**Replies by the Government of Finland to the questionnaire by the Special Rapporteur on violence against women, its causes and consequences**

**22 December 2020**

The Government of Finland presents the following replies to questionnaire sent by the Special Rapporteur on 9 April 2020.

**Q1**

Extract from the Criminal Code of Finland (unofficial translation):

*“****Chapter 20 -Sex offences (563/1998)***

***Section 1 - Rape (509/2014)***

1. *A person who forces another into sexual intercourse by the use or threat of violence directed against the person shall be sentenced for rape to imprisonment for at least one year and at most six years.*
2. *Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is unable to defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape.*
3. *If the rape, taking into consideration the pettiness of the threat or the other circumstances connected with the offence, is less serious when considered as a whole than the acts referred to in subsections 1 or 2, the offender shall be sentenced to imprisonment for at least four months and at most four years. A person who forces another into sexual intercourse through other than the threat referred to in subparagraph 1 shall be sentenced in a similar manner. What is provided above in this subparagraph does not apply if violence has been used in the rape.*
4. *An attempt is punishable.*

***Section 2 -Aggravated rape (509/2014)***

*(1) If, in the rape,*

*(1) grievous bodily injury, serious illness or a state of mortal danger is caused to another,*

*(2) the offence is committed by several people, or especially marked mental or physical suffering is caused,*

*(3) the victim is a child below the age of eighteen years,*

*(4) the offence is committed in a particularly brutal, cruel or humiliating manner, or*

*(4) a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made, and the rape is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated rape to imprisonment for at least two years and at most ten years.*

*(2) An attempt is punishable.”*

**Q2: Based on the wording of those provisions, is the provided definition of rape:**

1. NO
2. YES
3. NO
4. YES
5. YES: Rape can be committed (1) by using force or threat, even if the victim does not physically oppose the perpetrator, or (2) by abusing the victim’s state of helplessness. This is also confirmed in the preparatory texts to the legislation and legal practice.
6. NO
7. YES, the following definition in Chapter 20 of the Criminal Code applies to the rape provisions:

***“Section 10 - Definitions (509/2014)***

*(1) For the purposes of this Act, sexual intercourse refers to the sexual penetration of the body of another, by a sex organ or directed at a sex organ or anal passage, or to the insertion of the sex organ of another into the body of the offender.*

*[…]”*

1. NO
2. YES. However, it is confirmed in the preparatory texts to the legislation that the provisions on rape apply to

marital relationships.

1. YES
2. NO

**Q3**

No.

**Q4**

16 years of age. This is evident from the provisions on sexual abuse of a child:

*“****Chapter 20 -Sex offences (563/1998)***

*[…]*

***Section 6 -Sexual abuse of a child (540/2011)***

*(1) A person who by touching or otherwise performs a sexual act on a child below the age of sixteen years, said act being conducive to impairing his or her development, or induces him or her to perform such an act, shall be sentenced for sexual abuse of a child to imprisonment for at least four months and at most six years. (12.4.2019/486)*

*(2) Also a person who has sexual intercourse with a child below the age of six-teen years, if the offence when assessed as a whole is not aggravated in the manner referred to in section 7, subsection 1, shall be sentenced for sexual abuse of a child. In addition, a person who acts in the manner referred to in subsection 1 or above in the present subsection with a child who has reached the age of sixteen but is below the age of eighteen years, if the offender is the parent of the child or is in a position comparable to that of a parent and lives in the same household with the child, shall be sentenced for sexual abuse of a child.*

*(3) An attempt is punishable.*

***Section 7 -Aggravated sexual abuse of a child (540/2011)***

*(1) If*

*(1) a person has sexual intercourse with a child below the age of sixteen or in the cases referred to in section 6, subsection 2 with a child who has reached the age of sixteen but is below the age of eighteen years, or*

*(2) in sexual abuse of a child*

*(a) the victim is a child whose age or stage of development is such that the offence is conducive to causing special injury to him or her,*

*(b) the offence is committed in an especially humiliating manner, or*

*(c) the offence is conducive to causing special injury to the child due to the special trust he or she has placed in the offender or the special dependence of the child on the offender,*

*and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated sexual abuse of a child to imprisonment for at least one year and at most ten years.*

*2) An attempt is punishable.*

***Section 7 b (12.4.2019 / 486) - Aggravated child rape***

*A person who commits aggravated rape within the meaning of section 2 and at the same time aggravated sexual abuse of a child within the meaning of section 7 paragraph 1 subparagraph 1 shall be sentenced to imprisonment for aggravated child rape for a minimum of four and a maximum of twelve years.*

*The provisions of paragraph 1 do not apply if the act is punishable as an attempt of aggravated sexual abuse or aggravated rape.”*

**Q5**

Yes. The Criminal Code Chapter 20 section 7 a limits liability in cases where the inviolability of the person under 16 has not been violated. It also requires that the maturity and physical development between the parties do not differ significantly.

