

Combatting Rape: A Critical Analysis of France's National Legal Frameworks Through International and European Standards

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INTRODUCTION	3
1. INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORKS: FOUNDATIONS FOR COMBATting VIOLENCE AGAINST WOMEN	5
1.1. A CONSTRUCTION OF LEGAL PROTECTION AGAINST RAPE THROUGH THE CEDAW, THE ISTANBUL CONVENTION, AND ECTHR JURISPRUDENCE	5
1.1.1. CEDAW and Rape	7
1.1.1.1. The Establishment of the Link Between Discrimination Against Women and GBV	7
1.1.1.2. The Necessity of Adopting a Consent-Based Definition of Rape under CEDAW	8
1.1.1.3. Overcoming Gender Stereotypes with General Recommendation No. 33	11
1.1.2. Istanbul Convention and Rape	11
1.1.3. ECtHR Jurisprudence Regarding Rape	13
2. NATIONAL LEGAL FRAMEWORK IN FRANCE: ASSESSING COMPLIANCE WITH INTERNATIONAL AND EUROPEAN STANDARDS ON RAPE	18
2.1. AN AMBIGUOUS LEGAL FRAMEWORK FOR PROTECTING AGAINST RAPE: INSUFFICIENCIES IN LEGISLATION, DISCRIMINATORY PRACTICES, AND NARROW INTERPRETATIONS	18
2.1.1. Evolution of Provisions Regarding Rape in France	18
2.1.2. Insufficiencies in Legal Provisions: The Force-Based Definition of Rape	20
2.1.1.1. Hurdles in Proving Rape as a Consequence of Forced-Based Definition	21
2.1.3. Secondary Victimisation in Investigation and Judicial Processes Contradicting International and European Norms	23
2.1.4. A Restrictive Vision of Rape Within the French Judicial System	24
2.1.4.1. Understanding the French Judicial System: Powers and Jurisdictions	24
2.1.4.2. ‘Correctionnalisation’ of rape as a consequence of narrow interpretation of its definition	26
CONCLUSION	28

INTRODUCTION

*“Pour un viol, il faut un couteau, un pistolet, etc.”¹
(For a rape, you need a knife, a gun, etc.)*

- Ivan Levaï, 6 October 2011, France Inter

Rape, one of the gravest forms of gender-based violence (GBV), exemplifies the deeply entrenched inequalities and systemic discrimination that women face globally. It reflects not only individual acts of violence but also the pervasive patriarchal norms that underlie social structures, reinforcing male dominance and the subordination of women. As UN Special Rapporteur on violence against women stated in her report entitled ‘Rape as a grave and systematic human rights violation and gender-based violence against women’, “rape is rooted in patriarchal beliefs, entitlement, power and male domination, all of which foster an environment in which it is rampant and normalised” (Šimonović and Hassan, 2020).

Thus, the nature and extent of rape should be understood not merely as isolated incidents, but as also forming part of the broader framework of persistent patriarchal norms and structures. These norms perpetuate gender hierarchies through both overt violence and subtle discrimination, normalising male control over women's bodies and restricting their autonomy.

A notable manifestation of this persistence is the intransigent stance on maintaining force-based definitions of rape, which require evidence of physical resistance or force.² **This approach suggests that a woman's resistance is necessary for an act to be classified as rape, aligning with traditional views that place the burden on women to physically off their assailants.** Consequently, the continued use in many states³ of such definitions signals resistance to progressive reforms aimed at challenging entrenched patriarchal norms. By maintaining these traditional power dynamics, such definitions indeed obstruct advancements toward gender equality and respect for women's autonomy.

Given this critical interdependent connection between rape and patriarchal norms, France's adamant stance to maintain the force-based definition in **Article 222-23 of its Penal Code**,⁴ along with its recent alignment with the block against a consent-based definition of rape in the first ever EU Directive on combatting violence against women and domestic violence of the European Parliament and the Council of the EU, proposed by the Commission, (Malingre, 2023), which aims to recognise it as a Euro-crime under Article 83 of the Treaty on the

¹ Le Magueresse, C. (2012). Viol et consentement en droit pénal français: Réflexions à partir du droit pénal canadien. *Cairn*, p. 223.

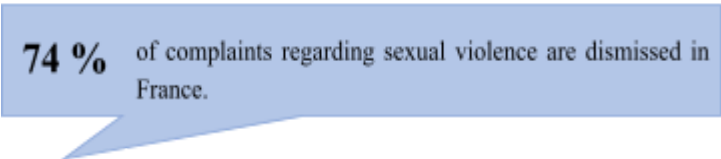
² This means that there must be proof of coercion, the use of force, the threat of force, or the inability to defend oneself.

³ Such as in Albania, Bulgaria, Bosnia and Herzegovina, Czech Republic, Estonia, Georgia, Hungary, Italy, Latvia, Lithuania, Norway, Poland, Romania, and Serbia.

⁴ “Any act of sexual penetration, of any nature whatsoever, committed on another person or on the perpetrator by violence, coercion, threat, or surprise is rape”.

Functioning of the European Union (Peseckyte, 2023), raises serious concerns about the effectiveness of protecting women and ensuring justice. This position significantly undermines efforts to criminalise rape solely based on lack of consent, questioning the extent to which women in France are truly safeguarded and able to obtain justice.

Statistics from the Ministry of the Interior's Statistical Service (SSMSI) reveal the gravity of the situation. In 2022, nearly **85,000 individuals were recorded as victims of sexual violence** (SSMSI, 2023), with **45 percent of these cases involving rape or attempted rape** (SSMSI, 2023). Meaning, out of **10 people**, approximately **4 to 5 individuals** experienced rape or attempted rape in 2022 in France. However, the French Ministry of Justice reported **only 7,000 convictions for sexual violence that same year** (Service statistique ministériel de la justice & Sous-direction de la statistique et des études (SDSE), 2023). The high percentage of cases that are dismissed (74 percent of complaints), as well as non-suit



74 % of complaints regarding sexual violence are dismissed in France.

orders, reductions to misdemeanours, and acquittals in cases “where evidence exists that should lead to prosecutions and convictions” (Le Monde, 2023) suggest that the situation is unlikely to improve.

These statistics highlight systematic failures of the French system, failures that are further illustrated by the case of Gisèle Pélicot, which became a symbol in the fight against sexual violence in the country. In this distressing case, Gisèle, aged 72, was drugged and filmed by her now ex-husband, Dominique Pélicot, while she was raped by more than 70 strangers aged between 26 and 74 whom he had invited through an internet forum over a period of ten years (Willsher, 2024). Of the 51 individuals tried before the Criminal Court of Vaucluse, 35 denied any intent to rape, claiming they were unaware she had been drugged and believed they were participating in a consensual “sex scenario” (Bertrand and Robles, 2024). Despite the pervasive ‘culture of shame’ often imposed on victims, Gisèle displayed remarkable resilience, turning the spotlight onto those who deserve to be shamed: the perpetrators. Yet, these 35 men, currently on trial, persist in their audacious claim of lacking any “intent to rape.”

By relying on a force-based definition of rape rather than one centered on consent, the current system in France demonstrates how perpetrators can exploit this outdated definition; hence, how this approach paves the way for loopholes that allow perpetrators to manipulate the law and evade accountability.

