Drug facilitated sexual assaults (DFSA) have been increasingly reported in the medical literature since the 1980s but their legal recognition is more recent, at least in Europe. From a case treated in south-eastern France, whose judicial consequences were known, it seemed of interest to carry out an international study of jurisprudence concerning this type of rape. While from the medical viewpoint the drugs used are well-known and their presence can be clinically verified, the legal consequences of their use in subsequent criminal prosecution is less clear-cut. Some European countries have no jurisprudence in this area, while others consider the use of drugs as an aggravating circumstance. In France, it was only in 2003 that the first case of DFSA was truly punished by the judicial system, with considerable media attention. By contrast, in English-speaking countries, particularly the United States, the use of drugs to facilitate sexual assault has frequently been recognized in legislation and in criminal prosecutions.

Prevention is fundamental and is recognised as demonstrated by campaigns in various countries.

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Keywords: Rape; Drug facilitated sexual assaults; International case law
physical examination did not show any obvious physical signs of assaults but showed bruising and rupture of the hymen and a bruise at the fourchette. Swab samples for DNA testing and other toxicological samples from blood and urine were collected. Before trial, the medical file was seized by the judicial authorities to obtain toxicological data but no expert evidence was available at trial. The defendant was convicted and sentenced to 8 years imprisonment; however, according to the Chairman of the Assize Court, the jury did not take into account the possible chemical submission in its verdict.

This case report will allow discussion of the management, toxicology and judicial implications of such cases. This subject is still very new in some European countries. Health and legal professionals discuss it amongst themselves from a technical point of view, while the popular press considers the anecdotal evidence and possible prevention. There is no consensus in medical and legal circles, whether national, European or indeed international, as to the proper legal consequences of DFSA. The objective of this article is to look at DFSA and its legal consequences in a number of countries, in an effort to improve understanding and thus better coordination between medical and legal practitioners.

1. Epidemiology

The statistics concerning rape or sexual assault generally and DFSA in particular are usually accepted as under-reported. Apparent increases in figures may reflect better reporting and a greater willingness on the part of victims to come forward rather than necessarily a real increase in actual crimes. In the case of DFSA the evidence is frequently anecdotal, with few controlled studies being carried out, although the situation is changing, with more attention given to this problem. Many of our references in this section are necessarily from newspaper articles or web sites, since the information cannot be found elsewhere.

Official statistics from national Ministries of Justice for sexual abuse are plentiful, but the picture is extremely patchy concerning DFSA. In France, in the Paris area over 4 years, 150 assaults of all kinds under the influence of chemical products were reported. In comparison, a retrospective study covering 2 years (1996/1997) in eastern Paris found 23 cases of DFSA of which half were actual rapes, where mainly benzodiazepines had been administered. In comparison, a retrospective study covering 2 years (1996/1997) in eastern Paris found 23 cases of DFSA. The sex ratio was two male/twenty-one female, always with the use of benzodiazepines, in three cases associated with alcohol. France recognizes that this problem is largely under-estimated with only 200 cases reported nationally over 8 years. In contrast, another study carried out at the Antipoison Center in Paris over a 2-year period in 1999–2001 identified 142 cases where drugs were used to commit crimes, of which a majority were rapes. As a result of this study, concerning this problem, on 24/12/2002 the Ministry of Health sent out a circular to the general headquarters of the hospital services with recommendations for emergency doctors and insisting on the importance of early high quality detection. In order to handle these cases, more effectively an inter-hospital working group has been established, centralizing all results at the French agency for the safety of health products.

In the United Kingdom, according to charity help-lines, there are now at least 100 cases of DFSA per year. 11% of complainants being male. It is estimated that drugs are involved in up to one in five rapes, but only a handful of men have ever been convicted of DFSA. Only two cases of DFSA have been prosecuted in Scotland (which has a separate judicial system) and toxicological evidence confirms that alcohol is the frequent ‘drug’ in DFSA.

