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Position Paper

The wave of consent-based rape laws in Europe

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ABSTRACT

After years of feminist struggle, international conventions, and the #MeToo movement, consent-based rape laws have rapidly been replacing coercion-based laws across Europe since 2017. In May 2023, we identified 20 European consent-based rape laws, and more were in progress. This article analyses the emergence and convergence of these laws, drawing on the theory of institutional isomorphism. The analysis is based on a collection of criminal codes, draft laws, news articles, previous research, and input from national experts. We map a timeline of consent-based rape laws in Europe and describe their key elements, identifying patterns such as international pressure, influential countries, civil society impact, and cases of sexual violence triggering national debates preceding legislative changes.

1. Introduction

While MacKinnon (2016) has raised concerns about consent-based rape laws in a society characterised by gender inequality, other feminists have persistently advocated for these laws (Pineau, 1989). They argue that such laws protect a wider range of rape victims, reduce gender-based violence, and create a more gender-equal society (Little, 2005).¹ Coercion-based rape laws have been criticised for building on heteronormative and gendered ideas of sexuality (Pineau, 1989; Smart, 1995), contributing to rape myths, i.e. 'harmful, stereotyped or false ideas' concerning what constitutes a 'real rape' (Burt, 1980: 217), and for disregarding rapes without violence or threats.

Despite years of feminist struggle, few European countries had introduced consent-based rape laws until recently. Nevertheless, we show that a wave of such laws has recently swept Europe, spreading from seven to 20 jurisdictions after 2017.² This article describes this surge and delves deeper to understand what prompted it, making a threefold contribution.

First, it contributes theoretically by applying and subtly modifying the established theoretical framework of institutional isomorphism (DiMaggio and Powell, 1983) in a new context to analyse patterns of homogenisation of rape laws across Europe since

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E-mail addresses: sara.uhnöo@socav.gu.se (S. Uhnöo), moa.bladini@law.gu.se (M. Bladini).¹ Criminal law as the primary response to societal problems has also been criticised owing to structural discrimination within legal institutions (for a nuanced discussion, see McGlynn, 2022).² The following 20 jurisdictions in Europe had adopted consent-based rape laws as of May 2023: England and Wales, Ireland, Belgium, Northern Ireland, Scotland, Luxembourg, Germany, Montenegro, Iceland, Malta, Sweden, Ukraine, Greece, Portugal, Croatia, Cyprus, Denmark, Slovenia, Spain, and Finland. Since May 2023, additional countries have either considered or implemented similar laws. Greenland introduced a law in July 2023, Switzerland and the Netherlands are set to introduce a law in July 2024, the Norwegian government is currently working on legislative changes (as of February 2024).<https://doi.org/10.1016/j.ijlcrj.2024.100668>

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2017.

Second, we offer an internationally comparative exploratory analysis of the introduction of consent-based rape laws in Europe, filling a gap in the literature, which has predominantly consisted of national case studies with a legal and descriptive focus. Prior studies address potential legal implications of law reforms, legal definitions of consent and intent, and burden of proof (Attard, 2020; Cowan, 2010; Hörnle, 2017; Mrčela et al., 2020; Šuta et al., 2022; Westmarland, 2004). Several studies mention the reasoning and aims of law reforms, such as the protection of victims' sexual self-determination, the prevalence of rape reports and convictions, international law obligations, feminist campaigning, and the need to revise outdated laws (Attard, 2020; Chioni-Chotouman, 2022; Skilbrei, 2021; Wegerstad, 2021). The introduction of consent-based rape laws has been explained by referring to hyper-medialised cases of sexual violence, highlighting the shortcomings of current laws (Boullila and Carri, 2017; Faraldo-Cabana, 2021; Nilsson, 2020; Weber, 2016).

Third, this article contributes empirically by offering an overview (a map and a timeline) of the recent surge in consent-based rape laws in Europe after 2017 and the key components of the new consent-based rape definitions. Researchers (see, e.g. Brå, 2020:13; De Vido and Sosa, 2021; Greenfield, 2019; Lovett and Kelly, 2009) and non-governmental organisations (NGOs) (see, e.g., Amnesty International's report *Right to Be Free from Rape*, 2018) have published maps and analyses of rape laws in Europe. In early overviews, few European consent-based rape laws were identified (see, e.g., Lovett and Kelly, 2009), while more recent reports reveal far more (see, e.g., De Vido and Sosa,³ 2021).⁴ Because of the rapidity of recent developments, however, there is a need for mapping rape laws, and analysing the key elements of new consent-based laws.

In the next section, we examine background factors that are believed to have been significant in recent rape law reforms in Europe, while acknowledging the potential influence of other factors. The theoretical framework encompasses theories of sexual consent and institutional isomorphism. Following the outline of the methodological approach and data presentation, we present the results, map the emergence and definitions of consent-based rape laws, and tentatively analyse rape law homogenisation. The article concludes with a discussion.

2. Fertile ground for consent-based rape laws in Europe

To comprehend the recent proliferation of consent-based rape legislation in Europe, it is essential to position this phenomenon within the broader framework of international and national legal, cultural, and normative contexts (De Vido and Sosa, 2021; Greenfield, 2019; Rigotti, 2022). Several background factors can provide fertile ground for these legislative reforms.

First, developments in the international legal context are crucial. A significant case in the European Court of Human Rights was *MC vs. Bulgaria* in 2003, which asserted an obligation to criminalise and prosecute all non-consensual sexual acts effectively but left it to each state to define the offence in law. Moreover, the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence, the 2011 Istanbul Convention, is crucial.⁵ Article 36 addresses rape and sexual violence and requires states to criminalise non-consensual sexual acts.⁶ It states that consent can only be given 'voluntarily as the result of the person's free will assessed in the context of the surrounding circumstance' (Council of Europe, 2011). The Group of Experts on Action against Violence against Women (GREVIO) monitors the Convention's implementation. Furthermore, in 2022, the European Commission proposed a Directive of the European Parliament and Council regulating violence against women and domestic violence, drawing on the Istanbul Convention (Rigotti, 2022). One suggestion is to make lack of consent the decisive requisite for rape. In the final directive, i.e. the Convention on Violence Against Women, rape was excluded. This was due to 14 member states opposing the proposed 'yes-means-yes' model (including Bulgaria, Hungary, and the Czech Republic, as well as France, Germany, and the Netherlands).

Second, social movements, particularly the global #MeToo movement in 2017, have initiated profound political debates on sexual harassment and gender-based violence (Chandra and Erlingsdóttir, 2020).⁷ As our timeline shows, most European consent-based rape laws came into force after 2017, coinciding with the rise of #MeToo. This pattern may suggest that the movement affected the trajectory of legislative reform.

Third, exploring the normative European national contexts is essential for comprehending these developments. A comparative analysis reveals a consistent pattern: European countries with consent-based rape laws, with few exceptions, score highly on the Gender Equality Index. Additionally, inhabitants of these countries exhibit high levels of confidence in the justice system, coupled with a relatively strong rejection of rape myths⁸ (see Appendix A). These factors are integral to the national context, potentially influencing

³ In this report from 2021, 11 jurisdictions with consent-based rape laws were identified.

⁴ In January 2024, the European Parliament (2024) published a report on consent-based laws in EU countries. Our analysis also includes countries that are not members of the EU.

⁵ The Istanbul Convention opened for signatures in May 2011 and entered into force in August 2014. Currently, it has been signed and ratified or accessed by 37 countries (Turkey has withdrawn), and the European Parliament recently voted for the EU to accede to it.

⁶ A sexual act includes vaginal, anal, or oral penetration with a body part or object without consent, performing other sexual acts without consent, and causing another person to perform sexual acts on a third person without consent.

⁷ The #MeToo hashtag went viral when actor Alyssa Milano shared her story and urged others to do the same with the words 'Me too' (Chandra and Erlingsdóttir, 2020). However, in 2006, activist Tarana Burke had already started a campaign for survivors of sexual violence called 'Me too'. The movement arrived later in some countries, e.g. Denmark in 2020. Moreover, the #MeToo movement peaked in different parts of the world under different sub-hashtags. Some examples are #Cuéntalo (Tell it) in Spain, #NeinHeisstNein (No means no) in Germany, and #IBelieveHer in Ireland.

⁸ Brå (2020:13, p.59) developed an index measuring the extent of the general public's rejection of four rape myths. In countries with high rape myth acceptance, it can be difficult for consent-based rape laws to be introduced or have an effect.

the adoption of consent models.⁹ In the next section, we delve into the theoretical underpinnings of our analysis.

3. Theoretical framework: consent and isomorphism

First, we address the main issues in debates on consent in rape law that inform our analysis of definitions. Second, we present our overarching theoretical framework of institutional isomorphism, on which we base our tentative analysis.

