



Rape Crisis Network Europe

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Rape: Still a forgotten issue

BRIEFING DOCUMENT

For Strengthening the Linkages – Consolidating the European Network Project

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September 2003

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ISBN 0-9544803-3-3
2003

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Published in the UK by
Child and Woman Abuse Studies Unit
London Metropolitan University
Ladbroke House
62-66 Highbury Grove
London N5 2AD

Acknowledgements

We wish to thank all the Justice Departments who completed the questionnaire, and the partners in the Strengthening the Linkages Network, especially the Rape Crisis Network Ireland who have co-ordinated the wider project. This research and the network was funded by the European Commission DAPHNE programme.

Rape: Still a forgotten issue

1. Introduction

This paper is one element of a much larger project seeking to develop and strengthen links between European women's NGOs working on rape. The entire project builds on a previous Daphne Project: *Rape: The Forgotten Issue?*¹ A key aspect of the initial project was to explore attrition in reported rape cases across Europe. Attrition, in this context means the number and proportion of cases that fail to reach court and result in a guilty verdict. Cases can be lost at a number of points, for a variety of reasons: the police may not identify the attacker; the victim/witness may decide to withdraw their statement; the case may be labelled a 'false report'; police/prosecutors/judges may decide there is not enough evidence; and the case may be lost in court. This report cannot address these processes, rather it presents updated attrition data across a number of European countries.

Whilst we are able to provide data on more countries than in 2001, 14 failed to respond, and only six of those responding could provide statistics on reporting figures and numbers of prosecutions and convictions (see Table 1). Our conclusion in 2001 that many countries still cannot provide the most basic data on rape and sexual assault leads us to conclude that it remains a forgotten issue; eclipsed in the 1990s by fashionable concern about domestic violence and trafficking. As this report will show, however, whilst governments, policy makers, and regrettably many women's NGOs, were not paying attention to rape, the rates for convictions have fallen virtually everywhere, reaching a contemporary all time low in much of the EU, and beyond, as we entered the new millennium.

The data this report compiles should act as a wake up call for anyone concerned with justice, equality and human rights, since at the most fundamental of levels – protection and redress from sexual violation – most states in Europe are currently failing their female citizens.

2. Methodology

The base data comprises short questionnaires sent to Justice Ministries in all European Union member states, aspirant states, Switzerland and Norway. Information was sought on:

- Numbers of rape cases reported, prosecuted and resulting in convictions in 1998-2001.
- For countries that failed to respond to the first survey, or provided incomplete data, an opportunity to provide the same information for 1977-1997.
- Any recent research containing either national prevalence data, including unreported rapes, or analysis of the attrition process.
- Details of any major reforms during the 1980s and 1990s with respect to: criminal law on rape; courtroom procedures; guidelines for prosecutors; guidelines for police investigations.
- National provision for forensic medical examinations.

Views were also sought about barriers to successfully prosecuting rape cases and whether rape was currently on the national political agenda. Ministries were, therefore, sent variations of the questionnaire depending on what data had, and had not, been provided previously.

¹ Published as Kelly L & Regan L, 2001, *Rape: The Forgotten Issue?*, London, Child & Woman Abuse Studies Unit, University of North London, ISBN 1 85377 330 1.

Of 35 Justice Ministries, 21 returned questionnaires, some promptly, others only after multiple reminders by both the research team, and project partners in country. The non-cooperation of some states, and the absence of complete data from others, raises issues about the possibilities of tracking the most fundamental indicators of responses to violence against women, which has not only been recommended by the European Women's Lobby (2001), but also been matters of policy development during the last four presidencies of the EU.

Table 1: Justice department responses to 1998 and 2002 questionnaires

Country	1998 Questionnaire returned	2002 Questionnaire returned	Attrition data provided	Data includes minors
Austria	No	Yes	Incomplete	Yes
Belgium	No	Yes	Incomplete	No
Cyprus	Yes	No	No	-
Czech Republic	Yes	Yes	Incomplete	Yes
Denmark	No	Yes	Incomplete	Yes
England & Wales	Yes (as UK)	Yes	Incomplete	Yes
Finland	Yes	Yes	Complete	Yes
France	No	Yes	Incomplete	No
Germany	Yes	Yes	Complete	Yes
Greece	No	Yes	Incomplete	Yes
Hungary	Yes	Yes	Incomplete	Yes
Iceland	No	Yes	Incomplete	No
Ireland	Yes	Yes	Complete	Yes
Italy	No	No	-	-
Latvia	Yes	Yes	Incomplete	Yes
Luxemburg	Yes	No	No	-
Malta	Yes	No	No	-
Netherlands	No	No	-	-
Norway	Yes	No	Incomplete	-
Poland	No	Yes	Incomplete	No
Portugal	No	Yes	Incomplete	Yes
Romania	No	Yes	Incomplete	No
Scotland	Yes (as UK)	Yes	Complete	Yes
Slovenia	Yes	Yes	Complete	No
Spain	No	Yes	Incomplete	-
Sweden	Yes	Yes	Complete	No
Switzerland	Yes	Yes	Incomplete	Yes
Turkey	No	No	-	-

Note: EU member states shaded

Ten countries [England & Wales, Finland, Germany, Hungary, Iceland, Ireland, Latvia, Scotland, Slovenia, Sweden,] provided all the data for the years 1998 to 2001. The invitation to update incomplete data provided for the initial study was taken up by five of the seven countries where this applied, but none were able to provide all the data requested, and nine ministries who had not responded in 1998 did so in 2002/3. In all of these latter cases only partial data was provided. Whilst countries are more able to provide data from the mid or late 1980's onwards, in many cases it is incomplete.

