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State of helplessness of a victim in the context of sexual abuse of a person with disabilities

Introduction

Sexual abuse of people with disabilities is a group of crimes that are rarely reported and inadequately tracked because they often take place in an intimate environment of the victim. The fact is that the vast majority of sexual abuse of people with disabilities remains an undisclosed number because if these crimes take place in the socially closest environment of the victim it is considered a private matter.

The subject of criminal law protection of individuals with disabilities from sexual exploitation is closely related to the issue of dignity. Regardless of the accepted standard of sexual behavior, most people hold the value of sexual life in high regard, although this value is not the same for everyone. For some, it is seen as a procreation, for others as an emotional bond with a partner, and for yet others as a purely hedonistic experience. Regardless of the political system, religion, worldview, or even the accepted standard of sexual behavior – since the dawn of history, there has been a tendency within legal systems to regulate this sphere of life in such a way that the sexual act should not be a method of exploiting or dominating another human being, and that the pleasure of sex derived by one person should not be a traumatic experience for another, or a source of suffering or humiliation¹. The protection of minors was particularly important in this regard². However, children are not the only victims of sexual abuse within or outside the family. Much less public attention has been paid to two other groups who may also be victims of sexual abuse by

¹ M. Czekaj, *Karnoprawna ochrona dziecka przed wykorzystaniem seksualnym*, [in:] L. Leszczyński, E. Skrętowicz, Z. Hołda (eds.), *W kręgu teorii i praktyki prawa karnego. Księga poświęcona pamięci profesora Andrzeja Wąska*, Lublin 2005, p. 440.

² J. Mierzwińska-Lorencka, *Karnoprawna ochrona dziecka przed wykorzystywaniem seksualnym*, Warsaw 2012, pp. 43–55.

other family members because they, like children, are strongly dependent on them. These are the elderly and people with disabilities³. The study is limited to the issue of disability as a factor of helplessness in the context of sexual abuse.

More than billion people worldwide have disabilities because of mental, physical, or sensory incapacities. This represents about 15% of the world's population, with up to 190 million people aged 15 years and older having significant difficulties in functioning, often requiring health care services⁴. Unquestionably, people with disabilities constitute a significant part of our society. Therefore, the issue of criminalizing the exploitation of the state of helplessness of a person with a disability against sexual abuse refers to an important social group and constitutes a maturity and responsibility of civil society. In the literature, the terms abuse, exploitation, or sexual harassment are often used interchangeably⁵. In the English-language literature, the terminology used depends on the author's area of interest – the term “disabled sexual abuse” is used to describe the phenomenon when the subject of interest is a person with a disability as a victim of sexual abuse. Sexual abuse can be defined as unwanted sexual activity. It may also be considered sexual abuse when a person exposes his/her genitals, looks at or touches certain parts of another person's genitals to satisfy his/her needs⁶.

Criteria used in specifying different forms of sexual abuse of people with disabilities, especially in research definitions, also include the use or non-use of violence by the perpetrator or subjective recognition by the person with a disability such sexual contact as abuse⁷. The Penal Code⁸ stipulates in Article 198 of the Polish Penal Code that whoever, taking advantage of the vulnerability of another person, or of the lack of ability to recognize the significance of the act or ability to control his/her conduct, resulting from mental disability or disorder, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act, shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and

³ B. Hołyst, *Wiktymologia*, Warsaw 2011, p. 720.

⁴ Disability and health, 2021, <https://www.who.int/news-room/fact-sheets/detail/disability-and-health> (accessed: 13.06.2023).

⁵ M. Dąbkowska, *Konsekwencje doświadczenia wykorzystania seksualnego w dzieciństwie u osób dorosłych z niepełnosprawnością intelektualną*, „Niepełnosprawność. Dyskurs Pedagogiki Specjalnej” 2018, No. 31, p. 222, DOI: 10.4467/25439561.NP.18.053.10453.