This report, therefore, aims to critically analyse France’s approach to rape from a legal perspective. Firstly, it examines the international and European legal frameworks underpinning the fight against violence against women (**Chapter 1**) in order to understand the norms and standards that states must comply with, as well as their obligations regarding violence against women, particularly rape. Secondly, it assesses the compliance of the national legal framework in France with these international and European standards on rape, focusing on relevant legislation and policy (**Chapter 2**).

1. INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORKS: FOUNDATIONS FOR COMBATTING VIOLENCE AGAINST WOMEN

International and European legal frameworks provide essential foundations for combatting violence against women. These frameworks establish norms and standards that guide the development of effective legislation and ensure the protection of women's rights. Analysing these legal structures is crucial to understanding the protections available and identifying existing gaps. This analysis will illuminate the effectiveness of laws addressing violence against women, particularly in relation to rape, and assess their compliance with international and European standards.

1.1. A CONSTRUCTION OF LEGAL PROTECTION AGAINST RAPE THROUGH THE CEDAW, THE ISTANBUL CONVENTION, AND ECTHR JURISPRUDENCE

International law, notably through General Recommendation No 19, 1992, paragraph 9,⁵ and The United Nations (UN) General Assembly Declaration on the Elimination of Violence against Women, 1994, Article 4,⁶ establishes that states have a duty to adhere to standards of due diligence in addressing violence against women (Human Rights Foundation, 2011). It provides a focus on the obligation of States

(a) to transform the societal values and institutions that sustain gender inequality while at the same time effectively respond to violence against women when it occurs, and (b) examine the shared responsibilities of State and non-State actors with respect to preventing and responding to violence and other violations of women's human rights (Chinkin, 2010).

This duty thus encompasses four equally important obligations in regards to violence against women: **prevention, investigation, prosecution, and compensation.**

01 Prevention

It requires States to take proactive measures, including enacting laws, promoting education, developing awareness-raising campaigns, establishing monitoring mechanisms, and providing training for specialised groups to prevent violence against women.

⁵ "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

⁶ "States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: ... (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons".

02 Investigation

It refers to the requirement for States to thoroughly and effectively examine cases involving violence against women. This includes promptly investigating incidents, gathering evidence, and ensuring that all relevant facts are uncovered to hold perpetrators accountable and protect victims' rights.

03 Prosecution

It consists of effectively bringing perpetrators to justice and holding them accountable through a fair, impartial, and effective legal process.

04 Compensation

It provides redress to victims, acknowledging the harm caused, and reinforcing the state's commitment to upholding human rights, which fosters a culture of accountability.

Such a comprehensive legal framework remains essential for providing adequate protection against family violence, abuse, rape, sexual assault, and other forms of GBV. By effectively implementing these obligations, states can both combat GBV and uphold the rights enshrined in international and European conventions, thereby reinforcing their commitment to ending violence against women and promoting gender equality.

In this context, various international and European conventions delineate the specific obligations of states. These include [the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence](#) (commonly known as [the Istanbul Convention](#)), [the Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\)](#), and [the European Convention on Human Rights \(ECHR\)](#).

However, these conventions not only impose duties on states regarding rape cases **but also establish essential elements for defining and recognising rape itself**. They advocate for a consent-based definition of rape, as opposed to a force-based definition, ensuring that the recognition of rape is aligned with principles of voluntary consent. Despite this, the EU's first-ever Directive on violence against women, adopted in 2024, has not yet filled the gap in criminalising rape using a consent-based approach as a consequence of the blockage of 14 Member States, including France (Jones, 2024).

This chapter therefore aims to examine the international and European standards set out by CEDAW, the Istanbul Convention, and European Court of Human Rights (ECtHR) case law to better understand and reveal the shortcomings in France's national laws and their implementation.

1.1.1. CEDAW and Rape

CEDAW, adopted in 1979, plays a crucial role in framing rape as a severe violation of women's rights and an act of gender-based violence. Although CEDAW does not explicitly mention violence against women, its principles and recommendations - most notably General Recommendations No. 19, No. 33, and No. 35 - have been instrumental in advocating for legal reforms and protections against sexual violence, including rape.



1.1.1.1. The Establishment of the Link Between Discrimination Against Women and GBV

CEDAW contains the definition of “discrimination against women” in its Article 1 as

(...) any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (CEDAW Committee, 1979).

This definition indicates that any actions based on sex that diminish or deny women's rights and freedoms, regardless of their marital status, constitute discrimination. In this context, GBV exemplifies such discrimination, as it is violence directed against individuals specifically because of their gender, with rape being one of its most severe manifestations. By subjecting women to violence solely due to their gender, GBV impairs or nullifies their recognition, enjoyment, or exercise of fundamental rights, including the right to life, the right not to be subjected to torture or cruel, inhuman, or degrading treatment, and the right to the highest attainable standard of physical and mental health. In this sense, GBV aligns with the Convention's definition of discrimination against women, as it undermines their fundamental rights and freedoms.

This connection has been further articulated in General Recommendation No. 19 in 1992, especially in paragraphs 6 and 7, where the CEDAW Committee explicitly addresses GBV, defining it as a form of discrimination (Committee CEDAW, 1992). This recognition highlights that states have an obligation to implement measures to prevent and eliminate all forms of violence against women, both through public and private acts, as emphasised in

Articles 2⁷ and 5 of CEDAW as well as in paragraph 24(a)⁸ of General Recommendation No. 19.

For instance, as Article 5 of CEDAW stresses,

States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. (CEDAW Committee, 1979).

Thus, Article 5 obliges states to actively work towards changing the social and cultural norms that perpetuate gender inequality and stereotypes. This aims to eliminate prejudices that reinforce ideas of superiority or inferiority between the sexes, aligning with the obligation of prevention under the standard of due diligence. By addressing these root causes, states fulfil their responsibility to prevent discrimination against women, thus preventing GBV and reinforcing the effectiveness of legal protections.



1.1.1.2. The Necessity of Adopting a Consent-Based Definition of Rape under CEDAW

The obligations extend to ensuring, through legislative measures, that the definition of rape reflects the principles of CEDAW and its recommendations - specifically, a consent-based definition, rather than one based on stereotypes that perpetuate discrimination against women. This is highlighted in various instances, such as the 2010 *Tayag Vertido v. Philippines* case, the 2014 *R.P.B. v. Philippines* case, and General Recommendation No. 35 of July 27th, 2017.

Indeed, the cases of *Tayag Vertido v. Philippines* and *R.P.B. v. Philippines*, along with General Recommendation No. 35, collectively underscore the importance of defining rape **based on the absence of consent rather than victim behaviour, such as physical resistance**. They highlight that rape constitutes a violation of women's rights to personal security and bodily integrity (CEDAW Committee, 2010) necessitating legislative reforms to eliminate discriminatory stereotypes that hinder justice for victims (CEDAW Committee, 2014). These

⁷ "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women".

⁸ "States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act."

rulings and recommendations call for legal frameworks that ensure all women, including those with disabilities, can access justice and support, reinforcing the centrality of consent in addressing sexual violence.

