

## Questionnaire on criminalization and prosecution of rape in Russia

### I - 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.**

Criminal code of the Russian Federation (Law No. 63-FZ of June 13, 1996 with latest amendments and additions of April 7, 2020)

#### **Chapter 18. Crimes Against the Sexual Inviolability and Sexual Freedom of the Person**

##### **Article 131. Rape**

1. Rape, that is, a sexual intercourse with the use of violence<sup>1</sup> or of a threat thereof<sup>2</sup>, with respect to the victim or to other persons or with the use of a helpless state of the victim<sup>3</sup> - shall be punishable with deprivation of freedom for a term of three to six years.

2. A rape:

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<sup>1</sup> “**Violence**” in Articles 131 and 132 of the Criminal Code of the Russian Federation should be understood as dangerous and not dangerous for life or health violence, including beatings or other violent acts related to causing physical pain to the victim or with the restriction of his freedom (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16 "On judicial practice in cases of crimes against sexual inviolability and sexual freedom of the person", par. 2).

<sup>2</sup> Responsibility for rape or violent actions of sexual character committed with the “**threat of violence**” occurs only in cases where such a threat was a means of overcoming the resistance of the person who had reason to fear this threat (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16, par. 3).

<sup>3</sup> Rape and violent actions of sexual character should be recognized as committed “**with the use of a helpless state of the victim**” in those cases when, due to her physical or mental state (dementia or other mental disorder, physical disabilities, other painful or unconscious state), age (young or old person) or other circumstances she could not understand the nature and significance of the actions taken with her or could not resist to them. At the same time, a person committing rape or violent acts of a sexual nature should be aware that the victim is in a helpless state (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16, par. 5).

In addition, only such a degree of intoxication caused by the use of alcohol, drugs or other intoxicating (psychoactive) substances can be recognized as helpless, which deprived this person of the opportunity to understand the nature and significance of the actions taken with him or to resist to them (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16, par. 6).

- a) committed by a group of persons, or by a group of persons with previous concert, or by an organised group;
- b) connected with a threat of homicide or with causing a grave injury to the health<sup>4</sup>, and also committed with special cruelty<sup>5</sup> with respect to the victim or to other persons;
- c) which has entailed the infection of the victim with a venereal disease - shall be punishable with deprivation of freedom for a term of four to ten years with restriction of liberty<sup>6</sup> for a term of up to two years or without such.

### 3. A rape:

- a) of a minor girl;
- b) which has entailed, by negligence, the causing of a grave injury to the health of the victim, the infection of her with AIDS or other grave consequences - shall be punishable with deprivation of freedom for a term of eight to fifteen years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity<sup>7</sup> for a period of up to twenty years and with restriction of liberty for a term of up to two years.

### 4. A rape:

- a) which has entailed by negligence the death of the victim;
- b) of a girl victim who has not reached the age of fourteen years - shall be punishable with deprivation of freedom for a term of twelve to twenty years with or without deprivation of the right to hold certain posts or to be engaged in a

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<sup>4</sup> The “**threat of homicide or with causing a grave injury to the health**” should be understood not only as direct statements expressing the intention to use physical violence against the injured person or other persons, but also such threatening actions of the perpetrator, as, for example, the demonstration of weapons or objects that can be used as weapons (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16, par. 3).

<sup>5</sup> “**Special cruelty**” can be expressed, in particular, in torture, mockery of the victim, causing him special suffering in the process of committing rape or violent actions of sexual character, in committing rape or other sexual acts in the presence of his relatives, as well as in the method of suppression resistance, causing severe physical or mental suffering of the victim or other persons (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16, par. 11).

<sup>6</sup> **Restriction of liberty** shall lie in the imposition by a court of the following restrictions in respect of a convict: not to leave his/her house (flat or other dwelling place) at a definite time of the day, not to visit definite places within the bounds of the area of an appropriate municipal entity, not to go beyond the bounds of the area of the appropriate municipal entity, not to visit places where mass events are held and other kinds of activities are exercised and not to attend them, not to change the place of residence or stay, the place of work and/or study without sanction of the specialized state body engaged in supervision over serving sentences in the form of restriction of liberty (Article 53, Part one of the Criminal code).