⁶ K. Hughes, M.A. Bellis, L. Jones, S. Wood, G. Bates, L. Eckley, E. McCoy, Ch. Mikton, T. Shakespeare, A. Officer, *Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies*, „The Lancet” 2012, Vol. 379, Issue 9826, pp. 1621–1629, DOI: 10.1016/S0140-6736(11)61851-5.

⁷ M. Sajkowska, *Wykorzystywanie seksualne dzieci: teoria, badania, praktyka*, Warsaw 2004, p. 13.

⁸ Act of 6 June 1997 Penal Code (consolidated text Journal of Laws 2022, item 1138 with amendments).

8 years. It should be noted that sexual abuse also occurs in the crime of rape (Article 197 of the Polish Penal Code) or abuse of dependence (Article 199 of the Polish Penal Code).

Nevertheless, the available studies show a lack of empirical and theoretical consideration of sexual violence against persons with disabilities. It is therefore advisable to carry out a dogmatic and legal analysis of the criminalisation of the exploitation of the state of helplessness of a person with a disability in the context of protection against various forms of sexual exploitation. This is an even more complex issue because not every act of a sexual nature with a person with a disability or mental illness should be treated as a crime since depriving mentally ill people of the right to sexual life is unjustified and contrary to the idea of sexual self-determination.

Disability as a risk factor for being a victim of sexual abuse

People with intellectual disabilities are exposed to sexual abuse from others more often than their peers. This is due to the fact that they usually have insufficient knowledge about the regularities of sexual development and expression, and knowledge about what behaviors are acceptable and what are not. The increased risk of becoming a victim of sexual violence due to a disability trait may be due to reduced levels of communication skills and fewer skills in assertive behavior, in this case expressing disagreement, refusal. Physical disabilities may also influence the increased likelihood of experiencing sexual violence. For example, both American and Norwegian studies showed that deaf children were several times more likely than hearing children to be victims of sexual violence⁹.

The analysis of the subject of sexual abuse of people with disabilities is fraught with difficulties, which result from the problem in clearly defining the scale of this crime. Sources of information on this issue are a.o. the nationwide research on family violence against older people and people with disabilities conducted by the Institute of Psychology of the Polish Academy of Sciences in 2009 and in 2015¹⁰. The problem in this case results from the lack of data based on which its extent is estimated. The sensitivity of the problem for both victims and perpetrators is also relevant. It causes that every way of its registration or retrospective diagnosis encounters a barrier of shame, repression

⁹ M. Beisert, A. Izdebska, *Wykorzystanie seksualne dzieci*, „Dziecko Krzywdzone” 2012, Vol. 39, No. 2, p. 59.

¹⁰ K. Korzeniowski, P. Radkiewicz, *Przemoc w rodzinie wobec osób starszych i niepełnosprawnych. Raport z badania ogólnopolskiego 2015 r. oraz badania porównawczego z lat 2009–2015*, Warsaw 2015.

from memory, fear, or anxiety of lack of social acceptance. Thus, the dark figure of crime may be extremely high in the case of sexual abuse of people with disabilities. There is also a lack of research on sexual violence against people with intellectual disabilities and a lack of reliable statistics from institutions that receive reports of sexual violence and investigate such cases (police, courts, NGOs), considering even basic variables such as gender, age, type and level of disability.

One of the factors that may contribute to the non-disclosure of sexual offences against people with intellectual disabilities is the fear of families of people with disabilities to disclose the situation, especially when it is domestic in nature, the perpetrator may be a parent, sibling or distant relative, or a person known to the family¹¹. The relationship between the caretaker of a person with a disability and that person is also a problem. They may be potential abusers or understate the problem in the suspected presence of sexual violence. Other factors that are not insignificant to the persistence of the dark figure of sexual violence against people with disabilities are their low social status, lack of respect for the rights, and low credibility.

The diminution of the rights and dignity of people with intellectual disabilities is expressed by the popular idea that they are unaware of the harm they are experiencing, and that sexual violence against them is treated as a lesser crime than for a non-disabled person¹².

