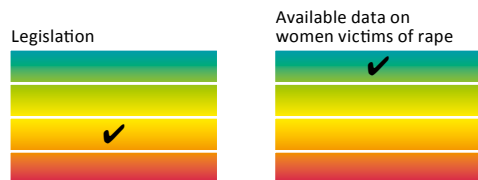


NATIONAL ANALYSIS

Germany



Expert

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Legislation

Following the Istanbul convention, consent to a sexual act must be given “voluntarily as a result of the free will of the person”. As it is further outlined in the Explanatory Report, prosecution of this offence requires a contextual assessment of the evidence “to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations” (Point 192)

The German criminal law does not correspond to the convention on this point. Currently, a clear “no” is not sufficient. There is still a need to prove coercion, the use of violence, the threat of danger to life or limb or taking advantage of a “vulnerable position”. If the victim has been paralysed by fear and / or didn't resist „enough“ (from fear), then it is often not rated as being submitted to “coercion”. For example, it is not considered a vulnerable position when the rape took place in a house where the victim could have run away or called for help.

The jurisdiction of the courts has adopted a definition that is even more restrictive regarding the “vulnerable position”. The victim must be defenseless to an objective viewpoint of the potential violence of the perpetrator. The subjective views of those affected, possibly crippling fear of impending rape, is often considered irrelevant.

The typical behavioral responses to sexual violence include being paralysed with fear, and the non-physical defence, and therefore must be considered according to the Istanbul Convention when assessing the sexual assault and rape. German criminal law should consider the criminal nature of rape not only in cases of force and coercion depending on a reaction characterised by defence/escape of the victim but also on clear consent.

Available data on women victims of rape

Three State agencies publishing data on sexual crimes:

1. Federal Criminal Police Office (reported cases)
2. Prosecution (prosecuted cases)
3. Penal system (convictions)

Easily available data of reported cases refers to the whole group of offences against sexual self-determination including sexual child abuse, distribution of child-pornography and so on. It is not possible to identify any specific type of offences among this data.

Data of prosecution cases and convictions are also available, but come from different sources and do not use the same categories. It is not possible to analyse the progress of prosecution (attrition) for one single offence (e.g. rape).

For example: the statistic of reported cases is about rape and sexual assault / coercion. The statistic from prosecution office is about the whole group of sexual crimes (also against children). Therefore these two data sets cannot be compared.



There are about 8000 reported sexual violence crimes annually. The number of unreported cases is much higher: only 8 per cent are reported to the police (*source: Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Kurzfassung der Untersuchung von Schröttle und Müller, hg. von Bundesministerium für Familie, Senioren, Frauen und Jugend. Berlin 2004, S. 19*).

The official crime statistic has recently improved its data collection and now gives information about the Victim-Suspect-Relationship for rape and sexual assault cases:

- Family member including ex-partner (and husband)
- Acquaintance
- Loose contact
- Stranger
- Unknown

For 2012 statistics, see: www.bka.de/DE/Publikationen/PolizeilicheKriminalstatistik/2012/2012Standardtabellen/pks2012StandardtabellenOpferUebersicht.html

More generally: www.bka.de/nn_205960/sid_2A76550AC195A61DE007573CBC444CA7/DE/Publikationen/PolizeilicheKriminalstatistik/pks__node.html?__nnn=true

Useful Contacts

Federal Helpline: 0800-116 016 : A free, confidential, multilingual, 24 hour accessible helpline for women victims of all forms of violence
Wildwasser: www.wildwasser.eu (sexual violence and rape)

Terre des Femmes : www.frauenrechte.de, 030-40504699-30 (all forms of violence against women, including sexual violence)
bff: www.frauen-gegen-gewalt.de, 030-322 99 500 (domestic and sexual violence)

Local crisis centres like
Lara: www.lara-berlin.de, 030-216 88 88

