



ROADBLOCKS TO JUSTICE: HOW THE LAW IS FAILING SURVIVORS OF SEXUAL VIOLENCE IN EURASIA

ABOUT EQUALITY NOW

Equality Now is an international human rights organization that works to protect and promote the rights of women and girls around the world by combining grassroots activism with international, regional and national legal advocacy.

Our international network of lawyers, activists, and supporters achieve legal and systemic change by holding governments responsible for enacting and enforcing laws and policies that end legal inequality, sex trafficking, sexual violence, and harmful practices such as child marriage and female genital mutilation.

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FOREWORD FROM ELIZABETH EVATT AC

Women are entitled to equality before the law and to the equal protection of the law without discrimination. And yet, as this report makes clear, when women have been victims of rape the law and the legal system in too many countries fail to accord this equality, both in substantive law and in the way laws are implemented. As a result women are often further victimized by the system which should protect them.



Dear friends,
In this groundbreaking report, **Roadblocks to Justice: How the law is failing survivors of sexual violence in Eurasia (2019)** Equality Now has revealed clearly just how

far the States concerned have failed women. The analysis of the situation in the 15 countries of the former Soviet Union shows that governments in those States must act decisively to transform their laws, policies and practices to prevent sexual violence and provide better access to justice for survivors.

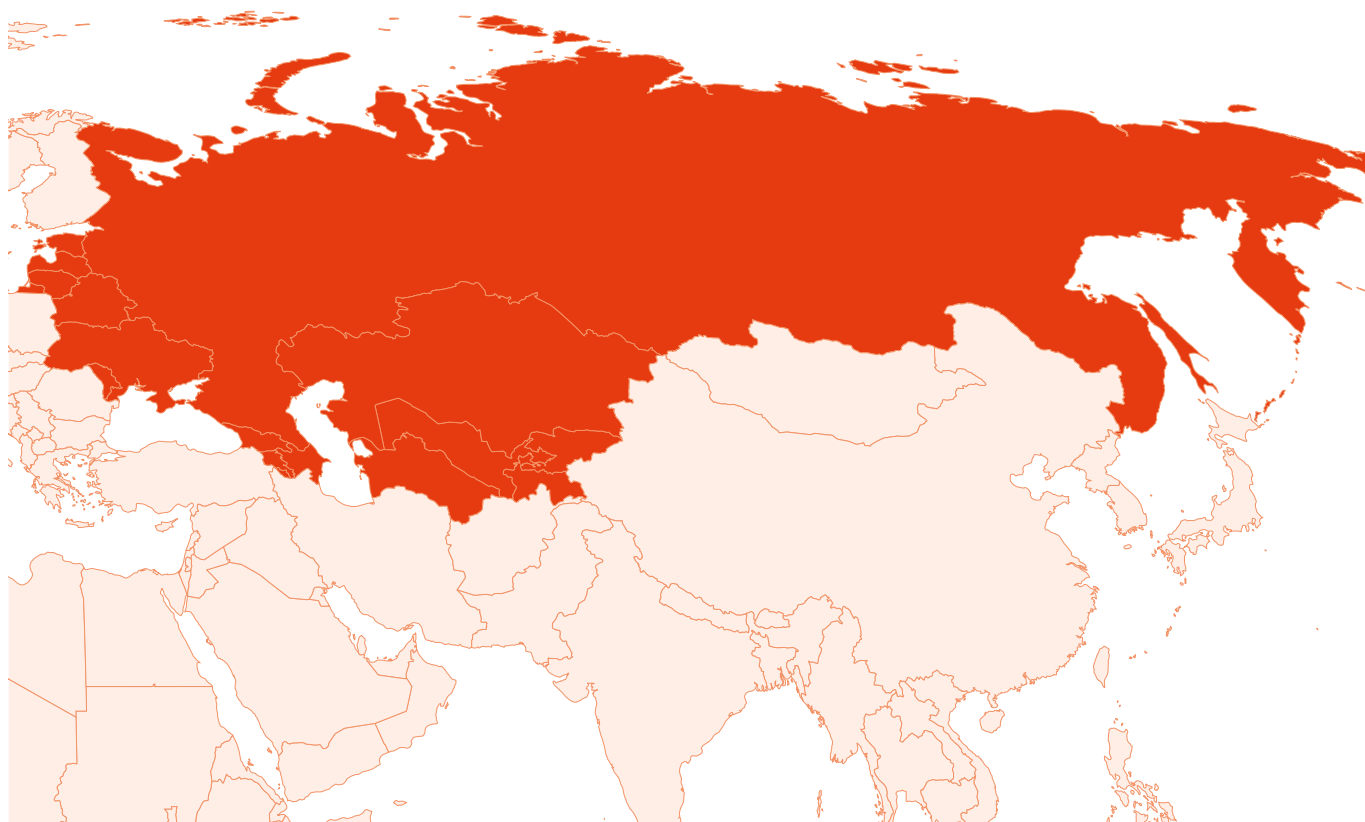
This report will be an important tool for all governments, law makers and advocates for the rights of women and girls across the post-Soviet region, as well as informing discussion globally on access to justice for victims of sexual violence.

This report comes just after the 70th anniversary of the adoption of the Universal Declaration of Human Rights. It is high time that all governments act to turn the words contained in many international and regional human rights instruments as well as the UN Sustainable Development Goals adopted in 2015 into reality for women and girls. Of foremost importance is to ensure their right to be free from sexual violence. At the very minimum, UN member states, including in the 15 post-Soviet countries studied in this report, must do all they can to ensure their laws on sexual violence do not allow perpetrators to escape criminal liability or penalty, and that women and girls have comprehensive redress when their right to be free from sexual violence has been violated. Civil society organizations and activists, such as Equality Now and its partners, are ready to assist in this essential effort.

The vision of a world where women and girls are safe in their homes, in their communities and in the street, including from sexual violence, must continuously be promoted so that they can make use of their capabilities and fully exercise their rights and freedoms on a basis of equality. We must all do our part individually and collectively to realize this vision as soon as possible.

Elizabeth Evatt AC

former Chair of the UN CEDAW Committee and a former member of the UN Human Rights Committee



This report will be an important tool for all governments, law makers and advocates for the rights of women and girls across the post-Soviet region.

METHODOLOGY

This report contains a general overview of the laws on sexual violence in the 15 countries of the former Soviet Union and analysis of gaps in the law allowing for potential impunity for perpetrators of sexual violence crimes. Detailed country profiles are also set out, which contain relevant excerpts from legislation in effect.² Wherever possible, we have included information on how the laws are put into practice.

Research was conducted to examine the following three issues:

1. Exemptions from criminal liability/penalty provided in the specific articles on sexual violence in the criminal codes;
2. Exemptions from criminal liability/penalty contained in the general provisions of the criminal codes, as applied to all crimes, including sexual violence;³
3. Application of the law in practice.

In order to examine and better understand if the law works adequately to provide access to justice generally for survivors of sexual violence, this report also looked at the general legal definitions of these crimes and some gaps in access to justice for survivors of rape/sexual violence. It then looked at related crimes, such as bride kidnapping and forced marriage, to understand how they contribute to enabling impunity for perpetrators. Equality Now will explore these issues further in its future work.

The methodology consisted of desk research of sexual violence laws conducted from February - July 2018 drawing from official government Criminal Codes, Criminal Procedure Codes and other official legislative sources in their original language, as well as in Russian and in English, where available, UN official documents, reports of international human rights organizations, and other reputable sources. Equality Now also sought data as to what extent the general articles from the criminal codes are actually applied to release a perpetrator from criminal liability and/or punishment in relation to sexual violence and related crimes. Local groups confirmed that their governments largely fail to collect disaggregated statistics on these matters. Nevertheless, information local groups provided from their own experience was critical in understanding how these laws were applied in practice - in the reporting, investigation, prosecution and punishment of sexual violence crimes.

On 19-21 November 2018 Equality Now held a convening in Tbilisi, Georgia, which brought together practicing lawyers and women's rights defenders from 13 of the 15 countries of the former Soviet Union (excluding Uzbekistan and Turkmenistan). During the convening, the issues included in this report were discussed and analyzed as relevant to the respective countries. The report further incorporates outcomes of the discussions and information about the practice of sexual violence laws as provided by the local groups during the convening.

² Kyrgyzstan and Ukraine adopted new legislation which entered into force on 1 January 2019 and 11 January 2019 respectively. In the charts provided in the report, the new legislation is referenced, though the analyzed practice in the report relates to the legislation in force until January 2019.

³ Legislation of each post-Soviet country, however, provides for release from liability generally for potentially any crime, usually based on the severity of the crime, as well as for release from penalty. Release from criminal liability can be applied at different stages, including during investigation, but always before a court's judgment. Release from penalty, on the other hand, indicates that the perpetrator is subject to criminal liability and that there is a conviction by the court. Only then can a court release the perpetrator from penalty on certain grounds.

RESEARCH FRAMEWORK

Sexual violence predominantly affects women and girls, but it is inflicted on men and boys as well. All should receive equal justice. Since many laws contain explicit discrimination against women and girls and since the perpetrators of rape are almost exclusively male and the vast proportion of survivors of sexual violence are women and girls, this report is largely written from that perspective. However, Equality Now recognizes that sexual violence against men and boys is largely unreported and unexplored, which, together with the prevailing patriarchal attitudes on male rape, often undermine their right to an effective remedy.

Gender-neutral laws and policies sometimes have a discriminatory impact on women and girls, for example if a State fails to provide services needed exclusively or predominantly by women, not least in the provision of reproductive services. Also, gender-based violence, such as marital rape discussed below, has not always been specifically recognized in the law which can and has meant that specific violations of women's and girls' rights are not properly addressed nor remedies resourced and so regularly go unpunished. Globally, this includes issues such as female genital mutilation, marital rape, child "marriage", sexual harassment, forced marriage, forced sterilization etc.

Being able to live a life free from sexual violence is not only a fundamental human right, but also necessary to meeting Goal 5 on Gender Equality and Empowerment of all Women and Girls of the 2030 Agenda for Sustainable Development (the **SDGs**) that all UN member states committed to and which includes the following targets:

- 5.1 End all forms of discrimination against all women and girls everywhere
- 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation
- 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation

Additionally, Goal 16 of the SDGs has as relevant targets to:

- 16.1 Significantly reduce all forms of violence and related death rates everywhere
- 16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children
- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

More specifically, regional and international law and expert guidelines developed under the auspices of UN Women⁴ set more detailed standards which legislatures should work to achieve.

The majority of post-Soviet countries are members of the Council of Europe and should ratify the Istanbul Convention (which is open for accession by member and non-member states), and conform their criminal codes as necessary to better protect women and girls under the law. At the time of writing this report, only Estonia and Georgia have ratified the Convention, while Armenia, Latvia, Moldova and Lithuania have signed but not yet ratified. All the states examined in this study are parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

While in the last few years some of the countries under review have taken certain steps in fighting domestic and gender-based violence (e.g. Georgia, Estonia, Armenia, Kyrgyzstan, Moldova, Latvia and Ukraine), sexual violence has been largely overlooked throughout Eurasia as compared to other forms of violence against women. In 2017 some forms of domestic violence were decriminalized in Russia and Kazakhstan, which can also have negative consequences to fighting sexual violence.

Some countries of the former Soviet Union (such as Azerbaijan, Kazakhstan, Uzbekistan, Turkmenistan, Tajikistan, Belarus and Russia) do not provide an enabling environment to, indeed frequently hinder, civil society engaging in human rights, including those focusing on women's rights, to work on various human rights issues and effectively seek justice for survivors of sexual violence. The political climate in these countries therefore compounds the difficulties in obtaining justice for victims of various human rights abuses, including gender-based violence.

⁴ UN Women Virtual Knowledge Center to End Violence against Women and Girls, guidelines on sexual violence legislation are available at: <http://www.endvawnow.org/en/modules/view/8-legislation.html>

REPORT KEY FINDINGS

Rape and sexual assault related laws and practices of the 15 countries of the former Soviet Union - that is Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan - effectively deny access to justice for survivors of sexual violence.

This is because the legal system provides a number of opportunities for perpetrators to escape criminal liability or punishment, including:

- Through the way sexual violence crimes are defined;
- Through the way the law allows for the direct release of a perpetrator from liability or punishment in certain circumstances;
- Through the way sexual violence crimes are investigated and prosecuted, including with respect to adolescent girls;
- Failure to designate certain violent practices as crimes; and
- As a consequence of layers of discrimination against women and girls generally and through intersection with other forms of marginalization / vulnerability.

Lack of faith in the justice system, as well as societal norms influenced by patriarchal culture, which in turn influence the administration of justice and which blame women and girls for the violence they experience, mean there is considerable underreporting of sexual violence. Even when women and girls report various forms of violence to the police, physical violence is usually recorded while sexual violence or coercion into sexual violence are often overlooked. Therefore, many of the reported cases of sexual violence are not even recorded as such.

The **most problematic provisions in law and practice which serve to deny justice to survivors seem to be regarding initiating an investigation into certain crimes of sexual violence only upon a victim's claim ("private" or "public- private prosecutions") and allowing reconciliation for these crimes.** These allow local law enforcement authorities not only to discourage survivors from filing such a claim but also to close investigations if the survivor withdraws her claim for any reason, or is pressured into reconciliation by the perpetrator. The Committee on the Elimination of Discrimination against Women (CEDAW) has found this to be the case in Kyrgyzstan, for example, where it conducted an inquiry into bride kidnapping and in September 2018 strongly

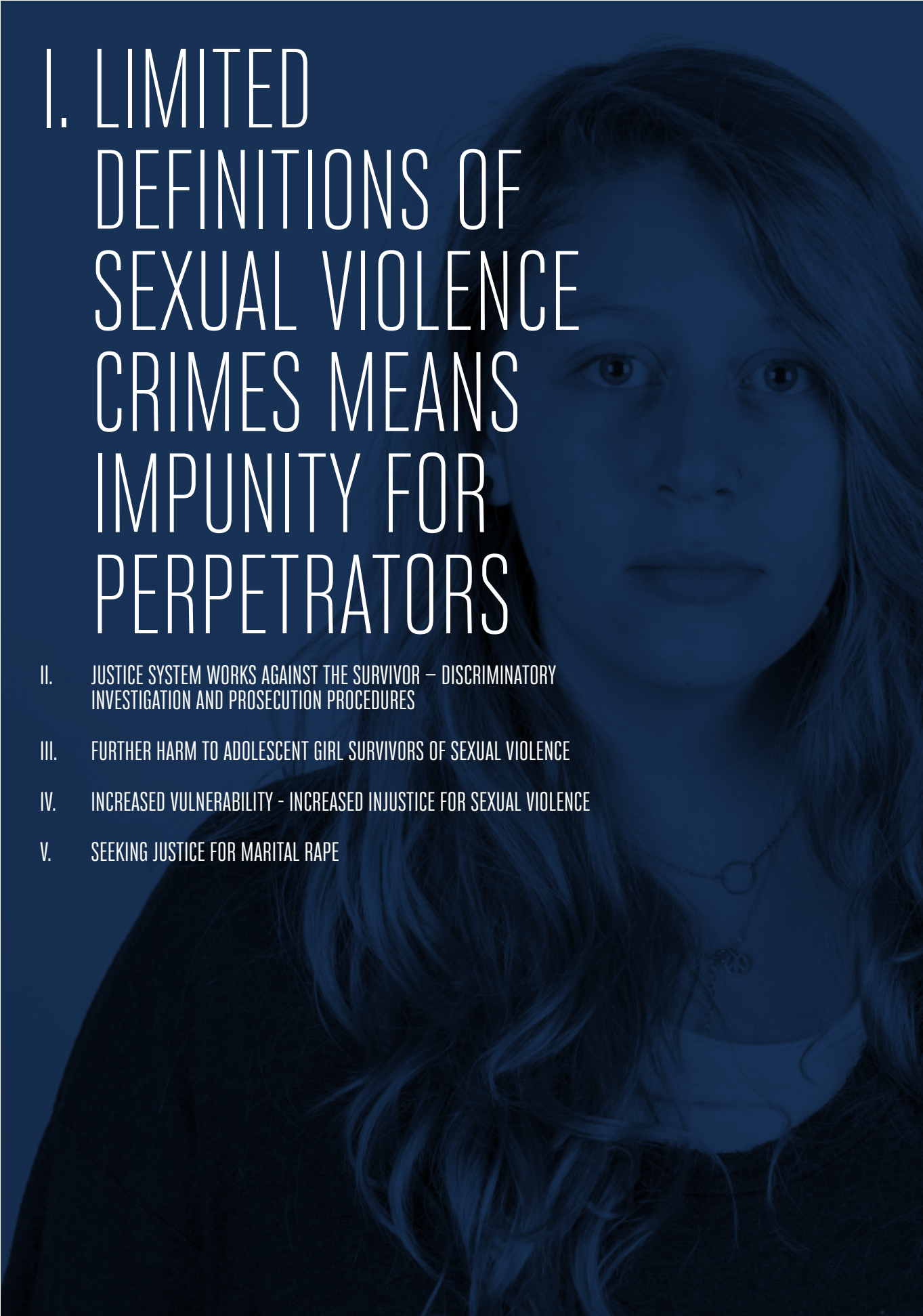
recommended mandatory prosecution of rape by the authorities ("*ex officio*").¹

Limited definitions of sexual violence crimes leave many of the coerced and non-consensual acts of a sexual character without any punishment. Moreover, burdensome evidence requirements, gender stereotyping and secondary victimization throughout legal proceedings further deny justice to survivors. Adolescent girls subjected to bride kidnappings, child marriages or forced marriages in many of the countries under review are often denied access to justice for sexual violence. Even though marital rape is not explicitly excluded as a crime under the law, it is very seldom prosecuted or punished. Women with vulnerable status are less likely to receive any justice for sexual violence they suffer.

The 15 former Soviet Union countries inherited large, if not all, parts of the criminal codes of the Soviet period, including structure, legal concepts and definitions. Therefore, positive reform in one country might inspire further reform in a neighboring country, as we witnessed with the repeal of similar rape exemption laws in several Middle Eastern countries in 2017 and 2018 - Tunisia, Jordan, Lebanon, and Palestine.

We hope this mapping of existing legal frameworks, in collaboration with organizations and activists across the region, will provide a base of evidence for us to develop advocacy strategies with partners calling for legal reform based on international and regional human rights law and standards and to plan future joint campaign activities.

¹ See Committee on the Elimination of Discrimination against Women, CEDAW/C/OP8/KGZ.1, Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women



I. LIMITED DEFINITIONS OF SEXUAL VIOLENCE CRIMES MEANS IMPUNITY FOR PERPETRATORS

- II. JUSTICE SYSTEM WORKS AGAINST THE SURVIVOR – DISCRIMINATORY INVESTIGATION AND PROSECUTION PROCEDURES
- III. FURTHER HARM TO ADOLESCENT GIRL SURVIVORS OF SEXUAL VIOLENCE
- IV. INCREASED VULNERABILITY - INCREASED INJUSTICE FOR SEXUAL VIOLENCE
- V. SEEKING JUSTICE FOR MARITAL RAPE

A. INTERNATIONAL HUMAN RIGHTS STANDARDS

Exploring definitions of sexual violence crimes within international human rights standards.

The Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) in its Article 2, together with the CEDAW Committee's General Recommendations 19⁵ and 35⁶ requires all States to “repeal all national penal provisions which constitute discrimination against women.” This principle also applies to repealing any discriminatory definitions of rape and other forms of sexual violence, as well as to the procedural laws under which sexual violence is prosecuted and punished.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (**Istanbul Convention**) deals with sexual violence, including rape, as follows:

Article 36—Sexual violence, including rape

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
 - a) engaging in non consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
 - b) engaging in other non consensual acts of a sexual nature with a person;
 - c) causing another person to engage in non consensual acts of a sexual nature with a third person.
2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.
3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.

International and regional bodies have handed down various jurisprudence on the definition of sexual violence, including on how the issue of consent should be interpreted.

Based on international human rights standards, definitions of rape should be amended to incorporate coercive circumstances. Following the jurisprudence of the ad hoc tribunals for the Former Yugoslavia and Rwanda,⁷ rape is committed when the offender used “force, threat of force or coercion,” as well as when “taking advantage of a coercive environment”. According to the judgment of the International Criminal Court, the victim's consent shall not be taken into account if the circumstances deprived them of “**voluntary and genuine consent**”. A victim's silence or non-resistance does not mean consent.⁸ Accordingly, consent cannot be voluntary and genuine, nor will it have any significance at all, when coercive circumstances are in place.

The European Court of Human Rights (ECHR) has held that even though the definition of rape provided by the criminal tribunals refers to rape committed during armed conflicts, the issues raised are universal and relevant in every context.⁹ According to the Court, when the offender in *M.C. v. Bulgaria* intentionally led the victim to a depopulated place, the coercive circumstances created were enough to overcome sexual autonomy. The Court concluded, “any sexual penetration without the victim's consent constitutes rape and that consent must be given voluntarily, as a result of the person's free will, assessed in the context of the surrounding circumstances.”¹⁰

The United Nations Committee on the Elimination of Discrimination against Women (**CEDAW Committee**) in its General Recommendation 35 provides that the definition of sexual crimes, including marital and acquaintance/date rape should be based on lack of freely given consent, and take account of coercive circumstances.¹¹ Further, the CEDAW Committee in the case of *Karen Tayag Vertido v. the Philippines*, relies on the standards developed by the international courts, suggesting that the state should remove the criterion of violence from the definition of rape and should instead

5 Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence against women, 1992.

6 Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

7 Prosecutor v. Akayesu, Case No ICTR-96-4, Trial Judgment, 02.09.1998, § 596-598.

8 International Criminal Court, “Rules of Procedure and Evidence”, UN Doc ICC-ASP/h/3 (2002), rule 70 a-c.

9 M.C. v Bulgaria, App. no. 39272/98, Council of Europe: European Court of Human Rights, 3 Dec. 2003 § 163.

10 M.C. v Bulgaria, § 102-107 and 163.

11 Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, §5.



enact a definition of rape, which:

- a. *requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting;*
- b. *requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.*¹²

In addition, the ECHR in the case of *M.C. v. Bulgaria* provides that due to a variety of psychological factors or because of fear of the offender, victims of sexual violence - especially underage girls - often do not resist the offenders.¹³ The Court pointed out that “any rigid approach to the prosecution of sexual offences such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual’s sexual autonomy...” such that the state has an obligation to penalize and effectively prosecute “any non-consensual sexual, including in the absence of physical resistance by the victim.”¹⁴

The UN’s Handbook for Legislation on Violence against Women further specifies that laws on sexual violence should include a broad range of coercive circumstances and not an over-emphasis on the existence of use of force.¹⁵

The CEDAW Committee and the UN Special Rapporteur on violence against women, its causes and consequences have recommended the states under review amend discriminatory definitions of rape and sexual violence:

- Kyrgyzstan: in 2018 CEDAW Committee’s inquiry on bride kidnapping recommended the state amend the definition of rape and ensure that it is “based on the lack of freely given consent and takes into account coercive circumstances;”¹⁶
- Georgia: in 2016 the Special Rapporteur on violence against women, after her country visit, recommended to “amend the definition of rape in the Criminal Code to ensure compliance with the Convention on the Elimination of All Forms of Discrimination against Women and the Istanbul Convention;”¹⁷
- Estonia: in 2016 the CEDAW Committee in its concluding observations expressed concern about the narrow definition of rape and recommended to “amend the Penal Code to review the definition of rape as any non-consensual sexual act irrespective of pain, physical abuse and/or health damage and threat.”¹⁸

¹² Karen Tayag Vertido v. The Philippines, CEDAW, Communication No.18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010), § 8.9(b)(ii).

