**Information provided by the Republic of Lithuania to the UN Special Rapporteur’s**

**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.***

Relevant Articles of the Criminal Code of the Republic of Lithuania (further in the text – CC):

**Article 13. Age for Liability under the Criminal Law**

<…>

2. A person who, prior to the time of commission of a crime or misdemeanour, had attained the age of fourteen shall be held liable for <…> rape (Article 149) <…>.

<…>.

**Article 100. Treatment of Persons Prohibited under International Law**

A person who intentionally, by carrying out or supporting the policy of the State or an organisation to attack civilians on a large scale or in a systematic way, conducts their killing or causes serious impairment to their health; <…> rapes or sexually coerces persons, <…> shall be punished by a custodial sentence for a term of five up to twenty years or by a life custodial sentence.

**Article 103. Causing Bodily Harm to, Torture or Other Inhuman Treatment of Persons Protected under International Humanitarian Law or Violation of Protection of Their Property**

1. A person who, in time of war or during an armed conflict or an aggression, occupation or annexation, orders, incites or organises inhuman treatment or subjects to inhuman treatment the persons protected under international humanitarian law: <…> rapes or sexually coerces persons, <…> shall be punished by a custodial sentence for a term of three up to twelve years.

2. A person who commits the act provided for in paragraph 1 of this Article by resorting to deceit shall be punished by a custodial sentence for a term of seven up to fifteen years.

**Article 149. Rape**

1. A person who has sexual intercourse with a person against his will by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim shall be punished by a custodial sentence for a term of up to seven years.

2. A person who rapes another person with a group of accomplices shall be punished by a custodial sentence for a term of up to ten years.

3. A person who rapes a minor shall be punished by a custodial sentence for a term of three up to ten years.

4. A person who raped a young child shall be punished by a custodial sentence for a term of five up to fifteen years *(explanation: a young child is considered to be a person under the age of 14).*

5. A person shall be held liable for the act provided for in paragraph 1 of this Article only under a complaint filed by the victim or a statement by the legal representative thereof or at a prosecutor’s request or when a pre-trial investigation is opened upon establishing signs of domestic violence.

6. A legal entity shall also be held liable for an act provided for in paragraphs 3 and 4 of this Article.

Relevant Article of the Code of Criminal Procedure of the Republic of Lithuania (further in the text – CCP):

**Article 167. Initiation of a pre-trial investigation only on the basis of a complaint of the victim or a statement of his or her legal representative or at the request of the prosecutor**

1. Regarding the criminal offenses provided for in Articles <…> 149(1) <…> of CC <…> a pre-trial investigation is initiated only if there is a complaint from the victim or a statement by his or her legal representative <…>.

2. If the offenses referred to in paragraph 1 are of public importance or have caused damage to a person who, for important reasons, is unable to defend his or her legitimate interests and there is no complaint from the victim or his or her legal representative, a pre-trial investigation must be initiated at the prosecutor's request.

3. If the criminal offenses provided for in <…> Article 149(1) <…> of CC are related to the domestic violence, a pre-trial investigation shall be initiated regardless of whether the victim has a complaint or a statement from his or her legal representative. <…>.

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

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

b. *Gender neutral, covering all persons?* NO

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

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

e. *Some combination of the above?* YES. *If yes, please specify*: Criminal liability arises when a person has sexual intercourse with another person against his will and that will is broken by using alternative methods/ways specified in CC: by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim.

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

g. *Does it cover all forms of penetration?* NO

h. *Is marital rape in this provision explicitly included?* NO

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

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

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 sexual relationship/had a sexual relationship? If so, please submit it with corresponding translations****.*

NO.

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

16.

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

As far as criminal offence of rape is concerned, there are no such provisions. However, such provisions do exist in terms of the criminal offence foreseen in the Article 1511 of CC.

**Article 1511. Satisfaction of Sexual Desires by Violating a Minor’s Freedom of Sexual Self-Determination and/or Inviolability**

1. An adult person who has a sexual relationship or otherwise satisfies his sexual desires with a person under the age of sixteen years, in the absence of signs of raping, sexual abuse or coercing into a sexual act, shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to five years.

<…>

5. The actions indicated in paragraph 1 of this Article shall not be considered a crime if there is no significant age, mental and physical maturity difference between participants in the actions.

