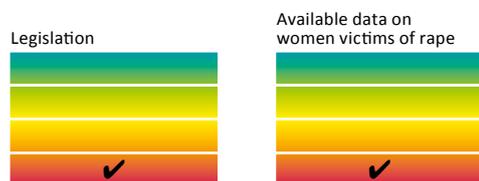


NATIONAL ANALYSIS

Ukraine



Expert

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Legislation

The Ukraine Criminal Code still incorporates the old definition of rape by use of force or threat or taking advantage of the helpless condition of victim, covering only vaginal penetration (Article 152). It is defined as sexual intercourse using physical violence, or the threat of injuries (the will of the victim is suppressed), or by taking advantage of the helpless condition of a victim (her/his will is ignored). **Sexual intercourse** (in terms of rape) usually means a heterosexual sexual act. It means the conjunction of male and female genitals capable, as a rule, of causing pregnancy. Anal or oral penetration of a sexual nature, as well as penetration with an object is covered by another crime recognized by the Criminal Code – violent, perverse gratification of sexual desires.

The helpless condition of a victim in reference to cases of rape means that because of the physical or mental condition of the victim, she or he may not understand the character and value of the actions committed against her or him (mental disability) or, even if understanding it, she or he may not resist. The condition of intoxication may be classified as a helpless condition only in a case when, because of the use of alcohol, narcotics or toxic substances, the person did not understand the conditions or was deprived of the physical ability to counteract the rapist. Consent to the use of alcohol or other substances, even in intimate circumstances, does not constitute consent to sexual relations.

Rape in marriage: The Article 56 of Family Code of Ukraine on the Right of Wife and Husband for Personal Freedom says that: “4. *Compulsion to cease marital relations, the compulsion to stay in marriage, including compulsion to sexual relations by physical or mental violence, is a violation of the right of a wife/husband to personal freedom and can have the consequences set by law.*”

Additional comments

According to the new Criminal Procedural Code that came into force in November 2012, rape without aggravating circumstances (that is, the majority of rape cases) is a private prosecution case, and investigation depends on the victim’s complaint. If the victim refuses to support prosecution the case will be closed. The main risk of such a provision is that the victim may waive the complaint under pressure from the perpetrator. Taking this into consideration and the emotional complexity of criminal proceedings for the victim, including pressure from the perpetrator, the majority of rape cases stay under-reported or do not reach the court.

The new Criminal Procedural Code contains a provision that applies to rape cases without aggravating circumstances concerning an agreement between victim and perpetrator that can be signed, and based on which court verdict will be made. Such an agreement, as well as others, can contain provisions on compensations for victims. As it is a new provision for Ukrainian legislation, we do not know how it will work.



It is very difficult for rape victims to get adequate compensations, as court practice on compensation for moral damages in the Ukraine is very weak. There is no mechanism for determining the amount of compensation and judges often give into stereotypes concerning the victim's guilt and provocative behaviour..

Available data on women victims of rape

The data on rape cases consists of statistics from the Ministry of Internal Affairs and the State Court Administration of Ukraine. However, neither source has the gender disaggregated statistics, and the statistics from the Ministry of Internal Affairs are only divided by age groups - adults and children who are victims.

In 2009-2011, the law enforcement agencies received more than 7,000 **complaints** of rape, but only 2,071 criminal cases were opened.

During the first 9 months of 2012, the law enforcement agencies registered 1,584 such reports, from which 440 criminal cases were opened for rapes (article 152). In 993 cases police refused to initiate criminal proceedings and 363 cases were referred to the court by police after finishing investigation.

According to the data of the State Court Administration of Ukraine, as of the beginning of 2012, there were 263 rape cases in the courts, and 214 cases were added in the next 6 months. Court hearings were held for 242 cases, of which in 207 convictions were made, and 250 persons were convicted.

But an even larger number of rapes remain unreported because women are afraid to ask for protection, are unable to counteract violence by themselves, and do not believe that the existent legal system is going to protect them. And the available official statistics prove how complicated it is to bring these cases to a logical conclusion and to punish rapists through the courts. Also, the society shows different attitudes to such manifestations of violence. A lot of people believe it is the victims who are guilty for what happened to them [1]. Spousal rape is not an additional qualifying attribute and is not considered as a separate crime.

(1) Source: Violence against women and domestic violence/ The Annual Human Rights report "Human Rights in Ukraine 2012" <http://helsinki.org.ua/index.php?id=1362810669>

Useful Contact

National Toll Free Hot Line on Combating Domestic Violence, Trafficking in Human Beings and Gender Discrimination 0 800 500 335 (from fixed phones) 386 (from mobile phones)

