act a person who is in a subordinate or dependent position to him, shall be punished by a prison sentence of three months to three years.

(2) A teacher, instructor, guardian, adoptive parent, stepfather, stepmother or some other person who by abuse of his/her position or authorities performs sexual intercourse or an equal act with a minor entrusted to him for teaching, education, custody and taking care, shall be punished by a prison sentence of one to ten years.

(3) If an act referred to in Paragraph 1 and 2 of this Article is committed against a child, the perpetrator shall be punished by a prison sentence of three to twelve years.

(4) If an act referred to in Paragraphs 1 to 3 of this Article resulted in pregnancy, the perpetrator shall be punished for an act referred to in



	<p>Paragraph 1 by an prison sentence of six months to five years, for an act referred to in Paragraph 2 by a prison sentence of two to twelve years, and for an act as of Paragraph 3 by a prison sentence of three to fifteen years.</p> <p>(5) If due to an act as of Paragraph 3 of this Article a child died, the perpetrator shall be punished by a prison sentence of ten years at least.</p>
<p>**Serbia</p>	<p>Criminal Code defines another criminal act – Sexual Intercourse through Abuse of Position, which sanctions the use of position or power for sexual intercourse inducement. The first qualified form is if the offence is performed against juvenile (person younger of 18) by a teacher, guardian, adoptive parent, stepparent or other person who through abuse of his position or authority.</p> <p>However this criminal offence is not considered rape, and the criminal sanctions are somewhat lenient (for basic form – imprisonment of three months to three years; for the first qualified form - imprisonment of one to ten years; for the second qualified form - imprisonment of five to twelve years; for the third qualified form - imprisonment for a term of three to fifteen years; and for the most qualified form - imprisonment for a term at least ten years or life imprisonment).</p> <p>Sexual Intercourse through Abuse of Position</p> <p>Article 181</p> <p>Whoever by abuse of position induces to sexual intercourse or an equivalent act a person who is in a subordinate or dependant position, shall be punished by imprisonment for a term of three months to three years.</p> <p>A teacher, guardian, adoptive parent, stepparent or other person who through abuse of his position or authority has sexual intercourse or commits an equivalent act with a juvenile entrusted to him or her for teaching, upbringing or care, shall be punished by imprisonment for a term of one to ten years.</p>



	<p>If the offence referred to in paragraph 2 hereof is committed against a child, the offender shall be punished by imprisonment for a term of five to twelve years.</p> <p>If the offence referred to in paragraphs 1 through 3 hereof resulted in pregnancy, the offender shall be punished for the offence referred to in paragraph 1 by imprisonment for a term of six months to five years, and for the offence referred to in paragraph 2 by imprisonment for a term of two to twelve years, and for the offence referred to in paragraph 3 by imprisonment for a term of three to fifteen years.</p> <p>If the offence referred to in paragraph 3 hereof resulted in death of the child, the offender shall be punished by imprisonment for a term of at least ten years or life imprisonment.</p>
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c. Is rape by spouse or intimate partner an aggravating circumstance?

HR	IE	ME	RS	SI
Yes	Yes	No	No	No

9. Does the law foresee mitigating circumstances for the purposes of punishment? If yes, please specify.

HR	IE	ME	RS	SI
Yes	Yes	Yes	Yes	Yes

Country	Does the law foresee mitigating circumstances for the purposes of punishment?
Croatia	Criminal Code, Article 154 Serious Criminal Offenses against Sexual Freedom



	<p>(1) The sentence of imprisonment for a term of three to ten years shall be imposed on whoever commits the offense referred to in Article 153, Paragraph 1, of Criminal Code:</p> <ol style="list-style-type: none"> 1. against a close person; 2. against a victim especially vulnerable due to her/his age, illness, addiction, pregnancy, disability, a severe physical or mental disorder; 3. in an especially cruel or especially humiliating manner; 4. out of hatred; 5. together with one or more perpetrators, with several acts of sexual intercourse or sexual acts equated with sexual intercourse being committed against one and the same person; 6. by using weapons or dangerous tools; 7. in such a manner as to inflict severe physical injuries on the raped person or to make her pregnant. <p>(2) Whoever commits the offense referred to in Article 153, Paragraph 2, of Criminal Code under the circumstances referred to in Paragraph 1 of this Article shall be sentenced to imprisonment for a term of five to fifteen years.</p> <p>(3) If the criminal offense referred to in Article 153, Paragraph 1 and 2 of Criminal Code, results in the death of the raped person, the perpetrator shall be sentenced to imprisonment for a term of at least five years.</p>
<p>Ireland</p>	<p>This is at the discretion of the sentencing judge who will take the perpetrator's individual circumstances into account, so there is no closed list. Circumstances which are usually regarded as mitigating are pleas of guilty, particularly early pleas, no previous convictions, strong evidence of remorse and of serious efforts made at rehabilitation, no evidence of subsequent offending since the offence before the court, and serious mental or physical health issues on the part of the perpetrator.</p>
<p>Montenegro</p>	<p>Mitigating circumstances can be the property status of the defendant, marital status, children and their age, previous non-conviction in general and especially non-conviction for the same criminal offense, i.e. whether or not it is a case of specific recidivism.</p>



Serbia	<p>Criminal Code (Article 54) provides that the court shall admeasure a sentence to a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstances that could have bearing on severity of the sentence (mitigating and aggravating circumstances), and particularly the following: degree of culpability, motives for committing the offence, degree of endangering or damaging protected goods, circumstances under which the offence was committed, past life of the offender, his personal situation, his comportment after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender.</p> <p>Mitigating circumstances can lead to suspended sentence and sentence below minimum prescribed.</p> <p>A bit different situation is when a victim is a minor. In such case, Criminal Code provisions are overruled by the Law on Special Measures for Preventing Criminal Offences against Sexual Freedom Perpetrated against Minors (Official Gazette of RS, no. 32/2013), which provides that the court may not lessen the sentence of the perpetrator of the criminal offense and that a person sentenced to imprisonment for a criminal offense may not be given a suspended sentence. So the possible mitigating circumstances can be of importance only for the admeasuring the sentence.</p> <p>The Law on Special Measures for Preventing Criminal Offences against Sexual Freedom Perpetrated against Minors is applicable to the following criminal offences:</p> <ol style="list-style-type: none">1) rape (Article 178, paragraph 3 and 4 of the Criminal Code),2) sexual intercourse with a helpless person (Article 179, paragraphs 2 and 3 of the Criminal Code),3) sexual intercourse with a child (Article 180 of the Criminal Code),4) sexual intercourse through abuse of position (Article 181 of the Criminal Code),5) illicit sexual activities (Article 182 of the Criminal Code),
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	<p>6) arranging and facilitating sexual intercourse (Article 183 of the Criminal Code),</p> <p>7) mediation in prostitution (Article 184, paragraph 2 of the Criminal Code),</p> <p>8) displaying, procuring and possessing pornographic materials and pornographic exploitation of a minors (Article 185 of the Criminal Code),</p> <p>9) inducing a minor to witness sexual activities (Article 185a of the Criminal Code), and</p> <p>10) misuse of computer network or communication by other technical means with an intent to commit criminal offenses against sexual freedom perpetrated against a minor (Article 185b of the Criminal Code).</p>
Slovenia	<p>In practice these circumstances are: past life of the offender, his attitude towards the victim of the criminal offence, confession, youth, health condition, time distance from the crime.</p> <p>One of the arguments for the soap penalty was also due to »sexual instinct«, since the offender »has been alone for a long time, and in these conditions he did not have a regular opportunity after the realization of natural instincts«. A few judgments of our courts are talking about the reasons for the soap penalty or even relief: "because the rape lasted only a short time ", "due to the influence of alcohol of the injured party ", "significant contributions to injured parties".</p>

10. 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?

