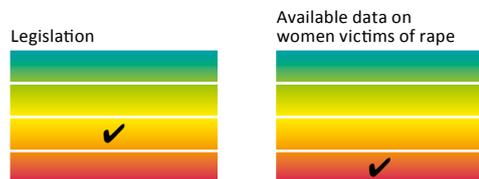


NATIONAL ANALYSIS

Luxembourg



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Legislation

1. a) non-consensual penetration

In article 375 of the penal code, Luxembourgish legislation has a wider definition of rape than previously, rape by use of force or threat. It includes also rape by trick and artifice, or by abusing a person unable to consent or resist freely. The Luxembourgish legal definition nevertheless doesn't comply completely with the definition given in the Convention. It is more restrictive as the victim not only has to prove that there was no consent, but must also prove that he/she was either unable to give or refuse his/her consent or that there was force or threat.

1. b) non-consensual acts of a sexual nature

In this case, Luxembourgish Law complies fully with the Convention as under article 372 of the penal code every "attentat à la pudeur" is punished. The "attentat à la pudeur" is defined as an illicit act of a sexual nature, with or without violence or threat, in which the victim finds him/herself physically involved. Only the act of a sexual nature and the non-consent of the victim must be proved.

1. c) causing another person to engage in non-consensual acts of a sexual nature

Again, Luxembourgish legislation complies with the Convention as in accordance to article 379bis 5° of the penal code someone who helps, assists or knowingly protects the prostitution of another or the soliciting for the purpose of prostitution is penalised.

2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances

Luxembourgish legislation doesn't mention any conditions concerning consent and there is no jurisprudence about it. Article 483 of the penal code defines "threat" as "all means of moral constraints by fear of imminent harm". This could be interpreted to mean that consent must be given freely and voluntarily and that moral force could also result from the surrounding circumstances but, until now, this interpretation has not been confirmed by Luxembourgish jurisprudence.

Investigation depending on a victim's statement/report/claim: The investigation can be initiated either by a victim's or another person's statement or complaint or by a police report. Continuation of the investigation depends on the prosecutor's decision and the public investigation may not be stopped by the withdrawal of the accusation or complaint.

Victim's compensation: The law of 12 March 1984 on compensation to victims who have suffered injuries resulting from crime, enhanced by the laws of 14 April 1992 and 6 October 2009, provides the right for certain victims of crime to receive compensation from the State budget. The victim of a rape or another non-consensual act of a sexual nature does not need to prove a physical or mental damage, which is presumed, but he/she must have been unable to obtain full and adequate compensation by another source.



Case law

Luxembourgish case law is contradictory in considering the victim's non consent as only condition to establish a rape. Some judgements qualify an act as rape if the victim didn't consent freely to the act. In other cases, rape is not admitted because violence and threat as constitutive elements of a rape have not been proven. In most cases, the decision depends on whether the victim was able to give his/her consent or not. The fact that he/she didn't give it is generally not considered as sufficient to establish a rape. Some judgements refer to a lack of criminal intent by the perpetrator, if the victim's behaviour was contradictory or could only have been interpreted in this way. In conclusion, Luxembourgish jurisprudence does not satisfy the requirements of the Convention, as in general, the lack of the victim's consent is not sufficient to establish a rape.

Available data on women victims of rape

The only official figures concerning sexual offences are included in the annual management report of the Police (Ministry of the Interior- www.police.lu) but do not include any gender disaggregated data.

Survey on a certain number of organizations (NGOs and others) reveals that:

if data relating to violence against women exist, the figures given relate to different forms of violence, including sexual violence. There may be sub-categories such as "rape" or "abuse", but there are no details related to the different "forms" of rape, as reflected in the above list

Useful Contact

- Helpline Info Viol-Violence sexuelle: 00352 49 58 54 (composed of professionals working in different associations active in the prevention of sexual abuse, supporting victims and their families.)
- Planning Familial : www.planningfamilial.lu

