FIGHTING THE LOTTERY
OVERCOMING BARRIERS TO JUSTICE FOR WOMEN RAPE SURVIVORS IN FINLAND
FIGHTING THE LOTTERY

OVERCOMING BARRIERS TO JUSTICE
FOR WOMEN RAPE SURVIVORS IN FINLAND

Amnesty International Finnish section

Published 6th March 2019
# CONTENTS

Executive summary ........................................................................................................... 4

Key recommendations ....................................................................................................... 5

Methodology ....................................................................................................................... 7

Terminology ....................................................................................................................... 10

The Finnish legal system ................................................................................................. 11

Chapter 1: The scale of the problem .............................................................................. 12

1.1 The prevalence of sexual violence ............................................................................. 12

1.2 Rates of reporting and conviction .............................................................................. 14

Chapter 2: Barriers to justice: the law .......................................................................... 17

2.1 The national legal framework ..................................................................................... 17

2.2 Consent ....................................................................................................................... 19

2.3 Focusing on resistance ............................................................................................... 21

2.4 High threshold for “helpless state” .......................................................................... 23

2.5 Gaps in the current definition of rape ....................................................................... 25

2.6 Categories of rape ..................................................................................................... 25

2.7 Sexual abuse – abusing a position of power .............................................................. 27

2.8 Rape in close relationships ......................................................................................... 28

2.9 Penalties and rehabilitation programmes for offenders ............................................ 29

Chapter 3: Barriers to justice: The legal process ....................................................... 31

3.1 The legal process in Finland ...................................................................................... 31

3.2 Survivors’ experiences of the legal process ............................................................... 32

3.2.1 Health care professionals ...................................................................................... 33

3.2.2 The police ............................................................................................................ 34

3.2.3 Legal counsel ....................................................................................................... 38

3.2.4 Prosecutors and the courts .................................................................................. 39
3.3 Myths about rape and gender stereotypes ......................................................... 42

Chapter 4: Barriers to justice: Lack of specialist training, support and resources .......... 46

4.1 Lengthy proceedings.......................................................................................... 47

4.2 Support for survivors......................................................................................... 48

4.3 Specialized training for the police, prosecutors and judges.............................. 50

Recommendations................................................................................................... 52
EXECUTIVE SUMMARY

Every year, around 50,000 women in Finland experience sexual violence, including rape. Most of those responsible for these crimes are never brought to justice: in 2017 convictions were obtained in the cases of just 209 charges of rape.¹

Finland, like other Nordic countries, is often praised for its achievements regarding gender equality. It was one of the first signatories to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in 2015.

Nevertheless, widespread gender-based violence against women, including sexual violence, is evidence that unequal power relations between men and women still prevail in society. For example, while Finland ranked third in the 2015 European Gender Equality Index and 15th in the 2017 UN’s Gender Inequality Index, which examine areas such as work, money and health,² the prevalence of violence against women, including sexual violence, in the country is among the highest in the EU.³

The majority of women subjected to sexual violence do not report the crime to the police and those who do encounter a system that falls short of human rights standards in the way it treats them. The cumulative effect of these failings is that the criminal justice system in Finland ignores, denies and tacitly condones sexual violence against women.

Amnesty Finland has worked to combat violence against women for 15 years. In 2008, Amnesty International published a report, Case closed: Rape and human rights in the Nordic countries, examining gaps in laws, procedures and practices in Denmark, Finland, Norway and Sweden. The report highlighted the factors that prevented women who reported rape from having their cases tried by a court of law and seeing the perpetrator brought to justice.⁴

This report looks at the changes that have been introduced in the 10 years since that report was published and examines the current law and legal practice on rape in Finland. The analysis set out by Amnesty International is based on desk research and interviews conducted in Finland between February and December 2018. The report focuses on the current status of survivors’ access to justice, a vital factor in reducing and ultimately preventing rape and other sexual

---

This includes the overall number of rape cases, as data disaggregated by age or gender is not available.
violence, and on how women experience the legal process from reporting through investigation and prosecution to the courtroom.

According to international human rights standards, sexual assault, including rape, should be defined by the lack of freely given consent to sexual activity. However, the Finnish definition of rape falls short of this requirement. There are alternative definitions of rape in Finnish law: the first focuses on coercion through the use or threat of violence; and the second on sexual intercourse exploiting the inability of the victim to defend themselves or to formulate or express their will due to unconsciousness, illness, disability, state of fear or other “helpless state”.

The current definition focuses on two extremes: rape using violence and cases where the victim is unable to consent due to an incapacity, leaving an area in between where there is no consent, but the definition of rape is not fulfilled. Legal practice reveals varied interpretations of the law, creating a lottery in terms of access to justice. One common approach to the definition that falls short of international human rights standards focuses on the victim’s resistance rather than the actions of the perpetrator. The threshold for considering the victim to be in a helpless state is also poorly defined and, in practice, very high.

The responses of health-care professionals, police, prosecutors and judges, when meeting victims of sexual violence, vary. Some interviewed survivors described positive and supportive experiences. However, other interviewees and the documentation revealed a lack of understanding of how victims respond to sexual violence and reflect deeply entrenched myths about rape and female sexuality that impact directly on access to justice. For example, rape survivors who “freeze” with fear or who do not report the rape soon after it occurs are less likely to receive justice. Impunity for sexual violence is widespread in Finland and the report highlights some of the factors contributing to this from the perspective of the victim’s experience. While rape survivors cannot be certain of an informed and supportive response from the first point of contact when they try to report the crime, serious underreporting is likely to continue. And while so many experiences in the justice system continue to pose a risk of further or exacerbated trauma, the justice system in Finland will continue to fail women and girls who experience rape and other sexual violence and deny them their right to justice and to a life free from violence.

KEY RECOMMENDATIONS

To the Finnish government and parliament:
1. Fully revise the legal definitions of rape and other sexual crimes so that the central aspect of the crime is the lack of consent assessed in the context of the surrounding circumstances, in line with international human rights law and standards. Particular attention should be paid to accommodating coercive circumstances that would negate the victim’s consent. The provision on sexual abuse should be repealed and acts, which constitute rape according to

---

5 Chapter 20, Section 1, para. 1 of the Finnish Criminal Code reads: “Rape. (1) A person who forces another into sexual intercourse by the use or threat of violence directed against the person shall be sentenced for rape to imprisonment for at least one year and at most six years.”

6 Chapter 20, Section 1, para. 2 of the Finnish Criminal Code reads: “(2) Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is unable to defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape.”
the definition in international human rights law should be incorporated into the definition of rape in the national law to ensure that it is brought into line with international standards.

2. Ensure sufficient resources and ongoing capacity building for the police, the prosecution service and the courts to deal with rape cases sensitively, efficiently and without undue delay.

3. Ensure sufficient resources for the Helsinki Sexual Assault Support Centre and the other planned support centres to be able to provide comprehensive care and assistance to all victims of sexual violence regardless of when the violence occurred. Bring the number of Sexual Assault Support Centres to the level recommended by the Council of Europe (1 centre per 200,000 women).

To the National Police Board and the Police University College:

4. Provide appropriate training that is available regularly and mandatory to all public officials who come into contact with victims of sexual violence in their work. Such training should include, among other things, training on the effects of trauma on victims of sexual violence and the sensitive handling of complaints and effective interviewing victims of sexual violence. Such training should also address and deconstruct harmful stereotypes and myths around rape and rape victims and raise awareness of how such myths and stereotypes may negatively influence the work of the police and obstruct survivors’ access to justice.

To the Office of the Prosecutor General:

5. Ensure that specialized training in sexual crimes is made mandatory for prosecutors who handle sexual crimes. Ensure that such training is available regularly and also addresses and deconstructs harmful stereotypes and myths around rape and rape victims and raises awareness of how such myths and stereotypes may negatively influence the work of the prosecution and obstruct survivors’ access to justice.

To the Judicial Training Board, the Ministry of Justice and the courts:

6. Introduce mandatory specialized training in sexual crimes for judges and lay judges who handle sexual crimes. Ensure that such training is available regularly and also addresses and deconstructs harmful stereotypes and myths around rape and rape victims and raises awareness of how such myths and stereotypes may negatively influence the work of the prosecution and obstruct survivors’ access to justice.
METHODOLOGY

This report on access to justice for rape survivors is based on desk research and interviews conducted by Amnesty International Finland between February and December 2018.

Sexual violence is widespread and systemic worldwide and all sexual violence, regardless of the gender or gender identity of the victim, is an important human rights issue. However, this report focuses on one form of sexual violence, namely rape, and specifically on women, who are disproportionately affected by it. The age of consent in Finland is 16, so girls aged 16 and 17 are also included in the scope of the report.

Amnesty International conducted extensive desk research that drew on previously published research, including Amnesty International research, inquiries conducted by the state, official statistics and parliamentary documents, including the preparatory works accompanying the current legislation.

---

7 According to the national crime victim surveys, women are about four times as likely to experience sexual violence as men. Between 2013-2017, the percentage of women experiencing sexual violence has been 1.6-2.3%, while the percentage of men has been 0.3-0.7%. Results from the national crime victim survey 2017, Results from the national crime victim survey 2016, Results from the national crime victim survey 2015, Results from the national crime victim survey 2014, and Results from the national crime victim survey 2013.

8 In Finland, the criminal process has been examined from the point of view of the victim and human rights, as well as sexual crimes have been researched by, among others, Johanna Niemi, Heini Kainulainen, Päivi Honkatukia, Minna Kimpimäki, Timo Ojala and Minni Leskinen. See e.g. Niemi et al. (ed.), Sukupuolistunut väkivalta: Oikeudellinen ja sosiaalinen ongelma, 2017; Kimpimäki, ‘Raiskauksen määrittelyn kipukohta: pakottamalla vai ilman suostumusta?’ Lakimies 6/2017; Kainulainen ja Saarikkomäki, Rikosprosessi väkivaltarikosten uhrien näkökulmasta, 2014; Ojala, Seksuallirikokset, 2014; Honkatukia, Uhrit rikosprosessissa – haavoittuvuus, palvelut ja kohtelu, 2011; Kainulainen, Raiskattu? Tutkimus raiskausten käsittelemisestä rikosprosessissa, 2004; Niemi, ‘Naisia, miehiä vai henkilöitä: Seksuallirikokset ja sukupuoli’, Oikeus 2/1998.
Amnesty International also analysed 112 police decisions to discontinue an investigation and 124 prosecutors' decisions not to press charges made in 2017 as well as 81 district court judgments involving 88 charges of rape handed down in 2016-2017. Access to these materials was granted on the condition that the cases reported are not identifiable in any Amnesty International publications.

Amnesty International’s analysis focused on the arguments used by police, prosecutors and judges to back up their conclusions and, in particular, reasoning around the issue of consent and whether particular cases constituted rape as defined in Finnish law. The decisions of the police, prosecutors and courts in Finland are usually written in such a way as to separate the substance of the testimonies of survivors, alleged perpetrators and witnesses and the analysis behind the decision. While care has been taken in the interpretation of these written materials, it is important to bear in mind that the testimonies are not first hand, but recorded from the perspective of the police officer, prosecutor or judge concerned.

Amnesty International’s research focused on procedural flaws and inadequate responses in the cases cited. The recommendations put forward by Amnesty International, if implemented, would address these shortcomings. It is important to stress, however, that they would not necessarily have led to different conclusions in those particular cases.

In addition, the analysis does not include judgments from appeals courts. Statistical data is not available but, based on district court judgments reviewed by Amnesty International, around 60% of district court judgments on rape are appealed. This does not, however, negate the findings, especially as more emphasis has been put on the proceedings in district courts in recent years by limiting the right of appeal.

Amnesty International also interviewed seven rape survivors contacted with the assistance of organizations providing support services to victims of violence. Interviewees were aged between 25 and 45 and all had made a report of rape to the police within the last six years. Three were

---

9 This included all police decisions in cases of rape in 2017 that fell within the scope of this report. In total, 49 other police decisions were filtered out. Apart from focusing on female victims, other reasons for filtering cases out from the analysis included that: a) the suspected perpetrator was below the age of criminal liability (15 years in Finland); b) the police could not identify the victim; c) there was insufficient detail in the decision to draw meaningful conclusions; d) the suspected perpetrator had died before the police investigation could be carried out; and e) the case had been transferred to another police station or combined with another case.

10 Amnesty International was granted research permits in order to access the decisions from five regional prosecutors’ offices that had made the highest number of decisions not to prosecute in rape cases in 2017. The most recent 24-27 cases (depending on the number of cases received) from each prosecutor’s office were analyzed. Rapes where the victim was a child below the age of 16 or male were excluded.

11 Each charge was analysed separately, as the reasoning concerning each charge is done separately, and so is referred to as one “judgment” later in this report. The analysis included decisions from six district courts, with the highest numbers of judgments handed out in cases of rape and sexual abuse in 2016-2017 (the longer time period was chosen due to the lower number of cases handled by each court, relative to the prosecutors’ offices and the police). Amnesty International was granted research permits from three district courts and in addition, three other courts provided us with public versions of judgments (no permit was applied for). Public versions omit the identity of the victim and sometimes also the reasoning of the court (in which case the judgment could not be used for analysis), while when a research permit was granted, Amnesty International received full details of the judgment (but no other court materials). Within the materials received, 44 acquittals and 44 convictions were chosen randomly for analysis. Rapes where the victim was a child below the age of 16 or male were excluded.

12 According to Chapter 25 Section 5 (a) of the Code of Judicial Procedure, leave to appeal is not required if the defendant has been sentenced to at least eight months’ imprisonment. In other cases, leave to appeal is required.
of foreign origin, and this was in some way significant to their experiences. Interviews were conducted in Finnish or English, according to the interviewee’s wishes, and either in person or by phone, to enable survivors from anywhere in the country to participate. Four interviewees live in the capital city area, two in Ostrobothnia and one in Central Finland.

The identities of all except one of the interviewees have been withheld and pseudonyms used, at their request. The purpose of interviewing survivors was to highlight the lived experiences of women and girl rape survivors in Finland and the impact of the different responses they encountered on their access to justice and support.