HR	IE	ME	RS	SI
No	No	-	No	No



- a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

HR	IE	ME	RS	SI
No	Yes ¹³	No ¹⁴	No	No

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

HR	IE	ME	RS	SI
No	Yes ¹⁵	No	No	No

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

HR	IE	ME	RS	SI
No	No	No	No	No

¹³ IE - It is permitted strictly speaking, as in there is no express prohibition on it. However, we are not aware of any cases where it has been used as an alternative to prosecution and so far as we are aware, the Director of Public Prosecutions does not consider it to be an appropriate alternative to prosecution for rape for any perpetrator. We have heard of a very small number of cases where some form of restorative justice with skilled outside help was used once the perpetrator had been convicted and gone to jail.

¹⁴ ME - It is not legally possible to make a legal agreement between the victim and the perpetrator, which will result in the waiver of criminal prosecution. In practice, a problem may arise if the victim has given a statement to the police but has not confirmed it before the prosecutor. As the victim's testimony is key evidence for the proceedings, if the victim refuses to testify before the prosecutor, the proceedings will be suspended.

¹⁵ IE - If the perpetrator is under 18, he is still likely to be prosecuted, but in rare cases the Director of Public Prosecutions may decide that provided he admits the rape, he may be dealt with otherwise than through prosecution because of his age through referral to the Garda-run Juvenile Diversion Programme. In this case, he will not be prosecuted but will be expected to comply with a programme of supervision, education and rehabilitation overseen by members of An Garda Síochána.



b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

HR	IE	ME	RS	SI
No	No	No	No	No

PROSECUTION

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

HR	IE	ME	RS	SI
Yes	Yes	Yes	Yes	Yes

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

HR	IE	ME	RS	SI
No ¹⁶	No	No	No	No

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

HR	IE	ME	RS	SI
Yes	No	No	No	Yes

¹⁶ HR - However, if the State Attorney's Office issues a decision and drops the prosecution, the victim has the possibility to take over the prosecution as a subsidiary prosecutor under certain conditions and within a certain period of time.



Country	Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?
Croatia	Article 360, Paragraph 6 of the Criminal Code Procedure - In the case of criminal offenses against life and limb and sexual freedoms punishable by imprisonment for a term exceeding five years, the public prosecutor must obtain victim’s consent for the agreement. If the victim has died or is unable to give consent, the consent shall be sought by the person referred to in Article 55, paragraph 6 of the Criminal Code Procedure (marital and extramarital spouse, life partner or informal life partner and descendant, and if they don’t exist, ancestor, brother, sister and a person whom the victim was required to support by law).
Ireland	NO, though the prosecutor may in certain circumstances, accept a plea of guilty to a lesser offence than rape instead.
Montenegro	NO.
Serbia	NO.
Slovenia	The plea bargain is possible, the “friendly settlement” is not. The agreement on penalties is possible; the prosecutor and the defendant conclude an agreement on the recognition of guilt (Law on criminal proceedings 450. a - 450. č).

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

HR	IE	ME	RS	SI
Yes	No	Yes	No	Yes



Country	Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?
Croatia	YES. There is no provision in the Criminal Procedure Code that would exclude the possibility of reaching a verdict based on the agreement of the parties in cases of criminal offenses against sexual abuse and sexual exploitation of children. In that case, as in question no. 14, the consent of the victim is required, i.e. in case that the child is victim, the consent of the legal representative is required. However, we are not aware that this institute has ever been used in court practice.
Ireland	NO, though the prosecutor may in certain circumstances, accept a plea of guilty to a lesser offence than rape instead;
Montenegro	YES.
Serbia	NO.
Slovenia	YES. The plea bargain is possible, the “friendly settlement” is not. The agreement on penalties is possible; the prosecutor and the defendant conclude an agreement on the recognition of guilt (Law on criminal proceedings 450. a - 450. č).

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

Country	Provide information on the statute of limitations for prosecuting rape
Croatia	<p>Article 81 of Criminal Code</p> <p>(1) Criminal prosecution shall become statute-barred after:</p> <ul style="list-style-type: none"> - 40 years for criminal offences for which sentences of long-term imprisonment or of imprisonment for terms exceeding 15 years may be imposed;



	<ul style="list-style-type: none"> - 25 years for criminal offences for which sentences of imprisonment for terms exceeding 10 years may be imposed; - 20 years for criminal offences for which sentences of imprisonment for terms exceeding 5 years may be imposed; - 15 years for criminal offences for which sentences of imprisonment for terms exceeding 3 years may be imposed; - 10 years for criminal offences for which sentences of imprisonment for terms exceeding one year may be imposed and - 6 years for other criminal offences.
Ireland	There is none.
Montenegro	<p>There are no special provisions specifically regulating the statute of limitations for the crime of rape. The Criminal Code of Montenegro through Chapter Ten – Article 124 Prescribing a period of limitation for criminal prosecution:</p> <p>Unless otherwise provided in this Code, criminal prosecution may not be undertaken after:</p> <ol style="list-style-type: none"> 1) 25 years of perpetration of a criminal offence for which a sentence of long-term imprisonment may be imposed by law; 2) 20 years of perpetration of a criminal offence for which a prison penalty exceeding 15 years can be pronounced by law; 3) 15 years of perpetration of a criminal offence for which a prison penalty exceeding 10 years can be pronounced by law; 4) 10 years of perpetration of a criminal offence for which a prison penalty exceeding 5 years can be pronounced by law; 5) 5 years of perpetration of a criminal offence for which a prison penalty exceeding 3 years can be pronounced by law;



	<p>6) 3 years of perpetration of a criminal offence for which a prison penalty exceeding one year can be pronounced by law;</p> <p>7) 2 years of perpetration of a criminal offence for which a prison penalty not exceeding one year or a fine can be pronounced by law.</p> <p>(2) If more than one punishment is prescribed for a criminal offense, the statute of limitations is determined according to the most severe prescribed punishment.</p>
<p>Serbia</p>	<p>Criminal Code provides the statutes of limitations as follows:</p> <ol style="list-style-type: none"> 1) twenty years from the time of committing of a criminal offence punishable by law to imprisonment over fifteen years; 2) fifteen years from the time of committing of a criminal offence punishable by law to imprisonment of over ten years; 3) ten years from the time of committing of a criminal offence punishable by law to imprisonment of over five years; 4) five years from the time of committing of a criminal offence punishable by law to imprisonment of over three years; 5) three years from the time of committing of a criminal offence punishable by law to imprisonment of over one year; 6) two years from the time of committing of a criminal offence punishable by law to imprisonment of under one year or fine. <p>However, if the victim is a child (person younger than 18) rules of the Criminal Code are overruled by the provisions of the Law on Special Measures for Preventing Criminal Offences against Sexual Freedom Perpetrated against Minors (Official Gazette of RS, no. 32/2013), which exclude the statutes of limitations for prosecution of sexual criminal offences against children (see above the criminal offences applicable). It provides that a criminal prosecution and execution of a sentence shall not be time-barred for the criminal offenses referred to in Article 3 hereof that were committed against minors.</p> <p>In April 2013, the Parliament of the Republic of Serbia adopted the Initiative of the Incest Trauma Center - Belgrade FOR the rescinding of the Statute of Limitations concerning sexual offences</p>