Mode of prosecution and interpretation of “helplessness”

By the Act of 13 June 2013 amending the Act Penal Code and the Act Code of Criminal Procedure¹³ the mode of prosecution of sexual abuse of helplessness or insanity was changed if the victim's condition at the time of the act was not the result of a permanent disorder. After the amendment came into force on 27 January 2014, this is an offence prosecuted *ex officio*. As a result of this amendment, it repealed a.o. the article 205 of the Penal Code Act of June 6, 1997, which provided that: “The prosecution of the offence specified in Article 197 or 199 § 1, as well as in Article 198, unless the condition of the victim specified in this provision is a result of a permanent mental disorder,

¹¹ M. Jurczyk, *Przemoc seksualna wobec osób z niepełnosprawnością intelektualną – wymiary i oblicza*, „Niepełnosprawność – Dyskursy Pedagogiki Specjalnej” 2019, No. 34, p. 195, DOI: 10.4467/25439561.NP.19.026.11856.

¹² M. Karwacka, *Przemoc seksualna wobec osób z niepełnosprawnością intelektualną*, „Interdyscyplinarne Konteksty Pedagogiki Specjalnej” 2013, No. 5, p. 61, DOI: 10.14746/ikps.2013.2.03.

¹³ Act of 13 June 2013 amending the Act Penal Code and the Act Code of Criminal Procedure (Journal of Laws 2013, item 849). See: D. Habrat, *Osoba nieporadna jako pokrzywdzona przestępstwem znęcania się*, „Studia Prawnicze” 2018, No. 2, pp. 117–118, DOI: 10.5281/zenodo.1400073.

shall occur on a motion of the injured person". After the amendment, this crime is prosecuted *ex officio*, which means that the initiation of the procedure for prosecuting the perpetrator of the crime of sexual abuse of a helpless person is triggered by each notice of suspicion of the crime, regardless of the subject who submits it. The subject filing the notice may still be the injured person itself, but also its family, friends, as well as a person completely unknown to the injured person¹⁴.

The statement that the procedure of prosecuting crimes under Art. 197 § 1–4, Art. 198 and Art. 199 § 1 of the Penal Code by means of motions has had a negative impact both on the implementation of postulates in the area of criminal policy, and on shaping in a rational way the social sense of justice, as well as the related level of legal protection afforded to the injured person. The purpose of changes in the discussed provisions of the Act, as indicated in the justification, focuses on creating an effective mechanism for counteracting selected crimes against sexual freedom and decency. It also provides more effective than so far legal protection of victims of such crimes.

In addition to changes in the mode of prosecution, an important issue for analysis is the interpretation of the concept of "helplessness", which is one of the statutory elements of the act under Article 198 of the Penal Code. This notion is widely understood in case law. It is assumed that a helpless person is a person with such properties or being in such a situation that he/she is deprived of the possibility to dispose of himself/herself in the area of sexual freedom. The source of helplessness does not necessarily have to be physical or physiological. It can be a disability, physical weakness, but also the inability to cope with a given situation due to various objective as well as subjective reasons¹⁵. The concept of helplessness essentially means the inability to make or carry out a decision of will, and the law does not place any limitations on the causes of this state of mind.

The judicature has already established that "helplessness" is understood as the inability to cope with a difficult situation¹⁶. Thus, the source of helplessness may be the inability to cope in a given situation due to various objective as well as subjective reasons¹⁷. In assessing whether a person was in

¹⁴ P. Banaszak, *Zmiana trybu ścigania sprawcy przestępstwa zgwałcenia – analiza teoretyczna*, „Prawo w Działaniu. Sprawy karne” 2019, No. 37, p. 42.

¹⁵ The Judgement of the Supreme Court of 20 April 2006, IV KK 41/06, Lex No. 183010; The Judgement of the Appeal Court in Katowice of 26 April 2012, II AKA 107/12, KZS 2012, No. 10, item 55.

¹⁶ The Judgement of the Supreme Court of 20 April 2006, IV KK 41/06, Lex No. 183010.