In the United States over a 26-month period, of 1179 samples collected from 49 states after alleged sexual assaults, 451 were shown to be positive for the presence of drugs. In contrast, another study of 2003 samples found that two-thirds contained alcohol and/or drugs, of which 63% revealed the presence of alcohol but only 3% GHB or flunitrazepam. At a US Drug Enforcement Administration DFSA training conference, Gail Abarbanel, founder and director of the nationally recognized Rape Treatment Center (infra 26) estimated that 15–20% of all sexual assaults were facilitated with drugs, which is why GHB and other such drugs are referred to as predatory drugs. Other statistics given by Ms. Abarbanel at this conference: of every 100 rapes in the US, 32 are reported to the police, 16 result in an arrest, 13 defendants will face prosecution, 7 will be convicted, 5 will go to prison. The bottom line is that only one out of every 20 rapists will go to jail. Preatory drugs, which can incapacitate victims and impair memory, make the successful prosecution of sexual predators that much more difficult.

In Canada, just for the little-populated region of Mauricie and Centre-du-Quebec, 19 women claim to have been victims of DFSA through the use of GHB in 2002, although only one pressed charges. A Canadian study over a 7-year period dealing with the implication of drugs in rape cases put forward a lesser prevalence of only 12%, and this thanks to better organized epidemiological and toxicological identification structures.

In Europe, finally, the cases registered remain isolated as the procedures for epidemiological identification are only now being set up.

2. Rape drugs

So-called “rape drugs”, such as benzodiazepines, are now well known; the most frequently used is Rohypnol (flunitrazepam) which is extremely powerful since one dose is equivalent to 10 times the strength of a Valium tablet. Other benzodiazepines are also used, such as trizolam, lorazeepam, chlorazepam, bromazepam but also hypnotics such as zolpidem or zopiclone have been described as DFSA drugs. Gamma-hydroxybutyrate (GHB) has also
been identified as a DFSA drug. GHB, which was synthesized by the French biologist Henri Laborit in 1960, could still be bought in Europe without a prescription in health food shops until the beginning of the 1990s. Along the same lines, other more common drugs such as ketamine, scopolamine, some anti-histamines, by-products of dimethlytryptamine, can also be administered with criminal intent. Some of these products are originally intended for veterinary use. In France decree no. 2003-1126 of 25/11/2003 increases penalties for the illegal import and export of this type of product.

Hallucinogenic-type drugs such as LSD or ecstasy can also be used in the commission of sexual assaults. Common street names for DFSA drugs are “Roofies” or “Forget Me Pill” for Rohypnol, “Liquid X”, “Liquid ecstasy” or “Easy Lay” for GHB (also called GBH after the acronym for the English crime of “grievous bodily harm”) and “K”, “Special K” or “Cat Valium” for ketamine. The possible criminal use is reflected by popular names such as “Forget Me Pill” or “Easy Lay”.

All of these products generally act on the cerebral receptors such as GABA, glutamate, acetylcholine. The various interactions induced on these receptors lead to clinical signs such as retrograde amnesia, hypothermia, sleepiness, rapid somnolence, unconsciousness, coma, hallucinations and vomiting. Generally, these drugs produce an effect of impaired judgment coupled with a lack of inhibition, giving an impression of collaboration or submission by the victim. Thus an apparently “active” victim may nonetheless be under the control of her assailant(s), but a victim’s recollection of her participation in the sexual activity makes her hesitate to lodge a complaint. These drugs’ effects are dangerously increased when consumed with alcohol. In fact there is an added difficulty in that many of these drugs cause effects that are themselves characteristic of ethanol intoxication, leading many law enforcement officers to assume that the victim was drunk rather than drugged, and to not carry out a thorough investigation as a result. Naturally, biological evidence should be collected as quickly as possible in order to prepare for any future judicial action. Blood specimens are usually only useful if taken within 24 h of the drugging but urine can still show traces up to 4 days later. Analysis of any vomit can also be useful. Hair samples should also be taken 1 month later from uncolored hair. All specimens should be in sufficient amount to allow a counter-analysis. Suitable storage is achieved at +4 or −20 °C for blood, urine or vomit and at ambient temperature for hair. Drugs of abuse, including GHB, are best tested by gas chromatography coupled with mass spectrometry. Nowadays, recommended screening for benzodiazepines or hypnotics, such as zolpidem or zopiclone, is by liquid chromatography coupled with tandem mass spectrometry; this combines specificity and extraordinary sensitivity.

Because of the effects of the drugs, in particular the anterograde amnesia, the prosecution may be deprived of one of the most powerful sources of evidence – the victim’s testimony. Thus the importance of forensic evidence is potentially even more crucial in DFSA cases than in other sexual assault cases, because it may have to substitute for victim testimony.

