

THE PENAL ACT OF RAPE IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract

Rape as a complicated penal act that includes the usage of force, threats or promise is a phenomenon that is present in every form of society. It is influenced by many social, economic and cultural factors. Although this problematic demands much importance in the world, studies show that cases with this phenomenon are critically undervalued and underestimated.

The main goal of this scientific paper is to study the phenomenon of rape, as a highly severe act of crime from the criminal's law aspect and to compare the latter in a regional context and as a multidimensional phenomenon which affects every living society.

Furthermore, this scientific paper will analyze cases of rape in the juridical territory of the Appeal Court of Gostivar, in the years from 2014 up to 2018. The verdicts of the Appeal Court of Gostivar will be analyzed and compared with each other.

Keywords: *rape, penal law, comparative analysis, Appeal Court of Gostivar*

INTRODUCTION

Recently rape presents a very concerning and frequent phenomenon in a worldly scale and it has managed to get the attention of many studies done on this direction. Even though rape is a phenomenon that has been widely studied and analyzed, it still requires a special and continuous treatment in a regional and global aspect.

There exist a large number of reasons and factors which influence rape as a phenomena, but it is almost impossible to name all the reasons because every case is different based on the perpetrator's characteristics and the way the act is done. On the other hand it is worth noting that the conceptual bases of the penal code of the Republic of the North Macedonia consists on the notion that the penal law is the basic instrument of the juridical state in the protection of the rights and freedoms of the individual from their violent restriction which can present itself as a form of criminality or state violence.

With the development and changing of society the understandings of what is acceptable and what isn't in the sexual sphere changes. These understandings have an effect on the lawmaker to define which acts should be penalized and which ones shouldn't. This area is one of the most dynamic, most changing in the penal legislation of states. In contrast of the general notion of the penal act as an illegal, distorted and punishable act provided by law, in reality the penal act is a concrete act of robbery, violence, fraud etc. Every penal act consists of the general elements of the penal act, but in the meantime so that it distinguishes itself as a specific act that is the object of judgment, those elements must have concrete contents.

Taking into consideration the nature of this work and the importance of rape as a penal act, that of major severity and belittlement, in order to reflect in the most detailed manner, I have investigated and analyzed data in the timeline 2014-2018 in the Primary Court of Gostivar and Appeal Court of Gostivar. A bigger emphasis is put on the verdicts of the Appeal Court of Gostivar and the subjects it has processed.

1. THE UNDERSTANDING OF THE PENAL ACT OF RAPE

All human beings are born free and equal in rights and dignity, no one is privileged with more or less rights. Rape is a nonconsensual sexual act that lacks the approval of one side, with physical and psychological violence, threatening, torture, false promise and other inhuman and degrading acts. Every sexual act without the consent of one side infringes and violates deeply gender freedom and destroys the dignity of the individual. Every individual has the right to personally choose their sexual partner.

Historically women have been victims of rape, however in the past rape was considered as an evil against the husband, father or victim's brother. Thus rape protected the man's rights to guarantee a legitimate familiar line. The roots of sexual violence date back from the ancient times, as a result of the degradation of the female gender and the gender inequality, underestimating the female gender and overestimating the male gender. These relations contributed to the long history of sexual violence, especially sexual violence inside the family unit.

Sexual violence in the last decades no longer has a gender predilection and anyone can be a victim. The current penal-juridical regulation against sexual integrity defines offenses which occur against the will of one side, or offenses which infringe sexual integrity as a component of personal freedom and integrity to choose one's partner. A more specific and powerful penal-juridical defense is present in offenses against children, taking into consideration the sensitive nature of children and the consequences that will follow in normal development, not only sexual but also psychophysical.

Human rights are also internationally protected including various conventions which influence the changes in national legislations. The Universal Declaration of Human Rights proclaims: (Deklarata

universale e të drejtave të njeriut, e aprovuar nga Ansambleja e Përgjithëshme e OKB'së, dhjetorë 1948)

First article: all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Second article: prohibits in any way discrimination or not acknowledging of rights based on race, sex, language, religion, political opinion or any other opinion of the individual.

“The woman is born free and enjoys equal rights with the man in every aspect.” (The first Declaration of Woman's and Female Citizen's Rights, 1798) The Declaration of Woman's and Female Citizen's Rights defense vocally and strongly the rights of females, which does not leave space for any kind of discrimination, contempt or underestimation of the female gender.

