

**“VIOLENCE” AND “LACK OF CONSENT” –
TWO APPROACHES TO CONSTRUCTING THE ESSENCE
OF THE OFFENCE OF RAPE FROM THE PERSPECTIVE
OF THE VICTIM’S AUTONOMY¹**

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Summary: The authors of the article answer the question of how to describe (define) rape in criminal law provisions so that the scope of criminalization covers all sexual behavior violating the subjectivity of the victim. The determination of the optimal manner of criminalization was based on definitions of being raped existing both in everyday and legal language. Reference was also made to provisions criminalizing rape in selected countries, combined with an attempt to categorize them based on the criterion of how the prohibited behavior is described. Attention was also drawn to the essence of sexual freedom and ways of its violation, and to setting the conditions under which it is possible to consider that sexual intercourse is approved by all parties. Ultimately we came to the view that rape is sexual intercourse without the other person’s consent.

Keywords: criminal law; crime; rape; consent; sexual freedom; sexual autonomy, sexual violence.

1 Introduction

An argument has been put forward in the literature, which does not cause major controversy, that sexuality is a changing and dynamic dimension of humanity. It is constructed through an interaction between the individual and social structures. It is present throughout the life cycle, harmonizing identity and creating and/or strengthening interpersonal bonds. Sexual pleasure, including autoeroticism, is a source of physical, psychological, intellectual and spiritual well-being. It is associated with a conflict-free and anxiety-free experience of sexuality, allowing,

¹ Article based on the legal status of March 2024. In February 2025, a provision will enter into force in Polish criminal law that partially takes into account the change proposed in the text.

therefore, social and personal development². To this it should be added that the actual, authentic and legitimate well-being is conceivable only where one person's (or more persons') sexual pleasure does not harm another individual.

2 Objectives of the study, its subject and methodology

The main aim of the study is to determine the most optimal manner of criminalization of the behaviour defined as "rape" from the perspective of respect for the sovereignty, autonomy and sexual freedom of the person harmed by rape, as given in the title. In other words, how to describe (define) rape in criminal law provisions so that the scope of criminalization covers all sexual behaviour violating the subjectivity of the victim. It must be provided that the study does not address other elements of defining and describing rape – that is the issue of the type of sexual activity (penetration, touching, etc.), the victim's sex (as relevant or irrelevant), number of offenders (single-offender and multiple-offender rape), relations between the offender and the victim (rape committed by a stranger, marital rape, date rape), the offender's motivation (anger rape, power rape, sadism, or – according to a different division – sexual and extra-sexual rape). The issue of the rape of a child is also beyond the scope of the study.

The determination of the optimal manner of criminalization will be based on definitions of being raped existing both in everyday and legal language. Attention will also be drawn to the essence of sexual freedom and ways of its violation, and to setting the conditions under which it is possible to consider that sexual activity is approved by all parties.

The methodology adopted here is determined by the objectives of the study. The article uses general scientific and special methods of scientific study. In particular, the methodological basis of the study is formed by general scientific (description, comparison, analysis, synthesis, induction, deduction, analogy, generalization, classification) and specific scientific (historical-legal, formal-legal) methods of scientific knowledge. This made it possible to explore the issues raised in the study as extensively as possible. In this way, the scope of the concept of "rape" was established both on the basis of literature and case-law. The formal-legal analysis focused on court and international tribunal rulings and international treaties, as well as on the legislation of particular countries.

3 Popular and dictionary definitions of rape in various languages

It is no surprise that rape is defined differently in various languages. In English, rape means "to force someone to have sex when they are unwilling, using violence

2 13th World Congress of Sexology Valencia Declaration on Sexual Rights, 1997. [online]. Available at: <https://web.archive.org/web/20091110024103/http://www.iub.edu/~kinsey/resources/valencia.html> Accessed: 07 March 2024.

or threatening behaviour,”³ it was defined similarly, although slightly more broadly, in Britannica: “Rape, unlawful sexual activity, most often involving sexual intercourse, against the will of the victim through force or the threat of force or with an individual who is incapable of giving legal consent because of minor status, mental illness, mental deficiency, intoxication, unconsciousness, or deception”⁴.

In Russian, rape is a type of sexual violence which typically involves sexual activity between one or more persons and another person, without the consent of the latter: “Изнасилование — вид сексуального насилия, как правило, подразумевающий совершение полового акта одним или несколькими людьми с другим человеком без согласия последнего”⁵.

Polish dictionaries provide a definition by which rape is “a legally prohibited act consisting in violating the physical integrity of another person, e.g. on sexual or racial grounds”⁶. Significantly, the word “rape” is also simply a synonym for force or violence in many languages (e.g. Polish – SJP Polish Dictionary), or is used to define an act of plunder, violent seizure, or abuse; despoliation; violation (English Dictionary).

At the same time, one should not lose sight of the fact that, as Polish studies show, many police officers, judges and prosecutors hold the view that a true rape occurs between strangers in a secluded place, which – sadly – greatly reinforces the stereotypes regarding rape⁷.

4 Ways of describing being raped in criminal law provisions of selected countries

It seems that prohibited behaviour of a sexual nature is present in criminal law provisions of all countries. Domestic laws do not always use the term “rape” for a description of prohibited behaviour violating sexual freedom. For instance, the Hungarian Criminal Code reads: “(1) *Sexual violence is a felony punishable by imprisonment between two to eight years if committed: a) by force or threat against the life or bodily integrity of the victim; b) by exploiting a person who is incapable of self-defence or unable to express his will, for the purpose of sexual acts*”⁸.

