



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Germany
Title:	Prosecution of non-consensual sexual acts
Date:	2 October 2015
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<u>Context</u>	
Issue at stake:	Still waiting for a draft law to implement the Istanbul Convention concerning non-consensual sexual acts
Ground of discrimination:	Sex
Source:	Policy development
Field:	Other (gender-based violence)
Applicable law:	Article 36 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

Content

Policy development: The Council of Europe Convention on preventing and combating violence against women and domestic violence, which Germany has not yet ratified, obliges states parties to criminalise, without further requirements, engaging in non-consensual sexual acts. In Germany, only 5-10 % of all sexual assaults are reported, attrition rates continue to rise and only 8 % of all investigation procedures lead to a conviction. The criminal law covers not only the requirement of lack of consent but additionally the requirement of force, serious threat, or an especially vulnerable situation of the victim. In the majority of cases in which the perpetrator is a person close to the victim and/or the victim does not fight back, State prosecutors and judges do not identify the sexual assault as falling within the scope of criminal law, or they do not believe the victim.

On 28 January 2015, the parliamentary Committee of Justice held a public hearing on the implementation of Article 36 of the Istanbul Convention. The majority of experts recommended amendments to the Criminal Code. Prior to the hearing, the Federal Association of Women's Advice Centres and the Women's Emergency Hotlines, the German Women Lawyers' Association, and the Greens had demanded amendments to the Criminal Code to implement the Council of Europe Convention and to combat and prosecute sexual violence effectively. The National Human Rights Institution had identified the need for some amendments from a human rights perspective. However, the Federal Ministry of Justice showed reluctance to fully implement the Convention.

A draft law on the implementation of European requirements for the criminal law related to sexual assaults explicitly precluded the question of a sufficient implementation of Article 36 of the Istanbul Convention as subject of further investigation. In addition, the respective amendments of the Penal Code were adopted without a solution in January 2015. In the media, a chairman of judges at the Federal Court of Justice, Thomas

Fischer, has actively campaigned *against* the prosecution of non-consensual sexual acts without further requirements.

In November 2014, the meeting of the ministries of justice supported the identification of the need for amendments to the Criminal Code concerning the protection of sexual self-determination. In January 2015, criminal law professor Tatjana Hörnle presented an expertise on the implementation of Article 36 of the Istanbul Convention, including the proposal of a draft law to amend the Criminal Code. The Federal Minister for Justice announced the intention to present a draft law before the parliamentary summer recess, which started on 6 July 2015. However, this was not realised.

Key points of analysis: The Council of Europe Convention on preventing and combating violence against women and domestic violence obliges states parties to criminalise, without further requirements, engaging in non-consensual sexual acts; however the German Penal Code includes further requirements. The Federal Ministry for Justice has showed reluctance to implement these parts of the Convention and did not keep the promise to present a draft before the parliamentary summer recess, which started on 6 July.

Internet link source:

(all accessed 24 July 2015)

Reporting and attrition rates of sexual assault: J. Lovett & L. Kelly,

<http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/197/different>

Public hearing of the parliamentary committee of justice on the implementation of Article 36 of the Istanbul Convention on 28 January 2015,

https://www.bundestag.de/dokumente/textarchiv/2015/kw05_pa_recht/356430

Demanding amendments of the Penal Code to implement the Council of Europe Convention: the Federal Association of Women's Advice Centres and the Women's Emergency Hotlines, <https://www.frauen-gegen-gewalt.de/vergewaltigung-verurteilen.html>,

the German Women Lawyers Association,

<http://www.djb.de/Kom/K3/st14-07/>, the Greens,

<http://dip21.bundestag.de/dip21/btd/18/019/1801969.pdf>, the German Institute for

Human Rights, [http://www.institut-fuer-](http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/menschenrechtswidrige-schutzluecken-schliessen-policy-paper-zu-menschenrechtlichem-aenderungsbedarf.html)

[menschenrechte.de/aktuell/news/meldung/article/menschenrechtswidrige-schutzluecken-schliessen-policy-paper-zu-menschenrechtlichem-aenderungsbedarf.html](http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/menschenrechtswidrige-schutzluecken-schliessen-policy-paper-zu-menschenrechtlichem-aenderungsbedarf.html),

and the expertise by Prof. Hörnle, [http://www.institut-fuer-](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Menschenrechtliche_Verpflichtungen_aus_der_Istanbul_Konvention_Ein_Gutachten_zur_Reform_des_Paragraf_177_StGB.pdf)

[menschenrechte.de/uploads/tx_commerce/Menschenrechtliche Verpflichtungen aus der Istanbul Konvention Ein Gutachten zur Reform des Paragraf 177 StGB.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Menschenrechtliche_Verpflichtungen_aus_der_Istanbul_Konvention_Ein_Gutachten_zur_Reform_des_Paragraf_177_StGB.pdf)