	<i>Tayag Vertido v. Philippines</i> (Communication No. 18/2008 of the CEDAW Committee in 2010)	<i>R.P.B. v. Philippines</i> (Communication No. 34/2011 of the CEDAW Committee in 2014)	General Recommendation No. 35 (2017)
Facts	In this case, the CEDAW Committee considered a complaint brought by Karen Tayag Vertido, a Filipina woman who claimed that the Philippines had failed to uphold her rights under the CEDAW following her rape and the subsequent acquittal of the accused. Vertido argued that the court's decision to acquit the accused was based on gender stereotypes, including the assumption that rape victims must physically resist their attacker. The Committee found that the Philippine judicial system had applied outdated and discriminatory concepts of consent and victim behaviour, which violated CEDAW.	In this case, the complainant, referred to as R.P.B., a deaf woman, brought a claim against the Philippines for failing to effectively assess the evidence, and provide adequate protection, support, and access to justice after she was raped. The CEDAW Committee found in favour of R.P.B., stating that the Philippines had failed to meet its obligations under CEDAW.	This Recommendation addressed the need for states to take comprehensive measures to prevent and combat all forms of violence against women, including sexual violence. It stressed that consent must be central to the definition of rape.

Definition of rape	In paragraph 8.7, it stated, by noting paragraph 24(b) of General Recommendation No. 19, that <i>“rape constitutes a violation of women's rights to personal security and bodily integrity, and that its essential element is lack of consent”</i>. The Committee criticised the reliance on resistance or proof of force in defining rape, emphasising that consent must be the central criterion.	In paragraph 8.10, it stressed that <i>“there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence”</i>.	In paragraph 33, it states that States must <i>“[e]nsure that the definition of sexual crimes, including marital and acquaintance/date rape is based on lack of freely given consent, and takes account of coercive circumstances”</i>.
Significance	This case was pivotal in advancing the understanding that rape should be defined by the absence of consent, rather than physical resistance or use of force.	This case reinforced the CEDAW Committee’s stance that a consent-based definition of rape is essential and that states must ensure that all women, including those with disabilities, have the means to report sexual violence and access effective legal remedies.	It urged states to revise their laws to eliminate any assumptions about consent based on victim behaviour, thereby reinforcing the idea that lack of consent is the essential element of rape.

The evolution of standards regarding the definition of rape and the treatment of victims is thus marked by significant milestones in the cases of *Tayag Vertido v. Philippines* and *R.P.B. v. Philippines*, culminating in **General Recommendation No. 35**. In *Tayag Vertido*, the CEDAW Committee established that rape is fundamentally about the lack of consent, challenging the outdated notion that required physical resistance from victims. This foundation was further reinforced in *R.P.B.*, which emphasised the necessity for reasonable accommodations for women with disabilities, highlighting the importance of equal access to justice and reiterating that consent must be central to the legal definition of rape. Finally, General Recommendation No. 35 synthesised these insights, **providing comprehensive guidelines for states to adopt a consent-based definition of rape and eliminate harmful stereotypes**. This progression reflects a shift towards a more inclusive and victim-centred

understanding of sexual violence, recognising it as a serious violation of human rights that necessitates systemic legal reform.

1.1.1.3. Overcoming Gender Stereotypes with General Recommendation No. 33

Gender stereotypes, which often portray women as passive, submissive, or responsible for the violence they experience, have profound implications in legal contexts. These stereotypes can influence how cases are prosecuted, how evidence is evaluated, and how victims are treated within the justice system. For instance, assumptions that a lack of physical resistance equates to consent can perpetuate the victim-blaming mentality, discouraging victims from reporting assaults and undermining their credibility in court. In this context, General Recommendation No. 33, adopted by the CEDAW Committee in 2015, specifically calls upon states to take all necessary measures to eliminate gender stereotypes, promoting a culture that respects the dignity and autonomy of women. It **urges governments**, in paragraph 21, in alignment with Article 2 of CEDAW, **to review and amend laws, policies, and practices that are rooted in outdated gender norms** (CEDAW Committee, 2015). In the context of rape, this means reforming definitions of consent along with training law enforcement, legal professionals, and judges to recognise and challenge their own biases.

Furthermore, in paragraph 55(h), the Recommendation emphasises the need to review the rules of evidence and their implementation in cases of violence against women, particularly rape (CEDAW Committee, 2015). The Recommendation stresses that **evidentiary requirements should not be overly restrictive or influenced by gender stereotypes, ensuring that the legal process is fair and supportive for victims** (CEDAW Committee, 2015). By advocating for reforms that prioritise the unique circumstances of survivors, General Recommendation No. 33 aims to foster an environment where evidence is evaluated impartially and fairly. Ultimately, this approach seeks to prioritise justice for survivors of violence, creating a framework that is sensitive to their experiences and conducive to achieving meaningful outcomes in cases of sexual violence. Through these combined efforts, the CEDAW Committee aims to challenge and dismantle the harmful stereotypes that have long hindered the pursuit of justice for women, reinforcing the imperative of a legal system that respects and upholds the rights and dignity of all individuals.

1.1.2. Istanbul Convention and Rape

The Istanbul Convention represents **the first legally binding instrument in Europe specifically designed to prevent GBV, protect victims, punish perpetrators, and establish policies**, often referred to as the "4P" approach (prevent, protect, punish, and integrate policy) (Council of Europe, 2021). Following its ratification in July 2014, the Convention entered into force in France in November 2014. In line with the principle of *pacta sunt servanda* under customary international law, the Convention continues to hold France accountable to its obligations.

As a landmark treaty, the Istanbul Convention plays a crucial role in harmonising and establishing comprehensive standards to secure “a life free of violence for all women and

girls across and beyond Europe” (Council of Europe, n.d). Central to the Convention is the implementation of the 4P approach, which is vital for the effective protection of women and girls from violence. By setting out both preventive and protective measures, the Convention promotes a holistic approach to addressing the pervasive threats to women’s safety. The phrase **"The Istanbul Convention saves lives"** aptly captures this life-saving framework and the transformative impact of the treaty.

In the context of rape, the Istanbul Convention plays a pivotal role in establishing appropriate legal frameworks, particularly through its clear definition of rape in Article 36, which stipulates that

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. (Council of Europe, 2011).*

Thus, according to the Istanbul Convention, consent is the sole element in defining rape as a crime. This means that **the absence of consent is the only factor in the criminalisation of rape**, highlighting the importance of recognising and respecting individual’s sexual integrity and bodily autonomy (Fitzgerald and Incir, 2023).

Moreover, in cases where such acts occur, Article 49 of the Istanbul Convention imposes further obligations on states to

1. (...) take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.

2. (...) take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention (Council of Europe, 2011).

Additionally, Article 55 emphasises that the prosecution of violence against women should not be fully dependent on the victim’s report or complaint “if the offence was committed in whole or in part on its territory”, allowing for both *ex parte* and *ex officio* proceedings (Council of Europe, 2011). **Ex parte proceedings** refer to legal actions initiated by one party without the participation, representation, or prior notice to the other party (Manitoba Courts, 2024). This mechanism can indeed be crucial in emergency situations where immediate action is needed. **Ex officio proceedings**, on the other hand, enable authorities to act on their own initiative, based on evidence or knowledge of the crime, regardless of whether the victim has filed a complaint (Baker McKenzie, n.d).

