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# A typology of the victim and the victim's relationship to the perpetrator from Article 188 of the Penal Law of the Republic of Croatia - a theoretical study and research results from the Zagreb County

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## Summary

The paper gives a theoretical study and research results from the Zagreb County Court in order to describe a typology of the victim and the victim's relationship to the perpetrator from Article 188. of the Penal law of the Republic of Croatia. The autor tries to approach the problem of rape by studying the psychological profile of the victim using theoretical data as well as his own reserach results from judgements given by the Zagreb County Court. The paper also deals with legal, biopsychosocial and sociomedical aspects of the criminal offence so as to describe the psychological profile of the rape victim and the victim's relation to perpetrator, as well as the phenomenology of rape in Croatia. It is concluded with an analysis of the research material.

*Key words: rape, rape victims, rape perpetrator*

## 1. Introduction

*"We, even though we are not reformers, but observers, cannot watch with critical eyes, and so we have found that it is impossible to be on the side of conventional sexual morals, and that we highly appreciate the way that society attempts to practically organize the problems of sexual life. We can show society, with calculations, that what they call their morals, costs more victims than what it's worth, and that their actions are based neither on truth nor do they tell of wisdom."*

*Sigmund Freud<sup>1</sup>*

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<sup>1</sup> Stojanović, J.: Silovanje, NIO "Univerzitetska riječ" Nikšić, 1988., p. 56.

Not so long ago, rape was something that was only read about in sensationalistic texts and whispered about in lobbies. Even scientific circles stayed far away from the topic. This collective avoidance cannot be because of the sensitive character of this topic. Furthermore, some areas of science ignored rape, believing that the problem belonged to disciplines that worked with behavioural disturbances and mental pathology. The problem of rape was left to psychiatrists and psychologists. Finally, it was believed that rape wasn't a thing that frequently happened and that it did not demand a great amount of attention.<sup>2</sup> However, in the last few years, rape has arisen more frequently as a topic of interest among scientists and laymen. This increase in interest can be accounted to women who removed the veil of mystery from rape and have helped potential victims.

In grading the social dangers of rape, some extreme notions arise. While some underestimate the danger of this crime, others are so sharp and go so far that they ask for the complete disablement of the perpetrator through castration<sup>3</sup>. Reason behind this unusual punishment, which is foreseen in a number of laws, is that rapists are usually repeated offenders.

Rape is a form of violence between the sexes and no doubt a distinct example of behaviour that is dangerous to society and that jeopardizes not only the sexual freedom of the victim but the basic human dignity. For example, force as a way to satisfaction of sexual drive regularly involves physical and psychological harm to the victim, sometimes even resulting in death.

In the beginning, criminology became aware that the causes of deviant behaviour did not lie only or mostly in the person, or only or mostly in the person's environment, but in the synthesis of these orientations. Enrico Ferri was the first criminologist that thought that way, that is, according to him, delinquent behaviour is the result of "the acting of the anthropological-biological-psychological disposition of the perpetrator and the influence of the social environment. Crime as a single act and delinquency as a mass social appearance are a symptom and result of individual pathology in its atavistical forms."<sup>4</sup> In contrast to Durkheim, who had a pure sociological orientation (theory that society creates criminals) and Lombros who had a pure anthropological-biological orientation (position that criminals are those who are born that way), Ferri<sup>5</sup> gave a synthesis of these two points of view, which is, in principle, acceptable. According to the synthesis, Ferri divided delinquent factors into three basic groups: "*personal, physical* (climate, meteorological conditions, and similar), and *social*, that is, *endogenous* and *exogenous*. These endogenous and exogenous factors are in a strong interaction because a person cannot change his genetic heritage, and some contingent forms of aggressive behaviour are contained in it. However, the behaviour does not have to "come to surface" if the person lives in a healthy environment. In contrast, a person who is not genetically predisposed to deviant behaviour may develop it, if he lives in such an environment."<sup>6</sup>

Studying the behaviour of rape victims and their relationship to the perpetrator, and taking into account the stated biological-sociological factors, we can, following Cicero's famous quote "*Historia est magistra vitae...*" and by applying it to human relationships, and systematically observing and studying, "predict" possible doings and with this knowledge prevent possible happenings. Following these thoughts, I tried to define the typology<sup>7</sup> of the

<sup>2</sup> Šeparović, Z.: Kriminologija i socijalna patologija, Pravni fakultet Zagreb, Zagreb, 1981., p. 111.

<sup>3</sup> Stojanović, , *op. cit.*, p. 56.

<sup>4</sup> Horvatić, Ž.: Osnove kriminologije - temeljni učenja o pojavnim oblicima i uzrocima kažnjivih ponašanja, Zagreb, MUP RH, 1998., p. 38.

<sup>5</sup> Ibid, p.39 - Besides Ferreri, Raffael Garafal should be mentioned. He also supported the biological-sociological orientation, but with a little more emphasis on the biological factor.

<sup>6</sup> Holmes, R.M., Holmes, S.T.: Psychological profiling and rape, Izbor, Zagreb, no. 2-3, 1999.

<sup>7</sup> According to Klaić, typology (tip + logos - word, speech) is a science of types, organizing by types, classification, - Klaić, B.: Riječnik stranih riječi, Nakladni zavod Matice Hrvatske, Zagreb, 1983, p. 1353.

victim and the victim's relationship with the perpetrator in the Zagreb County in the Republic of Croatia, by researching and analysing valid court rulings.

This work contains two parts - theoretical and practical. In the theoretical part, there are legal, psychological, biological and socio-pathological definitions and explanations of some facts, opinions and theories that exist about rape in Croatia and the world. The practical part includes processing and the conclusion of the analysed pattern.