<sup>7</sup> **Deprivation of the right to hold specified offices or to engage in specified activities** consists of the prohibition to hold offices in the civil service and local self-government bodies, or to engage in professional or any other activity (Article 47, Part one of the Criminal code).

certain activity for a term of up to twenty years and with restriction of liberty for a term of up to two years.

5. The deed provided for by Item b) of Part Four of this Article made by a person with a previous conviction for having committed an offence against sexual integrity of a minor - shall be punishable by deprivation of liberty for a term of fifteen to twenty years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to twenty years or by life imprisonment.

Note. The offences provided for by Item b) of Part Four of this article, as well as by Item b) of Part Four of Article 132 of this Code, shall also include the offences having the constituent elements provided for by Parts Three - Five of Article 134 and by Parts Two - Four of Article 135 of this Code that have been committed in respect of a person under twelve years old, because such person by virtue of the age thereof is in the helpless state, that is, he/she cannot understand the nature and meaning of the actions made in respect of him/her.

### **Article 132. Violent Actions of Sexual Character**

1. Pederasty, lesbianism or other actions of sexual assault<sup>8</sup> with the use of violence or with a threat thereof with respect to a male (female) victim or to other persons or with the use of the helpless state of the victim - shall be punishable with deprivation of freedom for a term of three to six years.

2. The same acts:

a) committed by a group of persons, or by a group of persons with previous concert, or by an organised group;

b) connected with a threat of homicide or with causing a grave injury to the health, and also committed with severe cruelty with respect to the victim or to other persons;

c) which has entailed the infection of the victim with a venereal disease - shall be punishable with deprivation of freedom for a term of four to ten years with restriction of liberty for a term of up to two years or without such.

3. The acts stipulated by Parts one or two of this Article, if they:

a) have been committed with respect to a minor boy (girl);

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<sup>8</sup> Other actions of sexual assault - homosexual and other, non-vaginal heterosexual assault (*per os, per anum*) (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16, par. 1)

b) have entailed, by negligence, the causing of a grave injury to the health of the victim, the infection of him (her) with AIDS or other grave consequences - shall be punishable with deprivation of freedom for a term of eight to fifteen years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years and with restriction of liberty for a term of up to two years.

4. The acts stipulated by Parts one or two of this Article if they:

a) have entailed, by negligence, the death of the male (female) victim;

b) have been committed with respect to a person who has not reached the age of fourteen years - shall be punishable with deprivation of freedom for a term of twelve to twenty years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a term of up to twenty years and with restriction of liberty for a term of up to two years.

5. The deeds provided for by Item b) of Part four of this article made by the person who has a previous conviction for having committed an offence against sexual integrity of a minor - shall be punishable by deprivation of liberty for a term of fifteen to twenty years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to twenty years or by life imprisonment.

### **Article 133. Compulsion to Perform Sexual Actions**

1. Compulsion of a person to enter into illicit relations, pederasty, lesbianism, or the commission of other sexual actions by means of blackmail, threat of destruction, damage, or taking of property, or with the use of material or any other dependence of the victim - shall be punishable by a fine in the amount of up to one hundred and twenty thousand roubles or in the amount of a wage/salary or other income of the convicted person for a period of up to one year, or by compulsory

works<sup>9</sup> for a term of up to four hundred and eighty hours, or by corrective labour<sup>10</sup> for a term of up to two years, or by compulsory labour<sup>11</sup> for a term of up to one year, or by deprivation of liberty for the same term.

2. The same deed committed in respect of a minor boy (minor girl) - shall be punishable by compulsory labour for a term of up to five years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to three years or without such or by deprivation of liberty for a term of up to five years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to three years or without such.

### **Article 134. Sexual Intercourse and Other Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years**

1. Sexual intercourse committed by a person who has reached the age of eighteen years of age with a person who has not reached the age of sixteen years - shall be punishable by compulsory works for a term of up to 480 hours, or by restriction of liberty for a term of up to four years, or by compulsory labour for a term of up to four years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to three years, or by deprivation of liberty for a term of up to four years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to ten years.