¹⁷ M. Budyn-Kulik, M. Kulik, *Przestępstwa przeciwko wolności seksualnej i obyczajności*, [in:] M. Królikowski, R. Zawłocki (eds.), *Kodeks karny. Część szczególna. Komentarz*, Vol. 1: *Art. 117–221*, Warsaw 2017, p. 701; H. Myśliwiec, *Seksualne wykorzystanie bezradności lub niepoczytalności innej osoby*, „Czasopismo Prawa Karnego i Nauk Penalnych” 2013, No. 2, pp. 96–100.

a state of helplessness, several circumstances must therefore be taken into account. These may include the age or psychological and physical condition of the person, his or her mental or emotional development, intelligence quotient, family relationships and relations, material situation, or support received from relatives. Regarding people with disabilities, the psychophysical and mental state is of particular importance.

It is generally accepted that the state of helplessness excludes the possibility of the victim to resist. It is pointed out, however, that a helpless person is also a person who has retained ability to understand the meaning of the situation and the actions taken towards him/her, who has the will to counteract these actions and whose ability to do so is suppressed, but only in the case of a joint occurrence of the indicated conditions¹⁸. It is therefore noted that important for the existence of a crime under Article 198 of the Penal Code is the exclusion of the possibility of expressing opposition to intercourse or other activities of a sexual nature.

The view is also rightly presented that the state of helplessness does not exclude manifestation by the victim, even in a very weak way, objection to sexual contact. However, it is debatable whether in a situation when the perpetrator uses violence, even to a minimum degree, in order to break through such resistance, there is a coincidence of the provisions of Article 197 and Article 198 of the Penal Code¹⁹, or whether this concurrence of these provisions is excluded, and the perpetrator is liable only under Article 197 of the Penal Code²⁰. In the jurisprudence, the possibility of a concurrence of the above-mentioned provisions is interpreted inconsistently²¹.

In reference to the crime of Article 198 of the Penal Code, there is no attack on the victim's freedom of decision-making in the sphere of sexual consent as in the case of the crime of rape, but an exploitation of the fact that the victim is unable to make a free and undisturbed decision of will in the above-men-

¹⁸ The Judgement of the Supreme Court of 2 July 2002, IV KKN 266/00, Lex No. 54406.

¹⁹ As accepted by A. Michalska-Warias, *Glosa do wyroku sądu apelacyjnego z dnia 15 maja 2013 r., II AKa 90/13, „Palestra”* 2014, No. 7–8, p. 150; S. Hyps, *Przestępstwa przeciwko wolności seksualnej i obyczajności*, [in:] A. Grześkowiak, K. Wiak (eds.), *Kodeks karny. Komentarz*, Warsaw 2019, p. 1058; J. Warylewski, *Przestępstwa przeciwko wolności seksualnej i obyczajności*, [in:] J. Warylewski (ed.), *Przestępstwa przeciwko dobrom indywidualnym*, series: System Prawa Karnego, Vol. 10, Warsaw 2012, p. 713.

²⁰ M. Bielski, *Przestępstwa przeciwko wolności seksualnej i obyczajności*, [in:] W. Wróbel, A. Zoll (eds.), *Kodeks karny. Część szczególna*, Vol. 2: *Komentarz do art. 117–211a*, Warsaw 2017, p. 717; V. Konarska-Wrzosek, *Przestępstwa przeciwko wolności seksualnej i obyczajności*, [in:] V. Konarska-Wrzosek (ed.), *Kodeks karny. Komentarz*, Warsaw 2016, p. 905.

²¹ It was admitted in the Decision of the Supreme Court of 30 July 2008, II KK 21/08, Lex No. 449033 and in the Judgment of the Supreme Court of 22 November 2006, V KK 293/06, Lex No. 295447; it was rejected in the judgments: Supreme Court of 4 March 2009, IV KK 339/08, Lex No. 491341; Court of Appeal in Kraków of 6 March 2014, II AKa 5/14, Lex No. 1496146; Court of Appeal in Katowice of 15 May 2013, II AKa 90/13, Lex No. 1335649; Court of Appeal in Łódź of 11 December 2012, II AKa 256/12, Lex No. 1353514.

tioned regard. Thus, while in the case of rape, the perpetrator directly violates the victim's self-determination in the field of intimate intercourse, the act under Article 198 of the Penal Code, consisting in taking advantage of helplessness or insanity, takes advantage of the existing state of the victim's inability to make a meaningful or free self-determination in the sphere of sexuality. It cannot, however, be understood as constituting a universal ban of all sexual relations with persons in such conditions. It should be emphasized that the lack of resistance on the part of the victim, as well as the lack of use of violence by the accused, cannot lead to a clear conclusion that the victim willingly consented to sexual intercourse with the accused. A helpless person is a person who is powerless, physically, or mentally weak or impaired.

