**Answers of Hungary to**

**“Annex - 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.

The Hungarian Criminal Code provides for the following, most relevant criminal offences that can be applied.

**Sexual coercion**

Section 196 (1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) The punishment shall be imprisonment for two to eight years if sexual coercion is committed

*a)* against a person who has not attained the age of eighteen years,

*b)* against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

(3) The punishment shall be imprisonment for five to ten years if sexual coercion is committed against a person who has not attained the age of fourteen years.

**Sexual violence**

Section 197 (1) A person who,

*a)* commits sexual coercion by violence or direct threat to life or physical integrity,

*b)* to engage in a sexual act, takes advantage of the state of another person who is incapable of self-defence or unable to express his will

commits sexual violence, is guilty of a felony, and shall be punished by imprisonment for two to eight years.

(2) A person who engages in a sexual act with another person who has not attained the age of twelve years, or has another person who has not attained the age of twelve years engage in a sexual act, also commits sexual violence and shall be punished by imprisonment for five to ten years.

(3) The punishment shall be imprisonment for five to ten years if the criminal offence specified in paragraph (1) is committed

*a)* against a person who has not attained the age of eighteen years,

*b)* by the perpetrator against a relative or a person raised by, or under the supervision, care, medical treatment or otherwise the power or influence, of the perpetrator, or

*c)* by more than one person at the same time, with knowledge of the activities of each other.

(4) The punishment shall be imprisonment for five to fifteen years if

*a)* the criminal offence specified in paragraph (2) is committed

*aa)* in a manner specified in paragraph (1),

*ab)* against an aggrieved party specified in paragraph (3) *b)*, or

*ac)* in a manner specified in paragraph (3) *c)*,

or

*b)* the criminal offence specified in paragraph (3) *a)* also qualifies under paragraph (3) *b)* or *c)*.

(4a) The punishment shall be imprisonment for five to twenty years if the criminal offence specified in paragraph (4) *a)* *aa)* also qualifies under paragraph (4) *a)* *ab)* or *ac)*.

(5) A person who makes available the conditions necessary for or facilitating the commission of sexual violence is guilty of a felony and shall be punished by imprisonment for up to three years.

**Sexual abuse**

Section 198 (1) A person who has attained the age of eighteen years who engages in a sexual act with a person who has not attained the age of fourteen years, or induces such a person to engage in a sexual act with another person, is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) A person who has attained the age of eighteen years who seeks to induce a person who has not attained the age of fourteen years to engage in a sexual act with him or another person shall be punished by imprisonment for up to three years.

(3) If the aggrieved party is a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or the perpetrator commits sexual abuse by abusing any other power or influence over the aggrieved party, the punishment shall be imprisonment for

*a)* two to eight years in the case specified in paragraph (1),

*b)* one to five years in the case specified in paragraph (2).

(4) A person who has attained the age of eighteen years who engages in a sexual act with a person who has attained the age of fourteen years but has not attained the age of eighteen by abusing his power or influence over that person shall be punished by imprisonment for up to three years.

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, If yes, please specify.

The consent of the victim is irrelevant in certain cases when it comes to sexual crimes, thus, the sexual act constitutes a criminal offence even if the victim gave some kind of consent, in this regard the Criminal Code renders punishable sexual violence, which is determined as coercing someone to perform or endure a sexual act by force, and/or by a direct threat against life or physical integrity; or by utilizing the state of another person who is incapable of self-defense or of declaring his/her will for a sexual act (e.g. being under the influence of drugs or alcohol, or having certain mental disabilities). Also, performing sexual act with a person under 12 years old, constitute sexual violence even if the victim had given “consent”. The novelty of the new Criminal Code was the introduction of a new criminal offence, namely sexual coercion, which criminalizes the act of coercing another person to perform or endure a sexual act, but in this case coercion can include acts of “simple” intimidation, meaning it is indirect, is not *vis absolute* (like in the case of sexual violence) but rather *vis compulsiva*. Coercing someone in this way to perform or endure a sexual act includes any behaviour where the victim does not give his/her consent voluntarily and freely but rather as a result of a some kind of intimidating coercion, which does not reach the level of duress required to establish the criminal offence of sexual violence. This offence can be established even in case the perpetrator performs the sexual act by exploiting the relative age difference between him/her and the victim.

f. Does it cover only vaginal rape? YES **NO**

g. Does it cover all forms of penetration? **YES**/NO, If yes, please specify.