2. Pederasty or lesbianism in respect of a person who has not reached sixteen years of age committed by a person who has reached eighteen years of age - shall be punishable by compulsory labour for a term of up to five years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity

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<sup>9</sup> **Compulsory works** consist of the performance of free socially useful works by the convicted person during his spare time. The type of compulsory works and the objects where they are to be served shall be determinable by local self-government bodies by approbation of criminal executive inspectorates (Article 49, Part one of the Criminal code).

<sup>10</sup> **Corrective labour** shall be imposed upon the convict having the principal place of work, as well as upon the one who does not have such. The convict having the principal place of work shall serve corrective labour at the principal place of work. The convict who does have the principal place of work shall serve corrective labour at the places fixed by local authorities by approbation of penal inspectorates but in the district where the convict resides (Article 50, Part one of the Criminal code). Deductions for the benefit of the State shall be made from the wage or salary of the person sentenced to corrective labour, in the amount fixed by the court's judgement, within the limits of from five to 20 per cent (Article 50, Part one of the Criminal code).

<sup>11</sup> **Compulsory labour** shall be imposed as an alternative to deprivation of liberty, where it is provided for by the appropriate articles of the Special Part of the Criminal code, for making petty or crimes of average gravity or for making a grave crime for the first time (Article 53.1, Part one of the Criminal code).

for a period of up to three years, or by deprivation of liberty for a term of up to six years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to ten years.

3. The deeds stipulated by Part One and Two of this Article committed in respect of a person who has reached twelve years of age but has not reached fourteen years of age - shall be punishable with deprivation of freedom for a term of three to ten years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to fifteen years and with restriction of liberty for a term of up to two years or without such.

4. The deeds stipulated by Parts One, Two or Three of this Article committed in respect of two or more persons - shall be punishable by deprivation of freedom for a term of eight to fifteen years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years.

5. The deeds provided for by Parts One, Two, Three or Four of this article made by a group of persons, by a group of persons with previous concert or by an organised group - shall be punishable by deprivation of freedom for a term of twelve to twenty years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years and with restriction of liberty for a term of up to two years or without such.

6. The deeds provided for by Part Three of this article made by a person with a previous conviction for having committed an offence against sexual integrity of a minor - shall be punishable by deprivation of freedom for a term of fifteen to twenty years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years or by life imprisonment.

Note. 1. A person who for the first time has committed the crime stipulated by Part One of this Article, shall be relieved of punishment by court if it is established that such person and the action committed by him/her are no longer socially dangerous in connection with his/her entry into marriage with the victim.

2. Where the age difference between the victim and the accused person is less than four years, the latter shall not be punishable by deprivation of liberty for the committed deed provided for by Part One of this article or by Part One of Article 135 of this Code.

### **Article 135. Lecherous Actions**

1. The commission of lecherous actions<sup>12</sup> without using violence by a person who has reached eighteen years of age in respect of a person who has not reached sixteen years of age - shall be punishable by compulsory works for a term of up to 480 hours, or by restriction of liberty for a term of up to three years, or by compulsory labour for a term of up to five years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to three years, or by deprivation of liberty for a term of up to three years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to ten years.

2. The same deed committed in respect of the person who has reached twelve years of age but has not reached fourteen years of age - shall be punishable with deprivation of freedom for a term of three to eight years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to fifteen years and with restriction of liberty for a term of up to two years or without such.

3. The deeds provided for by Parts One or Two of this article made in respect of two or more persons - shall be punishable by deprivation of liberty for a term of five to twelve years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years.

4. The acts stipulated by Parts one, two or three of this Article committed by a group of persons in preliminary collusion or by an organised group - shall be punishable by deprivation of freedom for a term of seven to fifteen years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years and with restriction of liberty for a term of up to two years or without such.

