

**НАПРЯМ 7. КРИМІНАЛЬНЕ ПРАВО
ТА КРИМІНОЛОГІЯ.
КРИМІНАЛЬНО-ВИКОНАВЧЕ ПРАВО**

DOI <https://doi.org/10.36059/978-966-397-452-1-70>

**THE LEGAL CONSTRUCTS OF VICTIMIZATION
AND STEREOTYPING OF WOMEN SUBJECTED TO SEXUAL
VIOLENCE IN CRIMINAL PROCEEDINGS**

Gabriela Kumorowska

Student

Department of Law

Tarnów Academy

Tarnów, Poland

Introduction. The issue of sexual violence, within the framework of andragogical experiences of women, remains a significant social challenge, both in the context of the policies of European Union member states and in the domain of global legislative dilemmas. According to data compiled by entities such as Eurostat, the European Union Agency for Fundamental Rights, UN Women, and the World Health Organization, the number of sexual offenses has significantly increased over the past several years. As indicated by Eurostat's statistical data, in 2022 alone, 231 456 cases of reported sexual violence crimes were recorded in the European Union countries [1]. According to the World Health Organization's indicators, sexual violence, on a global scale, affects one in three women and is defined as any attempt to commit a sexual act or any other act directed against a person's sexuality, using force, committed in any location and by any individual, regardless of their relationship with the victim of the violence [2]. Given the scale of the problem, it is important to highlight that, when measuring sexual abuse, there is an issue of sampling error, meaning that the actual size of the phenomenon is underestimated due to significant disparities between the admission of having experienced sexual violence and the actual cases of brutality that were not reported by victims to the relevant authorities. According to research from 2022 on gender-based violence in the European Union (EU-GBV), it is evident that one in four women who experienced sexual abuse never contacted the appropriate authorities or institutions, primarily due to shame, fear of stigmatization, or mistrust of law

enforcement agencies [3]. The protection of the dignity and rights of women reporting sexual offenses, although enshrined in numerous international regulations as well as national legal standards, often remains a problematic issue when it comes to the genuine desire to seek justice. The cause of this status quo includes, among others, the phenomenon of victimization, as well as the stereotypical portrayal of women in society, which can strongly influence the conduct of criminal cases, contributing to humiliating precedents that question the credibility of or suggest shared responsibility for the crime on the part of the victim. The growing interest in sexual violence from the perspective of legislative actions, the increasing number of women who have experienced such offenses, and the psychological consequences for victims confronting ineffective and gender-biased criminal procedures form a significant theoretical foundation for the following article.

Theoretical foundations of victimization and stereotyping

On a theoretical level, victimization is understood as encompassing both the experience of a violent crime itself and its consequences, within the context of societal attitudes adopted by the surrounding community [4]. The literature distinguishes between primary victimization, which is viewed from the perspective of the act of violence itself, and secondary victimization, which, on a procedural level, imposes a certain stigma on the crime victim, leading to a deepening of the experience of harm. In this case, however, it is caused by unprepared authorities who, due to a lack of appropriate tools or societal prejudices, are unable to provide the victim with adequate institutional support [4].

The phenomenon of the stereotyping of women, on the other hand, refers to the simplified and entrenched prejudices in societies that impose specific expectations regarding the traits and behaviors that certain social groups should present, solely due to their assigned gender. These stereotypes may concern both physical attributes, as well as non-biological traits, such as expectations regarding specific behaviors and the social roles they are expected to fulfill [5, p. 20]. In the context of women who have experienced sexual violence, certain social constructs define beliefs about what constitutes an impulse for the perpetrator to commit a sexual act, or how the victim of such a crime should behave, both during the act itself and later, when reporting the incident to the relevant authorities [6, p. 13]. The consequence of these socially imposed expectations is often the adoption of unrealistic standards, which form the basis for judgments both during the proceedings and when determining the outcome of criminal trials. The issue is evident both in the socio-cultural studies on gender and within the framework of international legal instruments, such as the 2011 Istanbul Convention, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as the recommendations

of the Committee on the Elimination of Discrimination against Women. The Istanbul Convention, which serves as a key document in defining sexual violence and mandates its recognition and the need to enforce justice in this area, obliges states, under Article 55(1), to minimize the reliance of criminal proceedings on the testimony of the person who has experienced sexual violence, due to the risk of secondary victimization or judgment based on certain prejudices [7]. The CEDAW Convention, on the other hand, emphasizes the need to prevent gender-based discrimination in the face of sexual crimes, recognizing such offenses as one of the most severe forms of abuse against women [8]. In the general recommendations of 2015, the Committee on the Elimination of Discrimination Against Women states that gender-based prejudices within the justice system significantly hinder women's ability to exercise basic human rights and may have severely negative consequences for women's procedural experiences, particularly for victims of sexual violence [9]. The elimination of gender-based stereotypes within the justice system, rooted in discrimination, must be prioritized to ensure justice for women subjected to sexual violence. Legal frameworks that perpetuate biases against the credibility of women as victims and witnesses reinforce victimization, while legal procedures often serve as an additional source of harm, undermining the authenticity of their experiences and depriving them of the opportunity for justice.

