



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

**Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women
May 2020**

Questionnaire on criminalization and prosecution of rape

Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

Rape
Article 170 of the Criminal code¹

(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.

(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 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' honour 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.

2. Based on the wording of those provisions, is the provided definition of rape:
 - a. Gender specific, covering women only. **YES/NO**
 - b. Gender neutral, covering all persons. **YES/NO**
 - c. Based on the lack of consent of victim. **YES/ NO**
 - d. Based on the use of force or threat. **YES/ NO**
 - e. Some combination of the above. **YES / NO**. Please specify.
 - f. Does it cover only vaginal rape? **YES /NO**

- g. Does it cover all forms of penetration? **YES/NO** Please specify.
 - h. Is marital rape in this provision explicitly included? **YES/NO**
 - i. Is the law silent on marital rape? **YES/NO**
 - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES/NO**
 - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **YES/NO**
3. To what extent legislation in your country excludes criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit relevant articles with corresponding translations.

It doesn't exclude criminalization.

4. What is the legal age for sexual consent?

15 years.

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

Yes. The law stipulates that sexual activity 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. However, the sexual activity with a person under the age of fifteen is not unlawful if it was committed with a person of comparable age and if it corresponds to the level of his or her mental and physical maturity.²

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

Please see answer to the question #1.

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?

Criminal Procedure act provides for the possibility to file a motion for indemnification in criminal procedure which may consist of a demand for compensation for damage (including for causing physical or mental pain). The court may in returning a guilty verdict grant the indemnity claim of the injured party in full, or it may grant the claim in part and direct the injured party to sue for the balance in civil proceedings. If the data collected in criminal procedure do not provide a reliable basis to award either full or partial indemnification, the court shall instruct the injured party that he may seek satisfaction in civil proceedings.³

The Obligations Code determines the right to compensation in Article 131. Under the provision of Article 132 of the OZ, the damage is also the infliction of physical or mental distress or fear on another person.

Victims also have a special right to compensation, which is recognised 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.⁴

Aggravating and mitigating circumstances

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
 - a. Is rape by more than one perpetrator an aggravating circumstance? **YES/NO**
 - b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **YES/NO**

As per Article 49 of the Criminal Code, the court considers all circumstances, which influence the grading of the sentence (mitigating and aggravating circumstances).

The second paragraph of Article 170 of the Criminal Code sets a rape committed against offenders serving sentence or other persons whose personal freedom was taken away as an aggravating circumstance.

An act of sexual abuse of a defenceless person is regulated in Article 172, which covers acts where the perpetrator has sexual intercourse or performs any other sexual act with a person by abusing their mental illness, temporary mental disorder, graver mental retardation, or weakness or any other state, owing to which that person is not capable of resisting. A prison sentence of one up to eight years is envisaged for such an act. Also specifically defined is the criminal act of sexual assault (sexual intercourse or performs any lewd act) on a person younger than fifteen years (Article 173). In this case, a prison sentence of between three and eight years is envisaged. A higher prison sentence (of three to ten years) is envisaged in the case that such a criminal act is committed by a person to whom the minor was entrusted into education, care, or protection, or if that person is the victim's custodian, adoptive parent or parent. Whoever commits a sexual assault against the defenceless person under the age of fifteen or by threatening him/her with an imminent attack on life or limb shall be sentenced to imprisonment for not less than five and not more than fifteen years.

- c. Is rape by spouse or intimate partner an aggravating circumstance? **YES/NO**
9. Does the law foresee mitigating circumstances for the purposes of punishment? **YES/NO** If yes, please specify.

As per Article 49 of the Criminal Act, the court considers all circumstances, which influence the grading of the sentence (mitigating and aggravating circumstances).

Paragraph 3 of Article 170 sets a lower sentence for rape when compelling a person to submit to sexual intercourse by threatening him/her with large loss of property to him/her or 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' honour and reputation.

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

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

*If rape has been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution is initiated only upon a proposal of the affected party.⁵

- if the perpetrator marries the victim of rape? **YES/NO**
- if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **YES/NO**

Prosecution

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

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

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

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

*Plea bargain is allowed,⁶ settlement procedure under the Criminal Procedure Act for offences punishable by more than three years’ imprisonment and alternative forms of dispute settlement in all proceedings conducted in relation to violence, are not allowed.⁷

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

60 years for the offence under paragraph 1, 90 years for the offence under paragraph 2 and 30 years for the offence under paragraph 3 of article 170 of the Criminal Code.⁸

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

The time limit for the statute of limitations in criminal offences against sexual inviolability committed against a minor begins when a victim becomes an adult.