Article 56 further ensures that victims are protected throughout investigations and judicial proceedings, mandating that states take appropriate measures to secure, among other things, the safety of victims from intimidation and retaliation (Council of Europe, 2011). Together, these mechanisms ensure that the prosecution of violence against women is not hindered by the victim's circumstances, thereby promoting accountability and justice.

These provisions therefore collectively require states to take proactive steps in establishing legal frameworks and operational procedures that comply with the Convention's standards, reinforcing the binding nature of these obligations. Specifically, they encapsulate the due diligence principle established in Article 5, which stipulates that

1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.

2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors (Council of Europe, 2011).

1.1.3. ECtHR Jurisprudence Regarding Rape

The European Court of Human Rights is instrumental in shaping the legal framework on rape, ensuring the protection of victims' rights under the ECHR. Through its evolving case law, the Court has developed key standards for addressing rape, focusing on States' obligations to prevent, investigate, and prosecute sexual violence. This sub-chapter will explore important rulings of the Court on rape, illustrating how the Court has interpreted protection against inhuman treatment and respect for private life in cases involving sexual violence, more specifically, rape cases.

- ***Aydın v Türkiye (1997)***: The *Aydın v. Türkiye* case (1997) represents a pivotal moment in the jurisprudence of the ECtHR, especially regarding the classification of rape as a form of torture under Article 3 of the European Convention on Human Rights (ECHR).

The applicant, Şükran Aydın, a 17-year-old Turkish national of Kurdish origin girl, was detained by security forces during an operation in her village in Tasit/Dernik in Mardin, the southeast of the country. During her detention, she was held incommunicado for several days and subjected to severe ill-treatment, including rape and other forms of physical and psychological abuse (§20). Despite her filing a complaint, the Prosecutor's investigation was grossly inadequate, focusing on an invasive and irrelevant "virginity test", as a method of investigating the crimes committed against her, rather than addressing the substantive allegations of torture and ill-treatment.

Although it was stated that Şükran's hymen had been torn and there was widespread bruising around her thighs, Dr Akkus, who has no expertise in dealing with rape victims, could not establish when the hymen had been torn (§24). Additionally, she was also sent to two other medical examinations to determine "if" or "when" she "lost her virginity" (§25). Consequently, the Prosecutor reported there was no evidence to support the applicant's complaints as the investigation was continuing.

In the face of such approach, the ECtHR's decision was groundbreaking in expanding the interpretation of Article 3 to **recognise rape by public officials or individuals acting in an official capacity as a form of torture, rather than merely inhuman or degrading treatment** (§86). Indeed with such recognition, the ECtHR highlighted that the distinction between torture and other forms of ill-treatment under the Convention is reserved for deliberate actions causing severe physical or mental suffering, a standard that was met in Şükran's case. The Court gave special consideration to her age, gender, and the circumstances under which she was detained, noting the deliberate nature of the violence, the humiliation, and the severe psychological and physical consequences of the rape.

- ***M.C v. Bulgaria (2003)***: The *M.C v Bulgaria* case brings to the fore critical issues in the interpretation and application of legal standards surrounding sexual violence, with the Court addressing the inadequacies of Bulgarian law and its implementation concerning sexual violence.

The case involved a 14-year-old girl who was allegedly raped by two men. On July 31st, 1995, the applicant and her friend were approached by P., A. and V.A. while they were waiting to enter a disco bar; as she knew P. and A., the former being the brother of a classmate of hers, she accepted their proposal to go to a disco bar together on the condition that she would be home by 11 p.m.; the group then went to a reservoir for a swim, despite her objections (§1-15). While she was waiting in the car, the applicant was sexually assaulted by P. (§17). After that, the group drove off to a house belonging to V.A.'s family, where A. also sexually assaulted her (§30).

The investigation failed to substantiate the claim of force, leading to a conclusion that no rape had occurred under Bulgarian law, which required evidence of physical coercion. Indeed, according to Bulgarian law, rape is defined as, "sexual intercourse with a woman (1) incapable of defending herself, where she did not consent; (2) who was compelled by the use of force or threats; (3) who was brought to a state of helplessness by the perpetrator" (§74).

While the applicant contested both the legal standard, which was more stringent than in other jurisdictions where non-consent alone is sufficient, and the thoroughness of the investigation, the Bulgarian Government defended itself before the Court stating that "the conclusion of the national authorities that P. and A. must have acted on the assumption of the applicant's consent had been well-founded" (§119).

However, after a thorough examination of the facts, the ECtHR determined that Bulgaria had indeed breached its positive obligations under Articles 3 and 8 of the ECHR by failing to ensure effective protection and conduct a comprehensive investigation. The authorities had closed the rape investigation on the grounds of insufficient proof of physical force, without adequately considering whether the victim had been subjected to forceful circumstances. The Court explicitly stated that,

In the light of the above, the Court is persuaded 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. In accordance with contemporary standards and trends in that area, the member States' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim (§166).

In other words, the ECtHR ruling emphasised that the Bulgarian legal system's reliance on the presence of force to define rape imposed an excessively high burden on victims, failing to adequately consider non-consent as the central issue. This decision thus reinforces **the need for laws to align more closely with international standards that prioritise non-consent over evidence of physical resistance.**

- **J.L v Italy (2021):** In 2021, the ECtHR made a notable **advancement in addressing victim-blaming and secondary victimisation faced by survivors of sexual violence within criminal proceedings.** This landmark decision represents a critical response to the failure of national courts to challenge and correct prejudiced assumptions and stereotypes regarding female sexuality, and it holds these courts accountable for their shortcomings.

In July 2008, J.L., a 22-year-old art and theatre student from Scandicci, Italy, spent an evening drinking in a public space with seven men, including D.S. and L.L., with both of whom she had a consensual occasional sexual relationship. Notably, L.L. had previously directed a documentary in February 2008 that featured J.L. in a role portraying a sex worker enduring violence.

During the evening, J.L., who became heavily intoxicated and struggled to walk, was followed into the restroom by D.S., who engaged in oral sex with her while she was unable to resist due to her intoxication. Later, as the event ended and the venue was closing, six friends of L.L., including D.S., allegedly accompanied her to the exit and began touching her. As she attempted to grab her bicycle to escape, she was pushed into L.L.'s car, where the seven men raped her one by one while she was unresponsive and in a state of shock.

Following the incident, J.L. experienced post-traumatic stress and was hospitalised. During the investigation, J.L. was questioned multiple times and had to repeatedly recount the events. The trial included 18 public hearings, where journalists attended and eight lawyers cross-examined J.L. on her personal life and sexual history. Notably, during hearings on February 28th and 29th, 2012, the defendants, except for D.S., claimed that “the applicant

had been provocative throughout the evening, both in the way she was dressed and in her sensual and vulgar behaviour” (§25).

Later on, the trial court found that J.L. had been subjected to criminal sexual acts, but not rape, due to her compromised physical and psychological state. Six men were convicted, but the Court found J.L.'s testimony partially credible due to inconsistencies (§29). The Tribunal of Florence stated in its judgement that “the applicant's version of the facts was inconsistent and appeared illogical in several respects, particularly as regards the initial part of the facts” (§29).