5. The deed provided for by Part Two of this article which is made by the person who has a previous conviction for having committed an offence against sexual

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<sup>12</sup> “**Lecherous actions**” include any actions, except for sexual intercourse, pederasty and lesbianism, committed against persons who have reached the age of twelve, but have not reached the age of sixteen, which have been aimed at satisfying the sex drive of the accused, or causing sexual arousal of the victim, or to awaken his interest in sexual relations. Such actions may be recognized as lecherous as well, in which there was no direct physical contact with the body of the victim, including acts committed using the Internet, other information and telecommunication networks (Resolution of the Plenum of the Supreme Court of the Russian Federation of December 4, 2014 No. 16, par. 17).

integrity of a minor - shall be punishable by deprivation of liberty for a term of ten to fifteen years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to twenty years.

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### **Article 15 Categories of Crimes**

1. Depending on the nature and degree of social danger, the deeds provided for by the Criminal code shall be divided into crimes of low gravity, crimes of average gravity, grave crimes, and especially grave crimes.

2. Intentional and negligent acts, for the commission of which the maximum penalty stipulated by the Criminal code does not exceed three years deprivation of liberty, shall be recognized as crimes of low gravity.

3. Qualified as crimes of average gravity shall be deliberate offences for whose commitment the maximum punishment stipulated by the Criminal code does not exceed five years of deprivation of freedom, and careless crimes for whose commitment the maximum punishment stipulated by the the Criminal code does not exceed ten years of deprivation of freedom.

4. Intentional acts, for the commission of which the maximum penalty stipulated by the Criminal code does not exceed ten years deprivation of liberty, and careless crimes for whose commitment the maximum punishment stipulated by the present Code does not exceed fifteen years of deprivation of freedom, shall be recognized as grave crimes.

5. Intentional acts, for the commission of which the Criminal code provides a penalty in the form of deprivation of liberty for a term exceeding ten years, or a more severe punishment, shall be recognized as especially grave crimes.

(...)

### **Article 61. Circumstances Mitigating Punishment**

1. The following circumstances shall be deemed to be mitigating circumstances:

- a) commission of a crime of low or average gravity in consequence of a coincidence of circumstances;
- b) the guilty person being a minor;
- c) pregnancy;



- d) the guilty person being responsible for his infant children;
- e) commission of crime in consequence of a coincidence of personal circumstance, or out of compassion;
- f) commission of a crime as a result of physical or mental coercion, or by reason of material, official, or any other dependence;
- g) commission of crime through a breach of the lawful conditions for necessary defence, the detention of a person who has perpetrated the crime, extreme necessity, justified risk, or the execution of orders or instructions;
- h) the illegality or amorality of the victim's behavior, which served as a pretext for the crime;
- i) giving oneself up, rendering active assistance in the clearance and investigation of a crime, the exposure and criminal prosecution of other accomplices in the crime, the search for property received through crime;
- j) rendering of medical or other aid to the victim after the commission of the crime, voluntary compensation for material loss and mental injury caused as a result of the crime, and other actions of effecting restitution of damage caused to the victim.

2. In imposing punishment, the court of law may take into consideration other mitigating circumstances not provided for by the first part of this Article.

3. If a mitigating circumstance is provided for by the corresponding Article of the Special Part of this Code as an element of another crime, then in itself it may not be considered for that second crime.

### **Article 63. Circumstances Aggravating Punishment**

1. The following circumstances shall be deemed to be aggravating circumstances:

- a) recidivism of offences;
- b) grave consequences of the commission of a crime;
- c) commission of a crime by a group of persons or a group of persons by previous concert, by an organised group, or by a criminal community (criminal organisation);
- d) an especially active role played in the commission of a crime;
- e) involvement in the commission of a crime of persons who suffer from heavy mental derangement or who are in a state of intoxication, or of persons who have not reached the age of criminal liability;
- f) commission of a crime by reason of political, ideological, racial, national or religious hatred or enmity or by reason of hatred or enmity with respect to some social group;
- f.1.) commission of a crime out of revenge for rightful actions of other persons, as

well as for the purpose of concealing other crime or facilitating commission thereof;

g) commission of a crime against a person or his relatives in connection with his official activity or the discharge of his public duty;

h) commission of a crime against a woman who is obviously in a state of pregnancy, or against a minor, another defenceless or helpless person, or a person who is dependent on the guilty person;