	<p>committed against children. The Parliament voted on the Initiative of the Incest Trauma Center – Belgrade that officially initiated and worked intensively toward this historical change of legislation. In this way, Serbia became second country in Europe, after UK, where the Law recognizes long-term effects of sexual trauma (comparing with earlier regulation when child sexual abuse offender could be prosecuted only six years after the last incident of sexual abuse occurred). From that moment on, the survivor was provided the right to report and start up a criminal procedure when gaining psychic strength and social power necessary to act as a more equal participant in prosecution.</p>
<p>Slovenia</p>	<p>Article 95/3 Criminal Code -1:</p> <p>3) Prosecution of criminal offences referred to articles 170 (rape) to 173 and the second paragraph of Article 174, article 175 and Article 176 of this Criminal Code is no longer permitted if the service of the offence expired a period equal to the three-time period laid down for the limitation of law enforcement by the first paragraph of 90. Article of this code.</p> <p>Limitation of law enforcement</p> <p>Article 90</p> <p>(1) Unless otherwise specified in this code, prosecution is no longer allowed if it has expired:</p> <ol style="list-style-type: none"> 1) Fifty years from the service of a criminal offence for which a prison of thirty years may be declared, unless it is not a non-barred criminal offence; 2) Thirty years from the service of a criminal offence for which a prison of over ten years may be declared by law; 3) Twenty years from the service of a criminal offence for which a prison of five years may be declared by law; 4) Ten years from the service of a criminal offence for which a prison is to be declared over one year; 5) Six years from the service of a criminal offence for which a prison of up to one year or a penalty may be imposed by law.



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

HR	IE	ME	RS	SI
Yes	Yes	Yes	Yes	Yes ¹⁷

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

Country	Mandatory requirements for proof of rape, such a medical evidence or the need for witnesses
Croatia	NO. The Criminal Code and the Criminal Procedure Act do not require any proof from the victim. The prosecution of rape is always ex officio, so it is a police and prosecutors' job to establish the evidence.
Ireland	NO.
Montenegro	NO.
Serbia	NO, the Criminal Code and the Criminal Procedure Code do not require any proof from the victim. The prosecution of rape is always ex officio, so it is a police and prosecutors' job to establish the evidence. However, a victim is always medically examined as soon as possible, and is taken DNA sample. The victim is provided examination ex officio, and the medical examination is provided immediately and on police request and logistic assistance.
Slovenia	NO.

¹⁷SI - Article 90/3 Criminal Code -1: (3) Irrespective of paragraph 1 of this Article, the time limit for statute of limitations in criminal offences against sexual inviolability and criminal offences against marriage, family or youth, committed against a minor, shall begin when the injured person becomes an adult.



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

Country	Rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial
Croatia	<p>YES.</p> <p>Criminal Procedure Act, Article 44</p> <p>(4) The victim of a criminal offense against sexual freedom and the victim of a criminal offense of trafficking in human beings shall, in addition to the rights granted to the victim in accordance with Article 43 of Criminal Code, have the right to:</p> <p>4) refuse to answer the questions not related to the criminal offense but related to the victim's strictly personal life.</p>
Ireland	<p>YES.</p> <p>See Sections 3 and 4A Criminal Law (Rape) Act 1981 as amended (see below for informal consolidated version)</p> <p>3. (1) If at a trial any person is for the time being charged with a sexual assault offence to which he pleads not guilty, then, except with the leave of the judge, no evidence shall be adduced and no question shall be asked in cross-examination at the trial, by or on behalf of any accused person at the trial, about any sexual experience (other than that to which the charge relates) of a complainant with any person; and in relation to a sexual assault tried summarily pursuant to section 12 –</p> <p>(a) subsection (2) (a) shall have effect as if the words ‘in the absence of the jury’ were omitted, (b) subsection (2) (b) shall have effect as if for the references to the jury there were substituted references to the court, and (c) this section (other than this paragraph) and subsections (3) and (4) of section 7 shall have effect as if for the references to the judge there were substituted references to the court.</p> <p>(2)</p> <p>(a) The judge shall not give leave in pursuance of subsection (1) for any evidence or question except on an application made to him, in the absence of the jury, by or on behalf of an accused person.</p>



(b) The judge shall give leave if, and only if, he is satisfied that it would be unfair to the accused person to refuse to allow the evidence to be adduced or the question to be asked, that is to say, if he is satisfied that, on the assumption that if the evidence or question was not allowed the jury might reasonably be satisfied beyond reasonable doubt that the accused person is guilty, the effect of allowing the evidence or question might reasonably be that they would not be so satisfied.

(3)

If, notwithstanding that the judge has given leave in accordance with this section for any evidence to be adduced or question to be asked in cross-examination, it appears to the judge that any question asked or proposed to be asked (whether in the course of so adducing evidence or of cross-examination) in reliance on the leave which he has given is not or may not be such as may properly be asked in accordance with that leave, he may direct that the question shall not be asked or, if asked, that it shall not be answered except in accordance with his leave given on a fresh application under this section. [...]

4A

(1) Where an application under section 3 or 4 is made by or on behalf of an accused person who is for the time being charged with an offence to which this section applies, the complainant shall be entitled to be heard in relation to the application and, for this purpose, to be legally represented during the hearing of the application.

(2) Notice of intention to make an application under section 3 or 4 shall be given to the prosecution by or on behalf of the accused person before, or as soon as practicable after, the commencement of the trial for the offence concerned or, as the case may be, the commencement of the proceeding concerned referred to in section 4(1).

(3) The prosecution shall, as soon as practicable after the receipt by it of such a notice, notify the complainant of his or her entitlement to be heard in relation to the said application and to be legally represented, for that purpose, during the course of the application.



	<p>(4) The judge shall not hear the said application without first being satisfied that subsections (2) and (3) have been complied with.</p> <p>(5) If the period between the complainant's being notified, under subsection (3), of his or her entitlements under this section and the making of the said application is not, in the judge's opinion, such as to have afforded the complainant a reasonable opportunity to arrange legal representation of the kind referred to in this section, the judge shall postpone the hearing of the application (and, for this purpose, may adjourn the trial or proceeding concerned) for a period that the judge considers will afford the complainant such an opportunity.</p> <p>(6) This section applies to a rape offence, “, an offence under the Criminal Law (Sexual Offences) Act 2006”, an offence under Section 6 of the Criminal Law (Sexual Offences) Act 1993, and any of the following, namely, aggravated sexual assault, attempted aggravated sexual assault, aiding, abetting, counselling and procuring aggravated sexual assault or attempted aggravated sexual assault, incitement to aggravated sexual assault and conspiring to commit any of the foregoing offences.”.</p>
Montenegro	NO.
Serbia	<p>Beside provisions related to especially vulnerable witness, mentioned above, Criminal Procedure Code provides as follows:</p> <p>Article 9 - Prohibition of Torture, Inhumane Treatment and Coercion:</p> <p>Any use of torture, inhumane and degrading treatment, force, threats, coercion, deception, medical procedures and other means affecting the free will or extorting a confession or other statement or action by a defendant or other participant in proceedings is prohibited and punishable.</p> <p>Article 102 - Protection of Witnesses Basic Protection</p> <p>The authority conducting proceedings is required to protect an injured party or witness from an insult, threat and any other attack. Upon</p>



	<p>receiving notification from the police or the court or upon learning about the existence of violence or a serious threat directed at an injured party or a witness, the public prosecutor will undertake criminal prosecution or notify the competent public prosecutor thereof. A public prosecutor or the court may request that the police undertake measures to protect an injured party or a witness in accordance with the law.</p> <p>Article 369 - Protection of the Reputation of the Court and Participants in Proceedings</p> <p>The court is required to protect its reputation and security, the reputation and security of the parties and other participants in proceedings, from an insult, threat and any other assault.</p> <p>Article 402 - Examining a Witness, Expert Witness or Professional Consultant</p> <p>The parties and the defense counsel, the president of the panel and the members of the panel question a witness, expert witness and professional consultant directly. The direct examination is performed first, followed by cross-examination, and additional questions may be posed with the approval of the president of the panel.</p> <p>This article, prescribing applicable certain rules on questioning of defendant, provides that the president of the panel will prohibit a question or a reply to a question if it is inadmissible , or does not refer to the subject matter, except if the question is aimed at verifying the authenticity of the testimony. The parties may request that the panel decide on the prohibition of a question or answer to a question.</p> <p>As it can be seen, there are no explicit provisions which prohibit posing questions related to any aspect of victim’s life, including victim’s behavior in the past. However, the judge(s) (president of the panel or panel itself) can prohibit asking questions related to victim’s life but only if they found it as inhuman, degrading, or as an assault or attack, or as irrelevant or imposed only as to disrespect the victim.</p>
Slovenia	NO.



