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Summary of the doctoral dissertation
entitled Marital Rape and in informal relationships

written under the supervision of late prof. dr hab. Jarosław Warylewski and dr hab. Wojciech Zalewski, prof. UG.

The doctoral dissertation is a scientific study of the issue of marital rape and in informal relationships, developed on the basis of the theoretical and dogmatic method. It presents the problem of applying art. 197 of the Penal Code to marital rape and in informal relationships, especially taking into account that this crime has not been included as a qualified type of rape crime indicated in art. 197 of the Penal Code. The aim was to prove whether the issue of rape is regulated in the Polish legal order in a sufficient way to also penalize the perpetrators of this act in marriage and in informal relationships.

The doctoral dissertation presents the issue of the crime of rape in its general approach and also in marital rape and in informal relationships. It shows how it has been shaped over the years, the penalization of this act in the Polish legal system and its regulation in the sources of legislation of other countries, as well as against the background of international law. It has been shown whether the existing obstacles constitute such a difficulty that the provision of art. 197 of the Penal Code can't cope. For the purpose to discuss the above issue was to raise social awareness of its existence, as well as to popularize the criminalization of the crime of rape, especially in marriage and in informal relationships. All considerations are based on the analysis of the wording of the Penal Code, taking into account its amendment and all the achievements of the judiciary and doctrine, as well as enriched with the author's empirical observations.

The research hypothesis for this issue was to start from the point indicating the popularity of the phenomenon of marital rape and in informal relationships and to show the adequacy of art. 197 of the Penal Code to the discussed topic.

The dissertation contains mainly general information on the very concept of rape, and then marital rape and rape in informal relationships. This was necessary for a proper and thorough assessment of the subject under discussion. Then Polish law was analyzed in terms of the adequacy of the provisions to the discussed issue. It was also verified how and whether the crime of marital rape and in civil partnerships was included in the law of other countries and whether it was referred to in international law. In my doctoral thesis the problem of sexual freedom of spouses and partners was also examined. In addition to the above, there was a need to overthrow the cultivated stereotype of men as the only perpetrators of this crime and women as its only victims.

The doctoral dissertation consists of six theoretical and dogmatic chapters. The first chapter, which is a prelude to the considerations contained in the dissertation, presents the phenomenon of rape in its general concept, which was then expanded to include a description of marital rape and in informal relationships. In addition, this chapter contains an explanation of terms that run throughout the dissertation, and their clarification was necessary for a full understanding of the topic. Such issues include rape, violation, prostitution, sexual intercourse and sexual act. It was also explained what post-traumatic stress is and what are its causes and consequences, and which is also not without significance for the legal and criminal assessment of the act under art. 197 of the Penal Code. At the very end of the chapter included additional information about institutions and organizations providing assistance to victims of the crime of rape in general. It was necessary to extend the chapter with the above issue due to the limited access of victims to the indicated data and as part of supplementing the knowledge of entities acting on behalf of victims about the existence and capabilities of other entities. Thus it allowed to disseminate information on the possibility of receiving assistance by each victim of the crime of rape, including victims of marital rape and in informal relationships.

The second chapter is devoted to the issue of marital rape and in informal relationships in Polish law. Based on the national penal norms, the basic types of the crime of rape and their relation to rape in marriage and informal relationships are described. Moreover, in the above scope, were discussed the dimension of the punishment for committing it, specific problems of convergence of regulations and concurrence of crimes, as well as the specificity of prosecuting perpetrators who are spouses and partners. This chapter is dogmatic in nature and presents all the above-mentioned issues in a commentary approach.

The third chapter extensively discusses the issues of Polish substantive criminal law, related to the problem of sexual freedom of spouses and partners. First of all, this chapter presents the premises qualifying an act as a crime of rape. Indicated methods of leading the victim, who is in a marital or partner relationship, to involuntary sexual intercourse with the use of violence, unlawful threat or deceit, with the additional extension of the issue of other sexual activity. Also in this chapter, space is devoted to discussing the qualified types of rape, which may also occur in the case of marital rape and in informal relationships, i.e. rape in concert with another person or rape with particular cruelty, as well as the connotation of marital rape and in informal relationships with pedophilia or incest rape. Nearly half of the chapter was devoted to showing the link between sexual violence and partners addiction to alcohol and other substances, and other pathologies such as physical and psychological abuse. In addition, the question was answered whether the financial situation in the victim's family is also important for the occurrence of rape in marriage and informal relationships.

The fourth chapter analyzes the subjective side of the crime of rape, discussing the stereotypes that are associated with typing the victim and the perpetrator of the crime of rape, including rape in marriage and informal relationships. It had to prove the reality of the statement that gender is indeed a factor in assigning the role of the perpetrator or the victim. For this purpose were discussed not only the profiles of perpetrators and victims of the crime of rape, which were created on the basis of the analysis of collected statistical data and empirical experience. In addition, this chapter contains a description of the feminist theory on marital rape and in informal relationships, which directly shows the relationship between gender and the subjective role of the crime of rape. Feminist theory had an undoubted influence on the development of the prosecution of the above-mentioned crimes in the domestic and foreign legal system, as well as contributed to the departure from the stereotypical perception of men as perpetrators and women as victims of the crime of rape. It was impossible to avoid analyzing this very important issue.

The extensive fifth chapter, which is of a comparative law nature, contains a discussion of marital rape and in informal relationships in the law of selected countries and in international law. Due to the variety of legal solutions among countries that are in direct contact with each other, this chapter has been divided into parts, which separately present the regulations contained in the law of countries located on specific continents, divided into European, Asian, African, North American, South American and Australian countries. In each of the groups, several examples of countries that differ in their approach to penalizing the crime in question are indicated, as well as those that share some common features. This chapter ends with

the presentation of the regulations contained in international law, together with an indication of the possible impact on the law of countries that still do not criminalize the crime of rape not only in marriage and informal relationships, but also in its general approach.

The penultimate chapter six contains an analysis of statistical data on the crime of rape, including marital rape and in informal relationships, and the results of the survey. The collected information was used for an in-depth research analysis of the phenomenon of rape, its occurrence, also in terms of spouses and partners, the effectiveness of prosecuting perpetrators and bringing them to criminal liability, including showing whether law enforcement agencies act in a way that allows avoiding secondary victimization of the victim and whether they ensure sufficient support for the victim of the crime of rape. Moreover the elaboration of the statistics, summarized by the result of the survey, was aimed at demonstrating whether the current shape and wording of art. 197 of the Penal Code are sufficient, or is it necessary to amend it.

At the end of the doctoral thesis was included a summary of the considerations that appeared in the course of discussing the remaining chapters, and which allowed to get acquainted with the term marital rape and in informal relationships. This chapter contains an answer to the question whether art. 197 of the Penal Code in its current wording is adequate to the subject matter raised, whether the Polish legislation has met the presented issue of prosecuting the perpetrators of the abovementioned crime, and whether the stereotype of the perpetrator and the victim of the crime of marital rape and in informal relationships has been broken.

This research topic was selected due to the low level of development of the solution regarding prevention and punishment of the perpetrator of the crime of marital rape and in informal relationships in the Polish legal order. The Polish law regulates the problem of rape as an activity sanctioned by law, but the impreciseness of this issue and its too broad coverage leaves countless solutions to avoid liability by the perpetrator committing this crime. The doctoral dissertation sought to demonstrate whether the current solution is adequate, or whether a modification of the applicable regulations indirectly relating to this act should be considered.