It should be unequivocally stated that, on the basis of the Penal Code currently in force, sexual exploitation of a person with a disability should be qualified as a crime under Article 198 of the Penal Code whenever the disability factor can cause a total state of helplessness, manifested in the inability to express an objection or make a decision. We will pay attention here to helplessness related to mental disability. Indirectly, however, helplessness may be influenced by the psychophysical state of the victim resulting from, for example, significant limitations of human functional characteristics or social problems because of limited opportunities for interpersonal contact.

Sexual abuse of a helpless or mentally incompetent person as a reflection of problems with rational crime recording

A source of knowledge for effective lawmaking should be detailed records of initiated proceedings and identified crimes. This type of approach would be an excellent argument for the proposed changes, closely related to practical factors. Unfortunately, in the case of people with disabilities, protection from crime is hidden in more substantive terms, such as the use of helplessness, incapacity, or insanity. This causes a problem with statistical control of the problem.

Due to the lack of data relating directly to the sexual abuse of people with disabilities in the context of a state of helplessness or insanity, police and court statistics of the crime of sexual abuse of a helpless or insane person under Article 198 of the Criminal Code are presented (Figure 1). These will allow, at least indirectly, to address to the issue at stake.

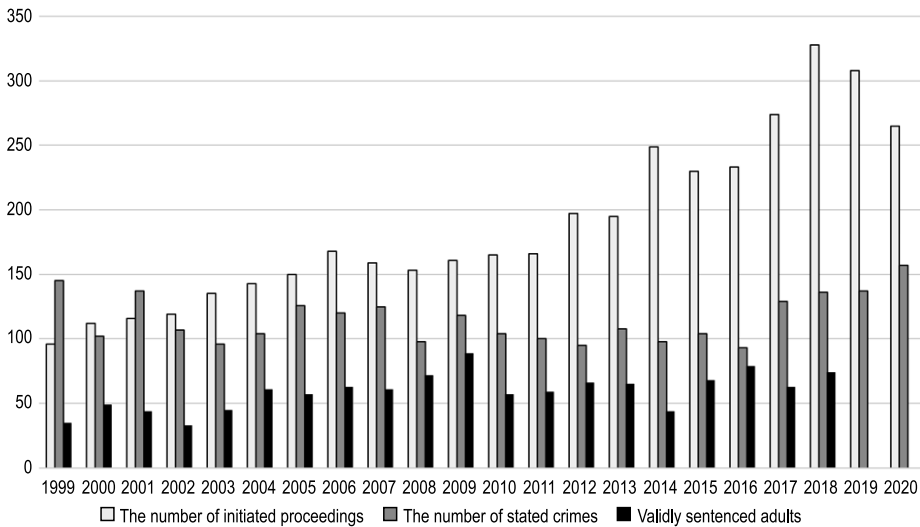


Figure 1. Police and court statistics on the crime of Article 198 of the Penal Code – sexual exploitation of a helpless or insane person

Source: own elaboration based on police statistics²² and data obtained from the Ministry of Justice.

It should be emphasized that although statistical data is quite suggestive, especially when it comes to police and court data, it shows only a small fragment of the analyzed phenomenon. It is not possible to determine the real scale of the problem due to the large size of unreported crimes that have not reached the knowledge of law enforcement agencies. The time scope of the analyses conducted includes the years 1999–2020 (in the case of data from the Ministry of Justice, information was obtained on legally convicted adults until 2018 – the remaining years were identified as data under development).