## 2. Bio psychosocial sociomedical and other characteristics of rape

### 2.1. Bio psychosocial characteristics of man

The reason why man survives in nature is that he has some built in **instincts**. Located in the hypothalamus is a basic mechanism for instinctual behaviour, which is made of two parts - the instinct for food and the sexual instinct. According to Schott, we have two psychosexual centres in the hypothalamus -the "sexual behaviour centre" in the ventromedial part and the "hormone sexual centre" in the infundibulum.<sup>8</sup>

**Affectivity** is one of the characteristics of man that helps him function in surprise, during unplanned, turbulent emotional states. The intensity of our reactions in these particular situations depends on four hormones in the human body. The adrenalin (A) and nor adrenalin (NA) increase our emotions (the heart works faster, blood pressure goes up, pupils dilate, senses become more aware, immediate power and readiness of muscle mass increases). In contrast, serotonin (HT) and acetylcholine (Ach) are hormones that slow down our emotions.<sup>9</sup>

### 2.2. Biological basics of man's aggressive behaviour

As we learned more about aggressive behaviour of man, several theories have been proposed. According to the famous etholog Lorenz, aggressive behaviour is a universal phenomenon that has, as its goal, the keeping of a type or breed.<sup>10</sup>

Moyer emphasizes eight evolutionary forms of behaviour:<sup>11</sup>

- The aggression of predators to their prey. This is the most primitive form of aggressive behaviour that is present in all mammals, and is located in the rinencefalon.
- Aggression provoked by fear. The centre is located in the temporal lobe, amygdale, cingulum and hypothalamus.
- Irritating aggression - aggression that appears provoked by frustration. It is located in the ventromedial part of the hypothalamus and amygdale.
- Territorial aggression - aggression regarding a place and directed at all intruders, because the host thinks that the attack is directed at his female, food, etc. Examples can be seen among all mammals that mark their territory with urine (for example, dogs) or by voice (for example, wolves).
- Aggression regarding sex - aggression with which the female is protected from intruders. For example, with wild horses we have examples of stallions guarding their mares from

<sup>8</sup> Kaplan, H.I., Sadock, B.J., Grebb, J.A.: Synopsis of Psychiatry, vol. 7., Baltimore: Williams and Wilkins, 1994., p. 87.

<sup>9</sup> *Ibid.*, p. 174.

<sup>10</sup> *Ibid.*, p. 87.

<sup>11</sup> *Ibid.*, p. 181.

other stallions that wish to satisfy their sexual instincts, which are here in the function of keeping a type of breed.<sup>12</sup>

- Motherly aggression - appears with mothers that defend and protect their young. That phase is characterized by a higher degree of irritability and tension. With mammals, the mother is frequently aggressive with the father of the young as well (for example, with bears, the mother chases the father away because there is a chance that he will eat his own young). With people, the mother is also very attached to the child, which is a condition for the development of empathy.
- Aggressive behaviour among males - represents rivalry for a female so that the male can satisfy his sexual instinct. It is closely related to aggression regarding sex and territory.
- Instrumental aggression - a learned aggression, an aggression with which one "cleans a path". It is characteristic only for humans, and in contrast to the others, it is the only type of aggression that can be learned - all the others are inborn.

### 2.3. Sociomedical characteristics of rape

As is with normal sexual relations, in all human relations and interactions there is a certain degree of domination and subordination. However, with rape, the degree of domination and subordination acceptable for both sides is overstepped. The reasons for that are in the participants themselves, even though it can come to the act itself because of current prevailing social factors.<sup>13</sup> Because of that, rape is often committed by victorious armies and it can then be performed by people (army men) who usually would not act in that way.<sup>14</sup>

The rape that is discussed in this work fits into Durkeim's well-known theory of anomy (lawlessness). According to him, anomy represents a break in the organization of values that normally govern the behaviour of members of a group or society. The values break down not only when the society is faced with a state of utter catastrophe, such as wars or revolutions, but also when some members of the society cannot achieve the goals of the society in a way that is generally acceptable. As a result, socially threatened groups that are part of the society (subcultures) can start violently taking what they think belongs to them, and what they cannot achieve in a legal way. Because of that, rape happens more often in between members of subculture groups where violent behaviour is common, and what's more, an acceptable, appreciated and even required form of behaviour.<sup>15</sup>

For a long time dominant attitude of society toward rape victims was the one that resulted in further victimization, by accusing the victims themselves of being the ones responsible of provoking or not resisting the rape. With the development of female liberalistic and feministic movements (some of which were so radical that they labelled every sexual relation between a man and a woman as rape), women as rape victims came into the centre of attention. As a supplement, Amir's study that is used by Trick and Tennet<sup>16</sup> shows that a fourth of victims

<sup>12</sup> The human sexual instinct is different from the sexual instinct of other animals, because with animals, sexual instinct is an instrument with which the exercise of reproduction is fulfilled, and is a way of keeping a breed alive in nature. With man it is much more subtle because with people sexual instinct appears firstly for fulfilling the need for pleasure, and then for procreation. It can be argued that people use contraceptive devices for sexual intercourse so that no conceivment takes place, and by homosexuality which does not and cannot have a procreative function. According to one study of American scientists, certain types of monkeys (baboons) and dolphins also have intercourse because of pleasure.

<sup>13</sup> Turčin, R.: Forenzička psihijatrija, in Kecmanović, D.: Psihijatrija. Tom II. Beograd - Medicinska knjiga, Zagreb, 1989.

<sup>14</sup> Brownmiller, S.: *Against Our Will: Men, Women and Rape*. New York, Simon & Schuster, 1975, p.56.

<sup>15</sup> Pergl, M.: *Posilstvo*, u: Žagar, D.: *Seksualna delinkvenca: Zbornik predavanj 6. posveta forenzične psihijatrije*, Ljubljana: Psihiatrična klinika v Ljubljani, Centar za mentalno zdravje v Ljubljani, 1995.

<sup>16</sup> Trick K.L.K., Tennet T.G.: *Forensic Psychiatry - An Introductory Text*, London: Pitman Books Limited, 1981., p. 91.