Victimization and gender stereotypes in criminal proceedings, based on international judicial rulings

The mechanisms underlying the adoption of discriminatory attitudes toward women who have experienced sexual violence are not limited to theoretical analyses of the phenomenon or conceptual evaluations of available legislative procedures; their existence is also substantiated by international judicial rulings. One of the first judicial rulings within the European context that effectively prompted a more victim-centered approach to sexual violence was the judgment issued by the European Court of Human Rights (ECtHR) in the case of *M.C. v. Bulgaria* (2003, No. 39272/98). In this case, the Court negated the requirement to prove physical resistance as a necessary condition for presuming the absence of consent, stating that such a requirement constitutes a form of victimization of the victim [10]. In the case of *J.L. v. Italy* (2021, No. 5671/16), the ECtHR, referencing gender stereotyping issues, stated that prejudice against women based on their clothing, sexual orientation, or occupation cannot serve as a basis for assessing the credibility of a victim in sexual offense cases [11, p. 7]. Similarly, outside of European jurisprudence, there are rulings condemning victimization and stereotyping of women, such as in the case of *R v. Barton* (2019 SCC 33) by the Canadian Supreme Court, in which the Court ruled that courts in criminal proceedings cannot be

guided by prejudice against Indigenous women or discrimination related to the victim's sexual history, while emphasizing the need to address the issue of consent in the sexual context [12]. International rulings highlight the impact of gender stereotypes on the victimization process and criminal proceedings, as well as the growing awareness among international institutions and courts regarding the prevention of discrimination. It is crucial to implement legal practices free from bias that ensure support for women experiencing sexual violence. An effective justice system in sexual violence cases relies on the education of law enforcement agencies and the analysis of legal standards.

Conclusion. Victimization of women following a sexual violence crime is linked not only to the brutality of the act itself but also to social and institutional stigmatization, which affects the willingness to report the crime. Research shows that secondary victimization, particularly in the case of young women, exacerbates harm and negatively impacts the perception of the justice system. Gender stereotypes, which can lead to the denial of the victim's credibility or the attribution of shared responsibility, hinder effective support. Despite international conventions and case law, institutions are often inadequately prepared to work with victims of sexual violence, highlighting the need for education in anti-discriminatory legal practices to ensure a fair criminal process that respects life and dignity.

References:

1. Eurostat. (n.d.). Crime statistics. European Commission.
2. World Health Organization. (n.d.). Violence against women. World Health Organization.
3. Eurostat. (2022). Crime and criminal justice statistics. European Commission.
4. Dziergawka, A. (2024). Secondary victimisation of victims of sexual offences – regulatory and practical aspects. *Prawo w Działaniu*, 57(164–188).
5. Cook, R. J., & Cusack, S. (2010). Gender stereotyping: Transnational legal perspectives (pp. 20–29). University of Pennsylvania Press.
6. Helios, J., & Jedlecka, W. (2017). *Współczesne oblicza przemocy. Zagadnienia wybrane*.
7. Council of Europe. (2011). Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210).
8. United Nations. (1979). Convention on the elimination of all forms of discrimination against women (CEDAW). United Nations.

9. Committee on the Elimination of Discrimination against Women. (2015). General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. United Nations.

10. M.C. v. Bulgaria, (2003). European Court of Human Rights, Application no. 39272/98.

11. Rzecznik Praw Obywatelskich. (2021, July 14). Definicja zgwałcenia. Biuro Rzecznika Praw Obywatelskich.

12. R. v. Barton, 2019 SCC 33, [2019] 2 S. C. R. 579.

DOI <https://doi.org/10.36059/978-966-397-452-1-71>

ПРАВОВА КАТЕГОРІЯ «ПРАЦІВНИК» У КОНТЕКСТІ УДОСКОНАЛЕННЯ КРИМІНАЛЬНО-ПРАВОВОЇ ОХОРОНИ БЕЗПЕКИ ТА ЗДОРОВ'Я ПРАЦІВНИКІВ НА РОБОТІ

Бахуринська Олена Олександрівна

кандидатка юридичних наук, доцентка,

доцентка кафедри кримінально-правової політики

та кримінального права

Київський національний університет імені Тараса Шевченка

м. Київ, Україна

Рішенням Верховної Ради України від 21.08.2024 р. прийнятий за основу та готується до другого читання проект ЗУ «Про безпеку та здоров'я працівників на роботі» (р.н. 10147 від 13.10.2023 р.) (далі – проект 10147) [1], яким запропонована нова, заснована на європейських стандартах, концепція системи заходів, спрямованих на збереження життя, здоров'я та працездатності працівників на робочому місці. Для забезпечення системності гарантій безпеки та здоров'я працівників розроблений проект ЗУ «Про внесення змін до деяких законодавчих актів України щодо відповідальності за порушення вимог законодавства про безпеку та здоров'я працівників на роботі» (р.н. 10148 від 13.10.2023 р.) (далі – проект 10148), яким пропонуються зміни до КУпАП та КК України [2].

Запропонована проектом 10147 зміна підходу до розуміння понять «охорона праці», «безпека та здоров'я працівника на роботі», до формулювання дефініції поняття «працівник» можуть мати вплив на встановлення змісту ознаки потерпілого у кримінальних правопорушеннях, передбачених ст.ст. 271–272 КК. Текстуально проект 10148 ознаку потерпілого не змінює і у можливій перспективі дослідники так