There is no doubt that statistical data has an undeniable value in presenting a given problem from practical point of view. Comparison of police and court data makes it possible to follow the entire process of liability, from initiation of proceedings to valid conviction, and to determine what proportion of cases ends in actual conviction or discontinuance of proceedings.

The numbers of prosecutions initiated, crimes stated, and adults validly convicted vary. An initiated proceeding, in this case, is a proceeding initiated by a police unit in connection with an event suspected of being a crime or initiated by a prosecutor's office and referred to the police for further direct investigation. A detected crime is an ascertained crime in which at least one suspect has been identified in the completed preliminary investigation²³.

²² <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/63499,Wykorzystanie-seksualne-osoby-bezradnej-lub-niepoczitalnej-art-198.html> (accessed: 23.06.2023).

²³ J. Warylewski, *Rozmiar, dynamika i struktura przestępczości seksualnej w Polsce w latach 1989–2017*, „Gdańskie Studia Prawnicze” 2019, No. 2, p. 418.

In the case of proceedings initiated until 2013, the number of prosecutions showed a slight upward trend, but from 2014 onwards it started to be at a higher level. It seems that this is related to the change in the mode of prosecution of the analyzed crime from the application mode to the ex officio mode. Unfortunately, the increase in the number of instituted proceedings did not translate into a similar trend in terms of ascertained crimes and legally sentenced adults.

Furthermore, a sharp increase in proceedings initiated in 2018 and 2019 can be noted. The justification for this increase may be the change in the duty to denounce. The catalog of criminal acts subject to notification was expanded as a result of the amendment to the Penal Code, which entered into force on July 13, 2017²⁴. Its purpose was to “increase the level of protection of minors, with particular attention to minors under 15 years of age, as well as those who are mentally or physically incapacitated”²⁵. The duty to denounce, which in this case is a legal obligation to notify law enforcement authorities of a crime under Article 198 of the Penal Code, is an important tool for detecting and punishing the perpetrators of such acts. It is an obligation on every person who finds out about such a crime. It should be emphasized, nonetheless, that these changes have a much broader scope and are not limited to minors; the obligation in question also applies to acts committed against adults, i.e. persons with disabilities who are mentally or physically incapacitated.

There is no doubt that the crime of sexual abuse of a helpless person endangers his or her health, so if the information in the doctor’s possession gives reasons for such a belief, invoking the premise of danger to the health of the helpless person waiving medical secrecy is justified. The doctor has a legal obligation under Article 240 § 1 of the Penal Code to notify the law enforcement authorities of an offence under Article 198 of the Penal Code, as the literal wording of Article 40 section 2 p. 1 of the Act on the Profession of Physician and Dentist allows for this²⁶. It is necessary to remember that, in addition to the order set out in Article 240 of the Penal Code, there is also a social obligation to report a crime, set out in the Code of Criminal Procedure in Article 304 § 1: “Anyone who learns that a crime prosecuted ex

²⁴ Amendment made by the Act of March 23, 2017 on amending the Act Criminal Code, the Act on proceedings in juvenile cases and the Act Criminal Procedure Code (Journal of Laws 2017, item 773).

²⁵ Justification to the Bill on amending the Act the Penal Code and the Act on proceedings in juvenile matters, 8th term, Sejm print No. 846.

²⁶ Act of 5 December 1996 on the professions of doctor and dentist (consolidated text Journal of Laws 2023, item 1516). See more: P. Bogacki, *Problematyka wykorzystania seksualnego dziecka w kontekście odpowiedzialności karnej lekarza za niezawiadomienie o przestępstwie*, „Wojskowy Przegląd Prawniczy” 2021, No. 2, p. 133; R. Kubiak, *Obowiązek denuncjacji ciężący na osobach wykonujących zawód medyczny*, [in:] E. Zielińska, T. Dukiet-Nagórska, A. Liszewska (eds.), *Odpowiedzialność prawna w związku z czynnościami medycznymi*, series: System Prawa Medycznego, Vol. 3, Warsaw 2021, pp. 1091–1092.

officio has been committed has a social obligation to notify the prosecutor or the Police”²⁷.