i) commission of a crime with heightened brutality, sadism or mockery, or involving tormenting the victim;

j) commission of a crime with the use of weapons, ammunition, explosives, fake explosives, specially manufactured technical means, narcotic agents, psychotropic, potent, poisonous or radioactive substances, medicinal or other chemical and pharmacological preparations, or with the use of physical or mental compulsion;

k) commission of a crime during a state of emergency, natural or social disaster, during mass disturbances, or in situations of armed conflict and military operations;

l) commission of a crime, abusing confidence placed in the guilty person through his official position, or through a contract;

m) commission of a crime with the use of uniforms or documents of representatives of the authorities;

n) commission of an intentional crime by a worker of a body of internal affairs.

o) making an offence in respect of a minor boy (minor girl) by a parent or other person upon whom the duty of bringing up the minor boy (minor girl) is imposed under law, as well as by a pedagogue or other employee of an educational, social services, medical or other institution who is bound to exercise supervision over the minor boy (minor girl);

p) commission of a crime in order to propagandize, justify and support terrorism.

1.1. The judge (court) who appoints punishment, depending on the nature and degree of social danger of the crime, the circumstances of its commission and the identity of the perpetrator, may aggravate the commission of a crime while intoxicated due to the use of alcohol, drugs, psychotropic substances or their analogues, new potentially dangerous psychoactive substances or other intoxicating substances.

2. If the aggravating circumstances are provided for by the corresponding Article of the Special Part of this Code as elements of another crime, then they in and of themselves may not be repeatedly considered in case of imposing punishment.

Criminal procedure code of the Russian Federation (Law No. 174-FZ of December

18, 2001 with latest amendments and additions of April 24, 2020)

**Article 20 Kinds of the Criminal Prosecution**

1. Depending on the character and on the gravity of the committed crime, the criminal prosecution, including the charge at the trial, shall be carried out in public, private-public or private procedure.

2. Criminal cases on crimes envisaged by Articles 115, Part One, 116.1, 128.1 of the Criminal Code of the Russian Federation, are seen as criminal cases of private prosecution, are initiated only upon application from the victim or from his legal representative, except for the cases stipulated by Part Four of this Article, and are subject to termination in connection with the reconciliation of the victim with the accused. Reconciliation is seen as admissible until the court departs to the court's room for passing the sentence.

3. Criminal cases on crimes, envisaged in the first part of Article 116, **the first part of Article 131, the first part of Article 132**, (...) of the Criminal Code of the Russian Federation, are seen as criminal cases of the private-public prosecution and are initiated only upon application from the victim, or from his legal representative, but are not subject to the termination in connection with the victim's reconciliation with the accused.

4. The investigator, as well as the inquirer with the consent of the public prosecutor shall institute a criminal case on any crime indicated in the second and third parts of this Article, and in the absence of an application of the victim or his legal representative, if the crime has been committed with respect of a person who, due to his dependent or helpless state or for other reasons cannot defend his rights and legal interests. The other reasons shall also include the case of commission of a crime by a person the information about whom is unknown.

5. Criminal cases, with the exception of those mentioned in the second and third parts of the present Article, are seen as criminal cases of public prosecution.

**2. Based on the wording of those provisions, is the provided definition of rape:**

**a. Gender specific, covering women only**

YES (Article 131 of the Criminal code in comparison with Article 132 of this code, in which homosexual and other, non-vaginal heterosexual assault (*per os, per anum*) is criminalized).

**b. Gender neutral, covering all persons**

NO (Article 131 of the Criminal code in comparison with Article 132 of this code; Article 131 criminalizes heterosexual vaginal rape committed by man against woman; Article 132 of this code, in which homosexual and other, non-vaginal heterosexual assault (*per os, per anum*) is criminalized).

**c. Based on the lack of consent of victim**

NO (Article 131, Article 132 of the Criminal code, both based on use of force or threat concept).

**d. Based on the use of force or threat**

YES (Article 131, Article 132 of the Criminal Code, both based on use of force or threat concept).

**e. Some combination of the above.**

NO (The conclusion about the lack of consent of victim can be deduced on the fact of the use of force, threat or helpless state of victim - Article 131, Article 132, of the Criminal code).

