

The Women against Violence Network, Autonomous Women's Centre and the Women's European Lobby Network Serbia, as part of the joint campaign of the European Women's Lobby and the Council of Europe¹



REQUEST FROM THE STATE OF SERBIA TO CHANGE THE DEFINITION OF THE CRIME OF RAPE

Rape continues to be one of the most brutal forms of violence against women which in the majority of cases remains undisclosed and unpunished. In order to bring to light the fact that many victims of sexual violence do not receive help and protection, in 2013 the European Women's Lobby launched the **Barometer on Rape**² which covers 32 European countries. The Barometer shows that almost all countries don't have services for victims of sexual violence, and that most European countries lack adequate legal regulations which would protect the victims of these criminal offences.

Definitions of the crime of rape have evolved during the last ten years – from definitions based on use of force and threat to use a force, with a requirement that the victim tried to resist, to definitions stating that rape is every act which was not explicitly and freely consented to. However, the Barometer shows that definitions based on use of force are still prevalent in most European countries – Serbia included.

The European Court of Human Rights holds that definitions based on use of force fail to adequately protect women from sexual violence, while on the other hand, definitions based on absence of consent are more in line with the human rights principle of protection of physical integrity.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, called the Istanbul Convention, which the State of Serbia had just ratified, explicitly demands that states change the legal definition of the crime of rape in order to make *punishable every act of sexual penetration, regardless of the form and nature of this act*,

¹ <http://www.womenlobby.org/news/ewl-news/article/one-month-to-go-act-against-rape>

² <http://www.womenlobby.org/Publications/Reports/article/2013-ewl-barometer-on-rape-report>



committed against a person who had not given consent. The Istanbul Convention goes a step further and requests that consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

For this reason women's organizations in 32 European states are organizing and implementing a joint campaign demanding justice and support for all those who had survived rape.

Current Legislation, Practice and Procedure in Rape Cases

Republic of Serbia's Criminal Code states that the criminal act of rape is an act which has *been committed with use of force or threat of use of force*, which implies that women must try to physically resist the rapist. Also, judicial practice and legal theory hold the opinion that only those acts where there has been penetration by the male sex organ can constitute rape – even in cases in which children are victims. All other forms of penetration – by hand or other object – as well as coercion to perform oral sex, are not considered to be a crime of rape or coerced sexual act, but are prosecuted as prohibited sexual acts.

Punishment for the basic form of the criminal offence of prohibited sexual acts (paragraph 1, Article 182 of the Criminal Code) is *a fine or up to 3 years in prison*, even in cases where children are victims.

The Criminal Code also states that marital rape will be prosecuted if the victim joins the legal prosecution, and not *ex officio*, even if there is evidence proving that a criminal offence had indeed happened.

There are no General or Specialized Protocols for actions of the institutions in rape cases. Rape victims give statements to the police and are then sent to the gynecologist for examinations, where vaginal swabs are taken. During the gynecological examination the victims are not tested for sexually transmitted diseases or HIV, are not given pills for immediate contraceptive protection nor are they offered to speak with a psychologist. Additionally, if the victims have other injuries on their body, those injuries will not be properly examined by the doctor of forensic medicine, other biological traces will not be collected from the victim's body or clothes, and the victim will not be tested for rape drugs. If victims choose to be examined by the doctor of forensic medicine they will be obligated to pay for that exam – and the fee is at least 5,000.00 dinars (approximately 44 €, or 59 \$). This is because of the fact that the Institutes for forensic medicine are part of Medical Faculties, regulated by the Ministry of Education and not by the Ministry of Health.

In Serbia there are no Rape Crisis Centers, no specialized, free support services for victims in which medical, psychological and legal help and support could be found in one place.

In Serbia state institutions do not conduct representative research on sexual violence. The only data available is data from the Statistical Office of the Republic of Serbia which shows numbers of reported, prosecuted and convicted persons for this criminal offence and the data from the

Autonomous Women's Center from 2003 – showing that only 6% of women living in Belgrade reported sexual violence committed by their partner.

Statistical Data on Criminal Offences against Sexual Freedoms³

Table – Number of reported, prosecuted and convicted persons for the criminal offences against sexual freedoms from 2000 to 2012

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Adults reported	386	386	400	408	472	479	374	455	405	448	387	414	372
For the criminal act of rape	203	169	164	142	154	114	127	164	142	177	138	131	121
Adults prosecuted	213	279	274	221	217	245	300	274	313	281	209	255	322
For the criminal act of rape	94	142	115	99	60	79	81	87	108	84	75	87	x ⁴
Adults convicted	169	224	231	183	178	194	236	214	256	238	164	190	244
For the criminal act of rape	77	113	95	81	50	68	67	71	88	77	62	59	67

Data regarding criminal act of rape

Penalty statistics

in 2009 – 77 convicted, all to prison sentences

in 2010 – of the 62 convicted, 2 received suspended sentences, 1 was found guilty but set free

in 2011 – 59 convicted, all to prison sentences

Victim's statistics

in 2009 – data exist for 64 victims – out of which 26 were children (7 of them bellow the age of 14, and 19 between the ages of 14 and 18), 63 victims were female and 1 was male

in 2010 – data exist for 56 victims – out of which 18 were children (1 child was bellow the age of 14, and 17 were between the ages of 14 and 18), 52 victims were female and 4 were male

³ Source: Statistical Office of the Republic of Serbia

⁴ this data hasn't been provided in the official report of the Statistical Office of the Republic of Serbia for 2012



in 2011 – data exist for 48 victims- out of which 13 were children (5 of them were below the age of 14, and 8 were between the ages of 14 and 18), 44 victims were female and 4 were male

Data regarding criminal act of prohibited sexual acts

Penalty statistics

in 2009 – out of the 86 convicted persons, 26 received suspended and 13 monetary sentences

in 2010 – out of the 47 convicted persons, 14 received suspended and 3 monetary sentences

in 2011 – out of the 58 convicted persons, 18 received suspended and 18 monetary sentences

Victim's statistics

in 2009 – data exist for 71 victims- out of which 43 were children (23 of them were below the age of 14, and 20 were between the ages of 14 and 18), 64 victims were female and 7 were male

in 2010 – data exist for 47 victims- out of which 21 were children (9 of them were below the age of 14, and 12 were between the ages of 14 and 18), 43 victims were female and 4 were male

in 2011 – data exist for 77 victims- out of which 52 were children (36 of them were below the age of 14, and 16 were between the ages of 14 and 18), 68 victims were female and 9 were male

Data for the European countries show that:

In the Czech Republic, one to two rapes per day are officially recorded.

In Denmark, the Crime Prevention Council makes statistics based on data from the rape centers and the police. They estimate that: 2000 rapes are committed in Denmark every year; 500 cases are reported to the police; in 300 cases the charges are brought and in 150 cases there is a conviction.

In France, an official survey done in 2005/2006 showed that 198,000 women between 18-59 years old are victims of actual rape or attempted rape.

In the Netherlands, a recent study (2012) revealed 15% of women between 25-70 years old and 8% of women between 15-24 years old were raped at least once in their lives.

In Sweden, data for 2011 shows that there were 6120 rapes of women and girls, out of which 3388 were cases where the woman was 18 years or older. During that period criminal charges were brought against 1030 perpetrators, while only 151 were convicted.

In Ireland, 21% of perpetrators of sexual violence against women were their partners or ex-partners. 90% of perpetrators were known to the survivor of rape (data from 2011).

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