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Only Yes means Yes

Laws guide attitudes and behaviour in society, which is why it is essential to make it clear in EU law that sex without consent is rape

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Only 13 EU countries have laws defining rape as sex without consent. Others require victims to prove the use of force or threat for the act to qualify as rape. As Socialists and Democrats, we are pushing to classify all non-consensual sex as rape across the entire EU in the currently negotiated EU directive to combat violence against women and domestic violence.

On a summer night, six years ago, Kristine Holst stayed over with a close male friend in Copenhagen, as she had done before. They had known each other for several years. In the middle of the night, she awoke to find this man climbing into her bed. - *He put his arm around my throat and then climbed on top of me. Pinning me roughly to the mattress, he raped me. That man was my friend. It took me a whole day to even say the word "rape."* Instead I found myself using the word *accident* - she wrote in the testimony published in the Time Magazine.

Rape is hugely under-reported, as women fear not being believed, stigma or they lack trust in the justice system. Kristine was determined to get justice, and she did go to the police, but what she experienced was indeed a very slow and humiliating process, which ended six months later with her perpetrator being acquitted. - *The worst* - Kristine recalls - *was the focus by the police, the lawyers and the judge on whether there was evidence of physical violence: on whether she had resisted, rather than whether she had consented.* She did say "no" several times, but under Danish rape law at the time, saying "no" and resisting was not enough.

Since that time, Denmark has changed its law along with 12 other EU countries, including Sweden, Spain, Belgium or Germany, and now has laws under which any sex without consent is defined as rape. Another 14 member states, including France, Poland or Austria, still use outdated definitions based on whether physical violence, threat or coercion is involved or if the victim is found to have been unable to resist.

This is an extremely outdated approach based on rape myths and harmful gender stereotypes. Most rapes do not fit stereotypes such as a 'stranger jumping out of the bushes', as Amnesty International and other research documents. Like in Kristine's case, women and girls are often raped by a friend or partner and more often than not have a reaction of trauma and subsequently freeze, making it impossible for them to resist. In addition, women can be involuntarily paralysed by drugs or alcohol, so often there is no physical violence involved.

Gender-based violence, sexual violence and domestic violence is a global pandemic and a serious violation of human rights. Also in Europe, one in three women has experienced physical or sexual violence since the age of 15, and one in 20 European women reported having been raped, according to a 2014 survey done by the [EU Agency for Fundamental Rights](#).

Now, we have a historic opportunity to give a voice to all women and survivors that gender-based violence is trying to silence, and make sure that the 'Only Yes means Yes' approach becomes the new norm throughout the whole EU. After years of our calls, the European Commission has recently proposed the first ever European legislation aimed at protecting women from violence ranging from female genital mutilation to cyberstalking. It also sought to make all EU countries codify non-consensual sex as rape punishable with a harmonised minimum penalty in prison. This would be in line with the Istanbul Convention, which says rape and all other non-consensual acts of sexual nature must be classified as criminal offences. They should be defined as crimes against a person's bodily integrity and sexual autonomy, as opposed to crimes against morality, public decency, honour or the family and society.

EU national governments have so far rejected to include the crime of non-consensual sex as rape in the Council's position, and - much to our huge surprise - removed the total provision for rape from the European Commission's proposal. They argue the EU has no legal basis for it, but in reality, they lack the political will. The same legal basis has already been used by the Commission for the criminalisation of sexual abuse of children in the Child Sexual Abuse Directive. And if rape is not sexual exploitation, then what is?

We urge the member states to change their position. It would not only be incomprehensible, but also an unforgivable insult to all women if minimum rules on the offence of rape were not included in the new EU legislation designed to fight gender-based violence.

Obviously, changing laws alone will not eradicate rape. We have to invest more in education on sexuality, consent and relationships; fighting rape myths and gender stereotypes; and training of legal professionals like police and judges. However, it is a long overdue step. It would send a powerful message about what kind of society we want to live in. That is, a society free from rape, and where everyone's sexual autonomy and bodily integrity are respected and valued.

Future generations should never question if sex without consent is rape. Victims must always feel safe and supported in reporting rape.

As Socialists and Democrats, we are determined to take on the fight with the member states, with the objective of having a final agreement before the end of this legislature, and before the European elections. However, we need an ambitious directive. One that will guarantee that all EU countries put into law that sex without consent is rape, and that all European women are equally protected.

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