Furthermore, the questionnaire requested that where national figures included offences against minors (true for 15 of our respondents), that data for adult cases only be presented: only four countries provided this data. All new and supplemental data was entered into Excel, and charts developed to present changes over time. Trend lines were plotted for each element, and changes over five year periods calculated.

Our analysis and conclusions are limited by the continued gaps in data for individual countries, and between them. Given the attention that the UN Beijing Platform for Action and CEDAW committee places on the need to collect and publish baseline data, not to mention the policy proposals at EU level on this in recent years, that these gaps persist is concerning. They limit the extent to which justice ministries, police and prosecutors, not to mention NGOs, academics and the media, can assess and reflect on the impact and effectiveness of legal and procedural reforms.

3. European research on the prevalence of rape and reporting

There has been far less research on rape and sexual assault in Europe than on domestic violence (Hagemann-White, 2001), meaning we have a weak knowledge base on the issue. Here we present information provided by justice departments on their awareness of research in their own countries.

It is widely accepted that all forms of violence against women are under-reported in official crime statistics, a more accurate picture is only possible through carefully crafted prevalence research. Only four countries were aware of such studies, and only two (from England & Wales and Sweden) were additional to those identified in 2001. This lack of new research adds to our assertion that rape remains a neglected issue. Additional information from NGO's and our own literature review for *Rape: The Forgotten Issue*, revealed that prevalence findings existed for nine European countries. Two justice departments, which responded to the current questionnaire, were apparently unaware of the prevalence research data available for their country.²

As with all prevalence studies, research findings are not consistent, partly because of variations in samples, methods and definitions of sexual violence used (Hagemann-White, 2001). Lifetime estimates range from one in ten to one in four. The conclusions in the previous study, therefore, still stand.

- Prevalence studies of rape and sexual assault remain at a low level, with limited methodological innovation.
- This should be addressed both through specific studies and integration of sexual assault into prevalence studies on other forms of violence against women.
- Findings of studies to date that most rapes are committed by known men, and may involve repeat victimisation, need to be further explored.

² Latvia: as part of the International Crime Victim Survey; Sweden: the prevalence study conducted by Prof Eva Lungren and colleagues at Uppsala University.

Table 2: European research on the prevalence of rape

Country	Prevalence of rape/sexual assault	Prevalence within domestic violence	Sample and method	Comments	Reference
England & Wales 2000	4.9% of women on at least one occasion since the age of 16.		National representative sample, 6944 women (British Crime Survey) Face to face interview, with computer aided data input		Myhill & Allen, 2002
Finland 1997		19% rape or attempted rape in previous relationships 6% in current relationship	National representative sample Domestic violence prevalence study 4955 women, postal questionnaire	A tenth sought medical help even though 50% were injured	Heiskanen & Piipisa, 1998
Germany* 1999	8.2% 'forced sex' 13.8% 'force or drugs' 25% reported sexual events that would constitute a crime		Convenience sample of 304 young women Regional	Study of sexual experiences	Krahe et al, 1999
Hungary 1999		10%	Not provided	Representative study of violence in the family	Toth, 1999
Ireland 2002	20.4% of women sexually assaulted as adults 6.4% rape		Random sample. 3118 adults Telephone interview		McGee et al, 2002
Latvia 1998	5.2% in last five years (sexual assault)		Random sample 769 women	As part of the International Crime Victim Survey	
Lithuania 1999	26.5% sexual abuse by a stranger after 16 18.2% by a known man 17% attempted coerced sex		Random sample 1010 women		Purvaneckiene, 1999
Netherlands 1992		21% 'unwanted sex' 7.4% rape	Representative sample, 1016 women Prevalence study of domestic violence Face to face interviews		Romkens, 1992
Sweden 2002	34% sexual violence since 15 (no figures for rape specifically)	19% by current or ex partner	National representative sample, 6926 women Postal questionnaire		Lungren et al, 2002
Switzerland 1994		11.6% unwanted or forced sex	Representative sample 1519 women Telephone interview		Gillioz, 1997
UK 1991	25% rape or attempted rape	Study focusing primarily on marital rape	1007 women in 11 cities Interviews		Painter, 1991

*Germany provided information on a number of research studies on sexual violence

Reporting rates across Europe

Comparing reporting rates across Europe is complex, since this has to be related to the size of the population (see Kelly and Regan, 2001, p16-19). A small comparison below between three nations illustrates that numbers reporting, when linked to population, reveal wide variations.

	Number reporting in 2001	Population in millions
England and Wales	9743	52
Germany	7891	82
Greece	170	10
Sweden	1752	9

If reporting were constant with respect to population, the Greek and Swedish figures should be relatively similar, but the country with a smaller population has a reporting rate ten times higher. Similarly, the German figure should be considerably higher than that for England and Wales, but is actually a fifth lower.