On appeal, the Court acquitted all the men, dismissing J.L.'s credibility. The Appeal Court focused heavily on J.L.'s sexuality, personal life, and behaviour, labelling her as “fragile”, “vulgar”, and “lascivious” (§42). It argued for the acquittal of the defendants, stating that

with regard to the applicant's alleged inferiority, the Court of Appeal considered from the outset that it was necessary to rule out any psychological deficiency on her part that might affect her consent. It added that, although she was going through a difficult period in terms of her family and feelings - her mother was seriously ill, her father was absent and she herself had recently experienced a romantic break-up and had just entered into a relationship with a man [soon] after meeting him - the applicant was a young woman who was ‘certainly fragile but also creative and uninhibited’, ‘capable of managing her (bi)sexuality and having occasional sexual encounters of which she was not entirely convinced’, such as those she had had with L.L. in the street and with D.S., both of whom she had met a few days before the incident, or the fellatio she had performed on D.S. in the fortress toilets, followed by dancing and playing with the mechanical bull” (§41).

The Court of Appeal also noted that several witnesses had stated that the applicant had behaved in an extremely provocative and vulgar manner; that she had danced in a lascivious manner while hugging some of the defendants and that, after having had sexual intercourse with D.S. in the toilet, a fact that had been immediately revealed to the group of friends, she had shown off her red lingerie while riding a mechanical bull (§42).

The Court’s reasoning thus indeed downplayed the reality of rape victims and perpetuated the presumptions and stereotypes surrounding rape cases on women’s sexuality, as it stated that J.L.'s previous interactions and subsequent behaviour indicated consent, despite her clear resistance and distress during the incident. The Court effectively implied that J.L. was at fault for the abuse, suggesting she reported it to “stigmatise” and “deny” a moment of weakness, thus engaging in a classic ‘blame-the-victim’ scenario (§46).

In the face of the blatant examples of victim blaming and secondary victimisation by a national court, the ECtHR not only confirmed in its judgement that the State had breached its obligations under Article 8, but also underlined that these obligations can be traced back to the Istanbul Convention. It emphasised that the Convention indeed

obliges Contracting Parties to take the necessary legislative and other measures to protect the rights and interests of victims, in particular to protect victims from intimidation and re-victimisation, to enable them to be heard and to present their views, needs and concerns and have them considered, and finally to give them the opportunity, if permitted under applicable domestic law, to give evidence without the alleged offender being present (§120).

As Article 8 of the ECHR aims to protect the right to private and family life, its positive obligations require states both to refrain from arbitrary interference with these rights and to take proactive measures to ensure their effective protection, even in relationships between private individuals. In the context of criminal proceedings, this means that states are required to structure their legal processes in a way that safeguards the life, liberty, and security of witnesses, particularly victims, while balancing the rights of the defence. Special protective measures are often necessary, especially in cases involving sexual offences, to shield victims from secondary victimisation and prevent unnecessary confrontation with the accused, as was the case here. These obligations are thus designed to protect the dignity, privacy, and psychological well-being of victims, ensuring that they receive appropriate support throughout the legal process (§119).

Therefore, in the present case, the Court recognised a violation of Italy's positive obligations under Article 8, particularly in light of the manner in which the applicant was treated during the proceedings. **This decision marks a significant step in addressing the culture of victim-blaming and secondary victimisation perpetuated by national courts as a consequence of entrenched patriarchy.** By acknowledging the state's failure to adequately protect the applicant's dignity and privacy, the Court emphasised the need for judicial systems to move beyond harmful stereotypes and ensure that victims are treated with respect and fairness throughout the legal process.

2. NATIONAL LEGAL FRAMEWORK IN FRANCE: ASSESSING COMPLIANCE WITH INTERNATIONAL AND EUROPEAN STANDARDS ON RAPE

In recent years, the issue of sexual violence, particularly rape, has sparked intense debate and scrutiny across Europe, and France is no exception. The present examination of France's national legal framework on rape aims to unravel how well the country's laws align with international and European standards. By delving into the nuances of French legislation, we will explore the effectiveness of these laws in protecting victims, ensuring justice, and promoting a culture of consent. In doing so, we hope to draw attention to both the strengths and the gaps within the current legal system, ultimately questioning whether France is adequately meeting its obligations to combat sexual violence and support survivors.

2.1. AN AMBIGUOUS LEGAL FRAMEWORK FOR PROTECTING AGAINST RAPE: INSUFFICIENCIES IN LEGISLATION, DISCRIMINATORY PRACTICES, AND NARROW INTERPRETATIONS

The legal landscape surrounding rape in France presents a complex labyrinth of protections that often feel ambiguous and insufficient. While there are laws in place intended to safeguard victims and punish perpetrators, the formulation and application of these laws can lead to confusion and inconsistency. This sub-chapter will unpack the intricacies of France's legal provisions regarding the protection against rape, revealing how certain provisions, the Court's narrow interpretations, and procedural and investigative processes contribute to an environment that double-victimises survivors, discouraging them from coming forward, and hindering the accountability of perpetrators. By examining these layers of ambiguity, this section aims to illuminate the challenges faced by survivors in their pursuit of justice within the current framework.

2.1.1. Evolution of Provisions Regarding Rape in France

Understanding and legally defining rape to criminalise and challenge the deeply entrenched culture of sexual violence has long been a complex issue in France. The **first legal reference** to rape dates back to the French Revolution, with **Article 29 of the Penal Code of 1791** establishing that “*le viol sera puni de six ans de fers*”, meaning that rape will be punished by six years in hard labour (irons), without providing a definition and focusing only on the violent penetration of an unmarried woman (Guéry, 2020). By the 19th century, debates around consent began to surface, particularly regarding a woman's free will and autonomy in sexual acts. A pivotal ruling from **the Criminal Chamber on June 25th, 1857, introduced the concept of non-consent through violence, coercion, or surprise** (Guéry, 2020).

Similarly, on July 10th, 1973, the Chamber recognised rape as a crime which “consists of having sexual relations with a woman against her will, either where the lack of consent is the result of physical or moral violence exercised against her, or where it is the result of any other means of coercion or surprise used by the perpetrator to achieve his aim”. However, it was not until the enactment of the law on **December 23rd, 1980** that rape was clearly defined as **an act of sexual penetration involving violence, coercion, or surprise, with a significant development being the recognition of marital rape** (Journal Officiel de la République Française, 1980). The **1992 Penal Code** further **expanded this by including threats as a means of negating consent** (Law No 92-684, 1992). Over time, jurisprudence has continued to develop the legal interpretation of rape, culminating in the **law of August 3rd, 2018**, which introduced a **gender-neutral framework** (Law No 2018-703, 2018), acknowledging that both perpetrators and victims could be the person of penetrated. Most recently, **the law of April 21st, 2021**, known as *Schiappa*, introduced additional reforms, **focusing on minors and recognising oral acts** (Law No 2021-478, 2021), continuing the evolution of France’s legal approach to sexual violence.

However, the one thing that keeps failing over the course the time is the adoption of a consent-based definition of rape rather than a forced-based one in France.