3. Possible criminal penalties

The new French criminal code sanctions rape according to article 222-3 with imprisonment of up to 15 years. The article provides for this sentence being increased to 20 years when one of eight aggravating circumstances is recognized, for example, if mutilation or infirmity results from the crime. The penalty can be increased to 30 years imprisonment if the victim dies. As a separate crime, which could be, but is not necessarily, associated with sexual assault, article 222-15 clearly states that the administration of harmful substances to another person causing mental or physical consequences is punished by up to 15 years imprisonment. On the other hand, French law does not consider this to be poisoning (article 221-5), which consists solely of administering substances with the intention of committing homicide. In practice, French criminal law only recognizes the sexual assault and usually does not prosecute the drug administration. We should emphasize that there is a paradox in the definition of vulnerability. Thus the fact that a woman is already under the influence for example of alcohol before the rape, will constitute an aggravating circumstance. On the other hand when a woman takes drugs without her knowledge, administered by the perpetrator before the rape this does not constitute an aggravating factor but will simply contribute to the actus reus of rape. However, in civil law, when claiming damages, the entirety of the circumstances can be considered with possible accumulated sanctions. Paradoxically these damages are often lower than those obtained in the case of an unknown or insolvent assailant if the victim applies to the CIVI (commission for the compensation of victims of criminal offences). Generally damages for sexual assault are about 35,000 euros and for rape from 50,000 to 100,000 euros depending on the circumstances. Damages can also be granted by criminal juries at the time of trial but of course this is not their primary function. Unfortunately we have no data concerning civil damages in DFSA cases. Twenty-one other European countries have a similar system. Ultimately in France in the criminal courts the concept of chemical submission is just one of the factors in the medico-legal file which can be used to prove the elements of sexual assault, most frequently rape. The idea of DFSA as a factor of vulnerability could perhaps evolve in judicial mentalities; for the moment the rare cases concerning this subject in French jurisprudence do not take it into account.

A French case in 1994 concerned a woman under the influence of drugs; the court did not recognize that she was in a vulnerable state and ignored the drug element. In June 1996 in Rouen a pregnant woman’s neighbour administered a hypnotic drug. He was convicted of sexual assault and sentenced to 5 years’ imprisonment for abusing...
the victim’s vulnerability, but because of her pregnancy and not her drugged state. However a case in Meaux on May 5 2003 merits attention since the court punished very severely me of the perpetrators of the rape of a young woman drugged without her knowledge with tea containing bromazepam, particularly as this facilitated a collective rape. A case in Evry in April 2003 resulted in a 10-year sentence although the element of chemical submission was not accepted, due to conflicting expert evidence. Another similar case in Paris produced an 8-year sentence, but again without the chemical element as it is still not recognized officially in the criminal code. The most recent case, heralded as the first true rape drug trial, occurred in Bobigny, near Paris, where a former policeman suspected of sexually assaulting a colleague after administering GHB in the alcohol she was drinking was in fact only charged with the covert administration of drugs under article 222-15. He was given the maximum 5-year prison sentence on December 19, 2003. Neither rape nor sexual assault could be proved in the absence of any physical evidence and so the defendant was convicted of the more minor offence in a lower court. The victim received 20,000 euros damages for moral prejudice. There has been considerable media attention on this case, which could possibly lead to a change in public attitudes.

In Spain the 1995 criminal code establishes a difference between two types of sexual offence: sexual abuse without the victim’s consent but with no violence or intimidation (articles 181, 182, 183) carrying sentences of 1–2 years in the absence of penetration and 2–6 years in the case of penetration; and sexual assault with the addition of violence or intimidation (articles 178, 179, 180). Sentences for this latter crime vary from 1 to 12 years depending on whether penetration occurred and according to aggravating circumstances of which some are similar to those in France (use of a weapon, group assault, the level of family relationship, position of trust, vulnerability). Other aggravating factors are different: assault on a minor aged 13 or younger (in France a minor aged 15) and the notion of oppression or degradation during the attack. The question of DFSA unknown to the victim is included in sexual abuse by Spanish law. Depending on the jurisdiction, the applicable sentence must be more than 6 years for these offences, to be judged by a jury in each province in France, once a sexual assault has been defined as rape it becomes a crime to be judged in the assize court with a jury. In any case, in Spain the concept of DFSA is not on the legislative agenda. The present reform under review in the Senate concerns the different forms of penetration. At present no cases of DFSA are known to have been prosecuted in Spain.