Reasons women give in surveys for choosing not to report include the following factors:

- not naming the event as rape (and/or 'a crime') oneself
- not thinking the police/others will define the event as rape;
- fear of disbelief;
- fear of blame/judgement;
- distrust of the police/courts/legal process;
- fear of family and friends knowing/public disclosure/stigma;
- fear of further attack/intimidation;
- divided loyalty in cases involving current/ex intimates;
- language/communication issues for women with disabilities and/or whose first language is not that of the country where they were assaulted.

In most academic and activist discussions reporting rates are thought to reflect the relative willingness of women to report: the extent to which they think they will be believed; their confidence in the justice system etc. Whilst these factors undoubtedly affect reporting, reflected in the falling reporting rates in Central and Eastern European (CEE) during the 1990s when state infrastructures were disrupted, the possibility that there may be variations, not just in reporting, but in the prevalence of rape across societies needs deeper exploration.

5. Attrition in reported rape cases

In this section we discuss the new and updated data from justice departments. The charts (see Appendix A) show the patterns over time for reporting, prosecutions and convictions³. We also discuss the trend analysis, although these lines are not reproduced, since they made the charts confusing to read.

We noted in *Rape: The Forgotten Issue?* (Kelly and Regan, 2001) that one would expect, especially in Western European countries, an increase in the reporting of rape from 1977 onwards (our reason for beginning data collection from this point), and that this would be accompanied by a parallel increase in prosecutions and convictions. The following factors would lead one to anticipate such patterns.

³ Whilst Spain did complete a questionnaire, there is no chart since the only data provided was the number of reports of rape to the police for the period 1989 to 2001.

- The activities of the women's movement in challenging both the taboo which silenced women and children and stereotypes surrounding how rape was understood.
- The emergence of new support services such as rape crisis lines, self help groups, women's self-defence courses, women's counselling projects and sexual assault centres based in hospitals.
- Legal reform in the 1980s and 1990s, which widened the definition of rape in various ways and removed discriminatory aspects, such as the exclusion of rape in marriage, and evidential requirements that distinguished rape from all other criminal offences.
- New training and guidelines in some countries for police, prosecutors and judges.
- Media attention, through both newspapers and visual media, especially popular drama and soap operas, reflecting the new understandings referred to above.

However, as this section will demonstrate, these predicted patterns are not reflected in the national official statistics. We should make some caveats here, however, since all studies of official statistics reveal complex counting rules and recording methods which mean they cannot be taken at face value: for example, there are cases reported to the police which are never recorded. We are not in a position to comment about these issues, but acknowledge that there may be inaccuracies in the data.

The country data

Complete data for the period 1977 to 2001 is available for only five countries (Finland, Germany, Ireland, Scotland and Sweden), data for Hungary and Slovenia is almost complete and England & Wales is complete for the period 1985 to 2001. This group of countries is discussed first because of the relative completeness of the data sets. When looking at the charts readers should note both the patterns over time, and the actual numbers of cases (both sets of information appear on the charts).

Finland: Chart 1

Whilst reporting increases from 305 cases in 1977 to 459 in 2001, there is not an unbroken rise; reporting fell between 1981 and 1984, and reached a lower plateau for the following four years. The rate of increase is also noticeable from 1996, although in 2001 there was a drop of 21 per cent. The trend overall is upwards. The level of prosecution is low at around a third through to the mid 1980s, falling to a low of 10 per cent in 1997. The increase to 21 per cent in 2001 is a product of a lower reporting figure and a slight increase in prosecutions since 1998. The majority of prosecutions in Finland result in convictions. Whilst the overall trend in prosecutions and convictions is down, the most recent data document an increase from 10 per cent in 1999 and 2000 to 16 per cent in 2001.

Germany: Chart 2

The number of reported rapes in Germany fell from 1984 to 1990, but increases from this year, although with year on year variation. This trend accelerates sharply with a 16 per cent increase between 1997 and 1998 although this decreases slightly in 1999 and 2000 before rising again in 2001. That said, however, the large increase one would expect following reunification, which almost doubled the population, is not evident in these figures.

Prosecutions and convictions broadly follow the same pattern as that seen for reporting with overall trends for all three slightly upwards. There is also a marked increase in 1997, partly reflecting a peak in reporting that year but the higher level of both prosecutions and convictions is sustained, despite a slight fall in the number of reported cases. From 1977-1992 an average of a quarter of cases were prosecuted, but this falls to a fifth until 1997, during 1998-2001 a higher rate of prosecutions is evident, averaging close to a third. The conviction rate has also increased during this period to a quarter of all reported cases.

Ireland: Chart 3

Reporting is relatively stable from 1977-1987, and then begins a more rapid increase⁴, with a couple of single year falls, which are recovered in the subsequent year. The numbers are relatively small, however, compared to many other countries, partly to do with the population of Ireland. There has been a fall in the rate of prosecution overall, with variation year on year, from two-thirds in the 1970s to an average of a third in 1998-2000. What is disturbing about the Irish conviction rates is the fluctuation year on year and the extremely low rate of 1-2 per cent from 1993-2000. The overall trends are that whilst prosecutions have risen alongside reporting, convictions have fallen in both percentage and absolute terms. Ireland has the lowest conviction rate among countries providing data.