**f. Does it cover only vaginal rape?**

YES (Article 131 of the Criminal code in comparison with Article 132 of this code; Article 131 criminalizes heterosexual vaginal rape committed by man against woman; Article 132 of this code, in which homosexual and other, non-vaginal heterosexual assault (*per os, per anum*) is criminalized).

**g. Does it cover all forms of penetration? If yes, please specify.**

NO (Article 131 of the Criminal code in comparison with Article 132 of this code; Article 131 criminalizes heterosexual vaginal rape committed by man against woman; Article 132 of this code, in which homosexual and other, non-vaginal heterosexual assault (*per os, per anum*) is criminalized).

**h. Is marital rape in this provision explicitly included?**

NO (Article 131 of the Criminal Code, Article 132 of the Criminal Code).

**i. Is the law silent on marital rape?**

YES (Article 131 of the Criminal Code, Article 132 of the Criminal Code).

**j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?**

YES. The issue of criminalization of marital rape has been legally resolved since the times of the USSR: the Plenum of the Supreme Court of the RSFSR on May 18, 1925 clarified Article 169 of the Soviet Russia Criminal Code of 1922, indicating that the wife should be recognized as a victim of rape by her husband. Since then, courts (including the courts of modern Russia) have recognized wives as victims of marital rape.

**k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?**

NO

**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.**

NO

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

The legal age for sexual consent is not determined explicitly in the Russian criminal legislation but it can be deduced from the provisions of Article 134 of the Criminal Code. As a general rule, any sexual intercourse with a person under the age of 16 years, even in the absence of violence and threats of its use, is criminalized. Thus, the age of consent is 16 years old.

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

YES (The second note for the article 134 (which criminalizes sexual contacts with persons under 16 years) of the Criminal Code stipulates that in cases where **the age difference** between the victim and the accused person is **less than four years**, the latter shall not be punishable by deprivation of liberty for the committed deed provided for by Part One of the Article 134 or by Part One of Article 135 of this Code. Sexual activities between under 16 years partners are not criminalized at all. Responsibility for Rape (Article 131) and Violent Actions of Sexual Character (Article 132) is provided only for persons over 14.

**6. Provide information on criminal sanctions prescribed and length/duration of**

**such criminal sanctions for criminalized forms of rape.**

*Cf.* 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?**

Russian legislation doesn't specify this. But the victim may file a claim for the recompense of the property damage and the material compensation of the moral damage, if there are grounds to believe that these damages were inflicted upon him directly by the crime (Article 44, Part one of the Criminal procedure code).

**II - Aggravating and mitigating circumstances**

**8. Does the law foresee aggravating circumstances when sentencing rape cases?**

YES (Articles 63 - general list of aggravating circumstances for all crimes listed in the Code, Article 131 (Parts two - five) - aggravating circumstances for rape especially, Article 132 (Parts two - five) - aggravating circumstances for Violent Actions of Sexual Character especially).

**If so, what are they?**

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

YES (Article 131, Article 132 Part two, Item a) of the Criminal code).

**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 (Only the minors - Article 131, Part three, Item a) and Article 131, Part four, Item b) of the Criminal code, as well as Article 132, Part three, Item a), Part four, Item b)).

**c. Is rape by spouse or intimate partner an aggravating circumstance?**

NO (Article 131, Article 132 of the Criminal code).

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

YES (Article 61 of the Criminal Code). *Cf.* the question №1.

*NB:* The list of mitigating circumstances is common for all crimes listed in the Criminal Code. The list of mitigating circumstances is not exhaustive thus any fact can be recognized as mitigating by the judge.

**10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? If so, at what stage and what are the consequences?**

NO (Article 76 of the Criminal code). Crime of Rape or Violent Actions of Sexual Character are categorized as grave or especially grave crimes, while reconciliation could be a legal response only for crimes or low-gravity average gravity.

**Article 76. Release from Criminal Responsibility in Connection with Reconciliation with the Victim**

A person who has committed a **crime of low-gravity category or a crime of average gravity category** for the first time may be released from criminal responsibility if he has reconciled with the victim and restituted any damage inflicted on the victim.