The understanding of the penal act of rape will be treated below in a general way in the legal aspect. The sexual act is the act which is done with the will and wish of both partners, if not then

rape is present. By rape we defined the performing of sexual act without the wish, will or consent of one side which infringes and treads the sexual integrity and dignity of the partner.

The Penal Code of Republic of North Macedonia (Penal code of RNM, “Official gazette of RNM” no.142, date 13.11.2012) has incriminated and sanctioned a large number of offenses and behaviors in this sphere, which damage the freedom of deciding in the sexual relations.

Article 186 paragraph (1) of the Penal Code of the Republic of North Macedonia: *“They who with use of direct force or threats will attack the life or body of another, or the life or body of a close individual, will make them perform a sexual act will be punished by imprisonment of three (3) to ten (10) years.”* (Penal code of RNM, “Official gazette of RNM” no.142, date 13.11.2012)

2. THE PENAL ACTS IN THE TERRITORY OF THE APPEAL COURT IN GOSTIVAR DURING THE TIME PERIOD 2014-2018

Taking into consideration the nature of this work and the importance of rape as a penal act, that of major severity and belittlement, in order to reflect in the most detailed manner, I have investigated and analyzed data in the timeline 2014-2018 in the Primary Court of Gostivar and Appeal Court of Gostivar. A bigger emphasis is put on the verdicts of the Appeal Court of Gostivar and the subjects it has processed.

Firstly I wanted to reflect on penal acts of rape in whole territory of the Republic of North Macedonia during the time period 2014-2018, and then I will show data meanly from the Appeal Court of Gostivar.

Table 1. On the following table I will present all cases of penal acts against gender freedom and gender moral, specifically penal acts of rape in whole territory of the Republic of North Macedonia during the time period 2014-2018. (www.stat.gov.mk.)

Table1. Penal acts against gender freedom and gender moral (penal acts of rape), 2014 – 2018.

	2014	2015	2016	2017	2018
Penal acts against gender freedom and gender moral	49	56	39	38	There is no data
Penal act of rape	15	24	14	13	There is no data

Source: State Statistical Office in RNM.

In the year of 2014: there have been (49) penal acts against gender freedom and gender morale of which (15) cases of the penal act of rape have occurred, **in the year 2015** there have been (56) penal acts against gender freedom and gender morale of which (24) cases of the penal act of rape have occurred, **in the year 2016** there have been (39) penal acts against gender freedom and gender morale of which (14) cases of the penal act of rape have occurred, **in the year 2017** there have been (38) penal acts against gender freedom and gender morale of which (13) cases of the

penal act of rape have occurred, **in the year 2018** data has still not been processed from the State Statistical Office.

Below through **table 2** I will present data taken from Primary Court of Gostivar, cases admitted in this court for which there has been indictment whose subject is the penal act of rape and also the number adjudicated with a court verdict in this court through the time period 2014-2018 in the region of Gostivar municipality.

Table2. Cases of penal act of rape in the region of Gostivar municipality.

Penal act of rape	2014	2015	2016	2017	2018
Indictment cases	2	3	2	2	2
Adjudicated cases	3	4	2	2	1

Source: Primary Court of Gostivar

In the year 2014: (2) cases of the penal act of rape have been indicted, while (3) cases have been adjudicated, **in the year 2015:** (3) cases of the penal act of rape have been indicted, while (4) cases have been adjudicated, **in the year 2016:** (2) cases of the penal act of rape have been indicted, while (2) cases have been adjudicated, **in the year 2017:** (2) cases of the penal act of rape have been indicted, while (2) cases have been adjudicated, **in the year 2018:** (2) cases of the penal act of rape have been indicted, while (1) cases have been adjudicated.

Through **table 3**, in order to reflect in a deeper and more inclusive way, because this study's topic is based and the investigations have been orientated towards the Appeal Court of Gostivar. The Appeal Court of Gostivar is responsible of the following Primary Courts: Primary Court of Gostivar, Primary Court of Tetovo, Primary Court of Debar and Primary Court of Kicevo. Below I will be showing data taken from the Appeal Court of Gostivar for the penal act of rape during the time period 2014-2018 for the total number of indicted cases.

Table3. Penal act of rape during time period 2014 – 2018

Penal act of rape	2014	2015	2016	2017	2018
Indicted complaints against the verdicts of primary courts	3	3	7	2	5
Total number of cases during the time period 2014-2018	20				

Source: Appeal Court of Gostivar.