¹³ *M.C. v. Bulgaria*, App. 39272/98, The European Court of Human Rights, decision of 4 December 2003, § 164.

¹⁴ Id. at § 166.

¹⁵ Handbook for Legislation on Violence against Women, United Nations, 2010, ST/ESA/329, p. 26, available at: <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

¹⁶ Committee on the Elimination of Discrimination against Women, Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 21 September 2018, CEDAW/C/OP8/KGZ/1, para. 92.

¹⁷ Report of Dubravka Šimonović - the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia; 22 July 2016, A/HRC/32/42/Add.3

¹⁸ CEDAW Concluding observations on the combined fifth and sixth periodic reports of Estonia, 18 November 2016, CEDAW/C/EST/CO/5-6, para. 18(b) and 19(b).

B. PROBLEMS WITH LOCAL LAWS AND PRACTICES

Exploring problems with the definitions of sexual violence crimes within local laws and practices across Eurasia.

I. GROUNDS FOR RELEASE FROM CRIMINAL LIABILITY AND/OR PUNISHMENT UNDER THE CRIMINAL CODES

If a person commits a crime under the codes of the countries studied s/he might not always be punished or found liable if the crime committed is classified as less serious or less grave.¹⁹ Many crimes committed against women and girls are considered less serious/grave crimes, for which the below provisions could in theory be applied, including with respect to sexual violence, thereby allowing the perpetrator to go free.

- ***Loss of socially dangerous nature***

If a person commits a crime that has been designated less serious and the circumstances related to the crime subsequently change whereby the perpetrator is deemed “no longer dangerous to the society”, that person might not be found responsible for the crime. For years, in many post-Soviet countries this provision has often been abused to exonerate the perpetrators of sexual crimes from responsibility after marriage to the victim. Article 134 of the Criminal Code of Russia still expressly provides that if an adult person (over the age of 18) marries a girl below 16 with whom he has had sexual relations with her supposed consent, he will not be punished for the statutory rape. Although marriage under the age of 18 (16 in exceptional circumstances) cannot be legally registered in Russia, the autonomous regions of Russia have the authority to lower the age further to as low as 14. Not only does the exemption provision exonerate the perpetrator from punishment if he does register the marriage, it also fails to protect the girl as a minor. In addition, the court can and does recognise cohabitation without registration as being a married state as long as the parties have reached the permitted age of marriage. Again, this would allow a perpetrator of statutory rape to escape punishment.

- ***Reconciliation***

A person might not be found responsible for a crime if he reconciles with the victim and “compensates” the harm without further examination by the authorities. Reconciliation is often used and abused with the result that perpetrators of sexual violence escape any form of criminal punishment or repercussions for their behavior (See Charts 3-8). This is either sanctioned by law (as in Moldova and Kazakhstan in relation to rape), or used informally in the course of the investigation by prosecutors who then do not need to continue further investigation of the allegations or to bring charges; or when a victim withdraws (or is put under pressure to withdraw) a complaint of sexual violence on the basis she has “reconciled” with the perpetrator.

- ***Other exemptions***

Other exemptions that are provided for “less serious” crimes are: active repentance - a person might not be found responsible if he voluntarily acknowledges his guilt, assists the investigation, or “compensates” the harm (usually by giving a sum of money, but “compensation” might include paying for medical treatment for the survivor for example); bail - a person might be released from criminal liability if he deposits a certain sum of money or real property and maintains good conduct for a certain period of time; and substitution with administrative liability - when an administrative penalty is imposed for an act that is criminally punishable. While under the existing criminal codes these provisions can theoretically exempt perpetrators of some criminal offenses, we have not found in our investigation to date any significant abuse of these provisions in relation to sexual violence.

While these provisions intend to ensure lenient and humane treatment for perpetrators of less serious offenses, they have the potential to give impunity for gender-based violent crimes against women and girls. Indeed, even classifying such offenses as less serious serves to obstruct proper justice for victims of sexual violence.

¹⁹ Criminal Codes of most of the countries reviewed provide three categories of criminal acts (less serious, serious and particularly serious) based on their gravity. The gravity of the crimes is determined by sanctions attached to particular crimes. E.g. under the Criminal Code of Georgia, crime that is punishable by imprisonment up to 5 years is a less serious crime. Crimes punishable for 5 to 10 years imprisonment are serious crimes. Crimes with imprisonment over 10 years are particularly serious crimes.

II. RAPE AND OTHER FORMS OF SEXUAL VIOLENCE - LIMITED DEFINITIONS

In the criminal codes of most of the post-Soviet countries, there are 3 main types of crimes of sexual violence:

1. Rape;
2. Assault of a sexual nature; and
3. Compulsion into sexual intercourse/actions.

Equality Now, in its 2017 report, *The World's Shame: The Global Rape Epidemic - How laws around the world are failing to protect women and girls from sexual violence*, benchmarked its findings against the listed recommendations from UN Women's Virtual Knowledge Centre. This report again benchmarks these laws against their guidelines developed by experts in the field.

Equality Now believes that it is important to define crimes, such as rape, which have historically been, and still are, used as a tool of patriarchal oppression and subordination, largely of women and girls, in a way that communicates their gendered nature. Laws on sexual violence should punish all acts of sexual penetration equally and provide equal access to justice to all survivors regardless of their sex, sexual orientation and gender identity and the means of penetration.

Rape

In most of the post-Soviet states, rape is defined or understood as penile-vaginal penetration (with the use of violence, threat of violence, or abuse of the victim's "helpless state"). This definition and understanding of rape as penile-vaginal penetration is true for all jurisdictions except for Estonia, Georgia, and Ukraine²⁰, where there is no distinction in crimes based on the gender of victims or means of assault (see Chart N1).

Assault of a sexual nature

The definition of "assault of a sexual nature" in the laws of the post-Soviet states is similar to rape in that it requires violence, threat of violence or abusing the "helpless state" of the victim. However, it applies to acts that do not involve penile penetration of the vagina but rather penile and non-penile penetration of other orifices and can also be committed by persons of the same sex. Articles on rape and assault of a sexual nature generally carry similar penalties.

Compulsion to engage in sexual intercourse/actions

The crime of compulsion to engage in sexual intercourse involves any of the above acts of rape and assault of a sexual nature but committed using blackmail, threatening destruction of property or by abusing authority over or dependence by the victim. Compulsion to engage in sexual intercourse is classified as a less serious crime than rape or sexual assault.

III. ELEMENTS OF THE CRIME

Violence

Violence and threat of violence, as elements of rape, are interpreted as only by physical means, rather than also psychological or economic harm or of any other form of coercion. In addition, the threat of violence must be immediate to constitute an element of the crime. Threats of future violence, no matter how severe, are not considered. Such threats might still constitute compulsion²¹ and will be criminally punishable, but to a lesser degree and sometimes not even with a custodial sentence. In addition, the crime of compulsion to engage in sexual intercourse/action can benefit from more exemptions from criminal responsibility/punishment.

²⁰ Estonia: § 141. Rape (1) Sexual intercourse or commission of another act of sexual nature with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation...

Georgia: Article 137 – Rape

1. Rape that is any form of penetration of a sexual nature of the body of a person with any bodily part or object, committed with violence, under the threat of violence or by abusing a helpless condition of a person affected...

Article 138 - Another action of a sexual nature

1. Another action of a sexual nature, which does not contain elements of crime under Article 137 of this Code, committed with violence, under the threat of violence or a helpless condition of a victim...

Ukraine: Article 152. Rape

1. Acts of a sexual nature connected with vaginal, anal or oral penetration into another person's body using genitals or any other subject, without the consent of the victim (rape)...

²¹ As an example, the Criminal Code of Georgia defines compulsion as follows: "Illegal restriction of a person's freedom of action, i.e. coercing physically or mentally a person to perform or not to perform a certain action the implementation of or abstinence from which is his/her right, or coercing a person to experience that influence that is against his/her will" (Art. 150).

“Helpless state” of the victim is included in the sexual violence articles as an alternative element to the requirement for additional violence on the part of the perpetrator. It is not interpreted as coercion or coercive circumstances as defined in international standards and is only in fact defined in law in few jurisdictions.²² The practice, however, is similar in all jurisdictions – “helpless state” is a state which prevents the victim from understanding the meaning of the actions they are subjected to or to resist those actions due to various reasons, such as age, disability, mental issues, being under the influence of alcohol or drugs, etc. A lack of resistance on the part of the victim, if not connected to this conventional understanding of “helpless” state, means the crime will not be classified as rape. Effectively then, both in respect to the requirement for additional violence and under the “helpless state” provisions, the law is indicating that the onus is on a victim of sexual violence to resist rather than on the perpetrator not to commit sexual violence. It also ignores many other reasons a victim might not have been able to resist e.g. if s/he were in a very isolated area, felt s/he could suffer further injury by resisting/running away or was just paralyzed by fear to name a few.

The UN Women guidelines state that rape and sexual assault laws should not require evidence of **additional force** as rape itself is a violent act and that additional violence should be considered an aggravating factor, which is also in line with the Istanbul Convention.

Lack of voluntary and genuine consent

Contrary to the international and regional standards indicated, the reviewed laws do not include the lack of voluntary and genuine consent on the part of the victim as a constitutive element for sexual violence crimes (see Chart N1). Under the first law of its kind in the region, provisions in Ukraine’s criminal code, which entered into force on 11 January 2019, define sexual intercourse without the victim’s consent as rape. However, the law

still does not provide that consent must be voluntary, genuine and willing, and that it must be assessed in the context of surrounding circumstances as indicated under CEDAW and the Istanbul Convention and as is beginning to be developed by other countries, such as in Sweden, in response to a failure of the criminal justice system to properly understand and prosecute rape.

As well as neglecting the importance of willing consent, the reviewed sexual violence laws do not enumerate **a wide range of coercive circumstances** that can paralyze the will and the actions of the victim, such as abuse of trust and authority and situations of dependence as highlighted above, but also deceit. These issues are only addressed to some extent with respect to the lesser crime of “compulsion to engage in sexual intercourse/actions”. The UN Women Guidelines state that laws should provide a broad range of circumstances in which **consent is immaterial**, such as sexual assault by an individual in a position of authority such as in a correctional facility or in a school setting or by individuals in certain professional relationships to the survivor such as an ongoing psychotherapist-patient relationship; and provide for a broad range of coercive circumstances around consent such as intimidation or fraud.

While the crime of compulsion to engage in sexual intercourse/actions does set out some examples of potentially coercive conditions, it does not describe them comprehensively. In addition, the crime is designated less serious than rape and therefore incurs a more lenient punishment as well as more possibility for exoneration. In 9 of the 15 countries reviewed, perpetrators can go unpunished if they reconcile with the victim of this crime (see Chart N6)

In general, these laws fall well below internationally agreed descriptions of sexual violence and the standards set out in order to achieve justice for any breach.

²² Armenia (Art. 138): “a person, who by the force of circumstances is permanently or temporarily unable to resist the perpetrator or to understand the character of the deed committed against them, as well as a person who has not reached twelve years of age.”

Moldova (Article 171): “taking advantage of the victim’s incapacity to defend themselves or to express their will...”

Estonia (§ 141): (1) Sexual intercourse or commission of another act of sexual nature with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation... § 147. Inability of person of less than ten years to comprehend Within the meaning of the offences provided for in this Division, a person is deemed to be incapable to comprehend if he or she is less than ten years of age.

Russia: Resolution of the Plenum of the Supreme Court of 4 December 2014 16, para. 5 - “when a person due to their physical or mental condition (dementia or other psychiatric disorder, physical disabilities, other disease or unconscious state), age (minor or senior person), or other circumstances could not understand the character and meaning of actions performed in their respect, or resist the perpetrator.”

C. RECOMMENDATIONS

- Amend criminal codes so that they do not allow “reconciliation” or “loss of socially dangerous nature based on change of circumstances” either on a formal or informal basis for escaping responsibility for sexual violence crimes at any stage of the proceedings.
- Ensure that the definitions of sexual violence crimes are in compliance with CEDAW and the Istanbul Convention and cover all forms of sexual acts committed without the victim’s voluntary, genuine and willing consent, and in a wide range of coercive circumstances.
- Ensure that sexual violence laws address all kinds of sexual penetration as crimes of appropriate gravity.
- Ensure that sentences for sexual violence crimes (rape, sexual assault, compulsion to sexual intercourse, statutory rape, rape of a minor) are commensurate with the gravity of the acts by classifying sexual violence crimes in the more serious category.



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A. INTERNATIONAL HUMAN RIGHTS STANDARDS

Exploring investigation and prosecution procedures within international human rights standards.

Mandatory investigations

As underscored by the CEDAW Committee,²³ law enforcement personnel often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence. There is evidence from groups working directly with victims that the law is not properly implemented and/or that a complainant is required to initiate and even prosecute her own case. This suggests that the legal system is heavily influenced by the stereotypes of men as entitled individuals and women as bearers of the so-called “honor” of their communities who carry the shame of any sexual act, even when they have been violated. International and regional standards, including the Istanbul Convention,²⁴ however set out clearly that authorities should respond seriously to all cases of gender-based violence, including through prosecution *ex officio* (by the state), to ensure access to justice. As sexual violence is particularly traumatizing, the aim of such standards is to make sure that survivors do not carry the burden of lengthy criminal proceedings and that perpetrators are brought to justice.²⁵

As further noted by the CEDAW Committee in its General Recommendation 35, states should: “Ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate *ex officio* prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties.”²⁶ States should also “Ensure that gender-based

violence against women is not mandatorily referred to alternative dispute resolution procedures, including mediation and conciliation.”²⁷

The CEDAW inquiry on bride kidnapping in Kyrgyzstan (2018) found that the State should urgently make sure that rape, considered to be a grave crime, be prosecuted *ex officio*.²⁸

The importance of mandatory investigation of violence against women was also underscored by the European Court of Human Rights. In *Opuz v. Turkey*, the Court stated that based on the seriousness of the crime the authorities should pursue the case as a matter of public interest, even when the victim withdraws her complaint.²⁹ Although the case specifically concerns domestic violence, these principles can be applied in relation to all forms of violence against women, including sexual violence, committed in domestic or any other settings.

Gender sensitive proceedings

The CEDAW Committee has emphasized the importance of gender-sensitive proceedings in ensuring access to justice, stating that “the secondary victimization of women by the criminal justice system has an impact on their access to justice, owing to their heightened vulnerability to mental and physical abuse and threats during arrest, questioning and in detention.”³⁰ Therefore, the Committee recommends governments take “effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities.”³¹ To avoid stigmatization and secondary stigmatization in cases of violence, the CEDAW Committee further recommends states apply a “confidential and gender-sensitive approach” during questioning, evidence collection and other procedures related to the investigation.³²

The UN Women Guidelines also provide that states should prohibit introduction of a survivor’s sexual history

23 Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/33, General Recommendation No. 33 on women's access to justice, § 27.

24 See Art. 55 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on *ex parte* and *ex officio* proceedings.

25 See Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, § 279, available at: <https://rm.coe.int/16800d383a>

26 Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, § 44.

27 *Id.* at § 45.

28 Committee on the Elimination of Discrimination against Women, Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 21 September 2018, CEDAW/C/OP.8/KGZ/1, para. 92.a.

29 *Opuz v. Turkey*, App. no. 33401/02, European Court of Human Rights, 9 June 2009, § 139 and 145.

30 *Ibid.* 17 at § 48.

31 *Id.* at § 51(c).

32 *Id.* at § 51(g).

as evidence in sexual violence proceedings, while the Istanbul Convention states that such evidence can only be permitted when relevant and necessary.³³

In the case of *P.M. v Bulgaria*, where it took the authorities 15 years to investigate a teenager's rape, the European Court of Human Rights ruled that the ineffectiveness of the investigation constituted inhuman and degrading treatment (a violation of Art. 3 of the European Convention of Human Rights).³⁴ Further, the Court in the case of *Y. v. Slovenia*, recognized the anguish and humiliation experienced by the survivor of sexual violence during the proceedings and, finding the violation of the European Convention (Art. 8), stated that "cross-examination should not be used as a means of intimidating or humiliating witnesses."³⁵ States also should "create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal justice processes; and take measures to prevent retaliation against women seeking recourse in justice."³⁶

Throughout the post-Soviet region, there is widespread impunity for perpetrators of sexual violence because of barriers in both law and in practice.

Avoiding burdensome evidence requirements to prove sexual violence

International human rights standards recognize that burdensome evidence requirements deny women access to justice. To combat this, the CEDAW Committee recommends states "revise the rules on the burden of proof in order to ensure equality between the parties, in all fields where power relationships deprive women of the chance for a fair judicial treatment of their case."³⁷ The CEDAW Committee further states that rules of evidence and their implementation, especially in cases of violence against women, should be reviewed and measures must be adopted to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes.³⁸ The UN Women Guidelines also recommend that a requirement of corroboration of the statement of a sexual violence survivor be prohibited by states.

Settlement should not be used for sexual violence

UN Women Guidelines state that in sexual violence cases, mediation shall be prohibited at all stages of the process. Under the Guidelines, financial settlement or marriage as settlement should also be prohibited in cases of sexual assault.

³³ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Art. 54.

³⁴ *P.M. v Bulgaria*, No. 49669/07, ECHR 028 (2012), 24 January 2012.

³⁵ *Y. v. Slovenia*, European Court of Human Rights, 28 May 2015, § 108.

³⁶ *Ibid* 17 at § 51(d).

³⁷ *Ibid* 17 at § 15(g).

³⁸ *Ibid* 17 at § 51(h).

Good practice

In addition to any regional and international human rights obligations, post-Soviet countries should consider relevant human rights good practice standards on rape and sexual abuse as instructive in their efforts to reform their penal codes. As noted above, chief among these are UN Women's Virtual Knowledge Centre to End Violence Against Women and Girls Core Elements of Legislation on Sexual Assault. Relevant Core Elements are listed below and could guide current efforts to amend national laws on rape and sexual assault.

A definition of sexual assault must, among other things:

- Not be framed as a crime of honor or morality;
- Not require ... force;
- Criminalize sexual assault within an intimate relationship;
- Place burden on accused to prove consent;
- Provide a broad range of circumstances in which consent is immaterial, such as sexual assault by an individual in a position of authority such as in a correctional facility or in a school setting or by individuals in certain professional relationships to the survivor such as an ongoing psychotherapist-patient relationship;
- Provide for a broad range of coercive circumstances around consent such as intimidation or fraud;
- Provide for mandatory investigation of sexual assault;

- Prohibit any requirement of corroboration of survivor's evidence;
- Prohibit introduction of survivor's sexual history as evidence at all phases of civil or criminal trial where it is unrelated to the case;
- Prohibit use of mediation at all stage of the process;
- Prohibit accepting financial settlement or marriage as settlement of claim of sexual assault;
- Mandate training for law enforcement, judicial, medical, and social service professionals;
- Mandate data collection on prevalence of sexual assault, disaggregated by gender, race, age, location of assault, and type of assault;³⁹
- Mandate prevention and public awareness programs on sexual assault; and
- Mandate data collection and monitoring of cases of sexual assault.

The problems with existing practices of investigation of rape have been raised by the CEDAW Committee in its concluding observations in relation to Moldova, for example. In 2013, the Committee recommended to the state to “ensure that all investigations into acts of sexual violence, including those committed against Moldovan migrant women, are carried out in line with international standards of investigation, including by amending the existing guidelines on investigation of rape and other forms of sexual assault.”⁴⁰

B. PROBLEMS WITH LOCAL LAWS AND PRACTICES

Exploring problems with investigation and prosecution procedures in Eurasia.

Throughout the post-Soviet region, there is widespread impunity for perpetrators of sexual violence because of barriers in both law and in practice. In the limited cases where investigation into a crime of sexual violence is begun, it is often terminated due to “reconciliation” of

the perpetrator with the victim, withdrawal of complaint by the victim (for various reasons, including stigma, social pressures, lack of confidence in the system, fear, police influence), refusal to give a statement against the perpetrator, or because law enforcement bodies did not find any “signs of crime.”

In most jurisdictions, investigation of sexual crimes against fully capable adults would only be initiated upon the victim's claim (so-called private or public-private prosecution, see Chart N2). Usually, under private prosecution a case begins with a victim filing a complaint and having the burden of gathering evidence. At any

39 The importance of collecting disaggregated statistics that should enable monitoring is also emphasized by CEDAW Committee in its General Recommendation N35, para. 49.

40 UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the combined 4th and 5th periodic reports of the Republic of Moldova, 29 October 2013, CEDAW/C/MDA/CO/4-5, para. 20.d.

point in the proceedings the victim can reconcile with the perpetrator and terminate the proceedings. Under public-private prosecution, the victim also initiates the complaint but the primary responsibility for the prosecution is on the prosecutor. Under most laws, the victim cannot technically terminate the proceedings once the prosecution has begun. However, in practice the victim is usually able to withdraw the complaint. Whether she is allowed to do so, and when, varies from country to country.

Public prosecution, on the other hand, implies that the investigation and prosecution of the crime do not depend on the complaint of the victim. Under the written law, investigation should be initiated in relation to every reported crime allegation, with the prosecution being conducted based on public interest (the seriousness of the crime), irrespective of the victim's wishes. Refusal of the victim to give a statement against the perpetrator cannot, in theory, be the basis for terminating the investigation.