*“****Chapter 20 -Sex offences (563/1998)***

*[…]*

***Section 7(a) –Restrictive provision (540/2011)***

*An act that does not violate the sexual self-determination of the subject and where there is no great difference in the age and mental and physical maturity of the parties shall not be deemed sexual abuse of a child, or the aggravated sexual abuse of a child referred to in section 7, subsection 1, paragraph 1.”*

**Q6**

Please see above the replies to questions 1 and 4.

**Q7**

Victims of rape and sexual violence are entitled to receive state-funded compensation for damages caused by the offence. Compensation is granted by State Treasury, on the grounds laid down in the Tort Liability Act (412/1974) and the Act on Compensation for Crime Damage (1204/2005). If the matter is tried in court, the victim must claim compensation from the perpetrator in the court proceedings in order to be able to receive the compensation. Compensation can be claimed after a court decision on the matter. If the perpetrator has not been arrested or the offence for any other reason has not been treated in court or arbitrated, compensation can in any case be claimed.

Compensation is paid as a rule for personal injury. Furthermore, victim of a sexual offence may receive compensation for the distress caused by the crime.

State-funded compensation is secondary in nature, which means that the compensation, which the perpetrator has paid to the victim will be deducted from it. The victim can, however, apply for compensation directly from the State Treasury without first having to try to recover the compensation from the perpetrator. The compensation based on the Act on Compensation for Crime Damage may differ from what the perpetrator has been convicted to pay.

**Q8**

YES

1. YES
2. YES: Grounds for aggravated rape include victim under 18 years of age and cruelty and particular humiliation (please see above the replies to questions 1 and 4). Furthermore, particular vulnerability may be considered as aggravating circumstance when determining the sentence in accordance with Criminal Code Chapter 6.

*“****Determining the sentence***

***Section 4 –The general principle (515/2003)***

*The sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the offender manifest in the*

*offence.”*

1. Not as such, but it may be taken as aggravating circumstance when determining the sentence (please see above the reply to question 8.b).

**Q9**

YES: Paragraph 3 of the rape provision concerns mitigating circumstances (Criminal Code, Chapter 20, section 1 - please see above the reply to question 1).

**Q10**

According to Section 3 of the Act on Conciliation in Criminal and Certain Civil Cases, conciliation may deal with crimes that are assessed as suitable for conciliation, taking into account the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime as a whole. The conciliation of a crime requires that the suspect confirms the main facts of the events and that conciliation

is in the interest of the victim.

Although not explicitly excluded from conciliation, in practice rape cases are not considered suitable for conciliation.

**Q11**

NO

1. NO
2. NO

**Q12**

YES

**Q13**

NO

**Q14**

NO

**Q15**

NO

**Q16**

The general provisions on statute of limitations in Criminal Code, Chapter 8 apply. These provisions include special rules concerning sexual offences against a child below the age of eighteen.

*“****Chapter 8 -Statute of limitations***

***Section 1 –Time-barring of the right to bring charges (297/2003)***

1. *The right to bring charges for an offence for which the most severe sentence is life imprisonment does not become time-barred. (212/2008)*
2. *The right to bring charges is time-barred if charges have not been brought*

*(1) within twenty years, if the most severe penalty provided for the offence is fixed-term imprisonment for over eight years,*

*(2) within ten years, if the most severe penalty is imprisonment for more than two years and at most eight years,*

*(3) within five years, if the most severe penalty is imprisonment for over a year and at most two years, and*

*(4) within two years, if the most severe penalty is imprisonment for at most a year, or a fine (18.11.2016/985)*

*(3) The most severe penalty refers to the maximum penalty provided for the offence in the applicable provision.*

*[…]*

*(5) The right to bring charges for sexual abuse of a child, aggravated sexual abuse of a child and aggravated child rape becomes time-barred at the earliest when the complainant reaches the age of twenty-eight years. The same applies to rape, aggravated rape, coercion into sexual intercourse, coercion into a sexual act, sexual abuse, pandering, aggravated pandering, trafficking in persons and aggravated trafficking in persons, directed at a person below the age of eighteen years. […] (12.4.2019/486)”*

**Q17**

YES, please see above the reply to question 16.