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- 3 Cambridge Dictionary. [online]. Available at: <<https://dictionary.cambridge.org/pl/dictionary/english/rape>>. Accessed: 07 March 2024..
 - 4 Britannica. [online]. Available at: <<https://www.britannica.com/topic/rape-crime>>. Accessed: 07 March 2024.
 - 5 Russian Wikipedia. [online]. Available at: <<https://ru.wikipedia.org>>. Accessed: 07 March 2024.
 - 6 Słownik Języka Polskiego. [online]. Available at: <<https://sjp.pl/gwa%C5%82t>>. Accessed: 07 March 2024.
 - 7 NOWAKOWSKA, Urszula. Mity i stereotypy na temat przemocy seksualnej a prawo ofiar do sądu i równego traktowania – rola prokuratora w ich przeciwdziałaniu. In: MAZOWIECKA, Lidia (ed.) *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*. Warszawa: Wolters Kluwer, 2016, p. 150.
 - 8 Hungarian Criminal Code. [online]. Available at: <https://legislationline.org/sites/default/files/documents/da/Hungary_Criminal_Code_of_2012_en.pdf>. Accessed: 07 March 2024.

The Bulgarian Criminal Code has a provision that also does not use the term “rape”: *“Article 152 (1) A person who has sexual intercourse with a person of the female sex: 1. who is deprived of the possibility of self-defence, and without her consent; 2. by compelling her thereto by force or threat; 3. by reducing her to a state of helplessness”*⁹.

A different technique is applied in the French regulations. The very description of the act is in essence a definition of rape – Art. 222–23 Code pénale provide: *“Any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise, is rape”*¹⁰.

Similarly, the regulations of other countries contain the term “rape”. For example, Art. 138 of Criminal Code of the Republic of Tajikistan reads: *“(1) Rape, that is, sexual intercourse with the use of violence or with the threat of its use against a woman or her relatives or using the helpless state of a woman”*¹¹.

An issue of particular concern from the perspective of the subject of this study is to determine the offender’s mode of behaving. The question here is not to give a definition of acts of a sexual nature, but of the accompanying behaviour – relating directly to the victims’ will. Art. 131 of the Russian Criminal Code reads: *“Rape, that is sexual intercourse with the use of violence or with the threat of its use against the victim or other persons or using a state of helplessness of the victim is punishable by imprisonment between three and six years”*¹². The Polish Criminal Code (Art. 197 § 1) also lists the offender’s modes of behaving: *“Whoever, by force, illegal threat or deceit subjects another person to sexual intercourse”*¹³. This issue is regulated in a similar manner in the Czech Criminal Code – Section 185 Rape: *“(1) A person who through violence, the threat of violence or the threat of any other serious harm coerces another person to sexual intercourse, or takes advantage of another person’s defencelessness, shall be liable to imprisonment for a term of six months to five years”*¹⁴. Even though the explanatory memorandum for the new Criminal Code emphasizes the principle of “protecting free choice in sexual relations,” it must be noted that the Czech criminal law does not prosecute

9 Bulgarian Criminal Code. [online]. Available at: <https://legislationline.org/sites/default/files/documents/2c/Bulgaria_Criminal_Code_1968_am2017_ENG.pdf>. Accessed: 07 March 2024.

10 French Criminal Code. [online]. Available at: <https://legislationline.org/sites/default/files/documents/df/France_Criminal%20Code%20updated%20on%2012-10-2005.pdf>. Accessed: 07 March 2024.

11 Tajik Criminal Code. [online]. Available at: <https://legislationline.org/sites/default/files/documents/f3/Tajikistan_CC_1998_am2020_en.pdf>. Accessed: 07 March 2024.

12 Russian Criminal Code. [online]. Available at: <<https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>>. Accessed: 07 March 2024.

13 Polish Criminal Code. [online]. Available at: <https://legislationline.org/sites/default/files/documents/6a/Poland_CC_1997_en.pdf>. Accessed: 07 March 2024.

14 Czech Criminal Code. [online]. Available at: <[https://www.ejtn.eu/PageFiles/6533/Criminal Code of the Czech Republic.pdf](https://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf)>. Accessed: 07 March 2024.

many situations in which sexual intercourse takes place without the consent of the victim and when the sexual autonomy of the victim is infringed¹⁵.

These are therefore examples of countries where the act specifies the use of violence, threat or any other method by the offender in order to induce another person to sexual activity. At the same time, other countries base the criminalization of rape on the victim's lack of consent. They include: Belgium, Denmark, Cyprus, Germany, Ireland, Luxembourg, Sweden, Holland, Iceland, Spain and Greece¹⁶. In the UK, a special law (Sexual Offences Act 2003)¹⁷ deals with sexual offenses. It provides that rape occurs when: "(1) A person (A) commits an offence if (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents. (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents. On the other hand, assault by penetration takes place where: (1) A person (A) commits an offence if— (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else, (b) the penetration is sexual, (c) B does not consent to the penetration, and (d) A does not reasonably believe that B consents. (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

In the USA, rape has one definition under federal law that is independent of the parties involved or location of assault. The central elements of rape are oral, anal, or vaginal penetration, no matter how slight, of the victim by the offender without consent or when the victim is incapacitated and unable to consent¹⁸.