The Italian criminal code provisions concerning sexual violence explicitly recognize as an aggravating circumstance the administration of alcoholic or narcotic substances. Article 609b, introduced by the law of February 15, 1996, no. 66, concerns victims in a position of physical or mental inferiority and requires this condition to be a consequence of the defendant’s direct action. Article 613CP requires the victim to have been reduced to a state where she is incapable of understanding or consenting, corresponding to a condition where she would be considered incapable of committing a crime (article 85CP). DFSA might also be considered to occur under article 643CP where the victim is in a state of mental infirmity or deficiency. This does not need to be a complete absence of mental faculties, simply a reduction in mental capacity, a state of weakened critical discernment and reduction of the ability to consent. All of these situations can be induced by the administration of drugs. This is reinforced by article 728 which deals with the suppression of another’s conscience (hypnosis, administration of narcotics). Italy is conscious of the increase in this type of case. In 2003 the forensic toxicology team in Padua published a case concerning a 61 year old woman who had been sexually abused while under anesthesia. Although blood and urine samples had not been taken at the time, later detailed analyses of head and pubic hairs showed evidence of thiopental and pentobarbital. This case is a good illustration of the need for toxicological sampling to provide legal proof of drug administration. The perpetrator was found guilty of sexual violence with aggravating circumstances, i.e., the administration of narcotic substances and the abuse of a person in a vulnerable situation. He was sentenced to 5 years’ imprisonment, payment of procedural costs and was forbidden to work in a hospital or other medical structure. He was also ordered to pay damages by the civil court, as indeed was the hospital concerned. This appears to be the only reported case so far in Italy.

In Germany the 13th chapter of the criminal code governs on sexual assault, notably based on section 177 which refers to sexual coercion or rape. Depending on the gravity of the circumstances, imprisonment can vary from 6 months to 10 years. Section 178 provides for imprisonment for life or not less than 10 years if the rape results in the victim’s death. Article 179 deals with assault on a person “incapable of resisting”, which can be interpreted as similar to the French notion of vulnerability. In fact the language of this article is very similar to the aggravating circumstance in France, but also includes an extra element concerning a person with serious mental disturbance. The paradox is that in this second case, despite representing aggravating circumstances, the sentence is in fact less severe, from 3 months to 5 years. No reported cases are available at present.

The English-speaking countries of the United States, New Zealand, the United Kingdom and Canada, are forerunners in the recognition of this new type of assault. Canada’s criminal code (articles 271–273) categorizes rape as either simple or serious, which corresponds more or less to the existence of aggravating circumstances in Europe. The definition of consent is very precise but does not mention drug-taking either voluntarily by the victim or without her knowledge. However the second section of this article allows the accused to use as a defence his “belief in consent”. The possibility of voluntary weakening of the vic-
tim’s faculties is mentioned as well as her voluntary ignorance; these two ideas, which could correspond to the use of drugs, do not constitute a defence for the accused since consent is deemed not to be obtained.\(^\text{53}\) The little jurisprudence available has to be collected from Court of Appeal cases. The impossibility of consent in the presence of intoxicating drugs was confirmed in a 1997 case where PCP (“Angel Dust”) had been administered in gin\(^\text{54}\) and in another more recent case (2003) of sexual assault under the influence of alcohol and GHB.\(^\text{55}\) A case of collective rape was heard in the District of Quebec on 28 January 2002 and the decision rendered on 11 November 2002 in which the judge did not take into account the alleged use of rape drugs. This was firstly because the medical proof was not sufficiently convincing (the tests were not complete) and secondly because at the appeal the victim admitted having possibly taken cocaine herself.\(^\text{54, 55}\)