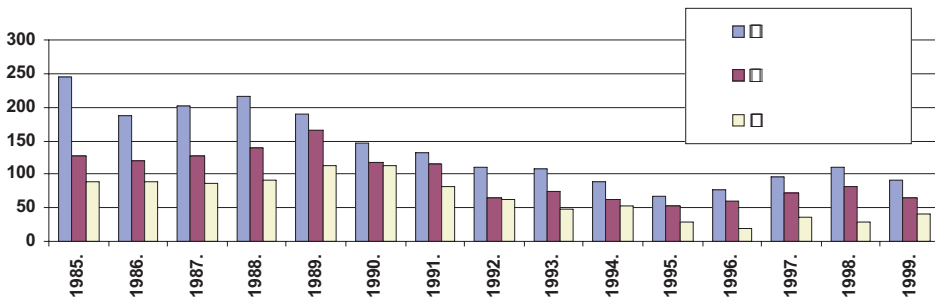
were forced with weapons, a fourth with threat of injury, a third was treated harshly, a fourth was beaten, and around 12% were choked.<sup>17</sup>

### 3. A phenomenological analysis of facts regarding crime rapes in Croatia and the world

A phenomenological analysis of facts regarding crime rapes in Croatia is represented in Graph 1. We can divide the graph into two eras, an era of slight decrease in reported, accused and convicted adults for the crime of rape from 1985 to 1996 and an era of continuous slight increase - from 1996 to 1998 followed by decrease in 1999. The greatest number of reported rapes was noted in 1985 (244 rapes), and the least in 1996 (68 rapes). The number of accused and convicted rapists follows similar curves, the most accused people being in 1989 (166 convicted), 1989 (114 convicted) and 1990 (114 convicted). In 1996 only 20 people were convicted of rape, which is almost six times less than in 1989 and 1990.<sup>18</sup> If we take into account the unique relationship between sexual instinct and aggression, then we can explain the constant decrease in the number of rapes from 1990 to 1996, which coincides with the war in Croatia.

#### Graph 1.

*The number of reported, accused and convicted adults in the Republic of Croatia for the crime of rape (Act 188 of the Criminal Law) from 1985 to 1999.<sup>19</sup>*



Because the act of rape is aggressive behaviour towards the victim, we can hypothesise that some of the aggressive behaviour was released during the other acts of aggression in the war, which resulted in less prevalent acts of sexual aggression during these war years. After the end of the war, the number of rapes increased, which means that aggression was again released through rape. However, we have to consider other factors such as migration of the war refugees from Bosnia and Herzegovina, the mobilization of the group at the age of rape perpetrators, the non-existence of statistical information from almost a third of the country that was occupied, and economical elements (sharp decrease of the living standard as a result of war). Also, after the war finished in 1995, the police returned to formerly occupied areas where they once again started their detective duties, with a stronger feeling

<sup>17</sup> Molnar, I.: Forenzično-psihijatrijski aspekti silovanja, Vještak, num. 16, 1998., p.50.

<sup>18</sup> Šuperina, M., Garačić, A.: Učestalost kaznenih djela protiv spolne slobode i spolnog ćudoreda u Republici Hrvatskoj te neka pitanja u svezi s tumačenjem i primjenom kaznenopravnih rješenja iz Glave XIV. Kaznenog zakona, Hrvatski ljetopis za kazneno pravo i praksu, Zagreb, vol. 7, no. 2, 2000. p. 134.

<sup>19</sup> Statistics obtained from the National Institute for Statistics.

of respect and defence of one's own and others' rights and freedoms, which resulted in a greater number of reports from the victims.

As a comparison, during 1991 in the United States of America (USA) there was one reported rape for every 2400 citizens, while in Croatia there was one reported rape for every 36,500 citizens, which means that there were 15 times more rapes in the USA than in Croatia.<sup>20</sup> Two equally possible explanations for such drastic difference in rate of reported crimes between Croatia and USA are 1) that there is a real difference in crime level between two countries, or 2) that in Croatia rape is actually underreported, due to society stigma that victims of rape still face.

Information from the European Committee on Crime Problems<sup>21</sup> shows us the number of rapes per 100,000 in European countries from 1990 to 1996. It is interesting that according to this information, Sweden is the country that has by far the most rapes (every year), and that the number is nine to ten times larger than the number in Croatia. Does this mean that Sweden, whose social system and cultural level is usually used as an example, is a land of rapists and deep moral and cultural problems, or is the "dark number" (number of unreported rapes) of rapes very small there because most rapes are reported.<sup>22</sup> This might be one of possible explanations of the high percentage of rapes in the northern countries - Norway, Denmark, The Netherlands and Finland, where it reaches values that are three to five times larger than they are here.

Cyprus has the greatest increase in the number of rapes at 361%, but its values from the least in Europe (in 1990) rise to the value of Croatia (in 1996), Malta (160%) and Catholic Ireland (129%) also noted great increases. An average number of rapes, by European standards, were noted by Lithuania and Romania. A surprisingly small number of rapes were reported in "Catholic" Italy, Malta and Cyprus.

It is likely that all European countries have approximately the same number of rapes, with small discrepancies, which depends on a number of factors,<sup>23</sup> and the real number is probably the same as the one in the Scandinavian countries just because of the social balance and the protection of human rights that they use there. The information of the European Committee on Crime Problems<sup>24</sup> shows us the number of convicted rapes per 100,000 in European countries from 1990 to 1996. In the table we see that the greatest amount of convicted rapist are in Russia, which shows us two things - Russia's justice system is very effective and/or that there is a small amount of perpetrators that have more than once raped.<sup>25</sup> There is a similar situation in Romania, Lithuania and Italy.

A small number of convictions (Malta and Cyprus in certain years do not have them at all) are in Sweden (where the number is nine to ten times smaller than the number of reported rapes), Norway, Austria, Switzerland, England with Wales, and the Czech Republic - all countries that have a large number of reported rapes. This implies that countries with a large number of reported rapes (more than 8 reported rapes per 100,000 citizens) have a justice system that is less effective or that a greater number of offenders are special recidivists.

<sup>20</sup> Molnar, *op. cit.*, p. 52.

<sup>21</sup> European Committee on Crime Problems (CDPC): European Sourcebook of Crime and Criminal Justice Statistics, Strasbourg, PC-S-ST (99) 8 DEF, October 12, 1999.: Table 1.B.1.5.

<sup>22</sup> For example, in Sweden as a truly socio-democratic country, a woman, if abused by her husband, receives a move to a new place, a new apartment, a job, and social help. Because of that it can be asked, whether women there, knowing that they will really be protected, are braver in reporting rape, so that the number of rapes look incredibly large in comparison to other less civilized countries. It is probable that the dark number is small, in comparison to us, where it is 4 to 10 times larger than the number of reported rapes.

<sup>23</sup> Demographic, religious, economic, cultural, etc.

<sup>24</sup> European Committee on Crime Problems (CDPC): European Sourcebook of Crime and Criminal Justice Statistics, Strasbourg, PC-S-ST (99) 8 DEF, October 12, 1999.: Table 3.B.1.4.