In a similar vein, the Criminal Code of Malta describes the essence of rape in detail, stressing its nonconsensual nature: "*Whosoever shall engage in non-consensual carnal connection, that is to say, vaginal or anal penetration of a sexual nature with any bodily part, and, or, any object, or oral penetration with any sexual organ of the body of another person shall, on conviction, be liable to imprisonment for a term from six to twelve years: Provided that penetration with any bodily part*

15 HAVELKOVÁ, Barbara. Zásilnění: několik úvah nad právní úpravou. In: CIPROVÁ, Kristina (ed). Pod hladinou – fakta a mýty o znásilnění (Below the Surface: Rape-related Facts and Myths). *GenderStudies*, 2016, pp. 12–23.

16 Amnesty International Consent Based Rape Laws in Europe (2020). [online]. Available at: <<https://www.amnesty.org/en/latest/campaigns/2020/12/consent-based-rape-laws-in-europe/>>. Accessed: 07 March 2024; TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 720; JAROCKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 45.

17 Sexual Offences Law 2003. [online]. Available at: <<https://www.legislation.gov.uk/ukpga/2003/42/contents>>. Accessed: 07 March 2024.

18 LOPEZ, Elise, KOSS, Mary, KENNON, Katelyn. Acquaintance Rape. In: BERNAT, Frances, FRAILING, Kelly. (eds.). *The Encyclopedia of Women and Crime*. Wiley, 2020, p. 3.

*and, or object shall be deemed to be complete by its commencement, and it shall not be necessary to prove any further acts*¹⁹.

Note should also be taken of an interesting approach adopted in the Turkish Criminal Code. Art. 102 lays down that: “(1) *Any person who attempts to violate sexual immunity of a person, is sentenced to imprisonment from two years to seven years upon complaint of the victim*”²⁰.

To sum up this brief overview, two different approaches to the victim's will can be identified. The legislation in some countries shows that the essence of rape is the lack of consent to sexual activity, whereas the legislation in others defines a manner in which the victim's will is violated – for instance, by coercion, deceit, threat, etc. It should be highlighted here that the criminalization field is in fact reduced in the latter case. This is because a criminal offense occurs only in the case of an effort at sexual activity (only in a manner) that is strictly prohibited by law. Other forms of the fulfilment of the intention of engaging in sexual activity, even without the victim's consent, but in a manner undefined by the laws, are typically exempt from punishment. Consequently, only an offender who due to the lack of consent to sexual activity engaged in actions aimed at breaking the resistance of the person opposing such activity can be held criminally liable.

5 The issue of rape in the so-called Istanbul Convention and other treaties

The Council of Europe Convention on preventing and combating violence against women and domestic violence (so-called Istanbul Convention)²¹ is based on three essential elements – preventing violence, protection of victims and prosecuting prohibited behaviour, the so-called 3P – prevention, protection, prosecution²². Within the scope of this analysis, Art. 36, titled Sexual violence, including rape, becomes particularly important. It reads as follows: “1 *Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised: a) engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; b) engaging in other non-consensual acts of a sexual nature with a person; c) causing another person to engage in non-consensual acts of a sexual nature with a third person. 2 Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances. 3 Parties shall take the*

19 Maltese Criminal Code. [online].

Available at: <https://legislationonline.org/sites/default/files/documents/c1/Malta_CC.pdf>. Accessed: 07 March 2024.

20 Turkish Criminal Law. [online].

Available at: <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e)>. Accessed: 07 March 2024.

21 Istanbul Convention. [online]. Available at: <rm.coe.int/168008482e>. Accessed: 07 March 2024.

22 SPUREK, Sylwia. Ofiary zgwałcenia a Konwencja o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej. In: MAZOWIECKA, Lidia (ed.) *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*. Warszawa: Wolters Kluwer, 2016, p. 163.

necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law”.

It is indicated in the literature that the Convention standards are based on the concept of the theory of sexual autonomy, in line with the adopted assumption – “no” means “no”, and only “yes” communicated consciously and without coercion means consent to sexual activity²³.

It is also important to recall Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence²⁴, pursuant to which: *“Member states should: provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should: penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance (35)”*.

Further, references to the case of MC v. Bulgaria²⁵ are particularly frequent in the literature, numerous analyses and comments. The stance adopted by the adjudicating entity is so significant that it is worth citing *in extenso*: *“The Court reiterated that, under Articles 3 and 8 of the Convention, Member States had a positive obligation both to enact criminal legislation to effectively punish rape and to apply this legislation through effective investigation and prosecution.*

The Court then observed that, historically, proof of the use of physical force by the perpetrator and physical resistance on the part of the victim was sometimes required under domestic law and practice in rape cases in a number of countries. However, it appeared that this was no longer required in European countries. In common-law jurisdictions, in Europe and elsewhere, any reference to physical force had been removed from legislation and/or case-law. Although in most European countries influenced by the continental legal tradition, the definition of rape contained references to the use of violence or threats of violence by the perpetrator, in case-law and legal theory, it was lack of consent, not force, that was critical in defining rape.

The Court also noted that the Member States of the Council of Europe had agreed that penalising non-consensual sexual acts, whether or not the victim had resisted, was necessary for the effective protection of women against violence and had urged the implementation of further reforms in this area. In addition, the

23 SPUREK, Sylwia. Ofiary zgwałcenia a Konwencja o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej. In: MAZOWIECKA, Lidia (ed.) *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*. Warszawa: Wolters Kluwer, 2016, p. 165.

