

Consent is sexy!

We are currently observing a serious rollback against sexual and reproductive health and rights (SRHR) in Europe. Including Poland's recently increased restrictions on access to abortion and Turkey's withdrawal from the Istanbul Convention. The widespread levels of attrition^[1] in Europe suggest that states are failing the due diligence obligations they have under international and regional human rights law, both in protecting women and girls from sexual violence and providing access to justice. A comprehensive protection of SRHR, including the recognition of consent as one of its key elements, is essential to achieving gender equality. The Istanbul Convention is a milestone for Europe as it obliges its state parties to criminalize all non-consensual acts of a sexual nature. Therefore, Europe needs to take action on consent, implement consent-based definitions of sexual violence, especially rape, in legislation, institutions and policy, and fight against gender-based violence, to protect and fulfil the rights of people in all their diversity*, especially for women and girls who are the most affected.

The legal definitions for terms like rape, sexual assault, and sexual abuse vary from state to state and mostly date back to the last century. Predominantly, rape continues to be categorized according to the degree of physical violence used or threatened by the perpetrator. Furthermore, it often includes the necessity to show that the survivor was in a state of fear or helplessness and unable to defend themselves or to express their will. In many countries, when a person does not explicitly say "no", does not defend themselves, or is otherwise coerced, rape might not be considered as having taken place. The European-wide lack of consent-based definitions of sexualised violence, especially in relation to rape, leads to disastrous consequences and advantages for the offenders in cases where the survivor was not able to articulate their will.

The absence of 'no' does not imply consent. 70% of the survivors freezes during rape and are not able to defend themselves. *Consent* means actively saying yes or showing agreement otherwise. The absence of consent by the survivor must be at the heart of what constitutes sexualized violence including rape. By ignoring this, many countries de facto prevent non-consensual sexual acts from being criminalised.

According to the 2014 survey from the European Union Agency for Fundamental Rights (FRA), one in ten women in the EU (11%) has been sexually assaulted since the age of 15. Furthermore, one in 20 women in the EU has been raped since the age of 15 – about 9 million women. Persons from the LGBTQI+ community, women of colour, women with disabilities, migrant women, and/or those from deprived socio-economic backgrounds are also often at higher risk of experiencing sexual violence. Existent discrimination of these groups makes it even more difficult for affected persons to seek support after being assaulted.

For a clear legal definition of rape

Only with a legal framework on sexualised violence, including rape, based on consent can we bring more perpetrators of sexualised violence to justice.

Sexualised violence, including rape, has to be determined by a lack of consent, regardless if it is

carried out by a person directly or by a third party. Sexualised violence can occur online and offline and can happen even when sexual services are provided in exchange for goods or money, or in marriages. All acts of sexualised violence have to be criminalised - and sufficient penalties imposed.

Let's talk about consent...

Consent can be expressed both verbally and nonverbally. Consent is given freely, voluntarily and without coercion, similarly it can be revoked at any time without an obligation for an explanation. Once a person expresses that they no longer consent to an act of sexual nature, continuing that act is an act of sexual violence. Sexual acts are individually consented to. Physical signs of arousal can not be interpreted as consenting to sex. A person needs to have the mental capacity to consent to sexual acts, and cannot be in a state of unawareness - such as being asleep, unconscious or severely intoxicated. A consent-based legal framework should also take into account the particular situation of certain persons with disabilities regarding their capacity to establish free and informed consent. It is the responsibility of the person initiating an act to ask for consent.

Age of Consent

As consent needs to be informed, given freely, voluntarily and without coercion, being able to consent to sexual acts requires the adequate psychological abilities to do so.

For this reason, the EGP calls for the introduction of a minimum age of consent in criminal law. This should not be intended to govern consensual sexual activities between minors or people who are close in age and degree of psychological and physical development or maturity. For sex with a person in a position of power over the sexual partner the age of consent is always 18.

Comprehensive Sex Education

Sex education needs to be encompassing, age-appropriate, non-intercoursecentric, and sex-positive. A comprehensive sex education curriculum covers many areas and includes: teaching about consent, boundaries, and interpersonal communication in all relationships; fostering a safe space for non-judgmental discussions about adolescence, puberty, sex and sexual pleasure as well as diverse forms of sexuality;; deconstructing rape culture^[2]; offering up-to-date and factful information on safe sex, sexually transmitted infections, genital mutilation, circumcision, and data on sexual violence. All of these areas require an intersectional approach without othering, in order to be inclusive and relevant to all students regardless of their gender identity, sexual orientation, sex characteristics, disability, religion or belief, and/or ethnicity.

Because it is high time to end rape culture and to change our laws so that they can actively contribute to, rather than hinder, the eradication of gender-based violence, the European Green Party:

1. Commits to establish a consent-based standard for all EGP member parties to implement Article 36 of the Istanbul Convention - because only *yes means yes*.
2. Calls on all Member parties to actively campaign for - and if in government coalition implement -consent-based law on sexualized violence including rape in their countries.

3. Calls on the Member States of the Council of Europe to adopt an amendment to the penal code with a definition of sexualized violence including rape based on the absence of consent.
4. Calls on the Member States of the Council of Europe to also outlaw legislation that enables early and/or forced marriage.
5. Calls on the Member States of the Council of Europe and on the European Union
 - to ratify and fully implement the Istanbul Convention, especially Article 36;
 - to bring the adoption of legislation on gender-based violence to the European level, to provide easily accessible, confidential and gender-sensitive channels to report sexual violence, while ensuring the protection of reporting persons, the timely investigation of their reports and effective prosecution of any crimes;
 - to implement appropriate comprehensive sex education in schools according to the criteria mentioned above;
 - to produce scientific survey data, in order to have access to reliable and comparable figures on non-consensual sex, coordinated at the European level;
 - to implement a real training plan for health, justice, and law enforcement professionals to respond to the needs of survivors of gender-based and sexual violence and to understand the rape culture around it, to ensure the operation of enough shelters dedicated to survivors of violence and to allocate the necessary budget for these actions.
6. Calls on all actors to implement the consent-based framework within their structures, to provide training on consent and rape culture, and commit to fighting for this framework across Europe and in their foreign policy.

^[1] Attrition: When women and girls* find the courage to report rape, cases are often dropped at various stages of the legal process. Oftentimes, alleged perpetrators are not prosecuted and held accountable for their crimes. This is called attrition. P.26 onwards: <https://www.amnesty.org/en/documents/eur01/9452/2018/en/>

^[2] **Rape culture** is a concept used to describe when rape is pervasive and normalized in society. Including acts from victim blaming, sl*t shaming, and objectification of women - to catcalling, stalking, non-consensual exposure, and groping - and rape. Raising consciousness about what rape culture is and how it is pervasive at different levels of society allows for it to be tackled.