Amnesty International conducted interviews with three police officers, two prosecutors, two district court judges, an appeals court judge as well as a psychologist, a midwife and a doctor from the Helsinki Sexual Assault Support Centre. Eight of the interviewees work in Helsinki, two in Inland Finland and one in Eastern Finland. Some interviewees requested that they not be individually identified in the report.

All interviewees have given their informed consent to the inclusion of their words and experiences and all except one have had an opportunity to check how these are reflected in the report and their comments have been taken into consideration.

Any translations from interviews or the written materials are unofficial and have been done by Amnesty International.

Amnesty International Finland is grateful to all the officials and professionals who generously shared their time, knowledge and expertise. The organization would also like to thank the volunteer lawyers (researchers and practitioners) whose insights and discussions informed this research. Above all, the organization would like to thank the women survivors who so courageously shared their experiences. We are truly inspired at their determination to see some good come of their experiences.

---

13 The interviewees were chosen based on both the written materials analysed (identifying officials who deal with cases of sexual violence regularly) and by asking the interviewees for recommendations of other officials to interview.

14 One of the judges could not be reached.

15 Amnesty International held two expert group discussions connected with this research, in May and in October 2018. In connection with these, the organization would like to thank prof. Johanna Niemi, prof. Kevät Nousiainen, prof. Heini Kainulainen, Sini Majlander, Fanny Pihlström, Anna Silventoinen, Minni Leskinen and Lauri Koskenniemi.
TERMINOLOGY

This report uses the term “survivor” in relation to the women interviewed who had experienced rape and the term “victim” in other contexts. The term “victim” is customarily used to describe people whose human rights have been violated, for example, it is the term adopted in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Rome Statute of the International Criminal Court. While acknowledging that “victim” is the appropriate legal term, Amnesty International recognizes that the term “survivor” better reflects the strength and resilience of women and girls who have experienced sexual violence and is the preferred term for many women and girls themselves and also many human rights activists.

“Sexual violence” is a broad term and its exact definition varies. In international law the term describes unwanted or non-consensual sexual activity. Sexual violence includes rape. In prevalence studies the term can be used to describe a narrower set of activities. Unless otherwise specified, this report uses the international law definition.

The term “rape”, when used to describe a victim’s experience, is used in the sense of international human rights law, as non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object. When used as a legal term in Finnish law, the term “rape” follows the definition of the Finnish Criminal Code and includes rape, aggravated rape and attempted rape (unless otherwise specified).

A “rape myth” is a deeply held erroneous belief about what constitutes rape, who can be a rape victim or how victims react before, during or after they were raped. Some of the common rape myths include that rape is perpetrated by a stranger, that a victim “asks for sex” if they flirt with the perpetrator, and that they would fight back with all their strength or would behave hysterically after the rape. Rape myths are underpinned by harmful gender stereotypes related to male and female sexuality and sexual behaviour.

THE FINNISH LEGAL SYSTEM

The Finnish legal system is based on a civil law system. Written law is the main source of legal instruction. The preparatory works of laws, especially the government’s law proposal to parliament, are important sources of instruction on the interpretation of the law. Precedents by the national Supreme Court are also important and lower courts are expected to apply the principles established by the Supreme Court. Precedents by the Supreme Court are available online and summaries and commentaries are published in various jurisprudential publications.
CHAPTER 1: THE SCALE OF THE PROBLEM

“Rape is really common... This is not ‘a girls’ problem’, that we need to be safe.”
“Helen”\(^{19}\)

Sexual violence and rape are serious violations under international human rights law and standards which have been developed within the framework of gender-based violence and violence against women. In line with a range of international and regional treaties and standards which it has signed and/or ratified, Finland is obliged to take measures to ensure that no one, especially women, are subjected to any form of sexual violence or abuse.

Finland has ratified both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),\(^{20}\) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).\(^{21}\) The rights to live free from gender-based discrimination and violence and the right to access to justice are also protected under the International Covenant on Civil and Political Rights (ICCPR)\(^{22}\) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).\(^{23}\)

1.1 THE PREVALENCE OF SEXUAL VIOLENCE

The Institute of Criminology and Legal Policy (Kriminologian ja oikeuspolitiikan instituutti, Krimo) conducts annual national crime victim surveys covering a wide range of crimes, including sexual violence. These suggest that every year, 2% of women in Finland experience sexual violence.\(^{24}\) A study conducted by the EU Fundamental Rights Agency (FRA) in 2012 suggests

\(^{19}\) Interview with “Helen”, Helsinki, 1 November 2018. (Name has been changed to respect the interviewee’s anonymity.)
\(^{20}\) Entered into force in Finland in 1986.
\(^{21}\) Entered into force in Finland in 2015.
\(^{22}\) Entered into force in Finland in 1975.
\(^{23}\) Entered into force in Finland in 1990.
an annual prevalence rate of 3%. The difference in the prevalence rates between the studies may result from the different definitions of sexual violence used, the FRA survey being the more comprehensive of the two.

The studies suggest that every year 41,000-62,000 women in Finland experience sexual violence. According to the FRA study, around 350,000 women in Finland (17% of the female population) have experienced sexual violence during their lifetime.

Both the national surveys and the FRA survey also clearly indicate that young people are many times more likely to become victims than older people. (See Table 1.) And, according to the national surveys, women are four times as likely to experience sexual violence as men.

### TABLE 1
Summary of prevalence rates of sexual violence against women found in annual national crime victim surveys and the 2012 study of the EU Fundamental Rights Agency.

<table>
<thead>
<tr>
<th>National crime victim survey</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2017*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>2.3</td>
<td>1.6</td>
<td>2.0</td>
<td>2.2</td>
<td>2.2</td>
<td>45,120</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EU Fundamental Rights Agency</th>
<th>2012</th>
<th>2017*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>3</td>
<td>61,527</td>
</tr>
<tr>
<td>Aged 18-29</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Aged 30-39</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Aged 40-49</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Aged 50-59</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Aged 60-74</td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>

*Based on 2,050,912 women aged 15-74 in Finland in 2017

Krimo also carried out two studies focusing on women as victims of violence in 1997 and 2005. These studies have not been repeated because since 2013 the annual national crime victim survey has included more detailed questions about sexual violence, a change that

---


26 Since 2013, the national crime victim surveys have covered coerced intercourse, attempted coerced intercourse and other coerced sexual acts. The FRA survey also included questions on sexual activity that the woman was made to take part in when she did not want to or was unable to refuse, as well as sexual activity that the woman consented to out of fear.

27 In 2017, there were 2,050,912 women aged 15-74 in Finland, according to Statistics Finland, Väestö, Väestörakenne, Väestö iän (5-v.) ja sukupuolen mukaan 2017, https://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/

28 See footnote 24.

produced a marked increase in the prevalence rate for sexual violence in the results.\footnote{In the national crime victim surveys before 2013, the prevalence rate for rape or attempted rape was reported as around 0.22%. Since 2013, the surveys have reported the prevalence rate for a broader range of coerced or non-consensual sexual activity and the prevalence rate for women has been between 1.6 and 2.3%. See Krimo, \textit{Rikollisuustilanne [Crime Trends in Finland]} 2017, p. 84, \url{https://helda.helsinki.fi/bitstream/handle/10138/239666/Katsauksia_29_Rikollisuustilanne_2017.pdf?sequence=2&isAllowed=y} and footnote 24.} While the national crime victim survey now better incorporates a female perspective, this should not replace a periodic female-specific crime victim survey.

\section*{1.2 Rates of Reporting and Conviction}

How rape survivors are treated at their first point of contact with public officials, whether in a health-care, police or another setting, can have a big impact on whether they decide to continue with the legal process. Fear of being turned away, or hearing of the experiences of others whose cases were not pursued, can act as a serious deterrent to survivors.

One survivor described to Amnesty International how she sought help from the local hospital, where she got turned away. She was told that rape was “a police matter”. “Emilia” described how it would have been easy to give up seeking help after such an experience and how this would have affected which cases come to the attention of the police:

“In that situation, where you get rejected, ‘not our business’, it would have been really easy to walk away... And if the reports are not received, or if there is no predisposition to receive them, then statistics will show only certain types of crimes. Those cases, where [the perpetrator] is a friend or [the rape] has not happened in a public place, they will become a blind spot. And in my opinion, that’s a big problem and one that needs to be dealt with.”

“Emilia”\footnote{Interview with “Emilia”, Helsinki, 28.9.2018. (Name has been changed to respect the interviewee’s anonymity.)}

Only a very small percentage of incidents of sexual violence is reported to the police.\footnote{According to Statistics Finland, 1,482 sexual crimes against women aged 15-74 were reported in 2017, including all categories of rape, sexual abuse, coercion into a sexual act, sexual harassment and the abuse of a victim of the sex trade, including attempts to commit these crimes. In the same year, there were 2,050,912 women aged 15-74 in Finland. With a prevalence rate of 2-3%, this would mean a reporting rate of between 2.4 and 3.6%. The general prevalence studies only cover women aged up to 74; however, six sexual crimes against women aged 75 or over were recorded by the police in 2017. Statistics Finland, Oikeus, Rikos- ja pakkokeinotilasto, Eräiden rikosten uhrit iän mukaan maakunnittain 2017, and Statistics Finland, Väestö, Väestörakenne, Väestö iän (5-v.) ja sukupuolen mukaan 2017, \url{https://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/}.} Nevertheless, the number of reported rapes has increased every year since 2013, by an average
of 73 cases each year (6.6%). Krimo suggests that this reflects an increase in the likelihood of victims reporting rather than an increase in the prevalence of rape.

The police must record every act of rape that they become aware of while on duty, either as a result of a report by the victim or from other sources. It is difficult to give a precise sense of how many reports of rape reach a satisfactory conclusion in the courts for a number of reasons. First, there is a time lag in a case proceeding from the police to the prosecutor and to court, so a rape may be recorded by the police one year, be considered by the prosecutor the next and reach the court the following year. Second, the precise charge may change during the course of the proceedings (for example from rape to coercion into a sexual act or the other way around). Third, the police, the prosecutor and the court can record acts of rape in different ways: normally each act of rape, sufficiently separated in time, will be recorded as one rape and will become one charge. They will also be recorded separately for each perpetrator and victim. However, in some cases, such as cases of long-term domestic violence, if the victim cannot clearly remember the exact timing of the incidents, they may be recorded as one act. In these cases, the number of acts can either increase or decrease during proceedings.

Despite these difficulties in interpreting the statistics, even the following indicative figures clearly show that impunity for crimes of rape is endemic. Few victims of sexual violence see the perpetrator brought to justice. In 2017, 1,244 acts of rape were reported to the police, while only 358 charges of rape came to trial (see Table 2). Of these, only 209 charges (58%) resulted in a conviction.

Overall, only 17% of rapes reported to the police result in convictions.

| TABLE 2 | The progress of reported rapes through the criminal justice system |
| --- | --- | --- | --- | --- | --- |
| | Rapes recorded by the police | Concluded investigations | Sent to prosecutor | Tried in court | Charges resulting in conviction |
| 2017 | | | | | |
| Total numbers | 1,245 | 888 | 874 | 358 | 209 |
| % of the rapes recorded by the police | 71% | 70% | 29% | 17% | |

In 2016, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) noted that while 1,000 rape cases were investigated annually, only 150 resulted in a conviction. It found that Finland had, therefore, not fulfilled its obligation to take “specific...
measures to fully investigate, prosecute and punish perpetrators of rape in order to increase the conviction rates in cases of rape”.  

Similarly in 2017, the UN Committee against Torture noted its concern “at the prevalence of violence against women in the State party, including domestic and sexual violence, the underreporting of cases and the lack of funding allocated to tackle it”. The Committee recommended ensuring that all allegations of domestic violence, including sexual violence, be registered by the police and promptly, impartially and effectively investigated and that perpetrators be prosecuted and punished. Finland responded that the law already requires prosecutors to carry out their duties “promptly” and that grounds for urgency were already provided for in the law; it made no reference to ensuring implementation in practice.

In Finland’s 2017 Universal Periodic Review, one state recommended that Finland implement new measures to ensure victims of rape could seek redress. Finland “noted” this recommendation and partially accepted other recommendations related to funding the prevention of sexual violence.

The high prevalence of sexual violence and low rate of prosecutions and convictions show that Finland’s actions to combat sexual violence against women and bring perpetrators to justice are inadequate and fall short of international human rights standards.

37 Committee against Torture, Concluding observations on the seventh periodic report of Finland, CAT/C/FIN/CO/7, p. 7.
38 Committee against Torture, Concluding observations on the seventh periodic report of Finland, CAT/C/FIN/CO/7, p. 7, and Addendum CAT/C/FIN/CO/7/Add.1, p. 5.
CHAPTER 2: BARRIERS TO JUSTICE: THE LAW

2.1 THE NATIONAL LEGAL FRAMEWORK

In recent years, a number of legislative amendments have been introduced that bring Finnish legislation more into line with international standards.

In particular, Amnesty International welcomed amendments to Chapter 20 of the Criminal Code in 2011 and 2014 that reflected some of the organization’s key recommendations set out in its 2008 report Case Closed. For example, in 2011, obtaining sexual intercourse by taking advantage a person’s unconsciousness, illness, disability, state of fear or other helplessness, even when that state was not caused by the perpetrator, was incorporated into the definition of rape (paragraph 2, section 1). However, other amendments, while containing positive elements, were accompanied by new provisions that created issues around access to justice in practice.

In 2014 the section on coercion into sexual intercourse (section 3), often called “mild rape”, was repealed, although a paragraph on “less serious” rape was added to the section dealing with rape (paragraph 3, section 1), with an addition that rape involving violence cannot be prosecuted as “less serious” rape (see section 2.6 Categories of rape below). At the same time, the minimum penalty for the “less serious” rape was changed from a fine to four months’ imprisonment and the maximum penalty increased from three to four years’ imprisonment.

