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המטלול האקדמי המכללה למנוה - 20222					

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Raping the law

A few days ago the police arrested a man named Yosef Sabah. According to the indictment served against him in the Petah Tikva District Court, he would pretend to be a boy of 15, contact underage girls by means of social networks and persuade them to carry out sexual acts on their own bodies in front of the Internet cameras. The State Prosecutor's Office at first considered trying him only for crimes of indecent acts in public and sexual harassment, but eventually decided to accuse him of rape as well.

Formally speaking, and ostensibly at least, it seems that the acts could

other person (adopting the interpretation that the other person in this case is the victim herself).

The attempt to adapt classic crimes from criminal law to the Internet era gives rise to varied and interesting problems. In this case, the "legal stew" that was created does not seem to be a particularly successful one. The interpretation that seducing minors from afar via the Internet to commit sexual acts on their bodies, without the penetration of a sexual organ, and without coercion – even if the consent was obtained fraudulently – is rape, seems strange to me, not to say unrealistic.

ently the well-known rule that "criminal law is designed to guide the behavior of ordinary people and therefore it must speak in ordinary and simple language" has been eroded and forgotten, and the State Prosecutor's Office does not act in accordance with it. Moreover, trying a person for rape under the circumstances described here constitutes a cheapening of the crime of rape, in a manner that undermines public confidence in criminal law.

There is a danger that because of the indictment for rape the accused will be publicly labeled as a rapist, even if he is acquitted of this crime and is convicted of lesser crimes of indecent acts and sexual harassment. There is no apparent justification for that. If the legislator wants us to relate to people like Sabah – people who certainly deserve to be subject to criminal law – as rapists, it is invited to update the crime of rape, which in any case includes quite a number of alternatives, and to add an alternative called "rape from afar." As long as he hasn't done so, the proposed interpretation of the existing law is far from being clear and logical.

It is not the job of the State Prosecutor's Office to cook up such a creative dish and to call the surfer a "rapist," even if he is far from being an innocent surfer. As long as that has not been done, and the law has not been amended, the facts in the indictment do not establish the crime of raping a minor, and serving the indictment as such seems more like a crime of raping the law.

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constitute crimes of rape, due to a combination of three legal instructions: one, the instruction to the effect that consensual intercourse will be considered rape if the accused obtained that consent fraudulently, after faking his identity (a law that is controversial in itself); the second, the instruction to the effect that intercourse is penetration of an object or one of the bodily organs into the woman's sexual organ (and not only the penetration by a sexual organ); and third, the instruction that in sexual crimes the accused will be considered to have committed the act, even if he caused the act to be perpetrated by an-

It is completely clear that the Israeli legislator did not anticipate an indictment for the crime of rape based on the combination of the three abovementioned legal instructions, and it is clear that had he been asked he would have rejected this interpretation. This interpretation is also too far removed from the usual everyday meaning of the expression rape, as it is understood by any ordinary person.

And now we have to ask why the State Prosecutor's Office feels obligated to serve an indictment for the most serious crime possible, even if it is a theoretical and unrealistic option. Appar-