3.1. Understanding consent

Lawmakers and feminist legal scholars have debated consent-based rape laws for decades. One argument against them stems from the conceptual ambiguity of *consent*. Another underlines the risk of consent-based rape law framing sexual violence as an individual choice and a matter of communication (Wegerstad, 2021; Halley, 2016). Several countries with consent-based rape laws have previously rejected them, citing problems with defining and proving consent or arguing that coercion-based rape definitions already criminalise sexual acts without consent.¹⁰ Legal scholars have also problematised legal definitions of consent (e.g., Bladini and Svedberg Andersson, 2020; Mrčela et al., 2020; Suta et al., 2022). While some do not explore the definition thoroughly, others have proposed different perceptions of the concept (Beres, 2007). Slightly simplified, there are two main consent models, both included in our study: yes-means-yes, sometimes called affirmative consent (Hörnle, 2019; Halley, 2016), and no-means-no. Yes-means-yes models are affirmative and communicative, criminalising sexual acts *without expressed consent*, implying that consent *only exists* if freely expressed (Rigotti, 2022). No-means-no models criminalise sexual acts *against* someone's will, implying that a lack of consent is *expressed* through rejection (Rigotti, 2022). A key difference is their interpretation of passivity, which may occur, for example, when a victim freezes out of fear.¹¹ While yes-means-yes models normally interpret passivity as non-consensual, no-means-no models can interpret passivity as consent because rejection has not been expressed (Dowds, 2022; Little, 2005). Some raise concerns that the yes-means-yes model reverses the burden of proof by forcing defendants to prove ascertained consent. Others contend that the no-means-no model could subject complainants to secondary victimisation while proving non-consent (Dowds, 2022). Moreover, MacKinnon (2016) argues that in gender-unequal societies, consent cannot be given freely as elements of coercion are always present. Little (2005) criticises this view and advocates for a communicative consent-based rape definition to make sex more equal as both parties express their will. Munro (2010) suggests a *consent-plus* model that focuses on the complainant's consent and incorporates MacKinnon's criticism by including contextual and societal dynamics of power and inequality. Thus, the complainant's word is taken seriously while coercive factors of social norms, recognising that rape is both a personal and systematic violation, are considered. The parties should critically reflect on these factors while exercising agency without claiming utopian self-determination free from coercion (Munro, 2010).

It should be noted that there is an ongoing debate whether criminal law is the best way to address societal issues such as sexual violence. As 'law and order' solutions to societal challenges have spread worldwide, the carceral state and carceral feminism have been criticised (Fitz-Gibbon and Walkate, 2018).¹² This critique is partly driven by the recognition that legal institutions often perpetuate structural discrimination. In addition, the concept of governance feminism aims to shed some light on the effects of feminist movements that engage with power (see, e.g., Halley, 2016; Bernstein, 2007). This debate has revived after the #MeToo movement (McGlynn, 2022; Terwiel, 2020).

3.2. Using institutional isomorphism to understand rape law homogenisation

To analyse the European countries included in this article, we use the theoretical framework of institutional isomorphism. The theory explains homogenisation processes in organisations or institutions in specific fields and the mechanisms of isomorphism 'that forces one unit in a population to resemble other units that face the same set of environmental conditions' (DiMaggio and Powell, 1983: 149). Although the theory was initially formulated for the meso level, its application extends to the macro level. Beckett (2010) argues that the underlying logics at the meso and macro levels are not fundamentally disparate and applies it to understand the development of state laws in the US. Similarly, in our analysis, the theory is applied at the macro level, focusing on the organisational field of Europe. The units are European states, and the isomorphism is the observed similarities in national rape law reforms across Europe since 2017. Isomorphism is often driven by striving for legitimacy, for example, acquiring political power in the intergovernmental institution of the EU (Radaelli, 2000) or in the national parliaments.

⁹ Some countries, such as Malta, France, and Cyprus, break this pattern. Moreover, these factors can also affect the legal implementation of consent-based rape laws. For example, in Malta, the law was introduced in 2018, but the country still struggles with low rejection of rape myths, low reported rape figures, low conviction rates, and low trust in the justice system (Brå, 2020a,b: 13; Désirée Attard, personal communication, 2023). An additional illustration can be found in the UK, where despite the early implementation of consent-based rape laws, the jurisdictions continue to grapple with low conviction rates. Hohl and Stanko (2015) have identified the influence of rape myths and ethnic stereotypes on attrition in rape cases in the UK.

¹⁰ For example, Sweden in 2005, Iceland in 2007, and Denmark in 2016 (Bladini and Jacobsen, 2020).

¹¹ However, in some yes-means-yes jurisdictions passivity can, in exceptional circumstances, be interpreted as 'tacit consent' (see for example the Swedish bill Prop, 2017/18:177).

¹² In addition, it should be noted that the problem of carcerality differs among states.

In their seminal work, DiMaggio and Powell (1983) propose three main mechanisms of isomorphism: coercive, mimetic, and normative. *Coercive isomorphism* is based on power and consists of both formal pressures for homogenisation, such as legally binding documents (i.e., the Istanbul Convention) and informal – and thus more subtle – pressures, including external parties' cultural expectations for rape legislation. This pressure usually comes from powerful institutions on which the organisation, or European state, depends. *Mimetic isomorphism* is when organisations or states imitate each other's strategies, or in this case, legal reforms introducing consent-based rape laws. Imitation of structures and practices of perceived successful and prestigious actors in the institutional field, in this case, other European countries, typically occurs in moments of uncertainty or perceived weakness to enhance legitimacy. *Normative isomorphism* is the mechanism of conforming to shared professional norms, values, or beliefs within an institutional field. Homogenisation can be an effect of professionalisation in organisations, including the growth of informal networks of experts, such as GREVIO and legal advisory committees, which span organisations, exchanging information, expertise, and personnel (DiMaggio and Powell, 1983; Radaelli, 2000). Moreover, we suggest that normative isomorphism can take the form of normative pressures from civil society, including NGOs acting as experts. The distinction between coercive isomorphism manifested as informal pressure through cultural expectations on states and normative isomorphism from NGO advocacy centres on their sources of influence: power or attraction. While coercive isomorphism stems from institutions with formal power, NGOs lack comparable formal authority. They must use other means, exerting normative professional influence by articulating pivotal values, such as gender equality.

Institutional isomorphism has been criticised for an excessive fixation on the external constraints that control organisational agency (Battilana and D'Aunno, 2009), largely overlooking individual actors' agency in aligning with or resisting prevailing norms within organisations and their possibilities to change their fields of operation. Our analysis noted the importance of individual actors' advocacy for legislative changes. Therefore, inspired by Verpoest (2018: 142), we added *rhetorical isomorphism* to our conceptual framework, defined as individual actors legitimising legal reforms through strategic rhetoric to evoke emotions (pathos) and referring to norms and practices. In this study, we identified how key individuals (lawmakers, politicians, and civil society activists) use hyper-medialised sexual violence cases for rhetorical purposes, often including victim testimonies to convey a sense of truth and real-life impact (Smart, 1995) to appeal to societal norms and public opinion in calls for consent-based rape laws.

The difference between rhetorical and normative isomorphism, as defined in this study, is that in normative isomorphism, experts in professional networks engage in structured efforts to change norms. They use evidence-based reasoning and established professional norms and values to influence decision-makers to adopt policies and rely on the credibility and authority of expert voices. In contrast, rhetorical isomorphism relies more on the power of emotion to influence public opinion and advocate for legal reforms. In both cases, individuals, social movements, or organisations may attempt to change institutions through *institutional work* (Battilana and D'Aunno, 2009).

4. Methodology

This study is exploratory and interpretative. Although previous research varies in scope,¹³ we included all European jurisdictions that criminalise rape based on consent or lack of consent. Not all European countries are EU or Council of Europe members. Nonetheless, we discuss the influence of these institutions on non-member countries. Additionally, we examine how international law and discussions on rape without consent can influence national law, even outside of these institutions.

We began by composing a preliminary list of European countries with consent-based rape legislation identified in reports (GREVIO country reports 2017, 2018; Amnesty International, 2018; De Vido and Sosa, 2021). Next, by searching further reports, news articles, and scientific articles regarding European rape law reform, we added Finland, which introduced a consent-based rape law in 2023, along with Ukraine, Montenegro, and Portugal. International and national reports and news articles were also used to map and gain a preliminary overview of possible reasons for the reforms in each country. Moreover, before including a country in our sample, we examined its criminal code. Our inclusion criteria were that they 1) criminalise the offence as rape and 2) stipulate that the victim's lack of will, consent, or voluntariness (different concepts are used) is a legal requisite for rape. Yes-means-yes, no-means-no, and consent-plus laws were thus included. However, we excluded countries that criminalise non-consensual sexual acts as an offence other than rape. An example is Austria, where rape is coercion-based, but sexual intercourse without consent is a separate offence. We also excluded Estonia, with a rape law that mentions violation of the victim's will, while the requisite for rape still refers to violence or threat (European Parliament, 2024). Turkey¹⁴ was also excluded because coercion is not required for sexual offences, but neither 'rape' nor 'consent' are used as legal concepts in the criminal code. Table 1 displays the countries included and the sources by which we identified them as having consent-based rape legislation.