The 2014 review also revised the definition of sexual intercourse (section 10) to include penetration with an object. Sexual intercourse is now defined as sexual penetration of the body of another person by a sex organ or directed at a sex organ or the anus, or as the taking of a sex organ into the body of the offender. The definition thus includes penetration of a sex organ or anus with an object or with any body part. While the definition of sexual intercourse does not mention gender or sexual orientation, its impact is not gender-neutral. For example, the licking of a woman’s genitalia does not fulfil the definition of penetration and thus perpetrators cannot be convicted of rape, even though the act is directed at a sexual organ. In such cases, a person would not face a charge of rape, but the lesser charge of coercion into a sexual act. In contrast, oral intercourse performed on a man usually involves taking the penis into the mouth, which is

41 One rape judgment analysed by Amnesty International ended with a conviction for coercion into a sexual act instead of rape because the perpetrator had licked the victim’s genitalia while the victim was asleep. Penetration with the tongue into the vagina during oral intercourse could not be proven. Coercion into a sexual act (Chapter 20, section 4 of the Finnish Criminal Code) carries a penalty ranging from a fine to three years’ imprisonment. The definition reflects the definition of rape except that rape covers acts of sexual penetration, while coercion into a sexual act covers sexual acts without penetration.
penetration. This apparently gender-neutral provision thus in practice affords different levels of protection of sexual autonomy based on gender.

In 2014, the right to press charges (section 11) was amended so that all sexual offences, apart from sexual harassment of an adult, are subject to public prosecution. At the same time, section 12, concerning the ability of the public prosecutor to waive charges at the request of the rape victim was repealed. This amendment has two important consequences: it reduces the risk of the perpetrator putting pressure on the victim and reinforces the message that rape is not a civil matter, but a serious criminal offence that warrants the intervention of the state.

However, a provision in the Code of Judicial Procedure (Chapter 17, Section 17) allows a current or former spouse of the accused to refuse to give evidence, which risks weakening the impact of the 2014 amendment, as a perpetrator of intimate partner violence can pressure the victim to refuse to testify. The court has the power to circumvent the victim’s decision not to testify if there is reason to suspect that their decision was made under duress. In a recent precedent, the Supreme Court stated that the existence of intimate partner violence in itself gives a reason to suspect that the decision of the victim was made under duress. Thus, the threshold for the courts to decide to circumvent the victim’s decision should be low.

Currently, there are two alternative definitions of rape in Finnish law. The first focuses on coercion through the use or threat of violence. The second focuses on sexual intercourse by exploiting the inability of the victim to defend themselves or to formulate or express their will due to unconsciousness, illness, disability, state of fear or other “helpless state”.

The definition covers two extremes – rape using violence and cases where the victim is unable to consent due to an incapacity – but leaves an area in between where there is no consent, but nor is there violence or an incapacity, meaning that the definition of rape is not fulfilled. Even

---

42 The man can be either in the position of perpetrator or of victim.
44 See Istanbul Convention, Article 55, which requires states to ensure that the prosecution of rape is not wholly dependent on the victim filing a report. See also Parliamentary Assembly of the Council of Europe Resolution 1691 (2009), para. 5.2.1, which calls on states to “make rape (including marital rape) an ex officio crime”.
45 The same applies to siblings, children, parents, and others with a similar close relationship to the perpetrator. Chapter 17, Section 17 of the Code of Judicial Procedure states: “The current or former married spouse or current cohabiting partner, sibling, relative in lineal ascent or lineal descent [parents, grandparents, children, grandchildren, etc.] or another person who has an equivalent close relationship based on an intimate relationship or kinship with the party, may refuse to testify.” No up to date translation is available. Law in Finnish available at https://www.finlex.fi/fi/laki/ajantasa/1734/17340004
46 The issue was raised by a lawyer in an expert group discussion, by a public prosecutor in an interview with Amnesty International, 31 November 2018, Helsinki, and by another public prosecutor in an informal discussion with Amnesty International, 11 December 2018, Helsinki.
47 According to Chapter 17, Section 18, para. 2, of the Code of Judicial Procedure, the court can decide that such a person does not have a right not to testify in a criminal matter “if there is reason to suspect that [the person] has not decided about using their right to remain silent themselves”. Circumventing the decision would take place by taking testimony from those that the victim has talked to about the crime and by using the victim’s statement given in the police interview.
48 Supreme Court precedent KKO:2019:17.
49 Chapter 20, Section 1, para. 1 of the Finnish Criminal Code.
50 Chapter 20, Section 1, para. 2 of the Finnish Criminal Code.
though the threshold for violence is low (for example, using weight to hold the victim down is sufficient), the current law continues to fall short of international standards in terms of the way it defines, prosecutes and punishes rape. Central to these shortcomings of the definition is the failure to adopt a consent-based approach.

A citizens’ legislative initiative for the revision of rape provisions (the Consent2018 campaign) will be given to parliament after it reached over 50,000 citizens’ signatures by December 2018. Also the Minister of Justice announced on 15 January 2019 that the Ministry would prepare a full amendment of the chapter on sexual crimes, aiming to strengthen the role of consent in the legislation. Amnesty International stresses that this amendment must make a lack of the victim’s consent the central element of sexual crimes legislation, and reject an approach that focuses on either violence or the victim’s inability to consent, to bring legislation in line with international standards.

2.2 CONSENT

According to international human rights standards, sexual assault, including rape, should be defined by the lack of consent to sexual activity. Legislation should include a combination of gender-neutral and gender-specific provisions to reflect the specific experiences and needs of women and girl survivors of violence, while allowing the prosecution of gender-based and sexual violence against men and boys too.

No international or regional human rights instrument provides a definition of consent. However, the Istanbul Convention specifies that:

“Consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.”

Istanbul Convention, Article 36(2)

The Explanatory Report to the Istanbul Convention further clarifies that prosecutions “will require a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. It is equally important to ensure that interpretations of rape legislation and the prosecution of

---

51 A citizens’ legislative initiative allows citizens to initiate laws and amendments in parliament. An initiative needs to reach 50,000 citizens’ signatures within six months for parliament to consider it.

52 See Istanbul Convention, Article 36 (1) and CEDAW Committee, General Recommendation No. 35, para. 33. See also Committee of Ministers of the Council of Europe Recommendation No. R (2002) 5, adopted by the Committee of Ministers on 30 April 2002, and Explanatory Memorandum H/Inf (2004), para. 35, which urges states to punish all non-consensual acts, including where the victim does not show resistance. See M.C. v. Bulgaria (2003), European Court of Human Rights 651, paras 164-166. See also International Criminal Court, Elements of Crimes (2011), Elements 1 and 2 of the Elements of Crimes relating to the crime against humanity of rape under Article 7(1)(g)-1, p. 8, and the war crime of rape in international and non-international armed conflicts under Article 8(2)(b)(xxii)-1 (p. 28) and Article 8(2)(e)(vi)-1, pp. 36-37.

rape cases are not influenced by gender stereotypes and myths about male and female sexuality”.  

Consent is a voluntary and ongoing agreement to engage in a particular sexual activity and so can be rescinded at any time. Developments in international criminal law have led to the recognition that consent can be given freely and genuinely only where the free will of one the consenting parties is not overpowered by coercive circumstances and when the person is capable of consenting.

In 2016, the CEDAW Committee found that Finland had not implemented the recommendation to place lack of consent at the centre of the definition of rape and remove the requirement of force or threat of force. Similarly, in 2017 the UN Committee against Torture recommended that Finland revise the definition of rape to include lack of consent, instead of categorizing rape according to the degree of physical violence. In Finland’s 2017 Universal Periodic Review, five states recommended that Finland review its definition of rape so that the degree of violence used or threatened is not the determining factor.

Finland accepted these recommendations, maintaining that the current definition of rape implicitly includes lack of consent and that in substance the provision conforms to international standards even if the wording of the provision does not include the term “consent”. Finland has referred especially to the second aspect of the definition, covering cases where the perpetrator has taken advantage of the victim’s “helpless state” where, by definition, a person is unable to formulate or express their will or to defend themselves.

However, the current definition and legal practice allow for differing interpretations of the law, which place varying importance on the victim’s consent. Some legal professionals, such as Appeals Court Judge Timo Ojala, have said that the most complicated cases already hinge on whether the victim consented or not. However, for others the current definition can give a pretext to not engage with those complicated cases. Thus, the victim’s access to justice can be dependent on the person doing the interpretation. The following sections highlight the different unsatisfactory interpretations that the current definition permits.

“According to Finnish legislation, having intercourse against the other person’s refusal does not fulfil the material elements of rape, unless it is associated with the elements

---

54 Explanatory Report for the Istanbul Convention, para. 192.
55 See International Criminal Court, Elements of Crimes (2011), Elements 1 and 2 of the Elements of Crimes relating to the crime against humanity of rape under Article 7(1)(g)-1, p. 8, and the war crime of rape in international and non-international armed conflicts under Article 8(2)(b)(xii)-1 (p. 28) and Article 8(2)(e)(vi)-1, pp. 36-37. See also International Criminal Court, Rules of Procedure and Evidence, UN Doc ICC-ASP/1/3 (2002), Rule 70(a), (b) and (c).
56 Letter from Xiaoqiao Zou, Rapporteur on Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, to the Permanent Representative of Finland to the United Nations Office at Geneva, 10 August 2016, YH/follow-up/Finland/64 pp. 2-3.
57 Committee against Torture, Concluding observations on the seventh periodic report of Finland, CAT/C/FIN/CO/7, p. 7.
60 Interview with Appeals Court Judge Timo Ojala, Helsinki, 18 September 2018.
explained above [violence or a helpless state].”
Prosecutor’s decision to close a case

2.3 FOCUSING ON RESISTANCE

There should be no assumption in law or in practice that a victim gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.61 However, by focusing on the victim’s capacity to consent, the “helpless state” definition makes the survivor’s resistance a key factor: if a victim is able to formulate or express their will or defend themselves, they are expected to do so to prove lack of consent. The logic of the law is that the victim’s physical resistance would force the perpetrator to use violence, making the act a rape.

Several survivors interviewed by Amnesty International described how the police focused on whether they said no or physically resisted:

“One [source of] astonishment in the police interview was that they asked first thing, “Did you bite the rapist?” Baffled, I thought in the interview, “No, should I have?” They did of course raise the issue of ‘did you defend yourself enough’... I got the impression that it was not acceptable to become paralyzed.”

“Laura”62

“Helen” was raped by a person unknown to her when she was very drunk, but the police considered that she was not in a “helpless state”:

“During the first interview [the police officer] was asking, ‘Did you say ‘no’? Did you say ‘no’ in the elevator?’... Especially the ‘fight’ questions, ‘Did you fight back?’... And during the second [interview] he was again asking: ‘Were you violent? Was he violent?’ And then he asked, ‘How could he know that you didn’t want to have sex?’... They said that if I had been conscious enough to [give him] a condom, that means I could have fought.”63

In 2013, the Supreme Court ruled that a victim of rape or other violence should not be expected to undertake violent or other actions to resist the attacker. According to the Court, “freezing” or a lack of self-defence should not be taken to indicate that no crime has been committed.64 However, in six of the subsequent judgments analysed by Amnesty International, the judges stated that resistance by the victim forms one of the criminal elements of rape. Evidently, in these cases, the victim was expected to resist physically.65

“The fact that a sexual partner says ‘no, I don’t want to’ before sexual intercourse or between intercourses, is not always a sufficient signal to the other person, that consent

62 Telephone interview with “Laura”, 25 September 2018. (Name has been changed to respect the interviewee’s anonymity.)
63 Interview with “Helen”, Helsinki, 1 November 2018.
64 Supreme Court precedent KKO:2013:96, point 33.
65 Four of these cases ended in a conviction.
and willingness to continue sex is not present.”
District court judgment, acquittal in a case with multiple accused

“The suspect says that the victim said ‘no’ once, but after that she had not resisted the sexual intercourse.”
Prosecutor’s decision to close a case

In 63 judgments analysed, the victim reported resisting either physically or verbally or both. Most cases where the victim reported resisting verbally (saying “no”) ended with an acquittal (15 out of 20 cases). By contrast, most cases where the victim reported resisting physically or physically and verbally ended with a conviction (29 of 43 cases). Of the six cases where the victim “froze” (did not resist), five ended in acquittal.

Some police and prosecutors also considered that situations where victims acknowledged that they could have resisted or left, but did not do so, did not fulfil the legal definition of rape:

“The victim has not said that the suspect would have prevented her from leaving the bed. Rather, this has been a question of tiredness and nausea. I interpret that the victim would not have been in such a state of helplessness, resulting from fear or some other reason, as to be unable to prevent the sexual intercourse by for example leaving the bed.”
Prosecutor’s decision to close a case

This reasoning is problematic because many survivors say that they probably could have left the situation and are unable to explain why they did not do so.66 These could be situations of “frozen fright”: where even though there are no physical restraints, the victim is paralyzed with fear. Moreover, the focus should not be on whether the victim could have prevented the rape but on whether the victim consented to the intercourse.

In Finland, rape is only punishable as an intentional crime: the perpetrator must know or consider it quite probable that the victim submitted to the sexual intercourse as a result of the violence or threat of violence used or because of their “helpless state.67 If the victim did not indicate her unwillingness, this can be considered to indicate that the perpetrator could not have known she did not consent. Such reasoning by the judges was evident in 12 judgments analysed.

“Even according to her own statement, the victim had not resisted in the situation but rather she had frozen and pretended to sleep… Such a situation does not constitute a crime even if the victim has been entirely passive and basically unwilling to have sexual intercourse… The statements of the accused and the victim are congruent about the victim not being active in the latter instance of intercourse, but she also did not express her reluctance in any way. The victim had not refused the accused or asked him to

---

66 Police and prosecutors’ decisions analysed by Amnesty International.
67 This definition of intent has been confirmed in various Supreme Court precedents, including KKO:2012:66 and precedents referred to therein, and mirrors the definition given in the Criminal Code for causing a consequence intentionally (Chapter 3, Section 6): “A perpetrator has intentionally caused the consequence described in the statutory definition if the causing of the consequence was the perpetrator’s purpose or they had considered the consequence as a certain or quite probable result of their actions. A consequence has also been intentionally caused if the perpetrator has considered it as certainly connected with the consequence that they have aimed for.”
stop the latter sexual intercourse. These facts support the perception that the victim has not been in such a helpless state that the accused would have been aware of it or could have perceived it or inferred it from the circumstances... The court does not consider credible the victim's supposition that the accused would have or should have perceived from the victim's body language, gestures or passivity, that the victim was not consenting to the latter intercourse.”

