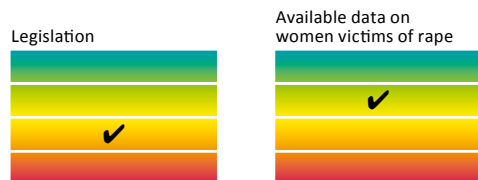


NATIONAL ANALYSIS

Portugal



Expert

Maria Shearman de Macedo

Legislation

Article 164 of the Portuguese Penal/Criminal Code defines rape as a criminal act by the use of force or threats (paragraph 1); or by using authority over a dependent (paragraph 2). In the case of adult victims of rape, investigation and prosecution depend on the victims' complaints.

The introduction of the crime of domestic violence into the Portuguese Penal Code, Article 152, with the reformulation of the entire legislative framework for Domestic Violence (Law 112/2009 of 16 September), has given more visibility to sexual violence within the marital relationship, namely marital rape and date rape. If a case is classified by the police and prosecution as domestic violence, which may include sexual violence, then it is a "public crime" not dependent on a complaint by the victim, though her testimony will be needed in court.

Compensation for moral and patrimonial damage is possible but depends upon criminal proceedings and must be requested within a specific time frame during court proceedings. In the case of violent crimes – which include rape – where acts of violence have caused serious damage to the victim's physical or mental health, it is also possible to request an advance compensation payment by the state.

Additional comments

In our experience criminal proceedings and court cases are lengthy and do not take into account the needs of the victims. The investigative and court process is based on the production and presentation of evidence and there is a lack of specialised training on the issue of sexual violence. Victims' suffering and risk are difficult to be recognized by the judicial system. Moreover, victims are still subjected to the patriarchal and "macho" perspective that blames the victim for "not resisting" or "wearing a mini skirt"...

A recent (2010) rape court case illustrates this continuing discrimination against women:

A well-known psychiatrist raped an eight month pregnant patient and was convicted in criminal court to five years in prison, with probation.

However two judges from the Court of Appeal decided to acquit the psychiatrist on the grounds that the defendant did not use enough violence to make the victim unable to resist. In the appeal decision, the judges say that "evidence that the psychiatrist raped the eight month pregnant and depressed patient during a consultation must be based on the "practice of acts by the use of physical force[...] in order to force her not to resist[...] or to overcome her resistance." And they added "Simply disregarding the will of the victim cannot be classified as violence."

This case had significant repercussions within both the media and public opinion. Most reactions were of outrage and indignation, but some also disbelieved the victim and defended the psychiatrist's reputation.



60

The case had a terrible impact on the woman involved as she was widely exposed in the media and social networks, where links were shared to the trial documents and reports about the violence and humiliation she was subjected to during the rape.

This case illustrates the risk that the women victims of rape have to face when reporting the crime to the authorities, as there is no guarantee that they will be treated respectfully by the judicial system.

A positive note: Portugal ratified the Istanbul Convention on 5/2/2013 and it was recognized that the actual definition of rape must be changed.

Available data on women victims of rape

The annual report “*Internal Security Report for 2012*” from the Ministry of Internal Administration www.portugal.gov.pt/media/904058/20130327_RASI%202012_vers%C3%A3o%20final.pdf gives data on reports/complaints of rape to the law enforcement authorities:

In 2012, **375 complaints of rape** (violação) were reported, classified as a “violent and serious crime”, which represent 20% of all sexual crimes covered by the Portuguese Penal Code.

In 25% of the rape cases the perpetrators were family members and in 34% were known to the victim, in 24% were perpetrated by strangers. The majority of the victims were female and all perpetrators were male. (pag. 136)

Useful Contacts

There are no specialised resources/services on sexual violence against women in Portugal. There are no rape crisis centres and no specific helpline, only the general emergency line 112, police stations, health services and forensic medicine services.

State entity responsible for the issues of Equality and Gender Violence:

CIG: www.cig.gov.pt

NGO giving support to women survivors of violence:

AMCV: www.amcv.org.pt

UMAR: <http://umarfeminismos.org/>

NGO giving support to all victims of crime (men and women)

APAV: http://apav.pt/apav_v2/index.php/pt/