	It is not prohibited to perpetrator to expose a woman's sexual history during trial. It depends of the judge if he allows that evidences.
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20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

Country	Procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings
Croatia	<p>YES.</p> <p>In the Croatian Criminal Procedure Code, influenced by Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA the rights of victims of crime have been introduced. A general catalog of rights is prescribed for all victims of crime. Additional rights are proscribed for children and victims of criminal offence against sexual freedom and the criminal offence of human trafficking. Since there is no special law about victims of crime in Croatia, the Code of Criminal Procedure contains procedural rights as well as the rights of victims on protection from secondary victimization, which are not necessarily related to the victim's participation in criminal proceedings.</p> <p>The victim of the CRIMINAL PROCEDURE ACT</p> <p>TITLE V. VICTIM, INJURED PARTY AND THE PRIVATE ATTORNEY</p> <p>1. Victim</p> <p><u>Article 43</u></p> <p>(1) In accordance with this Act, the victim of a criminal offense has:</p> <ol style="list-style-type: none"> 1) the right of access to support services for victims of crime, 2) the right to effective psychological and other professional assistance and support from a body, organization or institution that assists victims of crime in accordance with the law; 3) the right to protection against intimidation and retaliation,



- 4) the right to protection of dignity during the examination of the victim as a witness,
- 5) the right to be heard without unjustified delay after the filing a criminal complaint and to conduct further hearings only to the extent necessary for the purpose of criminal proceedings,
- 6) the right to be accompanied by a confidential person in taking actions in which s/he participates,
- 7) the right to participate in medical treatment only to a necessary minimum and only if it is absolutely necessary for the purpose of criminal proceedings,
- 8) the right to file a motion for prosecution and a private lawsuit in accordance with the provisions of the Criminal Code, the right to participate in criminal proceedings as an injured party, the right to be informed about the rejection of a criminal complaint (**Article 206, paragraph 3 of this Act**) and the dismissal of a prosecutor and the right to take over prosecution instead of the State's Attorney's Office,
- 9) the right to information from State Attorney's Office about the actions taken based on her/his application (**Article 206a of this Act**) and to file a complaint with the **Superior State's Attorney (Article 206b of this Act)**;
- 10) the right to be informed, upon her/his request, without undue delay, of the termination of detention or remand prison, the escape of the defendant and the release of the convicted person from serving his sentence of imprisonment and the measures taken to protect her/him,
- 11) the right to be informed, at her/his request, of any decision terminating criminal proceedings in a legally binding manner,
- 12) other rights prescribed by law.

Article 44

(1) A child as a victim of a criminal offense shall, in addition to the rights granted to the victim in accordance with this Article and other provisions of this Act, also have the right to:

- 1) legal representative at the expense of state budget,
- 2) confidentiality of personal data,



	<p>3) exclusion of the public.</p> <p>(2) The court, the State's Attorney Office, the investigator, and the police shall treat the child as a victim of a criminal offense with special care, bearing in mind age, personality, and other circumstances, in order to avoid harmful consequences for the upbringing and development of the child. In treating the child victim, the relevant authorities will primarily be guided by the best interest of the child.</p> <p>(3) If the age of the victim is not known, it will be presumed that the child is involved if it is likely that the victim has not reached the age of eighteen.</p> <p>(4) The victim of a criminal offense against sexual freedom and the victim of a criminal offense of trafficking in human beings shall, in addition to the rights granted to the victim in accordance with Article 43 of this Act, have the right to:</p> <ol style="list-style-type: none"> 1) talk to the advisor before the examination, at the expense of the state budget, 2) a legal representative at the expense of the state budget, 3) be questioned by a person of the same sex in the police and State Attorney's Office and, if possible, in case of repeated questioning to be questioned by that same person 4) refuse to answer the questions not related to the criminal offense but related to the victim's strictly personal life, 5) request to be questioned by means of an audio-video device (Article 292, Paragraph 4 of this Act), 6) confidentiality of personal data, 7) demand the exclusion of the public from the hearing.
<p>Ireland</p>	<p>See generally:</p> <p>Part III Criminal Evidence Act 1992 as amended esp by Section 30 Criminal Justice (Victims of Crime) Act 2017 as amended</p> <p>Sections 3, 4A and 8 Criminal Law (Rape) Act 1981 as amended</p> <p>Sections 20 and 21 Criminal Justice (Victims of Crime) Act 2017 as amended.</p>



	<p>Depending on victim's age (under 18 have more protections) and whether or not they have a mental disability (they have more protections), the following protections are more or less available, in every case at the discretion of the judge: video-link testimony, testimony from behind a screen where VL is not used, restrictions on cross-examination in person by the defendant, pre-recorded police statements being allowed to stand as evidence in the case (this applies only to under 18s and persons with a mental disability), the use of an intermediary (applies only to the questions posed, not the answers given by the witness), courtrooms being closed to the public, restrictions on questions about victim's private life which is unrelated to the offence, restrictions on questions about victim's other sexual history, victim anonymity (ie information leading to their becoming identifiable may not be made public) in respect of the most serious sexual offences. Victims are also entitled to object to the disclosure of any counselling records made, whether or not they have them in their possession.</p>
<p>Montenegro</p>	<p>NO. Not specifically specified for rape victims. It is defined through general provisions on prevention of re-victimization through general provisions.</p>
<p>Serbia</p>	<p>There are only few provisions on protection from re-victimization and they are all but sufficient to protect the victim. The Criminal Procedure Code, Articles 103 and 104, provides that the authority conducting proceedings may ex officio, upon the petition of parties or the witness himself or herself, designate as a particularly vulnerable witness a witness who is particularly vulnerable in view of his or her age, experience, lifestyle, gender, health status, nature, manner or consequences of the criminal offence committed, or another circumstance of the case. A particularly vulnerable witness may be examined only through the authority conducting the proceedings, which shall treat the witness with particular care, endeavouring to avoid any detrimental consequences of the criminal proceedings on the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which shall be decided upon by the authority conducting proceedings. If the authority conducting proceedings decides to examine a particularly vulnerable witness using audio-visual equipment, the examination shall be conducted without the</p>



presence of the parties and other participants in the proceedings in the room where the witness is located. A particularly vulnerable witness may also be examined in his or her dwelling or other premises or in an authorised institution professionally qualified for examining particularly vulnerable persons. In such case the authority conducting proceedings may order the implementation of the measures referred above.

A particularly vulnerable witness may not be confronted with the defendant, unless the defendant himself or herself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence.

The **Criminal Procedure Code** treats victims as a "victim - witness".

As it can be seen, the protective measures shall be granted only to "particularly vulnerable witness" (which encompasses the victim), not to all victims. Who will be a "particularly vulnerable witness" is up to the authorities' assessment and decision. This is why in many cases of sexual offences, adult victims are treated as "regular" victims-witnesses, thus not given any kind of protection. Those victims have to go through examination, cross examination and even confrontation with a defendant.