Based on our definition, we identified 20 countries with consent-based rape laws as of May 2023. A key methodological challenge was the varied information available in the 20 countries; see Table 1. To resolve this issue, we collected a vast amount of diverse and complementary data of four types: 1) *criminal codes* from each country, 2) *preparatory work* providing information on the reasoning

¹³ Lovett and Kelly (2009) analyse 33 countries, GREVIO reports (2017, 2018) analyse the 38 states that have signed and ratified the Istanbul Convention, and De Vido and Sosa (2021: 7) scrutinise 31 states (the 27 EU member states in addition to Iceland, Lichtenstein, Norway, and the United Kingdom).

¹⁴ Interpreting Turkey as a European rather than an Asian country may be controversial. However, as Turkey was the first and thus far only country to withdraw from the Istanbul Convention, it seems logical to examine it, albeit briefly.

Table 1
Sources for each country.

Country	News articles	Criminal codes	Preparatory work	Previous research	NGO/GREVIO-reports	Reference persons
Belgium	X	X			X	
Croatia	X	X		X	X	C
Cyprus	X	X		X	X	R/C
Denmark	X	X	X	X	X	L
England/Wales	X	X		X	X	
Finland	X	X	X		X	L
Germany	X	X		X	X	
Greece	X	X		X	X	R/C/L
Iceland	X	X	X	X	X	L
Ireland	X	X	X	X		L
Luxembourg	X	X	X		X	R
Malta	X	X		X	X	L
Montenegro		X			X	R/C
Northern Ireland		X		X	X	
Portugal	X	X	X		X	L
Scotland		X	X	X	X	L
Slovenia	X	X		X	X	L/C
Spain	X	X	X	X	X	L
Sweden	X	X	X	X	X	R/L
Ukraine	X	X	X	X		L

Notes: a. C = civil society actor (associated with NGO, i.e. Amnesty International or 8th March Institute), L = legal professional (i.e. LLD, LLM or law professors), R = researcher (scientists in fields other than law, i.e. gender studies or sociology).

behind rape law reform, 3) *previous research* on European consent-based rape laws, through systematic literature searches for each country¹⁵ and previous NGO reports or GREVIO country reports, and 4) *information from national experts* (reference persons), including researchers, civil society actors, and legal professionals. Data type 1 was used to identify and categorise the variations of consent-based rape laws, as discussed below. Data type 2 provided the legal reasoning and explained the discussions and motivations behind the law reforms. Data type 3 offered an overview of previous work on mapping the laws and the various national contexts, which was useful for our analysis. A key limitation of data types 1–3 was that sources in English were not always available. For sources in other languages, we relied on our own language skills,¹⁶ translation tools,¹⁷ and our personal and collegial networks¹⁸ who could translate. Type 4 data were used to complement and validate types 1–3. We identified and contacted national experts in all 20 countries and managed to reach 26 national reference persons in 16 countries via email or interviews, in person or online.¹⁹ These reference persons provided information that would be difficult to find elsewhere, directing us to other experts, criminal codes, and relevant official documents and assisting with fact-checking, translation, and validation of preliminary findings.

Then, after data collection, we explored the diverse national processes of consent-based rape law emergence in the 20 jurisdictions. Through a tentative analysis of factors that could explain the surge after 2017, we identified four main patterns: 1) international pressures, 2) influential countries, 3) civil society impact, and 4) cases of sexual violence triggering national debates. These four patterns were explored and interpreted with the four mechanisms of isomorphism in mind: coercive, mimetic, normative, and rhetorical. However, law reforms are highly complex, so these mechanisms are not exhaustive. In practice, these isomorphic mechanisms often coexist or follow each other and, over time, influence legislative reforms in a country. Below, we describe the patterns identified along with the applicable isomorphic mechanisms and illustrate these with examples.

5. Overview of consent-based rape laws in Europe: timeline and definitions

The results are presented in two parts. First, we present our categorisation and mapping of the 20 European jurisdictions with consent-based rape laws, with a timeline. In the second part, we discuss the four main patterns of law emergence.

Fig. 1 illustrates the 20 jurisdictions where rape is defined based on the will, consent, or voluntariness of the victim as of May 2023. Owing to recent developments, the figure provides a more extensive map of consent-based rape laws than does previous research. For example, Finland amended its rape laws in 2023. We also identified and added Ukraine, Montenegro, and Portugal.

The map clearly demonstrates that despite the recent surge, many countries still have not introduced consent-based laws. Italy and particularly France are interesting outliers in south-western Europe with high scores on the Gender Equality Index (see Appendix A). Another finding is that coercion-based models remain most prevalent in Eastern Europe, where many countries share a history

¹⁵ With the search words “rape AND [country]” and “rape AND consent AND [country]” in Scopus and Google Scholar, we found previous research on current consent-based rape laws in the countries studied, except for Belgium, Finland, Luxembourg, Montenegro, and Portugal.

¹⁶ The authors have comprehensive language skills in the Scandinavian languages, English, Spanish, and Portuguese.

¹⁷ Such as automatic translation tools on websites and Deep L.

¹⁸ Co-workers, friends, and national experts from our sample of countries.

¹⁹ We established contact with reference persons in all countries except for England and Wales, Belgium, Germany, and Northern Ireland. Consequently, we have reference persons in all countries that have introduced consent-based rape laws since 2017.

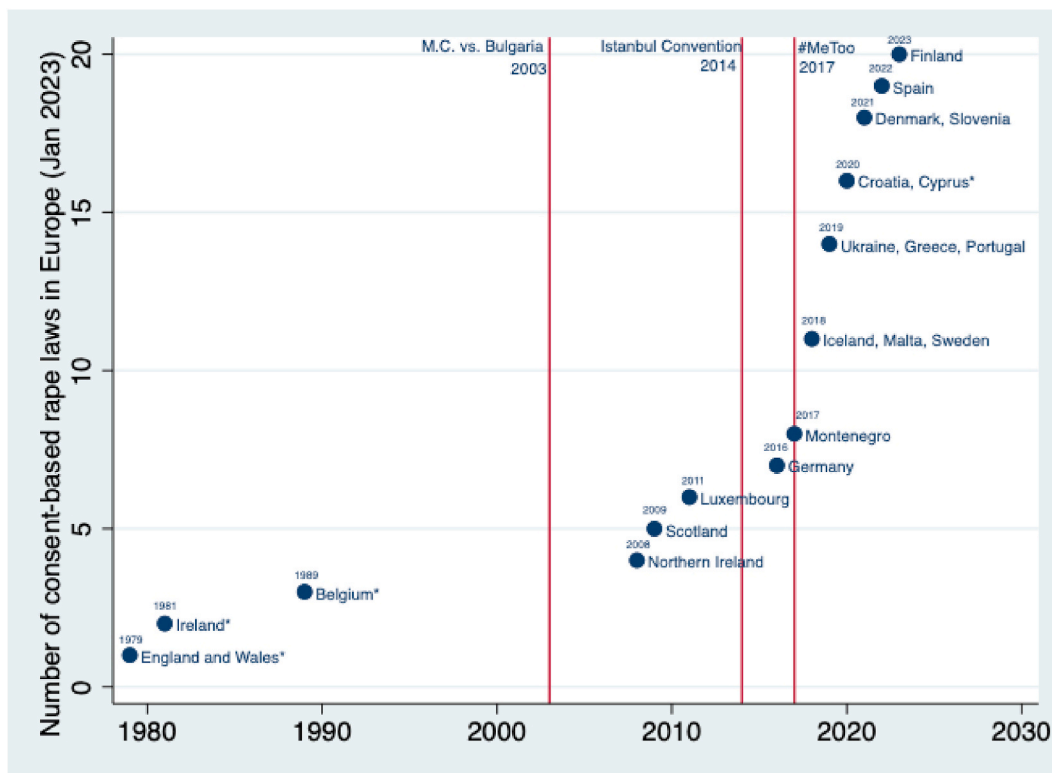


Fig. 2. Timeline of the development of consent-based rape laws in Europe. Notes: a. England and Wales, Ireland, and Belgium have made substantial amendments since then. b. Consent was mentioned in the Cypriot Criminal Code as early as 1959, under British rule.

different from that of the West (Soloviova, 2021). In these countries, not participating in the trend could be interpreted as a way of avoiding Europeanisation (FitzGerald and Skilbrei, 2022). Fig. 2 shows a timeline of the development of consent-based rape laws in Europe.

In Fig. 2, countries are placed based on when the first consent-based rape law was introduced. Rape under common law has been consent-based in England and Wales since the 1800s; however, the criminal code only officially mentioned consent in 1976 (Westmarland, 2004). England and Wales, Ireland, and Belgium introduced consent-based rape laws early, but consent was only mentioned and not legally defined until 2004, 2017, and 2022, respectively.²⁰ As the timeline illustrates, of the 20 jurisdictions, the majority introduced the laws after 2017. The wave of introductions since 2017 continues to expand. Greenland introduced a consent-based rape law in July 2023, Switzerland and the Netherlands are set to do so in July 2024, the Norwegian government is currently working on legislative changes (as of February 2024), and Serbia has been discussing reform in recent years.

Moreover, as discussed in the theoretical framework, consent is an ambiguous concept. Fig. 3 demonstrates the wide range of elements in rape and consent definitions in our 20 jurisdictions.