**Q18**

NO. In accordance with the principle of free assessment of evidence the court has the discretion to freely assess the value of the evidence.

**Q19**

There is no specific provision on cross-examination on the victim’s sexual history in our legislation. However, the court shall disallow irrelevant questions (Chapter 17, Section 48 of the Code of the Judicial Procedure) and the victim’s sexual history is not considered relevant to the case.

**Q20**

YES.

In the individual assessment of a victim (Chapter 11, Section 9a of the Criminal Investigation Act) the authorities will assess whether the victim needs protection during the criminal investigation and trial and which protection measures are required. In the assessment, the victim’s personal circumstances and the nature of the offence are taken into account. In this assessment, special attention shall be paid on the victims of sexual violence.

The victim may be heard in a trial behind a screen or without the accused being present (Chapter 17, Section 51 of the Code of Judicial Procedure). The victim may also be heard through a video conference (Chapter 17, Section 52 of the Code of Judicial Procedure).

The statement of a victim in the investigation may be recorded on video to be used as testimony in court proceedings (Criminal Investigation Act, chapter 9, section 4). According to Chapter 17, Section 24 of the Code of Judicial Procedure, hearings of the following persons in a video recording may be used as evidence if the accused has had an opportunity to ask the person being heard questions:

1) a person younger than 15 years or a person whose mental functioning is disturbed

2) a victim aged 15 - 17, if they are in need of special protection, taking into account in particular their personal circumstances and the nature of the crime

3) a victim aged 15 - 17 of a sexual offence mentioned in the Criminal Code, Chapter 20, s. 1, 2, 4, 5, 6, 7 or 7 b, if the victim does not want to be heard during trial,

4) a victim aged 18 or over of a sexual offence mentioned in the Criminal Code, Chapter 20, s. 1, 2, 4, 5, 6, 7 or 7 b, if being heard during trial would endanger the victim’s health or cause other equivalent significant harm.

**Q21**

YES

**Q22**

NO, general provisions on Statute of limitations in Criminal Code, Chapter 8 apply.

**Q23**

NO

**Q24**

YES

**Q25**

|  |  |  |  |
| --- | --- | --- | --- |
| **Rape / year** | **Reported** | **Found guilty** | **Charges dismissed** |
| 2019 | 1141 | 153 | 112 |
| 2018 | 1072 | 173 | 90 |
| 2017 | 918 | 162 | 109 |

|  |  |  |  |
| --- | --- | --- | --- |
| **Aggravated rape / year** | **Reported** | **Found guilty** | **Charges dismissed** |
| 2019 | 188 | 40 | 22 |
| 2018 | 156 | 32 | 11 |
| 2017 | 126 | 27 | 24 |

|  |  |  |  |
| --- | --- | --- | --- |
| **Aggravated child rape\* / year** | **Reported** | **Found guilty** | **Charges dismissed** |
| 2019 | 34 | 4 | 1 |
| 2018 | N/A | N/A | N/A |
| 2017 | N/A | N/A | N/A |

\*Aggravated child rape was added to the Criminal Code in 2019.

Please see the annex by Statistics Finland for the number of sexual offences reported to the police and cases sanctioned. The data is disaggregated by type of offence according to the Finnish crime nomenclature of the Finnish Criminal Code 89/1889. When analyzing this data, the statistical units need to be taken into account. The data concerning the police-recorded offences (first sheet) comprises of the number of *crimes* or *perpetrators*, whereas the data concerning courts (second sheet) entails the number of *cases* sentenced, acquitted and lapsed.

**Q26**

In 2019, the Ministry of Justice appointed a working group to prepare an overall reform of sexual offences. One of the main aims is to amend the definition of rape so that it is based on lack of consent. The report of the working group was finalised and sent for comments to different authorities and the civil society during the summer and autumn of 2020. The legislative work is ongoing.

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Annex: Data by Statistics Finland