Even when granted the status of "particularly vulnerable witness", the victim or the witness will not automatically be granted protective measures. Which measures would be used, depends on the authority's decision. As for confrontation, the protective measures depend not only to the authority's decision, but also on the defendant's: A particularly vulnerable witness may not be confronted with the defendant, unless the defendant himself or herself requests this and the court allows.

When the victim is a child (person younger than 18), yet another Law is in place: **Law on Juvenile Criminal Offenders and Criminal Law Protection of Minors**, **Official Gazette of RS, no. 85/2005**. This law, in **Articles 152 and 153**, provides that when conducting proceedings for criminal offences committed against minors, the public prosecutor,



investigating judge and judges of the panel shall treat the injured party with care, having regard to his or her age, personality characteristics, education and living circumstances, particularly endeavouring to avoid any detrimental consequences of the proceedings on his or her personality and development. Minors shall be examined with the assistance of a psychologist, pedagogic or other professional. If a minor who is an injured party is questioned as witness of the criminal offence, the examination may be conducted not more than twice, and exceptionally more times if necessary to achieve the purpose of criminal proceedings. If a minor is questioned more than twice, the judge shall particularly have regard for the protection of personality and development of the minor. If, due to the nature of the criminal offence and the minor's personal characteristics the judge deems it necessary, he or she shall order the examination of the minor with the aid of audio-visual equipment, and the examination shall be conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogic, social worker or other professional. Minors may be examined as witnesses-injured parties in their dwellings or other premises or authorised institution - organisation that is professionally qualified for examining minors. In examining the witness-injured party, the authorities may order application of the measures referred above. When a minor was examined with the aid of audio-visual equipment, the record of his or her testimony shall always be read at the main hearing or a recording of the examination heard. If a minor is questioned as a witness, who due to the nature of the criminal offence, consequences or other circumstances, is particularly vulnerable or is in a particularly difficult mental state, confrontation between him or her and the defendant is prohibited.

Although in almost all cases children protective measures are not conditioned by additional conditions, it is up to the prosecutors and judges which measure will be applied. The principle limitation to at most two examinations is further relaxed by authorisation of the court to expand the number of examinations on his own device. Some research showed that children are mostly examined in the courtroom, the use of audio-visual technology is extremely rare. The law puts additional conditions to prohibit confrontation: it is not enough that a victim is a child, the victim has to be particularly vulnerable or is in a



	particularly difficult mental state for the confrontation to be prohibited.
Slovenia	<p>EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29-EU) was transposed into the Criminal Procedure Act in 2019. It now includes the obligation of the police, State Prosecutor's Office, and the court to enable the victim, both in the criminal procedure and in the pre-trial procedure, to avoid unwanted contact with the accused or suspects, unless this is necessary. A juvenile victim has a right to a proxy taking care of his or her rights at all times during criminal proceedings and when questioned in pre-trial proceedings, in particular as regards the protection of his or her integrity during the hearing.ⁱ The competent authority in pre-trial or criminal proceedings individually assesses the level of the victim's exposure to secondary and re-victimization, intimidation and revenge upon the first contact with the victim, if possible to establish the existence of special protection needs. This assessment needs to be updated during the criminal proceedings if the circumstances change. Based on the assessment of special protection needs, the court may take various protective measures (for example, excluding the public from the main hearing, cross-examination via videoconference, etc.)</p> <p><u>We enclose an attachment.</u></p> <p>https://www.gov.si/assets/ministrstva/MP/obrazci-odskodnine-zrtvam/Publikacije-pravice-zrtev-KD/Pravice-zrtev-v-kazenskem-postopku-ang.pdf</p>

WAR AND/OR CONFLICT

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

Country	Is rape criminalized as a war crime or crime against humanity?
Croatia	YES



	<p>Criminal Code, Crime against Humanity, Article 90, paragraph 1</p> <p>(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:</p> <p>7. rapes another person, holds another person in sexual slavery, forces him/her 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 sterilises the person or inflicts on him/her any other form of sexual violence of comparable gravity; shall be sentenced to imprisonment for a term not less than five years or by long-term imprisonment.</p> <p>Criminal Code, War Crime, Article 91, paragraph 2</p> <p>(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, within the established framework of international law, namely, any of the following acts:</p> <p>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 sentenced to imprisonment for a term not less than three years.</p>
Ireland	NO, not specifically.
Montenegro	YES.
Serbia	<p>Criminal Code defines the criminal offence Crimes against Humanity in Article 371. This criminal offence is conducted if a person in violation of the rules of international law, as part of a wider and systematic attack against civilian population orders or commits</p>



	<p><i>inter alia</i> rape; forcing to prostitution; forcing pregnancy or sterilization aimed at changing the ethnic balance of the population. The prescribed punishment is imprisonment of minimum five years or life imprisonment.</p> <p>The criminal offence War Crimes against Civilian Population (Article 372) is committed if a person in violation of international law at time of war armed conflict or occupation orders or commits <i>inter alia</i> forcing to prostitution or rape. The prescribed punishment is imprisonment of minimum five years. This criminal offence exists if a person threatens to commit the offences specified above. The prescribed punishment is imprisonment of six months to five years.</p>
Slovenia	YES.

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

HR	IE	ME	RS	SI
No	No	No	No ¹⁸	No

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

Country	Explicit provisions excluding statutes of limitation for rape committed during war and armed conflict
Croatia	Criminal Code, Article 81, paragraph 2

¹⁸ RS - Criminal Code, in Article 108, provides that there shall be no statutes of limitation for criminal prosecution and enforcement of penalty for offences stipulated in articles 370 through 375 hereof (which include Crimes against Humanity and War Crimes against Civilian Population), and for criminal offences that pursuant to ratified international treaties cannot be subject to limitations.



	(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) and other offences that are not subject to the statute of limitations under the Constitution of the Republic of Croatia or the international law.
Ireland	NO
Montenegro	YES.
Serbia	Pls. see answer on question no. 22
Slovenia	YES

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

Country	Rome Statute of the International Criminal Court (ICC) ratified
Croatia	The Republic of Croatia signed the Rome Statute of the International Criminal Court on 12 th October 12, 1998, and ratified it on 2 nd April, 2001 with the Law on Ratification of the Rome Statute of the International Criminal Court (Official gazette - International treaties 5/2001) and submitted the instrument of ratification to the UN Secretary General on 21 st May, 2001.
Ireland	YES.
Montenegro	YES.
Serbia	6 September 2001
Slovenia	YES.



DATA

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

CROATIA

In the Republic of Croatia, until 1st January of 2020, there was a difference within the Criminal Code between the criminal offense of rape and the criminal offense of sexual intercourse without consent. With the Law on Amendments to the Criminal Code, which entered into force on 1st January of 2020, the offense of sexual intercourse without consent has been rescinded.

NUMBER OF REPORTED CASES TO THE POLICE

YEAR	SEXUAL INTERCOURSE WITHOUT CONSENT	RAPE	ATTEMPTED-RAPE
2019.	116	73	12
2018.	69	56	11
2017.	67	61	8
2016.	116	81	15
2015.	70	72	18

In Republic of Croatia, there is no official data about the number and type of verdicts and sentences imposed.

IRELAND

Latest year for which there is complete data set available is 2017, accordingly 2015, 2016 and 2017 figures for rapes reported, prosecuted and resulting in conviction, are set out below.



YEAR	NUMBER OF REPORTED CRIMES ¹⁹	NUMBER OF PROSECUTED CASES ²⁰	NUMBER OF RAPE CASES HEARD AND RESULTING IN CONVICTION ²¹
2017.	652	116	31 (5)
2016.	516	114	57 (15)
2015.	516	107	69 (8)

MONTENEGRO

The Law on Ratification entered into force on March 5, 2004, when it was published in the Official Gazette of Montenegro.