	Penal Code of 1791	Criminal Chamber 1857 and 1973	December 23rd, 1980 Law	Penal Code of 1992	Law 2018 and 2021
Definition/ mention of rape	<i>Rape will be punished with six years in (irons) hard labour</i>	<i>Taking advantage of a woman against her will, whether the lack of consent is the result of physical or moral violence or any other means of coercion or surprise intended to achieve the goal of the perpetrator outside the victim's will</i>	<i>An act of sexual penetration involving violence, coercion, or surprise, with a significant development being the recognition of marital rape</i>	<i>Any act of sexual penetration of any kind committed against another person by violence, coercion, threat, or surprise is rape</i>	<i>Any act of sexual penetration of any kind whatsoever, or any oral or genital act committed on another person or the person of the perpetrator by violence, coercion, threat, or surprise is rape</i>

Significance	First legal reference to rape in France without providing a definition. It also focuses only on the violent penetration of an unmarried woman	Introduced the concept of non-consent through violence, coercion, or surprise	First clear definition of rape in France and recognises marital rape	Expanded the definition of rape by including 'threat'	Broadened the concept of rape once again by including oral acts and adopting a gender-neutral framework
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2.1.2. Insufficiencies in Legal Provisions: The Force-Based Definition of Rape

The definition of rape in France, as established in [Article 222-23 of the French Penal Code](#), asserts that rape is defined as “any act of sexual penetration, of any kind, or any oral-genital act committed on another person or on the perpetrator by means of violence, coercion, threat, or surprise”. This definition indicates that the mere absence of consent is insufficient to classify an act as rape, reflecting a longstanding adherence to a force-based understanding of sexual violence.

Historically, this restrictive definition has roots in patriarchal norms that prioritised physical resistance and force as primary indicators of rape, thereby placing the burden of proof on the victim. This approach has been criticised for failing to adequately protect victims and for perpetuating societal stigmas that discourage reporting. Cultural attitudes towards gender roles and sexuality have further influenced perceptions of consent, leading to a legal framework that has not evolved to reflect the reality of sexual violence.

In contrast, France's obligations under various international and European conventions, including the Istanbul Convention, the CEDAW, and the ECHR, require a shift towards a consent-based definition of rape. The Istanbul Convention explicitly states in Article 36 that rape is committed without the victim's consent, emphasising that consent must be the cornerstone of legal definitions. Similarly, General Recommendation No. 35 urges states to revise their laws to eliminate any assumptions about consent based on victim behaviour, thereby reinforcing the idea that the lack of consent is the essential element of rape. The Committee of CEDAW has indeed stressed the importance of incorporating a lack of consent as a key element in the definition of rape. Furthermore, the ECtHR has reinforced the importance of a consent-based definition in its landmark ruling in *M.C. v. Bulgaria* (2003). In

this case, the ECtHR critiqued legal systems that required evidence of physical force or resistance to establish rape, recognising that such standards could impede **effective investigations and fail to protect victims**, thereby undermining human rights obligations.

Consequently, this analysis demonstrates that France's current force-based definition of rape is increasingly misaligned with international and European legal standards that affirm consent as fundamental to the definition of rape. As the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) reported in 2019 in its evaluation of France, notwithstanding the efforts made to assess the definition, the current formulation still fails to adequately and properly grasp the meaning of Article 36 (GREVIO, 2019). Although the Convention allowed states the flexibility to adopt specific wording in their legislation and provisions, the focus on the elements of “violence, coercion, threat, or surprise” devalues and, most importantly, contrasts with the essence of the provision, as well as with the other international human rights bodies such as the CEDAW Committee (GREVIO, 2019).

Furthermore, by failing to adopt a consent-based approach, France risks violating its obligations under conventions such as the Istanbul Convention, CEDAW, and the ECHR, while inadequately protecting victims. Reforming the legal definition of rape to incorporate a consent-based framework is thus essential for fulfilling France's commitments to international human rights law, ensuring justice for victims, and fostering a legal environment that effectively addresses the realities of sexual violence in contemporary society.

2.1.1.1.1. Hurdles in Proving Rape as a Consequence of Forced-Based Definition

Examining the definition of rape as it stands in France since 2021 reveals several key elements that must be satisfied to substantiate a rape claim in a French court. At its core, it is crucial to demonstrate that an act of sexual penetration or an oral-genital act has occurred. Furthermore, the perpetrator's behaviour must exhibit characteristics such as violence, coercion, threat, or surprise. Morally, it is imperative to establish that the perpetrator was aware of the victim's lack of consent and proceeded with the act regardless. Thus, **both the culpable intent of the perpetrator and the victim's total non-consent must be proven**.

However, this forced-based definition of rape poses additional challenges, as rape often occurs in private settings where evidence is scarce. The requirement to demonstrate the victim's physical resistance alongside the perpetrator's acknowledgement of this non-consent complicates matters further. In many cases, lack of consent is inferred from material facts, particularly the presence of violence, coercion, threats, or surprise. Therefore, if any of these elements are missing, the legal standards dictate that the offence of rape cannot be established; without the intention to commit rape, it does not exist in the legal sense. That is, as a consequence of having a forced-based definition of rape, which contradicts France's international and European obligations, the stringent criteria established by this definition create **a high threshold for proving rape**, making it significantly more challenging for victims to secure justice.

This approach becomes even more problematic when considering studies such as a 2017 Swedish clinical study, which revealed that 70 percent of the 298 participating women who were victims of rape experienced "involuntary paralysis," also known as tonic immobility (TI) (Amnesty International, 2018). This phenomenon, in which victims are physically unable to resist or express non-consent, poses significant barriers to proving rape under existing legal standards.

On the one hand, proving the constitution of rape involves various methods, including traditional approaches like witness testimonies and interrogations, alongside scientific techniques such as DNA analysis and medical examinations. On the other, significant obstacles persist in substantiating claims of rape. While DNA and medical examinations are often perceived as reliable, their effectiveness is contingent upon timely execution; delays can indeed lead to the loss or contamination of DNA evidence. For instance, in approximately **90 percent of cases, no physical lesions are observed** (Sauer, 2023), complicating the ability to confirm or deny penetration, while the absence of physical evidence for oral-genital acts further exacerbates this challenge. Additionally, the phenomenon of traumatic amnesia, which frequently afflicts victims of sexual violence, leads to partial or total memory loss about the assault, hindering evidence collection (Sauer, 2023). Although the **Criminal Chamber of January 13th, 2021 n°19-86.509** acknowledges this trauma, it does not recognise its impact on the statute of limitations for prosecuting offences, creating further barriers for victims seeking justice (Sauer, 2023).

The forced-based definition of rape and its accompanying evidentiary requirements contradict the principles established in international and European conventions, such as the Istanbul Convention and the CEDAW. These conventions delineate the necessity for legal frameworks that effectively prevent, investigate, prosecute, and punish violence against women. The current standards of proof impose an unreasonable requirement to demonstrate physical resistance, failing to adequately account for the complexities of consent, particularly in cases involving tonic immobility. This oversight significantly hinders both the pursuit of "effective prosecution" and the ability to impose appropriate punishments on perpetrators, as mandated by international and European obligations (**Articles 5 and 45 of Istanbul Convention**).

Therefore, it is essential to advocate for a transition toward a consent-based definition of rape that prioritises victims and acknowledges the realities of sexual violence. Such a shift would harmonise French law with international and European standards and promote a legal culture that supports victims rather than imposing additional barriers to justice. By recognising the complexities of consent and removing the requirement for physical resistance, France can ensure that the pursuit of justice becomes a pathway to healing rather than an additional source of trauma for those seeking redress. This reform is crucial in creating an inclusive and effective legal framework that truly protects victims and fosters accountability for perpetrators.

