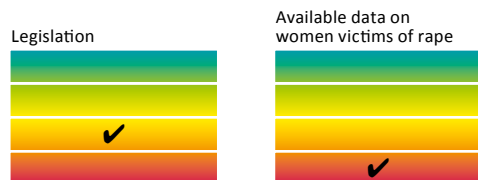


NATIONAL ANALYSIS

Poland



Expert

Malgorzata Tarasiewicz

Legislation

Article 197 of the Polish Penal Code states that “whoever, by force, illegal threat or deceit subjects another person to sexual intercourse shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.” The crime of rape is included in Chapter XXV of the Penal Code dealing with Offences against Sexual Liberty and Decency alongside, for example, such crimes as: taking sexual advantage of the vulnerability of another person (art. 198), abusing a relationship of dependence in order to subject a person to sexual intercourse (art. 199), subjecting a minor under 15 years of age to sexual intercourse or making him/her submit to another sexual act or to perform such an act (art. 200), adultery (art. 201) and forcing another person to practice prostitution (art. 203). All these crimes deal with sexual abuse but only the ones which fulfil the description presented in art. 197 are qualified as the crime of rape in the understanding of the Penal Code.

Often Polish legislation is interpreted in a way that raises expectations that a woman should use active resistance against the perpetrator attempting to rape her in order to make her a credible victim.

Additional comments

According to Prof. Monika Platek, the Polish Penal Code has taken a modern approach to the concept of rape from as far back 1932. This is seen in the fact that, contrary to definitions in many other pieces of legislation, the definition and concept of the crime of rape does not relate to the gender of the victim: the victim can be a woman or a man (while some legislation does not provide for the possibility of raping a man). And since the 1930s, Polish legislation has provided for the existence of marital rape.

The unfortunate fact that the crime of rape is included in Chapter XXV of the Penal Code dealing with Offences against Sexual Liberty and Decency and not in the Chapter on Offences Against Life and Health may suggest that rape is a violation of social and cultural norms and not a threat to women’s life, health and freedom. As investigation, and consequently prosecution, of the crime of rape depends on a victim’s complaint it may suggest a silent concession by the state to the inadequate approach to that crime. In practice, it means that the victims do not report the crime out of fear, loyalty towards the perpetrator (when he is a family member or an acquaintance) or fear of humiliating procedures at the police station and/or the court. The need for a victim’s complaint to start an investigation in a rape case may suggest that the legislator assumes the crime to be of minimal harm.



58

The signing of the Istanbul Convention puts an obligation on Poland to change the present provisions, which are unfavourable for the victims, relating to the prosecution being dependent on the victim's complaint. On the 10/5/2013, the Polish Parliament (the Sejm) decided that the Penal Code will be changed and that prosecution will be ex officio.

This change includes a provision according to which, until the beginning of the trial, the victim of rape can postulate that the perpetrator would not be prosecuted.

There are also new provisions protecting a victim from retraumatisation. The victim can be interrogated only once in the presence of a psychologist in a special, friendly room. The interrogation would be recorded.

Available data on women victims of rape

There is very little statistical data on rape in Poland and the gender of the victim is not identified. Data from the political statistics published on the police website and from a paper presented by Jaroslaw Warylewski indicated that in 2009 there were a total of 1,816 criminal investigations into cases of rape. According to the statistics of the Ministry of Justice, in 2011 in Poland, 1,748 cases of rape were reported.

Such a low number of reported rapes (for a nation with a population of 38 million) does not reflect the harsh reality. The low reporting level allows for the speculation that women do not report the crime for reasons such as excessively burdensome procedures and an inadequate system of compensation for the victims. In spite of specific recommendations on the treatment of rape victims (2001) no basic standards have been introduced into the practice of the police, courts and other institutions.

Useful Contacts

Ogólnopolskie Pogotowie dla Ofiar Przemocy w Rodzinie „Niebieska Linia” (National Helpline for victims of domestic violence “Blue Line”)

Tel: 801-12-00-02

From Monday till Saturday between 8 a.m. and 10 p.m.

on Sundays from 8 a.m. till 4 p.m. www.niebieska-linia.info

The list of helpline numbers in different parts of Poland can be found on the website: www.vday.za.pl/lista3.html