The above systems lead to the following abuses when it comes to investigation and prosecution of sexual violence:

I. NO MANDATORY INVESTIGATION FOR SEXUAL VIOLENCE SETS PERPETRATORS FREE

The lack of a requirement that sexual violence is automatically investigated and prosecuted by the authorities in 10 of the reviewed countries inhibits access to justice for sexual violence in those countries (see Chart N2). The most abused legal provisions exonerating perpetrators of sexual violence in practice seem to be the clauses which permit initiation of an investigation of an offense only upon a victim's explicit petition and then closing investigations based on the withdrawal of the complaint by the victim. This allows local law enforcement authorities to discourage women from filing such claims and to postpone initiation of investigation, anticipating in practice that one way or another, a woman is likely to withdraw her claim. This lack of serious attention by the legal system and the transfer of the burden onto the survivor for seeing a prosecution through also exposes a victim of sexual violence to pressure exerted on her by perpetrators, their families, her family and community members, law enforcement, lawyers and doctors involved in her case not to file a complaint, or to withdraw her claim. Many times also, the survivor of rape is not sufficiently empowered to file a private complaint because of post-traumatic stress disorder and/or lack of legal support. Even when such private complaints are initiated, the vast majority of the cases are terminated.

When the victim wants to withdraw the complaint because of "reconciliation" with the perpetrator or for any other reason, investigators almost immediately close the case, including for "lack of signs of crime" without any further inquiry. This can also happen at any time during the proceedings.

II. MANDATORY INVESTIGATION FOR SEXUAL VIOLENCE DOES NOT ALWAYS LEAD TO JUSTICE

In countries where the law provides that sexual violence is a matter for public prosecution, in practice the investigation and prosecution are still largely conducted in line with the rules of private prosecution – a lot depends on the victim being proactive and being required to provide evidence and information unlike for other crimes of similar gravity.

In small towns and villages, police officers are often friends or even relatives of the perpetrators, and are reluctant or refuse to open an investigation into rape, as this would negatively affect their relations with perpetrators/perpetrators families.

When an investigation of rape is opened, it is often discontinued for reasons unknown to the victim, or the investigation remains open for years but is neglected until the statute of limitations expires for prosecution. In public prosecution countries where the investigation is supposed to be mandatory, in practice the investigators/prosecutors still tend to close the case if the victim is unable for whatever reason to pro-actively support prosecution. In such cases, the investigation is closed by the resolution of the prosecutor stating that "no signs of crime" were detected in the cases. Similar to the private and public-private prosecution countries, many times in practice the burden falls on the victim, while the burden should always be on the prosecutor to properly investigate and ensure justice. This also means that few cases reach final judgment and are officially recorded as such, thereby undermining the extent of the problem and making it less likely that human or physical resources will be allocated to address sexual violence.

Although the countries under review do not collect disaggregated data on the issue, it appears that only an extremely small proportion of sexual violence cases shown to have been committed without the use of additional actual physical force reach the prosecution stage. Local experience underscores that all forms of sexual violence, from compulsion to sexual intercourse to

rape, committed using threats of violence or other forms of coercion that do not involve physical force are largely ignored by law enforcement in practice. This results in either a refusal to open an investigation or a refusal to file charges in public prosecution jurisdictions. If such cases reach the courts, there is almost no chance of conviction due to burdensome evidence requirements imposed by the courts. Even when there is proof of physical injuries resulting from rape, courts sometimes require proof of biological evidence confirming sexual intercourse, and if none is available, acquit the defendant. Even where DNA testing and collecting other evidence is free and is provided by prosecuting authorities (as in Georgia for example), there may also be delays in collecting the evidence.

The victim is often blamed for having “provoked” the rape.

III. GENDER STEREOTYPING AND SECONDARY VICTIMIZATION AS ADDITIONAL BARRIERS TO JUSTICE

Disbelief in victims' testimonies or statements throughout the process is reported in many states by local organizations. Often the disbelief is the result of stereotypical and discriminatory attitudes towards women. The victim is often blamed for having “provoked” the rape. Additionally, when the same victim has suffered several forms of violence, for example within the context of domestic violence, the perpetrator is more likely charged for the crimes not constituting sexual violence, which is then ignored.

Most of the post-Soviet States lack any gender-sensitive methodology to investigate rape which means women and girls may be re-victimized in the process and necessary and relevant evidence for filing charges may not be collected. Crime is investigated using a general methodology covering all criminal offenses, resulting in various failures, including the failure to obtain sufficient evidence to file charges; because the specificity of rape is not understood or addressed, there is no recognition, for example, that the trauma of sexual violence may lead to

inconsistent statements, that there is bias in the system based on stereotypes or that the nature of the crime is likely to preclude having witness testimony and may not involve obvious physical injuries.⁴¹

Throughout the region, there is a lack of female police officers and investigators. Rape investigations are in many cases conducted by men, which further traumatizes women and girls and creates a barrier for reporting. The sexual history of the victim, as well as her relationship status with the perpetrator, often come under scrutiny at all stages of the proceedings and are, consciously or otherwise, evaluated to assess whether she is a “worthy” victim and has been truly damaged by the rape. A low “evaluation” may result in more lenient penalties being imposed on the perpetrator.

Even though sexual violence offenses are mostly heard during closed court sessions, violations of confidentiality (including during questioning in the course of the investigation) of all parties - the victim, perpetrator and any witnesses - are widespread during the investigation stage, particularly in a village or small town. In addition, secondary victimization of the victim throughout sexual violence cases is not uncommon, as the victim is often questioned multiple times by different officials, who often use sexist and humiliating language in questioning her.

Survivors of sexual violence crimes often have no access to free legal assistance and services to support them throughout the criminal proceedings, including psychological and social assistance and safe housing. These factors, together with lengthy and stigmatizing criminal proceedings for sexual violence, many times contribute to a survivor's reluctance in seeking justice for sexual violence crimes.

⁴¹ In the judgment dated 19 November 2015 (case N253 -15) concerning attempted rape, the Supreme Court of Georgia stated that rape is a crime, which by its nature cannot have a lot of witnesses. Therefore, it is particularly important to assess the consistency of the victim's statement, its correlation with other evidence and absence of any motive, which would make the Court question the credibility of the victim (para. 3).

C. RECOMMENDATIONS

Provide for mandatory investigation and prosecution by the State

- Amend criminal codes to ensure that sexual violence crimes (rape, sexual assault, compulsion to sexual intercourse) are subject to mandatory investigation and prosecution by the state (ex officio, public prosecution). Therefore, ensure that the criminal codes exclude private or public-private prosecution options for these crimes (applicable for Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Lithuania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan).

Improve Policy and practice

- Ensure that all forms of sexual violence offenses are treated as matters of public interest, which have to be investigated and prosecuted as a priority.
- Recognize the specific nature of sexual violence crimes and ensure a gender-sensitive methodology for the investigation and prosecution of sexual violence, free from all stereotypes, including on the basis of disability, ethnicity and sexual orientation, including

with respect to gathering evidence and witness interrogation processes.

- Ensure that the victim's refusal to give a statement, or her changing the statement for the benefit of the perpetrator, is not the basis for concluding that "no signs of crime" were found and for terminating the investigation or prosecution in sexual violence crimes (applicable for public prosecution countries).
- Remove the burdensome evidence requirements applicable in practice to bring charges against the perpetrator or to convict him (e.g. proof of penetration or resistance of the victim).
- Ensure that each act of reported sexual violence goes into official crime records and collect and disaggregate statistics based on sex, age and any vulnerable status.
- Eliminate the practice of perpetrators going unpunished through procedural bargaining agreements for sexual violence crimes.
- Ensure that survivors of sexual violence are sufficiently supported throughout the legal proceedings, including through the provision of free legal aid, psychological and social assistance and safe housing.



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A. INTERNATIONAL HUMAN RIGHTS STANDARDS

Exploring protections of girls from sexual violence within international human rights standards.

The UN Human Rights Committee has recognized that in sexual violence cases in particular, the child (or woman) should not be pressured to marry her rapist or abuser, which the Committee has pointed out may not only absolve the perpetrator of a violent crime but also effectively lower the minimum age of marriage of the victim allowed under the law.⁴²

There is no international or regional treaty that sets out a legal age of consent to engage in sexual activities, thus leaving the task up to individual states. Nevertheless, the Convention on the Rights of the Child's definition of a child is "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Though there is no universally agreed age of consent, it remains clear that engaging a child in sexual activities under the nationally established legal age of consent is prohibited in all circumstances, regardless of whether the child "consented" to the activity or not. Moreover, UNICEF's Interagency Working Group states emphatically in its Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse that States must "criminalise all forms of sexual exploitation of children up to the age of 18 years, and consider any presumed "consent" to exploitative or abusive acts as null and void."⁴³ Similarly instructive, UN Women says that legislation should define a "child" in all Penal Codes and all other legislation as a minor under the age of 18.

B. PROBLEMS WITH LOCAL LAWS AND PRACTICES

Exploring problems with the protection of girls from sexual violence within local laws and practices in Eurasia.

I. SEXUAL INTERCOURSE WITH A MINOR (STATUTORY RAPE) AND RAPE OF A MINOR

The criminal codes of post-Soviet states differentiate between consensual sexual intercourse with a minor (statutory rape) and rape of a minor - committed by violence, threat of violence or abusing the victim's helplessness. Moreover, in most of the states, laws provide exemption from responsibility for statutory rape (by "reconciliation", loss of a socially dangerous nature, or exempting perpetrators through procedural bargaining, see Chart N5). Statutory rape is viewed in the context of morality by law or in practice, rather than a serious violation of a minor's right to sexual inviolability. The perpetrator under this crime can only be an adult over the age of 18.

The crime of *sexual intercourse with a minor* is defined as sexual intercourse of an adult with someone who has not reached the age of 16 (in Estonia it is 14). The crime can only be committed by an individual who is 18 years of age or above and who knew that the victim was under 16 (or 14 respectively). Under the article, it is implied that the minor consented, wanted or even initiated sexual intercourse. The minor is offered protection on the basis of age alone.

Some jurisdictions limit criminal liability for statutory rape based on the closeness in age and/or "maturity" of the perpetrator and victim.⁴⁴ In some jurisdictions there is no lower age limit for the victim (implying that a minor of any age can consent to sexual intercourse) and the penalties involved are not always higher in respect of younger

⁴² Equality Now, "Protecting the Girl Child, Using the law to end child, early and forced marriage and related human rights violations," (2014). pg. 13 referring to Human Rights Committee, CCPR/C/21/Rev.1/Add.10, General Comment No. 28, "Equality of rights between men and women (Article 3)," §24.

⁴³ UNICEF Interagency Working Group, Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse at pg. 7 (Jan. 28, 2016), available at https://www.unicef.org/protection/files/Terminology_guidelines_396922-E.pdf

⁴⁴ Azerbaijan: Criminal liability for the crimes provided for by Articles 152 [Statutory Rape] or 153 [Depraved Actions] of this Code incurs if the difference between the age of the person committing those crimes and the age of the victim is more than two years.

Lithuania: Art.151.1 Satisfaction of Sexual Desires by Violating a Minor's Freedom of Sexual Self-Determination and/or Inviolability 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.

Moldova: Article 174. Sexual Intercourse with a Person under the Age of 16 - (2) The person who committed the act set forth in par. (1) shall not be subject to criminal liability if he/she is close to the victim in terms of age and physical and mental development.

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

victims. Using the excuse that there is no gradation of sentencing based on the ages of perpetrator and victim and being unwilling to prejudice the future life prospects of the perpetrator, prosecutors and judges are frequently reluctant to impose any real sanction on perpetrators especially where the victim is 15 and the perpetrator generally a younger adult. For example, in Georgia in such cases, procedural bargaining agreements effectively leave perpetrators without any real punishment.

Statutory rape, when it is committed in the context of forming a *de facto* or religiously registered family, is the most underreported and unpunished crime throughout many countries of the region. In such cases, the authorities let perpetrators go free as they allow “reconciliation” under their general or specific law; or the prosecutor does not start or terminates the investigation/prosecution using his discretion; or if the case reaches the prosecution stage, the courts do not impose on perpetrators any real penalty due to procedural bargaining agreements or other reasons. This sends a signal that statutory rape, if its purpose is to form a family, is not a crime at all, and that it can be bargained away to exempt the perpetrator from real punishment. No acknowledgement is made of the abuse of the minor girl or any continuing abuse or lack of rights she may face within the so-called marriage. Even where there is no intention to form a family, statutory rape might not be charged if the girl was not a virgin on the basis that her lack of “chastity” means the statutory rape will have done her no harm and she is therefore unworthy of state protection.

Rape of a minor, on the other hand, is committed if the perpetrator used violence, threat of violence or abused the helpless state of the victim. It carries more severe punishments than statutory rape, as the act is understood to be committed against the minor’s will, using illegal methods. The younger the minor, the more severe penalties apply.

When an adolescent girl is raped (and even where the perpetrator has no intention to form a family), the investigation is almost always initiated under an act of sexual intercourse with a minor, rather than rape, because the prosecutors find it easier to prove statutory

rape. Otherwise they would have to collect evidence to show additional violence or some form of coercion. This practice ignores possible coercive circumstances or dependence of the victim on the perpetrator and further stigmatizes adolescent girls by not adequately recognizing the nature or gravity of the crime. As a result, under this article the minor girl may appear to have “consented” or “proactively asked” for sexual intercourse. She may be seen as promiscuous or a “seducer”, who engaged in sexual relations contrary to societal norms and so dishonored her family. This might deprive the victim of support from her family and community. She shoulders the blame while the perpetrator is frequently let off with only a fine.

Adolescent victims of rape are often stigmatized, mocked in their communities, and expelled from school if they have had to marry, further depriving them of their human rights, including to education.

II. BRIDE KIDNAPPINGS AND FORCED MARRIAGES

Child marriages and bride kidnappings⁴⁵ are still not uncommon in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan,⁴⁶ the North Caucasus part of Russia, Tajikistan, Turkmenistan, and Uzbekistan.⁴⁷ In Armenia and Georgia the practice of bride kidnapping has largely disappeared in recent decades, though there still remain some largely unreported incidents in certain communities. Bride kidnappings and forced marriages disproportionately affect adolescent girls in many of the reviewed countries and give rise to sexual violence offenses against them. At the same time, child marriages disproportionately affect girls, rather than boys.

In all the post-Soviet countries, consistent with international human rights standards, the age of marriage is 18 (with some exceptions allowed), though this mostly does not preclude couples from registering underage religious marriages or living together as a *de facto* family without the marriage being registered. Religious and unregistered (*de facto*) marriages are very widespread⁴⁸ in the region and they do not give spouses any legal protections, particularly in relation to property and inheritance.

⁴⁵ Bride kidnapping is a harmful practice, which involves abducting a woman or girl against her will through deception or force and subjecting her to physical, psychological or sexual violence or coercion to force her to marry the abductor.

⁴⁶ See Committee on the Elimination of Discrimination against Women, Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 21 September 2018, CEDAW/C/OP.8/KGZ/1.

⁴⁷ See e.g. information from UNFPA available at: <https://eeca.unfpa.org/sites/default/files/pub-pdf/Child%20Marriage%20ECCA%20Regional%20Overview.pdf>

⁴⁸ Id.

Some jurisdictions treat bride kidnapping and forced marriage as distinct crimes – Azerbaijan, Georgia (forced marriage but not bride kidnapping), Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; or they are specifically mentioned in slavery or trafficking criminal provisions such as in Estonia and Moldova. In other jurisdictions where bride kidnapping is not specifically criminalized, e.g. Kazakhstan and Russia, bride kidnappings are investigated/prosecuted under the general crime of abduction, which sometimes leads to no criminal liability if the victim is released within a certain time limit, unless there are indications of another crime having been committed by the perpetrator. If any sexual violence crimes are committed during the kidnapping, they are often not investigated.


Even if the possibility exists to investigate bride kidnappings and forced marriages under general legal articles of abduction and coercion, for better access to justice it is important to have them designated as separate crimes in line with the Istanbul Convention. Prosecuting

these crimes under other general articles leads to lack of disaggregated statistics about the prevalence of these violations as they are counted together with the other crimes that are committed under the same articles. In such situations, it is also more likely for the investigative authorities not to treat these crimes as a matter of concern and conduct investigation and prosecution without a gender lens, which negatively affects access to justice for survivors.

Bride kidnapping is frequently followed by rape, which is used as a tool for preventing the victim from leaving. Bride kidnapping usually ends with the woman or girl marrying the man because she has no other option and her chances of marrying again will have been significantly reduced if she was held overnight at the perpetrator's house. In such situations the "family" is then considered to have been formed, so rape is not investigated, i.e. the forced marriage, in addition to being ignored, has effectively exonerated the rape.

C. RECOMMENDATIONS

- Ensure that forced marriage and bride kidnapping are explicitly criminalized by the criminal code.
- Ensure that sanctions for statutory rape fully take into account the age differences between the victims and the perpetrators and that penalties will be proportionate to the acts committed.
- Prosecute all cases of rape of minors as rape and not lessen the charges to statutory rape when there is evidence to support a charge of rape.
- Where applicable, eliminate the practice of allowing procedural bargaining for perpetrators of statutory rape with the purpose of imposing lower sentences.

- 
- A woman with short brown hair, wearing a long-sleeved cardigan with a black and white paisley pattern over a black top, stands in a field of tall grass. She has her hands clasped in front of her. The entire image is overlaid with a semi-transparent red filter. On the left side, there is a list of five points in white text.
- I. LIMITED DEFINITIONS OF SEXUAL VIOLENCE CRIMES MEANS IMPUNITY FOR PERPETRATORS
 - II. JUSTICE SYSTEM WORKS AGAINST THE SURVIVOR – DISCRIMINATORY INVESTIGATION AND PROSECUTION PROCEDURES
 - III. FURTHER HARM TO ADOLESCENT GIRL SURVIVORS OF SEXUAL VIOLENCE

IV. INCREASED VULNERABILITY – INCREASED INJUSTICE FOR SEXUAL VIOLENCE

- V. SEEKING JUSTICE FOR MARITAL RAPE

A. INTERNATIONAL HUMAN RIGHTS STANDARDS

Exploring international protection mechanisms and human rights standards for vulnerable groups.

The CEDAW Committee recognizes that gender-based violence may affect some women in different ways and degrees than others including as a result of their ethnicity/race, indigenous or minority status, color, socioeconomic status, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, trafficking of women, armed conflict, seeking asylum, being a refugee, internal displacement, statelessness, migration, heading households, widowhood, living with HIV/AIDS, being in prostitution, etc. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, appropriate legal and policy responses are needed for these groups of women.⁴⁹ In addition, the CEDAW Committee calls on States to report on special measures taken to deal with the particular situation of women with disabilities.⁵⁰

The UN Convention on the Rights of Persons with Disabilities (CRPD) calls on State parties to “put in place effective legislation and policies, including women and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.” It also calls for special measures and procedures to ensure that persons with disabilities are able to effectively access justice on an equal basis with others and to exercise their legal capacity.

In its General Comment No. 9, the Committee on the Rights of the Child states that children with disabilities are five times more likely to be subjected to abuse and that “[g]irls with disabilities are often even more vulnerable to discrimination due to gender discrimination.” The Committee goes on to request State parties “pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.”

The particular vulnerability of women and girls in prostitution, especially in relation to sexual violence, is recognized by the CEDAW Committee. The Committee states that certain groups of women, including women in prostitution, are disproportionately subjected to sanctions (criminalization) hindering their access to justice.⁵¹ Women and girls in prostitution must be protected from rape and other forms of violence on the basis of equal protection of the law.⁵²

The CEDAW Committee has expressed concern that in certain countries women in prostitution are punished for prostitution and not the clients, organizers of prostitution or third parties, which benefit from prostitution,⁵³ e.g. the committee calls upon the Russian Federation to remove prostitution from the Administrative Offences Code and to create an oversight mechanism to monitor violence, including when committed by the police, against women in prostitution.⁵⁴

⁴⁹ Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, § 12.

⁵⁰ Committee on the Elimination of Discrimination against Women, A/46/38, General Recommendation No. 18 on disabled women

⁵¹ Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/33, General Recommendation No. 33 on women's access to justice, § 49.

⁵² Committee on the Elimination of Discrimination against Women, A/47/38, General recommendation No. 19: Violence against women, § 15.

⁵³ Report of the Committee on the Elimination of Discrimination against Women, Twenty-fourth session (15 January–2 February 2001) & Twenty-fifth session (2–20 July 2001), Concluding Observations (CO) for Egypt (para. 346), Guyana (§180–181), Guinea (§137), A/56/38., § CO for China, CEDAW/C/CHN/CO/6 (2006) § 19.

⁵⁴ Committee on the Elimination of Discrimination against Women Concluding Observations for the Russian Federation, CEDAW/C/RUS/CO/8, 2015, § 25–26.

B. PROBLEMS WITH LOCAL LAWS AND PRACTICES

Exploring problems with protection of vulnerable groups in Eurasia.

Under many of the laws reviewed, the rape of women and girls with disabilities is punished more severely than rape committed against someone with no disability. Despite this, women and girls with disabilities, particularly with learning difficulties or mental ill health, face a number of barriers in accessing justice for sexual violence. These include the lack of sufficient means (including technical) to report sexual violence to the authorities; the lack of knowledge of law enforcement on how to obtain witness statements from women with disabilities (including from women with learning difficulties or mental ill health); and the intersection of disability and gender-related prejudices through the process that many times leads to the impunity of perpetrators.

The more vulnerable the general environment either from prevailing circumstance or general prejudice or discrimination, the more at risk women and girls are to sexual violence and the less protection they receive from the authorities (e.g. women and girls in conflict regions, internally displaced communities, women and girls in rural areas, ethnic minorities, asylum-seekers).

Women and girls in prostitution, for example, frequently have negligible access to justice for sexual violence committed against them. This reflects the general position in legal practice and in society that women and girls largely bear the burden of responsibility for sexual violence and men on the whole are entitled to women's bodies. The law often criminalizes women or otherwise penalises them for selling sex, whereas the men who purchase use of their bodies are neither criminalized nor penalized. Rape committed against prostituted women and girls is often ignored as a crime by law enforcement even though all allegations of rape should be investigated vigorously and prosecuted to the full extent of the law. Buying a minor (i.e. someone under the age of 18) in prostitution should always be a criminal offence, as for example in Estonia (Art. 145(1) of the Criminal Code)⁵⁵. It is very important the offense be considered analogous to rape and treated as seriously under the law and in practice.


“women and girls with disabilities, particularly with learning difficulties or mental ill health, face a number of barriers in accessing justice for sexual violence.”

⁵⁵ Engaging in sexual intercourse or committing another act of sexual nature with a person of less than eighteen years of age for monetary payment or any other benefit is punishable by up to three years' imprisonment.

C. RECOMMENDATIONS

- Ensure that the marginalized or vulnerable status of a woman or girl (women with disabilities, adolescent girls, ethnic minority women, LGBTI, women in prostitution, migrant women) does not deny her effective access to justice for sexual violence; including by providing guidance on collecting statements from victims and ensuring that all women and girls (including those with disabilities) have the opportunity (with technical support if need be) to report sexual violence crimes and pursue cases on the basis of equality with others.
- Amend any relevant laws on prostitution so that those selling sex and therefore at serious risk of being victims of sexual crimes are not criminalized or penalized for selling sex and so effectively barred from reporting crimes against them; and so that those buying sex, who include those who are likely to perpetrate sexual violence against prostituted women and girls, are penalized both for buying sex and for any sexual violence they may commit, including against trafficked women and girls who due to their very status have not consented to sex.