<sup>25</sup> Namely, we conclude that if we compare the number of rapes to the number of convicted (in average 9.5:7.5 on 100,000 people)



Alternatively, small report versus conviction ratio may also result from a large number of false reports.

#### 4. A phenomenological typology of the victim according to some authors of world literature

Depending on the aspect from which we observe the victim, causes and predispositions to become a victim lay in the biological, sociological and psychological type of the personality.<sup>26</sup>

*Hentig* made a phenomenological victim typology by organizing them into 11 categories based on visible characteristics: "minors, elderly, mentally ill, immigrants, members of minority groups, dull-normal, depressive, high-flying and lonely, disappointed, in want of life, blocked and boring."<sup>27</sup>

*Mendelsohn's* typology<sup>28</sup> is directed at the amount of guilt, therefore it is psychologically interpretable. He divided them into four categories: completely innocent as the ideal victims, victims with a little guilt and those that act out of inexperience, victims that are as guilty as the delinquent, that is, the voluntary victim, and the victim whose guilt is a little larger than the perpetrator's. This last category is divided into two subcategories by the author - the provoking and the ill meaning victim.

*Thorsten Sellin* and *Marvin E. Wolfgang* define four categories of victims. "According to them, there are individual victims who are directly attacked, then impersonal victims such as: a store, church, theatre, and railroad. In the third category are the public goods: social, moral or legal order, and in the fourth are victims who with opposite interaction become victims, as is the case with adultery."<sup>29</sup>

Finally, *Gasser* organizes victims into three categories according to the reason of becoming victims. He differentiates among biological, psychological and social reasons as causes of becoming a victim.<sup>30</sup>

#### 5. Victims of sexual crimes

The role of a rape victim can greatly vary. The analysis of many sexual acts shows that there is a great psychological interaction between the perpetrator and the victim. Since rape is an act that involves two people, the role of the victim is an important factor in the final result.<sup>31</sup> Every victim has her objective and subjective characteristic qualities. Objective qualities include age, sex, social status, etc, while subjective qualities include intelligence, moral characteristics, character, temper, etc. Both qualities play an important role in the conditions required for rape.<sup>32</sup>

<sup>26</sup> Biology as a science explains, when it deals with life in the widest sense, the knowledge of genetics, the mechanism of the body, and psychological characteristics of certain human beings, who work together through the interaction of psychosocial factors. Biology, psychology and sociology affect one another by intertwining and integrating

<sup>27</sup> Pospišil-Završki, K.: Dosadašnje viktimologijske spoznaje o žrtvama krivičnih djela, Priručnik, num. 4, 1980, p. 339.

<sup>28</sup> Mendelshon, B.: The Origin of the Doctrine of Victimology.

<sup>29</sup> Pospišil-Završki, *op. cit.*, p. 340.

<sup>30</sup> Gasser, R.: Victimologie, Kriminalistik Vrl. Chur, 1976.

<sup>31</sup> Modly, Žrtva silovanja u lošem psihofizičkom stanju, Priručnik, num.1, 1988, p. 26. - That is the reason why is the role of the victim and her personality, always of great importance in explaining the actions of the perpetrator. It is a known fact that some person more easily become rape victims in certain situations.; Moldy, D.: Neki propusti kriminalističko-metodičke naravi u predistražnom postupku pri istraživanju kaznenih djela silovanja, Hrvatski ljetopis za kazneno pravo i praksu, num. 1, Zagreb, 1999.

<sup>32</sup> Ibid, p. 27.

With the act of rape, it is important not to forget the possible initial consent of the "victim" since the same factors can, according to the situation, represent an agreed to or forced sexual relation. Rape is defined depending on the factual state and the description of the victim.

The objective status omits "coercive force", and the subjective state can fall through if the perpetrator doesn't understand or cannot understand the resistance of the victim. Because of this, it is not strange that in the eighties in Germany only 1/5 of rape perpetrators reported to the police were convicted, and almost a third of the accused were liberated. The doubts that are emphasized in liberating sentences are unbridgeable. Schulz<sup>33</sup> rightly notes when he speaks of the victims: "The great uncertainty arises there because the victim alone decides of the questions of use of force. What's more, the victim decides whether there was or wasn't coercion involved." For example, the victim can feel that the force was used even when the perpetrator was extremely friendly. It is also possible that the victim denies being forced because it was her wish and the act for her wasn't distasteful. It is also possible that the victim initially agrees to the sexual act but later changes her or his mind and describes the same as being involuntary and forced.

If we look at the distribution of rapes relative to the day of the week or the season, the most rapes occur on Sundays, with summer being the most dangerous period of the year. In some geographical areas that have large community festivals and street celebrations in February (for example, Mardi Gras) this time of the year is the synonym for "accepting victims."

Rape most commonly occurs in the victim's house, and the areas adjoining the house: workshop, stable, basement. This is followed by country paths, forests and fields as the second most common place for rape to occur. In the last ten years, there is a rise in the number of rapes that occurred in trucks and other heavy vehicles.

According to the research of Schulz based on the data from one county court in Germany, victims are mostly in the age group under 18, followed by age group 18 to 25, after which the curve drops drastically. The conviction is less likely if the victim of the rape is a married woman. In the age group of victims from 40 to 50 years old, twice as many perpetrators were liberated than were convicted because the time of menopause in the woman matched the culmination of accusations for such deeds<sup>34</sup>. According to court practice, rape develops in three time-associated actions of the victim. In the first part with flirting, even though she thinks that it makes no difference, she approaches the perpetrator. He considers these actions to be consent to his intentions. His belief that the use of force is not unacceptable melts at the beginning of actions. Then the victim absolutely irrationally retaliates. In the third part, the woman most often gives in, since "everything is vain, anyways" and suffers the sexual act not even totally passively, even though she can completely mechanically cooperate.

Whether the rapist will receive deserved punishment really depends on the energy of the victim that reports the rape. It is because of the shame and fear of what the community will say that most rapes go unreported. There can be any number of reasons for not reporting the rape, from victim not being aware that it needs to be reported, to self blame of the victim for not fighting harder against the perpetrator, to some other reason that the victim might have for actually trying to protect the rapist

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<sup>33</sup> Schulz, H.: Die Notzucht, Täter-Opfer Situationen, Hamburg, 1958.