The Criminal Code uses the term “sexual act”, which is defined as intercourse and any seriously indecent act, which is capable of, or directed at, arousing, maintaining, or satisfying sexual desires” [section 459 (1) 27.]

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. Are there any provisions excluding criminalization of the perpetrator if the victim and

alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it with corresponding translations.

NO

4. What is the legal age for sexual consent?

14 years of age.

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

provide them.

NO

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

criminal sanctions for criminalized forms of rape,

Regarding the criminal offence of sexual coercion:

* the basic case is punishable by imprisonment for one to five years,
* the aggravated cases are punishable by imprisonment for two to eight years or five to ten years respectively.

Regarding the criminal offence of sexual violence:

* the basic case is punishable by imprisonment for two to eight years,
* the aggravated cases are punishable by imprisonment for five to ten years, five to fifteen years or five to twenty years respectively.

Regarding the criminal offence of sexual abuse:

* the basic cases are punishable by imprisonment for one to five years or for up to three years,
* the aggravated cases are punishable by imprisonment for two to eight years or one to five years respectively.

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?

The Hungarian government according to the Victim Support and Compensation Act of 2005 provides assistance and support in several forms to victims of crime committed in the territory of Hungary. The victims of violent deliberate crime as well as rape and/or sexual violence are entitled to state compensation.

A crime victim eligible for state compensation is a natural person in need,

a) who has been victimized by a violent deliberate crime and, as a direct consequence thereof, suffered severe physical or mental injury, or

b) who is a direct relative, adoptive or foster parent, adopted or foster child, spouse or domestic partner of the victim injured or died in consequence of a crime referred to in Paragraph a) above, and was living in the same household with the victim at the time of the crime, and

c) whom the victim injured or died in consequence of a crime referred to in point a) above is or was obliged to support pursuant to the provisions of a law, an enforceable court order or official decision or a valid contract, or

d) who provided for the funeral of the victim victimized by a violent deliberate crime against a person.

 Victim support service compensates the victim in need for the damage or loss of income in a causal caused by the crime to the extent specified by law. The determination of and entitlement to state compensation does not depend on the prosecution of the perpetrator.

Application for state compensation can be submitted by victim as soon as the criminal proceedings had already begun, but within three month after the crime had been committed.

 The victim of rape and/or sexual violence may be entitled to a civil law claim during the criminal proceedings and, pursuant the Civil Act of 2013, may file a civil lawsuit against the perpetrator, to demand enforcement of the proceeds of crime.

**Aggravating and mitigating circumstances**

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

what are they?

YES

Regarding the criminal offence of sexual coercion, it is punishable more severely, if it has been committed:

* against a person who has not attained the age of eighteen years,
* against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party,
* against a person who has not attained the age of fourteen years.

Regarding the criminal offence of sexual violence, it is punishable more severely, if it has been committed:

* against a person who has not attained the age of twelve years
* against a person who has not attained the age of eighteen years,
* against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party,
* or the combination of the above,
* by more than one person at the same time, with knowledge of the activities of each other.

Regarding the criminal offence of sexual abuse, it is punishable more severely, if it has been committed:

* against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

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

c. Is rape by spouse or intimate partner an aggravating circumstance?  **YES**, relative includes spouses and cohabitant persons as well [section 459 (1) 14.]

9. Does the law foresee mitigating circumstances for the purposes of punishment?

YES/**NO** If yes, please specify.

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?

a. Regardless of the law, is reconciliation permitted in practice*? Y*ES/**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.