2.1.3. Secondary Victimisation in Investigation and Judicial Processes Contradicting International and European Norms

In the pursuit of proving an alleged rapist to be innocent, it has become common to rely on gender stereotypes and myths to excuse and/or reduce perpetrator's responsibility during trials, hence undermining the victim's credibility. This practice frequently subjects victims to invasive scrutiny concerning their clothing, behaviour, and sexual history, shifting focus away from the actions of the perpetrator. Such approaches indeed perpetuate harmful stereotypes about what constitutes "appropriate" behaviour and attire and detract from the central issue of consent and the accused's conduct. For example, a study by Ipsos and Mémoire Traumatique

et Victimologie revealed that "40 percent of French people believe that if a victim was being provocative, it alleviates the rapist's responsibility. Many also believe she could deter him if she really puts up a fight, and 30 percent think a sexy outfit excuses the rapist" (Gougnot, 2022). These attitudes contribute to a culture where victims are often seen as partially responsible for the assault, even when they attempt to seek justice.

40% of French people

believe that if a victim was being provocative, it alleviates the rapist's responsibility.

30% think a sexy outfit

excuses the rapist.

The legal system must thus confront these biases, as they significantly shape societal perceptions and influence the treatment of victims in court, thereby perpetuating a culture of victim-blaming. This phenomenon, referred to as secondary victimisation, occurs when victims experience the trauma of the assault along with further harm through the investigation and judicial process (Council of Europe Committee of Ministers, 2006). The ECtHR explicitly acknowledged this form of secondary victimisation in *J.L. v. Italy* (2021), where the Court found that the state's failure to adequately protect the applicant's rights under Article 8 of the ECHR resulted from the inappropriate treatment she endured during the legal proceedings regarding her rape case.

Similarly, the CEDAW Committee, in its **General Recommendation No. 33**, emphasised the detrimental impact of gender stereotypes on access to justice and the right to a fair trial. The Committee urged states to ensure that "evidentiary requirements should not be overly restrictive or influenced by gender stereotypes, ensuring that the legal process is fair and supportive for victims" (CEDAW Committee, 2015).

Furthermore, **Article 2(c) of CEDAW** requires states to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination" (CEDAW Committee, 1979). This provision underscores the necessity of creating a legal framework that guarantees women's rights and actively addresses and prevents discrimination within judicial processes. By doing so, CEDAW aims to foster an

environment where women can indeed pursue justice without the fear of further victimisation.

Additionally, **Articles 18, 49, and 56 of the Istanbul Convention** mandate states to implement measures that ensure comprehensive support and protection for victims, as well as effective investigation and prosecution procedures, all aimed at mitigating secondary victimisation during all stages of criminal proceedings (Council of Europe, 2011). Article 49 emphasises the need for effective investigation and prosecution of gender-based violence with a “gendered understanding of violence”, while Article 18 calls for comprehensive support services and protection to safeguard victims from further harm. Article 56 further details the responsibility of states to protect victims' rights and interests at all stages, particularly by providing safeguards against intimidation, retaliation, and repeat victimisation. This includes ensuring that victims are informed about their rights and the progress of their cases (c), as well as enabling them to present their views and evidence in a manner that respects their dignity (d) (Council of Europe, 2011). These provisions emphasise what is needed to create a supportive environment in which victims can meaningfully participate in the legal process without facing additional trauma, thus prioritising their safety and emotional well-being.

Finally, the **Victim's Rights Directive 2012/29/EU** plays a critical role in addressing the issue of secondary victimisation, particularly for survivors of gender-based violence, including rape (Directive 2012/29/EU of the European Parliament and of the Council, 2012). Paragraph 17 explicitly acknowledges that violence against individuals based on their gender, such as rape and sexual assault, constitutes a form of discrimination and a violation of fundamental freedoms (Directive 2012/29/EU of the European Parliament and of the Council, 2012). This recognition underscored the heightened risk of secondary and repeat victimisation for women victims of gender-based violence, calling for the need for special support and protection measures. In line with this, Article 20(d) emphasises that medical examinations should be limited to essential cases, conducted only when strictly necessary for criminal proceedings, further protecting victims from unnecessary trauma during the legal process (Directive 2012/29/EU of the European Parliament and of the Council, 2012).

Consequently, the second victimisation of victims, such as occurs in France, not only compromises the integrity of the judicial process but also constitutes a profound failure to comply with the mandates of CEDAW, the Istanbul Convention, and EU directive, fostering an environment in which women are discouraged from seeking justice.

2.1.4. A Restrictive Vision of Rape Within the French Judicial System

2.1.4.1. Understanding the French Judicial System: Powers and Jurisdictions

In principle, rape is classified as a crime under the French Penal Code and should be tried in a *Cours d'Assises* (Court of Assizes), which is composed of three judges and six jurors (Service public, 2024). The *Cour d'Assises* judges individuals accused of committing serious crimes such as homicide or rape, which are among the most severe offences punishable by

imprisonment of over 20 years (Servic public, 2024). On top of that, since the law of March 23rd, 2019, the **departmental criminal court**, which operates without a jury, has also been competent to judge crimes punishable by imprisonment of between 15 and 20 years (Service public, 2024). However, it is possible to send a case before the *Cours d'Assise* for appeal.

For instance, rape in France is punishable by 15 years' criminal imprisonment under Article 222-23 of the Penal Code. However, in certain circumstances, the sentence can increase to 20 years, such as when the perpetrator is a person of authority, acts alongside others, uses or threatens to use a weapon, or administers drugs to impair the victim's judgement (Article 222-24 of the Penal Code). It also applies when the assault results in permanent mutilation, is committed against a minor under 15, or targets a particularly vulnerable person, such as due to age, illness, disability, pregnancy, or economic dependence (Article 222-24 of the Penal Code). If the rape results in the victim's death, the penalty rises to 30 years (Article 222-25 of the Penal Code).

This is in contrast to the **Tribunal Correctionnel** (Correctionnal Court), which handles less serious offences (*délit*), including sexual assault cases, and is composed of one president and two professional judges without a jury, as indicated in Article 398 of the Criminal Procedure Code. In such cases, if there are no aggravating factors, the Tribunal can impose a sentence of five years' imprisonment and a fine of €75,000, in accordance with Article 222-27 of the Penal Code. Due to aggravated circumstances listed in Articles 222-28 and 222-29 of the Penal Code, the sentence can also increase to seven years' imprisonment and a fine of €100,000. This includes cases involving the abuse of power, assaults committed with the threat of a weapon, or against a particularly vulnerable individual. Sexual assault on a minor under the age of 15 is punishable by up to 10 years' imprisonment and a fine of €150,000, with the same penalty applying in cases involving individuals in a state of extreme vulnerability (Article 222-29-1 of the Penal Code).