District court judgment

The law as it currently stands allows an interpretation which requires the victim to resist unwelcome sexual advances rather than requiring the perpetrator to take steps to confirm that the other party consents. The definition still fails to acknowledge that silence or passivity of the victim are not indicators of consent. Furthermore, it ignores the fact that not all victims react in the same manner when faced with a situation that threatens their sexual autonomy and that “freezing” in such situations is a well-documented reaction.

It is important also to stress that the impact of a definition of rape that relies on evidence of violence by the perpetrator or on the victim’s helpless state extends well beyond the courtroom. Some of the survivors interviewed, for example, described how it can lead to a process of internalizing certain rape myths:

“I admit that I myself have been afraid of, or imagined that a rape is an attack in a park. And that made me think [after my own experience], ‘Was this rape?’ Because I had such a strong mental image that a ‘real’ rape is one where the perpetrator attacks in a park and beats you senseless and you need to scream and shout and everything. And that it [rape] can’t possibly be what happened [to me], in a private apartment.”

“Laura”68

“I myself have had to struggle a lot to be able to believe that I have a right to flirt, without it meaning that I can then be violated.”

Hilla69

2.4 HIGH THRESHOLD FOR “HELPLESS STATE”

In practice, the threshold for a “helpless state”, when a person is considered to be unable to resist, is set very high. The definition is only applied in cases where the victim is fully unconscious (asleep) or extremely intoxicated. For example, if the victim is only half-asleep, the elements of rape are not considered to be fulfilled, even if it is clear that the victim did not consent.70 It is also unclear what level of intoxication should be considered to constitute a

---

69 Interview with Hilla Marin, Helsinki, 10 August 2018.
70 In September 2018 the District Court of Helsinki convicted a man of sexual harassment who had had intercourse with a woman who was drunk, feeling sick and half-asleep. The perpetrator was a guest who entered the victim’s bedroom unbidden when she had gone to sleep. The perpetrator was a guest who entered the victim’s bedroom unbidden when she had gone to sleep. The victim initially thought the man in her bed was her husband. The Court concluded that the definition of rape was not fulfilled and convicted the man of sexual harassment. See www.hs.fi/kotimaa/art-2000005814875.html
“helpless state”. The decision is left to the discretion of judges, resulting in inconsistent levels of protection for intoxicated victims.  

An additional shortcoming concerns the provision on the victim’s state of fear. Although the law recognizes that fear can cause a person to be unable to resist, in practice the provision is very seldom used.

Research suggests that an involuntary reaction of temporary “frozen fright” is common in victims of sexual assault. It is a reaction caused by the autonomous nervous system to minimize the risk of injury in a dangerous situation and cannot be controlled, it renders people unable to resist physically and, in some cases, verbally.

One police officer told Amnesty International that the state of fear must be caused by the perpetrator’s actions or arise from circumstances that would have been apparent to the perpetrator. One example given in the preparatory works of the law is when the perpetrator breaks into the victim’s house to rape her – an extremely rare occurrence in real life. Usually a state of fear is connected to a less obviously threatening situation.

Public Prosecutor Nina Keskinen explained:

“The threshold to convict is very high, on the basis of abusing the victim’s state of fear without there being any prior violence. Situations where for example a stranger just starts touching and the victim says that she just froze because it’s a stranger, that won’t pass [won’t result in conviction]. It’s not [a sufficient cause of] a state of fear, that the perpetrator is a stranger.”

Circumstances that victims have pleaded in court as causing fear include the unexpectedness or insistence of the perpetrator’s actions, not knowing the perpetrator well and thus not knowing how he would react to resistance, being dependent on the perpetrator for a place to sleep, prior experiences of sexual violence and that they were young and unused to sexual interaction.

“I explained my situation, I explained how at 18 I’d moved to a completely foreign country, didn’t know the people… my vulnerability in the situation, the fact that I don’t drink alcohol and I wasn’t at that time so used to being around people who do drink alcohol, so I don’t know how they react… [At the police interview] I did spend a lot of time going into detail about the situation, what led to it, my feelings, the reasons I was afraid, all of that, and it was just all brushed off.”

“Louise”

---

71 Judgments analysed by Amnesty International.
72 Möller, Søndergaard and Helström, “Tonic immobility during sexual assault - a common reaction predicting post-traumatic stress disorder and severe depression”, Acta Obstetricia et Gynecologica Scandinavica, 2017, p. 932. The report is based on questionnaires completed by 298 women who visited the Stockholm Emergency Clinic for Raped Women between February 2009 and December 2010. Seven out of 10 reported symptoms of Tonic Immobility during their assault, which took place up to a month before the survey.
73 Interview with a police officer, Helsinki, 23 October 2018.
75 Interview with “Louise”, Helsinki, 2 October 2018. (Name has been changed to respect the interviewee’s anonymity.)
A state of fear caused by such circumstances only formed part of the consideration of the court if the accused had also used violence in the alleged rape.  

### 2.5 GAPS IN THE CURRENT DEFINITION OF RAPE

Amnesty International’s analysis shows that situations that are not covered by the current legal definition of rape include:

- Where the rape victim was passive or semi-conscious, perhaps half-asleep, drunk or had frozen with fright and did not resist, and the perpetrator did not use violence. In such cases, the perpetrator did not need to resort to violence, but neither was the victim in a fully unconscious or otherwise “helpless state”.
- Where the perpetrator ignored the fact the rape victim said no or asked them to leave, but where the victim did not resist physically and the perpetrator did not use violence.
- Where penetration happened so suddenly that the victim did not have a chance to react.
- Where a rape victim withdrew consent during intercourse, but the perpetrator did not stop.
- Where the victim acquiesced to sex under duress by the perpetrator; for example when the perpetrator blackmailed the victim or used non-violent threats.

In the written materials, such cases represented 16 out of 112 cases closed by the police, 37 out of 124 cases closed by the prosecutor and 13 out of 44 acquittals in the district courts. A police officer and Public Prosecutor Nina Keskinen also listed the first three types of cases as falling outside the scope of the current definition of rape. In all these situations, the lack of a rape definition requiring active consent acts as a barrier to justice for rape survivors.

### 2.6 CATEGORIES OF RAPE

In Finnish law, there are three categories of rape, each of which carries a different penalty.

- The crime of rape carries a penalty of between one and six years’ imprisonment.
- Aggravated rape carries a penalty of between two and 10 years’ imprisonment. Aggravating factors mainly relate to the level of violence used: for example, causing grievous injury, committing the rape in a particularly brutal manner, using a weapon such as a firearm or knife, causing especially marked mental or physical suffering, or making a threat of serious violence. Other factors constituting aggravating circumstances include a rape committed by several people or where the victim was under the age of 18.

---

76 Judgments from district courts analysed by Amnesty International.
77 Even though this could fulfil the definition of “less serious rape”, the data analysed by Amnesty International included a case closed by the prosecutor where the perpetrator had used a threat other than of violence and the prosecutor considered that this did not fulfil the definition of rape.
79 Chapter 20, Section 1, paras 1-2 of the Finnish Criminal Code.
80 Chapter 20, Section 2, para. 1 of the Finnish Criminal Code states: “(1) If, in the rape, (1) grievous bodily injury, serious illness or a state of mortal danger is caused to another, (2) the offence is committed by several people, or especially marked mental or physical suffering is caused, (3) the victim is a child below the age of 18 years, (4) the
The third category of rape, which carries penalties ranging from four months’ to four years’ imprisonment, applies in cases where the rape is considered “less serious”. The mitigating factors that can contribute to the rape being defined as “less serious” include, lesser or “petty” threats of violence, using a threat other than of violence, or “other circumstances connected with the offence”.

Amnesty International believes that all forms of rape are a serious offence and that the penalties imposed should be commensurate with the gravity of the crime. A key concern regarding the categorization above stems from the inconsistent application of the category of “less serious” rape because of the vague wording of the provision and the lack of clear guidance on the circumstances in which a rape should be considered “less serious”. The examples mentioned in the preparatory works of the law concern a “petty” threat to use violence and “exceptional circumstances” connected with the rape. However, what these exceptional circumstances are is not explicitly stated. As a result the interpretation is left to the discretion of the courts and varies considerably. For example, in one judgment the court stated:

“Considering the utter defencelessness of a strongly intoxicated and sleeping person, the rape as a whole is not considered less serious in a way that the accused should be sentenced on the basis of the lower scale.”

District court judgment

In another case, however, the provision, which is not intended to be applied at all in cases where violence has been used, the interpretation was rather different. Amnesty International found a conviction of “less serious” rape had been handed down where the perpetrator threatened the victim with violence, grabbed hold of her head to try and force her into oral intercourse and later, when the victim had fallen asleep, raped her. The factors the court considered to make the rape “less serious” included that the intercourse did not involve the penetration of the victim’s sexual organ, that the threat and use of violence were not enough to break the victim’s will or make her leave the bedroom, and that the perpetrator had not attempted to continue the intercourse with violence after the victim woke up and pushed him off. However, the court does not explain how these factors would constitute “exceptional circumstances”. Moreover, the reasoning puts the blame on the victim for not leaving the bedroom, rather than holding the perpetrator fully accountable for the range of abuse he inflicted on her.

---

81 Chapter 20, Section 1, para. 3 of the Finnish Criminal Code states: “If the rape, taking into consideration the pettiness of the threat or the other circumstances connected with the offence, is less serious when considered as a whole than the acts referred to in paras 1 or 2, the offender shall be sentenced to imprisonment for at least four months and at most four years. A person who forces another into sexual intercourse through other than the threat referred to in paragraph 1 shall be sentenced in a similar manner. What is provided above in this paragraph does not apply if violence has been used in the rape.”

2.7 SEXUAL ABUSE – ABUSING A POSITION OF POWER

The crime of sexual abuse is defined in Finnish law as enticing a person into sexual intercourse or into another sexual act essentially violating their right to sexual autonomy, or into submitting to such an act, by abusing a position of power or the dependency of the victim.\(^83\) The provision applies to, for example, under-aged school students as well as people in institutions whose capacity to defend themselves or to formulate or express their will is impaired due to illness or disability. The penalties for those convicted of sexual abuse range from a fine to four years’ imprisonment.

The provision on sexual abuse (section 5) has been recognized to partly overlap with the provisions on rape (paragraph 2, section 1) in cases where the victim has an illness or disability. Therefore, various actors were in favour of fully incorporating the provisions on sexual abuse into the definition of rape during the 2014 revision of the law.\(^84\) However, the section on sexual abuse was retained on the grounds that it could provide additional protection against enticement for people in institutions.\(^85\)

The provision on sexual abuse is meant to apply when the person with an illness or disability is enticed into sexual intercourse or a sexual act or submits to such an act due to the perpetrator being in a position of power, but the illness or disability does not entirely prevent the victim from formulating or expressing their will or defending themselves.

However, according to Article 46 of the Istanbul Convention, abusing a position of power and targeting a particularly vulnerable person should be considered aggravating factors. The current definition could mean that the violation of the sexual autonomy of a person whose will is impaired due to disability is treated as sexual abuse rather than rape, in other words that their impairment leads to a lesser charge and a lower sentence, which is clearly contrary to international standards. This is one consequence of a law that focuses on the victim’s ability to formulate their will or defend themselves rather than the victim’s consent and the circumstances in which genuine consent can be given.

In 2016, the CEDAW Committee found that no concrete measures had been taken to ensure adequate protection in “cases of non-consensual sexual acts where there is an abuse of authority, such as in cases of rape committed against women who are residents in closed institutions.”\(^86\)

---

\(^83\) Chapter 20 Section 5 para. 1 of the Finnish Criminal Code reads: “Sexual abuse. (1) A person who abuses their position and entices one of the following into sexual intercourse, into another sexual act essentially violating his or her right of sexual self-determination, or into submission to such an act, (1) a person below the age of eighteen years, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender, (2) a person below the age of eighteen years, whose capacity of independent sexual self-determination, owing to his or her immaturity and the age difference of the persons involved, is essentially inferior to that of the offender, where the offender blatantly takes advantage of this immaturity, (3) a patient being treated in a hospital or other institution, whose capacity to defend himself or herself or to formulate or to express his or her will is essentially impaired owing to illness, disability or other infirmity, or (4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of this dependence, shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.”

\(^84\) Including three ministries, the parliamentary ombudsman, the National Police Board and two police departments, the Prosecution Office of Northern Carelia, the District Court of Central Finland, professor of procedural law Johanna Niemi, Amnesty International and eight other NGOs. Ministry of Justice, Mietintöjä ja lausuntoja 54/2012, Raiskaurikosten lainnäkäänäilliset muutostarpeet Lausuntotiviistelmä, 23-26.

\(^85\) Government bill 216/2013, 41.
institutions”. Finland had also not implemented the recommendation to align the punishments for such acts with those for rape.86

The provision on sexual abuse should be repealed and acts which constitute rape according to the definition in international human rights law should be incorporated into the definition of rape in the national law to ensure that it is brought into line with international standards.

2.8 RAPE IN CLOSE RELATIONSHIPS

The close relationship between the victim and the perpetrator should be considered an aggravating circumstance in determining the penalty for sexual violence offences.87 Also a precedent issued by the Supreme Court of Finland in 2012 stated that penalties in cases of domestic or intimate partner violence should be more severe.88 However, it appears that Finnish legal practice does not always recognize an intimate or family relationship between the perpetrator and victim as an aggravating circumstance.