There is no specific provision regarding the perpetrator of rape, only the general reasons for terminating the liability to punishment of perpetrator prevail, thus: the death of the perpetrator, statute of limitation, pardon. However, crimes of sexual nature do not have a statute of limitation if punishable by more than five years of imprisonment if the victim of the criminal offence had not attained the age of eighteen years when the criminal offence was committed. In any other case, if the victim of a sexual crime punishable by less than five years of imprisonment had not yet attained the age of eighteen years when the criminal offence was committed, the limitation period shall not include the period left until the aggrieved party attains or would have attained the age of eighteen years. [section 26 (3) c) and 28 (1a)].

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

b. if the perpetrator loses his "socially dangerous” character or reconciles with

the victim? YES*/***NO**

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

YES/**NO**

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

YES*/***NO**

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

See Q 11.

Nonetheless, it must be highlighted that regarding criminal offences of sexual coercion, sexual violence and sexual abuse, only on three instances can it happen that the crime is punishable by less than five years of imprisonment:

* A person who makes available the conditions necessary for or facilitating the commission of sexual violence is guilty of a felony and shall be punished by imprisonment for up to three years. [section 197 (5)]
* A person who has attained the age of eighteen years who seeks to induce a person who has not attained the age of fourteen years to engage in a sexual act with him or another person shall be punished by imprisonment for up to three years. [section 198 (2)]
* A person who has attained the age of eighteen years who engages in a sexual act with a person who has attained the age of fourteen years but has not attained the age of eighteen by abusing his power or influence over that person shall be punished by imprisonment for up to three years. [section 198 (4)]

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

Sexual coercion, sexual violence or sexual abuse committed against a child does not have a statute of limitation. However, regarding the certain criminalized behaviours included in these criminal offences (as mentioned above, under Question 16), section 28 (1a) of the Criminal Code says that if the victim of a criminal offence against the freedom of sexual life and sexual morality had not yet attained the age of eighteen years when the criminal offence was committed, the limitation period shall not include the period left until the aggrieved party attains or would have attained the age of eighteen years.

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

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

Victims under the age of 18 years, or victims of a criminal offence against the freedom of sexual life and sexual morality shall be regarded as persons requiring special treatment *ex officio* [section 82 a) and c) of the Criminal Procedure Code]. As such, the proceeding authorities shall take the utmost care in the course of maintaining contact with such a person and to protect the privacy and personal data of such persons, ensure enhanced protection of the personal data of the victim related to the circumstances justifying the classification for a person requiring special treatment [section 85 (1) b) - d)], also, the proceeding authority may decline refuse to give information or to allow taking video or audio recordings if it would directly endanger the rights to privacy of such persons [section 109 (1) a)].

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during

the prosecution and court hearings? **YES**/NO. If yes, please specify.

By creating the system of the special treatment (Chapter XIV of the Criminal Procedure Code), the legislator wanted to express the need for the courts, prosecutors and investigating authorities to provide increased protection, discretion, and attention to persons requiring special treatment. As part of the available measures, the following ones preventing re-victimization can be highlighted: preparing the procedural action requiring the presence of such person in such a way that it could be conducted without the need of repetition, ensuring that the person concerned will not encounter any other person involved in the criminal proceedings; ensuring the presence of the person concerned at the procedural act through telecommunications devices; making voice and video recordings, restricting the right of the accused or the defense counsel to be present or ask questions, the proceeding authority may order that a forensic psychologist also be present at the procedural act etc.. [section 85 (1) g), h), j), k), 86. § (2)].

**War and/or conflict**

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

Under Chapter XIII of the Criminal Code on Crimes against humanity, as part of the criminal offence of crime against humanity [section 143 (1)f)], and under Chapter XIV of the Criminal Code on War Crimes, as part of the criminal offence of violence against protected persons [section 149 (2) c)].

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

Section 26 (3) a) of the Criminal Code states that crimes under Chapter XIII and Chapter XIV do not have a statute of limitation.

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.

**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.

Budapest, 18th May 2020