In the United Kingdom, rape is defined in Section 1 of the Sexual Offences Act 1956 (itself a consolidation of provisions in the Offences against the Person Act 1861) as being committed when a man has sexual intercourse with a person who at the time does not consent to it. Section 4 entitled “Administering drugs to obtain or facilitate intercourse” further states that it is an offence for a person to apply or administer to, or cause to be taken by, a woman any drug, matter or thing with intent to stupefy or overpower her so as thereby to enable any man to have unlawful sexual intercourse with her. Thus, the administration of a DFSA drug can be considered as a separate offence, but can also be treated as an aggravating circumstance.\(^\text{56, 57}\) Separate prosecution is possible under the Misuse of Drugs Act of 1971, which was modified in July 2003 to make the use and possession of GHB illegal. The use of alcohol to facilitate sexual abuse is more common in the jurisprudence. For examples, see Camplin [1865]\(^\text{58}\) Lang [1975]\(^\text{59}\) or Malone [1996]\(^\text{60}\) where the victim was “too drunk to complain”. It should be noted that even if the administration of drugs or alcohol cannot be proved, as in Canada, British law also provides for consent being impossible in cases where the female is “mentally deficient, drunk, asleep or otherwise unconscious” (author’s italics)\(^\text{61}\) A conviction in 1995 was upheld by the Court of Appeal (Larter/Castleton)\(^\text{62}\) in which a 14 year old was “insensible probably through drink” and would seem to support the prosecution of “date-rape”. The Sentencing Advisory Panel gave specific advice to the Court of Appeal in December 2002 that “relationship rape” or “acquaintance rape” should be treated as no less serious than “stranger rape”, which in fact represents only 12% of recorded rapes. Sentencing guidelines clearly indicate “the covert use of a drug to overcome the victim’s resistance and/or obliterate his or her memory of the offence” as the eighth of nine aggravating factors which increase the minimum sentence from 5 to 8 years.\(^\text{63}\) The most serious case to date is Cobb, where a male ER nurse injected three patients with midazolam, a drug which causes memory loss, and raped two of them. His life sentence was upheld on appeal because at trial it emerged that he had previously caused the death of a fellow nursing student by administering the same drug together with alcohol.\(^\text{64}\) One case in Scotland led to the rapists being sentenced to 5 and 4 years’ imprisonment, but as in many French cases, they were not charged with drug administration, despite the victim having been unconscious for about 6 h.\(^\text{55}\)

The United States is a leader as regards drug rape legislation, as evidenced by the federal law passed in October 1996, the Drug-Induced Rape Prevention and Punishment Act. The Act provides for criminal penalties of up to 20 years imprisonment for any person who administers a controlled substance to a person, without the victim’s knowledge, with the intent to commit a crime of violence, including rape. It also increases the penalty to 3 years for unlawful simple possession of common DFSA drugs. In American law, controlled substances can be categorized from Schedule I to V according to their potential for abuse, medical use and possible dependence.\(^\text{65}\) Flunitrazepam was singled out under the Act for stricter penalties although it remains a Schedule IV drug. But at least eight individual states have re-classified it into Schedule I.\(^\text{66}\) Another federal law, the Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 1999, modified the Controlled Substances Act to take into account the prevalence of “date rape” drugs. In addition, the law directs the Attorney General to develop model protocols for taking victim statements to improve investigations and prosecutions. It also requires the Secretary of Health to submit annual reports to Congress and to develop a national campaign of prevention.\(^\text{68}\) By 2000 twenty states had outlawed GHB by placing it on the schedules of controlled substances, albeit at different levels. Eighteen states have done the same for ketamine. The Federal Food and Drug Administration recognizes ketamine as a medical drug while flunitrazepam and GHB are classed as drugs of abuse. Thus the prosecutor in this kind of case can use a two-pronged approach: the drug administration and the sexual assault which follows can be judged as separate felonies. In the US these crimes are judged most frequently at state level; the fact that each state is independent makes the evaluation of jurisprudence difficult. Indeed, American state jurisdictions have various approaches to DFSA.\(^\text{69}\) The important element, as in other countries, is consent, or rather the lack of it. The most common terms used in the statutes are that a victim is incapable of consent if he is “mentally incapacitated”, or “physically helpless”. “Mentally incapacitated” is defined in New York, for example, as in a number of other states, as meaning that “a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent”. “Physically helpless” in New York means that “a person is unconscious or is physically unable to flee or physically unable to communicate unwillingness to act”\(^\text{70}\) but Kentucky includes intoxication by controlled substances in both these elements.\(^\text{71}\) Some states such as New Hampshire or Pennsylvania add drug administration as a direct aggravating
circumstance, while Iowa specifically mentions flunitrazepam. The effect of the administration of DFSA drugs in most states is to allow prosecution as a first degree felony. Other states use the term “mentally or physically incapable of resisting or understanding” and “forcible compulsion” due to administration of a drug. In contrast, in Georgia and Massachusetts, there is no mention of incapacitation or of drugs, simply that the action is “against (the victim’s) will”. According to the circumstances, rape and sexual assault can be classed variously in the first, second or third degree, class A, B or C felonies, or even in minor cases of assault as misdemeanors. Thus, the penalties vary widely, but the majority of states can impose up to a life sentence for first degree rape. As mentioned before, the drugging itself can usually also be prosecuted as a felony, often treated as a form of assault and battery, particularly where the evidence of sexual abuse is difficult to obtain. Another effect of the evidentiary problem may be that DFSA crimes tend to be prosecuted or plea-bargained as sexual assault, rather than the more serious charge of rape.