Legislation refers to the criminalised sexual act (1. a.) in different ways: carnal connection, sexual act, intercourse, or equivalent acts. Penetration (1. b.) can be narrowly defined, as in England and Wales, where rape can only be committed with a penis; penetration with another body part or an object is categorised as sexual assault by penetration, which is an example of gendered legislation. Many countries criminalise all forms of penetration as rape.²¹ In addition, the criminalised form of sexual acts (1. c.) varies. In the English and Welsh example, the act is performed by the perpetrator against the victim, whereas in Croatia and Sweden, making the complainant perform sexual acts on the defendant, a third person, or themselves is also considered rape. Our data have different levels or definitions of criminal intent (*mens rea*) (2). In some jurisdictions, 'honest belief', a subjective intent, or 'reasonable belief', an objective intent, that the complainant had consented would exclude rape. In Sweden and Croatia, gross negligence, i.e., a failure to exercise reasonable care about consent, is the lowest form of *mens rea* criminalised as negligent rape. These definitional variations are shown in Fig. 4.

Some countries, including Montenegro and Greece, have no legal definition of consent (1), reflecting the debate on the lack of a definition that presumes a universal understanding of the word, as discussed above (Beres, 2007). Other countries, including Germany,

²⁰ The Sexual Offences Act 2003 in England and Wales, (which was, despite its name, put into force in 2004), Criminal Law (Sexual Offences) Act 2017 in Ireland, and L 2022-03-21/01 in Belgium.

²¹ For example, Belgium, Croatia, Finland, and Malta.

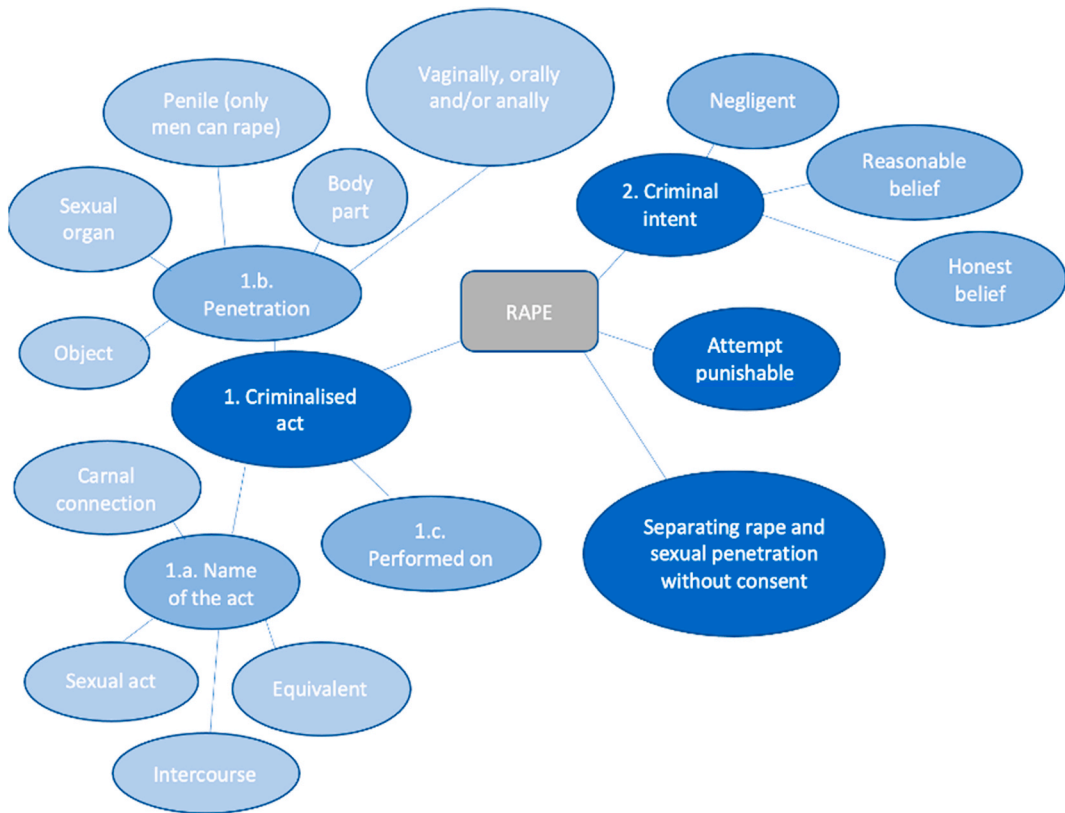


Fig. 3. Variations in rape definitions in the 20 jurisdictions.

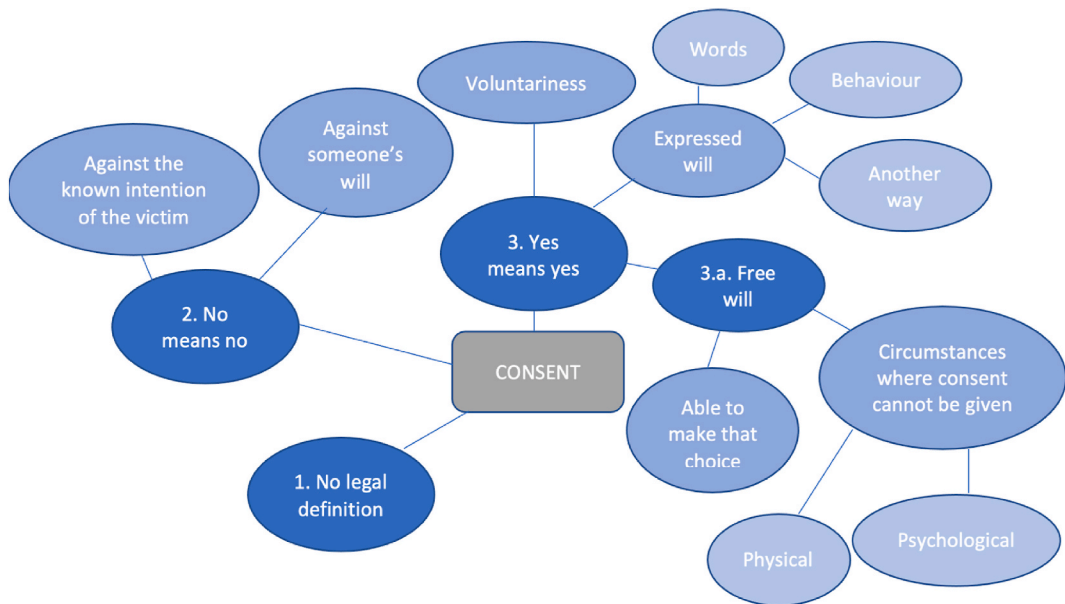


Fig. 4. Variation of consent definitions in the 20 jurisdictions.

define lack of consent as performing the act against one's will – representing a no-means-no model (2). Portugal is a controversial case, as GREVIO (2018: 49) notes that Portuguese legislation mentions 'constraint' and therefore does not comply with the Istanbul Convention, as it does not clearly disrupt the practice of forcing rape victims to prove resistance. However, the 2019 amendment clarifies that 'constraint' includes pursuing acts 'against the known intention of the victim', which we interpret as a no-means-no model.²² However, most countries have yes-means-yes models (3), where consent can be expressed by word, deed, or other ways (Little, 2005). The circumstances under which consent is given (3. a.) are also legislated differently. In Malta, for example, the context should be considered 'taking into account that person's emotional and psychological state' regarding the power dynamics between the participants; this could be interpreted as a context-based definition reflecting Munro's (2010) consent-plus model. In other countries, e.g., Sweden, the criminal regulations include circumstances under which consent cannot be given owing to sleep or unconsciousness, or consent may be invalid because of a threat or use of force. In conclusion, consent-based rape laws vary widely in construction, and may be more or less radical, reflecting the scholarly variations of defining consent (Beres, 2007).

6. Exploring consent-based rape law emergence

In this section, we present a tentative explorative analysis of consent-based rape law emergence in Europe through the lens of isomorphism. Four patterns are identified and discussed: 1) international pressure, 2) influential countries, 3) civil society impact, and 4) cases of sexual violence that triggered national debates. These patterns are discussed in light of the four types of isomorphism behind the homogenisation of rape laws: coercive, mimetic, normative, and rhetorical. We provide examples of patterns drawn from specific countries. Not all countries are analysed in detail.²³ Note that law-making processes are slow and complex, and the patterns we suggest should be understood to coexist with other factors.

6.1. Coercive isomorphism: formal and informal international pressure

Coercive isomorphism consists of pressure on states to create homogenisation, usually from institutions on which the state depends. Coercive isomorphism includes *formal* coerciveness through intergovernmental legislation and *informal* coerciveness through cultural expectations and fear of falling behind (DiMaggio and Powell, 1983; Radaelli, 2000). International institutions, including the United Nations and the EU, intend to harmonise policies across borders through conventions such as the Istanbul Convention (FitzGerald and Skilbrei, 2022). This is an example of a form of coercive isomorphism. GREVIO publishes country reports with recommendations for implementing the Convention. Pressures from the Istanbul Convention may have accelerated the introduction of consent-based rape laws, even in countries with limited domestic pressure for such reforms. In Cyprus, for example, the amendment originated from the country's ratification of the Istanbul Convention without public or expert consultation.²⁴ Similarly, in Malta, the reform stemmed from ratifying the Istanbul Convention, with minimal domestic demand (Attard, 2020; reference person). This illustrates the coercive impact of international obligations and may be understood as a form of formal coercive isomorphism.