- 
- I. LIMITED DEFINITIONS OF SEXUAL VIOLENCE CRIMES
MEANS IMPUNITY FOR PERPETRATORS
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OF SEXUAL VIOLENCE
 - IV. INCREASED VULNERABILITY - INCREASED INJUSTICE
FOR SEXUAL VIOLENCE

V. SEEKING JUSTICE FOR MARITAL RAPE

A. INTERNATIONAL HUMAN RIGHTS STANDARDS

Exploring international human rights standards for the criminalisation of marital rape.

In its General Recommendation 35, the CEDAW Committee suggests states make sure that “the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances.”⁵⁶ The Special Rapporteur on violence against women recommends that criminal laws should be revised or new criminal provisions should be adopted to prohibit marital rape.⁵⁷

The Istanbul Convention further suggests that in cases of violence against women, it should be an aggravating circumstance if “the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority” (Art. 46.a). The UN Women’s Virtual Knowledge Centre to End Violence Against Women and Girls Core Elements of Legislation on Sexual Assault provide that sexual violence within marriage should be specifically criminalized.

The CEDAW Committee, Human Rights Committee and the Special Rapporteur on violence against women have recommended the states under review to specifically criminalize marital rape:

- Kyrgyzstan: in 2018, the CEDAW Committee’s inquiry on bride kidnapping recommended the state adopt legislation specifically to criminalize marital rape.⁵⁸
- Tajikistan: in 2018, the CEDAW Committee in its concluding observations recommended the state expedite the adoption of legislation criminalizing marital rape and sexual assault within and outside marriage.⁵⁹

- Belarus: in 2016, the CEDAW Committee in its concluding observations recommended the state adopt legislation specifically criminalizing marital rape.⁶⁰
- Latvia: in 2014, the Human Rights Committee in its concluding observations recommended the state consider establishing spousal rape as a specific crime in the criminal law.⁶¹
- Lithuania: in 2014, the CEDAW Committee in its concluding observations recommended the state amend the Criminal Code with a view to explicitly criminalize marital rape.⁶²

B. PROBLEMS WITH LOCAL LAWS AND PRACTICES

Exploring problems with local laws and practices regarding the criminalisation of marital rape in Eurasia.

The laws in the countries reviewed fail to explicitly punish rape within marriage. The exceptions are Ukraine and Moldova where marital rape is punished more severely as an aggravating factor in crimes of sexual violence. (While Ukraine specifically mentions marital rape, in Moldova it is termed “against a family member”, which can theoretically include a spouse.) Georgia, for example, includes crimes committed against family members under general aggravating circumstances for all crimes. The Criminal Code of Latvia explicitly states that crimes committed against a spouse or a former spouse, or a partner in an unregistered marriage, is an aggravating circumstance for all crimes. In line with international standards, it would be important to specifically criminalize marital rape in the states reviewed, as it is hardly ever recognized under the general law as a crime by law enforcement. In addition, the Istanbul Convention and recommendations from the UN Women’s Guidelines provide that an offense committed against a former or current spouse or partner should be considered aggravating circumstances when deciding on sentencing.

⁵⁶ CEDAW GR 35, para 29.e.

⁵⁷ See e.g. Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, on her mission to the Bahamas, 25 May 2018, A/HRC/38/47/Add.2, para. 73.h.

⁵⁸ CEDAW inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 21 September 2018, CEDAW/C/OP8/KGZ/1, para. 92.b.

⁵⁹ CEDAW concluding observations on the sixth periodic report of Tajikistan; 9 November 2018; CEDAW/C/TJK/CO/6, para. 26.

⁶⁰ CEDAW concluding observations on the eighth periodic report of Belarus, 18 November 2016, para. 23.a.

⁶¹ UN Human Rights Committee (HRC), Concluding observations on the 3rd periodic report of Latvia : Human Rights Committee , 11 April 2014, CCPR/C/LVA/CO/3, para. 9.a.

⁶² Committee on the Elimination of Discrimination against Women Concluding observations on the fifth periodic report of Lithuania, 24 July 2014, CEDAW/C/LTU/CO/5, para. 25.e.

Domestic violence, which often includes sexual violence, is a serious problem in all jurisdictions. It is still largely considered a private matter in which authorities should not intervene. Law enforcement authorities and the judiciary are making extensive use of reconciliation mechanisms in domestic violence cases, favoring a family's apparent unity over protection of and justice for the victims. Even where there is some acknowledgement of physical violence within the home, spousal sexual violence is all too often completely ignored. In some states there is pressure on an unmarried victim of rape to marry the perpetrator to avoid bringing dishonor to the family and community - she is seen as having provoked the rape - committing her to further violence at the hands of her "husband".

The general laws in all states allow charges to be brought against victims of rape or other forms of gender-based violence for false reporting if not enough evidence can be gathered, which, given the extreme difficulties already highlighted in navigating the legal system, can have a chilling effect on reporting. Though non-governmental organizations have not reported any significant abuse of this provision in relation to sexual violence, it has been used in cases of alleged domestic violence in which sexual violence also occurs.

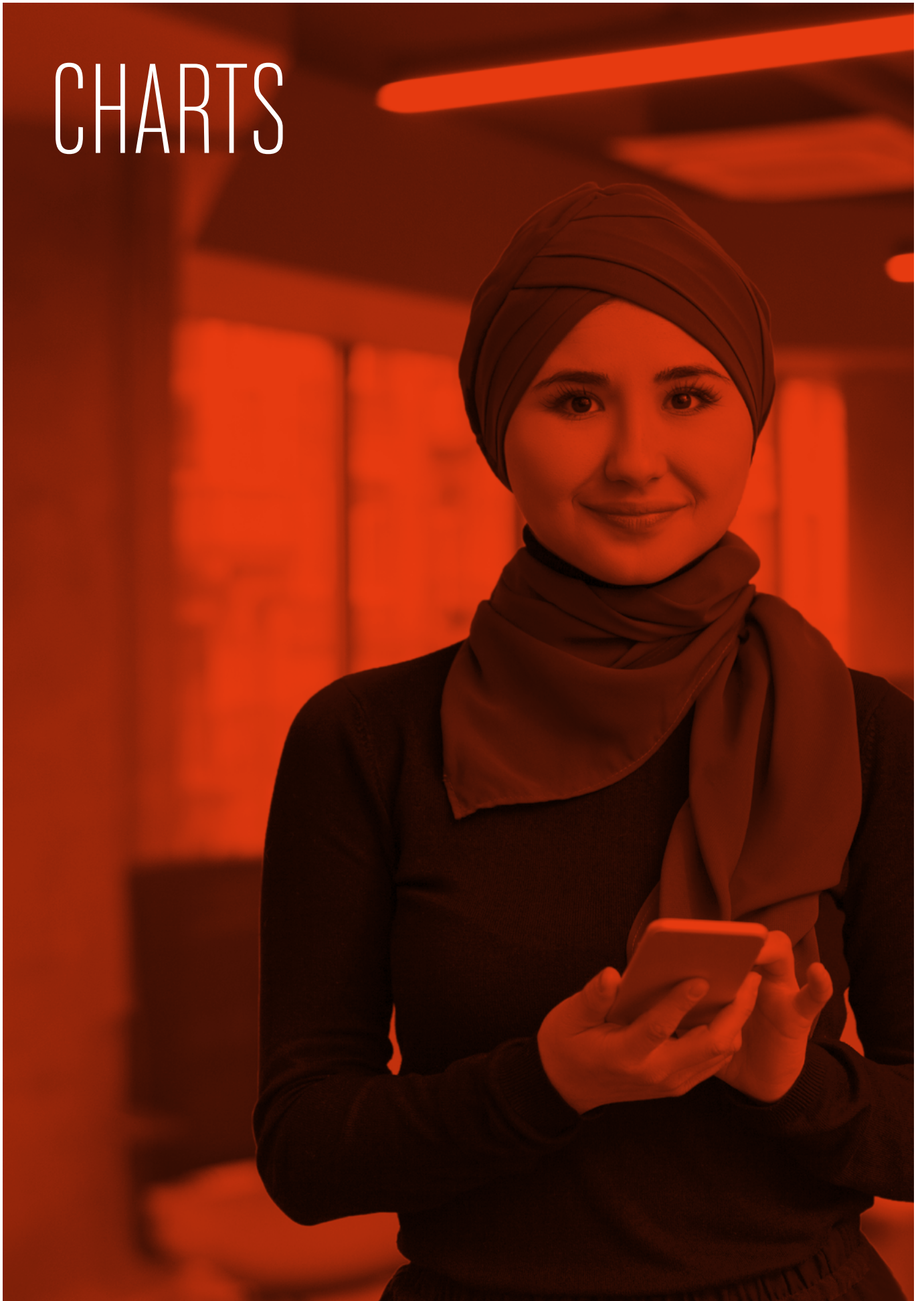
C. RECOMMENDATIONS

- Explicitly criminalize marital rape and ensure it is included as an aggravating circumstance of rape; and
- Effectively prosecute and punish marital rape as a matter of public interest.





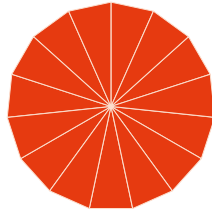
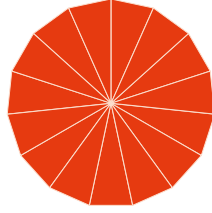
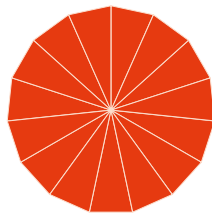
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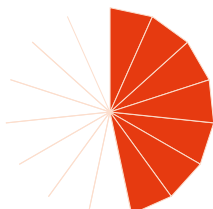

National definitions of sexual violence crimes as compared to international standards

	Identified in	No of countries out of 15 countries reviewed
Sexual violence crimes are wrongly framed as crimes of honor or morality	Latvia[1]	
Failure to require lack of consent as a proper element of crimes of sexual violence and that any consent must be given voluntarily as the result of the person's free will	Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan. (Ukraine now includes lack of consent)	
Failure to indicate a broad range of coercive circumstances as an element of crimes of sexual violence	Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, *Estonia and Latvia still being the most progressive.	
Requires additional violence, threat of violence or using the helplessness of the victim as elements of rape	Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan	
Failure to separately criminalize rape within marriage and/or intimate relationship	Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan * Moldova envisages rape committed against a family member as an aggravating circumstance. However, there is no explicit mention of spousal rape.	

[1] Rape is included in the chapter of crimes against morality and gender inviolability.

N2







Crimes of sexual violence where private or public-private prosecutions are used

	Identified in	No of countries out of 15 countries reviewed
Non-aggravated Rape	Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Lithuania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan	
Non-aggravated Sexual Assault	Azerbaijan, Belarus, Kazakhstan, Lithuania, Russia, Uzbekistan	
Compulsion to sexual intercourse/actions	Azerbaijan, Kazakhstan, Kyrgyzstan, Lithuania, Turkmenistan, Ukraine, Uzbekistan	
Coercion to enter into marriage	Azerbaijan, Ukraine, Uzbekistan	
Sexual Harassment	Lithuania, Moldova	

Below are charts summarizing the letter of the law with regard to impunity, exemptions that could potentially be applied to various crimes of sexual violence and abused in that context. In other words, these provisions may not necessarily be applied in practice currently. However, unless they are legally extinguished, the possibility remains that they could in practice be used to exonerate a perpetrator from criminal liability or punishment. The law should clarify that crimes of sexual violence should never benefit from exoneration.




N3

General exemptions under the law that could be applied for Rape (non-aggravated unless indicated otherwise):

	Identified in	No of countries out of 15 countries reviewed
Reconciliation	Kazakhstan (including aggravated if committed by a vulnerable person, but not if the victim is underage), Moldova (including aggravated if the perpetrator is underage, but not if the victim is underage)	
Active repentance	Kazakhstan, Moldova	
Loss of socially dangerous nature	Kazakhstan, Lithuania (including aggravated), Moldova, Ukraine, Uzbekistan (including aggravated)	
Assistance in investigation of a serious crime	Estonia (including aggravated), Lithuania (including aggravated); Kazakhstan	
Bail	Ukraine	
Substitute with administrative liability/ release of juveniles	Moldova	



N4

General exemptions under the law that could be applied for sexual assault (non-aggravated unless indicated differently):

	Identified in	No of countries out of 15 countries reviewed
Reconciliation	Kazakhstan (including aggravated if committed by a vulnerable person, but not if the victim is underage), Moldova (including aggravated if the perpetrator is underage, but not if the victim is underage)	
Active repentance	Kazakhstan, Moldova, Turkmenistan (including aggravated)	
Loss of socially dangerous nature	Azerbaijan, Kazakhstan, Lithuania (including aggravated), Moldova, Turkmenistan, Ukraine, Uzbekistan (including aggravated)	
Assistance in investigation of a serious crime	Estonia (including aggravated), Lithuania (including aggravated); Kazakhstan	
Bail	Ukraine	
Substitute with administrative liability/ release of juveniles	Moldova	


N5

General exemptions under the law that could be applied for “Sexual intercourse with a minor” (Statutory rape) (non-aggravated unless indicated differently)

	Identified in	No of countries out of 15 countries reviewed
Reconciliation	Armenia, Belarus, Lithuania, Russia, Tajikistan (including aggravated)	
Active repentance	Armenia, Belarus, Russia, Tajikistan (including aggravated), Turkmenistan, Uzbekistan	
Loss of socially dangerous nature	Azerbaijan (including aggravated), Armenia, Belarus, Lithuania (including aggravated), Russia (only release from punishment in case of marriage), Tajikistan (including aggravated), Turkmenistan, Ukraine, Uzbekistan (including aggravated)	
Bail	Lithuania, Ukraine	
Assistance in investigation of a serious crime	Estonia (including aggravated), Latvia, Lithuania (including aggravated),	
Substitute with administrative liability/ release of juveniles	Belarus	

N6

General exemptions under the law that could be applied for Compulsion to sexual intercourse (non-aggravated unless indicated differently):

	Identified in	No of countries out of 15 countries reviewed
Reconciliation	Belarus, Kazakhstan (including aggravated if committed by a vulnerable person, but not if the victim is underage), Kyrgyzstan, Lithuania, Moldova, Russia (including aggravated), Tajikistan, Ukraine, Uzbekistan	
Active repentance	Armenia, Belarus, Georgia, Kazakhstan, Moldova, Russia (including aggravated), Tajikistan, Turkmenistan, Ukraine, Uzbekistan	
Loss of socially dangerous nature	Armenia, Azerbaijan, Belarus, Kazakhstan, Lithuania, Moldova, Tajikistan, Turkmenistan, Ukraine, Uzbekistan (including aggravated)	
Assistance in investigation of a serious crime	Estonia (including aggravated), Lithuania (including aggravated); Kazakhstan	
Bail	Kazakhstan, Lithuania, Ukraine	
Mitigating circumstances	Lithuania	
Substitute with administrative liability/ release of juveniles	Belarus, Moldova	

General exemptions under the law that could be applied for Bride kidnapping/forced marriage (non-aggravated unless indicated differently):

	Identified in	No of countries out of 15 countries reviewed
Reconciliation	Azerbaijan, Kyrgyzstan (including in respect of the underage), Uzbekistan	
Active repentance	Azerbaijan, Georgia, Turkmenistan (including aggravated)	
Loss of socially dangerous nature	Azerbaijan (including aggravated), Turkmenistan, Ukraine, Uzbekistan	
Assistance in investigating a serious crime	Estonia (including aggravated)	
Bail	Ukraine	

N8

General exemptions under the law that could be applied for Violation of age of marriage (non-aggravated unless indicated differently):

	Identified in	No of countries out of 15 countries reviewed
Reconciliation	Tajikistan	
Active repentance	Tajikistan, Uzbekistan	
Loss of socially dangerous nature	Tajikistan, Uzbekistan	

N9

Penalties

	Rape	Sexual Assault	Compulsion into sexual actions	Statutory rape ("consensual" sexual intercourse with a minor)
Armenia	Imprisonment 3-6 yrs.	Imprisonment 3-6 yrs.	Imprisonment 1-3 yrs.	Fine or imprisonment up to 2 yrs.
Azerbaijan	Imprisonment 4-8 yrs.	Imprisonment 3-5 yrs.	Fine, or corrective labor, or imprisonment up to 3 yrs.	Imprisonment up to 3 yrs.
Belarus	Restriction of liberty up to 4 yrs or imprisonment for 3-7 yrs.	Restriction of liberty up to 4 yrs or imprisonment 3-7 yrs.	Restriction of liberty up to 3 yrs or imprisonment up to 3 yrs with fine and deprivation of right to certain occupations, or without it.	Restriction of liberty up to 4 years or imprisonment up to 4 years with fine.
Estonia	Imprisonment 1-5 yrs.	-	Imprisonment up to 3 yrs.	Imprisonment up to 5 yrs.
Georgia	Imprisonment 6-8 yrs.	Imprisonment 4-6 yrs.	Fine or imprisonment up to 3 yrs.	Imprisonment 7-9 yrs.
Kazakhstan	Imprisonment for 3-5 yrs.	Imprisonment for 3-5 yrs.	Fine, corrective labor, or community labor, or restriction of liberty for 1 year, or imprisonment for 1 year.	Restriction of liberty up to 5 years or restriction of liberty up to 5 years.
Kyrgyzstan	Entered into force on 01.01.2019 Deprivation of liberty of 3rd category.	Entered into force on 01.01.2019 Deprivation of liberty of 3rd category.	Entered into force on 01.01.2019 Deprivation of right to occupy certain positions or activities, or corrective labor, or fine, or imprisonment of 1st category.	Entered into force on 01.01.2019 Deprivation of liberty of 4th category.
Latvia	Imprisonment 4-10 yrs and probationary supervision up to 5 yrs.	Imprisonment up to 7 yrs and probationary supervision up to 5 yrs.	-	Imprisonment up to 5 yrs or temporary deprivation of liberty, or community service, or a fine, with probationary supervision up to 5 yrs.

	Rape	Sexual Assault	Compulsion into sexual actions	Statutory rape (“consensual” sexual intercourse with a minor)
Lithuania	Custodial sentence up to 7 yrs.	Custodial sentence up to 7 yrs.	Arrest or custodial sentence up to 3 yrs.	Fine or restriction of liberty or arrest or a custodial sentence up to 5 yrs.
Moldova	Imprisonment for 3-5 yrs.	Imprisonment for 3-5 yrs.	-	Imprisonment 3-7 yrs.
Russia	Imprisonment 3-6 yrs.	Imprisonment 3-6 yrs.	Fine, or obligatory labor, or corrective labor, or compulsory labor, or imprisonment for 1 yr.	Obligatory labor, or restriction of liberty, or compulsory labor 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 imprisonment up to 4 yrs 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.
Tajikistan	Imprisonment 3-7 yrs.	Imprisonment 5-7 yrs.	Fine, corrective labor, or imprisonment up to 2 yrs.	Imprisonment 2-5 yrs.
Turkmenistan	Imprisonment 3-10 yrs with or without imposing the obligation to live in a certain locality for 2-5 yrs.	Imprisonment 2-6 yrs.	Corrective labor or imprisonment up to 2 yrs.	Imprisonment up to 3 yrs.
Ukraine	Current: imprisonment 3-5 yrs. Legislation entered into force on 11 January 2019. Imprisonment 3-5 yrs.	Current: imprisonment up to 5 yrs. Legislation entered into force on 11 January 2019: (under new law the act does not involve penetration) - imprisonment up to 5 yrs.	Current: fine or imprisonment for 6 months. Legislation entered into force on 11 January 2019: fine or imprisonment up to 6 mnths.	Current: restriction of liberty for up to 5 yrs, or imprisonment up to 5 yrs. Legislation entered into force on 11 January 2019: Restriction of liberty for up to 5 yrs, or imprisonment up to 5 yrs.
Uzbekistan	Imprisonment 3-7 yrs.	Imprisonment 3-7 yrs.	Community labor, or corrective labor.	Community labor, or corrective labor, or restriction of liberty for 1-2 years or imprisonment up to 3 yrs.

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ANNEX



Excerpts

Criminal Code

Article 72. Release from Criminal Liability due to Active Repentance

1. A person, who committed for the first time a little gravity or medium gravity crime, may be released from criminal liability, if they after committing the crime voluntarily acknowledged their guilt, assisted investigation of the crime, compensated the damages or remedied the harm caused by the crime in another way...

[applies to non-aggravated Compulsion, non-aggravated Statutory rape, Depraved Actions including aggravated]

Article 73. Release from Criminal Liability due to Reconciliation with the Victim

A person, who committed a little gravity crime, may be released from criminal liability, if they have reconciled with the victim and compensated the damages or remedied the harm caused...

[applies to non-aggravated Statutory rape, non-aggravated Depraved Actions]

Article 74. Release from Criminal Liability due to Change of Circumstances

A person, who committed for the first time a little gravity or medium gravity crime, may be released from criminal liability, if it is established that due to change of circumstances, the person who committed the deed or the deed committed have lost their socially dangerous nature.

[applies to non-aggravated Compulsion, non-aggravated Statutory rape, Depraved Actions including aggravated]

Article 138. Rape

1. Rape, that is, a sexual intercourse of a man with a woman against her will with the use of violence or of a threat thereof with respect to the latter or to another person, or with the use of a helpless state of the woman... shall be punishable by imprisonment from three to six years.

2. Rape:

c) committed against a minor;
shall be punishable by imprisonment from four to ten years.

3. The act envisaged in the first or second part of this article committed:

- a) Against a person who has not reached the age of eighteen by parents, teachers, or employees of educational or medical institution or care institution, or by other persons who had the obligation of care towards the person;
- b) Against a person who has not reached the age of fourteen

shall be punishable by imprisonment from eight to fifteen years...

4. For the purposes of Articles 138 and 139 of this Code, a person in a helpless state is defined as a person, who by the force of circumstances is permanently or temporarily unable to resist the perpetrator or to understand the character of the deed committed against them, as well as a person who has not reached twelve years of age.

Article 139. Violent Actions of Sexual Character

1. Committing actions of sexual character, including homosexual actions against the will of the victim with the use of violence or with a threat thereof with respect to the victim or to another person, or with the use of a helpless state of the victim...

shall be punishable by imprisonment for a term of three to six years.

2. The same actions:

- 3) committed against a person who is underage (male or female);
- 6) committed against a woman with obvious signs of pregnancy;
- 7) committed with the use of a weapon or another object used as a weapon or threat of its use;

shall be punishable by imprisonment for a term of four to ten years.