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

Women who insist on prosecuting domestic (including sexual) violence are forced to participate in conciliation proceedings by law enforcement officials (CAT/C/RUS/CO/5, 22.04.2012).

**11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? If yes, please specify.**

YES (only the statute of limitations - Article 78 of the Criminal Code).

**III - Prosecution**

**12. Is rape reported to the police prosecuted *ex officio* (public prosecution)?**

YES (only Rape and Violent Actions of Sexual Character with aggravating circumstances - Article 20, Part five of Criminal Procedure Code)

**13. Is rape reported to the police prosecuted *ex parte* (private prosecution)?**

YES (Rape and Violent Actions of Sexual Character without aggravating circumstances - Article 20, Part three of Criminal Procedure Code, except to Article 20, Part four of this code)

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

NO (“friendly settlement” - Articles 75-76 of the Criminal code); YES (plea bargain - Article 314 of the criminal procedure code, if the case concerns crimes provided for by Article 131, Article 132, Parts 1-2 of the Criminal code)

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

NO (“friendly settlement” - Articles 75-76 of the Criminal code; plea bargain - Article 314 of the Criminal procedure code)

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

**Article 78 of the Criminal code (Release from Criminal Responsibility due to the Statutes of Limitation)**

1. A person shall be released from criminal responsibility if the following time-limits have expired since the day of commission of a crime:

(...)

c) **ten years** after the commission of a **grave crime**;

d) **fifteen years** after the commission of an **especially grave crime**.

2. The limitation period shall be counted from the day of committing a crime to the time of the entry of a court's judgement into legal force. If a person commits a new crime, then the limitation period for each crime shall be counted independently.

3. The running of a limitation period shall be stopped if the person who has committed the crime evades the investigation or court trial. In this case, the running of the limitation period shall be resumed upon the time of detaining said person or his acknowledgement of guilt.

4. The question of the application of the limitation period to a person who has committed a crime punishable with **the death penalty or deprivation of liberty for life** shall be settled by a court of law. If the court does not deem it possible to release said person from criminal responsibility in connection with the expiry of the limitation period, then the death penalty or deprivation of liberty for life shall not be applied.

(...)

\*\*\*

Thus, since Rape and Violent Actions of Sexual Character are categorized as grave-category crimes (Article 15, Part four and Article 131, Article 132, Part one of the Criminal code), as a general rule, the statute of limitations is ten years. In case of the aggravating circumstances stipulated by Article 131, Article 132, Part two of the Criminal code (committing by a group, or using the threat of injury or killing),



the statute of limitations is also 10 years, and if there are the aggravating circumstances provided for by Article 131, Article 132, Parts three - four (minor girls as a victim, injury as a harm), then the statute of limitations is 15 years. In the case of the aggravating circumstances stipulated by Article 131, Article 132, Part five, of the Criminal code, the limitation period may not be applicable by the court (Article 78, Part 4 of the Criminal code).

**17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?**

NO

**18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? If yes, please specify.**

NO

**19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial?**

YES (but only regarding minors)

As a general rule, according to Article 240, Part one of the Criminal procedure code (Directness and Verbal Nature of the Judicial Proceedings) during the judicial proceedings, all proof on the criminal case shall be **subject to a direct study**. But Article 281, Part 6 of the Criminal procedure code stipulates that the testimony of a minor victim, previously given during a preliminary investigation, as well as the demonstration of photographic negatives and photographs, transparencies made during interrogations, the audio and video recording, filming of interrogations are read out in the absence of the minor victim without interrogation.

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.**

YES (only judicial proceedings in camera)

According to Article 241, Part two, Item 3) of the Criminal procedure code (Public character of Judicial Proceedings), conducting **the judicial proceedings in camera** shall be admissible on the ground of a court ruling or resolution, if an examination of the criminal cases on the offences of the sexual immunity and sexual freedom of the personality and on other crimes may lead to an indulgence of the information on the intimate aspects of life of the participants in the criminal court proceedings or of information humiliating their honour and dignity.