Ukraine could serve as another example of this form of coercive isomorphism. Ukraine depends on bodies such as the International Monetary Fund and World Bank, both of which can pressure states to improve social conditions such as gender equality. Ukraine also seeks membership in the EU, which views gender equality as a criterion for accession, thereby distinguishing between insiders and outsiders through gender equality (FitzGerald and Skilbrei, 2022). Thus, the 2019 amendment could be a result of coercive isomorphism.

Informal coercive isomorphism is expressed through *cultural expectations* in national contexts (DiMaggio and Powell, 1983). We suggest that European cultural expectations can pressure states to introduce consent-based rape laws. As we have seen, such laws are prominent in Western countries that may be perceived as powerful, as these states set the norms. FitzGerald and Skilbrei (2022) describe how Europeanness has connotations such as 'good' or 'progressive', whereas 'Eastern European' has become synonymous with 'European but not European', creating a hierarchy. To avoid being left behind, and to conform to a community, states can homogenise policies to fit in (Dolowitz and Marsh, 1996). When the international context has defined a problem and adopted specific solutions – e.g., consent-based rape laws aiming at gender equality – countries may feel pressure to introduce similar policies (Dolowitz and Marsh, 1996).

6.2. Mimetic isomorphism: influencing countries

Mimetic isomorphism occurs when a state imitates other states' policies through policy transfer (Dolowitz and Marsh, 1996; Radaelli, 2000). After #MeToo in 2017, many countries experienced public demand to improve protections for victims of sexual violence. In feminist scholarship, this has revived a discussion on carceral and governance feminism (McGlynn, 2022; Terwiel, 2020).

²² The original Portuguese proposal included consent (1047/XIII/4); however, the final version excluded the word (Law 101/2019), drawing criticism from women's rights organisations.

²³ For interested readers, see Sjölin (2015) for England and Wales; Mrčela et al. (2020) for Croatia; Vestergaard (2020) for Denmark; Boulila and Carri (2017) for Germany; Chioni-Chotouman (2022) for Greece; Bragadóttir (2020) for Iceland; Daly (2020) for Ireland; Attard (2020) for Malta; Dowds (2022) for Northern Ireland; Cowan (2010) for Scotland; Šuta et al. (2022) for Slovenia; Faraldo-Cabana (2021) for Spain; Wegerstad (2021) for Sweden; and Soloviova (2021) for Ukraine.

²⁴ According to our sources, this resulted in a lack of public awareness.

When states perceive uncertainty and receive ambiguous demands, they imitate other states that are perceived to be successful to gain legitimacy (Radaelli, 2000). In the context of gender equality in Europe, Sweden has presented itself as a norm-leading and successful state (FitzGerald and Skilbrei, 2022), making gender equality a 'Swedish question' (Towns, 2002: 162). This may explain the branding of the Swedish consent-based rape law as 'revolutionary' and 'new', without referencing other countries with similar laws, although there were several across Europe (Nilsson, 2020; Skilbrei, 2021). In this case, mimetic isomorphism was not a strategy; instead, Sweden sought to be perceived as a pioneer in the field. Swedish rape legislation has been described as setting 'a new high bar for other countries to follow' (Greenfield, 2019: 21). For example, EU *Best Practices* reports promote Sweden as a policy leader in gender equality, urging other member states to imitate Swedish legislation (FitzGerald and Skilbrei, 2022). This is interpreted here as promoting policy transfer and mimetic isomorphism (Radaelli, 2000).

Mimetic isomorphic policy transfer is one possible pattern in our data whereby knowledge of policies in one political context is used to develop policies in another (Dolowitz and Marsh, 1996; Radaelli, 2000). Specifically, the Swedish law influenced neighbouring Nordic countries such as Iceland, Denmark, and Finland. Although Iceland introduced a consent-based rape law just months before Sweden, the amendment drew on Swedish debates and propositions (10/148 Frumvarp). Denmark based its evaluation of the consent-based bill on the Swedish rape law, suggesting imitation of the Swedish use of 'voluntariness' instead of 'consent'²⁵ (Vestergaard, 2020). The Finnish law imitates Swedish law in that it follows the Swedish 'voluntariness' wording, rather than 'consent' (RP 13/2022). Moreover, Greenland introduced a consent-based law in July 2023, and the Norwegian government is working on legislative changes. The Swedish consent-based rape law may also have had mimetic effects outside the Nordic context. As we discuss below, in Greece, for example, the Department of Justice took inspiration from Swedish law (Berghed, 2019). Thus, mimetic isomorphism of Swedish rape laws seems to have been a pattern in recent years, particularly in the Nordic countries, which homogenised their consent-based rape laws, despite variations in definitions.

6.3. Normative isomorphism: civil society impact

Normative isomorphism means homogenisation through education or professional networks, basing policies on cognitive resources and expertise (Radaelli, 2000). In the context of consent-based rape laws, legal experts usually review the draft laws but seldom initiate them. Other expert groups, such as GREVIO, have the power to monitor rape legislation and make recommendations, which can ultimately lead to legislative change. Additionally, civil society organisations and NGOs with expert knowledge on gender equality and rape provide cognitive resources for legislators. For example, *Fatta!* (Get it!), a Swedish NGO, strongly promoted consent-based rape laws, which is assumed to have contributed to legislative change (Leijonhufvud, 2015). Additionally, the *Fáðu já* (Get a Yes) campaign produced a film to raise awareness of sexual violence and consent that was cited in the Icelandic law proposal (10/148 Frumvarp). Below, we scrutinise the impact of civil society on rape legislation in three countries: Slovenia, Denmark, and Greece, where NGOs were involved in law-making. These examples demonstrate normative pressures on policymakers from NGOs to generate homogenisation through efficient institutional work to change rape laws.

6.3.1. Slovenia and the 8th of March Institute

In 2017, a hyper-medialised case where a man raped an unconscious family friend prompted a debate about implementing a consent-based rape law. At the time, the act did not constitute rape because he had not been violent when commencing penetration, which was required under the coercion-based law. The Ministry of Justice established a working group to investigate the need for a consent-based rape law, which initially proposed a no-means-no model, but discussions stalled, and no agreement was reached (Šuta et al., 2022). In response, the Eighth of March Institute (Inštitut 8. Marec) NGO, part of the above-mentioned Ministry of Justice working group, started a 'yes-means-yes' campaign. In 2021, the organisation gathered 5000 signatures to propose legal reform via a People's Initiative (Šuta et al., 2022). However, before the organisation submitted the signatures, the government proposed an amendment to rape legislation (Inštitut 8. Marec, n.d.). In response, the Eighth of March Institute collaborated with the opposition to propose their own bill with a yes-means-yes model, which the National Assembly later approved on June 4, 2021 (Inštitut 8. Marec, n.d.; Šuta et al., 2022). Some argue this law reform was unprofessional, as the bill did not undergo expert review (Šuta et al., 2022). However, this legislative reform process was obviously influenced by the Eighth of March Institute, which here represents a professional group with knowledge of feminism and rape issues. This, in turn, indicates normative pressure from civil society on lawmakers, contributing to an informal network of consent-based rape law advocacy that pushed legislators to meet its demands.

6.3.2. Denmark and rape survivors

In Denmark, a civil society coalition of social movements, activists, and rape survivors has advocated for consent-based rape legislation for years. Denmark has been heavily criticised for its rape legislation and treatment of rape survivors by Amnesty International (2019). This sparked national debate and was part of Amnesty's 'Let's Talk about Yes' campaign for consent-based rape legislation in Europe. One pivotal moment in the debate was when Amnesty International Denmark, along with rape survivors, met the Minister of Justice, who had previously opposed consent-based rape laws. However, according to Jacobsen (2020), after listening to

²⁵ However, 'consent' was proposed by the government and used in law.

rape survivors he changed his mind, which allowed other consent opponents to follow suit. The Danish Permanent Penal Code Committee investigated the need for new rape legislation (Vestergaard, 2020) and agreed that reform was needed. The consent-based rape law entered into force in January 2021. As such, Amnesty International published a high-profile and widely discussed report, followed by meetings with politicians in order to influence public and political debate. This indicates that lawmakers were influenced by the experiences and expertise of Amnesty International and the rape victims. We interpret this as an example of normative isomorphism changing the law.