Additionally, if an act is recognised as rape, it is classified as a crime with a statute of limitations of up to 20 years (Lonné, 2023). This period extends to 30 years if the victim is a minor, with the limitation period commencing when the minor turns 18 (Lonné, 2023). Conversely, if an act is classified as sexual assault, the victim has only 6 years to file a complaint, or 10 years if the victim is between 15 and 18 years old, and 20 years if the victim is below 15 years at the time of the incident (Lonné, 2023).

<i>Cour d'Assises and departmental criminal court</i>	<i>Tribunal Correctionnel</i>
Deal with serious crimes (crime) such as homicide and rape	Deals with less serious offenses (<i>délit</i>) including sexual assault
Imprisonment of over 20 years for serious crimes, including life sentences (and up to 20 years for the departmental criminal court)	Up to 5 years' imprisonment or 7 years for aggravated cases (except for the case involving minors under the age of 15)

Statute limitation of 20 years (30 years if the victim is a minor)	Statute limitation of 6 years (10 years if the victim is between 15 and 18; 20 years if under 15)
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Understanding the division and authority of the different French courts in dealing with offences is essential to grasp the impact on victims of their narrow interpretations of the definitions of rape and forms of penetration.

2.1.4.2. ‘*Correctionnalisation*’ of rape as a consequence of narrow interpretation of its definition

The term ‘*correctionnalisation*’ refers to the practice of downgrading rape cases from being tried in the *Cours d’Assise* or departmental criminal court to the *Tribunal Correctionnel*. This reclassification often results in significantly lower penalties for offenders and categorises the acts as ‘sexual assault’, which is defined in **Article 222-22 of the Penal Code** as “**any sexual assault committed with violence, coercion, threats or surprise or, in the cases provided for by law, committed on a minor by an adult**”, rather than recognising them as rape. The reliance on a force-based definition of rape contributes to this issue, as numerous incidents are reclassified, depriving victims of the appropriate legal acknowledgment of their trauma and deterring them from seeking justice.

According to GREVIO's 2019 report on France, a substantial number of rape complaints - approximately 70 to 80 percent - do not lead to convictions for rape due to this judicial practice (GREVIO, 2019). This issue is particularly prevalent in cases of marital rape and the rape of women involved in prostitution (GREVIO, 2019). Such reclassification has thus serious procedural implications, including a reduction in the statute of limitations and diminished sentences. While some argue that ‘*correctionnalisation*’ can have benefits, such as quicker legal proceedings (Moroz, 2023), this does not eliminate the fact that it downgrades the recognition of the victim’s trauma, nor, contrary to common misconception, does it guarantee condemnation of the perpetrator.

Although ‘*correctionnalisation*’ has a legal basis in Article 469 of the Criminal Procedure Code, which allows for offenses that may include sexual violence to be processed as correctional offenses rather than serious crimes depending on the circumstances of each case, GREVIO’s 2019 report recommended that France review its legislation and judicial practices. In particular, it called for a reconsideration of the ‘*correctionnalisation*’ of rape, as **Article 36 of the Istanbul Convention** requires States Parties to criminalise all forms of non-consensual acts of a sexual nature, including rape, and to ensure that such crimes are effectively prosecuted and punished with appropriate penalties.

A striking example of this practice is provided by the decision handed down by the Criminal Chamber of the Court of Cassation on October 14th, 2020 n° 20-83.273. Notwithstanding the fact that the 2021 law broadened the definition of rape to include oral acts, in this case the Criminal Division refused to classify an act of sexual penetration with the tongue as rape, on

the grounds that the penetration was not “sufficiently deep and intense”, and instead classified it as sexual assault (Dalloz, 2020). Prior to the 2021 law, case law had in fact added a qualification whereby penetration had to be “sufficiently deep” and involve a certain intensity of duration or movement to qualify as rape (Dalloz, 2020). Since sexual assault refers to non-penetrative sexual violence such as inappropriate touching, groping, or other forms of physical contact of a sexual nature without consent, by refusing to acknowledge that the woman had been raped because the penetration with the tongue did not meet the criteria of being “sufficiently deep and intense” and lacked the required “intensity of duration or movement”, her traumatic experience and the torture she endured were minimised to a form of physical contact without consent.

While the new formulation of Article 222-23 appears to cover such situations and the practice of ‘*correctionalisation*’ itself does not inherently contravene international or European standards, **it could be considered a breach of international and European obligations relating to victims' rights and access to effective justice if it leads to inadequate responses to rape cases.**

CONCLUSION

This report has highlighted the critical discrepancies between France's current legal framework on rape and the standards set forth by international and European human rights instruments, such as CEDAW, the Istanbul Convention, and ECtHR case law. The persistence of a force-based definition of rape within the French Penal Code presents significant obstacles for victims in proving their cases, resulting in a justice system that often fails to adequately protect victims or ensure accountability for perpetrators. The secondary victimisation experienced by rape survivors, compounded by a legal process that often disregards their trauma, further exacerbates the problem.

French System	International and European Standards
Continues to use a forced-based definition of rape	Calls for the adoption of a consent-based definition of rape
Significant hurdles exist in proving rape, hindering effective investigations and prosecutions	Emphasise that evidentiary standards should not be excessively restrictive or shaped by gender stereotypes, guaranteeing a fair and supportive legal process for victims. Additionally, remind states of their obligation to uphold due diligence responsibilities.
Victim-blaming culture throughout the investigation and judicial process	CEDAW Committee, ECtHR, and GREVIO underscore the necessity to prevent secondary victimisation and take necessary measures to avoid it

In this context, France's legal framework urgently requires reform. **A shift towards a consent-based definition of rape, as demanded by international and European human rights standards, is essential to address the current shortcomings.** Moreover, **reforms must include legal and judicial measures to prevent secondary victimisation**, ensuring that the legal process does not retraumatise victims or downplay the severity of their experiences, and **provide and support the victims at all stages**, thus meeting the obligations of effectively preventing, protecting, investigating, and prosecuting under due diligence. The practice of '*correctionnalisation*', which reduces the severity of rape charges and trivialises the victim's trauma, is another pressing issue that requires immediate attention.

The case of Gisèle Pelicot starkly illustrates this pressing need for reform, as her resolute stand against a legal system steeped in victim-blaming culture underscores the imperative for a legal framework that truly reflects the lived realities of women. France must therefore seize this moment to align its laws and judicial practices with international and European obligations, fostering a legal environment where justice for rape victims is not just a promise, but a reality. The necessity of this reform cannot be overstated - it is time for France to meet its obligations and provide the protection and justice that rape victims deserve.

Recommendations :

- Transition from the current force-based definition of rape to one that solely takes into account consent. This change would help eliminate loopholes that perpetrators exploit and align French law with contemporary understandings of sexual violence.
- Reform evidentiary requirements to ensure they are not overly restrictive or influenced by gender stereotypes.
- Provide ongoing training for police, prosecutors, and judges on issues related to sexual violence, consent, and trauma-informed responses to enhance their understanding and sensitivity towards victims' experiences.
- Create dedicated units within law enforcement and the judiciary that specialise in handling sexual violence cases (or reorganise newly created units for domestic violence as of January 1st, 2024, to include all forms of violence against women and children). These units can ensure that investigations and prosecutions are conducted more effectively and with greater empathy for victims.
- Launch public awareness campaigns aimed at changing societal attitudes towards victims of sexual violence, focusing on eradicating victim-blaming and fostering a culture of support and understanding.

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