#### **IV - War and/or conflict**

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

YES, as war crime (Crimes against humanity are not criminalized explicitly by Criminal Code)

##### **Article 356 of the Criminal code (Use of Banned Means and Methods of Warfare)**

1. Cruel treatment of prisoners of war or civilians, deportation of civilian populations, plunder of national property in occupied territories, and use in a military conflict of means and methods of warfare, **banned by an international treaty in which the Russian Federation is a party** - punished by deprivation of liberty for a term of up to 20 years.

2. Use of weapons of mass destruction, banned by an international treaty of the Russian Federation - shall be punishable by deprivation of liberty for a term of 10 to 20 years.

\*\*\*

The Russian Federation is a party for certain international treaties which ban the sexual violence and Rape:

##### **Article 27 of the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War of 12 August 1949**

(...)

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

(...)

##### **Part 1 of the Article 76 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.**

Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977**

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(...)

e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(...)

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

NO (Statutory limitations are not applicable for war crimes including rape and other forms of sexual assault (Article 78, part five of the Criminal Code)).

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

YES (Article 78, Part 5 of the Criminal Code (Release from Criminal Responsibility in Connection with the Expiration of Statutes of Limitation ) stipulates that “[t]he statutes of limitation shall not be applied to persons who have committed crimes provided for by Articles (...) 356 (...) of the Criminal code”).

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

NO

**V - 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.**

	Reported (Art. 131) <sup>13</sup>	Reported (Art. 132)	Prosecuted (Art. 131) <sup>14</sup>	Prosecuted (Art. 132) <sup>15</sup>	Sanctioned (Art. 131), pers. <sup>16</sup>	Sanctioned (Art. 132), pers. <sup>17</sup>
2019	3177	N/A	6819 <sup>18</sup>		2267	2954
2018	3374	N/A	7105 <sup>19</sup>		2551	3098
2017	3538	N/A	9520		2878	3138
2016	3893	N/A	9923		3104	3232
2015	3936	N/A	10744		3308	3081

## VI - 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.**

Law enforcement officials are denying to file complaints of domestic violence (including sexual violence); women who insist on prosecuting domestic violence are forced to participate in conciliation proceedings by law enforcement officials (CAT/C/RUS/CO/5, 22.04.2012).

There is a lack of statistical information on violence against women, its causes and consequences, differentiated by age, nationality and nature of the relationship between the victim and the offender, as well as research on the causes and consequences of such violence (CEDAW/C/RUS/CO/8, 27.10.2015). The statistical data on rape of the Judicial Department, the Ministry of Internal Affairs, the Investigative Committee, the General Prosecutor's Office, vary and do not correspond to each other.

<sup>13</sup> Statistics of the General Prosecutor's Office, URL: <http://crimestat.ru/analytics>.

<sup>14</sup> Statistics of the Investigative Committee of the Russian Federation, URL: <https://sledcom.ru/activities/statistic>.

<sup>15</sup> Statistics of the Investigative Committee of the Russian Federation, URL: <https://sledcom.ru/activities/statistic>.

<sup>16</sup> Statistics of the Judicial Department at the Supreme Court of the Russian Federation, URL: <http://www.cdep.ru/index.php?id=5>.

<sup>17</sup> Statistics of the Judicial Department at the Supreme Court of the Russian Federation, URL: <http://www.cdep.ru/index.php?id=5>.

<sup>18</sup> Statistics of the Judicial Department at the Supreme Court of the Russian Federation URL: [http://www.cdep.ru/userimages/sudebnaya\\_statistika/2020/F1-svod\\_vse\\_sudy-2019.xls](http://www.cdep.ru/userimages/sudebnaya_statistika/2020/F1-svod_vse_sudy-2019.xls)

<sup>19</sup> Data for 9 months (January - September 2018).

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Re-victimization of women from rape is often associated with fear of condemnation by society and even close relatives. For example, rape victims are silent about their crimes because of the fear of publicity, which becomes an obstacle to legal marriage in the future. This situation is common, but it stands out in some regions of Russia (E/CN.4/2006/61/, 26.01.2006).