Scotland: Chart 4

Reporting in Scotland rises consistently, with the exception of 1982-1983, whilst both prosecution and convictions remain relatively constant, also reflected in trend lines. The increase in reporting, therefore, is not reflected in the other two measures, resulting in a decline in rates of prosecution from a third in the 1970s to a tenth in 1998-2001, and a similar decline in the conviction rate from an average of 20 per cent in the late 1970s to 6 per cent in the four most recent years.

Sweden: Chart 5

The Swedish data shows a progressive rise in reporting from 1977 to 1990, a steep peak in 1991-1992, followed by a decline and levelling off until 2001. The overall trend in reporting is upwards. As with Scotland the numbers and trends for prosecutions and convictions are flat, especially with respect to convictions. This too results in declining prosecution and conviction rates: from an average of 22 per cent prosecuted between 1977-1997, to an average of 13 per cent in 1998-2001; and from a conviction rate above 10 per cent for the earlier period to seven per cent for 1998-2001.

Hungary: Chart 6

Data is only complete here for 1981-2001, and the decline in reporting noted in the earlier report continued, although a rise is evident in the data for 2001. There is a far higher prosecution rate than in many EU countries, over three-quarters of cases up to 1989, falling to just under two-thirds for 1998-2001. Conviction rates were close to those for prosecution until 1989, falling to 1993, and then returning to previous levels for much of the late 1990s. The trend overall is downwards on all three sets of data, and slightly more pronounced for prosecution and convictions. The conviction rate is one of the highest in Europe, even in the most recent period it averages over half (54 per cent).

Slovenia: Chart 7

The data is virtually complete for Slovenia, and the new data reverses a downward trend on all measures in the 2001 report. Reporting has risen considerably since 1997, although the pattern of a decreasing proportion of prosecutions and convictions evident in many Western European countries is notable from the late 1980s. Prosecutions took place for the majority of cases between 1983 and 1989, but had fallen to less than third in 1998-2001. Similarly the conviction rate was around 50 per cent in the mid 1980s, but falls to an average of nine per cent in 1998-2001. The overall trends reflect this with reporting increasing and prosecutions and convictions falling.

England & Wales: Chart 8

The data set here is complete, but only from 1985. Perhaps more than in any other country the patterns are clear and consistent, year on year. Reporting rises each year, prosecution by a little, but nowhere near matching the increased reporting, and convictions remain virtually

⁴ There is some suggestion that part of this may be attributed to the reporting of historic sexual abuse cases, which increased markedly in the 1990s.

constant in numeric terms. As a consequence the rates of prosecutions and convictions fall each year in the data series: around 40 per cent were prosecuted up to 1993, falling to just over a quarter for the period 1998-2001; similarly the conviction rate begins at 24 per cent in 1985, falling to all time low of six per cent in 2001.

The next series of charts all have significant missing data, meaning that some areas cannot be addressed at all, and/or caution is needed interpreting trends over time.

Austria: Chart 9

Prior to 1990, data is only available for the three years 1977, 1983 and 1987 and no pattern is discernable, with conviction rates starting at 10 per cent, decreasing to 7 per cent and increasing to 15 per cent respectively. Complete data is available for 1990 to 1997 with prosecution data missing for 1998 to 2000. The trend lines, plotted for the period 1990 onwards, show relatively flat trends for reporting and convictions, albeit that the year-to-year patterns vary somewhat, and a slight increase in prosecutions. The conviction rate throughout the 1990s has been 20 per cent or above.

Czech Republic: Chart 10

Here we only have data on prosecutions for the whole of the research period, with data on reports and convictions from 1989 onward, although conviction data is missing for 1998 and 1999. The trend line for prosecutions over the whole period shows a slight but steady decrease overall. Trend lines for 1989 onwards show a steady decline in reporting with a similar pattern in prosecutions. Over three-quarters of reported rape cases are prosecuted, but only a quarter result in convictions. Conviction rates also decline, and in terms of trends to a somewhat greater extent. The decrease in reported cases, however, means that the conviction rates in 2000 and 2001 (28 per cent and 25 per cent) are higher than many of the previous years.

Iceland: Chart 11

Complete data is only available for the period 1989 to 2001. Since the raw numbers are very small any year on year change appears as a peak and trough. The trend lines however demonstrate slow but steady change over time, with reporting, prosecutions and convictions all declining. The decline in conviction rates can be seen in an average of 41 per cent for the period 1989 to 1992, falling to 21 per cent for the period 1998 to 2001.

Latvia: Chart 12

Data for the whole period is only available for convictions, and whilst they decline in numbers over time, without reporting data it is impossible to know if there is a linked pattern. Complete data is available for 1993 to 2001 and trend lines for this period show a decrease in reporting with relatively unchanging prosecution and conviction. As a result, conviction rates rise over this period with a declining attrition rate. Fifty per cent of reports resulted in a conviction in the period 1993 to 1997 with 60 per cent doing so in the period 1998 to 2001.

Poland: Chart 13

Complete data is only available for period 1980 to 2000, although prosecution and conviction data is available for 1977 to 1988. A perplexing aspect here is that from 1994 prosecutions exceed reports by several hundred a year. Meaning that trends for both these figures are not reliable. The trend for conviction rates is down relative to prosecutions, and the gap between the two more than doubles between 1977 and 2001.