<sup>34</sup> Schulz, *op. cit.*, "According to court practice, rape develops in three time-associated actions of the victim. In the first part with flirting, even though she thinks that it makes no difference, she approaches the perpetrator. He considers those actions to be consent to his intentions. His belief that the use of force isn't unacceptable melts at the beginning of actions. Then the victim absolutely irrationally retaliates. In the third part, the woman most often gives in, since "everything is vain, anyways" and suffers the sexual act not even totally passively, even though she can completely mechanically cooperate."

A nationwide survey “Non-reporting of Sexual Assault Victimization in Japan” made by John Dussich’s<sup>35</sup>, had a goal to comparatively measure the extent, character and dynamics of nonreporting among sexual assault victims in Japan; in particular among Japanese, Chinese, Korean and English speaking women. According to Dussich survey, three most common reasons for not reporting were: “the victim did not consider the incident serious enough; victim thought reporting would be troublesome; the victim thought the police would ask unpleasant questions. Rape prompted the most reporting followed by sexual assault with force. Only six of the victims in the 24 rape cases reported their victimization. Those sexual assault victims who experienced violence reported more often than those with no violence. When sexual assault victims dealt with their victimization alone, 91.1% of the women chose not to report; however, when others were involved in the decision, reporting increased significantly.”

When the victim gets over her feelings, sometimes so much time has passed that the accusation is not taken seriously enough, even by the police. However, understanding psychological effects of rape on the victim, lawsuits that take place after a prolong period of time should be taken as seriously as those that are initiated in a timely manner.<sup>36</sup>

With attempted rapes, there is usually a lack of energy for reporting the crime. A woman who successfully defended herself from a sexual attack physically is unharmed. She feels like a winner and is happy, so she has no interest in convicting the perpetrator.<sup>37</sup>

## 6. Pre-crime social relationships between the perpetrator and the victim - an analysis of comparative quotes from world literature

Pre-crime social relationships are very important when observing the situation. Schneider differentiates four possible types of pre-crime relationships between the perpetrator and the victim.<sup>38</sup>

In the case that the victim and the perpetrator do not know one another, there is neither pre-contact nor pre-acquaintance. The rapist can be known to the victim, without there being prior sexual contact.

The victim knows the perpetrator for a short period of time before the crime, or the victim has some knowledge of where the perpetrator lives, works, and the name or the nickname of the perpetrator.

The victim has seen and met perpetrator more than once. That acquaintance is such that the social contacts were usually in the neighbourhood, at the workplace, at the gym, at school, at college, etc.

The perpetrator and the victim know each other well, and their social relations intertwine. Included are direct friends (personal friends of the victim), indirect friends (friend of a relative of the victim), relative (by blood or marriage), known close neighbours, etc.

<sup>35</sup> <http://www.victimology.nl/> - “A survey of 748 women - 281 victims of a crime and 260 victims of sexual assault, showed that Japanese women were clearly different in their response patterns, yet closer to the Korean and Chinese response and least similar to the English speaking women.”

<sup>36</sup> Schulz, H. *loc. cit.*

<sup>37</sup> According to court practice, rape develops in three time-associated actions of the victim. In the first part with flirting, even though she thinks that it makes no difference, she approaches the perpetrator. He considers these actions to be consent to his intentions. His belief that the use of force is not unacceptable melts at the beginning of actions. Then the victim absolutely irrationally retaliates. In the third part, the woman most often gives in, since “everything is vain, anyway” and suffers the sexual act not even totally passively, even though she can completely mechanically cooperate.

<sup>38</sup> Schneider, H.J.: *Der Täter und sein Opfer-Partner im Verbrechen*, Vrl. Kindler, München, 1979.

Examining the social relationships between victims and perpetrators of sexual crimes within certain groups, examiners came to different conclusions. Feix<sup>39</sup> in 1967 found that "from the actions of the victim and from her personality arise some impulses that trigger the outplay of the crime, the decision of the perpetrator to commit the crime, as well as give the motive for the crime."

The study of Kinsey, Pomeroy and Gerhard<sup>40</sup> in 1954 showed pre-crime social relationships of adult men who with sexual intentions approached girls under the age of 12. Out of 609 examined there were: strangers in 45% of the cases, friends and acquaintances in 32%, uncles in 9%, fathers in 4%, brothers in 3% and grandfathers in 2%. Out of 1075 tested female adult victims the following information about the type of abuse was found: attempt at sexual closeness in 9%, fondling the male genitals in 51%, fondling the female genitals in 1%, oral contact with the male genitals in 1%, and coitus in 3% of the cases. The overlapping of percentages indicates more than one act for the same perpetrator.

The survey of 4441 American women by Gagon<sup>41</sup> in 1965 recorded prevalence of sexual abuse. According to the survey, 1075 women were abused of which 333 were molested before the age of 13 by an adult male. The author claims that those 333 women described 400 sexual molestations, of which only 6% were reported. A quarter of the victims knew the perpetrator, and in 8% of the cases, a relative was involved.

Schönefelder<sup>42</sup> examined 30 girls in 1968, and 188 cases with female victims from the County court in Hamburg. The following forms of sexual contact were found: nongenital contact, genital contact, mutual manipulation acts similar to the sexual act, anal and oral fondling, and attempted and completed sexual act. The perpetrators were: people that were socially close, neighbours, acquaintances, friends of the family, relatives through blood or marriage, or some other authoritative person. Out of 188 girls, 37% actively participated in the sexual act.

Nau<sup>43</sup> in 1962 claimed that children who were the victims of sexual crimes came from "emotionally hungry" families. Out of 600 examined children, 349 of them acted towards the crime on a scale from indifference to mental readiness.

Reinhardt<sup>44</sup> in his studies of relationships between perpetrators and victims of sexual acts (based on 150 court files) in the Counties of Zurich, Solothur and Bern showed that the victims were girls from 12 to 16 years old. He claimed that we cannot think of a majority of the girls as "seduced" or "molested", because the majority provoked the act, or at least in a high degree "voluntarily suffered" the act. 54% of the girls had sexual experience before the crime, 73% behaved provocatively, but the act was "readily suffered", while 51% developed a feeling of liking for the perpetrator. 78% came from unfavourable social backgrounds and with 82% the act was a result of negligence in raising the child.