No consolidated data on rape cases. Reports on the work of the Prosecutorial Council and the State Prosecutor's Office show that due to criminal offenses against sexual freedom, proceedings were initiated:

- In 2018. against 35 persons
- In 2017. against 25 persons
- In 2016. against 26 persons
- In 2015. against 28 persons
- In 2014. against 31 persons

¹⁹ IE: Source: Central Statistics Office, drawn from police (An Garda Síochána) figures and in all cases of recorded rape figures, published under reservation. CSO's explanation of "under reservation" may be accessed through this web-link: <https://www.cso.ie/en/methods/crime/statisticsunderreservationfaqs/>

²⁰ IE - Source: Director of Public Prosecutions Annual Report 2018 (latest available), see this web-link: <https://www.dppireland.ie/app/uploads/2019/11/AR2018-eng.pdf>

²¹ IE - including eventual convictions on lesser charge in brackets. Source as in footnote above.



SERBIA

Figure 1

Reported Cases and Prosecutors' Decisions												
Year	Reported perpetrators				Prosecutors' decisions							Criminal investigation launched
	total	unknown	Male	Female	Reports rejected/ procedure suspended							
					total	Postponing prosecution - special obligations imposed	Not a criminal act	Statutes of limitation	No evidence, ungrounded	Investigation discontinued		
2018	76	5	68	3	23	1	3	/	19	/	55	
2017	77	4	72	1	25	/	2	/	22	1	52	
2016	91	6	83	2	27	/	2	/	24	1	64	
2015	88	6	81	1	21	2	5	1	13	/	67	



Figure 2

Year	INVESTIGATIONS' RESULTS			
	total	Investigation suspended	Charges filed	Unknown perpetrators
2018	53	13	35	5
2017	52	16	32	4
2016	64	11	47	6
2015	67	4	57	6

Figure 3

Number of defendants and court decisions									
Year	Number of defendants			Court decisions					
	Total	Male	Female	Condemnation Judgment - Sentenced	Charges dismissed	Criminal procedure suspended	Charges rejected	Exonerations on Judgment	Judgment - Security Measure imposed
2018	31	31	/	25	/	/	1	4	/
2017	46	46	/	39	/	/	2	5	/
2016	68	68	/	51	/	1	4	11	1
2015	73	70	3	50	6	3	/	17	/



Figure 4

Type of penal sanctions imposed					
Year	Sentenced - total number	Imprisonment	Home detention	Suspended sentence	Educational measure - Law on juveniles ²²
2018	25	25	/	/	/
2017	39	38	/	/	/
2016	51	49	2	/	1
2015	50	47	/	3	/

Figure 5

Length of the imprisonment sentence													
Year	Imprisonment total	40 years	30-40 years	15-20 years	10-15 years	5-10 years	3-5 years	2-3 years	1-2 years	6-12 months	3-6 months	2-3 months	Less than 2 months
2018	25	/	/	1	3	4	10	6	1	/	/	/	/
2017	38	/	/	/	3	10	8	13	3	1	/	/	/
2016	49	/	/	1	4	11	24	6	1	1	1	/	/
2015	47	/	/	/	2	15	9	15	3	2	1	/	/

²² RS - Law on Juvenile Criminal Offenders and Criminal Law Protection of Minors. Please note, that measures prescribed by this law, can be imposed on young adults (up to 21), especially if the offence is committed during underage period (before defendant reached 18)



JUVENILES

Figure 1

Reported Cases and Juvenile Prosecutors' Decisions									
Year	Reported perpetrators			Juvenile prosecutors' decisions					
	total	Male	Female	Rejected - total	Not a criminal act	Diversi on Orders	Rejected as ungrounded	Permanent obstacle for prosecution	Motion for Preparatory Proceeding
2018	3	3	0	1	1				2
2017	3	3	0	1			1		2
2016	4	4	0	2	1			1	2
2015	9	9	0	2	2				7

Figure 2

Preparatory Proceedings			
Year	Total launched	Decision to discontinue Preparatory Proceeding	Motion for imposing criminal sanction
2018			2
2017		1	
2016		1	1
2015			7



Figure 3

Proceeding Before the Juvenile Court Bench								
Year	Total Launched	Discontinued	Security Measure imposed	Juvenile Prison Sentence	Educational Measures			
					Total	Warning and guidance	Increased supervision	Institutional measures
2018	8	1		1	6	2	3	1
2017	10	1		1	8	4		4
2016	7	1		1	5		4	1
2015	10	4				2	4	

SLOVENIA

Adult convicts by criminal act	2015	2016	2017	2018
Rape, article 170	19	10	12	7

*Number of considered criminal offenses, number of investigated criminal offenses and number of suspects (statistical persons) according to Article 170 of the Criminal Code for the period 2015-2018 by sex of an adult suspect.

Sex	Values	Year			
		2015	2016	2017	2018
Male	Number of suspects	41	26	38	34
	Number of criminal offences	37	26	38	34
	Number of criminal offenses investigated	36	25	37	33



Female	Number of suspects				
	Number of criminal offenses	33	26	34	27
	Number of criminal offenses investigated	30	23	32	24
Sum number of suspects		41	26	38	34
Sum number of criminal offences		39	32	41	36
Sum number of criminal offences investigated		36	28	38	33

*Number of criminal offenses dealt with and number of suspects (statistical persons) under Article 170 of the Criminal Code for the period 2015-2018, where a report was submitted by sex of an adult suspect.

		Year			
Sex	Values	2015	2016	2017	2018
Male	Number of suspects	12	10	20	14
	Number of criminal offences	13	12	20	17
Female	Number of suspects	1	1	0	0
	Number of criminal offences	21	13	18	15
Sum number of suspects		13	11	20	14
Sum number of crimes		25	17	24	21

*Number of considered criminal offenses, number of investigated criminal offenses and number of suspects (statistical persons) according to Article 170 of the Criminal Code for the period 2015-2018 by sex of a minor suspect.

		Year			
Sex	Values	2015	2016	2017	2018
Male	Number of suspects	4	6	6	5



	Number of criminal offences	4	6	4	7
	Number of criminal offenses investigated	4	5	4	6
Female	Number of suspects				
	Number of criminal offences	10	6	7	10
	Number of criminal offenses investigated	10	5	7	8
Sum number of suspects		4	6	6	5
Sum number of criminal offences		10	10	9	12
Sum number of criminal offences investigated		10	9	9	10

The number of criminal offenses dealt with and the number of suspects (statistical persons) under Article 170 of the Criminal Code for the period 2015-2018, where a report was submitted by sex of the juvenile suspect²³.

Sex	Values	Year			
		2015	2016	2017	2018
Male	Number of suspects	3	2	1	1
	Number of criminal offences	3	2	2	1
Female	Number of suspects				
	Number of criminal offences	9	7	6	4
Sum number of suspects		3	2	1	1
Sum number of criminal offences		9	7	8	4

²³ SI - Slovenian Police Statistics, prepared data specially for this Report (18 May 2020).



OTHER

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

Country	Any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context
Croatia	<ul style="list-style-type: none"> • When it comes to reporting violence, victim rights guaranteed by the Criminal Procedure Code are not respected and we are still fighting and trying to ensure that the exercise of victims' rights does not depend on the discretionary assessment of the representatives of the relevant institutions. • Procedure from reporting violence until final verdict usually takes an extremely long time (4-6 years), although there are some exceptions - it depends about cases and counties. There are cases that lasted for 20 years (we have cases that are returned to the first instance court due to legal remedies). • Imprisonment sentences are low, and the most sentences imposed are minimal. • There is no standardization in the technical conditions when it comes to using audio-video devices in courts for testimonies (lack of technical equipment, insufficient knowledge for the use of equipment, lack of professional associates who participate in conducting testimonies, no standardization in the work). • There is lack of special rooms /waiting rooms for victims in courts that are necessary in order to reduce the possibility of contact with the perpetrator.