6.3.3. Greece and the U-turn

In Greece, Amnesty International Greece, alongside other feminist NGOs, advocated for consent-based rape laws for years. In Amnesty's *Right to Be Free from Rape* report (2018), Greece received criticism for failing to comply with the Istanbul Convention. As part of the international 'Let's Talk about Yes' campaign, Amnesty International Greece advocated for a consent-based rape law through demonstrations, informative seminars, and meetings with parliamentarians. In March 2019, the government proposed a bill that amended the rape legislation; however, it did not mention consent but maintained focus on a coercion-based model and deemed rape with 'lesser forms of coercion' to be a misdemeanour rather than a felony (Chioni-Chotouman, 2022). Despite criticism,²⁶ the government proposed the bill in June 2019 (Bergehed, 2019), which again sparked strong reactions. Amnesty International Greece was in contact with legislators and formulated a revised bill inspired by the Swedish consent-based rape law (Bergehed, 2019). Hours later, the government made a U-turn and proposed consent-based rape legislation, which was passed by parliament later that same day (Bergehed, 2019; Chioni-Chotouman, 2022). The Greek case could be read as an example of civil society affecting rape reform after being closely consulted in law-making, i.e., an expression of normative isomorphism. There are also elements of mimetic isomorphism, as Sweden's rape law seemed to inspire the reform.

6.4. Rhetorical isomorphism: triggers of national debates

The final pattern of our tentative analysis is rhetorical pressure (rhetorical isomorphism) through the strategic use of hyper-medialised sexual violence cases to spark national debates, whereby institutional actors agitate to change legislation. Hyper-medialised cases of sexual violence that influence the development of rape reforms can be identified in several countries, such as Sweden (Nilsson, 2020); however, cases in Germany and Spain stand out because of their apparent effect on legislation.

6.4.1. Germany and the Cologne attacks

On New Year's Eve 2015/2016 in Cologne, men reportedly robbed and sexually harassed thousands of women unknown to them on the streets. As the women had no opportunity to react or resist physically, as required by law at that time, many reported attacks were not considered crimes (Boulila and Carri, 2017). This caused intense public debate about sexual violence in Germany, and most people across the political spectrum favoured revising the law on sexual offences (Weber, 2016). Interestingly, both left-wing feminists and right-wing anti-immigration conservatives advocated for legal reform but with different justifications. Media attention on the North African descent of some reported perpetrators divided the country. The far right applied xenophobic arguments that the assaults were a result of liberal immigration policies, while left-wing feminists focused on legal failures to protect women (Boulila and Carri, 2017). The Internet campaign #ausnahmslos (#noexcuses) took an anti-racist feminist stance and expressed the criticism that women's rights had only become a priority when the perpetrators could be identified as a racialised Other (Boulila and Carri, 2017; Weber, 2016). The far right, however, criticised the campaign for ignoring the 'real causes', namely a liberal immigration policy (Boulila and Carri, 2017). Thus, the Cologne attacks were used as a proxy to claim an attack on German national identity (Boulila and Carri, 2017). Here, the attacks were framed as a problem deriving from the racialised Other from outside Europe (FitzGerald and Skilbrei, 2022). This aligns with the arguments of femo-nationalism, a kind of feminist nationalism that recognises the West as a gender-equal society under threat from immigration by people from foreign cultures and religions (Farris, 2017). The risk of neoliberal and populist movements exploiting feminist demands was highlighted by Fraser in 2012. The example is also relevant in the debate on carceral approaches and the risks of governance feminism.

We suggest that these debates exemplify rhetorical isomorphism shifting political discourse and legal discussions regarding sexual harassment laws, resulting in legislative changes to meet public demands. As the public – the voters – are their customers, the politicians had to satisfy public demands to maintain legitimacy (see Hinings et al., 2017). In July 2016, the law was reformed according to a no-means-no model, and the requirement for physical resistance was removed from sexual harassment and rape cases. The reform also affected deportation owing to sexual assault and asylum legislation, thereby consolidating the xenophobic and racist debates triggered by the Cologne case²⁷ (Boulila and Carri, 2017; Weber, 2016; FitzGerald and Skilbrei, 2022).

²⁶ According to our reference persons, the bill was heavily criticised by an informal professional network of the leftist party Syriza, the Greek General Secretariat for Gender Equality, and several NGOs and legal actors.

²⁷ This example could be further explored and discussed as it epitomises challenges with both carceral and governance feminism.

6.4.2. Spain and the 'La Manada' case

The Spanish 'La Manada' (The Wolfpack) rape case is another example of sexual violence triggering an influential national debate about legal reforms. In July 2016, during the San Fermín festival in Pamplona, five young men who called themselves 'La Manada' raped a young woman. They bragged about the rape in a group chat where videos of the act and misogynistic language were exchanged (Faraldo-Cabana, 2021). The perpetrators were prosecuted but acquitted of rape and were instead convicted of sexual abuse, a lesser crime (Portela, 2021). As the victim was submissive and passive, no violence or threats were involved, which was a prerequisite for rape. In response to this judgement, massive feminist protests broke out nationwide (Faraldo-Cabana, 2021). On social media, journalist Cristina Fallarás started the hashtag #Cuéntalo (Tell it, the #MeToo of the Spanish-speaking Internet), reaching millions of social media engagements in more than 60 countries (Portela, 2021). Another hashtag in support of the complainant was #YoTeCreo (I believe you). Both were examples of individual actors playing important roles in sharing their rape testimonies, which sparked debate on the shortcomings of the current law. This is an example of one feminist strategy to change political institutions and legal frameworks that was possibly successful, as personal testimony can be given the status of truth, which enriches the political arguments when the speaker is heard and believed (Smart, 1995). This example represents a turn in society's political discourse, creating new demands owing to a hyper-medialised case.

Nevertheless, in this case, the feminist movement faced a backlash, specifically from the far right supporting the defendants. On a far-right online forum, the defendants, portrayed as the real victims of the trial, received massive support, and pictures and information about the complainant were disseminated (Portela, 2021). As feminists supported the complainant through the hashtag #YoTeCreo, a counter-campaign called #YoNoTeCreo (I don't believe you) demonstrated disbelief of the complainant and support for the defendants (Portela, 2021). This conflict between the feminists and the far right drew further attention to the case.

Because of the media attention and public debates, lawmakers could not ignore the inadequacy of the Spanish rape law. Although the discourse was not in unison, Spain, as in Germany, chose to implement a consent-based rape law shortly afterwards. A draft law was approved in March 2020 (Faraldo-Cabana, 2021). The new law, in force in 2022, removed the lesser crime of sexual abuse, merging it with sexual aggression, which covers rape, and applied a yes-means-yes model, the *Solo sí es sí* law.

7. Concluding discussion

The contribution of this study is threefold. *First*, it contributes theoretically by applying institutional isomorphism theory (DiMaggio and Powell, 1983) at the macro level to understand the diffusion of consent-based rape laws in Europe. We have operationalised the mechanisms of isomorphism to fit the specific case and developed the mechanism of rhetorical isomorphism proposed by Verpoest (2018). *Second*, it contributes a tentative analysis of rape law convergence in Europe to explain the sudden surge of rape reforms since 2017. Certainly, the data illustrate a multifaceted picture of developments in 20 European jurisdictions, and our analysis should thus be seen as a first attempt to understand some aspects of the consent wave in Europe.

We identified four isomorphic mechanisms behind European rape law homogenisation. First, coercive isomorphism through international pressures, formally through the Istanbul Convention and informally through 'European norms', seem to have influenced the introduction of consent-based rape laws in several jurisdictions (e.g., Ukraine, Malta, Cyprus), with little domestic pressure. Second, we found instances of mimetic isomorphism from norm leaders such as Sweden influencing other countries to impose similar laws (e.g., Iceland, Denmark, Finland, and Greece). Third, we identified normative isomorphism in terms of informal professional networks of civil society actors playing a normative and educational function in influencing legislative changes, for example, in Slovenia, Denmark, and Greece. Fourth, we showed that rhetorical pressure to homogenise rape laws preceded legal reforms (rhetorical isomorphism) through hyper-medialised sexual violence cases sparking national debates followed by reforms (e.g., Germany, Spain). As law reforms are highly complex processes, these mechanisms are not exhaustive, and in practice, these isomorphic pressures often coexist, jointly and in parallel, influencing legal developments in a country.

Third, this article empirically contributes an overview of the developments of consent-based rape laws in Europe, increasing from seven to 20 countries in recent years, and describes the legal elements of rape in these jurisdictions showing large variations, in terms of the legal elements of rape and the conceptualisation of consent. This mapping clearly illustrates that although the introduction of such laws represents a homogenisation of European rape laws, the offence is defined and constructed very differently. From a feminist perspective, these laws vary in radicality, from the traditionally gendered definition in the UK to the Maltese example of a context-based consent-plus model in line with Munro's (2010) suggestion that power imbalances should be considered. Furthermore, the difference between 'no-means-no' and 'yes-means-yes' consent models is fundamental. Finally, it should be noted that the punishment for rape varies greatly, from a minimum of one year in Finland to a maximum of life imprisonment in Cyprus.

Against the current backdrop of law-and-order politics in many countries, the recent trend towards the introduction of consent-based rape laws in Europe could be interpreted as an expression of carceral feminism, promoting the use of the criminal justice system and harsher punishments to address sexual violence (Grzyb, 2021). The use of criminal law to reduce gender-based violence and strive for gender equality has been intensively debated within feminist research. In particular, criticism has concerned the

appropriation of feminism to make political demands for incarceration, rather than implementing crime preventing measures (Grzyb, 2021), and the disregard of structural racism, as most prisoners belong to ethnic minorities (McGlynn, 2022). The examples of normative isomorphism, particularly that of Germany, address the concerns of Fraser (2012) that Halley et al. (2019) again highlighted in the discussion on governance feminism. What are the effects of feminism engaging with power and its ideas and ideals being pushed into a system built on patriarchy?