Portugal: Chart 14

No data is available for prosecutions and data for reporting is only available for 1993 to 2001. The trend lines show a decrease in reporting over this period. Convictions have fallen from 1994, and the conviction rate falls from an average of 22 per cent for 1993 to 1997 to an average of 17 per cent for 1998 to 2001.

Switzerland: Chart 15

We have no prosecution data, and only both reporting and convictions for 1983-2000. Reporting falls between 1990-1994, and then climbs again, and reaches higher number in 1999 and 2001. The trend over time, is however, flat. The variation in convictions year on year is less pronounced, although here a very slight trend upwards is discernable. Conviction rates for 1983-1992 average 21 per cent, for 1993-1997 27 per cent and for 1998-2000 24 per cent.

The final five charts contain very limited data.

Belgium: Chart 16

Primary data here is for convictions, with numbers reporting for 1994-2000, and no prosecution data. Reporting increases steeply for every year but 2000, and the number of convictions only rising slightly through the entire period. The conviction rate drops from 27 per cent in 1994 to 16 per cent in 2000.

Denmark: Chart 17

Although data for reporting and prosecutions was available for the period 1979 to 2001, no data on convictions was provided. The trend line for reporting increases very slightly over this period whilst for prosecutions it decreases leading to a widening gap in the later period.

France: Chart 18

No data on prosecutions was provided and data for reporting was only provided from 1995 onwards. The data also relate to the category of 'serious sexual assaults'. As conviction data was provided for most of the research period a trend line was plotted that shows a slight, but steady, increase in convictions, a pattern different from almost all other countries. Reporting also increases over the period for which data was available. The conviction rate for the period 1995-1997 averaged 21 per cent, whereas for 1998-2001 this rose to 32 per cent.

Greece: Chart 19

No data on prosecutions was provided and data on reporting was only available from 1988 onwards. Conviction data was not available for 1999 onwards. Trend lines for both are flat, with a very small decrease in reporting. The raw numbers are low.

Romania: Chart 20

Only data on reports and prosecutions for the period 1997 to 2001 was available. In this short period there is a slight decrease in reporting with a similar pattern discernable in prosecutions.

No chart has been produced for Spain as only data on reporting for the period 1989 to 2001 was provided. Despite variations in individual years, the trend overall is a steady decline in reports of rape.

Reflections

Whilst some of the patterns and trends noted in the 2001 report are continued in the more recent data, there are also some interesting changes worth noting.

- Whilst we have more data than in 2001, it is not complete in most instances, meaning that many European countries lack the most basic mechanism for tracking justice system responses to reported rape. This in turn means that the impact of legal and procedural reforms cannot have been monitored, let alone evaluated.
- England & Wales, Finland, Ireland, Scotland and Sweden share a pattern of increasing attrition, with increased reporting and declining conviction rates over decades.

- The pattern of declining reporting throughout the 1990s found in most CEE countries in the initial report, is reversed in 2001, but this would need to be sustained over a longer time period before any firm conclusions are drawn.
- Prosecution rates vary markedly across Europe from over half of reported cases to a tenth.
- In a number of countries most prosecutions result in convictions, but this can fall to as much as a quarter in others.
- European countries with adversarial legal systems have the highest attrition rates, but Sweden also appears in the group with conviction rates below ten per cent for 1998-2001 (England and Wales, Ireland, Scotland, Sweden).
- German speaking countries have conviction rates of 22-25 per cent for 1998-2001.
- The conviction rate has fallen for most of Europe since the 1970s, and no country had an increase in convictions that exceeded an increase in reporting.

One can conclude, therefore, that legal reform and changes in the investigation and prosecution of rape have had little, if any, impact on convictions, and more than this in many countries these processes have occurred during a period when the proportion of prosecutions and convictions has fallen, sometimes dramatically. Table 3 demonstrates this comparing average conviction rates across three five year time periods; the only exceptions to declining conviction rates are the Czech Republic, Germany and Latvia, although it is only in Germany where there is no confounding with falling reporting rates. The table also shows that where data is available for 1977-1981, the decreases over time are frequently more pronounced.

Table 3 Conviction rates compared over time

Country	1977-1981	1993-1997	1998-2001	Change over time
Austria*		25%	22%	-3%
Belgium*			16%	
Czech Republic**		22%	27%	+3%
England & Wales	30%****	10%	08%	-22%
Finland	24%	13%	11%	-13%
France			32%	
Germany	18%	17%	25%	+7%
Greece		20%		
Hungary	81%	53%	54%	-27%
Iceland		25%	21%	-4%
Ireland*	09%	02%	01%	-7%
Latvia		50%	66%	+16%
Norway		15%		
Poland*		49%	45%	-3%
Portugal		22%	17%	-5%
Scotland	20%	08%	06%	-14%
Slovenia***	25%	11%	09%	-16%
Sweden	11%	08%	07%	-4%
Switzerland*		27%	24%	-3%

* 1998 to 2000 only as figures for 2001 were not available

** 2000 to 2001 as conviction figures for 1998 and 1999 were not available

*** additional data has enabled recalculation of figures in Kelly and Regan, 2001.

**** Conviction rate in 1977 32%

Barriers to successfully prosecuting rape cases.