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

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

There are no provisions regarding this.

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

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.⁹ 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.)¹⁰

War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity? **YES/NO**
22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **YES/NO**
23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **YES/NO**

There is an explicit provision excluding statutes for limitations for the war crimes (rape being among them).
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **YES/NO**

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.

	Rapes reported to the police ¹¹	Charged (adults) ¹²	Proposal for a corrective measure (minors) ¹³	Found guilty (adults) ¹⁴	Found guilty (minors) ¹⁵
2019	81	-	-	-	-
2018	64	19	4	7	3
2017	69	20	0	12	1
2016	55	24	1	10	0
2015	73	18	2	19	1

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.

As seen from the above the legal definition of rape is based on force, the threat of force or coercion, and not on lack of consent.

According to non-governmental organizations, many rapes and sexual violence remain unreported because victims are afraid to ask for protection, do not know who to turn to, and do not believe the legal system will protect them. Those NGOs that assist survivors of violence say that they often encounter inadequate work by police officers, public prosecutors, lawyers, and judges who minimize reports of crimes against sexual inviolability, do not investigate them due to lack of evidence or are asking victims about circumstances that are not at all relevant to the existence of crimes and by doing so re-victimize them and cause them additional psychological pain.¹⁶

There is no special crisis referral centre in Slovenia for victims of rape or sexual violence, which would perform a medical and forensic investigation and provide trauma assistance and counseling to the victims.¹⁷

Institute of Criminology at the Faculty of Law Ljubljana in its empirical study of representative judicial sample practices related to rape, sexual violence and sexual abuse of a defenceless person perceived the following characteristics in the area of penal policy for sexual offences:

- The courts practically do not use the upper half of the threatened sanctions. The highest imposed sanction for all the offenses in question was 6 years' imprisonment (imposed for the offence under the second paragraph of Article 170). The share of suspended sentences is relatively high.
- Questionable appropriateness of mitigating circumstances in individual cases ("significant contribution of the injured party", short duration of rape, alcoholism of the injured party).
- Differences in sentencing between courts and within courts.¹⁸

¹ www.policija.si/images/stories/Legislation/pdf/CriminalCode2009.pdf

² Article 173 of the Criminal code.

³ Articles 100 - 105 of the Criminal Procedure Act.

⁴ Report submitted by Slovenia pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) to Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), October 2019, page 52, <https://rm.coe.int/grevio-inf-2019-15-eng/pdfa/1680989a54>

⁵ Article 170, paragraph 4 of the Criminal Code.

⁶ Articles 450 a - č of the Criminal Procedure Act.

⁷ Articles 161 a of the Criminal Procedure Act nad Article 22 e of the Domestic Violence Prevention Act.

⁸ The Criminal Code was amended in March 2020 with additional provision saying that prosecution for criminal offences of (among others) rape, sexual violence, sexual abuse of defenceless person and sexual assault on a person below fifteen years of age shall no longer be permitted if a time equal to three times the regular time statute of limitation.

⁹ Article 65 of the Criminal Procedure Act.

¹⁰ Article 143 č of the Criminal Procedure Act.

¹¹ Police statistics, www.policija.si/o-slovenski-policiji/statistika/kriminaliteta

¹² Statistical Office of the Republic of Slovenia, https://pxweb.stat.si/SiS-tatDb/pxweb/sl/10_Dem_soc/

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Amnesty International, Association for non-violent communication, Association SOS Help-line for Women and Children - Victims of Violence Faculty of social Sciences of University in Ljubljana, Ključ

- Centre for fight against human trafficking, Institute 8th March, Legal- information center for non-governmental organizations, Peace Institute, Slovenian foundation for UNICEF; A call for a change in the definitions of crimes against sexual inviolability, March 2019, www.amnesty.si/media/uploads/files/Dopis-spremembe-KZ-spolno-nasilje-NVO-FSD.pdf

¹⁷ Report submitted by Slovenia pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) to Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), October 2019, page 45.

¹⁸ dr. Mojca M. Plesničar, dr. Matjaž Ambrož, Sila, objektivno sposobna streti odpor, Empirična študija reprezentativnega vzorca pravosodne prakse v zvezi s kaznivim dejanjem posilstva, spolnega nasilja in spolne zlorabe slabotne osebe s pregledom možnih modelov novih zakonskih rešitev, November 2019.