24 Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence. [online]. Available at: <<https://www.coe.int/en/web/genderequality/recommendation-rec-2002-5-and-other-tools-of-the-council-of-europe-concerning-violence-against-women>>. Accessed: 07 March 2024.

25 Judgement of the European Court of Human Rights of 04.12.2003, 39272/98. [online]. Available at: <https://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/M.C.v.BULGARIA_en.asp>. Accessed: 07 March 2024.

International Criminal Tribunal for the former Yugoslavia had recently found that, in international criminal law, any sexual penetration without the victim's consent constituted rape, reflecting a universal trend towards regarding lack of consent as the essential element of rape and sexual abuse. As Interights had submitted, victims of sexual abuse – in particular, girls below the age of majority – often failed to resist for a variety of psychological reasons or through fear of further violence from the perpetrator. In general, law and legal practice concerning rape were developing to reflect changing social attitudes requiring respect for the individual's sexual autonomy and for equality. Given contemporary standards and trends, Member States' positive obligation under Articles 3 and 8 of the Convention requires the penalisation and effective prosecution of any non-consensual sexual act, even where the victim had not resisted physically."

6 Sexual freedom and sexual autonomy

Sexual freedom is frequently indicated in legal relations as a legal good being violated in the commission of the offence of rape. The titles of chapters of some criminal codes, e.g. Polish (Chapter XXV Offences against Sexual Liberty and Decency), Hungarian (Chapter XIX Sexual Freedom and Sexual Offenses), or Lithuanian (Crimes and Misdemeanours Against Freedom of a Person's Sexual Self-Determination and Inviolability) refer to the concept of sexual freedom. The Turkish Criminal Code uses the term: Sexual Immunity, and the title of a chapter of the Criminal Code of Tajikistan reads as follows: "Sexual Freedom or Sexual Invalidity".

Sexual freedom is a human right. It means having the freedom to define, explore and experience your own sexuality as you want, without fear of repression or violence (Sexual Freedom September). In the light of the considerations of WHO, sexual freedom is the right to freedom, which excludes all forms of sexual coercion, exploitation and abuse at any time and in all situations in life. The struggle against violence is a social priority.

Sexual freedom is a fundamental human right. It is at the heart of human dignity, equality, and civil liberties embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. Human sexuality cannot be prescribed or legislated, and is a natural, fundamental, and precious aspect of life. Only when we acknowledge, protect, and celebrate sexual freedom can we realize human rights as a whole²⁶. Sexual freedom stems from the right to privacy, that is one of fundamental human rights²⁷. Everyone has the right to decide on his or her

26 What is sexual freedom. [online]. Available at: <<https://www.woodhullfoundation.org/about-us/what-is-sexual-freedom/>>. Accessed: 07 March 2024.

27 WĄDOŁOWSKA, Agata. Wolność seksualna jako przedmiot ochrony prawnokarnej. *Prokuratura i Prawo*, vol. 4/2007, p. 140.

own intimate matters so that no one else – without his or her consent – interferes with that sphere²⁸.

The concept of sexual freedom, which appears in numerous legal acts and studies, has recently been contrasted and compared with the concept of sexual autonomy. The concept of sexual autonomy assumes the simultaneous fulfilment of three elements: 1) possibility of making responsible, mature and rational choices; 2) having freedom from external pressures and restrictions; 3) ensuring the physical inviolability of the person. Sexual autonomy assumes freedom from violence, deceit, mental coercion, and what is most important in such a distinction, the right to communicate positive will, that is consent. The lack of violence, mental coercion or deceit does not allow for an unequivocal conclusion that the person has consented to sexual activity. Autonomy defines one's right to exercise control over one's body, deriving pleasure from sexual life, freedom from torture, mutilation, sex forced under any circumstances (including under the pretence of marital duty). This means the right to sexual privacy, that is to individual decisions and behaviour in the intimate sphere to such an extent that it does not infringe the rights of others. It is equivalent to sexual equality²⁹.

Sexual autonomy requires obtaining an autonomous, free, informed and unhindered consent for engaging in sexual activity, where “yes” means “yes”, in contrast to obtaining a refusal expressly as required within the concept of sexual freedom, and where “no” means “no”³⁰. Under this concept, seeking to engage in sexual activity must bring a positive reaction, and not merely not cause opposition³¹.

It should also be highlighted that just as sexual freedom falls within the concept of human freedom, so too sexual autonomy falls within the concept of human autonomy. It is clear that both sexual freedom and sexual autonomy are everyone's separate rights and are intrinsic and independent values. All these values, among others, make up the concept of the right to self-determination.

7 Essence of a violation of sexual freedom and sexual autonomy

As given above, the essence of a violation of sexual freedom in criminal law relations is breaking the will of the future victim. The methods of breaking the will that are most frequently indicated in legal acts include violence, deceit, threat, intimidation, and slightly less frequently – taking advantage of the unconscious state. In essence, this method of the formulation of the attributes of a criminal

28 WĄDOŁOWSKA, Agata. Wolność seksualna jako przedmiot ochrony prawnokarnej. *Prokuratura i Prawo*, vol. 4/2007, p. 140.

29 PŁATEK, Monika. Zgwałcenie. Gdy termin nabiera nowej treści. Pozorny brak zmian i jego skutki. *Archiwum Kryminologii*, vol. XL/2018, p. 285.