NGOs and social researchers have pointed to a range of reasons that act as barriers to prosecuting rape, especially the continued culture of scepticism within which women's (and children's) accusations are received (Frohmann, 1991; Kelly, 2002; Kersetter, 1990) and the ways these ideas have been encoded in law, making rape a crime subject to unique evidential requirements (Schulhofer, 1998). Whilst many of these special legal rules have been removed from statute law, their legacies remain. We sought the views of Justice ministries as to what they regarded as the most significant barriers to prosecutions. Table 4 summarises these, with those reported in the earlier study shaded.

Table 4: Barriers to successful prosecution

Barrier	Justice Department
Burden of proof/limited evidence/lack of evidence	Cyprus, Czech Republic, Finland Hungary, Iceland Slovenia, Spain Sweden, Switzerland
Under-reporting of rape	England & Wales, Germany Portugal, Romania, Spain
Unwillingness/victim withdrawal	Finland, Germany, Hungary, Sweden
Lack of training and/or understanding of rape within police forces	Belgium, Finland, Latvia
Undermining credibility of victim/victim blame	Hungary, Malta, Latvia
Conflict for victim/or threats if alleged offender is family member	Germany, Portugal, Spain
Difficulties for victims dealing with the criminal justice system	Czech Republic, Greece
Lack of services nationally for first response to rape/lack of support for victims	England & Wales, Hungary, Sweden
Difficulty of assessing victims credibility/ testimony	Germany, Slovenia, Spain
Delay in reporting to the police, including loss of evidence	Ireland, Spain
Inadequate legal procedures	Czech Republic, Hungary
Inadequate forensic medical facilities/ resources/skills	Belgium, Latvia, Malta
Non-identification of offender	Iceland
Long delays in court proceedings	Ireland
Low public awareness	Slovenia
Limited incentives for prosecutors	England and Wales

Unsurprisingly, many of these issues relate to details and technicalities of law and procedure, rather than a more critical engagement with the social construction of rape. However, what is also clear is that many could be addressed with minimal resources and political will: it is possible to improve forensic practice; to provide support for victims/witnesses; to improve procedures (Kelly, 2003a; 2003b). And most importantly it is possible to approach rape investigations seeking to build/develop evidence. The most obvious attempts internationally in this respect come from North America, where the focus has shifted to a) recognition that the perpetrator is likely to be known and b) seeking evidence that supports a complaint rather than looking at what undermines it (Archambault & Lindsay, 2002; Kelly, 2002; Vasschs, 1994).

That so little investment – financial, intellectual, political – has been made in the field of sexual assault in Europe during the 1990s, underscores our contention that it remains a neglected and, in some senses, forgotten issue. The next section shows that this also applies to legislative and procedural reform.

6. Recent changes in legislation, policy and guidelines

Seven countries reported changes in the statute law relating to rape in the 1980's, and thirteen in the 1990's. There was far less consistency here, with some reflecting differences between adversarial and investigative legal systems. Apart from procedural differences in how criminal cases are dealt with, most countries with investigative systems define the crime of rape in terms of force, whilst in adversarial systems the absence of consent tends to be the defining feature. However, both areas - force/threat/resistance and consent - tend to play a part in the prosecution process. Some commonalities do emerge though, with eight countries either making rape a gender-neutral offence or including male rape in the legal definition, and seven countries removing the rape in marriage exemption. The next most common changes are extending the definition to other forms of penetration, and in the case of Germany to define the crime itself more broadly. In four countries reform has taken rape out of the arena of crimes against morality⁵ and into crimes against the person/sexual crime. Three countries have changed the force/resistance requirements, and three the routes by which a prosecution can be mounted (in two cases making it a state responsibility and in one allowing women to make their own complaint in cases of marital rape). Other less common changes include: restrictions on sexual history evidence; reviews of sentencing; introducing degrees of sexual assault; allowing NGOs to be party to the case; lowering the age at which perpetrators can be charged; and stopping perpetrators being able to cross-examine the victim/witness in the court case.

The question as to whether the crime of rape should be 'gender neutral' is an interesting one, and has been recently discussed in the review of sexual offences law for England and Wales (Home Office, 2000). Whilst there is no question that men and boys can be, and are raped; the more interesting question is whether women can perpetrate it? The assault that comprises rape is, in the main, one that uses the penis as its weapon, and thus implies that it is a crime perpetrated by men. Whilst objects are used in some assaults, and these can be amongst the most violent and degrading offences, again it is mainly men who do this. To make the crime 'gender neutral' to cover a small number of cases seems to detract from the core of the crime and its motivations. This conundrum was resolved in the UK (Home Office, 2000) by suggesting that the crime of rape be defined in terms of any form of penetration by a penis of a woman, man or child and a new gender neutral offence of 'sexual assault by penetration' introduced to cover sexual assaults with objects. These are now clauses in the Sexual Offences Bill introduced in 2003.