The most significant case in the US involving the use of Rohypnol is that of Sera. The defendant had been convicted in 1998 of eight criminal counts, including the felony of drug administration, related to three sexual encounters with two women and although he contested the sufficiency of the evidence, the conviction was affirmed by the Supreme Court of Arkansas in May 2000. The definition of lack of consent used in this case was the “physically helpless” element. The typical difficulty of proof in DFSA, since the victims did not know the assaults had occurred until it was too late to obtain forensic evidence, was overcome here because the defendant videotaped his crimes.

In Wojahn a doctor gave tranquilizers to his patients to “relax” them before examinations or X-rays; interestingly here the judge stated that “rape drugs may be proved by circumstances and surroundings” (the victim felt “groggy”) and referred to an earlier case, Crosby, where the victim was “dizzy and weak” after an injection.

Like the other English-speaking countries New Zealand is active in prevention, with similar legal provisions. It is against the law to have sex with another person without consent under the “sexual violation” clause in section 128A of the Crimes Act 1961 carrying a maximum penalty of 20 years’ imprisonment. A Crimes (Drug Rape) Amendment Bill is being prepared and has recently been presented to Parliament. If approved, this bill will insert a new section 129B into the Act “relating to consent in cases of drug-facilitated rape, by including under matters that do not constitute consent to sexual connection the fact that a person is prevented from physically resisting by an intoxicating, anaesthetic, controlled or illegal substance, or hypnotic drug.” One man was found guilty in 2003 of 17 charges, including stupefying, sexual violation, indecent assault and kidnapping, and sentenced to 17 years imprisonment, which sentence was reduced to 13 years on appeal. In Mexico, the 1931 federal penal code is regularly updated, the latest revision being in September 2004. Rape is dealt with in articles 265 and 266. Article 266, in section II, refers to the possibility of products being administered which would render the victim incapable of resisting. This circumstance increases the initial sentence for rape by more than half. In the jurisprudence, two reported cases exist, but these concern the administration of alcohol to the victim, incurring sentences of 22 and 14 years, respectively, depending on the victim’s age. In one other case of medication being administered to a minor, the prosecution was abandoned because the victim’s family withdrew the complaint.

In contrast, South America is more difficult to assess from the judicial point of view, but from the following anecdotal case public opinion at least appears very sensitive to the problem. In Caracas, Venezuela, a man who had administered a paralyzing Columbian drug, Burundanga, a product which is derived from Datura, and raped several adolescents, was attacked by a mob, then shot and killed by the authorities during his arrest. This example illustrates that the problem can be found, if not worldwide, at least in many areas of the globe.

4. Prevention

As we have shown, English-speaking countries are active after the assault by considering DFSA an aggravated crime, but they are equally active before it in terms of prevention through numerous public awareness campaigns targeted in particular at young people, for example via posters and counseling on university campuses. A film called “Spiked” was shown in UK cinemas and at universities during the autumn of 2003 and is typical of the new educational approaches. The terms “drink spiking” or the older “Mickey Finns” are frequently seen in newspaper articles and on dedicated websites with advice on how to avoid being victimized. There is even some evidence of a newer phenomenon: that of cigarette spiking, known in the US as “fry”. In the UK recently, beer mats and swizzle sticks have become available which claim to allow the detection of drugs in drinks. A press release in November 2004 announced that a product called the Drink Detective, which can detect the presence of benzodiazepines, GHB and ketamine, had won a prestigious science award. The manufacturers claim that the chemistry is very reliable but also that the very sight of it would deter would-be rapists.