30 PŁATEK, Monika. Zgwałcenie. Gdy termin nabiera nowej treści. Pozorny brak zmian i jego skutki. *Archiwum Kryminologii*, vol. XL/2018, p. 285.

31 JAROCKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 52.

offence (its statutory description) assumes the presence of resistance from the rape victim. Although it is noted in the commentaries that the resistance does not have to be very intense, there must be resistance as an externalized and discernible lack of consent to sexual activity – an expression of opposition³². Polish Supreme Court) held that: “*The victim’s manifestation of resistance in the form of behavior clearly perceptible to the offender and unambiguous in its meaning is of particular importance in situations where the offender may assume that the resistance is unreal and constitutes e.g. a form of a love game*”³³.

It happens that courts understand this requirement narrowly, expecting evidence of putting up physical resistance³⁴. By focusing on resistance and the breaking of resistance by physical or mental means of pressure, this concept leaves aside the issue of consent, being an expression of the will to engage in sexual activity, which is fundamental for sexual autonomy³⁵. Notably, a study conducted in Poland showed a specific paradox – resistance put up by a victim of domestic sexual violence is seen as mutual violence that completely cancels criminal liability for abuse or minimizes the offender’s guilt³⁶.

The issue of a principled nature is as follows– is the lack of resistance from a participant in a sexual act a sign of consent to the offender’s behaviour? It should be strongly emphasized that the lack of resistance may result from numerous reasons – fear, shame, inability to react – so-called tonic immobility³⁷ – the sense of duty, the situation of subordination, the accompanying circumstances (e.g. the victim’s children sleeping in the same room), etc.³⁸. Many of these situations take on particular meaning when the offender is a family member (husband or partner), friend, acquaintance or superior. It is true that even the subsequent reporting of the offence of rape is extremely difficult for victims in such a situation (many never decide to do so), so the lack of resistance at the moment when the offender engages in sexual activity becomes easier to understand. The dark figure of rapes in Poland is approx. 95%, which means that

32 JAROCKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 47.

33 Judgement of the SC of Poland of 26.07.2001, V KKN 95/99, LEX no. 51671.

34 SOLODOV, Denis, LEWANDOWSKA, Ewelina. Zasadność sporu odnośnie nowej definicji zgwałcenia – uwagi na tle proponowanych zmian. *Studia Prawnoustrojowe*, vol. 54/2021, p. 573, 576.

35 JAROCKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 53.

36 NOWAKOWSKA, Urszula. Mity i stereotypy na temat przemocy seksualnej a prawo ofiar do sądu i równego traktowania – rola prokuratora w ich przeciwdziałaniu. In: MAZOWIECKA, Lidia (ed.) *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*. Warszawa: Wolters Kluwer, 2016, p. 157.

37 GALLIANO, Grace, NOBLE, Linda, TRAVIS, Linda, PUECHL, Carol. Victims reactions during rape /sexual assault: A preliminary study of the immobility response and its correlates. *Journal of Interpersonal Violence*, 8(1)/1993.

38 SOLODOV, Denis, LEWANDOWSKA, Ewelina. Zasadność sporu odnośnie nowej definicji zgwałcenia – uwagi na tle proponowanych zmian. *Studia Prawnoustrojowe*, vol. 54/2021, p. 577–578; VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 19.

only every twentieth rape is recorded³⁹. In the light of a survey prepared by the Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2010–2016 (2017), 8 out of 10 rapes are committed by someone known to the victim – 19,5% are committed by a stranger, 39% are committed by an acquaintance, 33% are committed by a current or former spouse, boyfriend or girlfriend, 6% are committed by more than one person or the victim cannot remember, 2,5% are committed by a non-spouse relative⁴⁰.

That lack of resistance from the victim may result in the lack of criminal liability of the person engaging in essentially non-voluntary sexual activity with the victim⁴¹. It is also worth highlighting that studies conducted in various countries show that most rapes occur between people who know each other. The data published by the Home Office indicate that the offenders of 90% of the most serious rapes are persons known to the victims. A study by STER Foundation for Equality and Emancipation shows that only in the case of 8% of women who suffered sexual violence, the offenders were strangers⁴².

Another question which needs to be asked is whether the lack of consent to a violation of other goods requires manifesting resistance by the victim. Does the owner have to shout and protest about having his thing taken without consent to refer to theft? Or is it enough if he does not agree to having his thing taken without consent, without communicating it in any way whatsoever? Indeed! There is a presumption of the lack of consent, which is widely accepted in the world! Taking someone else's thing will be legal only after obtaining the owner's consent to such behavior! The aforesaid presumption applies to all human freedoms and rights and certainly it should also apply to sexual freedom and autonomy. Everyone should have the right to self-determination in the sphere of one's own sexuality, including the right to avoid sexual activity to which one does not consent⁴³. Mere passivity must never constitute an endorsement of participation in sexual activity⁴⁴. Consequently, sex is not consensual until all its participants have given their consent to it⁴⁵.

39 WARYLEWSKI, Jarosław. Rozmiar, dynamika i struktura przestępczości seksualnej w Polsce, w latach 1989–2017. *Gdańskie Studia Prawnicze*, vol. 2/2019, p. 418.

40 Statistics of perpetrators sexual violence. [online]. Available at: <<https://www.rainn.org/statistics/perpetrators-sexual-violence>>. Accessed: 07 March 2024.