3. The action specified in Part One or Part Two of this Article, which was committed:

- 1) against a person under the age of eighteen by a parent or teacher or employee of an educational or medical or correctional institution or another person assigned the obligation of such person's upbringing or care;
- 2) against a person under the age of fourteen,

shall be punishable by imprisonment for a term of eight to fifteen years with deprivation of the right to occupy certain positions or engage in certain activities for a period not exceeding 3 years, or without deprivation of such right.

Article 140. Compulsion to Perform Sexual Intercourse or Actions of Sexual Character

1. Compulsion to sexual intercourse or actions of sexual character, including compulsion to homosexual actions by means of blackmail, threat of destruction, damage, or theft of property, or with abuse of material or any other dependence of the victim, if there is no indicia of crimes provided for by Articles 132 [Trafficking or Exploitation] or 132.2 [Trafficking or Exploitation of a Child] of this Code...

shall be punishable by imprisonment for a term of one to three years.

2. The action specified in Part One of this Article, which was committed knowingly against a person who is under the age of sixteen,

shall be punishable by imprisonment for a term of five to twelve years.

Article 141. Sexual Intercourse or Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years

1. Sexual intercourse or other sexual actions committed by a person of eighteen years of age knowingly in respect of a person who has not reached the age of sixteen years...
in the absence of evidence of crimes under Articles 138 or 139 or Part Two of Article 140 of this Code,

shall be punishable by the imposition of a fine in the amount of one hundred to two hundred fifty times the minimum wage or imprisonment for a term not exceeding 2 years.

2. The deed provided for by part 1 of this Article committed:

- 1) by a person of 21 years of age;
- 2) by a group of people;
- 3) in respect of the same person repeatedly...

shall be punishable by imprisonment for a term of four to ten years.

3. The action specified in Part One or Part Two of this Article, which was committed:

- 1) against a person under the age of eighteen by a parent or teacher or employee of an educational or medical or correctional institution or another person assigned the obligation of such person's upbringing or care;
- 2) against a person under the age of fourteen,

shall be punishable by imprisonment for a term of five to twelve years with deprivation of the right to occupy certain positions or engage in certain activities for a period not exceeding 3 years, or without deprivation of such right.

Article 142. Depraved Actions

1. The commission of lecherous actions by a person who has reached age of 18 years knowingly in respect of a person who has not reached the age of sixteen years, or by a person who has reached age of 16 years knowingly in respect of a person who has not reached age of 14 years...

2. The deed provided for by part 1 of this Article committed:

- 1) by a person who has reached age of 16 years with the use of violence or threat thereof;
- 2) by a person who has reached age of 21 years knowingly in respect of a person who has not reached age of 16 years;
- 3) by a person who has reached age of 18 years knowingly in respect of a person who has not reached age of 14 years;
- 4) in respect of the same person repeatedly;
- 5) by a group of persons;
- 6) with the use of internet...

Comments

Marriage age is 18. It can be reduced to 17 with the consent of the parents. It can also be reduced to 16 with the consent of the parents and when the other person is at least 18 (Article 10 of the Family Code).

Sexual crimes are not qualified as private prosecution cases and, thus, can be initiated without the victim's claim.

Resources

Criminal Code

https://base.spininform.ru/show_doc.fwx?rgn=7472

Criminal Procedure Code

http://www.parliament.am/law_docs/010998HO248eng.pdf?lang=eng

Family Code

https://base.spininform.ru/show_doc.fwx?rgn=8661

Excerpts

Criminal Code

Article 72. Release from Criminal Liability due to Active Repentance

72.1. A person, who committed a crime of minor social danger, may be released from criminal liability, if they voluntarily acknowledged their guilt, actively assisted investigation of the crime, compensated the damages or remedied the harm caused by the crime in another way...

[applies to non-aggravated Depraved Actions and non-aggravated Coercion to enter into Marriage]

Article 73. Release from Criminal Liability due to Reconciliation with the Victim

73.1. A person, who committed a crime of minor social danger, may be released from criminal liability, if they have reconciled with the victim and compensated the damages or remedied the harm caused...

[applies to non-aggravated Depraved Actions and non-aggravated Coercion to enter into Marriage]

Article 74. Release from Criminal Liability due to Change of Circumstances

A person, who committed a crime of minor social danger or a less serious crime, may be released from criminal liability, if it is established that due to change of circumstances, the deed committed or the person who committed the deed have lost their socially dangerous nature.

[applies to Sexual Assault (non-aggravated), Compulsion to Perform Sexual Actions, Statutory Rape (including aggravated), Depraved Actions, and Coercion to enter into Marriage]

Article 149. Rape

149.1. Rape, that is, a sexual intercourse with the use of violence or of a threat thereof, with respect to the [female] victim or to other persons, or with the use of a helpless state of the victim...

shall be punishable by imprisonment for a term of four to eight years

149.2. The same actions:

149.2.3. committed knowingly against a person who is underage,

shall be punishable by imprisonment for a term of five to ten years.

149.3. The same actions:

149.3.3. committed knowingly against a victim who is under the age of fourteen,

shall be punishable by imprisonment for a term of ten to fifteen years.

Article 150. Violent Actions of Sexual Character

150.1. Pederasty or other actions of sexual character committed with the use of violence or with a threat thereof, with respect to the victim or to other persons, or with the use of a helpless state of the victim...

shall be punishable by imprisonment for a term of three to five years.

150.2. The same actions:

150.2.3. committed knowingly against a person who is underage;

shall be punishable by imprisonment for a term of five to eight years.

150.3. The same actions:

150.3.3. committed knowingly against a victim who is under the age of fourteen,

shall be punishable by imprisonment for a term of eight to fifteen years.

Article 151. Compulsion to Perform Sexual Actions

Compulsion of a person to enter into sexual intercourse, pederasty, or to commit other sexual actions by means 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 imposing a fine in the amount of five hundred to one thousand manat, or correctional labor for a term of up to two years, or imprisonment for a term of up to three years.

Article 152. Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years

152.1. Sexual intercourse or other sexual actions committed in respect of a person who has not reached the age of sixteen years...

shall be punishable by imprisonment for a term of up to three years.

152.2. Same deed committed in respect of a person who has not reached the age of fourteen years... shall be punishable by imprisonment for a term of three to six years.

152.3. Deeds provided by Articles 152.1 or 152.2 of this Code, committed by persons who have the child-rearing responsibilities, as well as by a teacher or another staff of an educational, fostering, medical or another kind of institution who have the responsibility to supervise the underage persons...

shall be punishable by imprisonment for a term of four to seven years, with the deprivation of the right to occupy a certain position or to engage in certain activities for up to three years or without deprivation of such right.

Note: Criminal liability for the crimes provided for by Articles 152 or 153 of this Code incurs if the difference between the age of the person committing those crimes and the age of the victim is more than two years.

Article 153. Depraved Actions

153.1. The commission of lecherous actions without using violence in respect of a person who has not reached sixteen years of age...

153.2. The same deed committed in respect of a person who has not reached fourteen years of age...

153.3. Deeds provided by Articles 153.1 or 153.2 of this Code, committed by persons who have the child-rearing responsibilities, as well as by a teacher or another staff of an educational, fostering, medical or another kind of institution who have the responsibility to supervise the underage persons...

Article 176-1. Coercion of a Woman to Enter a Marriage

176-1.1. Coercing a woman to enter into marriage...

176-1.2. The same deed committed in respect of a person who has not reached the marriage age...

Criminal Procedure Code

Article 37. Kinds of Criminal Prosecution

...

37.3. Criminal public-private prosecution can be initiated upon a claim of the victim of the crimes, or in cases provided for by Article 37.5 of this Code upon a prosecutor's initiative on crimes provided for by Articles ... 149.1 [*Rape non-aggravated*], 150.1 [*Violent Actions of Sexual Character non-aggravated*], 151 [*Compulsion...*], ... 176-1 [*Coercion to enter into marriage*] ... of the Criminal Code.

37.4. Criminal public-private prosecution cannot be terminated due to reconciliation of the victim with the defendant, except for cases provided for by Articles 73 and 73-1 of the Criminal Code.

37.5. Prosecutor can initiate proceedings on private-public prosecution cases without a victim's claim, only in the following cases:

...

37.5.2. if the crime is committed by an agent of the authorities or another officer of State bodies, or in respect of such persons;

37.5.3. if the crime is committed in respect of a pregnant woman, an elderly person or a person in a helpless state;

37.5.4. if the crime is committed under threat or coercion, or in respect of a person dependent on the perpetrator;

37.5.5. if the crime is committed by a legally incapable person or a person who has not reached the age of criminal liability, or in respect of such person...

if the deed affects interests of a person in a helpless or dependent state or for other reasons incapable to exercise their rights independently, or in cases of private-public prosecution, which affect interests of the society, or the State.

Comments

Marriage age is 18. Local authorities can reduce the marriage age for no more than one year due to a valid reason. Article 10 of the Family Code.

The amendments of 2014-2015 added some elements of aggravated crimes with higher punishment, but cancelled the “first time crime” condition for release from liability options.

Resources

Criminal Code

https://base.spinform.ru/show_doc.fwx?rgn=2670#B3Y6oPCFYX

Criminal Procedure Code

https://base.spinform.ru/show_doc.fwx?rgn=11597

Family Code

https://base.spinform.ru/show_doc.fwx?rgn=2604

Excerpts

Criminal Code

Article 86. Release from criminal liability with bringing a person to administrative liability

1. A person who has for the first time committed a crime that does not pose a major public danger, or a less serious crime and reimbursed the damage, or has paid income obtained by criminal means, or otherwise redressed the damage inflicted by an offense, may be exempted from criminal liability with applying administrative liability, if it is recognized that it is sufficient to apply administrative penalties for redemption.

Article 87. Release from criminal liability due to loss of public danger by the act or the perpetrator

A person who committed a crime that does not pose a major public danger or a less serious crime may be released from criminal liability if it is recognized that, due to a change in the situation, the act committed has lost the character of a socially dangerous act or that person has ceased to be socially dangerous.

Article 88. Release from criminal liability due to active repentance

1. A person who has for the first time committed a crime that does not pose a major public danger, or a less serious crime, may be released from criminal liability if, after committing the crime, he voluntarily acknowledged guilt or actively facilitated the detection and (or) solving of the crime, reimbursed the damage (harm) caused by the crime, returned unjust enrichment and (or) paid income received by criminal way, and deposited the criminal-legal compensation...

Article 89. Release from criminal liability due to reconciliation with the victim

A person who committed a crime that does not pose a major public danger, or who has for the first time committed a less serious crime, may be released from criminal liability if it has reconciled with the victim and has made amends for the damage caused by the crime.

Article 118. Release of an Underage from Criminal Liability

1. A person who has for the first time committed at the age of under eighteen a crime that does not pose a major public danger, or a less serious crime, may be released from criminal liability with transfer to the supervision of the parents or persons who replace them, at their request, if by the nature of the committed crimes, data on the person and other circumstances of the case, the correction of a minor is possible without bringing him to criminal liability.

Article 166. Rape

1. Sexual intercourse against the will of the victim with the use of violence or with the threat thereof to a woman or her relatives, or with the use of helpless state of the victim (rape)...

shall be punishable by restriction of freedom for a term of up to four years or imprisonment for a term of three to seven years.

2. Rape.... committed knowingly against a person who is underage –

shall be punishable by imprisonment for a term of five to thirteen years.

3. Rape committed knowingly against a person who is a minor.....

shall be punishable by imprisonment for a term of eight to fifteen years.

Article 167. Violent acts of a sexual nature

1. Pederasty, lesbianism or other acts of a sexual nature committed against the will of the male (or female) victim with the use of violence or with the threat thereof, or with the use of the helpless state of the male (or female) victim...

shall be punishable by restriction of freedom for a term of up to four years or imprisonment for a term of three to seven years.

2. The same actions committed knowingly against a person who is underage (male or female), -
shall be punishable by imprisonment for a term of five to thirteen years.

3. The actions specified in Part 1 or Part 2 of this Article committed knowingly against a person who is a minor (male or female)

shall be punishable by imprisonment for a term of eight to fifteen years.

Article 168. Sexual intercourse and other acts of a sexual nature with a person under sixteen years of age

1. Sexual intercourse, pederasty, lesbianism or other acts of a sexual nature committed by a person who has reached the age of eighteen knowingly in respect of a person who has not reached the age of sixteen, in the absence of indicia of crimes provided for in Articles 166 and 167 of this Code...

shall be punishable by restriction of freedom for a term of up to four years or imprisonment for the same term with a fine.

Article 169. Depraved acts

1. Depraved acts committed by a person who has reached the age of eighteen knowingly in respect of a person who has not reached the age of sixteen, in the absence of indicia of crimes provided for in Articles 166, 167 and 168 of this Code...

2. The same actions committed with the use of violence or with the threat of its use...

Article 170. Compulsion to actions of a sexual nature

1. Coercion of the person to sexual intercourse, sodomy, lesbianism or other acts of a sexual nature by blackmail, threats of destruction, damage or seizure of property or using the official, material or other dependence of the

male (or female) victim...

shall be punishable by restriction of freedom for a term of up to three years or imprisonment for the same term with a fine and with deprivation of the right to occupy certain positions or engage in certain activities or without deprivation of such right.

2. The same action committed against a person known to be underage (male or female)...

shall be punishable by imprisonment for a term of three to six years.

Criminal Procedure Code

Article 26. Criminal cases of public, private-public and private prosecution

...

4. Cases of crimes provided for in ... part 1 of article 166 [Rape], part 1 of article 167 [Sexual assault] ... of the Criminal Code of the Republic of Belarus are cases of private-public accusation, initiated only on the basis of a claim of a victim of the crime, their legal representative or representative of the legal entity.

5. Prosecutor has the right to initiate criminal proceedings on the crimes specified in parts 2 and 4 of this article also in the absence of a claim of a victim of the crime, if the crimes affect the essential interests of the State and society or are committed in respect of a person who is in official or other dependence on the accused, or are otherwise unable to independently defend their rights and legitimate interests. The case, initiated by prosecutor, shall be sent for preliminary investigation. Proceedings in such case shall not be terminated due to reconciliation of a victim of the crime with the accused during preliminary investigation.

...

8. Reconciliation in cases listed in parts 2-4 of this article is allowed only until the court is removed to the advisory room for the resolution of the sentence.

Comments

The age of marriage is 18.

In exceptional cases, due to pregnancy, birth of a child, or in the case of emancipation, the civil status registering agency may reduce the marriage age, but not more than for three years.

Reduction of the marriage age is made upon the application of the persons entering into marriage. In this case, the consent of parents or guardians of minors is not required.

Resources

Criminal Code

[http://etalonline.](http://etalonline.by/?type=text®num=HK9900275#load_text_none_1_1)

[by/?type=text®num=HK9900275#load_text_none_1_1](http://etalonline.by/?type=text®num=HK9900275#load_text_none_1_1)

Criminal Procedure Code

[http://etalonline.](http://etalonline.by/?type=text®num=hk9900295#load_text_none_1_1)

[by/?type=text®num=hk9900295#load_text_none_1_1](http://etalonline.by/?type=text®num=hk9900295#load_text_none_1_1)

Family Code

[http://etalonline.](http://etalonline.by/?type=text®num=hk9900278#load_text_none_2_1)

[by/?type=text®num=hk9900278#load_text_none_2_1](http://etalonline.by/?type=text®num=hk9900278#load_text_none_2_1)

Excerpts

Criminal Procedure Code

§ 203(1). Termination of criminal proceedings on the basis of conciliation

(1) If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal proceedings and the suspect or accused has reconciled with the victim pursuant to the procedure provided for in § 203(2) of this Code, the prosecutor's office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim. Termination of criminal proceedings is not permitted:

- 1) in the criminal offences specified in §§ 133(1) [*Support to human trafficking*], 133(2) [*Pimping*], 134 [*Abduction*], ... 141 [*Rape*] and 143 [*Compelling...*] and in the criminal offence specified in § 144 [*Sexual intercourse with descendant*] of the Penal Code, if the victim is under eighteen years of age;
- 2) in criminal offences committed against a victim who is less than fourteen years of age;
- 3) if the criminal offence resulted in the death of a person...

[applies to Buying Sex from Minors who are over 14 y.o., Agreement of sexual purpose for meeting with child who is over 14 y.o.]

§ 205. Termination of criminal proceedings in connection with assistance received from person upon ascertaining facts relating to subject of proof

(1) The Office of the Prosecutor General may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and taking of evidence would have been precluded or especially complicated.

Penal Code

Offences against Sexual Self-determination

§ 141. Rape

(1) Sexual intercourse or commission of another act of sexual nature with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation...

is punishable by one to five years' imprisonment.

(2) The same act:

1) if committed against a person of less than eighteen years of age;

is punishable by six to fifteen years' imprisonment.

§ 143. Compelling person to engage in sexual intercourse or other act of sexual nature

(1) Sexual intercourse or commission of another act of sexual nature with a person against his or her will by taking advantage of the dependency of the victim on the offender but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in § 141 of this Code...

is punishable by up to three years' imprisonment.

§ 143(2). Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in § 141 of this Code...is punishable by two to eight years' imprisonment.

§ 144. Sexual intercourse with descendant

(1) Sexual intercourse or commission of another act of sexual nature by a parent, person holding parental rights or grandparent with a child or grandchild...

§ 145. Sexual intercourse or other act of sexual nature with child

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than fourteen years of age... is punishable by up to five years' imprisonment.

§ 145(1). Buying sex from minors

(1) Engaging in sexual intercourse or committing another act of sexual nature with a person of less than eighteen years of age for monetary payment or any other benefit

is punishable by up to three years' imprisonment.

(2) An act specified in subsection (1) of this section, if committed against a person of less than fourteen years of age,

is punishable by up to five years' imprisonment.

(3) The act specified in subsections (1) and (2) of this section, if it was committed by a person who has previously committed a criminal offence provided for in this Division,

is punishable by two to eight years' imprisonment.

(4) An act specified in subsection (1) or (2) of this section, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(5) For criminal offence provided for in subsections (2) and (3) of this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83^{^2} of this Code.

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

§ 147. Inability of person of less than ten years to comprehend

Within the meaning of the offences provided for in this Division, a person is deemed to be incapable to comprehend if he or she is less than ten years of age.

Chapter 11

OFFENCES AGAINST FAMILY AND MINORS

Division 2

Offences against Minors

§ 178(1). Agreement of sexual purpose for meeting with child

(1) Making a proposal for meeting a person of less than eighteen years of age who was not capable of comprehending the situation, or a person of less than fourteen years of age, or concluding an agreement to meet him or her, and performance of an act preparing the meeting, if the aim of the meeting is to commit an offence of sexual nature provided for in §§ 133 [*Trafficking in human beings*], 133(1) [*Support to human trafficking*], 141-145(1) [*Sex crimes*], 175 [*Human trafficking in order to take advantage of minors*], 175(1) [*Requesting access to child pornography and watching thereof*], 178 [*Manufacture of works involving child pornography or making child pornography available*] or 179 of this Code with respect to the specified person...

§ 179. Sexual enticement of children

(1) Handing over, displaying or making otherwise pornographic works or reproductions thereof knowingly available to a person of less than fourteen years of age, or showing sexual abuse to such person or engaging in sexual intercourse in the presence of such person or knowingly sexually enticing such person in any other manner...

Comments

Forced marriage is covered by the crime of trafficking of persons.

§ 133. Trafficking in human beings

(1) Placing a person in a situation where he or she is forced to marry, work under unusual conditions, engage in prostitution, beg, commit a criminal offence or perform other disagreeable duties, and keeping a person in such situation, if such act is performed through deprivation of liberty, violence, deceit, threatening to cause damage, by taking advantage of dependence on another person, helpless or vulnerable situation of the person...

Marriage age is 18. A court may extend the active legal capacity of a person who has attained at least 15 years of age pursuant to the provisions concerning the extension of active legal capacity of minors for the performance of acts required for the contraction of marriage and for the exercise of the rights and performance of the obligations related to marriage.

Article 1 of Family Law Act

Resources

Penal Code

<https://www.riigiteataja.ee/en/eli/509012018005/consolide>

Criminal Procedure Code

<https://www.riigiteataja.ee/en/eli/ee/512122017005/consolide>

Family Code

<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/507022018005/consolide>

Excerpts

Criminal Code

Article 68 - Releasing from criminal liability due to active repentance

1. A person who has, for the first time, committed a crime for which the maximum sentence provided for by an article or part of an article of the special part of this Code does not exceed three years of imprisonment, may be released from criminal liability, if, after committing the crime, he/she voluntarily appears and admits his/her guilty, assists in the discovery of the crime and indemnifies the damage.

[applies to non-aggravated Coercion, and non-aggravated Forced Marriage]

2. A person who has committed a crime of any other category, may be released from criminal liability, if so provided for by the relevant article of the special part of this Code.

Article 70 - Releasing from criminal liability due to changed circumstances

The offender may be released from criminal liability if it is established that it is not expedient to impose criminal liability for the given act due to the changed circumstances.

Article 70.1 - Releasing from criminal liability due to the collaboration of the accused with investigative authorities

In exceptional cases, when the collaboration of the accused with investigative authorities has revealed the identity of an official and/or person(s) who has (have) committed a particularly serious crime, and the accused directly participated in the creation of essential conditions required for the discovery of the crime, the court may release the accused from criminal liability.

Article 137 – Rape

1. Rape, that is any form of penetration of a sexual nature of the body of a person with any bodily part or object, committed with violence, under the threat of violence or by abusing a helpless condition of a person

affected...

shall be punished by imprisonment from 6 to 8 years..

3. The same act committed:

d) knowingly by an offender against a minor, a person with disability, or a pregnant woman,
shall be punished by imprisonment for a term of 10 to 13 years..

4. The same act committed:

c) knowingly against a minor who has not reached 14 years of age
shall be punished by imprisonment from 15 to 20 years with limitation of rights related to weapons or without it.

Article 138 - Another action of a sexual nature

1. Another action of a sexual nature, which does not contain elements of crime under Article 137 of this Code, committed with violence, under the threat of violence or a helpless condition of a victim...

shall be punished by imprisonment for a term of four to six years....

2. The same act:

d) committed knowingly by an offender against a minor, a person with disability or a pregnant woman
shall be punishable by imprisonment for a term of six to nine years

Article 139 - Coercing into penetration of a sexual nature of the body of a person, or into another action of a sexual nature

1. Coercing into penetration of a sexual nature of the body of a person, or into another action of a sexual nature, committed under the threat of damaging property, disclosing defamatory information, information representing private life or such information that may substantially affect the right of that person, and/or by abusing a helpless condition of a person affected, or material, official or other kind of dependence...

shall be punishable by fine or imprisonment for a term of three years..