The question as to whether the law should be cast in terms of levels of rape/sexual assault has exercised many in the English-speaking world, especially in the USA and Canada. Few European countries seem to have chosen this route, apart from Finland. The arguments against it have been that it explicitly seeks to distinguish between 'more' and 'less' serious rape, often on the basis of factors such as whether the parties knew each other, use of a weapon etc. These are extremely poor predictors of 'seriousness', since the meanings and impacts of sexual violation are more complex than variations in relationship and context. That said, however, it is clear that distinctions about 'seriousness' are implicit in the decision making of all practitioners in the criminal justice system, from whether the investigation should be pursued through findings of guilt and sentencing, and especially in what are considered aggravating and mitigating factors. Too often these procedures and decisions rest on common sense ideas that reinforce the notion of 'real rape', often in contrast to the testimony of the complainant, and the evidence of the impacts the assault has had.

⁵ This appears to still be the case in Hungary, Italy, Turkey.

The most common changes, which emerged over the last 20 years, include:

- Eleven countries have made rape a gender neutral offence or included rape of men in the legal definition;
- Eleven countries have removed the rape in marriage exemption;
- Eleven countries have extended the definition to include other forms of penetration.

Table 5 summarises these changes and includes more recent reforms. The failure to harmonise the legal framework across European member states continues to make comparative studies such as this extremely problematic.

Table 5: Changes in rape law in European countries 1980-2003

Country	Year	Changes
Austria	1989	- language of rape and sexual assault - gender neutral - rape in marriage - less strong resistance requirement
	2001	- increase in sentencing if assault leads to death - widened definition, forms of penetration
Belgium	1989	- new definition - gender neutral
Cyprus	1994	- rape in marriage
	2001	- male rape
Czech Republic	1992	- sentencing range decreased
England & Wales	1993	- under 14 boys can be charged
	1991	- male rape
	1993/7	- rape in marriage
	1999	- end to cross examination by accused
	2003	- bill revising all sexual offences law
Finland	1998	- gender neutral - lower requirement of force/threat
	1999	- sex not moral crime - three degrees of sexual assault - a state prosecution for higher two offences
Germany	1997	- rape in marriage - gender neutral - widened definition to include the exploitation of vulnerability and dependence
Greece	1984	- widened definition to include sexual assault
Hungary	1997	- gender neutral - rape in marriage
Iceland	1992	- widened definition
Ireland	1981	- exclusion of sexual history evidence - rape in marriage - widened definition, forms of penetration - resistance requirement removed - review of sentencing
	1990	- further widening of definition - under 14 boys can be charged - extended restrictions on sexual history evidence
Italy	1989	- women's groups can be parties to case
	1996	- crime against person - defined as 'sexual violence'

		- six month window to report, but if do cannot withdraw
Latvia	1999	- increase in sanctions
Luxembourg	1992	- extended definition, forms of penetration
Macedonia	1997	- rape in marriage
Portugal	1998	- male rape
Romania	1996 1997	- increase in sanctions - male rape
Scotland	1986 1989 1995 2001	- restriction of sexual history evidence - rape in marriage - further restriction of sexual history evidence - removal of force from definition
Slovenia	1995	- male rape - marital rape a state offence
Spain	1989 1995 1999	- introduced concept of 'offences against sexual freedom' - rape in marriage - widened definition - increase in sentencing - widened definition
Sweden	1984 1998	- gender neutral - widened definition, forms of penetration
Switzerland	1992	- rape in marriage

Note: Table includes information provided by both Justice Departments and NGO's from the earlier research.

These extensions of the definition of rape confirm that one would expect increased reporting figures throughout the period of our study, and especially towards the end of the 1990s, since more forms of behaviour are included within the crime.

Procedural reform

Although five of our respondents outlined procedural changes in the courts in the 1980's, this was covered in the original report (see Kelly and Regan, 2001, p27-29). Eleven also reported changes in the 1990's, most of which had already been documented (op cit), with the majority of these reforms applying only to one or two countries. Procedural forms reported include:

- Introduction of video and other forms of technical equipment to enable the victim/witness to be cross-examined outside of the court room.
- Introduction of screens in courts to enable victim/witnesses to give evidence without facing their attacker.
- Anonymity for the victim/witness.
- Removal of all unnecessary persons, including the alleged offender, whilst the victim/witness gives their evidence.
- Removing the right of the accused being able to cross-examine the victim/witness.
- The right of victim/witnesses to have a support person present whilst they give evidence.
- The right to legal assistance before, and representation during, court cases.
- Allowing NGOs to be party to the case.

There is no common 'good practice' across Europe with respect to measures that support and enable complainants to give their best evidence in court, which protects their dignity and integrity, nor limits the extent to which they can be humiliated and exposed to further harm.

Changes in guidelines for prosecutors

Only two countries reported changes during the 1990's: England and Wales instructed prosecutors to keep up to date with changes in the law and, on the federal level, Germany issued instructions to prosecutors to show special consideration for the victim's concerns when ordering a forensic examination. The case of Germany highlights one of the difficulties in reporting on changes in this area. As it has a federal system, prosecutors are subject to guidelines and regulations issued on the Lander level. Switzerland reported that they were unable to answer this question as they have 26 procedural codes – again as part of a federal system. Whilst regional autonomy is an important principle in a number of European countries, one has to ask whether procedures that seek to ensure and uphold basic human rights should be so subject to geographical variation.