	<ul style="list-style-type: none"> • Although there is the Crime Victim Compensation Act, procedures are complicated and expensive, victims are unaware about this Act, and a small number of victims submit such requests. The Committee for the award of monetary compensation usually reject these requests. • At all levels of the judicial bodies, there is a problem with the lack of specialization of assigned attorneys when it comes to working with victims of crimes against sexual freedom. • We also point out the problem with the allocation of assigned attorneys from State budget as a right that all victims of crimes against sexual freedom have. Attorneys are assigned randomly, from a general list, and often those attorneys have no experience working on criminal cases. • Lack of specialized education about working with victims of crimes against sexual freedom is clearly seen among all institutions that are included in the reporting and prosecution. Furthermore, there is an obvious lack of specialized education in all other professions (e.g. medical, psychological) • At the state level, there is no data available about reported cases, filled indictments, duration of the proceedings, types of verdicts, etc. • There is a lack of specialized centers for sexual violence survivors. Women’s Room is only specialized organization in Croatia (4 million people). Istanbul Convention is ratified, but not implemented.
<p>Ireland</p>	<p>While there is a distinct and very welcome trend towards specialization in sexual violence among police investigators (through specialist units), prosecution staff, courtroom lawyers and judges, and there has also been a recent increase in the number of protective and special measures available to victims of sexual violence during investigation and prosecution, more still needs to be done to ensure that any vulnerable witness has ready access to the particular supports and protections that would enable him or</p>



her to participate fully in the criminal justice system without running a real risk of being re-traumatized by going through the process itself and more positively, to ensure that he or she can give their best evidence to investigators and to the court. There are several gaps in the patchwork of supports available, of which we will give two examples:

1. Children who endure sexual violence are not entitled as of right to access supports such as giving evidence by video-link in court if by the time the violence is reported and the case comes to court, they are over the age of 18. They can ask for most of these supports, but it is much harder to get them over that age, whereas there is a presumption in favor of these supports being used if the child is still under 18 by the time the case comes to court;
2. If an intermediary is needed so that the witness can understand the questions being put to him or her by a lawyer, that may be granted, but there is no express power in law which allows the answers given by the witness to be given to the court by the intermediary.

With regard to procedure, there is no requirement to hold a pre-trial hearing and ensure that as many practical and legal issues as possible are resolved before the case comes to trial. This means that once the matter is listed for trial and the parties assemble at court, there are often delays to the start of the trial as these issues are dealt with before the trial proper begins. Or, there are delays during the trial as the hearing of evidence is halted in order to address one or more other legal issues. Or, the case may be adjourned to another date altogether usually for some practical reason – often, one which could have been foreseen and addressed at an earlier preliminary hearing. Delays are lengthy anyhow as judicial time and court space are limited, and additional and avoidable delays add even more stress and uncertainty to the process for hapless victims of sexual violence.

It is fair to say that the protections available to vulnerable witnesses in the investigation and prosecution of sexual offences are now being examined by a high level Justice Committee chaired by an eminent criminal lawyer, Dr Tom O'Malley at the request of the



	<p>Minister for Justice and Equality. We understand that the results of his review are expected shortly. We await them with interest.</p> <ul style="list-style-type: none"> • With regard to the accountability of convicted perpetrators, RCNI is aware that much preliminary work has been done by the outgoing Government on a new Sex Offenders (Amendment) Bill. This does much to expand, and improve upon, the list of supervision measures now available to An Garda Siochana and the Probation Service, who are jointly responsible for the risk assessment and risk management of released sex offenders in the community. We look forward to its speedy passing and implementation once the new Government is formed. • The outgoing Government was also responsible for introducing a measure to provide for presumptive minimum sentences for subsequent sexual offences committed within a defined period, unless in the view of the sentencing judge, it would be disproportionate in all the circumstances to impose such a sentence (Criminal Law (Sexual Offences) (Amendment) Act 2019). • Finally, the outgoing Government has also recently passed the Judicial Council Act 2019 which provides for the establishment of a Sentencing Guidelines and Information Committee responsible for the drafting of guidelines for discrete groups of offences, including sexual offences. This is a welcome development.
<p>Montenegro</p>	<p>Key problems registered in practice are as follows:</p> <ul style="list-style-type: none"> • Reported cases of rape are very rare • Rape victims, in practice, face their perpetrators despite legal orders which allow for this to not happen. Of particular concern are the registered cases of child victims of sexual violence facing their perpetrators. • Rape victims give statements several times even if, according to the Criminal Procedure Code, they have a legal possibility to only do so once • The concept of free consent is still unknown to employees of institutions (courts, prosecutors and the police) despite the fact that the Criminal Code of Montenegro was amended in



	<p>2017 in a way that Article 204. Rape was supplemented by a new paragraph "(1) Whoever commits statutory rape or an equal act without consent, shall be punished by imprisonment for a term between one and eight years." This was introduced with the intention of adapting Montenegrin legislation to the provisions of the Istanbul Convention, given that rape had previously been recognized in the Criminal Code of Montenegro only in situations of coercion, use of force or threat of direct attack on life or body.</p>
<p>Serbia</p>	<p>Public statistics on criminal offences is in many aspects limited. It is not possible to analyze data for different forms of one criminal act, or by the <i>modus operandi</i>, or age of offenders/victims of every criminal offence and offences form. In analyzing data provided for this questionnaire, it was impossible to compare sanctions imposed to forms of rape (basic form or qualified forms), which could give detailed insight in penal policies.</p> <p>It is very important to have knowledge for <i>modus operandi</i>, as those data – if known and analyzed – could strongly influence policies not only in crime management, but also in other areas where potential for prevention lies. For example, there is well established connection between existence of firearms in the household, or possession of firearms by a perpetrator and GBV. Firearms in the households or in perpetrators’ possession increase the risk of armed gender violence and armed family violence 12 times and risk of the femicide five times. Official data how many offences of GBV or family violence are conducted by firearms are not available (although exist in the evidence of the Ministry of Interior but are by law categorized as classified). Some data are available for femicide, but there are no data on how wide is the phenomena of using weapon as a method of threat in sexual violence, emotional violence and other non-physical violence, or as the method of non-lethal physical violence. Such in-depth, but unfortunately unavailable data, are invaluable in policy making and advocating, especially because there is an ongoing process of harmonization of Serbian legal framework with EU <i>acquis</i> and with major international treaties and documents which regulate possession and wearing of firearms and GBV.</p>



Another issue is that penalties prescribed in the Criminal Code for rape (and as well as for many other criminal offences) depend on the age of the victim. Criminal Code defines three different age groups: adults - older than 18; juveniles (age 14-18) and children (age 0-14). Penalties prescribed in case of rape of a child (0-14) are the highest, lenient for minors and more lenient for adults. Dividing children in those two groups with high influence of that division on the level of criminal protection is not in line with CRC, Lanzarote Convention, other international treaties and documents and accepted standards in human and children rights.

Finally there is a worrying deficiency in the definition of rape as forced sexual intercourse or an equivalent act (which as previously mentioned, does not treat penetration of object for sexual purposes). Treating rape only as a **forced** sexual intercourse, reflect the time in Serbian legal and judicial history when judges, for the conviction, requested proof of victims' serious resistance and defence, or otherwise would not condemn the perpetrator. Not prescribing rape as any form of sexual intercourse **without consent** is in contrary to Istanbul Convention which Serbia has ratified almost ten years ago. Actually, sexual intercourse without consent would not be even recognized as criminal offence in the large number of cases, since there is no criminal offence prohibiting this offence. Prohibition exist in criminal offences other than rape, but only if the victim is a child (below 14), "helpless person", or the sexual intercourse is induced by abuse of position.