Judges have discretion in sentencing, although the sentence should be “in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the offender as manifested in the offence.”89 General aggravating factors are listed in Chapter 6, Section 5 of the Criminal Code. The factors listed in the section on aggravated rape are also considered aggravating factors for rape, even if the conviction is not for aggravated rape. Neither provision mentions the close relationship of the parties.90

The judgments analysed by Amnesty International indicate that some judges are either unaware of the requirements of Article 46 of the Istanbul Convention and the Supreme Court ruling or are choosing not to explicitly apply them. In only two of the 44 convictions for rape analysed by Amnesty International were such factors as a close relationship between victim and perpetrator considered an aggravating factor in sentencing. In both cases, the parties were friends and it was the breach of a relationship of trust that formed an aggravating factor. In eight convictions, the perpetrator was a current or former intimate partner. However, the impact

86 Letter from Xiaoqiao Zou, Rapporteur on Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, to the Permanent Representative of Finland to the United Nations Office at Geneva, 10 August 2016, YH/follow-up/Finland/64 pp. 2-3.
88 Supreme Court precedent KKO:2012:9, point 6: “the European Court of Human Rights has in its judgments (Opuz v. Turkey 9.6.2009, E.S. and others v. Slovakia 15.9.2009, A v. Croatia 14.10.2010, Hajduova v. Slovakia 30.11.2010) noted the harmfulness of domestic and intimate partner violence and the state’s responsibility to protect effectively, for example using criminal law, victims of domestic and intimate partner violence who are in a vulnerable position. The Supreme Court considers that in cases of domestic and intimate partner violence, where the perpetrator and the victim are not in an equal position but rather the victim needs special protection, the harmfulness and dangerousness of the act and the level of guilt of the perpetrator supports measuring the penalty as more severe than the general level of penalties.”
89 Chapter 6 Section 4 of the Finnish Criminal Code.
90 Chapter 6 Section 5 para. 1 of the Finnish Criminal Code reads: “The following are grounds for increasing the punishment: (1) the methodical nature of the criminal activity, (2) commission of the offence as part of the activity of an organized criminal group, (3) commission of the offence for remuneration, (4) commission of the offence for a motive based on race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds, and (5) the criminal history of the offender, if the relation between it and the new offence, due to the similarity between the offences or otherwise, shows that the offender is apparently heedless of the prohibitions and commands of the law.” See footnote 80 for the provision on aggravated rape.
of the relationship of the parties on the sentencing was not explicitly considered in any of these. By contrast, in five cases the fact that the perpetrator was a stranger was explicitly considered an aggravating factor.

In interviews with Amnesty International two district court judges recognized that a breach of trust between the parties makes the act more hurtful to the victim, but neither expressed the view that this alone would constitute an aggravating factor meriting a heavier penalty.\(^{91}\) In contrast, Appeals Court Judge Timo Ojala, stated that a close relationship consistently produces higher sentences, the vulnerability of the victim does not go unrecognized and these factors are explicitly explained in judgments.\(^{92}\) This suggests judges are using different standards when measuring the punishment and that there is a need for greater clarity and training to ensure the consistent implementation of the law in practice.

### 2.9 Penalties and Rehabilitation Programmes for Offenders

**"Is it fair that for this you get a suspended sentence of one year and a few months and if you don't mess up in the next two years the penalty won't be carried out and in five years' time it disappears from the criminal record? So you can go and stick things inside another person and after that you get this little warning of 'try to think a little next time'?"**

Hilla, describing her feelings after the man who raped her while she was asleep received a suspended prison sentence\(^{93}\)

In Finland, rape is punishable by terms of imprisonment. However, sentences of less than two years are usually suspended, unless “the seriousness of the offence, the guilt of the offender as manifested in the offence, or the criminal history of the offender” requires that a custodial sentence be served.\(^{94}\) If the offender commits further serious crimes while on probation – which lasts from one to three years – the sentence becomes custodial.

During a custodial prison sentence, sex offenders can participate in a programme designed to help prevent reoffending (the STOP-programme). Offenders are helped to recognize and change their attitudes and behaviours related to sexual crimes and to acknowledge the harm done to victims of sexual offences and are equipped with the skills needed for a life free from crime.\(^{95}\)

The programme is voluntary and only those offenders whose risk of re-offending is estimated to be medium-high or high are accepted on it. The offender must have at least eight months of a custodial sentence remaining to participate. Interviewed survivor “Emilia” expressed regret that in her case, the perpetrator received such a short custodial sentence that it was unlikely he would be able to participate in a programme:

**“I wish that the perpetrator could have participated in [the STOP-programme], because I feel that he is also entitled to help and support despite the fact that even during the**

\(^{91}\) Interviews with District Court judge Jukka Jaakkola, Helsinki, 3 October 2018, and District Court judge from Inland Finland, Tampere, 11 October 2018.

\(^{92}\) Interview with Appeals Court judge Timo Ojala, Helsinki, 18 September 2018.

\(^{93}\) Interview with Hilla Marin, Helsinki, 10 August 2018.

\(^{94}\) Chapter 6 Section 9 of the Criminal Code.

\(^{95}\) See [https://www.rikosseuraamus.fi/fi/index/taytantoopano/toiminnat/kuntouttavatoiminta-ohjelmatyo/uuasintarikollisuuteenvaihtavatoimintaohjelmat.html](https://www.rikosseuraamus.fi/fi/index/taytantoopano/toiminnat/kuntouttavatoiminta-ohjelmatyo/uuasintarikollisuuteenvaihtavatoimintaohjelmat.html) (in Finnish)
legal process he didn’t seem to really internalize what had happened – or perhaps for just that reason. I also believe that unfortunately I’m not his only victim, but I really hope that I’m the last. Of course, I’m not capable of evaluating the practices or services of prisons but based on the prejudices and assumptions that a victim has to correct repeatedly, I would imagine that the part of the perpetrator is no easier and that skills in meeting and supporting perpetrators of violence are needed especially in crimes of sexual violence. From this point of view the length of the sentence saddened me. On the other hand, the fairest way would be that all those convicted of these crimes were allowed to participate in this kind of a project or programme, regardless of where and how they are serving their sentence.96

In 2015-2017, 289 of 553 convictions of rape or multiple offences including rape (52%) received a suspended sentence.97 In all these cases, the criminal justice system does not offer a rehabilitative programme, such as the STOP-programme, to the perpetrators.

Amnesty International considers that such a programme should be available to all sexual offenders, regardless of the type of sentence, the time they have left to serve or the level of risk of re-offending.

---

96 Email exchange with “Emilia” following the interview, 1 October 2018.
97 Statistics Finland, Syttetyt, tuomitut ja rangaistukset, rangaistukset rikoksittain. Data from the court of first instance. The same perpetrator could be convicted for multiple related or unrelated offences at the same time. The most serious offence forms the basis of the sentencing. For each additional offence, around one-third of the sentence that the offence would receive if the conviction was for that offence alone is added to the sentence. The sentence is handed down as one combined sentence, usually without a breakdown of the impact of each offence on the sentence.
CHAPTER 3: BARRIERS TO JUSTICE: THE LEGAL PROCESS

Finland has an obligation under international human rights law to take all necessary measures to protect the rights and interests of victims of rape, including their special needs as witnesses, at all stages of investigation and legal proceedings. This includes access to adequate and timely information on available support services and legal measures.

Protecting survivors’ rights also involves certain measures to ensure proper collection and submission of evidence including training officials to conduct criminal investigations competently, developing protocols for timely collection and preservation of forensic evidence, and gathering medico-legal evidence in a context of therapeutic assistance to the victim. Legislation should also prohibit courts from drawing any adverse inference from a delay of any length between when the alleged violence occurred and when it was reported. The experiences of survivors in Finland show that the authorities are failing to adhere to these standards in a number of ways.

3.1 THE LEGAL PROCESS IN FINLAND

“[The trial is] pretty horrible. Partly related to the long duration of [these cases], so if it’s been for example one year since the act, or one year since the interview at the police, so now she needs to remember everything again, all the details again. And even though it’s not the intent, of course often the victim feels at the trial that she is being blamed. Because everyone there is digging up the details and even the prosecutor may ask questions that the victim feels are putting the blame on [her].”

Public Prosecutor Nina Keskinen describing rape survivors’ experiences in court

---


99 Istanbul Convention, Article 19.

100 CEDAW General Recommendation No. 33, General recommendation on women’s access to justice, (UN Doc CEDAW/C/GC/33) (2015), para. 51(i).


103 Interview with Public Prosecutor Nina Keskinen, Helsinki, 20 September 2018.
The legal process is normally instigated by the rape survivor, who reports the crime to the police. The crime may also be reported by someone else, for example hospital staff, a social worker, a family member, a friend or a witness. The police may also become aware of the crime while investigating another crime. The police must investigate and submit the case to the prosecutor for consideration if there is “reason to suspect” that a crime has been committed. This threshold is meant to be very low.

On the basis of the investigation file submitted by the police, the public prosecutor then assesses whether to prosecute and, if so, on what charges. The prosecutor can order the police to collect further evidence on specific matters. The prosecutor has a duty to prosecute if the suspected conduct is punishable according to law, “probable grounds” exist to support the guilt of the suspect and the crime has not expired according to the statute of limitations. The prosecutor must waive charges if these conditions are not met.

The decision of the police not to investigate and the decision of the prosecutor not to prosecute cannot be appealed. However, the victim can take the case to court. In this case, if the victim loses the case, she is responsible for paying her own and the accused’s legal expenses.

If the prosecutor decides to press charges, the case is heard by a district court. The prosecutor, the defendant and the survivor are all parties to the proceedings and may appear before the court, present claims and evidence and name witnesses. The victim can make a claim for compensation at the same hearing. Rape cases are usually decided by a panel of three judges. All judges take part in decisions on both guilt and sentencing. If the judges disagree about the verdict or the sentencing, the majority vote decides the case. The decisions of the court must be justified. A judge who disagrees with the majority may leave a dissenting opinion. The standard required for a conviction is that the evidence of guilt be “beyond reasonable doubt”.

All parties may appeal the judgment to a regional court of appeal. In the appeals court the case is usually decided by a panel of three judges. A judgment by a court of appeal may be appealed to the Supreme Court, subject to leave to appeal being granted.

3.2 **SURVIVORS’ EXPERIENCES OF THE LEGAL PROCESS**

“At the trial I thought, and said to my counsel, that if I had known what this would be like, I would never have reported the rape.”

“Tiina”

“Nothing can compensate for what I have lost: health is the most important thing.”

“Anna”, whose legal process lasted for over three years and went to appeal.

---


106 Chapter 2 Section 1 of the Code of Judicial Procedure.

107 Telephone interview with “Tiina”, 8 August 2018. (Name has been changed to respect the interviewee’s anonymity.)

108 Interview with “Anna”, Helsinki, 11 September 2018. (Name has been changed to respect the interviewee’s anonymity.)
The reality for rape survivors in Finland is that the legal process can take a significant toll on their wellbeing. Survivors interviewed by Amnesty International described the legal process as “burdensome”, “stressful”, “scary”, “stigmatizing” and “victim blaming”, regardless of the outcome of the case. Several survivors reported severe health consequences, including one survivor who had attempted suicide.\(^{109}\)

Hilla described the legal process as more traumatizing than the rape itself, while “Louise” said that the process left her feeling worse than before.\(^{110}\) Several survivors were doubtful as to whether they would have reported the rape if they had known what the legal process entailed. This psychological strain can become a significant barrier to access to justice, particularly for survivors who do not have access to adequate appropriate support and are unable to pursue the case.

“If you are a foreign sex worker, don’t report to the police. It will take your health, your nerves, your money, your belief in people, your whole life gets ruined.”
Interviewed survivor, who had her case tried in court\(^{111}\)

### 3.2.1 HEALTH CARE PROFESSIONALS

“When no one looks me in the eye and I’m just lying on the table and they’re plucking my pubic hairs – it’s so humiliating.”
Interviewed survivor\(^{112}\)

Professionals in the health sector are often the first port of call for rape survivors, but it is clear from some of those interviewed by Amnesty International that understanding and experience of how to respond to rape survivors is often lacking in health facilities.

For example, “Tiina” reported that the nurse and the doctor had started arguing about how to take forensic samples while she was lying on the examination table. The nurse had also said to her, “Don’t cry” and “Be more careful next time”, which she found hurtful.\(^{113}\)

“Laura” told Amnesty International that she wished that health care workers would have seen through her shock; although she was offered support, she downplayed her own shock and thus did not receive the help she needed. Later, when her health deteriorated significantly, finding help was difficult. She often encountered health care workers who were reluctant to treat her, as they did not feel they had the appropriate training and skills and had never encountered a victim of sexual violence before.\(^{114}\)

---

\(^{109}\) Details of the interviews are withheld to protect the interviewees’ identities.

\(^{110}\) Hilla’s process ended in the conviction of the perpetrator (interview with Hilla Marin, Helsinki, 10 August 2018); in “Louise”’ case, the police closed the investigation because they did not consider a crime to have taken place (interview with “Louise”, Helsinki, 2 October 2018).

\(^{111}\) Details of the interview are withheld to protect the interviewee’s identity.

\(^{112}\) Details of the interview are withheld to protect the interviewee’s privacy.

\(^{113}\) Telephone interview with “Tiina”, 8 August 2018.

\(^{114}\) Email exchange with “Laura” following the interview, 6 February 2019.
Amnesty International also heard about situations where doctors have been reluctant to treat victims of sexual violence. Sometimes this may be because of a fear of failure, the mental strain of treating a victim, or a reluctance to treat patients who may be intoxicated.115

Avoiding further violations of the victim’s sexual autonomy and re-traumatization is important in the legal process. Therefore, forensic samples should always be collected only with the victim’s consent.116 However, this can mean that victims must make decisions in a distressed state and without enough information about the importance of the evidence for the legal process.