Latvia reported a major change in how cases are handled in their criminal justice system during the 1990's. Prior to 1994 rape cases were started and examined by the prosecutors' office, after 1994 cases were initiated and investigated by the police, with prosecutors only handling the later stages of the investigation.

Changes in guidelines for police investigation

Only two countries reported changes in guidance for police investigation of rape and sexual assault in the 1980's: Sweden introduced a mandatory forensic examination in all reported cases; in England & Wales advice was issued to all police forces (n=43) to create rape examination suites in which forensic examinations could be undertaken, and to ensure specialist training for police officers.

A similar pattern was found for the 1990's with only two countries reporting changes: Ireland introduced new powers of detention and new procedures for collection of forensic evidence; Sweden issued an instruction that each police station must have a division that concentrates on sexual crime. Germany noted that guidelines are constantly updated by respective Landers. England and Wales also noted that, following an inspection of police and prosecutor practice (HMCPSI, 2002) in reported rape cases, an action plan has been developed, which includes the national centre for policing excellence producing a national investigative code.

Forensic medical examinations

In the recent questionnaire we explored for the first time whether there were any centres, or mobile teams, that provide forensic examination and crisis intervention, often referred to as Sexual Assault (Referral) Centres (see also Kelly, 2003a, 2003b). Countries reporting that this provision exists in several, or most major cities (or were in the process of extending such provision) were: Austria; Denmark; England & Wales; Finland; Hungary; Iceland; Spain and Sweden. Other countries with less developed provision were Latvia and Greece. Four other countries reported specialist provision for forensic medical examinations but for all victims of crime, with most are linked to or located in hospitals.

7. Reversing the neglect of rape and sexual assault

This update on attrition and responses to reported rape in European countries confirms that rape and sexual assault continue to be neglected areas in government and institutional responses to violence against women. We would argue that this limited attention is one of the factors underpinning the widespread increase in attrition across Europe. There is no doubt that change, in legislation, policy and practice follows from an issue gaining attention at the highest political levels nationally and internationally. During the 1990's the issues that exercised

national governments and the EU were domestic violence and trafficking, and even within these issues the relevance of sexual violence was underplayed.

As we enter the new century, less than half of Justice ministries (n=8) responding to our survey thought that rape of adults was high on their national political agenda. But there are some signs of change and development, which can act as spurs for a wider and more concerted effort to reverse the recent neglect of rape and sexual assault.

England & Wales

Following a joint inspection of police and prosecutor responses to reported rapes (HMCPSI, 2002), the government published an action plan in July 2002 with the overarching aim of improving the conviction rate for rape. In 2003 a Sexual Offences Bill was put before parliament, which re-writes all law on sexual offences.

Germany

The Federal Ministry of Justice intends to further strengthen protections for victims of sexual offences within current reform of criminal procedure. These changes will improve the victim's position in terms of participation in the proceedings and their legitimate interest in experiencing redress and satisfaction. Special attention is being given to the issue of sexual assaults against disabled people.

Iceland

Recent debates have resulted in increased sentences and various legal amendments.

Scotland

Several parliamentary debates, a report and renewed attention to whether the law and the criminal justice system properly protects victims of sex offences, also recent changes in the law, and high court decisions.

Sweden

The statute law on sex crimes is presently being re-written.

In all these countries, apart from Germany, the increases in attrition have been publicised by women's organisations, and used as a campaigning tool with the media and politicians: in the case of Iceland using *Rape: The Forgotten Issue?*

Recommendations

Whilst few of the recommendations made in the previous study have been acted upon, we revisit and adapt them, in light of both new findings and other developments at European and international levels.

- Women's NGOs should draw attention to declining conviction rates, as one way to move the issue of rape into the political arena.
- The EU should pick up this issue as one indicating a failure across much of Europe to address violence against women, and ensure that women's human rights are upheld.
- Data on the numbers of rapes reported, prosecuted and resulting in convictions should be one of the key areas in any indicators on violence against women agreed at EU level. Justice departments should collect, collate and publish data on reported rapes, prosecutions and convictions on an annual basis. This information should be analysed nationally and regionally.

- The limited improvement in responses to reported rapes should be addressed by the UN Special Rapporteur, and in the CEDAW committee examinations of reports by European countries.
- Research exploring the points at which cases are lost and dropped, and why, should be undertaken, and within this attention devoted to those countries where conviction rates have increased.
- Greater examination at EU level of what constitutes good practice in responses to rape.
- Commitment by governments to evaluate recent and new legal and procedural reforms, including the perspective of victims/survivors.
- Any new prevalence studies on violence against women (and domestic violence) should include questions about sexual assault.

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Other RCNE reports available:

Good Practice in Medical Responses to Recently Reported Rape, Especially Forensic Examinations, a Briefing paper for the Daphne Strengthening the Linkages Project, carried out by Prof. Liz Kelly and Linda Regan of the Child and Woman Abuse Studies Unit, London Metropolitan University.

Training Models and Accreditation Strategies – carried out by the RCNE and based on data from our European partners.

Best Practice Guidelines for NGOs supporting women who have experienced sexual violence – carried out by the RCNE and based on data from our European partners.

Country Reports from a number of members, namely: Czech Republic, Denmark, England and Wales, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Scotland, Sweden, Turkey.

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Appendix A: Country Charts

Chart	1	Finland
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