For 4 years, the Parliament of Serbia does not put in the procedure the Initiative submitted and to the members of the Parliament repeatedly presented by the Incest Trauma Center - Belgrade and the Ombudsperson's office on **Initiative on Prevention of Re-traumatization within Criminal Prosecution concerning Survivors of Childhood Sexual Assault** (requesting Monitoring role of the Parliament regarding protection legislative measures in accordance with the Lanzarote Convention).

No public advocacy campaign was ever initiated and implemented in the best interest of survivors of sexual violence by the state -



regarding any sub-topic in this field. The Incest Trauma Center - Belgrade run the National Campaign against Child Sexual Abuse in period 2007-2017 out of which in period 2012-2015 as the National Leader of ONE IN FIVE Council of Europe Campaign for the Republic of Serbia appointed by the Council of Europe in Strasbourg.

Special attention! For 5 years there was close co-operation of the Incest Trauma Center - Belgrade with the Ministry of Education of Serbia. In 2016, in partnership with the Ministry of Education and selected school personnel pool (21 person) and 3 independent experts, the Incest Trauma Center - Belgrade wrote up Educational Packs for kindergarten and 10 subjects that were officially introduced into the national curriculum of primary and secondary schools. 24 authors from Education field received „Thank You“ Certificate signed by the Minister of Education. On November 18, 2016 in this way the Sexual Assault issue was - after 9 years of advocacy and lobbying of the Incest Trauma Center - Belgrade officially introduced into the national (pre)school curriculum to be learnt by children, youth and parents within a regular life of kindergartens and schools. The high-level profile Ceremony was organized by the Incest Trauma Center - Belgrade and held in the Ceremonial Hall of the Rectorate of the Belgrade University and both the Parliament of Serbia, the Ministry of Education and the Republic Ombudsperson's Office contributed to this Promotion Day as the main allies who co-operated closely for 5 years and produced main benchmark results in the field of Sexual Violence and Education out of this co-operation, e.g. having as keynote speakers on the Ceremony Day Chair of Parliamentary Committee for Human and Minority Rights and Gender Equality, co-ordinators of the Women Parliamentary Network and Deputy Ombudsperson for the Rights of the Child and Gender Equality (video recording available on the Incest Trauma Center - Belgrade official YouTube channel). The Ministry of Education issued the Guidelines on Usage of Educational Packs and together with the Incest Trauma Center - Belgrade its representatives made a journey throughout Serbia to teach kindergartens and schools how to use Educational packs. 5 months later, suddenly, the pressure occurred through social networks by clerical and ultra-right wing forces that are active in Serbia and women HR defenders and school personnel who were



	<p>authors of Educational Packs were attacked. The State failed to provide protection. On the contrary, the Minister of Education (now still in position) announced in media only he would withdraw Educational Packs for that moment. No official public letter on the withdrawal was ever issued by the Ministry.</p> <p>In period, 2017-2019, the Incest Trauma Center - Belgrade monitored the implementation of the Lanzarote Convention in primary and secondary schools in Serbia. Based on results, it was proved the Educational Packs are necessary to be in daily usage in kindergartens, primary and secondary schools. Evidence-based Advocacy and Lobbying Pack as the public call to foreign allies to help return the Educational Packs in use was published in March 2020 and available upon request.</p>
<p>Slovenia²⁴</p>	<p>Sexual violence, including rape the Slovenian legislation defines several different crimes against sexual integrity. In the definition of rape and sexual violence the legislature used a model of coercion.</p> <p>In practice, how the coercion manifested itself is decided for each individual case. In a recent case Supreme Court stated that the force was manifested as the perpetrators's physical superiority and as supremacy over the victim. The perpetrator used it to force the victim to engage in sexual intercourse. This was against victim's right to express her own will and against her right to sexual self-determination. The victim did not physically resist but she expressed that she does not want to have sexual intercourse. The perpetrator used force to undress the victim, hold her hands and hip and finished forced sexual intercourse.</p> <p>In another case the Supreme Court stated that the victim's physical resistance is not necessary in the case of rape if the force and the threat are such that they themselves exclude resistance. This can occur especially when the victim realizes that because of the</p>

²⁴ Source: REPUBLIC OF SLOVENIA ALTERNATIVE REPORT for consideration by Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

Participating non-governmental organizations: Društvo za nenasilno komunikacijo (Association for non-violent communication); Društvo SOS telefon za ženske in otroke - žrtve nasilja (Association SOS Help-line for women and children - victims of violence); Društvo Ključ - center za boj proti trgovini z ljudmi (Society Ključ - Centre for Fight against Trafficking in Human Beings); Pravno-informacijski center nevladnih organizacij - PIC (Legal-informational Centre for NGOs); Združenje proti spolnemu zlorabljanju/Združenje za moč (Association against sexual abuse/ Association for Power)



hopelessness of her position, she would not succeed in resisting. In such a case, her surrender does not constitute a consent to sexual intercourse. It only means that by the use of such force and threat, the perpetrator has broken victim's resistance. As a consequence, forced sexual intercourse occurred.

So far in Slovenian jurisprudence, there has been no (known) case in which the perpetrator would not be held responsible for a crime against sexual integrity because the force would not be demonstrated – the perpetrators are either held responsible for rape or for any other crime against sexual integrity. For this reason, **it would be sensible for legislation to follow practice and adopt a model of consent.**

The offence of rape must be defined as the absence of consent. It is important to interpret the consent as free active cooperation and/or explicitly voluntarily and freely given consent.

Consent may be given in words or acts until these words and actions clearly show permission and desire to participate in sexual activity.

The existence of the consent must not be regarded as automatic, simply because the person does not oppose the opposition. Just because someone is silent or not saying no, the person does not give consent.

The European Court of Human Rights decided 15 years ago that the decisive factor in determining whether it was a crime of rape, the absence of consent, and not the proof of the use of force and resisting.

In line with the Council of Europe Convention on Preventing and Combating violence against women and domestic violence (more commonly known as the Istanbul Convention), the definition of rape should cover all vaginal, oral or sexual penetration in the body of another person with any part of the body or object without its consent. Non-governmental organizations urge Ministry of justice of Slovenia to prepare a proposal for amendments to the Criminal Code as soon as possible, so that rape is defined on the basis of the model 'yes' means yes'. This will eliminate the current outdated model based on violence, force and threat and that leaves the victims of this horrified crime.



Victims do not often decide to report sexual violence, because they fear a lengthy and arduous process. In addition, it seems likely to them that the perpetrator will not be convicted in the end, since considerable time has passed from the event, the case is already obsolete and they have no physical evidence.

Some women are also **unaware of the fact that sexual violence in a relationship is a crime**. Procedures in court are unsuitable for victims of sexual violence as they further victimize the victims because they are lengthy and require victims to repeatedly describe the events that happened to them.

There is also an urgent need to raise public awareness of the manifestations of sexual violence and of the help network available. **There is a need for a reform in legislation in order to follow the model of consent in cases of sexual violence and the adoption of guidelines on the treatment of victims of sexual violence in legal proceedings** (rapid treatment of victims in health care institutions and before state authorities, respect for victims' privacy, ensuring that victims have as few interviews as possible using recordings of her statement).

END OF DOCUMENT

Dusica Popadic

President of the European Women's Network against Sexual Violence



(Stamp)

18 May 2020