For example, “Anna” described how the doctor asked her to decide on whether to take DNA samples, even though she was in shock. She thought the samples would not yield results as she had waited 1.5 days and had already showered. In reality, the samples could have yielded results, but the doctor did not encourage her to have them taken.117

3.2.2 THE POLICE

The EU Victims Directive (2012/29/EU) provides binding standards in relation to victims’ right to information, protection, support and access to justice. Article 1 of the Directive states that victims of crime should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner.118

How victims of rape are met at their first point of contact with public officials can have a big impact on whether they decide to continue with the legal process. The victim’s cooperation is crucial throughout the legal process. If a victim does not come to the police interview or refuses to talk about the rape at the interview, the police will close the case.119

Some survivors described positive encounters with the police in their interviews with Amnesty International. It was important to them that the police took them seriously, gave them time to answer questions, did not rush them, encouraged them to seek support and helped them with practical issues, such as taking them to the hospital. It was also important that the police did not say things that appeared to blame the victim, but rather reassured them that being raped is not their fault and that it was not the police’s aim to seek to blame the survivor. For example, Hilla described how, when asking about how much she had had to drink and what she had been wearing, the police explained that they did not seek to blame her and said that these things did not reduce the responsibility of the perpetrator:

115 Interview with a midwife from the Helsinki Sexual Assault Support Centre, 17 October 2018.
117 Interview with “Anna”, Helsinki, 11 September 2018.
119 This was a reason behind closing the case in 20 out of the 112 police decisions analysed by Amnesty International. Two victims told the police that they were unable to talk about the rape because the trauma was too fresh.
“From such small things was built the trust that I dared tell everything and also tell the things that could have turned against me in someone’s eyes [for example that I had offered the perpetrator a place to sleep].”

“Tiina”, who was raped by a stranger, also had a positive encounter with the police:

“The first time, when the police were really wonderful – the investigating police officer was really wonderful – she gave me all the papers, all the contact details of where to get help, and was concerned about me and was concerned about my partner... A very important thing was the police’s attitude, when they came to [the crime scene], they were so understanding and listened and believed and that has stayed with me very strongly... I don’t know how it would have gone if the police had had a worse attitude. I can’t stress that enough.”

However, several interviewees felt that the police had treated them with little respect and in ways that undermined their access to justice. In some cases, the police response reflected discriminatory stereotypes:

“[The worst thing about the process was] the police officer’s comment. It really stuck with me, it really did. ‘A Finnish man understands when you say no’. It was a very unfortunate comment... it was definitely a lack of experience. And I’m sure he meant well, but those words were just not on... I don’t think I would have been lectured on what Finnish men do if I was a Finn.”

“Louise”

“EMILIA’S” STORY

“Emilia” called the police from a hospital lobby, and was told to wait there. However, when the police officer arrived, she was told that “Emilia” had already left, so the officer also left. “Emilia” remained waiting in the lobby, approaching every police patrol that she saw arriving at the hospital, until finally one patrol helped her. “Emilia” told Amnesty International:

“Luckily there were three kind police officers who in that situation acted in a way that lifted the burden from me. They said, ‘Hey, there’s something strange in this, we will investigate, wait here, we will take care of this.’ And that felt really, really good. Even such a small thing, that someone says, ‘I will investigate and there has been a misunderstanding.’”

The patrol took “Emilia” to the police station, where she made contact with the first investigating police officer. “Emilia” apologized for and tried to explain the misunderstanding at the hospital, but the officer maintained that “Emilia” was responsible for the mistake and was clearly annoyed:

---

120 Interview with Hilla Marin, Helsinki, 10 August 2018.
121 Telephone interview with “Tiina”, 8 August 2018.
122 Interview with “Louise”, Helsinki, 2 October 2018.
123 Interview with “Emilia”, Helsinki, 28 September 2018.
“In my opinion that came across into the reporting. She was really pissed off in that situation and behaved inappropriately... She said that she could log the first of the acts as a ‘mild’ [rape] – she used this expression, [although] she said that one may no longer say this, but this was mild – and what was maybe the rudest was that she said that ‘of course men will try begging for sex, as a woman you should know [how to deal with that]’. And that, I think, is thoroughly wrong, no one should be subjected to such nullification, in that situation... She categorized [the event] at a point of the process where she shouldn’t have said anything value-laden.”

Women’s access to justice for rape depends on, among other things, the quality of police investigations. Under Article 49(2) of the Istanbul Convention, the authorities have a responsibility to ensure that investigations into violence against women, including rape, are carried out in an effective manner. The Explanatory Report to the Convention specifies that this comprises, for example: “establishing the relevant facts, interviewing all available witnesses, and conducting forensic examinations, based on a multi-disciplinary approach and using state-of-the-art criminal investigative methodology to ensure a comprehensive analysis of the case.”

However, some police investigations described to Amnesty International by interviewees fell short of these standards.

**“HELEN’S” STORY**

“Helen” told Amnesty International that she reported the rape to the police immediately. The police officer promised to call the bar where she and the perpetrator had met straight away. However, the investigation was only started three weeks later. By this time, the CCTV tape of that night had been recorded over and the evidence was lost. The officer also did not advise “Helen” to seek medical assistance or take her to a hospital and as a result potential DNA evidence was also lost.

The police officer interviewed her immediately, but did not wait for an interpreter – the interview was conducted in English, which was neither Helen nor the officers’ first language – and as a result the interview had to be repeated. “Helen” found it stressful having to answer the same questions again, as if the first interview had never happened. She said she wished the officer had apologized and asked her to confirm the content of the first interview, rather than repeating the process:

“He never admitted that it was his mistake... At one point I was more mad at this policeman than at the person who did it.”

Eventually the case was closed by the police due to “insufficient evidence”.

---

124 The officer was referring to the provision on coercion into sexual intercourse, known as “mild rape”, repealed in 2014. The provision was replaced by a new provision on “less serious” rape. See section on Categories of rape.

125 Istanbul Convention, Article 49(2).

126 Explanatory Report of the Istanbul Convention, para. 56.

127 Interview with “Helen”, Helsinki, 1 November 2018.
Survivors said that having to talk about their experience to many different people (health-care professionals, the police and the judges and attorneys in court) was particularly stressful.

> "Time after time you have to tell people what happened and whether his fingers were here and whether his fingers were there. And no one will say whether they believe you or not... I would have wanted this human interaction that someone would say that this is really awful, that everyone is not just stone-faced in that situation."

Hilla\(^{128}\)

Good practice can reduce this stress. The Helsinki Sexual Assault Support Centre provides an example of a good practice in this regard. If a survivor who arrives at the Support Centre wants to report to the police, the Support Centre waits for the police to arrive so that she can give her statement to the doctor and the police at the same time.\(^{129}\)

**“LAURA’S” STORY**\(^{130}\)

“Laura” described to Amnesty International how the police came to collect her for the interview at 8am on a Sunday morning, without warning. She had only had two hours’ sleep because she had been at the hospital until 5.30am and was still drunk from the previous night. She wondered whether the outcome of the process would have been different if she had slept enough as she may have described the events in different terms.

Her case was closed when the prosecutor considered the crime to constitute coercion into sexual intercourse and she had not demanded the punishment of the perpetrator.\(^{131}\) The police had not explained this to her:

> “For example they didn’t say much about it, when they asked me if I demanded punishment, about what that meant in practice. They stressed that this [case] will be investigated anyway, it will go under public prosecution in any case. They gave me the impression that it doesn’t matter what I say, that the case will be investigated and solved.”

In her shock, she had downplayed the rape: “Now afterwards it vexes me, that I should have talked differently in the police interviews, so the perpetrator would have been held accountable and would have got a conviction and so on.”

When she got the prosecutor’s decision to close her case, “Laura” said that at first she was relieved and immediately afterwards disappointed.

> “I realized that what I had said at the police interview had affected [the case’s interpretation as coercion into sexual intercourse]. It left me with a terrible fury and

\(^{128}\) Interview with Hilla Marin, Helsinki, 10 August 2018.

\(^{129}\) Interview with a doctor from the Helsinki Sexual Assault Support Centre, 31 October 2018.

\(^{130}\) Telephone interview with “Laura”, 25 September 2018.

\(^{131}\) Before 2014, the Criminal Code included a provision on “lesser degree” of rape, called coercion into sexual intercourse, which was not subject to public prosecution. Therefore, for the case to proceed, the victim had to demand punishment at the police interview or charges would not be pressed.
anger, whether the police interview went as it was supposed to. Or if the interview had been at noon that day [instead of early morning], whether I would have answered differently. If something had got me to say that I demand punishment, the case would have been completely different. This is what I mulled over and wondered, and I have blamed myself for it.”

Timely and thorough initial investigation is especially important in rape crimes, because the victim’s testimony is usually the key piece of evidence and physical evidence often decays quickly. The time elapsed between the crime itself and interviewing the victim is also considered to impact the reliability of the survivor’s testimony, as they are more likely to plug memory gaps with information received from other people.

“I know that at some police stations they don’t interview the victim because the case is dark [the identity of the perpetrator is unknown]. There will be big problems with access to justice then, if the suspect is later found out and there will be a six-month delay in interviewing the victim... The [victim’s] story won’t be nearly as credible, when she has processed it herself and maybe discussed it with others for six months.”
Interview with a police officer

Amnesty International considers it especially alarming that receiving more information or talking with a friend about rape crimes can in themselves be considered sufficient to reduce the survivor’s credibility. The myths surrounding rape and deeply entrenched gender stereotypes mean that victims frequently have trouble making sense of their experience at first and may require extra time and information to be able to identify their experience as a crime.

“The victim has reported the rape after receiving more information about rape crimes. Before the police report the victim and her friend have messaged about the event. These facts weaken the credibility of the victim’s testimony. It is possible that the victim has supplemented her memories with erroneous impressions.”
District court judgment

3.2.3 LEGAL COUNSEL

The victim of a sexual crime is entitled to legal representation and a support person paid for by the state at all stages of the process, from the police interview onwards. Indeed, the presence of legal counsel was identified as a factor improving the victim’s access to justice. Deciding on legal counsel is also a difficult decision and some survivors said they would have welcomed more practical help with finding one. One survivor described how she did not find the impetus to find an attorney until the date of the trial was fixed. She then had a little over a week in the

132 The importance of the early investigation was highlighted by interviewed police officers, prosecutors and judges.
133 Interview with a police officer, Helsinki, 23 October 2018.
134 Interview with a police officer, Helsinki, 23 October 2018.
middle of a holiday period to find a lawyer, which proved difficult. Moreover, the reaction of the legal counsel (“You are only now getting a lawyer!”) made her feel guilty about the delay.  

“Someone could be made to take care at an earlier stage [that the victim has legal counsel], to have one in good time before the trial. In the worst case scenario, it can be that the trial should start and only in that situation one is found... The counsel could have better prepared the victim for this situation.”

*District court judge Jukka Jaakkola*  

In an example of a more supportive approach, one of the police officers told Amnesty International that police have extracted a list of attorneys in criminal law who work in Helsinki from the website of the Finnish Bar Association and may offer to call the attorney chosen by the survivor on the survivor's behalf, if the victim wants them to. Hilla suggested that it would be helpful to survivors if a follow-up system were in place where someone would call to ask if the survivor had found an attorney and got support. The Helsinki Sexual Assault Support Centre (see below) follows up on survivors’ health and wellbeing for up to six months after their visit to the Centre. Such a system of follow-up for the legal side of the process would improve survivors’ access to justice.

### 3.2.4 PROSECUTORS AND THE COURTS

Some survivors described their dealings with prosecutors and the courts in positive terms. “Emilia” told Amnesty International how the prosecutor greeted her before the trial and explained what would happen in the hearing. In the trial, the prosecutor made a simple remark (“Just now you described pretty well which [facts] were your recollections and which [facts] you have inferred later...”) that gave “Emilia” confidence and made her feel that she had been heard:

“She didn't judge my testimony, didn't per se express an opinion, but still expressed it in a way that allowed me to feel a bit of safety. I think it was really meaningful, because I felt that my attorney disregarded this. This was a minimal detail, but it was really important to me.”

Survivors told Amnesty International that they wanted judges to behave in a neutral manner and set boundaries on what the defence could bring up so that questions would be limited to things that are relevant to the event.

135 Details of the interview are withheld at the request of the interviewee.
136 Interview with District Court Judge Jukka Jaakkola, Helsinki, 3 October 2018.
137 Interview with Hilla Marin, Helsinki, 10.8.2018.
138 Interviews with psychologist Pertti Hakkarainen (17 September 2018), a midwife (17 October 2018) and a doctor (31 October 2018) from the Helsinki Sexual Assault Support Centre.
139 Interview with “Emilia”, Helsinki, 28 September 2018.
140 According to Chapter 17 Section 48 of the Code of Judicial Procedure, judges have the power and responsibility to limit arguments and questions to what is relevant for the case. However, the judges interviewed said that the threshold for using this power to the accused’s detriment is dependent on the individual judge and can be rather high, as judges are careful to safeguard the accused’s ability to mount an effective defence.
“In the Appeals Court they asked me about my private life: ‘Are you in a relationship?’ What difference does it make if I’m in a relationship? The defence counsel had changed, he harassed me, and no one stopped him. He tried to confuse my mind by asking the same thing in different ways, talked quickly, tried to get me to make a mistake.”

“Anna”141

“[In the District Court] At some point the judge started [saying to] the perpetrator, ‘I understand that you have a tough background and you’re scared, and this is difficult for you.’ It was a horrible experience, the trial, I think. I didn’t expect such terrible manners from the defence counsel either... The Appeals Court was better...there [the chairing judge] was stern, but he was stern to the perpetrator too and that felt like a fairer situation. It was very scary and the man was very grim, but maybe he treated both parties more fairly.”

“Tiina”142

There were also examples among the judgments analysed where judges explicitly resisted rape myths or displayed a good understanding of victim psychology:

“The accused has admitted having sexual intercourse with the complainant who was in an unconscious state, as per the indictment. The attitude of the accused is illustrated by his statement in the hearing that the complainant did not in any way express that she was unwilling. This utterance means that a woman is in the accused's view always willing to have sex with him and that the opposite condition needs to be separately expressed.”

“The complainant’s testimony is also very typical for a person subjected to violence and sexual violence... The complainant told [the court] that after the first phase of violence she did not understand what had happened. She had thought that as the damage had already been done, nothing matters anymore. This utterance suggests in the court’s opinion that the complainant was shocked, resigned and paralyzed from the violence directed at her and was for this reason later unable to defend herself or to formulate or express her will”.