3. The same act committed:

d) knowingly against a minor, a person with disability or a pregnant woman
shall be punished by imprisonment for a term of five to seven years

Article 140 – Penetration of a sexual nature into the body of a person below the age of 16

1. Penetration of a sexual nature into the body of a person below the age of 16, committed knowingly by an adult...
shall be punishable by imprisonment for a term of seven to nine years.
2. The same act committed:
 - a) knowingly against a person with disability or a pregnant woman
shall be punishable by imprisonment from eight to ten years.

Article 141 - Lewd act

1. A lewd act of an adult committed knowingly by an offender without violence against a person below the age of 16...
shall be punishable by imprisonment from five to seven years.
2. The same act committed:
 - a) knowingly against a person with disability or a pregnant woman
shall be punished by imprisonment from eight to ten years.

Article 150.1 - Forced marriage

1. Forced marriage (including an unregistered marriage)...
shall be punished by community service from 200 to 400 hours and/or deprivation of liberty up to two years...
2. The same act committed knowingly against a minor:
shall be punished by deprivation of liberty from two to four years.

Comments

Age of marriage is 18, no exceptions (Article 51 of the Law on Civil Status Acts).

No private prosecution options.

Resources

Criminal Code

<https://matsne.gov.ge/en/document/view/16426>

Criminal Procedure Code

<https://matsne.gov.ge/en/document/view/90034>

Family Code

<https://matsne.gov.ge/en/document/view/1541247>

Excerpts

Criminal Code

Article 65. Release from criminal responsibility due to active repentance

1. A person, who has committed a criminal offence or a first time crime, may be released from criminal liability subject to the personality of the perpetrator, his (her) acknowledgement of guilt, assistance in uncovering, investigation of the crime, remedy of harm, caused by the crime.

2. Provisions of the first part of this Article shall not apply to the persons, who committed terrorist, extremist crime, as part a criminal group, crime against sexual inviolability of underage persons, grave or especially grave crime against person, except for cases specially provided by the relevant Article of Special part of this Code.

[applies to Rape (non-aggravated); Violent Actions of Sexual Character (non-aggravated); Statutory rape (non-aggravated); Compulsion to Perform Sexual Actions]

Article 67. Release from criminal responsibility upon fulfillment of conditions of procedural agreement

A person who fulfilled all the conditions of procedural agreement *[requires consent of the victim]* may be released from criminal responsibility.

2. Provisions of part one of this Article shall not apply to persons who committed crimes against sexual inviolability of the underage, except for cases when such crime is committed by an underage person in respect of an underage person of 14 to 18 years of age.

Article 68. Release from criminal responsibility due to reconciliation

1. A person who has committed a criminal offence or a crime of little or average gravity *[applies to Rape (non-aggravated); Violent Actions of Sexual Character (non-aggravated); Statutory rape (non-aggravated); Compulsion to Perform Sexual Actions]*, not related to causing death, shall be released from criminal liability, if he (she) reconciled

with the victim, the applicant, including within the procedure of mediation, and remedied the harm caused.

2. The underage, pregnant women, women with minor children, men raising minor children alone, women of fifty-eight years old and over, men of sixty-three years old and over, who for the first time committed a grave crime *[applies to Rape and Violent Actions which were committed by a gang, with a threat of murder or with extreme brutality, repeatedly or when it lead to infecting the victim with an STD; Statutory Rape committed by a parent or another person in charge]* not related to causing death or grievous harm to human health, may be released from criminal liability, if they reconciled with the victim, the applicant, including within the procedure of mediation, and remedied the harm caused. When an underage perpetrator is released from criminal liability, compulsory measures of educational impact shall be applied.

...

4. Provisions of this Article shall not be applied to persons, who committed crimes against sexual inviolability of the underage persons, except for cases when such crime was committed by an underage person in respect of an underage person of 14 to 18 years of age, crimes that caused death of a person or death of two and more persons by negligence, corruption crimes, terrorist crimes, extremist crimes, corruption crimes, crimes committed as a part of a criminal group.

Article 69. Release from criminal responsibility on bail

1. A person, who has for the first time committed a criminal offence or the crime of little or average gravity, not related to causing death or grievous harm to human health, for which a fine is provided among other types of basic punishments by a relevant Article or part of an Article of the Special part of this Code *[applies to Compulsion to Perform Sexual Actions]*, may be released from criminal liability by court on bail.

...

6. Provision of this Article shall not be applied to persons, who committed corruption crimes, terrorist crimes, extremist crimes, crimes committed as part of a criminal group, crimes against sexual inviolability of an underage person.

Article 70. Release from criminal responsibility due to change of circumstances

1. A person, who has committed a crime shall be released from criminal liability by court, if it is established that by the time of trial the committed action ceased to be socially dangerous due to change of circumstances.

2. A person, who has committed a criminal offence or a crime of little or average gravity [*applies to Rape (non-aggravated); Violent Actions of Sexual Character (non-aggravated); Statutory rape (non-aggravated); Compulsion to Perform Sexual Actions*] for the first time, shall be released from criminal liability by court, if it is established that by the time of trial this person may not be considered as socially dangerous by virtue of subsequent irreproachable conduct.

Article 120. Rape

1. Rape, that is, a sexual intercourse with the use of violence or of a threat thereof, with respect to the [*female*] victim or to other persons, or with the use of a helpless state of the victim...

shall be punishable by imprisonment for a term of three to five years.

2. Rape:

2) combined with a threat of murder and committed with particular cruelty to the victim or to other persons; shall be punishable by imprisonment for a term of five to ten years.

3. Actions specified in Part One and Two of this Article, if they are:

3) committed knowingly against a person who is underage;

5) committed against a person who is underage by a parent, teacher, or another person entrusted by the law of the Republic of Kazakhstan with the duty of this minor's upbringing;

shall be punishable by imprisonment for a term of ten to fifteen years with deprivation of the right to hold certain positions or engage in certain activities for a period of ten years or without such deprivation, and in cases provided for in paragraph 5), with life-long deprivation of the right to hold certain positions or engage in certain activities.

4. Actions specified in Parts One, Two or Three of this Article, if they are committed knowingly against a person who is a minor, -

shall be punishable by imprisonment for a term of

fifteen to twenty years with a life-long deprivation of the right to hold certain positions or engage in certain activities, or life imprisonment.

Article 121. Violent Actions of Sexual Character

1. Pederasty, lesbianism or other actions of sexual character committed with the use of violence or with a threat thereof, with respect to a male (or female) victim or to other persons, or with the use of a helpless state of the victim...

shall be punishable by imprisonment for a term of three to five years.

2. The same actions:

2) combined with a threat of murder and committed with particular cruelty to the victim (male or female) or to other persons;

shall be punishable by imprisonment for a term of five to ten years.

3. Actions specified in Part One and Two of this Article, if they are:

3) committed knowingly against a person who is underage;

5) committed against a person who is underage by a parent, teacher, or another person entrusted by the law of the Republic of Kazakhstan with the duty of this minor's upbringing;

shall be punishable by imprisonment for a term of ten to fifteen years with deprivation of the right to hold certain positions or engage in certain activities for a period of ten years or without such deprivation, and in cases provided for in paragraph 5), with life-long deprivation of the right to hold certain positions or engage in certain activities.

4. Actions specified in Parts One, Two or Three of this Article, if they are committed knowingly against a person who is a minor, -

shall be punishable by imprisonment for a term of fifteen to twenty years with a life-long deprivation of the right to hold certain positions or engage in certain activities, or life imprisonment.

Article 122. Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years

1. Sexual intercourse, pederasty, lesbianism, or other sexual actions committed knowingly with a person who has not reached the age of sixteen years...

shall be punishable by restriction of freedom for a term of up to five years, or imprisonment for the same term.

2. The same actions committed against a person under the age of sixteen by a parent, teacher, or another person entrusted by the law of the Republic of Kazakhstan with the duty of this minor's upbringing, -

shall be punishable by imprisonment for a term of seven to ten years with a life-long deprivation of the right to hold certain positions or engage in certain activities.

Article 123. Compulsion to Perform Sexual Actions

Compulsion of a person to enter into sexual relation, pederasty, lesbianism, or to commit 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 imposing a fine in the amount of up to one thousand monthly calculation indices, or correctional labor of the same amount, or engaging in community work for up to four hundred hours, or restriction of freedom for a term of up to one year, or imprisonment for the same term.

Article 124. Depravity of Minors

1. Lecherous actions without use of violence committed knowingly in respect of a minor...

Criminal Procedure Code

Article 32. Cases of Private, Private-Public and Public Prosecution

...

2. Cases on crimes provided by Articles ... 123

[*Compulsion to Perform Sexual Actions*] ... of the Criminal Code ... qualify as cases of private prosecution. They are initiated upon a claim of the victim and shall be terminated in case of reconciliation with the defendant.

3. Cases on crimes provided by Articles ... 120 (part one) [*Rape*], 121 (part one) [*Violent Actions of Sexual Character*] ... of the Criminal Code ... qualify as cases of private-public prosecution. They are initiated upon a claim of the victim and shall be terminated due to reconciliation with the defendant only in cases provided for by Article 68 of the Criminal Code.

4. Prosecutor initiates or continues proceedings on the private and private-public prosecution cases even without a victim's claim, if the deed affects interests of a person in a helpless or dependent state or for other reasons incapable to exercise their rights independently, or in cases of private-public prosecution, which affect interests of the society, or the State.

Comments

Underage means under 18, minor – under 14.

Marriage age is 18. Local authorities can reduce the marriage age for no more than two years due to 1) pregnancy, 2) common child.

Article 10 of the Marriage and Family Code.

Resources

Criminal Code

http://online.zakon.kz/document/?doc_id=31575252

Criminal Procedure Code

https://online.zakon.kz/Document/?doc_id=31575852

Family Code

https://online.zakon.kz/document/?doc_id=31102748

Excerpts

Legislation entering into force on 01.01.2019

Criminal Code

Article 61. Exemption from Criminal Liability after Reaching an Agreement with the Offence Victim

(1) A person that committed a less severe crime [*applies to Compulsion to Perform Sexual Actions, Compulsion of a juvenile to enter into de facto marital relations, Compulsion of a person to enter into marriage, Violation of marriage age legislation in conducting religious ceremonies*] shall be exempted from criminal liability if having reached an agreement with the offence victim and redressed the damage caused by crimes provided for by a relevant list of Articles in the Criminal Procedure Code...

Criminal Procedure Code

Article 23. Kinds of Criminal Prosecution

...
3. Crimes provided by Articles ... 161 Part 1 [*non-aggravated Rape*], 163 [*Compulsion to Perform Sexual Actions*]... qualify as criminal cases of private-public prosecution.

Pre-trial proceedings on criminal cases of private-public prosecution are initiated only upon application from the victim, or from their legal representative and can be terminated due to the parties' reconciliation in accordance with Article 61 of the Criminal Code...

Article 26. Circumstances excluding criminal proceedings

1. Criminal proceedings shall be terminated:
...
- 4) due to absence of a victim's application in cases provided by this Code;
...
- 13) due to reconciliation of the parties in accordance with Part 3 of Article 23 of this Code...

Criminal Code

Chapter 25. Crimes Against the Sexual Inviolability and Sexual Freedom of the Person

Article 161. Rape

1. Rape, that is, a sexual intercourse with the use of violence not threatening life or health, or of a threat thereof, with respect to the [*female*] victim or to other persons, or with the use of a helpless state of the victim... shall be punishable by imprisonment of the 3rd category.

2. The same action:
 - 2) combined with the threat of violence that poses danger to life or health;
 - 3) committed with particular cruelty towards the victim or her relatives,
shall be punishable by imprisonment of the 4th category.
3. Actions specified in Parts 1 or 2 of this Article:
 - 1) committed knowingly against a person who is underage;
 - 2) resulting in the onset of pregnancy;
shall be punishable by imprisonment of the 5th category.
4. Actions specified in Parts 1, 2 or 3 of this Article committed knowingly against a person who is a minor, shall be punishable by imprisonment of the 6th category or life imprisonment.

Article 162. Violent Actions of Sexual Character

1. Pederasty, lesbianism or other deviate actions of sexual character committed with the use of violence not threatening life or health, or with a threat thereof with respect to a male (or female) victim or to other persons, or with the use of the helpless state of the victim... shall be punishable by imprisonment of the 3rd category.
2. The same actions:
 - 1) committed by a group of persons or a group of persons in a preliminary conspiracy;
 - 2) combined with the threat of violence that poses

danger to life and health;

3) committed with particular cruelty to the victim (male or female) or to other persons,

shall be punishable by imprisonment of the 4th category.

3. Actions specified in Parts 1 or 2 of this Article:

1) that caused serious harm by negligence;

2) committed knowingly against a person who is underage (male or female),

shall be punishable by imprisonment of the 5th category.

4. Actions specified in Parts 1, 2 or 3 of this Article committed knowingly against a person who is a minor (male or female),

shall be punishable by imprisonment of the 6th category or life imprisonment.

Article 163. Compulsion to Perform Sexual Actions

Compulsion of a person to enter into sexual relation, 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, in the absence of indicia of crimes provided for by Articles 161 and 162 of this Code...

shall be punishable by deprivation of the right to hold certain positions or engage in certain activities of the 4th category or correctional labor of the 4th category, or a fine of the 5th category, or deprivation of freedom of the 1st category.

Chapter 26. Crimes Against Spiritual and Moral Health of a Person

Article 164. Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years

Sexual intercourse, pederasty, lesbianism, or other sexual actions committed knowingly with a person who has not reached the age of sixteen years by a person who has reached the age of eighteen years, in the absence of indicia of crimes provided for by Articles 161 and 162 of this Code...

shall be punishable by imprisonment of the 4th category.

Article 165. Depraved Actions

Lecherous actions without sexual contacts committed knowingly in respect of a person who has not reached sixteen years of age, in the absence of indicia of crimes provided for by Articles 161, 162 and 164 of this Code...

Chapter 28. Crimes against the family relations culture and the interests of the juveniles.

Article 175. Kidnapping of a person with a purpose of marriage

1. Kidnapping of a person for entering into marriage against their will...

2. Kidnapping of a person who has not reached eighteen years of age for entering into de facto marital relations or for entering into marriage against their will...

Article 176. Compulsion to enter into de facto marital relations

Compulsion to enter into de facto marital relations with a person who has not reached eighteen years of age...

Article 177. Compulsion of a person to enter into marriage

Compulsion of a person to enter into marriage, as well as compulsion to continue a marriage, that was contracted compulsorily, or compulsion of a person to enter into concubinage without contracting a marriage, or compulsion to continue of such concubinage, as well as preventing a person from entering into marriage...

Article 178. Violation of marriage age legislation in conducting religious ceremonies

Parents (persons substituting them) of a person, in respect of whom a religious marriage ceremony was conducted, person who conducted the religious marriage ceremony, as well as an adult person in respect of whom a religious marriage ceremony was conducted with an underage person in violation of marriage age legislation...

shall be punishable by imprisonment of the 2nd category.

Comments

Article 14 of Family Code provides that age of marriage is 18. Due to justifiable reasons local executive authorities may reduce the marriage age but no more than for 1 year upon a local child protection body's commission findings.

Resources

Old CC

<http://cbd.minjust.gov.kg/act/view/ru-ru/568>

Old CPC

<http://cbd.minjust.gov.kg/act/view/ru-ru/9>

New CC

http://cbd.minjust.gov.kg/act/view/ru-ru/111527?cl=ru-ru#st_172

New CPC

<http://cbd.minjust.gov.kg/act/view/ru-ru/111530>

Family Code

<http://cbd.minjust.gov.kg/act/view/ru-ru/1327>

Excerpts

Criminal Code

Section 58. Release from Criminal Liability

...

(2) A person who has committed a criminal violation or a less serious crime, except criminal offences resulting in death of a human being, may be released from criminal liability if there is a settlement effected with the victim or with his or her representative and within the last year the person has not been released from criminal liability for committing an intentional criminal offence by reaching a settlement and has completely eliminated the harm caused by the criminal offences committed or has reimbursed for the losses caused.

(3) A person who has given substantial assistance in the uncovering of a serious or especially serious crime which is more serious or dangerous than the crime committed by the person himself or herself, may be released from criminal liability. This provision shall not apply to a person who is held criminally liable for especially serious crimes provided for in Sections ... 159 [Rape], 160 [Sexual Violence] ... of this Law or to a person who has established or managed himself or herself an organised group or a gang...

Section 58.1 Conditional Release from Criminal Liability

...

(1.1) A person who is accused of committing a serious crime and who has given substantial assistance in the uncovering of a serious or especially serious crime, which is more serious or dangerous than the crime committed by the person himself or herself, may be also conditionally released from criminal liability by a prosecutor in accordance with the procedures laid down in the Law. This provision shall not apply to a person who is held criminally liable for committing the serious crimes provided for in Sections ... 159 [Rape], 160 [Sexual Violence] ... of this Law, or to a person who has been an organiser of a crime.

...

(4) In conditionally releasing from criminal liability, the public prosecutor, with the consent of the person, may impose as a duty:

- 1) to apologise to the victim;
- 2) to rectify the harm caused within a specific time period;

Chapter XVI. Criminal Offences against Morality and Gender Inviolability

Section 159. Rape

(1) ...an act of sexual intercourse taking advantage of the state of helplessness of a victim or an act of sexual intercourse against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim (rape)...

the applicable punishment is deprivation of liberty for a period of four and up to ten years and with probationary supervision for a period up to five years.

(2) For a person who commits rape where commission is by a group of persons, or who commits rape of a minor,

the applicable punishment is a life imprisonment or deprivation of liberty for a period of five years and up to twenty years and with probationary supervision for a period up to five years.

(3) For a person who commits rape, if serious consequences have been caused thereby, or commits rape of such person who has not attained the age of sixteen years,

the applicable punishment is a life imprisonment or deprivation of liberty for a period of ten years and up to twenty years and with probationary supervision for a period up to five years.

Section 160. Sexual Violence

(1) ...acts of sexual nature for the purpose of sexual gratification in physical contact with the body of the victim, if such acts have been committed taking advantage of the state of helplessness of a victim or against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim...

the applicable punishment is deprivation of liberty for a period up to seven years and with probationary supervision for a period up to five years.

(2) ...anal or oral act or sexual gratification in an unnatural way which is related to vaginal, anal or

oral penetration of the body of the victim, if such acts have been committed taking advantage of the state of helplessness of a victim or against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim...

the applicable punishment is deprivation of liberty for a period of four and up to ten years and with probationary supervision for a period up to five years.

(3) For a person who commits the criminal offence provided for in Paragraph one of this Section, if it has been committed by a group of persons or on a minor,

the applicable punishment is deprivation of liberty for a period of three and up to twelve years, with probationary supervision for a period up to five years.

(4) For a person who commits the criminal offence provided for in Paragraph one of this Section, if serious consequences have been caused thereby or if it has been committed on a person who has not attained the age of sixteen years,

the applicable punishment is deprivation of liberty for a period of five years and up to fifteen years and with probationary supervision for a period up to five years.

(5) For a person who commits the criminal offence provided for in Paragraph two of this Section, if it has been committed by a group of persons or on a minor,

the applicable punishment is a life imprisonment or deprivation of liberty for a period of five years and up to twenty years and with probationary supervision for a period up to five years.

(6) For a person who commits the criminal offence provided for in Paragraph two of this Section, if serious consequences have been caused thereby or if it has been committed on a person who has not attained the age of sixteen years,

the applicable punishment is a life imprisonment or deprivation of liberty for a period of ten years and up to twenty years and with probationary supervision for a period up to five years.

Section 161. Acts of Sexual Nature with a Person who has not Attained the Age of Sixteen Years

...an act of sexual intercourse, anal or oral act, or sexual gratification in an unnatural way, or other acts of sexual nature in physical contact with the body of the victim, if it has been committed on a person who has not attained the age of sixteen years and if such offence has been committed by a person who has attained the age of majority...

the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with probationary supervision for a period of up to five years.

Section 162. Leading to Depravity

(1) ...leading to depravity of a person who has not attained the age of sixteen years or who is in the state of helplessness, that is, for a person who commits acts of sexual nature without physical contact with the body of the victim for the purpose of sexual gratification or to rouse sexual instinct in the victim, if such act has been committed by a person who has attained the age of majority or it has been committed taking advantage of the state of helplessness of the victim or against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim...

Section 162.1 Encouraging to Involve in Sexual Acts

(1) ...encourages a person who has not attained the age of sixteen years to involve in sexual acts or encourages such person to meet with the purpose to commit sexual acts or enter into a sexual relationship using information or communication technologies or other means of communication, if such act has been committed by a person who has attained the age of majority...

Section 48. Aggravating Circumstances

(1) The following may be considered to be aggravating circumstances:

...

15) the criminal offence related to violence or threats of violence, or the criminal offence against morality and sexual inviolability was committed against a person to whom the perpetrator is related in the first or second degree of kinship, against the spouse or former spouse, or against a person with whom the perpetrator is or has been in unregistered marital relationship, or against a person with whom the perpetrator has a joint (single) household...

Comments

The age of majority is 18 years.

Marriage age is 18.

By way of exception, a person who has attained sixteen years of age may marry with the consent of his or her parents or guardians if he or she marries a person of age of majority.

If the parents or guardians, without good cause, refuse to give permission, then permission may be given by an Orphan's court for the place where the parents or appointed guardians reside. – Articles 32, 33 of the Civil Code

No private prosecution option.

Resources

Criminal Code of Latvia of 17 June 1998, with edits up to 13 February 2018

<https://likumi.lv/ta/en/id/88966-the-criminal-law>

- English translation on an official publications website.

Civil Code

<https://likumi.lv/ta/en/en/id/225418-the-civil-law>

Excerpts

Criminal Code

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 38. Release from Criminal Liability upon Reconciliation between the Offender and the Victim

1. A person who commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime may be released by a court from criminal liability where:

- 1) he has confessed to commission of the criminal act, and
- 2) voluntarily compensated for or eliminated the damage incurred to a natural or legal person or agreed on the compensation for or elimination of this damage, and
- 3) reconciles with the victim or a representative of a legal person or a state institution, and
- 4) there is a basis for believing that he will not commit new criminal acts...

[applies to Sexual Abuse non-aggravated, Statutory Rape including aggravated, Sexual Harassment, Grooming of a Person under the Age of Sixteen, Sexual Abuse of a Person under the Age of Sixteen Years]

Article 39. Release from Criminal Liability on the Basis of Mitigating Circumstances

A person who commits a misdemeanour or a negligent or minor premeditated crime may be released from criminal liability by a reasoned decision of the court where:

- 1) he commits the criminal act for the first time, and
- 2) there are at least two mitigating circumstances provided for in paragraph 1 of Article 59 of this Code, and
- 3) there are no aggravating circumstances...