The recent surge of consent-based rape laws in Europe could also be interpreted as a sign of 'legal optimism', i.e., an overly strong belief in what criminal law can accomplish (Skjörten, 1996). The effects of consent-based rape laws on legal practices are far from self-evident, and it is important to keep in mind the distinction between law in books and law in practice and to explore further the potential limitations of the effects of legal reforms (Smart, 1995). Indeed, laws may not have the intended outcomes, as uncertainty over legal interpretations of consent, problems of evidence, and rape myths may persist (Bladini et al., 2023; Sjölin, 2015; Wallin et al., 2021). While some countries, such as Sweden, initially experienced a surge of rape convictions after reforming the laws (Brå, 2020: 6), others continue to have high attrition rates despite the introduction of a consent-based rape law (Harding et al., 2024), and some have even experienced an unintended reverse effect. In Spain, the merger of two crimes resulted in retroactive sentence reductions and prison releases,²⁸ which could be interpreted as a politically driven legal reform based on public demand leading to legal shortcomings, as claimed by Hörnle (2017) and Šuta et al. (2022).

A final remark – despite the potential pitfalls of using the law to address sexual violence and the possible societal and legal barriers when implementing consent-based rape laws in practice, rape victims should be offered legal protection (Grzyb, 2021). Legal reforms alone cannot achieve structural change in gender inequality; societal changes are also needed (Bragadóttir, 2020; Cowan, 2010; Faraldo-Cabana, 2021), but reforms may be a first step to more profound changes (Smart, 1995). Like McGlynn (2022), we recognise the need for criminalisation and other actions. Defining rape by consent – 'only yes-means-yes' – sends an important message to society on what constitutes rape. Therefore, consent-based rape laws can be viewed as a necessary but not sufficient condition for a more gender-equal society. Monitoring these legal reforms, analysing their application in practice in various European countries, and undertaking analyses of national legislations that are not (yet) consent-based are essential topics for future studies.

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CRedit authorship contribution statement

Sara Uhnöo: Writing – review & editing, Writing – original draft, Supervision, Project administration, Methodology, Conceptualization. **Sofie Erixon:** Writing – review & editing, Writing – original draft, Methodology, Investigation, Conceptualization. **Moa Bladini:** Writing – review & editing, Writing – original draft, Methodology, Conceptualization.

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Appendix A

²⁸ In response to criticism, the law was amended in April 2023 to demand harsher punishments for rapes committed by coercion (see Congreso PSOE, 6 Feb. 2023 for draft amendment).

The normative national contexts of consent-based rape laws in Europe.

Country	Reported rapes per 100,000 inhabitants (average value in 2013–2017)	Latest score on the Gender Equality Index	Percentage with confidence in the country's criminal justice system	Index of rejection of rape myths	Introduction of a consent-based rape law	Signing and ratification of the Istanbul Convention
Sweden	63	82	76	100	1	1
Spain	3	76	34	88	1	1
Denmark	22	78	85	83	1	1
Ireland	11	73	61	81	1	1
Finland	20	74	85	77	1	1
UK	60	73	61	63	1	1
Slovenia	2	69	24	61	1	1
Portugal	4	67	44	60	1	1
Germany	9	71	77	54	1	1
Luxembourg	15	75	77	51	1	1
Croatia	7	61	37	47	1	1
Belgium	29	76	59	40	1	1
Greece	1	58	48	40	1	1
Cyprus	2	61	35	38	1	1
Malta	4	68	45	25	1	1
Netherlands	8	78	70	93	0,5	1
Austria	14	71	78	81	0,5	1
Estonia	11	60	56	33	0,5	1
Slovakia	2	59	25	7	0	0,5
France	20	76	59	67	0	1
Hungary	4	57	58	45	0	0,5
Poland	2	62	42	30	0	1
Czechia	6	58	25	25	0	0,5
Romania	5	56	44	21	0	1
Lithuania	5	64	31	19	0	0,5
Bulgaria	2	65	35	15	0	0,5
Latvia	5	62	48	8	0	0,5

Source: Brå (2020: 13, p. 66), EIGE (2023; 2020), Council of Europe (2023).

Notes: See Brå (2020:13, p. 66) for further information on the first, third, and fourth columns. We have updated the Gender Equality Index, an index created by the EU analysing seven spheres of gender equality (violence, work, money, knowledge, health, power, and time) where 100 would mean the country has reached full gender equality, with each country's latest score (2023 for all countries except the UK with its latest score in 2020 before leaving the EU). The Rejection of Rape Myth Index by Brå (2020:13) uses Eurobarometer 449, gauging respondents' disagreement with four statements on victim blaming or rape myths. We have included data on consent-based rape laws (1 = introduced, 0.5 = on the way or being discussed, 0 = non-existent) and the Istanbul Convention (1 = signed and ratified, 0.5 = signed but not ratified, 0 = neither). Montenegro, Iceland, Italy, and Ukraine are excluded because of limited data.