Amir<sup>45</sup>, who followed 646 acts of rape in Philadelphia that were recorded by the police in 1958 and 1960, made a more detailed empirical study in 1971. He found that the relationship

<sup>39</sup> Feix, G.: Die Bekämpfung von Sexualverbrechen an Kindern, Berlin, Ost. 1967. In the area of Schleswig-Holstein in 1977, 10,147 victims of various crimes were noted. Positive pre-crime social relationships between the victim and the perpetrator in comparison to the total number of victims and to the crimes were as follows: in murder, 84%; in homicide, 78%; in acts of so-called common violence, 47.5%; in rape, 44%; in child molestation, 48%; in serious bodily harm with deadly consequences, 37.5%; and in bodily harm, 45%. These relationships were least common in robberies (25%), and most common in molestation of persons entrusted for education and care (100%), like it is shown, after the fourth and fifth column come the two most frequent sexual crimes: rape and coition, in 92%.

<sup>40</sup> Kinsey, A.C. - Pomeroy, H. - Gerhard, D.: Das sexuelle Verhalten der Frau, Berlin-Frankfurt am Main, 1954.

<sup>41</sup> Gagon, J.H.: Female Child Victims of Sex Offences, Social Problems, No. 13, 1965.

<sup>42</sup> Schönefelder, T.: Die Rolle des Mädchens bei Sexualdelikten, Stuttgart, 1968.

<sup>43</sup> Nau, E.: Die Glaubwürdigkeitsbeurteilung kindlicher u. jugendlicher Zeugen, Jahrb. d. Jugendpsychiatrie, Bd., 3., 1962.

<sup>44</sup> Reinhardt, H.: Die Bestrafung d. Unzucht mit Kindern, Bern, 1967.

<sup>45</sup> Amir, M.: Forcible Rape, Vrl. Schultz, 1975.

between the perpetrator and the victim was strengthened if the victim did some specific jobs - like a nurse or waitress. Social stratification also played a role. Women from the lower classes were more often victims than those from the so-called middle and upper classes. The amount of physical resistance towards the perpetrator, according to the author, was directly proportional to the physical and psychological brutality during and before the sex crime. In the examined material, 28% of the victims resisted the perpetrator before and during the sex crime, 10% fought with him, and 55% acted submissively. The author does not agree with the theory of Mendelshon<sup>46</sup> how an adult woman, if the attacker acts alone, can escape the attack. He shows the basic psychological state of women and how women are not brought up to fight for themselves. Examining 1292 perpetrators of sexual crimes, Amir found that they were 53% of the time acquaintances, friends, relatives of the family, or relatives of the victim, while the other 47% were strangers to the victim.

Kucklick<sup>47</sup> examined 221 rapes in 1970 and found that the victims in the majority of cases were overly naive, that they entered the cars or apartments of the perpetrators upon invitation, and that they went to the places where they were victimized. The author found that 75 were under the influence of alcohol at the time of the crime, and that places of meeting the perpetrator were public transit vehicles, streets, bus and train stations, and public locales. More than 50% of the victims were acquaintances, colleagues, neighbours, or relatives of the perpetrator. Of the 221 victims, 43 were by lifestyle or social status prostitutes, protégées under guardianship, alcoholics. The use of violence was through threats, slaps, covering the mouth by hand, degradation, and the use of alcohol. The places that the crimes took place were: cars, victim's apartment, perpetrator's apartment, private property, gateways, stairways, abandoned houses, locales, etc.

As Felix<sup>48</sup> claims, the meaning of alcohol for these crimes and victims in that it acted as a victimizer because the awareness and self-respect of the victim fell, and the amount of suggestibility and light-headedness rose.

Schneider<sup>49</sup> claims that all criminal behaviour, especially sexual crime, is the result of a dynamic process of interaction between the perpetrator and the victim, where the basis lies in the predisposition of somebody who wants to become a victim. It is the reason that they "bait" the perpetrator into the act, that he is released by his actions or that he is at least brought to the point where he easily attacks. However, the predisposition to become a victim is not inborn, nor is it a sign of personal character, or a biological trait. This predisposition is different, or as the author claims, it is "learned" in various states of social need.

It is especially valid with sexually molested children, who are, like all children, unusually curious about sexuality. The children examined by many authors come from social and economical misery, and their families are most often completely disorganized, with the child often neglected, if not physically and mentally abused. They are often children with early behavioural defects in the narrower social community (family, school). The greatest harm to those children is from the dysfunctional family relationships, which causes emotional problems or break in the relationship between the parents and the child. Many researchers found a poor or nonexistent capacity for self-control with girls that they transcribed to the lack of motherly love, the mother's emotional non-existence and the non-existence of an emotional relationship between daughter and mother.

Sexually abused female children, according to Nau<sup>50</sup>, are usually charming, contactable, at the age of 10-12 especially partial to sexual contact, and all in the search for love, attention, or gentleness that they do not have in their family. Girls want to prove to their parents via

<sup>46</sup> Mendelshon, B., *op. cit.*

<sup>47</sup> Kucklick, N.: *Kriminologische Untersuchung: Notzucht, Nötigung zur Unzucht*, Hamburg, 1970.

<sup>48</sup> Felix, G.: *Die sexuell motivierten Tötungsdelikte in der DDR*, Berlin, 1967.

<sup>49</sup> Schneider, H. J.: *Der Täter und sein Opfer-Partner im Verbrechen*, Vrl. Kindler, München, 1979.

<sup>50</sup> Nau, *op.cit.*, p. 232

sexual relations that they are “grown up” and “independent”. The author brings up one more interesting point: most often victims of sexual crimes are not psychologically and physically disturbed, contact shy or poor children, nor are they children that come from disturbed households, with mentally slow, infantile mothers, but they are often the only children in the family.