[applies to Sexual abuse non-aggravated, Sexual Harassment, Grooming of a Person under the Age of Sixteen]

Article 39(1). Release from Criminal Liability When a Person Actively Assisted in Detecting the Criminal Acts Committed by Members of an Organised Group or a Criminal Association

1. A person who is suspected of participation in the commission of criminal acts by an organised group or a criminal association or belonging to a criminal association may be released from criminal liability where he confesses his participation in the commission of such a criminal act or his membership of the criminal association and where he actively assists in detecting the criminal acts committed by members of the organised group or the criminal association.

2. Paragraph 1 of this Article shall not apply to a person who participated in the commission of a premeditated murder or who had already been released from criminal liability on such grounds, also to the organiser or leader of an organised group or a criminal association.

Article 40. Release from Criminal Liability on Bail

1. A person who commits a misdemeanour, a negligent crime or a minor or less serious intentional crime may be released by a court from criminal liability subject to a request by a person worthy of a court's trust to transfer the offender into his responsibility on bail. Bail may be set with or without a surety.

2. A person may be released from criminal liability by a court on bail where:

- 1) he commits the criminal act for the first time, and
- 2) he fully confesses his guilt and regrets having committed the criminal act, and
- 3) at least partly compensates for or eliminates the damage incurred or undertakes to compensate for such where it has been incurred, and
- 4) there is a basis for believing that he will fully compensate for or eliminate the damage incurred, will comply with laws and will not commit new criminal acts...

[applies to Sexual Abuse non-aggravated, Statutory Rape including aggravated, Sexual Harassment, Grooming of a Person under the Age of Sixteen, Sexual Abuse of a Person under the Age of Sixteen Years]

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 detention of a person who has committed the criminal act, immediate 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.

Chapter XXI. Crimes and misdemeanours against freedom of a person's sexual self-determination and inviolability

Article 149. Rape

1. A person who has sexual intercourse with a person against their 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.

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.

...

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 the prosecutor's request or when the pre-trial investigation is initiated 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.

Article 150. Sexual Assault

1. A person who, against a person's will, satisfies his sexual desires through anal, oral or interfemoral intercourse by using physical violence or by threatening the immediate use thereof or by otherwise depriving the victim of a possibility of resistance or by taking advantage of the helpless state of the victim...

... shall be punished by arrest or by a custodial sentence for a term of up to seven years.

5. A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request or when the pre-trial investigation is initiated 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.

Article 151. Sexual Abuse

1. A person who, by threatening to resort to violence, using other mental coercion or by taking advantage of a person's dependency, compels the person to have sexual intercourse with or otherwise satisfy sexual desires of the offender or a third person...

shall be punished by arrest or by a custodial sentence for a term of up to three years.

...

3. A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request or when the pre-trial investigation is initiated upon establishing signs

of domestic violence

4. A legal entity shall also be held liable for an act provided for in paragraph 2 of this Article.

Article 151(1). 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 [*rape, sexual assault or sexual abuse*]... 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.

2. A person who has sexual intercourse or otherwise satisfied his sexual desires with an underage person upon offering, promising to provide or upon providing to him in consideration money or a consideration of another form, in the absence of characteristics of a rape, sexual assault or sexual abuse... shall be punished by community service or by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to five years.

3. A father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of an underage person who has sexual intercourse or otherwise satisfied his sexual desires with that underage person, in the absence of characteristics of a rape, sexual assault or sexual abuse...

4. A legal entity shall also be held liable for the acts provided for in this Article.

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.

Article 152. Sexual Harassment

1. A person who, in seeking sexual contact or satisfaction, harasses a person subordinate to him in office or otherwise by vulgar or comparable actions or by making offers or hints shall be considered to have committed a misdemeanour...

2. A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request.

Article 152(1). Grooming of a Person under the Age of Sixteen Years

1. An adult person who proposes a person under the age of sixteen years to meet for the purpose of having a sexual intercourse or otherwise satisfying his sexual desires or exploiting him for the production of pornographic material, provided that following this proposal he undertakes specific actions for the meeting to take place...

2. A legal entity shall also be held liable for the acts provided for in this Article.

Article 153. Sexual Abuse [Depravation] of a Person under the Age of Sixteen Years

1. A person who carries out sexual abuse [depraved] actions in respect of a person under the age of sixteen years...

2. A legal entity shall also be held liable for the acts provided for in this Article.

Criminal Procedure Code

Article 167. The initiation of pre-trial investigation based only on the complaint of the victim or his legal representative, or the prosecutor's request

1. In respect of criminal offenses established in ... Paragraph 1 of Article 149 [*non-aggravated Rape*], Paragraph 1 of Article 150 [*non-aggravated Sexual Assault*], Paragraph 1 of Article 151 [*non-aggravated Sexual Abuse*], Articles 152 [*Sexual Harassment*] ... of the Criminal Code of the Republic of Lithuania, the pre-trial investigation shall be initiated only in the case of a complaint by the victim or a statement by their legal representative. In these cases, the process takes place in a general manner.

2. If the crimes referred to in Paragraph 1 of this article are of public significance or cause damage to a person who for significant reasons can not defend their legitimate interests, and there is no the complaint of the victim or statement of their legal representative, the pre-trial investigation of these acts must be initiated at the request of the prosecutor.

3. If the criminal acts provided for in ... Paragraph 1 of Article 149 [*non-aggravated Rape*], Paragraph 1 of Article 150 [*non-aggravated Sexual Assault*], Paragraph 1 of Article 151 [*non-aggravated Sexual Abuse*] of the Criminal Code of the Republic of Lithuania show signs of domestic violence, the pre-trial investigation shall be initiated regardless of whether there is a complaint by the victim or a statement from their legal representative. In these cases, the pre-trial

investigation is initiated and the process proceeds in a general manner.

Article 212. Termination of pre-trial investigation

Pre-trial investigation is discontinued:

...

3) when, in accordance with Article 36 of the Criminal Code of the Republic of Lithuania, it is recognized that a person or the act committed by him as a result of a change of circumstances has become non-dangerous;

4) when, in accordance with Article 37 of the Criminal Code of the Republic of Lithuania, it is recognized that a

criminal offense is negligible;

5) where the suspect and the victim reconcile in cases provided for in Article 38 of the Criminal Code of the Republic of Lithuania;

6) when the suspect is transferred to a person who is worthy of the court's trust in the cases provided for in Article 40 of the Criminal Code of the Republic of Lithuania;

7) when a suspect helps to uncover criminal offenses committed by an organized group or a criminal organization in the circumstances specified in Article 39 (1) of the Criminal Code of the Republic of Lithuania...

Comments

Article 3.14. Legal age of consent to marriage

1. Marriage may be contracted by persons who by or on the date of contracting a marriage have attained the age of 18.

2. At the request of a person who intends to marry before the age of 18, the court may, in a summary procedure, reduce for him or her the legal age of consent to marriage, but by no more than two years.

3. In the case of a pregnancy, the court may allow the person to marry before the age of 16.

4. While deciding on the reduction of a person's legal age of consent to marriage, the court must hear the opinion of the minor person's parents or guardians or curators and take into account his or her mental or psychological condition, financial situation and other important reasons why the person's legal age of consent to marriage should be reduced. Pregnancy shall provide an important ground for the reduction of the person's legal age of consent to marriage.

5. In the process of deciding on the reduction of the legal age of consent to marriage, the state institution for the protection of the child's rights must present its opinion on the advisability of the reduction of the person's legal age of consent to marriage and whether such a reduction is in the true interests of the person concerned.

The Seimas' website provides a translation of the Criminal Code, however the translation seems to have some inconsistencies and inaccuracies. Suggested translation corrections are in brackets. The Criminal Procedure Code does not have an official translation.

Resources

Criminal Code original

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555/xyTtKoVsYG>

translation

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/o4d3aa62d16911e59019a599c5cbd673?jfwid=-fa58gryby>

Criminal Procedure Code

<https://www.e-tar.lt/portal/lt/legalAct/TAR.EC588C321777/RKDzuhQANj>

Civil Code, Family Law part original

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687/Uml0DCyzsQ>

translation

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.404614?jfwid=-fa58gruaj>

Excerpts

Criminal Code

Article 54. Release from Criminal Liability of Juveniles

(1) A person under the age of 18 who commits for the first time a minor or a less serious crime may be released from criminal liability according to the provisions of criminal procedure law provided that it was stated that the juvenile's rehabilitation is possible without assigning criminal liability.

...

Article 55. Release from Criminal Liability for Administrative Liability

(1) A person who commits for the first time a minor or a less serious crime ... may be released from criminal liability and subjected to administrative liability provided that he/she admits his/her guilt and remedies the damage caused by the crime and if it is established that the rehabilitation of the person is possible without assigning criminal liability.

...

Article 57. Release from Criminal Liability due to Active Repentance

(1) A person who commits for the first time a minor or a less serious crime may be released from criminal liability if following the crime he/she voluntarily admits his/her guilt, actively contributes to solving of the crime, compensates the value of material damage caused, or in any other way remedies the harm caused by the crime.

Article 58. Release from Criminal Liability due to a Situation Change

A person who commits for the first time a minor or a less serious crime may be released from criminal liability provided that it is established that due to a change in situation the person or the crime committed lost their socially dangerous character.

Article 59. Conditional Release from Criminal Liability

A criminal investigation against a person charged with committing a minor or a less serious crime who admits his/her guilt and does not represent a social danger may be conditionally suspended with a subsequent exemption from criminal liability according to criminal law procedures provided that the rehabilitation of the person is possible without criminal punishment.

Article 109. Reconciliation

(1) Reconciliation is an act by which criminal liability for a minor or a medium gravity crime is eliminated, and in case of juveniles also for a serious crime provided for in Chapters II to VI of the Special Part, as well as in cases provided for by the criminal procedure, if a person has not been convicted for similar crimes committed intentionally, or if the criminal proceedings against them for similar crimes committed intentionally in the last five years have not been terminated.

(2) Reconciliation is exercised in person and has legal consequences from the commencement of the criminal prosecution and until the of the court retires to deliberate.

...

(4) Reconciliation does not apply to persons who committed crimes against juveniles provided for in articles 171–175-1...

Article 167. Slavery and conditions similar to slavery

The placement or detainment of a person in circumstances where another person owns them, or the impact on a person using deceit, coercion, violence or threat of violence for the purpose of entering into concubinage or in marriage, or withholding in concubinage or in marriage...

Article 171. Rape

(1) Rape, i.e. sexual intercourse committed with the use of physical or mental forcing of a person, or by taking advantage of the victim's incapacity to defend themselves or to express their will...

shall be punishable by imprisonment for a term of 3 to 5 years.

(2) Rape:

...

b) committed knowingly against a juvenile;

b1) committed knowingly against a pregnant woman;

b2) committed against a family member;

...

shall be punishable by imprisonment for a term of 5 to 12 years.

(3) Rape:

...

b) committed against a person (male or female) under the age of 14;

...

shall be punishable by imprisonment for a term of 10 to 20 years or life imprisonment.

Article 172. Violent Actions of a Sexual Character

(1) Homosexuality or satisfying sexual needs in perverted forms committed with the use of physical or mental forcing of a person or by taking advantage of the victim's incapacity to defend themselves or to express their will...

shall be punishable by imprisonment for a term of 3 to 5 years.

(2) The same actions:

...

b) committed knowingly against a juvenile;

b1) committed knowingly against a pregnant woman;

b2) committed against a family member;

...

shall be punishable by imprisonment for a term of 5 to 12 years.

(3) Actions specified in Parts (1) or (2):

) committed knowingly against a person under the age of 14;

a1) committed against a person under the perpetrator's guardianship, patronage, protection, upbringing or treatment;

shall be punishable by imprisonment for a term of 10 to 20 years or life imprisonment.

Article 173. Sexual Harassment

Sexual harassment, i.e. manifestation of a physical, verbal or non-verbal behavior infringing the dignity of a person or creating an unpleasant, hostile, degrading, humiliating, discriminatory or insulting atmosphere in order to compel the person to sexual intercourse or other unwanted sexual acts, committed through threats, coercion, blackmail...

Article 174. Sexual Intercourse with a Person under the Age of 16

(1) Sexual intercourse other than rape as well as acts of vaginal, anal, oral or any other penetration knowingly committed in respect of a person under the age of 16...

shall be punishable by imprisonment for a term of 3 to 7 years

(2) The person who committed the act set forth in par. (1) shall not be subject to criminal liability if he/she is close to the victim in terms of age and physical and mental development.

Article 175. Perverse actions

The perverse actions knowingly committed against a person who has not reached 16 years of age, consisting of exposure, obscene touch, obscene or cynical talks with the victim about sexual intercourse, induction of the victim to attend or participate in pornographic performances, the provision of pornographic material to the victim, as well as other sexual acts...

Article 175-1. Seduction of a juvenile for sexual purposes

(1) Proposal, persuasion, manipulation, threat, promise of any form of advantage, including through information technology or electronic communications, in order to establish a meeting with a juvenile with a view to committing any sexual offense against them, if these actions were followed by material facts leading to such a meeting...

Criminal Procedure Code

Article 276. Initiating a Criminal Investigation Based on a Victim's Complaint

(1) A criminal investigation shall be initiated based only on a victim's complaint in the case of crimes provided in arts. ... 173 [*Sexual Harassment*] ... of the Criminal Code... Should the injured party reconcile with the suspect/accused/defendant in cases specified in this paragraph, the criminal investigation shall terminate. The procedure in such proceedings is general.

...

(4) If the victim in the case on a crime provided in para. (1) due to his/her incapacity or limited legal capacity, helplessness or dependence on the suspect or due to other reasons is unable to defend his/her legal rights and interests, the prosecutor shall initiate a criminal investigation even if the victim does not file a complaint.

(5) Should the injured party reconcile with the suspect, accused, defendant in cases mentioned in para. (1), the criminal investigation shall be terminated. The reconciliation shall be personal and shall be effective only if it occurs prior to the court judgment becoming effective.

Comments

The minimum marriage age is 18 years. If there are valid reasons, the marriage age may be reduced, but not more than two years. The permission to reduce the marriage age is given by the local guardianship authority, on the basis of the application of the persons wishing to marry and the consent of the parents of the underage.

Article 14 of the Family Code

Resources

Criminal Code

<http://lex.justice.md/index.php?action=view&view=doc&lang=2&id=331268>

Criminal Procedure Code

<http://lex.justice.md/index.php?action=view&view=doc&lang=2&id=350171>

Family Code

<http://lex.justice.md/index.php?action=view&view=doc&lang=2&id=286119>

Excerpts

Criminal Code

Article 75. Release from Criminal Liability in Connection with Active Repentance

1. A person who has committed a crime of light [*applies to Compulsion to Perform Sexual Actions, Depraved Actions*] or medium gravity [*applies to Compulsion to Perform Sexual Actions committed in respect of a minor boy (minor girl), Sexual Intercourse and Other Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years*] for the first time may be released from criminal liability, if after the perpetration of the offence he has given himself up, assisted in the exposure and investigation of this crime, compensated for the damage, or in any other way effected restitution for the damage caused as a result of this crime, which has ceased to be socially dangerous as a result of active repentance.

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

A person who has committed a crime of light or medium gravity for the first time may be released from criminal liability if he has reconciled with the victim and restituted any damage inflicted on the victim.

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 or of a threat thereof, with respect to the victim [*female*] or to other persons or with the use of a helpless state of the victim...

shall be punishable by imprisonment for a term of three to six years.

2. Rape:

b) combined with a threat of murder or infliction of grievous bodily harm, as well as committed with particular cruelty towards the victim or other persons;

shall be punishable by imprisonment for a term of four to ten years with restriction of freedom for a term of up to two years or without such restriction of freedom.

3. Rape:

a) committed against an underage person;

shall be punishable by imprisonment for a term of eight to fifteen years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to twenty years or without such and with restriction of freedom for a term of up to two years.

4. Rape:

b) committed against a victim who is under the age of fourteen, -

shall be punishable by imprisonment for a term of twelve to twenty years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to twenty years or without such and with restriction of freedom for a term of up to two years.

Note. The offences provided for by Item b of Part Four of this article [*rape of a victim under 14 years old*], as well as by Item b of Part Four of Article 132 [*Violent Actions of Sexual Character - with respect to a person who has not reached the age of fourteen years*] of this Code, shall also include the offences having the constituent elements provided for by Parts Three - Five of Article 134 [*Sexual Intercourse and Other Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years - committed in respect of a person who has reached twelve years of age but has not reached fourteen years of age; committed in respect of two or more persons; by a group of persons, by a group of persons by previous concert or by an organized group*] and by Parts Two - Four of Article 135 [*Depraved Actions - committed in respect of the person who has reached twelve years of age but has not reached fourteen years of age, in respect of two or more persons, committed by a group of persons in preliminary collusion or by an organised group*] 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 character with the use of violence or with a threat thereof with respect to a male (or female) victim or to other persons or with the use of the helpless state of the victim... shall be punishable by imprisonment for a term of three to six years.

Article 133. Compulsion to Perform Sexual Actions

1. Compulsion of a person to enter into sexual relation, 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 imposing a fine in the amount of up to one hundred twenty thousand rubles or in the amount of the convicted person's salary or other income for a period of up to one year, or compulsory work for a term of up to four hundred eighty hours, or correctional work for a term of up to two years, or forced labor for a term of up to one year, or imprisonment for the same period of time.

2. The same deed committed in respect of an underage boy (or girl)... shall be punishable by forced labor for a term of up to five years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years or without such, or by imprisonment for a term of up to five years with deprivation of the right to hold certain positions or engage in certain 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 with a person who has not reached the age of sixteen years committed by a person who has reached the age of eighteen years... shall be punishable by compulsory labor for up to four hundred and eighty hours, or by restriction of freedom for a term of up to four years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years or without such, or by imprisonment for a term of up to four years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to ten years or without such.

2. Pederasty or lesbianism with a person under the age of sixteen committed by a person who has reached the age of eighteen -
(as amended by the Federal Law of 12.28.2013 N 380-FZ)

shall be punishable by forced labor for a term of up to five years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years or without such, or by deprivation of freedom for a term of up to six years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to ten years or without such.

3. The actions specified in Part One or Part Two of this Article committed with a person who has reached the age of twelve but is under the age of fourteen, -

shall be punishable by imprisonment for a term of three up to ten years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to fifteen years or without such and with restriction of freedom for a term of up to two years or without such.

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. Depraved Actions

1. The commission of lecherous actions 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...

Criminal Procedure Code

Article 20. Kinds of the Criminal Prosecution

3. Criminal cases of the private-public prosecution are initiated only upon application from the victim, or from their legal representative, but are not subject to the termination due to the victim's reconciliation with the accused. [applies to non-aggravated rape and non-aggravated Violent Actions of Sexual Character]

Comments

State of helplessness in terms of sexual crimes is described as “when a person due to their physical or mental condition (dementia or other psychiatric disorder, physical disabilities, other disease or unconscious state), age (minor or senior person), or other circumstances could not understand the character and meaning of actions performed in their respect, or resist the perpetrator.” (Resolution of the Plenum of the Supreme Court of 4 December 2014 16, para. 5)

Article 13 of the Family Code provides that age of marriage is 18. Marriage at 16 may be allowed due to justifiable reasons.

Federal Law provides for a possibility for republic level authorities to allow lower marriage age. At least in 12 regions marriage is allowed at 14, in other 4 at 15 due to justifiable reasons.

Domestic violence (battery without injury) has been decriminalized early in 2017, it is an administrative offence now.

Resources

Criminal Code

http://www.consultant.ru/document/cons_doc_LAW_10699/

Criminal Procedure Code

http://www.consultant.ru/document/cons_doc_LAW_34481/

Resolution of the Plenum of the Supreme Court of 4 December 2014 16

<https://rg.ru/2014/12/12/plenum-dok.html>

Family Code

http://www.consultant.ru/document/cons_doc_LAW_8982/

Excerpts

Criminal Code

Article 72. Release From Criminal Liability Due to Active Repentance

1) A person, who has committed a petty crime or a medium-gravity crime for the first time, may be released from criminal liability, if after committing a crime the perpetrator voluntarily acknowledged their guilt, or actively rendered assistance in exposing the crime, or compensated the damage or made up the losses caused in some other way...

Article 73. Release From Criminal Liability Due to Reconciliation With a Victim

A person, who has committed a petty crime or a medium-gravity crime, may be released from criminal liability, if he reconciled with the victim and compensated the damage caused to the victim.

Article 74. Release From Criminal Liability Due to Changes In the Situation

A defendant, who has committed a petty crime or a medium-gravity crime, may be released from criminal liability, if it is established that as a consequence of the change of conditions the committed crime has lost the character of public danger or the defendant has stopped being a public danger.

[all apply to Compulsion to Perform Sexual Actions, Sexual Intercourse and Other Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years, including with the abuse of official position, by a parent or another person in charge, Depraved Actions, including aggravated, Giving in Marriage a Girl Who Has Not Reached Marriage Age, Contracting a Marriage in Respect of a Person Who Has Not Reached Marriage Age]

Article 138. Rape

1) Rape, that is sexual intercourse with the use of violence or with the threat of violence towards the woman or other persons, or with the use of the helpless condition of the woman...

- shall be punishable by imprisonment for a term of three to seven years.

2) Rape:

) knowingly committed against an underage person;

- shall be punishable by imprisonment for a term of seven to twelve years.

3) Rape:

d) knowingly committed against a person under the age of fourteen or a close relative;

- shall be punishable by imprisonment for a term of twelve to twenty-five years, or by death penalty, or by life imprisonment.

Article 139. Violent Actions of Sexual Character

1) Pederasty, lesbianism or other actions of sexual character with the use of violence or with a threat thereof with respect to a male (or female) victim or to their family or with the use of the helpless state of the victim...

- shall be punishable by imprisonment for a term of five to seven years.

2) The same actions:

e) knowingly committed against an underage person (male or female),

- shall be punishable by imprisonment for a term of seven to ten years.

3) The same actions committed:

a) against two or more persons;

b) against a close relative,

- shall be punishable by imprisonment for a term of ten to fifteen years.

4) Actions specified in Part One or Part Two of this Article, if they are committed:

a) knowingly against a person under the age of fourteen;

- shall be punishable by imprisonment for a term of fifteen to twenty years.

Article 140. Compulsion to Perform Sexual Actions

Compulsion of a person to enter into sexual intercourse, 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 subordinate, material or any other dependence of the victim...

- shall be punishable by imposing a fine in the amount of five hundred to seven hundred estimated standard units, correctional labor for a term of up to two years, or imprisonment for a term of up to two years.

Article 141. Sexual Intercourse and Other Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years

1) Sexual intercourse, pederasty, lesbianism, or other sexual actions committed knowingly with a person who has not reached the age of sixteen years, in the absence of indicia of crimes provided for by Articles 138 and 139 of this Code...