From the investigation point of view, British police forces are becoming more aware of the DFSA problem and participate actively in prevention campaigns; many have introduced special rape evidence kits developed for collecting samples as rapidly and as competently as possible. The Metropolitan Police Force in London, for example, also started Project Sapphire in 2001 with a detailed action plan to improve rape investigation. It uses an “Early Evidence Kit” developed in partnership with the Forensic
5. Conclusion

In view of this study, drug facilitated sexual assault is a scourge which affects every country. It is thus fundamental when there is the slightest doubt during the forensic medical examination to take all the necessary samples, to substantiate not only the fact of rape but also the question of drug administration. While English-speaking countries seem to consider this aspect legally as an aggravating circumstance, or indeed a separate crime, European countries, apart from Italy, do not specifically mention drugs in their criminal codes. Will the jurisprudence evolve? Will we move from simply reinforcing the qualification of rape to increasing sentences because the victim is considered to be vulnerable at the time of the act and thus an aggravating factor exists? We feel we should underline the paradox that in most countries, a sexual assault using a weapon is punished more severely than one under the influence of a drug. Shouldn’t legislation consider a drug as a kind of chemical weapon? In any case, the initial examination of the victim by the forensic physician and the systematic collection of swab samples is of the utmost importance given the specific aspect of this “chemical violence”. Indeed, in many cases, this violence involves an at least temporary loss of memory entailing that the victim herself might not remember that she had been sexually assaulted, thus making it difficult to detect that there had been sexual violence in the first place.

It must now become a reflex for medical practitioners to take these potential cases of sexual violence into consideration and to collect evidence and to collect that evidence at once in such suspected cases so that it might be used against the aggressor in the case of prosecution.

In the United States of America; the general recommendations of the National Institutes of Health give the following warning to victims: “get your urine (pee) test as soon as possible. Rohypnol leaves your body 72 h after taking it. GHB leaves your body in 12 h...”

### Drug facilitated sexual assaults: comparative table of the law

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| Canada    | Canadian Criminal Code:  
- Articles 271, 272, 273: rape (from simple to serious rapes)  
- No mention of drug-taking by the victim, either voluntarily or involuntarily |  |
| United States | Drug-Induced Rape Prevention and Punishment Act 1996 |  
- Administration of a controlled substance to a person, without the victim’s knowledge, with the intent to commit a crime, including rape. Controlled Substances Act. State Laws:  
- New York Penal Codes: articles 130.00 and 130.05  
- Kentucky Penal Codes: articles 510.010 and 510.020  
- New Hampshire Criminal Code: title LXII, Section 632-A.2  
- Pennsylvania Consolidated Statutes: title 18, section 3121  
- Iowa Code, 1999 supplement: section 709.4  
- Nevada Revised Statutes: 200.366, section I  
- Missouri Revised Statutes: section 566.030  
- Criminal Code of Georgia: section 16-6-1  
- General Laws of Massachusetts: Part IV, chapter 265, section 22  
- Device for Facilitating Sexual Assault (DFSA) an aggravating circumstance in some states | Unlawful possession of common DFSA drugs: 3 years imprisonment |
| United Kingdom | Sexual Offences Act 1956 |  
- Section 1: sexual intercourse between a man and a woman who does not consent to it at the time  
- Section 4: administering drugs to obtain and facilitate intercourse Administration of DFSA drugs either an aggravating circumstance or a separate offence. Misuse of Drugs Act 1971  
- Use and possession of GHB illegal | Administration of a controlled substance to a person, without the victim’s knowledge, with the intent to commit a crime, including rape: up to 20 years imprisonment |
| New Zealand | Crimes Act 1961 |  
- Section 128A: sex with another person without consent. Crimes (Drug Rape) Amendment Bill in preparation. Would insert a new section 129 relating to drug-facilitated rape | Sex with another person without consent: imprisonment up to 20 years |
| Mexico | Federal Penal Code |  
- Articles 265 and 266: administration of products rendering the victim incapable of resisting  
- DFSA an aggravating circumstance | Use of DFSA increases initial sentence for rape by more than half |

### References