41 JAROCKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 53.

42 NOWAKOWSKA, Urszula. Mity i stereotypy na temat przemocy seksualnej a prawo ofiar do sądu i równego traktowania – rola prokuratora w ich przeciwdziałaniu. In: MAZOWIECKA, Lidia (ed.) *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*. Warszawa: Wolters Kluwer, 2016, p. 150.

43 TORRES DÍAZ, María Concepción. Sexual violence with reference to the forthcoming Law for the Guarantee of Sexual Freedom in Spain. *Católica Law Review*, vol. 3, 2021, p. 117.

44 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden. *German Law Journal*, vol. 22/2021, pp. 736–737.

45 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, pp. 718–719.

8 Interpreting the lack of consent and interpreting the existence of consent to sexual activity

It is clear that the aspect of interpreting the other person's will as to potential sexual activity and its scope may turn out to be the most difficult and problematic issue, given that it is widely agreed that it is the lack of consent that is relevant for the existence of the offence of rape.

Of course, a clear “yes” or a clear “no” removes all doubts as to the content of the other person's will (leaving aside the evidentiary issues). Voluntariness also cancels the prior use of violence, unlawful threat, deceit by the offender⁴⁶, as well as a state that prevents free expression of the will e.g. strong alcohol intoxication, narcotic intoxication⁴⁷. The concept of sexual autonomy and the concept of consent based on it assume that, in essence, consent must be communicated. It is obvious that consent to sexual activity does not have to take the form of a declaration of will under the rules laid down in the Civil Code. The position of the other person as to sexual activity may be understood on the basis of signals sent by that person. It is not always easy and it may give rise to many misunderstandings⁴⁸. The lack of proper communication of those involved in sexual activity can be a source of violence.

There is no doubt that stereotypical views on signals allegedly expressing consent to sexual activity should be rejected – clothes (provocative, skimpy, etc.), late meeting time, meeting place (the boyfriend's apartment, bar, etc.), the person's state (e.g. drunkenness, intoxication, sleep). It is clear that consent expressed to a previous sexual activity does not mean consent to each consecutive one. The relation between persons (marriage, love, free relationship) does not mean permanent consent to every sexual activity⁴⁹.

R. Torenz pointed out that, in practice, consent to sex or refusal to engage in sexual activity is often not communicated directly, but non-verbally⁵⁰. The non-verbal behaviour which, in our opinion, may be a sign of consent to sexual activity includes handing and/or accepting a condom, getting undressed or undressing the partner, touching the partner or oneself, kissing, etc.⁵¹ Some doubts may arise over the acceptance of money by a person who is engaged in paid love. Thought may also be given to whether the elements of a foreplay should be mutual, that is come

46 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, pp. 739–740.

47 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 719.

48 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 726.

49 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 720.

50 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 727.

51 VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 22.

from both partners, for sex to be considered voluntary⁵². Moreover, some feminist circles claim that consent must be verbalized for sexual activity to be considered consensual⁵³. This view should nonetheless be rejected as excessively interfering with intimate relations, stripping them completely of all forms of romanticism and spontaneity and, as R. Torenz argues⁵⁴, contrary to the rules prevailing in society. That requirement breaches the autonomy of the parties, who would have to determine verbally the willingness to engage in sexual activity every single time. The non-verbal expression of consent, provided that it does not raise doubts, should not undermine the protection of sexual autonomy.

The meaning of many types of behaviour, as potential signals, will depend on patterns/rules developed in the relationship, but also on cultural patterns in a given society⁵⁵. As R. Torenz rightly argues, people do not make decisions about sexual consent in a vacuum but in social contexts⁵⁶. Sexuality is co-created by society⁵⁷. It should be noted that the issue is not cultures permitting rape as such or its forms (e.g. marital rape), but the rules and patterns regarding the expression of consent to specified sexual behaviour. In that regard, sexual behaviour may vary across different countries, societies and cultures, and even in different relationships. In the science of criminal law, behaviour patterns of that type can be compared to the rules for dealing with legal goods – in this case, a legal good in the form of sexual freedom and autonomy and ways of the expression of consent to a breach of intimacy. The theory of criminal law states that the lack of a violation of those rules means the primary legality of an act. In other words, behaviour in compliance with the adopted patterns – socially, culturally accepted or accepted in a given relationship – will not be a criminal offence. This does not mean that in certain situations these rules cannot be departed from by manifesting a lack of consent in some other way. For instance, if the rule in a given relationship is that the partners have sex on Wednesdays, this does not mean that one of the partners cannot refuse to have sex some Wednesday or other. Every case should be considered on an individual basis by judicial authorities⁵⁸. There is also no doubt

52 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 743.

53 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 719, 726.

54 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 728.

55 VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 18.

56 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 721.

57 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 722.

58 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 740.

that a previously given consent can be withdrawn at any moment and from that moment sexual activity is no longer of a voluntary nature⁵⁹.

9 Characteristics (“parameters”) of consent

The commentaries to the Council of Europe Convention on preventing and combating violence against women and domestic violence point to a number of conditions giving rise to consent to sexual activity. First, it may be given only by a sane person above the age of majority. Second, the consent must be voluntary. Third, it must be prior consent, that is, it must be communicated before an interaction and a legal good. Fourth, it must be explicit, which does not mean any “agreement” on a violation⁶⁰. It is added in the English literature that it is irrelevant whether the parties are strangers, acquaintances or spouses for the recognition of a lack of consent⁶¹.