Pollock, Stelle and Brandt<sup>51</sup> examined family relations in the USA in families where the children were victims of different criminal acts and they found that dissonant situations can predispose a child to become a victim, sometimes even a few years ahead of time. Parents who are themselves emotionally immature pass over to the child their neurotic conflicts, demanding that they be of physical and psychological help in their problems. They exhaust the child with their overpowering mental problems, and take out all their unhappiness with life on the child. The emotional immaturity of the parents does not allow the children to grow, mature, and develop their personal confidence. Schneider claims that psychoanalysis can see all women as potential victims, because every woman has unconscious, potential tendency to become a victim. Malleus Maleficarum in the 15<sup>th</sup> century considered woman to be the “mother of all sexual sin” because of her sexual “lust”.<sup>52</sup>

Psychological pathologists underline mental disturbances as a condition of abused girls and raped women, while sociological learning claims the opposite, finding the problem of those victims in their status and unhappiness.

The lack of attention, love, emotional warmth, independence in the family and respect are elements that, according to the experience of Amir<sup>53</sup>, make women victims of sexual violence or cause what is later called “an accident” or they become a “complementary partner” of the perpetrator. The author bases those claims on the examination of 646 rapes, in which he found that in 122 cases (19%) the victim provoked the rape.

The consent of the victim to drink with the perpetrator, agreeing to go with a stranger into his car, to enter his apartment upon invitation, or to invite him to one's own apartment, like the fact of not clearly resisting and firmly not agreeing to the act are elements of being a “complementary” accomplice to the act.

Comparing 122 provoking with 524 non-provoking rape victims, Amir found a much greater amount of provoking participants in the following categories: blood alcohol level at the same level as of the perpetrator at the time of the crime, “having a reputation”, a victim and the perpetrator live in the same neighbourhood, meeting the perpetrator at a bar, picnic or party, sexual self-obliging victim and the existence of a described unconscious relationship: perpetrator - victim.

Schneider concludes that the genetic victims occur based on the economical situation in a certain social system. He warns of the society of material excess where volatility arises, and needed self-control exists, neither in behaviour nor in spending. As far as sexual crimes go, he considers family upbringing and a lack of emotional warmth responsible for total loss of control of the behaviour of children, minors and adolescents.

## 7. Research results from Zagreb County

This practical part of this work, shows are the results of the research of 44 final judgements made from 1991 to 2000 (the County Court in Zagreb, and the Supreme Court of Croatia) which are to do with Art. 188 of the Criminal Law of the Republic of Croatia, with

<sup>51</sup> Pollock, C., Steele, H., Brandt, N.: Violence and Victims, Boston, 1975.

<sup>52</sup> Bonheur, H., Rosner: Sex Offenders: Diagnosis, Organicity, and Intelligence, Journal of Forensic Sciences, vol. 26, no. 4, Colorado Springs, p. 783.

<sup>53</sup> Amir, *op. cit.*, 23.

the goal of designating a typology of victims of the rape crime and its relationship and ties to the perpetrator in the area of the Zagreb county.

In 42 of these 44 judgements the accused perpetrators were convicted, and two were found innocent. In 40 judgements, the accusation has to do with one perpetrator - singular rapes, while one judgement had to do with a group rape, where three young men were involved, so all together we have 43 perpetrators.

### 7.1. Information about the committed rapes

Almost two thirds of the rapes (62.3%) happened in the time frame from 10 pm to 4 am. (see Table 1.). It is necessary to note that rapes in the city happen at night, while rapes in the country, happen during the entire day, which will be discussed later. Note that "night rapes" are committed on Monday, Tuesday, Thursday, Friday, and Saturday, while "day rapes" are committed on Monday, Wednesday, and Friday. As it is obvious, out of this information we cannot relate the day of the week with the time of the rape. From the pattern analysis we can see that rapes are committed every day of the week except for Sunday (see Table 2.)

**Table 1.:** *Time of the rape*

8 am - 10 am	10,5%
10 am -12 am	5,3%
1 pm - 4 pm	0%
4 pm - 6 pm	5,3%
6 pm - 8 pm	5,3%
8 pm - 10 pm	10,5%
10 pm -12 pm	15,8%
12 pm - 2 am	26,3%
2 am - 4 am	21,1%
4 am - 6 am	0%
6 am - 8 am	0%

**Table 2.:** *Day of the week*

Monday	36,8%
Tuesday	10,5%
Wednesday	15,8%
Thursday	5,3%
Friday	22,2%
Saturday	5,6%
Sunday	0%

It is interesting that the highest number of rapes is committed on Monday in the early morning hours (36.8%). Since they are usually city rapes, this can be explained by the fact that perpetrators "go to the town" and get drunk on Sunday, and then early Monday morning, while still intoxicated commit rape. Also, rape happens more often in the first and second quarter of the month (58.1%) than in the third and fourth. It is interesting that only 5.3% of

rapes are committed in the third quarter. This relationship could be explained by the fact that at the beginning of the month, people receive their paycheques or social help (or their parents receive it), and because of that, they "go out", get drunk, and commit rape. From the statistics we can see that rape occurs more often in February (15.3%) and October (15.3%), while in November and December not one rape was committed (see Table 3)

**Table 3.: Month of the rape**

January	10,5%
February	15,8%
March	10,5%
April	10,5%
May	5,3%
June	10,5%
July	10,5%
August	10,5%
September	10,5%
October	15,3%
November	0%
December	0%

Actually, as the month with the most rapes, we can single out October because there were three separate rapes committed, while the one in February was a group rape involving two younger adults and one minor, and so it should be looked at from the aspect of a group rape. We find that 1998 was the year with the most rapes (26.3%), and it is followed by 1995, 1994, 1996, 1997, 1993, and 1991.

Almost two thirds of rapes (62.5%) committed in the Zagreb County were committed in closed areas such as cars, apartments, houses, cottages, basements, etc. A little more than a third (37.5%) were committed in open areas (paths, streets, bushes, forests, open public areas, etc.).

Taking into account the description of the surroundings where rapes have been committed, the most of them happened on paths, streets, and apartments (including houses, cottages and apartments) at 40%, and cars take the second place at 13.3% (mostly city rapists).

Most rapes occurred in the country, that is, the area outside of the city (53.3%). All rapes committed by perpetrators that live in the country were committed in the country, while some perpetrators from the city committed rape by taking the victims to a place out of the city (most often some forest or bushes by a path).

## **7.2. The relationship between the perpetrator and the victim**

In most cases (55.6%), the victim and the perpetrator are acquainted, which can mean that he in advance fantasizes the rape, and fixates the victim. On the other hand, we have 44.4% of those that pick their victims randomly and at the moment that their sex drive is initiated.

