



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

### NEWS REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Prosecution of non-consensual sexual acts
<b>Date:</b>	18 April 2017
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Amendments to the Penal Code to implement the Istanbul Convention concerning non-consensual sexual acts
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Other: gender-based violence
<b>Applicable law:</b>	Amended Penal Code

### **Content**

**Legislative development:** In November 2016, amendments to the Penal Code concerning sexual assault and sexual harassment entered into force, implementing Article 36 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

The Istanbul Convention, which Germany has not yet ratified, obliges States Parties to criminalise, without further requirements, engagement in non-consensual sexual acts. The former criminal law on sexual assault in Germany required, in addition to the absence of mutual consent, the use of force, serious threat, or an especially vulnerable situation of the victim. Only 5-10 % of all sexual assaults were reported, attrition rates continued to rise and only 8 % of all investigation procedures led to a conviction. But the Federal Ministry of Justice denied the necessity of amendments, federal judges actively campaigned against the prosecution of non-consensual sexual acts without further requirements, and politicians from all parties expressed their concerns.

It was not until the sexual harassment and assault of many women in Cologne at New Year's Eve 2016, that politicians discovered the urgent need for amendments to the Penal Code. As the suspected perpetrators were North African refugees and Arabic young men, the discussion about protection against sexual violence was at least partially based upon prejudiced assumptions and sometimes developed into public agitation against refugees and Muslims.

On 7 July 2016, the Federal Parliament adopted several amendments to the criminal law implementing the 'no means no' principle. Sexual harassment became a criminal offence and sexual actions without the consent of the other person are punishable without further requirements. The use of force or threat or the exploitation of an especially vulnerable situation of the victim are no longer essential elements for a conviction of the crime, but regarded as aggravating circumstances. Although the necessary implementation of the Istanbul Convention, as well as the problem of deficient prosecution of sexual assault in Germany, were the reasons for the amendments, the

parliamentary group of the Christian Democratic Party suggested amendments to the law of asylum and residence. They introduced the possibility of expulsion and deportation of a person even if life, health and freedom are endangered in the country of origin after committing a non-consensual sexual act. Moreover, the Penal Code was amended by a complex and, in the end, unintelligible section on sexual assaults committed in a group, which legal experts consider to be incompatible with the Constitution

It remains to be seen whether reluctant courts will put the legislative amendments into practice. Previous case law has not been free of gender stereotypes and rape myths, the public discussion about the necessary amendments was characterized by victim blaming and proclamations of the end of the rule of law, and the racist impact of public opinion since the beginning of 2016 cannot contribute to qualified judgment.

**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, the engagement in non-consensual sexual acts. After some discussion, the Penal Code has been amended accordingly. But the judiciary does not fully support the amendments, and public opinion is often biased.

**Internet link source:** Amendments to the Penal Code – Improvement of the protection of sexual self-determination of 4 November 2016, Bundesgesetzblatt, [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl116s2460.pdf%27%5D\\_1489010971052](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl116s2460.pdf%27%5D_1489010971052).

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-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-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).