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

**Article 149. Rape**

1. A person who has sexual intercourse with a person against his will by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim shall be punished by a custodial sentence for a term of up to seven years.

2. A person who rapes another person with a group of accomplices shall be punished by a custodial sentence for a term of up to ten years.

3. A person who rapes a minor shall be punished by a custodial sentence for a term of three up to ten years.

4. A person who raped a young child shall be punished by a custodial sentence for a term of five up to fifteen years *(explanation: a young child is considered to be a person under the age of 14).*

<…>

6. A legal entity shall also be held liable for an act provided for in paragraphs 3 and 4 of this Article.

According to the Article 43 of CC, the following penalties may be imposed upon a legal entity for the commission of a criminal act: 1) a fine (from 10 000 EUR to 5 000 000 EUR); 2) restriction of operation of the legal entity; 3) liquidation of the legal entity.

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

Pursuant to Article 30 of the Constitution, a person shall have the right to compensation for material and moral damage in accordance with the procedure established by laws.

Article 28 of CCP defines the term “victim” and specifies the rights of a victim. A subject who is recognized as a victim is a natural person who, as a result of a criminal act, suffered physical, material or moral damage. A person is recognized to be a victim by decision of a pre-trial investigation officer, a prosecutor or by the ruling of a court. The victim and his/her representative shall have the following rights: to supply evidence; submit applications; make challenges; have access to case information during pre-trial and trial proceedings; participate in court proceedings; appeal the actions of a pre-trial investigator, prosecutor, pre-trial judge and court, also, appeal the court’s judgement or ruling; to make a final speech. Pursuant to paragraph 10 of Article 44 of CCP, every person who has been recognized as a victim shall have the right to request identification and just punishment for the person who has committed a criminal act, receive compensation for damage caused by a criminal act and in the cases established by laws – also, compensation from the Crime Victims’ Fund as well as receive state-guaranteed free legal aid in accordance with the procedure established by law.

According to Article 109 of CCP, a person who suffered material or non-material damage as a result of a criminal act shall have the right, during criminal proceedings, to file a civil claim against the suspect or the accused or the persons bearing material responsibility for the acts of the suspect or the accused. The court shall hear such claim together with the criminal case. Where the civil claim has been filed during a pre-trial investigation, the data confirming the grounds and amount of the civil claim must be collected during this stage. Pursuant to Article 118 of CCP, if the defendant or the person who bears material liability for the defendant’s actions do not have funds to compensate for the damage, the damage may be compensated from the funds allocated by the state for that purpose in the cases and in the manner established by law. The Law of the Republic of Lithuania on Compensation for Damage Caused by Violent Crime provides for the awarded compensation of material and/or non-material damage caused by violent crimes and the compensation in advance for material and/or non-material damage caused by violent crimes. This Law does not regulate the compensation of damage caused by violent crimes from the persons who committed a crime or the persons liable for their acts. Paragraphs 5 and 6 of Article 2 of the Law define the terms of compensation for damage caused by violent crimes and compensation in advance for damage caused by violent crimes. Compensation for damage caused by violent crimes shall mean the compensation for material and/or non-material damage caused by violent crimes from the special Crime Victims’ Fund programme where the person who committed a violent crime or the person liable for his/her acts does not compensate for the damage awarded by court judgement. Advance compensation for damage caused by violent crimes shall mean the compensation for material and/or non-material damage caused by violent crimes from the special Crime Victims’ Fund programme where no court decision on the compensation for damage has been made.

**AGGRAVATING AND MITIGATING CIRCUMSTANCES**

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

Article 60 of CC provides the general list of aggravating circumstances which can be applied when any of criminal offence is being committed.

**Article 60. Aggravating Circumstances**

1. The following shall be considered as aggravating circumstances:

1) the act has been committed by a group of accomplices. Taking into consideration the nature and extent of participation of each accomplice in the commission of the criminal act, a court shall have the right not to recognise this circumstance as aggravating;

2) the act has been committed by an organised group;

3) the act has been committed by reason of disorderly conduct or for mercenary reasons;

4) the act has been committed by torturing the victim or subjecting him to taunting;

5) the act has been committed against a young child;

6) the act has been committed against a person who, due to an illness, disability, old age or for other reasons, was in a helpless state, without his request, or the act has been committed against a minor taking advantage of his dependency or through abuse of trust, authority or influence;

7) the act has been committed against a woman known to be pregnant;

8) the act has been committed by taking advantage of a public or other person’s disaster;

9) the act has been committed by a person under the influence of alcohol, narcotic, psychotropic or other psychoactive substances, where these circumstances influenced the commission of the criminal act;

10) the act has been committed in a publicly dangerous manner or by using explosives, explosive materials or firearms;

11) the committed act has inflicted serious damage or a real threat to the victim's life;

12) the act has been committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views;

13) the act has been committed by a repeat offender.