“The complainant’s behaviour, that she has remained in touch with the accused after the act, has been invoked as a factor reducing the credibility of the complainant's testimony. On this point the district court notes that specific victim behaviour cannot be expected from the victim of a rape. It has been shown that the relationship between the parties had finished and recommenced several times even before the event now under consideration. Also the testimony of the witness has shown that the complainant had thought that the accused had changed. The complainant has also openly stated that they were friends after the event [rape]. In light of these factors the fact that the parties have been in touch with each other after the event does not reduce the credibility of the complainant’s testimony in the view of the court.”

141 Interview with “Anna”, Helsinki, 11 September 2018.
142 Telephone interview with “Tiina”, 8 August 2018.
However, there were many examples of very different experiences. Several survivors described how the statements of defence counsel or judges were victim-blaming:

“In the District Court I was just asked all the time what I did wrong, why I didn’t prevent the rape. How much I had drunk, why I didn’t ask for help, why I didn’t get a taxi. No one asked the perpetrator why he started following [me] or why he thought it was ok to start leading someone around town or stop them from getting into a taxi or anything. And in court they [the defence] very largely tried to brand me as a whore and wanton and everything.”

“Tiina”

Practical measures to ensure that the victim does not have to meet the accused are usually taken care of in court. However, there is room for improvement. For example, one survivor said that the separate waiting area she was directed to had a glass wall which allowed the perpetrator to see her.

A victim of rape has the right to not appear in court under certain circumstances. The police interview can be videoed, and the video watched at the trial. However, Public Prosecutor Nina Keskinen told Amnesty International that there are problems with this:

“For example, for the claims for compensation, the police don’t know how to ask the questions that the victim’s counsel would ask in the trial in relation to compensation… It’s more likely that a case will be dismissed [the perpetrator acquitted] and the compensation is smaller if it’s a video [rather than the victim being present at the trial].”

A police officer interviewed by Amnesty International described how the perpetrator can clearly see the victim’s face in the video, which may increase the risk of acts of revenge against the victim in cases where the perpetrator and the victim were previously unknown to each other. In contrast, if the victim choses to appear in court, she can request a screen that would block the accused’s view. Similar measures should be taken to protect victim’s identity when the victim testifies through a video or videoconference.

---

143 Telephone interview with “Tiina”, 8 August 2018.
144 Such measures can include a separate waiting area, a screen in court shielding the accused’s view of the victim or testifying without the accused being present in the room.
145 Details of the interview are withheld at the request of the interviewee.
146 According to Chapter 17, Section 24, para. 3, an adult victim of rape and certain other sexual crimes does not need to appear in court if hearing the victim in court would “compromise her health or cause other similar significant harm”. In these cases, a video or other recording can be used if the accused has had an appropriate opportunity to ask the victim questions.
147 This issue was also brought up by District Court Judge Jukka Jaakkola.
148 Interview with police officer, Helsinki, 23 October 2018.
149 See Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS 210, para. 292, https://rm.coe.int/16800d383a
Both Public Prosecutor Nina Keskinen\textsuperscript{150} and Appeals Court Judge Timo Ojala considered that in the appeals court a recording from the district court should be used rather than requiring the survivor to appear in person. As Timo Ojala explained:

“If the victims have the energy to persevere until the district court, after that at the latest they try to get on with their lives. There’s active forgetting of things, don’t want to keep it in mind, but in one way or another try to get a hold of life again. And often then when we hear them in the Appeals court, it’s stressful and nasty to remember the event again when it has maybe already been suppressed a bit and then the statement can be quite brief and then we have to compare that with the earlier statements.”\textsuperscript{151}

3.3 MYTHS ABOUT RAPE AND GENDER STEREOTYPES

International human rights law and standards require Finland to counter and eradicate gender stereotypes and discriminatory attitudes towards women as a means of preventing gender-based violence. However, stereotypes and myths about rape and victims of rape continue to affect legal proceedings, despite Supreme Court precedents on this.

In 2013, the Supreme Court stated that a long delay in reporting a sexual crime to the police is not uncommon as the victim may try to erase the experience and the shame, anxiety and fear associated with it from their mind. The Court also said that no particular behaviour should be expected from the victim of a sexual crime. In addition, the Court stated that in assessing the victim’s credibility, the fact that the victim has told others about the events little by little and that people close to them did not notice changes in the victim’s behaviour after the event is irrelevant.\textsuperscript{152} However, the experiences of the people interviewed by Amnesty International and the official documentation analysed indicate that prosecutors and judges have yet to fully internalize these principles.

“What the defence counsels ask, for example, is that if the victim is really suffering, why did she not seek help immediately. Then when I tell them information about what are typical ways of acting in a trauma, it seems to have an effect... Sometimes they may ask also, why a person doesn’t resist in the situation itself. Then [I can] explain the psychological factors behind it. It’s not a sign of consent...”
Psychologist Pertti Hakkarainen from the Sexual Assault Support Centre\textsuperscript{153}

In one case, the prosecutor considered that the perpetrator had not acted with the required intent, by referring to the myth that women say ‘no’ when they mean ‘yes’ – a myth that had been internalised by the victim herself:

“The victim herself says that the suspect apparently did not entirely understand that she did not want sex. The suspect has perhaps thought her resistance was some sort of stupid foreplay. The victim has at some point asked him to at least put a condom

\textsuperscript{150} Interview with Public Prosecutor Nina Keskinen, Helsinki, 20 September 2018.
\textsuperscript{151} Interview with Appeals Court Judge Timo Ojala, Helsinki, 18 September 2018.
\textsuperscript{152} Supreme Court precedents KKO:2013:96 and KKO:2013:97.
\textsuperscript{153} Interview with psychologist Pertti Hakkarainen from the Helsinki Sexual Assault Support Centre, 17 September 2018.
While expert witnesses, such as psychologists, can be called to court, this is dependent on the prosecutor, the victim or the defendant naming the expert as a witness. In the majority of judgments analysed by Amnesty International, there was no indication that an expert witness had been heard (although written medical statements were frequently presented).

“Judges don't understand shock. For example, they asked me why I just waited at the door until the perpetrator left. There should be a psychologist or a psychotherapist at the trial who would explain to the judges about trauma. For example, when I was asked why I didn't immediately go to the police or a doctor. I was in shock, I don’t know, why I didn't do it.”

“Anna”154

Reporting the rape immediately afterwards to the police, security personnel or health-care professionals clearly increased the chances of securing a conviction in the judgments analysed by Amnesty International. Three-quarters of cases where the victim reported immediately ended with a conviction (25 out of 33 cases). By contrast, less than half the cases where the victim reported between one and seven days after the event ended with a conviction (8 out of 17). These very different outcomes suggest the enduring power of the myth that a “real” victim reports immediately.

Internalized rape myths can lead victims to question whether their experience constituted rape and to struggle to name the experience as such. Not naming the experience as rape can even be used as evidence against the victim in the legal process. In one prosecutor’s decision to close a case, the victim had described the experience to a friend as “shagging” or as “cheating on” her partner immediately after the rape. The prosecutor considered this to indicate that the victim had had consensual intercourse with the perpetrators and had regrets about it, which contributed to the prosecutor’s decision not to press charges.

In some decisions by both prosecutors and courts, the credibility of the victim was contested based on what the judge or prosecutor considered to be the actions of a “reasonable” person. For example, the following circumstances were cited as reducing the victim’s credibility:

- The victim did not immediately report to the police or seek medical help;
- The intercourse had taken place in a small apartment, where other people had been present but the victim had not tried to get help from them or told them about the rape;
- The victim had kissed the accused immediately prior to intercourse;
- The victim had shared a bed with the accused after intercourse, or had otherwise allowed the accused to stay the night with her;
- The victim had had consensual sex with the accused after the alleged rape (a common occurrence when the victim and the perpetrator are in an intimate relationship);
- The victim had voluntarily spent time with the accused after intercourse;
- The victim had not sent messages or tried to call her friends or parents to get help;

---

154 Interview with “Anna”, Helsinki, 11 September 2018.
155 Interviews with survivors and a police officer, Helsinki, 23 October 2018, and victims’ accounts as reported in police or prosecutors’ decisions or judgments.
• The victim only told her friends about the rape little by little or did not tell them all the details.

At least one of these elements was cited in 16 out of the 88 judgments and 22 out of the 124 prosecutors’ decisions.

“With the victim and the accused in the three-room apartment have also been the accused's parents. The victim could have sought support from them if she had felt her safety to be at risk.”
District court judgment

“The victim's own statement that she went back to the bed next to the suspect to talk and sleep does not support the idea that she had just been raped by the suspect.”
Prosecutor's decision to close a case

“Even if in the evening and during the night the victim had been so intoxicated that this prevented her from acting rationally, it is clear that in the morning after she had woken up such a barrier no longer existed.”
District court judgment in a case concerning a girl under the age of 18

In some cases, judges misinterpreted signs of trauma. For example, one victim had sent messages to her friend saying that she wondered if the police would think she was responsible for the rape because she had offered the perpetrator a place to stay the night. The court interpreted this as the victim displaying regret about consenting to intercourse and failed to understand that self-blame is not an indication of consent.

Invoking the victim's prior sexual experiences, including experiences of sexual violence, is generally prohibited by international human rights standards. However, judgments analysed by Amnesty International indicate that defence lawyers sometime do refer to the victim’s prior experiences of sexual encounters or sexual violence to undermine their credibility. Public Prosecutor Nina Keskinen confirmed this: “They say that [the victim] has already earlier told a story like this, or they highlight that who will believe that a person who was raped last year again ends up in the same situation.”

Some judges expressed disbelief if the rape was not short, if several sexual positions were used during the rape or if there were other people in the same space who did not notice anything amiss.

“The District Court adds that the victim has said that the situation has lasted for about an hour and the parties have undisputedly been in several different positions during the intercourse, which facts must be considered peculiar if the event had been involuntary.”
District court judgment

---

156 Article 54 of the Istanbul Convention.
One district court judgment records that the accused admitted having had intercourse with the victim while she was asleep and that the victim had said during the day that she did not want sex. According to the perpetrator, they had talked about trying “something” new. Even though intercourse with a sleeping person clearly fulfills the elements of rape under the current definition in Finnish law, the court did not convict the accused, saying:

“The victim and the accused have been dating. They have had intercourse many times before the situation described in the indictment. In this kind of relationship doing a sexual act to a sleeping person is not to be evaluated in the same way as between strangers.”

Such statements highlight the profound hold of myths about rape that continue to prevail in the criminal justice system and in society at large.
CHAPTER 4: BARRIERS TO JUSTICE: LACK OF SPECIALIST TRAINING, SUPPORT AND RESOURCES

International human rights law and standards require Finland to ensure that the relevant law enforcement agencies respond to all forms of violence promptly and appropriately\(^ {158}\) and engage adequately in prevention and protection, including through the employment of preventive operational measures and the collection of evidence.\(^ {159}\) Investigations and judicial proceedings must be carried out without undue delay.\(^ {160}\) Professionals must receive appropriate training on the prevention and detection of violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.\(^ {161}\)

International law and standards require Finland to provide comprehensive and integrated support services to assist survivors of violence.\(^ {162}\) These should include, among other things, referrals to other service providers accessible around the clock and free of cost; advocacy and counselling providing proactive support and crisis intervention, including legal advice and support, as well as longer-term support. Services should also include pregnancy testing, emergency contraception, safe and legal abortion services, treatment for sexually transmitted diseases, treatment for injuries, post-exposure prophylaxis and psycho-social counselling at the expense of the state.\(^ {163}\) Specialized services should be available for particular groups of women such as for example migrants or survivors of trafficking.\(^ {164}\) Access to such services should not be conditional on the survivor reporting the violation to the police.\(^ {165}\)

The provision of such comprehensive specialist services in Finland is limited and the implementation of support services varies considerably across the country. This has a considerable impact both on survivors’ access to justice and immediate support as well as consequences for longer-term healing.

---

\(^ {158}\) UN Handbook for Legislation on Violence against Women (2012), pp. 34-36. See also Istanbul Convention, Article 50(1).

\(^ {159}\) Istanbul Convention, Article 50(2), and CEDAW General Recommendation No. 35, para. 38 (b).

\(^ {160}\) Istanbul Convention, Article 49(1); the Constitution of Finland, section 21, para. 1: Everyone has the right to have their case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to their rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

\(^ {161}\) Istanbul Convention, Article 15


4.1 LENGTHY PROCEEDINGS

“The process is psychologically very oppressive. So why does it have to be so long?”
Hilla

Survivors also highlighted how the length of time it takes to process reports to the courts also delays the psychological recovery of the victim. All interviewed professionals identified the length of the process as a problem because complicates the assessment of evidence that is largely based on the testimonies of the parties or witnesses.

“The waiting. I was all the time in the same nervous state, the event was close, I couldn’t get away from it. I had to keep the event in mind for several years for the trial.”

It takes the police, on average, 6.4 months to process reports of rape. Where cases are passed to the prosecutor, that stage takes, on average, a further 4.2 months. Cases that reach the District Court can then take around six months to conclude. After this, there is the possibility of an appeal to the Appeals Court and perhaps further, to the Supreme Court. However, the length of proceedings varies across the country and from case to case.

The prosecutors and judges interviewed by Amnesty International stated that six months to a year was a reasonable length of time for cases to take from the moment they are reported to the police to the district court judgment.

The police and the judicial system have operated under reduced budgets in recent years. The number of police has reduced from almost 7,900 in 2010 to 7,200 in 2017. Some police departments and prosecutors’ offices have made agreements on how to limit the number of cases being investigated and sent to the prosecutor. Also the judicial system has seen funding “shaved” year on year. The limited resources of the judicial system have been criticized by, among others, the Minister of Justice, Antti Häkkänen; the chair of the parliamentary committee on constitutional issues, Annika Lapintie; and former member of parliament and Minister of Justice, Tuija Brax. While sexual crimes are always considered serious crimes, the pressure

---

166 Interview with Hilla Marin, Helsinki, 10 August 2018.
167 Interview with “Anna”, Helsinki, 11 September 2018.
168 Statistics from the National Police Board, 2017, which include all forms of rape and attempted rape.
169 Statistics from the Office of the Prosecutor General, 2017. The data does not include aggravated rape.
170 Based on statistics received from the District Courts of Helsinki, Pirkanmaa, Pohjanmaa and Pohjois-Savo.
173 The chief of police at the Helsinki Police Department Tomi Vuori also wrote about the issue in the police blog, 31 December 2018, https://blogi.poliisi.fi/priorisointi-on-vastuunkuntoa/
on the resources of the police, prosecutors and courts threatens the effective and timely investigation, prosecution and handling of all types of cases.