References

- Amnesty International, 2018. Right to Be Free from Rape. Amnesty International, London.
- Amnesty International, 2019. Give us respect and justice. Overcoming Barriers to Justice for Women Rape Survivors in Denmark. Amnesty International, London.
- Attard, J., 2020. An analysis into the newly amended sexual offences, with specific regard to rape and defilement of minors. *ELSA Malta Law Review* 7, 13–27.
- Battilana, J., D'Aunno, T., 2009. Institutional work and the paradox of embedded agency. In: Lawrence, T.B., Sudday, R., Leca, B. (Eds.), *Institutional Work: Actors and Agency in Institutional Studies of Organizations*. Cambridge University Press, New York, pp. 31–58.
- Beckert, J., 2010. Institutional isomorphism revisited: convergence and divergence in institutional change. *Socio. Theor.* 28 (2), 150–166.
- Beres, M.A., 2007. 'Spontaneous' sexual consent: an analysis of sexual consent literature. *Fem. Psychol.* 17 (1), 93–108. <https://doi.org/10.1177/0959353507072914>.
- Bergehed, K., 2019. En Berättelse Om När Grekland Införde Samtyckeslag. Amnesty International Sweden. <https://www.amnesty.se/aktuellt/en-berattelse-om-nar-grekland-inforde-samtyckeslag/>. (Accessed 23 February 2023).
- Bernstein, E., 2007. The sexual politics of the "New Abolitionism". *Differences* 18, 128–151.
- Bladini, M., Uhnöo, S., Wettergren, Å., 2023. It sounds like lived experience. On empathy in rape trials. *International Journal of Law, Crime and Justice* 72, 1–14. <https://doi.org/10.1016/j.ijlcrj.2023.100575>.
- Bladini, M., Svedberg Andersson, W., 2020. Swedish rape legislation from use of force to voluntariness – critical reflections from an everyday life perspective. *Bergen Journal of Criminal Law and Criminal Justice* 8 (2), 95–125. <https://doi.org/10.15845/bjclcrj.v8i2.3241>.
- Boulila, S.C., Carri, C., 2017. On Cologne: gender, migration and unacknowledged racisms in Germany. *Eur. J. Wom. Stud.* 24 (3), 286–293. <https://doi.org/10.1177/1350506817712447>.
- Bragadóttir, R., 2020. Legislation on the offence of rape in Icelandic criminal law. *Bergen Journal of Criminal Law & Criminal Justice* 8 (2), 54–77.
- Brå (Swedish National Council for Crime Prevention) (2020:13) Reported and cleared rapes in Europe: Difficulties of international comparisons <https://bra.se/bra-in-english/home/publications/archive/publications/2020-09-30-reported-and-cleared-rapes-in-europe.html> (accessed 2 March 2023).
- Brå (Swedish National Council for Crime Prevention) (2020:6) The new consent law in practice: an updated review of the changes in 2018 to the legal rules concerning rape <https://bra.se/bra-in-english/home/publications/archive/publications/2020-07-01-the-new-consent-law-in-practice.html> (accessed 30 March 2023).
- Burt, M.R., 1980. Cultural myths and supports for rape. *J. Pers. Soc. Psychol.* 38 (2), 217–230.
- Chandra, G., Erlingsdóttir, I. (Eds.), 2020. *The Routledge Handbook of the Politics of the #MeToo Movement*. Routledge, New York.
- Chioni-Chotouman, C., 2022. Substantive and procedural challenges impeding an effective response to rape. In: Erbaş, R. (Ed.), *Global Problems in Sexual Offenses*. Lexington Books, London, pp. 25–44.
- Council of Europe, 2011. Convention on Preventing and Combating Violence against Women and Domestic Violence. CETS No. 210) 11 May.
- Cowan, S., 2010. All change or business as usual? Reforming the law of rape in Scotland. In: McGlynn, C., Munro, V.E. (Eds.), *Rethinking Rape Law: International and Comparative Perspectives*. Routledge, New York, pp. 154–168.
- Daly, Y.M., 2020. Knowledge or belief concerning consent in rape law: recommendations for change in Ireland. *Crim. Law Rev.* 6, 478–496.
- De Vido, S., Sosa, L., 2021. Criminalisation of Gender-Based Violence against Women in European States, Including ICT-Facilitated Violence. Publications Office of the European Union, Luxembourg.
- DiMaggio, P.J., Powell, W.W., 1983. The iron cage revisited: institutional isomorphism and collective rationality in organizational fields. *Am. Socio. Rev.* 48 (2), 147–160.
- Dolowitz, D., Marsh, D., 1996. Who learns what from whom: a review of the policy transfer literature. *Polit. Stud.* 44 (2), 343–357.
- Dowds, E., 2022. Redefining consent: rape law reform, reasonable belief and communicative responsibility. *J. Law Soc.* 49, 824–847. <https://doi.org/10.1111/jols.12395>.
- European Parliament, 2024. Definitions of Rape in the Legislation of EU Member States. EPRS, European Parliamentary Research Service. [https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA\(2024\)757618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA(2024)757618_EN.pdf).
- Faraldo-Cabana, P., 2021. The Wolf-Pack case and the reform of sex crimes in Spain. *German Law Journal* 22 (5), 847–859. <https://doi.org/10.1017/glj.2021.38>.
- Farris, S.R., 2017. *In the Name of Women's Rights: the Rise of Femonationalism*. Duke University Press, Durham and London.
- FitzGerald, S., Skilbrei, M.L., 2022. *Sexual Politics in Contemporary Europe: Moving Targets, Sitting Ducks*. Springer Nature, Cham.
- Fitz-Gibbon, K., Walklate, S., 2018. *Gender, Crime and Criminal Justice*, 3. Routledge, London.
- Fraser, N., 2012. *Feminism, Capitalism, and the Cunning of History: an Introduction* halshs-00725055.
- Greenfield, N., 2019. Legislative approaches to rape in the EU: an overview. GEN: Gender & Policy Insights.
- GREVIO, 2017. Baseline Evaluation Report Austria. GREVIO/Inf(2017)4. Council of Europe.
- GREVIO, 2018. Baseline Evaluation Report Portugal. GREVIO/Inf(2018)16. Council of Europe.
- Grzyb, M., 2021. Penal populism: negotiating the feminist agenda. Evidence from Spain and Poland. *Eur. J. Criminol.* 18 (6), 836–854. <https://doi.org/10.1177/1477370819882912>.
- Halley, J., 2016. Currents: Feminist key concepts and controversies. The move to affirmative consent. *Signs: Journal of Women in Culture and Society* 42, 257–279.
- Halley, J., et al. (Eds.), 2019. *Governance Feminism: Notes from the Field*. University of Minnesota Press.
- Harding, R., Maguire, L., Williams, E., 2024. Competing concepts of public value and legitimacy in the police: organisational challenges in the investigation of rape and serious sexual offences. *International journal of law, crime and justice* 76. <https://doi.org/10.1016/j.ijlcrj.2023.100646>.
- Hinings, C.R., Logue, D., Zietsma, C., 2017. Fields, institutional infrastructure and governance. In: Greenwood, R., Meyer, R.E., Lawrence, T.B., Oliver, C. (Eds.), *The Sage Handbook of Organizational Institutionalism*. Sage Publications Ltd., pp. 163–189.
- Hohl, K., Stanko, E.A., 2015. Complaints of rape and the criminal justice system: fresh evidence on the attrition problem in England and Wales. *Eur. J. Criminol.* 12 (3), 324–341. <https://doi.org/10.1177/1477370815571949>.
- Hörnle, T., 2017. The new German law on sexual assault and sexual harassment. *German Law Journal* 18 (6), 1309–1330.
- Inštitut 8 Marec, n.d. Samo ja pomeni ja. <https://www.8marec.si/samo-ja-pomeni-ja/> (accessed 14 December 2023).
- Jacobsen, H., 2020. The Long Road to a Consent-Based Rape Law in Denmark. Amnesty International, 17 Dec. <https://www.amnesty.org/en/latest/news/2020/12/the-long-road-to-a-consent-based-rape-law-in-denmark/>. (Accessed 22 February 2023).
- Leijonhufvud, M., 2015. *Svensk sexualbrottslag: en framåtsyftande tillbakablick*. Norstedts juridik, Stockholm.
- Little, N.J., 2005. From no means no to only yes means yes: The rational results of an affirmative consent standard in rape law. *Vanderbilt Law Review* 58 (4), 1321–1364.
- Lovett, J., Kelly, L., 2009. Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe. Child and Women Abuse Studies Unit. London Metropolitan University, London.
- MacKinnon, C.A., 2016. Rape redefined. *Harvard Law & Policy Review* 10 (2), 431–478.
- McGlynn, C., 2022. Challenging anti-carceral feminism: criminalisation, justice and continuum thinking. *Wom. Stud. Int. Forum* 93.
- Mrcela, M., Vuletić, I., Livazović, G., 2020. Negligent rape in Croatian criminal law: Was legal reform necessary? *Review of Central and East European law* 45 (1), 126–160. <https://doi.org/10.1163/15730352-bja10002>.
- Munro, V.E., 2010. From consent to coercion: evaluating international and domestic frameworks for the criminalization of rape. In: McGlynn, C., Munro, V.E. (Eds.), *Rethinking Rape Law: International and Comparative Perspectives*. Routledge, New York, pp. 17–29.
- Nilsson, G., 2020. Towards voluntariness in Swedish rape law: hyper-medialised group rape cases and the shift in the legal discourse. In: Bruvik Heinskou, M., Skilbrei, M.L., Stefansen, K. (Eds.), *Rape in the Nordic Countries: Continuity and Change*. Routledge, New York, pp. 101–119.
- Pineau, L., 1989. Date rape: feminist analysis. *Law Philos.* 8 (2), 217–244.

- Portela, T.B., 2021. Los mitos de la violación en el caso de 'La Manada'. Una crítica a la división patriarcal público/privado. J.: Investigaciones Feministas. 2, 575–585. <https://doi.org/10.5209/infe.76277>.
- Radaelli, C.M., 2000. Policy transfer in the European Union: institutional isomorphism as a source of legitimacy. *Governance* 13 (1), 25–43.
- Rigotti, C., 2022. A long way to end rape in the European Union: assessing the commission's proposal to harmonise rape law, through a feminist lens. *New J. Eur. Crim. Law* 13 (2), 153–179. <https://doi.org/10.1177/20322844221100046>.
- Sjölin, C., 2015. Ten years on: consent under the sexual offences act 2003. *J. Crim. Law* 79 (1), 20–35. <https://doi.org/10.1177/0022018314566744>.
- Skilbrei, M.L., 2021. Keeping Sweden on top: rape and legal innovation as nation-branding. In: Larsen, E., Moss, S.M., Skjelsbæk, I. (Eds.), *Gender Equality and Nation Branding in the Nordic Region*. Routledge, New York, pp. 75–89.
- Skjorten, K., 1996. Rettsoptimisme og seksualisert vold. *Materialisten* 24 (1–2), 21–39.
- Smart, C., 1995. *Law, Crime and Sexuality: Essays in Feminism*. Sage, London.
- Soloviova, A., 2021. Rethinking concept of rape under the Istanbul Convention: Ukrainian experience. *Balkan Social Science Review* 18 (18), 205–219.
- Šuta, Ž., Berglez, N., Šepec, M., 2022. "Yes means Yes". Theoretical dilemmas and new definition of rape and sexual assault in Slovenian Criminal Law. *Problemy Prava Karnego* 6 (1), 1–56. <https://doi.org/10.31261/PPK.2022.06.01.06>.
- Terwiel, A., 2020. What is carceral feminism? *Polit. Theor.* 48 (4), 421–442.
- Towns, A., 2002. Paradoxes of (in)equality: something is rotten in the gender equal state of Sweden. *Cooperat. Conflict* 37 (2), 157–179. <https://doi.org/10.1177/0010836702037002975>.
- Verpoest, L., 2018. Geopolitical othering versus normative isomorphism? LGBTI Rights in Russia and Ukraine. *Eur. Foreign Aff. Rev.* 23 (Special), 139–158. <https://doi.org/10.54648/eerr2018015>.
- Vestergaard, J., 2020. The rape law revision in Denmark: consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law & Criminal Justice* 8 (2), 5–32.
- Wallin, L., Uhnou, S., Wettergren, Å., Bladini, M., 2021. Capricious credibility—legal assessments of voluntariness in Swedish negligent rape judgements. *Nordic Journal of Criminology* 22 (1), 3–22. <https://doi.org/10.1080/2578983X.2021.1898128>.
- Weber, B., 2016. The German refugee 'Crisis' after Cologne: the race of refugee rights. *Engl. Lang. Notes* 54 (2), 77–92.
- Wegerstad, L., 2021. Sex must be voluntary: sexual communication and the new definition of rape in Sweden. *German Law Journal* 22 (5), 734–752. <https://doi.org/10.1017/glj.2021.32>.
- Westmarland, N., 2004. *Rape Law Reform in England and Wales*. University of Bristol, Bristol. School for Policy Studies Working Paper Series Paper 7.