We can make two conclusions from this. There are two types of rapists - those that fixate the victim, and have wanted her for a period of time, because it is difficult to believe



that someone would attack an acquaintance without previous consideration of the consequences. The other type is the type that in the middle of an "eruption" of sex drive, which slowly frees itself when they are under the influence of alcohol, turns into a pure monster without brakes - totally inhibited, they grab the first person that they like.

Of the people involved, 53.3% were not previously in contact with the perpetrator, so the attack came on as a total surprise for the victim. 40% of them had some previous contact at the scene of the crime. A great number (88.9%) of perpetrators did not use weapons to get the victim, except in two cases, where one used a pocketknife, and the other used a flintlock. Not a single perpetrator used restraining material, which means that they were certain that their strength was good enough to conquer the resistance of the victim. Not a single perpetrator tried to "clean up" the scene of the crime, which tells us that they did not worry too much about being caught, and shows their indolent attitude towards the committed crime. In 88.9% of the cases, the perpetrator did not take the personal items and values of the victim, which shows us that most of them were interested only in satisfying their sex drive.

### 7.3 The typology of the victim

In the data I was using in this research, young women from 17 to 25 were the targets, with the exception of two women at the age of 54 and 44, and one 7 year old girl. All the victims were female. Since they were mostly young women who are still at school, most of them (62.5%) are unmarried, while one quarter is married and for 12.5% there are no statistics. 31.25% are unemployed, 6.25% are employed part time (for example, waitresses), for 31.2% there are no statistics, and under other (31.25%) are students and housewives. 12.5% do not have school (country population), one is at elementary school (the seven year old child), 18.75% are high school students, and for 62.5% there are not any statistics. Since most of the victims are young, most live with their parents (43.75%), the married ones (12.5%) live with their husbands, 12.5% live with friends, 6.25% live by themselves, and there aren't statistics for a quarter of them. More than half (56.25%) have never been victims before, two have been once before, one has been twice before, and for 18.75% there are not any statistics. During the attack, 50% used verbal, passive and physical, 22.2% verbal and passive and 11.1% physical resistance. Half the victims spoke to their perpetrators before or after the sexual relation. Before the rape, 77.2% of the victims asked the perpetrator to have mercy, and 55.6% tried to calm the perpetrator by talking. Not one offered a different type of intercourse (oral, anal, etc.), and only one considered herself to blame for the rape. In this case the victim has been an Albanian woman that has lived for many years in Zagreb, but in her traditional ways. She thought that the fact that her husband's brother first attempted, and then raped her, was partly her fault, and so she was afraid to tell her husband. Her problem should be looked at from the aspect of her culture, which may seem to be old fashioned and conservative to us.

## 8. Conclusion

By comparing statistics from world literature with the results of this research we come to the conclusion that the typology of rape victims in the Zagreb County is more or less the same as in the larger area of Croatia, and even Europe and the USA. This suggests that typology of rape victims is universal for a transitional country and developed countries, with fluctuations due to cultural, ethnographical, demographical, religious, socio-economic, and other factors.

Rape victims in the Zagreb County are mostly younger woman from 17 to 25 years old. More than half of them are unmarried, and they come from lower social classes. Less than ten percent are employed. Almost all of the victims from the country are uneducated, while victims that live in the city attend school or study. More than half have never been victims before. Only 15% victims were alcoholised, while 95% of rapists were under influence of alcohol. Half of victims used force as a way of defending themselves, and two thirds asked the rapist to have mercy. In more than half cases the victim and the perpetrator are acquainted. Almost two-third of rapes happened at night, while months with the most rapes are February and October. More than half of rapes were committed in closed areas (such as cars, apartments, houses, cottages, basements, etc), while a little more than a third were committed in open areas (paths, streets, bushes, forests, open public areas, etc.). When we talk about the place of rape as a description, the most rapes occurred on paths, streets, and apartments (including houses, cottages and apartments) at 40%, and cars take the second place at 13,3%. The half of rapes took place in the country.

Even though statistics show that the majority of perpetrators come from the lower classes of society, it would be naive to think that they are the only perpetrators. The problem of unreported rapes, which is 4 to 10 times larger (in Croatia and the world) than the number of reported rapes, will definitely and unavoidably be present in the future<sup>54</sup>. In principle, it is the main problem of a detailed analysis of phenomenological and ethological aspects of rape. Most of the rapes are reported by women who are middle and lower class. Victims from the upper class are almost non-existent because they do not wish to be presented as victims in society so that they can keep their "social reputation". Victims rarely report perpetrators from the upper class because they are aware of their lower social status and do not believe that they will receive fair treatment.

The best way to fight rape is to prevent it, which would, among others, involve education and raise of the public awareness considering that crime. Important advances have been achieved - in 1998 Croatia has adopted the New Croatian Penal Code, which made some significant changes in the field of sexual offences, especially considering rape. Before 1998 rape could be committed only between men and women. Since then it has been extended to all combinations between sexes (male and female, female and male, male and male, female and female). Also, domestic and foreign governmental and nongovernmental organisations have started media and public campaigns regarding domestic violence, especially molestation and rape.

The causes of rape and other delinquent and criminal behaviour lie deep in the personality and psychical factors of man, but also in the society in which he grew, and in which he lives. This interaction of social and pathological factors gives us the answer to the question of why rapists and rape victims exist.

## Sažetak

U radu je prikazan teorijski okvir i rezultati istraživanja provedenog u Zagrebu kako bi se opisale karakteristike žrtve i žrtvinog odnosa s počiniteljem s osvrtom na članak 188. kaznenog zakona Republike Hrvatske. Autor nastoji opisati problem silovanja proučavajući pri tome psihički profil žrtve te upotrebljavajući podatke iz teorije kao i podatke dobivene na temelju vlastitog istraživanja provedenog na Županijskom sudu u Zagrebu. U radu su prikazani pravni, biopsihološki i sociomedicinski aspekti kaznenog djela kako bi se opisao psihički profil žrtve i njenog odnosa s počiniteljem te kako bi se dao prikaz problema u Hrvatskoj.

*Ključne riječi: silovanje, žrtve silovanja, počinitelj*

<sup>54</sup> Molnar, I.: Forenzično-psihijatrijski aspekti silovanja, Vještak, 1998.

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