- shall be punishable by imprisonment for a term of two to five years.

2) The same deed committed:

a) with the use of an official position;

b) by a parent, a teacher, or another person who has child-rearing obligations...

- shall be punishable by imprisonment for a term of three to five years with deprivation of right to hold certain positions or engage in certain activities for a term of up to three years, or without such deprivation.

Article 142. Depraved Actions

1) The commission of lecherous actions of violence knowingly in respect of a person who has not reached sixteen years of age, in the absence of indicia of crimes provided for by Articles 138, 139 and 140 of this Code...

2) The same deed committed:

a) with the use of violence or threat thereof;

b) with the use of an official position;

c) by a parent, a teacher, or another person who has child-rearing obligations;

d) knowingly in respect of a person who has not reached fourteen years of age or a close relative...

Article 142.1 Sexual Intercourse, Other Actions of Sexual Character and Depraved Actions with Abuse of Emotions and Religious Convictions

1) Sexual intercourse, other actions of sexual character or deprived actions committed with the abuse of religious feelings and convictions of the victim in course of carrying religious education...

shall be punishable by imprisonment for a term of three to seven years with deprivation of right to hold certain positions or engage in certain activities for a term of up to three years, or without such deprivation

2) The same actions committed against underage persons, -

shall be punishable by imprisonment for a term of five to eight years with deprivation of right to hold certain positions or engage in certain activities for a term of up to five years, or without such deprivation.

Article 168. Giving in Marriage a Girl Who Has Not Reached Marriage Age

Giving in marriage a girl who has not reached marriage age by parents or guardians, or other persons she is in charge of, as well as intermediation or assistance in giving in marriage...

- shall be punishable by correctional labor for a term of up to two years or by restriction of freedom for a term of up to five years.

Article 169. Contracting a Marriage in Respect of a Person Who Has Not Reached Marriage Age

Contracting a marriage agreement in respect of a person who has not reached marriage age, as well as contracting a marriage with such person...

- shall be punishable by imposing a fine in the amount of one to two thousand calculated standard units, or by correctional labor for a term of up to two years, or by restriction of freedom for a term of up to five years.

Criminal Procedure Code

Article 24. Cases of private, private-public and public prosecution

...

3. Cases on crimes provided by Articles ... 138 Part 1 [*Rape*] of the Criminal Code qualify as cases of private-public prosecution, they are initiated upon an application of the victim of the crime or their legal representative. In case of reconciliation of the victim of the crime with the defendant and remedy of the harm caused to the victim, prosecution shall be terminated.

Comments

Criminal Procedure Code only provides procedure for application of the criminal prosecution and cannot provide new grounds for criminal liability release. Therefore, even though the reference is not explicitly made in this Article, reconciliation can only be applied in cases specified in the relevant Article of the Criminal Code. Thus, according to Article 73 of the Criminal Code the release from criminal liability through reconciliation cannot be applied to Rape cases.

State of helplessness is not defined in the law, it is only interpreted in practice of the courts – in most jurisdictions as inability, due to various reasons, to understand and/or to resist the criminal actions.

Article 13 of Family Code provides that age of marriage is 18. In exceptional cases a court may reduce the marriage age but no more than for 1 year upon a request of those who want to get married.

Resources

Criminal Code

http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=23

Criminal Procedure Code

http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=334

Family Code

http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=343

Excerpts

Criminal Code

Article 71. Release From Criminal Liability Due to Sincere Repentance

(1) A person, who has committed a crime of little or medium gravity for the first time, may be released from criminal liability with due consideration of their personality, if after committing a crime the perpetrator repented, voluntarily acknowledged their guilt, actively rendered assistance in exposing the crime, compensated the damage or made up the losses caused in some other way, as well as if there is no claim from the victim.

(2) Provisions of part 1 of this Article do not apply to ... crimes committed against the underage persons in the sphere of sexual relations... Said limitations do not apply to the underage perpetrators who committed sexual crimes.

Article 73. Release From Criminal Liability Due to Changes In the Situation

A person, who has committed a crime of little or medium gravity for the first time, may be released from criminal liability, if it is established that as a consequence of the change of conditions the person or the committed deed stopped being a public danger.

[both apply to Satisfaction of Sexual Need in Unnatural Form, including aggravated, Compulsion of a Person to Sexual Intercourse, Sexual Intercourse with a Person Who Has Not Reached the Age of Sixteen Years, , Coercing or Impeding a Woman to Marry, including under age of marriage]

Article 134. Rape

(1) Rape, that is sexual intercourse with the use of violence, with the threat thereof, as well as with the use of the helpless state of the [female] victim...

shall be punishable by imprisonment for a term of three to ten years with imposing an obligation to reside in a certain area for a term of two to five years or without such obligation.

2) Rape:

e) committed knowingly against an underage person, shall be punishable by imprisonment for a term of five

to fifteen years with imposing an obligation to reside in a certain area for a term of two to five years or without such obligation

(3) Rape:

b) committed knowingly against a person under the age of fourteen,

shall be punishable by imprisonment for a term of ten to twenty-five years with imposing an obligation to reside in a certain area for a term of two to five years or without such obligation.

Article 135. Pederasty

(1) Pederasty, that is sexual intercourse of a man with a man...

shall be punishable by imprisonment for a term of up to two years with imposing an obligation to reside in a certain area for a term of two to five years or without such obligation.

(2) Pederasty with the use of physical violence, or a threat thereof, as well as with the use of the helpless state of the victim...

shall be punishable by imprisonment for a term of three to six years with imposing an obligation to reside in a certain area for a term of two to five years or without such obligation.

(3) Action specified in Part Two of this Article, if it is committed:

c) knowingly against an underage person;

shall be punishable by imprisonment for a term of five to ten years with imposing an obligation to reside in a certain area for a term of two to five years or without such obligation.

(4) Actions specified in Part Two or Part Three of this Article, if they are committed:

a) knowingly against a person under the age of fourteen;

shall be punishable by imprisonment for a term of ten to twenty years with imposing an obligation to reside in a

certain area for a term of two to five years or without such obligation.

Article 136. Satisfaction of Sexual Need in Unnatural Form

(1) Satisfaction of sexual need in an unnatural form with the use of violence, or a threat thereof, or with the use of helpless state of the male or female victim...

shall be punishable by imprisonment for a term of two to six years.

(2) The same deed if:

- a) committed repeatedly;
- b) committed by to or more persons without collusion, or by a group of persons in collusion;
- c) caused grave consequences...

(3) Actions specified in Part One or Part Two of this Article knowingly committed against an underage person (male or female),

shall be punishable by imprisonment for a term of five to ten years.

Article 137. Compulsion of a Person to Sexual Intercourse

Compulsion of a person to sexual intercourse or to commission of other sexual actions by means of blackmail, threat of destruction of property, or with the use of material or other dependence...

shall be punishable by correctional labor for a term of up to two years, or imprisonment for a term of up to two years.

Article 143. Sexual Intercourse with a Person Who Has Not Reached the Age of Sixteen Years

Sexual intercourse with a person who has not reached the age of sixteen years...

shall be punishable by imprisonment for a term of up to three years.

Article 144. Depraved Actions

The commission of lecherous actions without the use

of violence knowingly in respect of a person who has not reached sixteen years of age ...

Chapter 20. Crimes against the underage, the family and morality

Article 162. Coercing or Impeding a Woman to Marry

(1) Forcing a woman to enter into marriage or to continue marital cohabitation, as well as preventing her from getting into marriage, fraught with violence of a threat thereof...

(2) Forcing a person who has not reached the age of marriage to inter into factual marital relations...

Criminal Procedure Code

Article 213. Criminal cases initiated upon a victim's claim

...

2. Criminal cases on crimes provided for by part one of Article 134 [*non-aggravated Rape*], Article 137 [*Compulsion of a person to sexual intercourse*]... of the Criminal Code shall be initiated only upon a claim of the victim, but in case of reconciliation of the victim with the defendant the criminal proceedings shall not be terminated.

3. A prosecutor can initiate a case on rape without a claim of the victim if she, due to physical or mental disabilities is unable to defend her rights.

4. In exceptional cases, if ... a victim in a case under Article 134 of the Criminal Code, due to a helpless state, dependence on the defendant or other reasons in unable to defend their rights an legal interests, a prosecutor can initiate a case without the victim's claim. ...Such criminal case shall not be terminated due to reconciliation of the victim with the defendant.

Comments

Article 15 of the Family Code sets age of marriage at 18 years. In exceptional cases local authorities can lower the age of marriage but no more than one year.

Resources

Criminal Code

http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8091

Criminal Procedure Code

http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8332

Family Code

http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8345

Excerpts

Incorporating changes entering into force on 11 January 2019

Criminal Code

Article 45. Release from criminal liability in view of effective repentance

A person who has committed a minor criminal offense or negligent medium grave offense, except for corruption crimes, for the first time shall be released from criminal liability if, upon committing that offense, he/she sincerely repented, actively facilitates the detection of the offense, and fully compensates the losses or repairs the damage inflicted.

...

[applies to Compulsion to sexual intercourse, presuming that none of the other crimes can be committed out of negligence]

Article 46. Release from criminal liability in view of reconciliation of the offender and the victim

A person who has committed a minor criminal offense or negligent medium grave offense, except for corruption crimes, for the first time shall be exempt from criminal liability if he/she reconciled with the victim and compensated the losses or repaired the damage inflicted.

[applies to Compulsion to sexual intercourse, presuming that none of the other crimes can be committed out of negligence]

Article 47. Release from criminal liability in view of admission by bail

1. A person, who has committed a minor criminal offense or an offense of medium gravity, except for corruption crimes, for the first time and sincerely repented, may be released from criminal liability for admission by bail on request of the collective body of an enterprise, institution or organization on condition that such person, within one year of his/her admission by bail, will not fail the trust of the collective body, avoid measures of correctional nature or break public peace.

2. If conditions of the admission by bail are not satisfied, the person shall be subject to criminal liability for the offense committed.

[applies to non-aggravated Rape, non-aggravated Sexual assault, Compulsion to sexual intercourse, non-aggravated Statutory rape, non-aggravated Depravity]

Article 48. Discharge from criminal liability due to a change of situation

A person who has committed a minor criminal offense or an offense of medium gravity, except for corruption crimes, for the first time may be released from criminal liability if it is established that at the time of investigation or trial, due to a change of situation, the act committed by that person has lost its socially dangerous nature or that person has ceased to be dangerous to the public.

[applies to non-aggravated Rape, non-aggravated Sexual assault, Compulsion to sexual intercourse, non-aggravated Statutory rape, non-aggravated Depravity]

Chapter III. Crimes againsts freedom, honor and dignity of a person

Article 151-2. Forcing to marry

1. Forcing a person to marry or to continue a forced marriage or to enter into a cohabitation without a marriage, or to continue such cohabitation, or inducing a person for that purpose to move to a territory other than that in which they reside, -

shall be punishable by arrest for a term up to six months or by restraint of liberty for a term up to three years, or by deprivation of liberty for the same term.

2. The same actions committed repeatedly or by a prior conspiracy by a group of persons, or with respect to a person who has not reached the age of marriage in accordance with the law, or with respect to two or more persons, -

shall be punishable by restraint of liberty for a term up to five years or imprisonment for the same term.

Chapter IV. Crimes against sexual freedom and sexual inviolability of a person

Article 152. Rape

1. Acts of a sexual nature connected with vaginal, anal or oral penetration into another person's body using genitals or any other subject, without the consent of the victim (rape) -

shall be punishable by imprisonment for a term of three to five years.

2. Rape committed repeatedly or by a person who previously committed any of the crimes covered by the Articles 153 to 155 of this Code, or the such acts committed against a spouse or ex-spouse or other person with whom the perpetrator is (was) in family or intimate relations, or a person in connection with the performance of this person's official, professional or social duty, or in respect of a woman who was known to be pregnant in the guilty party, -

shall be punishable by imprisonment for a term of five to ten years.

3. Rape committed by a group of persons or rape of a minor -

shall be punishable by imprisonment for a term of seven to twelve years.

4. The actions provided for in part one of this Article committed against a person under the age of fourteen, irrespective of her/his voluntary consent -

shall be punishable by imprisonment for a term of eight to fifteen years.

5. Actions provided for in parts one, two, three or four of this Article, which have caused grave consequences, -

shall be punishable by imprisonment for a term of ten to fifteen years.

Note: The consent is considered voluntary if it is the result of the free expression of the person, taking into account the accompanying circumstances.

Article 153. Sexual Violence

1. Any violent acts of a sexual nature, not involving the penetration of another person's body, without the voluntary consent of the victim (sexual violence) -

shall be punishable by imprisonment for a term up to five years.

2. Sexual violence committed repeatedly or by a person who has previously committed any of the crimes provided for in Articles 152, 154, 155 of this Code, or the commission of such acts against a spouse or ex-spouse or other person with whom the offender is (was) in family or intimate relations, or with respect to a person in connection with the performance of this person's official, professional or social duty, or with respect to a woman who was known by the perpetrator to be pregnant, -

shall be punishable by imprisonment for a term of three to seven years.

3. Sexual abuse committed by a group of persons or sexual abuse of a minor -

shall be punishable by imprisonment for a term of five to seven years.

4. The actions provided for in part one of this Article committed against a person under the age of fourteen, irrespective of their voluntary consent -

shall be punishable by imprisonment for a term of five to ten years.

5. Actions provided for in parts one, two, three or four of this Article, which have caused grave consequences, -

shall be punishable by imprisonment for a term of ten to fifteen years.

Article 154. Coercion to enter into sexual intercourse

1. Coercing a person without their voluntary consent to commit an act of a sexual nature with another person -

shall be punishable by a fine of up to fifty non-taxable minimum incomes, or arrest for a term up to six months.

2. Coercing a person without their voluntary consent to commit an act of a sexual nature with a person on whom the victim is materially or functionally dependent -

shall be punishable by a fine of up to one thousand non-taxable minimum incomes of citizens or restraint of liberty for a term up to two years.

3. The actions provided for in part one or two of this Article combined with the threat of destruction, damage or seizure of the property of the victim or their close relatives, or with the threat of disclosure of information that defames them or close relatives, -

shall be punishable by restraint of liberty for a term up to three years or imprisonment for the same term.

Article 155. Sexual intercourse with a person who has not reached sixteen years of age

1. Natural or unnatural sexual intercourse with a person who has not reached sixteen years of age, committed by an adult person...

shall be punishable by restriction of liberty for five years or imprisonment for the same period.

2. The same actions committed by a close relative or family members, by a person responsible for upbringing or taking care of the victim, or where these actions caused sterility or other grave consequences...

shall be punishable by imprisonment for a term of five to eight years with deprivation of the right to hold certain positions or to engage in certain activities for a term of up to three years or without such deprivation.

Article 156. Depravity of the underage

1. Depravity actions committed in regard of a person under 16 years of age, -

2. The same actions committed in regard of a minor child, or by a family member or a close relative, or any person responsible for upbringing or taking care of the victim...

Criminal Procedure Code

Article 26. Optionality

...

4. Criminal proceedings in the form of private prosecution shall be initiated only upon request of the individual concerned. Dropping charges by the victim, his representative in cases specified in the present Code is the unconditional ground for closing criminal proceedings.

Article 477. Concept of private criminal proceedings

1. Private criminal proceedings means proceedings which may be initiated by investigator, public prosecutor only based on the victim's application in respect of criminal offences established in:

1) ... Article 151-2 (forcing to marry), paragraph 1 of Article 152 (rape without aggravating circumstances), paragraph 1 of Article 153 (sexual violence), Article 154 (coercion to sexual relations)...

Comments

Amendments to Criminal Code and Criminal Procedure Code are entering in force on 11 January 2019. Only the amended Articles are mentioned in the Excerpts section, the ones not mentioned are same as in the current legislation.

Marriage age is 18. A person who has reached 16 years of age may request permission to marry, a court shall grant the right to marry if it is established that it is in the interests of the person. (Articles 22 and 23 of the Family Code).

Resources

Criminal Code

<http://zakon5.rada.gov.ua/laws/show/2341-14/>

Criminal Procedure Code

<http://zakon5.rada.gov.ua/laws/show/4651-17>

Family Code

<http://zakon5.rada.gov.ua/laws/show/2947-14>

Excerpts

Criminal Code

Article 65. Release from Criminal Liability due to Loss of Socially Dangerous Nature by Act or by Person Who Committed Thereof

A person, who committed a crime, may be released from criminal liability, in the instance if it is established that by the time of investigation or trial, due to change of circumstances, the action committed has lost its socially dangerous nature.

A person, who committed a crime, may be released from criminal liability, in the instance if it is established that by the time of investigation or trial, due to change of circumstances, he/she has lost his/her socially dangerous nature.

Article 66. Release from Criminal Liability due to Active Repentance

A person, who committed a first crime of a minor social danger or less serious crime, may be released from criminal liability, if he, after completion of the crime, has acknowledged their guilt, sincerely repented, actively assisted investigation of the crime, and remedied the damage caused.

[applies to Compulsion, Violation of age of marriage, Sexual Intercourse with Person under Sixteen Years of Age, Depravity]

Article 66.1. Release from Criminal Liability due to Reconciliation

A person, who committed a crime provided by Articles ... 121 (Compulsion of a Woman to Sexual Intercourse) ... Article 136 (Coercing or Impeding a Woman to Marry) ... of this Code, may be released from criminal liability, if they have admitted their guilt, reconciled with the victim and remedied the damage caused...

Chapter 4. Crimes against sexual freedom

Article 118. Rape

Rape, that is, a sexual intercourse committed with use of violence, threats, or abuse of helpless state of the victim...

shall be punishable by imprisonment for a term of three to seven years.

Rape:

d) combined with a threat of murder, —

shall be punishable by imprisonment for a term of seven to ten years.

Rape:

a) committed knowingly against a person under the age of eighteen;

b) committed knowingly against a close relative;

shall be punishable by imprisonment for a term of ten to fifteen years.

Rape committed knowingly against a person under the age of fourteen, —

shall be punishable by imprisonment for a term of fifteen to twenty years.

Article 119. Violent Satisfaction of Sexual Need in Unnatural Form

Satisfaction of sexual need in an unnatural form committed with use of violence, threats, or abuse of helpless state of the victim...

shall be punishable by imprisonment for a term of three to seven years.

The same actions:

d) combined with a threat of murder, —

shall be punishable by imprisonment for a term of seven to ten years.

Actions specified in Part One or Part Two of this Article:

a) committed knowingly against a person under the age of eighteen;

b) committed against a close relative;

shall be punishable by imprisonment for a term of ten to fifteen years.

Actions specified in this Article committed knowingly against a person under the age of fourteen, —
shall be punishable by imprisonment for a term of fifteen to twenty years.

Article 120. Besoqolbozlik* (Pederasty)

Besoqolbozlik, that is, satisfaction of sexual need of a [male] man with a [male] man without violence...

shall be punishable by restriction of freedom for a term of up to three years, or imprisonment for a term of up to three years.

Article 121. Compulsion of Woman to Sexual Intercourse

Compulsion of a woman to a sexual intercourse or to satisfaction of sexual need in an unnatural form by a person, to whom the woman was in financial, service, or other dependence...

shall be punishable by obligatory community service for a term of up to three hundred hours, or correctional labor for a term of up to two years.

The same actions fraught with sexual intercourse or satisfaction of sexual need in an unnatural form...

shall be punishable by obligatory community service for a term of three hundred to four hundred hours, or correctional labor for a term of two to three years, or restriction of freedom for a term of three to five years, or imprisonment for a term of three to five years.

Chapter 5. Crime against family, the youth, and morality

Article 125.1. Violation of Legislation on Age of Marriage

Entry into factual marital relations with a person under the age of marriage, committed after imposition of administrative penalty for the same deed...

shall be punishable by imposing a fine in the amount of twenty to thirty minimum monthly wages, or compulsory community service for a term of up to two hundred and forty hours, or correctional labor for a term of up to one year.

Marrying off a person under the age of marriage by parents or people substituting them, committed after imposition of administrative penalty for the same deed...

shall be punishable by imposing a fine in the amount of thirty to fifty minimum monthly wages, or compulsory community service for a term of two hundred and forty hours to three hundred hours, or correctional labor for a term of up to two years.

Officiating a religious marriage with a person under the age of marriage, committed after imposition of administrative penalty for the same deed...

shall be punishable by imposing a fine in the amount of fifty to one hundred minimum monthly wages, or compulsory community service for a term of three hundred to three hundred and sixty hours, or correctional labor for a term of up to three years.

Article 128. Sexual Intercourse with Person under Sixteen Years of Age

Sexual intercourse or satisfaction of sexual need in and unnatural form with a person known to the perpetrator to be under sixteen years of age...

shall be punishable by compulsory community service for a term of up to three hundred and sixty hours, or correctional labor for a term of up to two years, or restriction of freedom for a term of one to three years, or imprisonment for a term of up to three years.

The same deed committed:

- a) repeatedly or by a dangerous recidivist;
- b) by a person who has previously committed crimes under Articles 118 or 119 of this Code...

Article 129. Depraved Acts in Respect of Person under Sixteen Years of Age

Commission of depraved acts without use of violence in respect of a person known to the perpetrator to be under sixteen years of age...

The same deed committed with the use of violence or threat...

Chapter 6. Crimes against freedom, honor, and dignity

Article 136. Coercing or Impeding a Woman to Marry

Forcing a woman to enter into marriage or to continue marital cohabitation, or abducting her with intend to marry against her will, as well as preventing her from getting into marriage...

shall be punishable by imposing a fine in the amount of up to twenty-five minimum monthly wages, or compulsory community service for a term of up to three hundred and sixty hours, or correctional labor for a term of up to three years, or restriction of freedom for a term of one to three years, or imprisonment for a term of up to three years.

Criminal Procedure Code

Article 325. Initiation of a criminal case upon a victim's claim

Criminal cases on crimes provided for by ... part one of Article 118 [*Rape*], part one of Article 119 [*Sexual assault*], part one of Article 121 [*Compulsion*], Article 136 [*Coercing to marry*] ... of the Criminal Code shall be initiated only upon a victim's claim with a request for prosecution of the perpetrator. In exceptional cases, when the victim due to helpless state, dependence on the defendant or other reasons is unable to defend their right and legal interest, the prosecutor shall initiate the criminal case without the victim's claim.

Comments

Article 15 of the Family Code sets Age of marriage as 18 years for men, and 17 years for women. In exceptional cases (pregnancy, child birth, emancipation) local authorities can reduce the age of marriage for no more than one year.

Resources

Criminal Code

http://lex.uz/pages/getpage.aspx?lact_id=111457#331850

Criminal Procedure Code

http://www.lex.uz/pages/getpage.aspx?lact_id=111463#248537

Family Code

http://www.lex.uz/pages/GetAct.aspx?lact_id=104723

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