
DATE RAPE DRUGS A NEW KIND OF RAPE AND A NEW KIND OF VIOLENCE

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Abstract. Rape is a very serious offense, and the study of its victims indicates that they experience serious consequences of trauma. It is any kind of sexual intercourse (vaginal, oral or anal) that is committed against a person's will or is committed with physical force or for instance with a threat to hurt the victim or another person or committed using traps. Today, more and more often the victims of rapes are intoxicated by perpetrators who use special substances described as a *date rape drug*.

Keywords: rape, date rape drug, victim, perpetrator.

INTRODUCTION

The term *date rape drug* (drd)¹ is widely used. *Date rape drug* – it is any psychoactive substance which excludes victim's free will in the area of undertaking a sexual intercourse and excludes the defence against the perpetrator of the rape. In addition, the *date rape drug* features cause the difficulties in collecting evidence of a crime, which makes it difficult to detect the perpetrator of any kind of crimes for instance robbery.

Therefore, the name *date rape drug* is only a mental shortcut because this category of substances are also used by perpetrators for committing other kind of crimes.

In English literature these drugs are also referred to as "the pill rape "or" tablet rape ", "drug – facilitated sexual assault" and the "predatory drug" because it is a method of "hunting down" the unsuspecting victim. The date rape drugs are also connected with other group of narcotics, namely "club drugs", "party drugs" and "rave drugs" because when they are taken at a reduced dose – they do not have an anaesthetic but relaxing effect. Moreover, they can be easily purchased in discos or nightclubs.

The first mention of the *date rape drug* in the Polish press comes from March 1996. The published material concerned the ban issued by the US government for using imported hypnotic drug named Rohypnol. This drug gained bad fame as a pill for rape because young men learned how to dose it in the drinks served to women in the pubs for sexual assault purpose. The **aim**

¹ drd in this material doesn't mean drug related deaths.

of the study is to analyze the situation of *date rape drug* usage in Poland taking into account direct connection between drug and crime.

In Poland, *date rape drug* appeared several years later. At the beginning Poles were involved in the smuggling of Rohypnol, and then the press reported criminal use of this kind of pills in criminal case (rape or robbery)². In the nineties Polish authorities such as Police, National Bureau for Drug Prevention, the Main Pharmaceutical Inspector, the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, the National Medicines Institute and even Human Right Defender - began to analyse this issue³ But Police statistics have not confirmed that it is a common phenomenon till now. There are annually approx. 1400 reported rape cases in Poland⁴ but only a small percentage are committed with *date rape drugs*. This is also reflected in the court data - only a few such cases have had its final in court so far.

However, the above statistics does not reflect the actual threat of this kind of crime. The assessment of the real situation is very difficult because not all incidents are reported to law enforcement authorities in Poland.⁵ Furthermore, various non-governmental organizations involved in helping victims of sexual crimes estimate that in Poland up to 1000 rapes with *date rape drug* e may be committed very year. The Police also confirm the fact that the black market of these substances is growing. Law enforcement agencies confiscate thousands of drd every year as well as attempts of smuggling Rohypnol or ketamine also concerned a large amount of pills. But we still do not have many rape cases involving drd. Thus, perhaps Poland is not the main target but only a transit country for this kind of products.

WHAT KIND OF SUBSTANCES CAN BE INVOLVED IN THE DATE RAPE DRUGS?

As mentioned before - it is any psychoactive substance which can intoxicate a victim and excludes victim's free will and possibilities of defence against the perpetrator.

² Bibliography of articles about date rape drug developed by P.J. contains 326 articles from 1997 to 2011 but most of them was published after 2005. P.J. Nowakowski, *Polish bibliography of articles about drd issue related issues*, (in:) P.J. Nowakowski (ed.), *Around date rape drug*, ed. Polish Sociology Society, Warsaw 2011, pp. 257-283.

³ P.T. Nowakowski, *Introduction*, (in:) P.T. Nowakowski, *Around date rape drug*, ed. Polish Sociology Society, Warsaw 2011. p. s. 9

⁴ The data of the Police: number of reported rapes (Art. 197 of the Penal Code) decreases year after year. In 2010 r. - 1567 rapes were reported, in 2011 – 1497, 2012 - 1432, and in 2016 – 1383. , www.policja.gov.pl access 10 of November 2017

⁵ L. J. Buller, *Personal safety in the context of date rape drug* (in:) P.J. Nowakowski (ed.), *Around date rape drug*, ed. Polish Sociology Society, Warsaw 2011, pp. 123-127

So these drugs cause in people who use them dizziness, drowsiness and amnesia, which often makes it difficult to identify and arrest offenders.⁶

Literature describes various substances of this kind. For example, Peter Adamowicz and Maria Kała list about 20 kinds of *date rape drugs*, Izabella Michalewicz over than 40 different specifics, and Isabella Filc-Redlińska mentions about 70 substances that may be used as a pill for rape.⁷

The forms of the *date rape drugs* are varied:

- liquid - introduced into a drink immediately mixed with it,
- powder - also rapidly dissolves in most liquids and it is easy to store and to hide it, for example, in a pocket,
- tablets - as a rule, dissolving them in a drink takes time, but is also convenient for hiding and storage.

