

'Negligent rape': Has Sweden's sexual consent law led to change?

By Catherine Edwards

TheLocal.se (12.07.2019) – <https://bit.ly/2JB2XoL> – One year ago, Sweden introduced a law change that meant sex without explicit consent was considered as rape, including when the victim did not actively say 'no'. The Local spoke to experts to find out the impact this has had on court cases and within Swedish society.

The law change meant that participants needed to clearly demonstrate that they wanted to engage in sexual activity in order for it to be considered consensual.

Two new offences of "negligent rape" and "negligent sexual abuse" were created for acts where courts found that consent had not been established, but in which the perpetrator had not intended to commit rape or assault. Previously, a decisive factor for a rape conviction was proof that a perpetrator used force, threats, or taken advantage of someone in a vulnerable situation.

The law faced backlash at the time, and had to be clarified after Sweden's Council on Legislation said it was too unclear. Others criticized it as "signalpolitik", meaning a policy implemented only for appearances and unlikely to make a real

difference.

Twelve months on, rights organizations say the law has had a measurable impact on court cases and helped change the national discussion on sexual autonomy – but warned there was still work to be done.

'Negligent rape' sentences

“Earlier this year, we looked at 30 court judgments, and these included cases which definitely would not have been considered to be rape before the change in the law; where no violence or other means of force was used,” Katarina Bergehed, an Amnesty International expert in women’s rights, told The Local.

Over the past year, the new law has been decisive in at least seven rape cases which went to court, according to an investigation by Swedish radio programme I lagens namn (In the name of the law).

The programme said that of 60 rape cases, the new law was crucial in seven, including six convictions of negligent rape.

A study from the Siren news agency reached the same conclusion, finding that in 84 cases where prosecutors mentioned “negligent rape”, 45 resulted in a rape conviction while six were sentenced for negligent rape.

'Sleeping in the same bed and wearing only underwear does not mean consent'

One of these sentences was confirmed by Sweden's Supreme Court on Sunday, marking the first time the country's highest criminal court made a judgment relating to negligent rape.

The 27-year-old male plaintiff was found guilty of the negligent rape of a woman while staying overnight at her home.

The woman said had agreed he could stay overnight, but made it clear she did not want to have sex. Despite that, the man initiated sexual intercourse.

Both the perpetrator and the plaintiff said that she was passive throughout the intercourse, and that they did not speak. The plaintiff said she "froze and did not know how to act", while the perpetrator said he was not sure whether she was awake when he first initiated sexual contact, "but [he] had the impression that she wanted to have sex" and continued because she did not tell him not to. He also said that he stopped the intercourse when he thought she didn't want to continue.

In a statement accompanying its decision, the Supreme Court wrote: "A person who is subjected to sexual acts against their will does not have any responsibility to say no or express their reluctance in any other way. Furthermore, the court notes that the fact that the plaintiff and the perpetrator agreed to sleep in the same bed and that they were dressed in

only underwear does not mean that the plaintiff voluntarily participated in the sexual acts.”

The man now faces two years and three months in jail, although this includes sentences for other crimes he was found guilty of. The penalty for the count of negligent rape was eight months’ jail, according to the Supreme Court.

Without the 2018 law, it is likely that the man would have been acquitted, since intent was previously required for a conviction of rape or sexual assault, and the Supreme Court found no evidence of intent.

‘Greater awareness about consent’

The fact that Sweden’s law now sets a clear boundary between consensual sex and rape or assault has also helped open up to discussions about sex and consent, the Swedish Association for Sexuality Education (RFSU) told The Local.

“There is increased awareness and a greater openness towards talking about [sexual consent] today,” said RFSU’s Maria Bergström, when asked what changes she had observed since the consent law was passed.

“For example, we can see that this has made it easier for people who have previously experienced this to put words on what happened to them, and to then perhaps go further with reporting it or seeking support. The law has finally made it

clear that one always has a responsibility to ensure that there is consent.”

“There is a much greater awareness and more conversations today on these questions among young men but also in the adult population – we also see that the question is raised by the media in a different way than before,” she said.

Bergström also mentioned the impact of the #MeToo movement in putting the question of consent and boundaries on the political agenda, as women from a wide range of industries came forward with their experiences of assault and harassment, all calling for tangible change.