It is also important to notice that according to the para. 2 of Article 60 of CC when imposing a penalty, a court shall not take into consideration an aggravating circumstance which is provided for in a law as constituting the body (element) of a crime. At this point, it should be mentioned that such features (circumstances) as being group of accomplices in the criminal offence of rape, also when victim is a minor or a young child are the integral part of the criminal offence of rape (consist the separate compositions of this criminal offence) and for this reason are called the qualified compositions of criminal offence of rape (this automatically means the imposition of more severe penalties).

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

To be precise, as far as the criminal offence of rape is concerned, this feature is the integral element of a qualified composition of criminal offence of rape (para. 2 of Article 149 of CC).

**Article 149. Rape**

<…>

2. A person who rapes another person with a group of accomplices shall be punished by a custodial sentence for a term of up to ten years.

<…>.

According to para. 1 of Article 60 of CC, the following circumstances on this regard (foreseen in a sub-question (a) of a question No. 8) shall be considered as aggravating circumstances: the act has been committed by a group of accomplices (taking into consideration the nature and extent of participation of each accomplice in the commission of the criminal act, a court shall have the right not to recognise this circumstance as aggravating), the act has been committed by an organised group.

**b. *Is rape of 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

To be precise, as far as the criminal offence of rape is concerned, being a minor victim or a young child victim is the integral element of a qualified composition of criminal offence of rape (para. 3 and para. 4 of Article 149 of CC).

**Article 149. Rape**

<…>

3. A person who rapes a minor shall be punished by a custodial sentence for a term of three up to ten years.

4. A person who raped a young child shall be punished by a custodial sentence for a term of five up to fifteen years *(explanation: a young child is considered to be a person under the age of 14).*

<…>.

According to para. 1 of Article 60 of CC, the following circumstances on this regard (foreseen in a sub-question (b) of a question No. 8) shall be considered as aggravating circumstances: the act has been committed against a person who, due to an illness, disability, old age or for other reasons, was in a helpless state, without his request, or the act has been committed against a minor taking advantage of his dependency or through abuse of trust, authority or influence;

**c. *Is rape by spouse or intimate partner an aggravating circumstance?*** NO

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

Article 59 of CC provides the general list of mitigating circumstances which can be applied when any of criminal offence is being committed.

**Article 59. Mitigating Circumstances**

1. The following shall be considered as mitigating circumstances:

1) the offender has provided assistance to the victim or otherwise actively avoided or attempted to avoid more serious consequences;

2) the offender has confessed to commission of an act provided for by a criminal law and sincerely regrets or has assisted in the detection of this act or identification of the persons who participated therein;

3) the offender has voluntarily compensated for or eliminated the damage incurred;

4) the criminal act has been committed due to a very difficult financial condition or desperate situation of the offender;

5) the act has been committed as a result of mental or physical coercion, where such a coercion does not eliminate criminal liability;

6) the commission of the act has been influenced by a provoking or venturesome behaviour of the victim;

7) the act has been committed at the request of the victim, who is in a desperate situation;

8) the act has been committed in violation of conditions of arrest of a person who has committed the criminal act, direct necessity, discharge of professional duty or performance of an assignment of law enforcement institutions, conditions of industrial or economic risk or lawfulness of a scientific experiment;

9) the act has been committed by exceeding the limits of self-defence, where a criminal law provides for liability for exceeding the limits of self-defence;

10) the act has been committed in a state of extreme agitation caused by unlawful actions of the victim;

11) the act has been committed by a person of diminished legal capacity;

12) the act has been committed by a person intoxicated by alcohol or drugs against his will;

13) a voluntary attempt to renounce commission of the criminal act has been unsuccessful.

2. A court may also recognise as mitigating other circumstances which have not been indicated in paragraph 1 of this Article.