The statistics presented, though, reveal a lack of knowledge about the extent of sexual crime against people with disabilities. It could be a kind of a statistical picture of criminality of great importance for diagnosing the state of legal protection and directions of changes. Without knowledge of the size, structure and dynamics of sexual crime, it is impossible to conduct a rational penal policy in terms of preventing and combating this type of crime.

International standards and measures to protect people with disabilities from sexual abuse

The issue of the rights of people with disabilities is also regulated at the level of international legislation. The catalog of legal acts that refer to the issues discussed here varies both in terms of their legal character and their validity. Firstly, both the provisions of the Charter of Fundamental Rights²⁸ and the provisions of the European Convention on Human Rights²⁹ do not directly refer to the problem of sexual abuse of people with disabilities and, consequently, to the question of protection of their rights. The provisions of the CFR only indicate that everyone has the right to respect for their mental integrity (Article 3 section 1). Further, attention should be drawn to EP and Council Directive 2012/29/EU, which establishes minimum standards on the rights and protection of victims of crime³⁰. The UN Convention on the Rights of Persons with Disabilities is one of the most important international legal acts in this area. It is worth noting that from a historical point of view it was the first act of international law devoted entirely to people with disabilities³¹.

The Convention on the Rights of Persons with Disabilities includes a catalog of rights, among which, in addition to fundamental ones such as the right to life, equality before the law or freedom and personal security, it also guarantees, among others, freedom from exploitation, violence and abuse³². In Article 16, the Convention expresses the need to strengthen the protection of the freedom of people with disabilities from said exploitation and from violence

²⁷ Act of 6 June 1997 Code of Criminal Procedure (consolidated text Journal of Laws 2022, item 1375 with amendments).

²⁸ Official Journal UE C.2007.303.1.

²⁹ Journal of Laws 1993, No. 61, item 284.

³⁰ Official Journal U.E.L.2012.315.57.

³¹ Convention on the Rights of Persons with Disabilities, New York on December 13, 2006 (Journal of Laws 2012, item 1169).

³² A.G. McEachern, *Sexual abuse of individuals with disabilities: prevention strategies for clinical practice*, „Journal of Child Sexual Abuse” 2012, Vol. 21, No. 4, p. 388, DOI: 10.1080/10538712.2012.675425.

and abuse, pointing out the various obligations of signatory states to fulfill this task. Despite the existence of these and other regulations that protect the rights of this group at the national and international level, there is still a long way to go to achieve equal opportunities³³.

Apart from the Convention on the Rights of Persons with Disabilities, in the area of legal regulation of the status of persons with disabilities in society noteworthy are the Standard Rules on the Equalization of Opportunities for Persons with Disabilities³⁴, whose dominant background is the focus on the integration and social inclusion of people without disabilities and with disabilities.

Conclusion

In conclusion, it can be said that the risk of sexual abuse of a person with a disability in a state of helplessness is higher in the family, in the immediate environment or in the workplace. Efforts should be directed towards avoiding such circumstances and recognizing such crimes and abuse. People with disabilities and their families should be fully informed about precautions to prevent sexual abuse. Consider establishing programs to prevent sexual harassment, especially in facilities where people with disabilities are located and treated.

There are no registers to assess the extent of the problem of abuse, including sexual abuse of people with disabilities. The only information available is from police and court statistics. This information, nevertheless, relates only to a small percentage of cases in which legal intervention was taken. It is therefore worth considering the possibility of collecting data on crimes against people with disabilities. The frequency of such abuse is, for various reasons, difficult to estimate and measure. People with disabilities may face discrimination and fear disclosure because of retaliation from caretakers who may be perpetrators, thus preventing them from seeking help. Many people may not want to disclose the truth because of physical or emotional limitations due to their disability.

³³ K. Hughes, M. A. Bellis, L. Jones, S. Wood, G. Bates, L. Eckley, E. McCoy, Ch. Mikton, T. Shakespeare, A. Officer, *op. cit.*, p. 1621. yet quantitative syntheses of studies of this issue are scarce. We aimed to quantify violence against adults with disabilities. Methods In this systematic review and meta-analysis, we searched 12 electronic databases to identify primary research studies published between Jan 1, 1990, and Aug 17, 2010, reporting prevalence estimates of violence against adults (aged mainly ≥ 18 years).