Polish criminologist and feminist M. Płatek argued that consent must be informed, it may be expressed as an accomplished fact, but unambiguously, and it must be enthusiastic⁶². It is hard to agree with the last element. It is unclear whether a proposal for sexual activity is to be enthusiastically accepted (in the mind of the person accepting the proposal) or the enthusiasm is to be manifested. Besides, although undoubtedly voluntary, sexual activity (as it seems) does not have to be enthusiastic. It should be recalled that in Polish the word enthusiastic means “in a state of delight, emotionally engaged”⁶³. It is worth considering whether, according to the above theory, passivity itself – submission to acts of one of the parties to sexual activity – without any signs of satisfaction with the undertaken actions may be viewed as participation in non-voluntary sexual activity⁶⁴. However, there is a view that even consent given reluctantly is considered to be relevant⁶⁵. In the opinion of J. Vestergaard, in such situations, the particular circumstances of given sexual activity will dictate whether the passive party gave consent to it⁶⁶.

59 TORENZ, Rona. The Politics of Affirmative Consent: Considerations from a Gender and Sexuality Studies Perspective. *German Law Journal*, vol. 22/2021, p. 720.

60 ZALEWSKI, Wojciech. In BIENKOWSKA, Elżbieta, MAZOWIECKA, Lidia (Eds.). *Konwencja o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej. Komentarz*. Warszawa: Wolters Kluwer 2016, p. 443.

61 ALLEN, Michael. *Textbook on Criminal Law*, Oxford 2001, p. 372.

62 PŁATEK, Monika. Zgwałcenie. Gdy termin nabiera nowej treści. Pozorny brak zmian i jego skutki. *Archiwum Kryminologii*, vol. XL/2018, pp. 299–300.

63 Polish Wiktionary. [online]. Available at: <<https://pl.wiktionary.org/wiki/entuzjastyczny>>. Accessed: 07 March 2024.

64 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 741; VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 20.

65 JAROCKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 58.

66 VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 19.

The specificity of sexual activity, its intimate nature and potential effects require, as it were, broader arrangements – consent must relate to the time and place of sexual activity, but primarily to its progress and form (whether only coitus or its surrogate forms), and also to potential protection against an unwanted pregnancy. Consent sets the acceptable conditions for sexual activity and a violation of any element can be considered a lack of consent to sexual activity.

At the same time, these elements and, more precisely, the necessity to establish them reinforce the argument that only (affirmatively) expressed consent means respect for sexual freedom and autonomy. The arrangement of details on every occasion can be avoided only in a relationship in which principles and rules covering the above issues have been developed and there is no reason to believe that anything has changed. However, each party has the right “re-negotiate” the rules on, for example, stopping the use of contraceptives or a change of a contraceptive measure.

10 Potential objections to the concept of sexual autonomy and their assessment/falsification

Many claims have emerged in conversations, discussions and the media that women falsely accuse men of rape “for the purposes” of an ongoing divorce case, fight for children, out of revenge or wounded pride. Concerns have been expressed that an amendment to the law (where it uses the notion of rape only when the victim puts up resistance) – by the lack of necessity to put up resistance for rape to be recognized – would facilitate and intensify the practice of false accusations⁶⁷. It should be noted that studies conducted both in Poland and abroad show that false accusations of rape are a negligible percentage compared to other types of criminal offences⁶⁸. Besides, the recognition that rape occurs also when the offender uses threats (in general or of a specific type) potentially raises the same problems. Such problems are raised by all criminal behaviour that occurs “in a one-to-one relationship” and does not bring about visible effects (e.g. insult, threat, blackmail, sometimes fraud, etc.). It should be recalled that the accusation must prove that sex occurred without consent⁶⁹.

The second potential objection is the argument of (excessive?) juridisation that encroaches even on romantic relations; criminal law enters the world of first dates, spontaneous sexual contacts. After all, the usual sexual activity of adults is not characterized by formal arrangements⁷⁰. However, one should bear in mind

67 VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, pp. 9–10.

68 NOWAKOWSKA, Urszula. Mity i stereotypy na temat przemocy seksualnej a prawo ofiar do sądu i równego traktowania – rola prokuratora w ich przeciwdziałaniu. In: MAZOWIECKA, Lidia (ed.) *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*. Warszawa: Wolters Kluwer, 2016, p. 154.

69 VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 10.

70 VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 11.

that the world of first dates and meetings, but also of longer relationships and marriages, is often a land of violence and harm, where the victim is alone and helpless.

The third objection is the claim that the new rape law suffers from a lack of predictability⁷¹. For instance, it is hard to determine whether sex was voluntary when one party sent contradictory signals⁷². This issue applies to all types of behavior that consists in an interaction with someone else's legal good. Consent to stay in someone's home, taking another person's thing, etc., can also be ambiguous if the holder of good changes his mind or sends contradictory messages. That behavior – a breach of good under the influence of error – may be assessed differently in various legal systems. As a rule, they envisage legal structures exempting from criminal liability. In short, it is difficult to charge a person acting under the influence of error with an intentional violation of a specified legal good.