3. When imposing a penalty, a court shall not take into consideration a mitigating circumstance which is provided for in a law as constituting the body of a crime.

**10. *Is reconciliation between the victim and the perpetrator allowed as part of a legal response?* NO *If so, at what stage and what are the consequences?***

a. *Regardless of the law, is reconciliation permitted in practice?* NO (in terms of a part of a legal response) *and what is the practice in this regard?*

According to the Article 38 of CC, release from criminal liability upon reconciliation between the offender and the victim is allowed in those cases when a person commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime (also other additional conditions exist). Criminal offence of rape according to CC is treated as a serious or grave crime (depending on the qualifying features). Thus Article 38 of CC could not be applied in this case.

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

In terms of releasing from criminal liability, theoretically the provisions foreseen in Article 36 and 37 of CC could be applied (general provisions which could be applied when any criminal offence is being committed). However, we do not have information if those provisions were applied in practice when the criminal offence of rape was committed.

**Article 36. Release from Criminal Liability When a Person or Criminal Act Loses Its Dangerousness**

A person who commits a criminal act shall be released from criminal liability where a court acknowledges that before opening of the hearing of the case in the court this person or the act committed thereby had lost its dangerous character due to a change in circumstances.

**Article 37. Release from Criminal Liability due to Minor Relevance of a Crime**

A person who commits a crime may be released from criminal liability by a court where the act is recognised as being of minor relevance due to the extent of the damage incurred, the object of the crime or other peculiarities of the crime.

a. *If the perpetrator marries the victims of rape?* NO

b. *If the perpetrator loses his “socially dangerous” character or reconciles with the victim?*

YES, if the definition of “socially dangerous character” could be treated as similar to the definition – “dangerous character due to a change in circumstances” in Article 36 of CC.

NO, in terms of reconciliation as it is understood in Article 38 of CC. Release from criminal liability upon reconciliation between the offender and the victim is allowed in those cases when a person commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime. Criminal offence of rape according to CC is treated as a serious or grave crime (depending on the qualifying features). Thus Article 38 of CC could not be applied in this case.

**PROSECUTION**

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

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

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

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

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

**Article 149. Rape of CC**

1. A person who has sexual intercourse with a person against his will by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim shall be punished by a custodial sentence for a term of up to seven years.

2. A person who rapes another person with a group of accomplices shall be punished by a custodial sentence for a term of up to ten years.

3. A person who rapes a minor shall be punished by a custodial sentence for a term of three up to ten years.

4. A person who raped a young child shall be punished by a custodial sentence for a term of five up to fifteen years (explanation: a young child is considered to be a person under the age of 14).

According to the Article 95 of CC the statute of limitations of criminal liability is fifteen years in the event of commission of a serious crime under paragraphs 1-3 of the Article 149 of CC.

According to the Article 95 of CC the statute of limitations of criminal liability is twenty-five years in the event of commission of a grave crime under paragraph 4 of the Article 149 of CC.

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

The statute of limitations of criminal liability is applicable, no other limitations.

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

NO, general requirements for the pre-trial investigation are applicable.

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

**20. *Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearing?*** YES. Special protection needs are prescribed for victims under the Article 362 of CCP.

**WAR AND/OR CONFLICT**

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

2**2. *Is there a statute of limitations for prosecuting rape in war or in conflict contexts?*** NO

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

(according to the para. 9 of Article 95 of CC, there is no statute of limitations for such crimes against humanity and war crimes as, for example, Treatment of persons prohibited under international law (Article 100 of CC) or Causing bodily harm to, torture or other inhuman treatment of the persons protected under international humanitarian law or violation of protection of their property (Article 103 of CC). If rape committed consists a part (as an integral element of criminal offences) of those crimes mentioned, there is no statute of limitations for prosecuting rape committed during war and armed conflict).

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

**DATA**

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

|  |  |
| --- | --- |
| **Year** | **Number of rape reported** |
| 2016 | 110 |
| 2017 | 124 |
| 2018 | 116 |
| 2019 | 94 |

|  |  |
| --- | --- |
| **Year** | **Number of cases of rape sanctioned** |
| 2016 | 75 |
| 2017 | 88 |
| 2018 | 57 |
| 2019 | 37 |

**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.***

All the information is provided above, no additional comments to add.