³⁴ Standard Principles on the Equalization of Opportunities for Persons with Disabilities adopted at the 48th session of the United Nations General Assembly on December 20, 1993 (Resolution 48/96).

Sexual abuse of people with disabilities is increasing at an alarming pace, and society must address this problem. Particularly noteworthy is the danger of sexual abuse of mentally handicapped children. Offenders often negatively assess the mental functions of victims with mental disabilities and precisely exploit the lack of awareness of what sexual exploitation is. Therefore, people with intellectual disabilities are more vulnerable to experiencing sexual abuse and suffer deeper, more damaging consequences. People with disabilities deserve special protection and their dignity is a fundamental obligation of the rule of law and civil society.

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Summary

State of helplessness of a victim in the context of sexual abuse of a person with disabilities

Keywords: criminal law, sexual abuse, helplessness, people with disabilities.

Sexual abuse against people with disabilities constitutes a group of crimes that are rarely reported and are inadequately monitored. Most sexual abuses against people with disabilities remain undisclosed. If these offences occur within the victim's socially closest environment, they are considered private matters. The aim of the article is a dogmatic legal analysis of penalizing the sexual exploitation of helplessness in individuals with disabilities. Attention has been drawn to the increased risk of falling victim to sexual violence due to the characteristic of disability, in the context of protection against various forms of sexual exploitation. The challenges in determining the scale of sexual abuse against people with disabilities have been highlighted. The article

discusses the procedure for prosecuting the offence defined in Article 198 of the Penal Code and provides an interpretation of the concept of helplessness. Additionally, police and court statistics related to the offence stipulated in Article 198 of the Penal Code are presented in the article. The focus is on disability as a potential factor of helplessness. The article justifies the complexity of the problem, considering the diversity of values and standards related to sexual life. It has been demonstrated that people with disabilities deserve special protection, and ensuring their dignity is a fundamental obligation of the rule of law and civil society.

Streszczenie

Stan bezradności ofiary w kontekście wykorzystania seksualnego osoby z niepełnosprawnością

Słowa kluczowe: prawo karne, wykorzystywanie seksualne, bezradność, osoby z niepełnosprawnością.

Seksualne nadużycia wobec osób z niepełnosprawnością stanowią grupę przestępstw, które są rzadko zgłaszane i niewłaściwie monitorowane. Przeważająca część nadużyć seksualnych wobec osób z niepełnosprawnością pozostaje niejawną liczbą, ponieważ jeśli te przestępstwa mają miejsce w społecznie najbliższym środowisku osoby pokrzywdzonej, to uznawane są za sprawę prywatną. Celem artykułu jest analiza dogmatyczno-prawna penalizacji wykorzystywania stanu bezradności osoby z niepełnosprawnością. W niniejszym tekście zwrócono uwagę na zwiększone ryzyko stania się ofiarą przemocy seksualnej ze względu na cechę niepełnosprawności w kontekście ochrony przed różnego rodzaju formami wykorzystania seksualnego. Wskazano na trudności pojawiające się w określeniu skali przestępstwa wykorzystania seksualnego wobec osób z niepełnosprawnością. Zanalizowano tryb ścigania przestępstwa określonego w art. 198 k.k. oraz dokonano wykładni pojęcia „bezradność”. Ponadto w artykule przedstawiono statystyki policyjne oraz sądowe dotyczące przestępstwa stypizowanego w art. 198 k.k. Skoncentrowano uwagę na niepełnosprawności jako potencjalnym czynnikiem bezradności. Uzasadniono kompleksowość problemu, uwzględniając różnorodność wartości i standardów związanych z życiem seksualnym. Wykazano, że osobom z niepełnosprawnościami należy się szczególna ochrona, a zapewnienie im godności należy do podstawowych obowiązków państwa prawa i społeczeństwa obywatelskiego.