From the data above we can notice the number of indicted complaints being: **in the year 2014** there have been (3) cases, **in the year 2015** there have been (3) cases, **in the year 2016** there have been (7) cases, **in the year 2017** there have been (2) cases, **in the year 2018** there have been (5) cases. The most cases have been in 2016.

3. INFLUENTIAL FACTORS ON THE APPEARANCE OF THE PENAL ACT OF RAPE

a. The perpetrator's age

Age is an important characteristic of the criminal phenomenon. Many data and a court practice, also from the notes of many empirical criminological studies tell as that criminal acts and behavior is present in various ages of people. However even in this sphere certain age groups commit more offenses.(Josepf, 2000). The perpetrator's age of the penal act or penal behavior can be divided according to the positive law settings; minors and adults. Adulthood is considered from the age of 18 until the individual's death. However different faces of adulthood take part in this criminal offense. In crime literature and studies the division and categorization of the age of adults is usually done in decades e.g. divided by ten or twenty years, or less. A specific age for adulthood is between 18-25 than 26-30 and so on divided by a decade. (Josepf, 2000)

Table 4. through the table below I will show data about the perpetrator's age of the penal act of rape in the territory of the Appeal Court of Gostivar during the time period 2014-2018.

Table4. Perpetrator's age of the penal act of rape in the territory of the Appeal Court of Gostivar

The perpetrator's age	
Age of 20-25	1 person
Age of 26-30	3 persons
Age of 31-40	6 persons
Age of 41-50	7 persons
Age of 51-60	2 persons
Above 60	1 person
Total number	20 persons

Source: Appeal Court of Gostivar

b. The perpetrator's gender

In criminal literature gender is interpreted in different point of views. However, based on criminal statistics and court practice there exists a certain impression that criminality is a male occurrence. Males have absolutely dominated in many findings done by criminal experts in USA, Germany, France, England, Japan etc. however an increase of female criminal activity has been observed in recent times. It is thought that the past female was less included in societal activities hence the smaller partake in criminal offenses.(Ignjatoviq, 2001)

The female was usually occupied with the birth, growth and care of children and other family members, and less with activities outside the family which could put than in different situations and would bring forth their criminality.

Table 5. Perpetrator's gender of the penal act of the rape in the territory of Appeal Court in Gostivar

The perpetrator's gender	
Female gender	0 persons
Male gender	20 persons

Source: Appeal Court in Gostivar

c. The perpetrator's education level

Education plays an important role in the prevention of crime through school, learning programmes and extracurricular activities. The educational level plays a huge role in the formation of the human personality and making it able so they have a safer and more successful life. Enriko Feri accentuates that criminality is reduced in societies where the learning curve is higher due to the decrease of ignorance, decrease of lack of knowledge, the disappearance of bad habits etc. According to crime literature, the point of views of the relation between education and criminal activity have been expressed a long time. A person who has education acquires culture and thus the individual's bad habits are no more. (Halili, 2011, p.260)

Table 6: Perpetrators' educational level of the penal act of rape in the territory of the Appeal court of Gostivar during the time period 2014-2018.

The perpetrator's educational level	
Illiterate	3 persons
Primary education	7 persons
Secondary education	4 persons
Tertiary education (University)	1 person
Unknown	5 persons

Source: Appeal court of Gostivar

d. Victims of the penal act of rape

The worth victim means the person or group that has been damaged or facet the offense. Victimization occurs when a person is deprived of life, damage of his bodily integrity, destruction of physical and mental health and short or long term severe consequences that remain after the offense. Damage means the distraction of moral and material wealth and goods, infringing or endangering the individual and collective rights and freedoms. Usually the victim is the human being and his rights and goods. (Halili, 2011)

Studies on sexual delinquencies and sexual violence have shown that in most cases the female is the victim. Usually these females have a lower level of education, a weaker material state, harsher

living conditions, unwed or divorced and have substance abuse issue (alcohol, drugs) and other health problems.

Table 7. Data pertaining to the fact if the victim knows their abuser in the Appeal Court of Gostivar during the time period 2014-2018.

Victims of the penal act of rape	
Known	20 cases
Not known	0 cases

Source: Appeal Court of Gostivar

Table 8. Victim's gender of the penal act of rape in the Appeal Court of Gostivar during the time period 2014-2018.

Gender of the victim's of the penal act of rape	
Female	20 cases
Male	0 cases

Source: Appeal Court of Gostivar

As it can be seen from the data illustrated in the above table, we can conclude that females represent the absolute dominant group as victims of rape.