11 Conclusions

As regards the leading question whether the offence of rape is sexual activity breaking the other person's will or without the other person's consent, we are in favor of the latter approach. This is not only because of the criminal regulations in selected countries and in international treaties, but also because of the essence of sexual freedom and autonomy. Sexual freedom, which is at the disposal of every adult, is protected, inter alia, by the presumption of the lack of consent to its violation (hence the term sexual autonomy). Therefore, the lack of consent should everywhere be a sufficient condition for recognizing that rape occurred. Violence, threat, deceit may be qualifying circumstances (linked to a more severe penalty). The following provision prepared for the purposes of the Spanish *Draft Organic Law on the Comprehensive Guarantee of Sexual Freedom* may be seen as a proposal for a provision criminalizing rape to be considered in a democratic state ruled by law: “*Anyone who performs any act that violates the sexual freedom of another person without his or her consent shall be punished with a prison term [...] for sexual assault. It shall be understood that there is no consent when the victim has not freely expressed, by means of overt, conclusive, and unequivocal acts in accordance with the attendant circumstances, his or her express will to participate in the act*”⁷³.

This definition of the lack of consent, which is consistent with the above considerations, is the added value of the provision constructed in this way.

The adoption of this concept may entail the cost or risk of less spontaneous sex or even its lack, where there is no certainty as to the existence of consent.

71 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 741.

72 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 741.

73 TORRES DÍAZ, María Concepción. Sexual violence with reference to the forthcoming Law for the Guarantee of Sexual Freedom in Spain. *Católica Law Review*, vol. 3, 2021, p. 123; VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 7.

The profit brought by this approach is the avoidance of traumatizing experiences related to unwanted sex, respect for the other person, and healthier relationships, both permanent and spontaneous ones. The profit of the avoidance of the consequences of rape is described in the literature as follows: *“Rape is an invasion of integrity. By taking into account both the physical harm suffered by the victim and the infringement upon her autonomy, this understanding is more complex than others. It regards rape to be ‘an invasion of the embodied person.’ This position emphasizes the harmful consequences of rape such as shame, loss of selfesteem, objectification and dehumanization. This conceptualization is unfamiliar in the Czech context and the narrow notion of compensation in the criminal law, that interprets harm as strictly material, essentially ignores any other types of harm”*⁷⁴.

Because rape is *“an expression of disrespect for the value of the victim... Failure to secure consent is an injury to the acknowledgment of the victim’s value as a fully fledged person worth of respect”*⁷⁵.

Sex should be voluntary, mutual and communicative, being a natural and enjoyable element of human life⁷⁶. Rape is a negation of sex understood in that manner⁷⁷. It is important to note that any change in the scope of criminalization of rape should be preceded by an educational campaign on sexual autonomy⁷⁸.

In conclusion, one more remark must be made. As the authors from Poland, we cannot fail to note that an amendment to the Polish Criminal Code changing the provisions on rape, which is to introduce new qualified types, is under preparation. However, whoever by force, threat or deceit induces another person to engage in sexual activity will still continue to be held liable for rape. The Polish minister’s answer to a parliamentary question concerning the need to amend the provisions is astonishing: *“When analysing the need to adapt the attributes of the offence of rape to the provisions of the Convention by introducing the premise of the victim’s lack of consent, it should be noted that, first, the Polish legal order introduces the offence of rape as behaviour consisting in breaking the victim’s resistance, i.e. it in fact sanctions the behaviour undertaken despite the victim’s objection – thus undertaken despite a verbalized lack of consent. Second, the statutory regulation of the offence of rape remains open to interpretation in line with the Convention, and*

74 HAVELKOVÁ, Barbara. Znásilnění: několik úvah nad právní úpravou. In: CIPROVÁ, Kristina (ed). Pod hladinou – fakta a mýty o znásilnění (Below the Surface: Rape-related Facts and Myths). *GenderStudies*, 2016, p. 11.

75 HAVELKOVÁ, Barbara. Znásilnění: několik úvah nad právní úpravou. In: CIPROVÁ, Kristina (ed). Pod hladinou – fakta a mýty o znásilnění (Below the Surface: Rape-related Facts and Myths). *GenderStudies*, 2016, p. 11.

76 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 735, 743.

77 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 744.

78 WEGERSTAD, Linnea. Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden, *German Law Journal*, vol. 22/2021, p. 737; JAROČKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 46.

in the given circumstances of the act, it should be possible to take into account the victim's lack of consent understood as not expressing acceptance directly. The two aforesaid factors mean that at the moment it is not necessary to amend the definition of the offence of rape⁷⁹.

Polish criminal law is thus a source of discrimination in the sphere of sexual freedom. One can thus only call for moving away both in Polish and international law from viewing rape in connection with the use of violence, threat or deceit aimed at breaking resistance – overcoming opposition⁸⁰. That traditional construct of the offence of rape is no longer admissible in the modern world⁸¹.

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79 Under-Secretary of State in the Ministry of Justice PIEBIAK, Łukasz answer to a parliamentary question no. 19896 in the matter of problems with the implementation of the convention on preventing and combating violence against women and domestic violence, Warszawa 17.04.2018. [online]. Available at: <https://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=64E7E609&view=null>. Accessed: 07 March 2024.

80 JAROCKA, Marika. Definicja zgwałcenia jako jabłko niezgody w polskim systemie prawnym. *Studia Iuridica Toruniensia*, vol. XXVIII/2021, p. 57.

81 VESTERGAARD, Jørn. The rape law revision in Denmark: Consent or voluntariness as the key criterion? *Bergen Journal of Criminal Law and Criminal Justice*, vol. 2/2020, p. 6.

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