4.2 SUPPORT FOR SURVIVORS

“The victim of a crime can aid the investigation the best when they are feeling as well as possible.”
Psychologist Pertti Hakkarainen, Helsinki Sexual Assault Support Centre

Currently there is only one Sexual Assault Support Centre in Finland, located at the Women’s Hospital in the capital, Helsinki; this falls far short of the 13 recommended by the Council of Europe. Similar centres are planned in Turku, Tampere, Kuopio and Oulu, but sufficient funding for these has not been forthcoming to date. In the meantime, forensic samples are gathered elsewhere in the country in generalist health centres or hospitals. While the staff at the Helsinki Support Centre receive systematic training, the situation in the rest of the country varies.

The Helsinki Support Centre serves all people over the age of 16 who have experienced sexual violence in the previous month, regardless of sex or gender. People whose experiences of sexual violence are related to incidents further in the past are directed to other service providers, such as NGOs or other health-care units as the Centre lacks the resources to address the needs of these survivors. Amnesty International considers that all victims, regardless of when their experience of sexual violence took place, should have access to comprehensive support services and that adequate resources should be allocated to enable the Helsinki Support Centre and similar centres in other parts of the country to provide them.

The aim of the Sexual Assault Support Centre is to provide a comprehensive service: forensic samples, short-term support and a plan for long-term support. Reporting to the police is encouraged, but not required. The Centre is staffed by midwives and doctors, and appointments with a psychologist, a pastor and a social worker are also possible.

One practical issue is the storage space for samples. The Helsinki Support Centre keeps forensic samples for at least a year and, if the survivor wishes, for a maximum of 10 years. This longer period is consistent with the current 10-year statute of limitations for bringing rape charges, but not with the statute of limitations for aggravated rape, which is currently set at 20 years. Before destroying the samples at the end of a year, the Centre attempts to contact the survivor to ask them again if they want their samples kept for longer. It is important that the ability

---

174 Interview with psychologist Pertti Hakkarainen from the Helsinki Sexual Assault Support Centre, 17 September 2018.
176 Interviews with psychologist Pertti Hakkarainen (17 September 2018), a midwife (17 October 2018) and a doctor (31 October 2018) from the Helsinki Sexual Assault Support Centre.
177 Email exchange with Pertti Hakkarainen, psychologist from the Helsinki Sexual Assault Support Centre, 17 October 2018.
179 Interview with a doctor from the Helsinki Sexual Assault Support Centre, 31 October 2018.
to press charges is not thwarted by the destruction of physical evidence which could undermine access to justice at a later date. For example, in one case closed by the police, the police had informed the victim that if she did not come to the police interview, the physical evidence gathered would be destroyed.180

In general, the legal system expects victims of rape to display a high level of agency in ensuring their rights and does not take into account how a traumatic experience can reduce a person’s ability to process information, make decisions or take action.181 For example, some interviewed survivors said they felt overwhelmed at the prospect of approaching support services themselves. Lack of facilities and resources for services means that getting support can be extremely difficult. For example, one survivor described how she was only able to access support services after she attempted suicide.182

Nevertheless, examples emerged of practices that took into account the fact that survivors suffering from trauma might need help to access support.

“*The work of the whole centre is based on an understanding that a person who is in a traumatized state is not at their best for seeking help for themselves, from the internet for example.*”

Psychologist Pertti Hakkarainen, Helsinki Sexual Assault Support Centre183

Amnesty International was told that some police officers and the Helsinki Sexual Assault Support Centre ask the victim for permission to give their contact details to a support organization, rather than the victim having to approach the organization themselves. This was viewed as a positive model by several interviewees.184

Staff at the Helsinki Sexual Assault Support Centre told Amnesty International that they considered specialization improved the care they provide. A midwife described how experience and routine in taking forensic samples improves the ability to care for the patient at the same time and reduces the fear of making a mistake.185

Interviews with the Sexual Assault Support Centre staff underscored that the strength of the Centre lies in the comprehensive support it can provide for survivors of sexual violence and its close cooperation with different actors, such as the police, the forensic laboratory and NGOs.

Reform of the provision of social services and health-care services186 has been planned by several governments. However, the current proposal for reform pays insufficient attention to its potential impacts on women who have experienced violence. According to a study conducted in 2016 by Amnesty International, only 15% of key public servants and municipal government officials were aware of the challenges presented by the reform for the prevention of violence

180 Police decision to close the case analysed by Amnesty International.
181 Interviews with psychologist Pertti Hakkarainen from the Helsinki Sexual Assault Support Centre, 17 September 2018, and survivors.
182 Details of the interview are withheld to protect the interviewee’s privacy.
183 Interview with psychologist Pertti Hakkarainen from the Helsinki Sexual Assault Support Centre, 17 September 2018.
184 Although “Helen” felt that this model did not suit her, as she preferred to choose the place and time to contact a support organization.
185 Interviews with a midwife from the Helsinki Sexual Assault Support Centre, 17 October 2018.
186 For information on the ongoing health, social services and regional government reform, see http://alueuudistus.fi/en
against women and for victim support services. These challenges include, for example, ensuring that victims of sexual violence receive integrated and holistic support services.

4.3 SPECIALIZED TRAINING FOR THE POLICE, PROSECUTORS AND JUDGES

“The police officer] was shaking, he was uncomfortable hearing about [the rape]… They need to get all the police officers, especially men, into training on how to communicate with victims of rape.”

“Helen”

Training is crucial to give professionals the confidence and expertise to meet victims, ensure that the collection and preservation of evidence is done correctly and reduce false perceptions about rape.

Police, prosecutors and judges in Finland are generalists and as such each of them is expected to be able to handle any type of crime. However, the police, prosecutors and judges interviewed by Amnesty International considered that specialization increases the quality of the investigation and legal proceedings regarding sexual offences as staff gain more experience in addressing these crimes.

Police complete a three-year degree at the Police University College, including a module on violent crimes (including sexual violence) as well as courses on victim psychology, victims' rights and interviewing victims. After the completion of this degree, police can complete a two-week specialized course focusing on sexual crimes and children. One police officer interviewed said that the course was of high quality, but that two weeks was not enough time to cover all the necessary aspects properly. This training is not compulsory, even for police who handle sexual crimes. To their knowledge, currently only the Helsinki Police Department has a specialist sexual crimes unit.

“Especially at smaller police stations and departments it can happen that someone ends up investigating sexual crimes because they are a woman, because it is thought that somehow weirdly a woman can naturally manage it even without training.”

Interviewed police officer

The level of specialization in dealing with sexual crimes among prosecutors varies across the country. In some regional prosecutor’s offices, individual prosecutors specialize in sexual crimes, after a time working on other types of crimes. The Office of the Prosecutor General organizes a three-day training on domestic violence and sexual crimes against adults for prosecutors handling these cases. The training is given mostly by specialized prosecutors, with

187 Published in January 2017. The study surveyed senior social workers and chairpersons of municipal councils. 118 responses to an electronic survey were received from 88 municipalities (out of a total of 311). In addition, 15 in-depth interviews were conducted in five municipalities from around the country. Available in Finnish at https://frantic.s3.amazonaws.com/amnesty-fi/2017/01/Amnestyn-kuntaselvitys-naisiin-kohdistuvasta-v%C3%A4kivallasta.pdf

188 Interview with “Helen”, Helsinki, 1 November 2018.

189 Interview with a police officer, Helsinki, 23 October 2018.

190 Interview with a police officer, Helsinki, 23 October 2018.

191 They continue working on other types of crimes as well.
two one-hour sessions from NGOs on the victim’s perspective: how to address the survivor sensitively, on taking the victim’s trauma into account in the legal process and psychological aspects of the victim’s behaviour at the time of the crime.\textsuperscript{192}

The training is practice-oriented and was found useful by a prosecutor and a judge interviewed by Amnesty International. However, the training is not compulsory and not available regularly enough. Public Prosecutor Nina Keskinen said: “I myself handled these cases [sexual crimes] for about two years before I got to go to the training, so the training doesn’t come early enough. They should be more frequent, so if a new prosecutor starts in January, they would get the training within, say, the first half a year.”\textsuperscript{193}

The Judicial Training Board, the courts and the Ministry of Justice are jointly responsible for the training of judges.\textsuperscript{194} Judges do not have their own specialized course and the training aimed at prosecutors does not deal with all the issues relevant to a judge’s work, even when a judge is able to access the training.\textsuperscript{195}

Outside of structured training, specialization takes place mainly through a peer-support system, where police officers, prosecutors or judges can consult more experienced colleagues.\textsuperscript{196}

Specialized training should be available to all police, prosecutors and judges who handle cases of sexual violence, everywhere in the country. There should be structures ensuring that professionals can get advice in dealing with cases of sexual violence.

Specialization should be accompanied by the mainstreaming of skills in handling cases of sexual violence, especially in areas with low population densities, in order to ensure that specialization does not result in victims of sexual violence having to travel long distances to access effective services. For example, a victim of rape may refuse or be unable to travel two hours to the nearest hospital where forensic samples can be taken by a trained professional.\textsuperscript{197}

All public officials who may encounter rape victims should have a basic understanding of trauma and their role in supporting the victim. This includes lawyers in public legal aid offices and social workers as well as police patrols (regardless of their area of focus), health-care professionals, judges and prosecutors. Training is especially important for patrol officers, who are usually the ones who investigate the crime scene rather than the specialized investigating police officer. One idea put forward by a police officer interviewed by Amnesty International was making available to police patrol officers succinct and memorable factsheets on sexual crimes that focus on how to meet a victim of sexual violence, what actions should be taken first and what the priorities are in investigating sexual crimes.

\textsuperscript{192} Course schedule sent to Amnesty International by an interviewed prosecutor.
\textsuperscript{193} Interview with Public Prosecutor Nina Keskinen, Helsinki, 20 September 2018.
\textsuperscript{195} Interview with a district court judge, Central Finland, 11 October 2018.
\textsuperscript{196} Interviews with police officers, public prosecutors and judges.
\textsuperscript{197} Interview with public prosecutor, Helsinki, 31 October 2018.
RECOMMENDATIONS

To the Finnish government and parliament:
1. Fully revise the legal definitions of rape and other sexual crimes so that the central aspect of the crime is the lack of consent assessed in the context of the surrounding circumstances, in line with international human rights law and standards. Particular attention should be paid to accommodating coercive circumstances that would negate the victim’s consent. The provision on sexual abuse should be repealed and acts, which constitute rape according to the definition in international human rights law should be incorporated into the definition of rape in the national law to ensure that it is brought into line with international standards.
2. Revise the provision on sexual intercourse to ensure that an apparently gender-neutral provision does not, in practice, afford different levels of protection of sexual autonomy based on gender.
3. Revise the appropriate legislation or guidance to ensure that the close relationship between the victim and the perpetrator, the abuse of a position of power and targeting a victim made vulnerable by particular circumstances are considered aggravating factors in sexual crimes, in line with Article 46 in the Istanbul Convention.
4. Ensure sufficient resources and ongoing capacity building for the police, the prosecution service and the courts to deal with rape cases sensitively, efficiently and without undue delay.
5. Ensure sufficient resources for the Helsinki Sexual Assault Support Centre and the other planned support centres to be able to provide comprehensive care and assistance to all victims of sexual violence regardless of when the violence occurred. Bring the number of Sexual Assault Support Centres to the level recommended by the Council of Europe (1 centre per 200,000 women).
6. Ensure the specific needs of victims of sexual violence, including those related to collecting forensic samples, are taken into account in the planned reform of health services and regional government, in line with the standards set out in the World Health Organization Guidelines for medico-legal care for victims of sexual violence.
7. Ensure that treatment and rehabilitation programmes are available to all sexual offenders, regardless of the type of sentence, the time they have left to serve or the level of risk of re-offending.

To the National Police Board and the Police University College:
8. Provide appropriate training that is available regularly and mandatory to all public officials who come into contact with victims of sexual violence in their work. Such training should include, among other things, training on the effects of trauma on victims of sexual violence and the sensitive handling of complaints and effective interviewing victims of sexual violence. Such training should also address and deconstruct harmful stereotypes and myths around rape and rape victims and raise awareness of how such myths and stereotypes may negatively influence the work of the police and obstruct survivors’ access to justice.
9. Introduce mechanisms to ensure that victims have effective access to legal representation from the early stages of the process and that the responsibility for finding legal representation is not placed solely on the victim.
To the Office of the Prosecutor General:
10. Ensure that specialized training in sexual crimes is made mandatory for prosecutors who handle sexual crimes. Ensure that such training is available regularly and also addresses and deconstructs harmful stereotypes and myths around rape and rape victims and raises awareness of how such myths and stereotypes may negatively influence the work of the prosecution and obstruct survivors' access to justice.

To the Judicial Training Board, the Ministry of Justice and the courts:
11. Introduce mandatory specialized training in sexual crimes for judges and lay judges who handle sexual crimes. Ensure that such training is available regularly and also addresses and deconstructs harmful stereotypes and myths around rape and rape victims and raises awareness of how such myths and stereotypes may negatively influence the work of the prosecution and obstruct survivors' access to justice.

To the Finnish Bar Association and the Association of Finnish Lawyers:
12. Make available regular training on sexual crimes for legal counsel, especially focusing on the victim in the legal process; victim's rights and needs, including the experiences of trauma and its impact on the victims as complainants and witnesses; myths and stereotypes about rape and rape victims and their impact on legal process and survivors' access to justice; and measures to avoid re-traumatization.