4. THE ROLE OF COURTS IN THE PREVENTION OF THE PENAL ACT OF RAPE

Courts are independent state organs that have the power of law. Courts protect human rights and freedoms, rights defined by law from the interests of the subjects. They also protect the lawfulness and constitutionality. Courts on one side protect the rights and freedoms of the citizen which are guaranteed by law, and also they complete the role of the rule of law in constitutional manner. (Krivokapiq, 2006)

The procedure before the court is regulated by law and is based upon these premises: lawfulness and legitimacy; equity of the sides; adjudicating in a reasonable time period; rightfulness; public and transparent; contradictoriness; many degrees; oral; written; direct; protective; the analysis of the evidence based on free will and economical. There are various penal acts with different importance and various courts based on their jurisdiction, it is of most importance that between the courts there is division of the matters so that every court has a specific field of work and authority, thus penal acts can be more easily divided and adjudicated. There are different criteria in order to determine a court's authorities. In general, the court's competence is a right and obligation to solve a penal matter, the report between the penal matter and the location of its

occurrence, the perpetrator's quality, and the kind of procedural penal act. Based on what was said we can see that there are certain criteria for determining of the penal court's competences: a. the kind and importance of the penal act b. the place where the court exercises the role of adjudication c. the perpetrator's quality d. the kind of penal-procedural acts. (Zejneli and Sahiti, 2017) The verdict that represents a certain action that strips the accused of guaranteed rights and freedoms represents the repressive function of the courts. However, this repressive measure in itself has a preventive nature because any penal sanction must be in accordance with the preconceived goal towards the perpetrator and their close and wide community. Sanctions should be applied within two influencing dimensions. One has to do with the perpetrator that has the sanction applied upon them and the goal is to prevent the repeating of penal acts and educational improvement. The secondary dimension has to do with the community that has the same sanction applied to it so that the community respects the juridical system and avoids committing penal acts. In penal-juridical terminology and crime terminology the first dimension is called special prevention while the second is called general prevention.

CONCLUSION

Violence, as a very serious and common phenomenon in the whole world is the main focus of many studies. Even though it seems to be much analyzed, still and maybe never the study and analysis of this phenomenon that is complex and full of consequences might not be enough.

While analyzing and looking into subjects pertaining to the penal act of rape, in the territory of the Appeal Court of Gostivar during the time period 2014-2018, I have stumbled upon these findings: Out of 20 cases, the perpetrator in all of the cases has been of male gender, being that of 20 perpetrators. We can conclude that the male gender participates the most in doing these offenses, and the lack of female participation can be contributed and reasoned by the position and role that the female holds in society, being that of a more discriminatory nature than of the male gender. Pertaining to the passive subject, that is the victim, all cases have to do with the female being the victim, with a total number of 20 females and zero males. It is almost a universal fact that females are the most common target for the penal act of rape, not only in North Macedonia, but in the whole world. Based on this statistical data we can discuss why females continue to be the dominant victim of the penal act of rape.

The act of rape in itself is a very complex crime that has a lot of consequences with huge implications and the war against this phenomenon requires a deep dive into understanding many issues and their resolution. Firstly, to fight for the prevention of sexual offences it is of utmost importance to discover the criminal factors which influence the occurrence and spreading of this type of offence, be those of economical nature, social, cultural and many others not less important. In a national level, laws should be made with severe rigorousness that define and punish sexual offences, taking into consideration higher punishments, especially against repeat offenders of this crime. In order to fight and prevent sexual offences in the form of rape, a main focus should be on a more encompassing and efficient help that victims of rape receive, be it financial or more importantly moral and psychological, because the last two areas are severely damaged in the victim and hardly, if ever, recuperate.

The state organs, beginning from the state police, public prosecution and courts are the main actors for preventing and fighting the crimes of sexual violence, especially against punishing and maintaining the punishment against the perpetrators of this heinous crime, that of sexual violence. That's why results will be achieved when these organs acquire a zero tolerance policy

without discrimination or underestimating any case that has sexual violence as its component, achieving individual and general prevention. Not less important is the phase of the execution of the penal sanction. These institutions must do whatever is in their power to resocialize the perpetrator so that they can return to society in an improved state, and not just act as a place of further criminalization. This initiative should push towards the formation of a national strategy that will raise awareness and improve the societal attitude towards the crimes of sexual nature.

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