Other features of this category of substances:

- no smell, no taste, or faint smell, taste,
- easy to dissolve in liquids, the victim does not notice anything suspicious,
- cause severe state of intoxication or unconsciousness and amnesia,
- are rapidly metabolized in the body, and after a short time cannot be detected in the blood and urine. It makes it difficult to collect evidence of a crime,
- some of these substances (e.g. GHB) in the initial phase of intoxication, have sexually stimulating effect and make an intoxicated person's behave vulgarly.

The *date rape drugs* often used by the perpetrators of rape are: GHB, flunitrazepam and ketamine. They are thoroughly described in the literature.⁸

Gamma - hydroxybutyric acid (GHB) is a psychotropic substance that belongs to depressants. It stimulates releasing of dopamine - a neurotransmitter which activates in humans a state of euphoria. In medicine, this specific was applied as an anaesthetic in the past.⁹ Today it is used in the treatment of narcolepsy and more rarely alcoholism.

GHB is difficult to detect because it is practically undetectable after 8 hours in the blood and after 12 hours in urine. Components necessary for the production of GHB may be legal,

⁶ B. Szukalski, *Drugs, compendium of knowledge about the addictive*, (ed.) Institute of Psychiatry and Neurology, Warsaw 2005, p. 169

⁷ J. Daszykowska, P. Witek, *Overview concepts and definitions relating to drd*, (in:) P.J. Nowakowski (ed.), *Around date rape drug*, ed. Polish Sociology Society, Warsaw 2011, pp. 39-40.

⁸ E. Sobutkowska, K. Sędkiewicz, *Deceptive use of date rape drug in the crime of rape*, <http://www.skk.lzl.pl/images/podstpnewykorzyst.pdf> access 10 of February 2015

⁹ J. Daszykowska, P. Witek, op. cit., pp. 44-46.

easy to acquire, for instance, GBL (γ -Butyrolactone) is a common chemical used as a stain remover and it converts to GHB in the stomach.

GHB is often taken because users find that it enhances their experiences of being in a club, party, or rave. Small doses of GHB can act as a stimulant and aphrodisiac. GHB can produce euphoria and it is used in the dance party. GHB model of action can be compared to MDMA (ecstasy), so in a small dose it is a stimulant not a depressant.

GHB is also used by people exercising in the gym. It has been used by bodybuilders to aid in fat reduction and muscle building. GHB also has anabolic effects (it stimulates protein synthesis).¹⁰ Regular use of GHB leads to physical and psychological dependence. In the USA, there are numerous recorded cases of deadly overdose of GHB.¹¹

Another frequently used *date rape drug* is flunitrazepam (the trade name - Rohypnol). It is a psychotropic substance from the group of benzodiazepines, but used much more often than the other benzodiazepines (eg. clonazepam) because of its extremely strong sedative effect. The combination with alcohol causes amnesia and increases the toxic results. In medicine, flunitrazepam is used in sleep disorders and as an introductory to narcosis.¹²

Psychotropic substance with a different mechanism of action is ketamine. It is dissociative substance like PCP. Synthesis of ketamine is complicated, so the source of ketamine is always a legal drug factory. Currently, ketamine is often used in veterinary medicine. Typical effects arising after the intake of this substance are e.g.: hallucinations, problems with coordination, slow reaction time, dizziness, euphoria, a feeling of being someone else, numbness, amnesia, coma. Katamina can be used also as a party drug but is very short-acting. It takes effect within about 10 minutes, while its hallucinogenic effects last 60 minutes when insufflated or injected. Overdose can lead to death.¹³

Legal and criminological aspects of rape with *date rape drug* involve the use of deception (deceit, trick) in the crime of rape. Sexual freedom is a value protected by all modern legal systems.

¹⁰ <http://www.drugabuse.gov/publications/drugfacts/club-drugs-ghb-ketamine-rohypnol> access in 10 of February 2015

¹¹ A. Basińska – Szafrąńska, Date rape drug in medicine, (in:) P.J. Nowakowski (ed.), *Around date rape drug*, ed. Polish Sociology Society, Warsaw 2011, pp. 81-84.

¹² M. Jędrzejko, P. Polak, *Narcotics used in committing sexual offenses*, Drug Addiction Problems Bulletin, No 3/2006, pp. 13-14.

¹³ B. Szukalski, *op. cit.*, pp. 63-65.

First of all, rape damages the sexual freedom of man, with her/his right to make free decisions concerning her/his life in this area. An individual's right to freely decide about their sexual life is unquestionably one of the most important aspects of human freedom.¹⁴

The rape as a crime is defined in Art. 197 of the Penal Code .¹⁵

It involves actions:

- whoever, by force, illegal threat or trick subjects another person to sexual intercourse (Art. 197§1 of the Penal Code),
 - or if the perpetrator, in the manner specified in § 1, makes another person submit to other sexual act or to perform such an act (Art. 197§2 of the Penal Code),
 - or if the perpetrator commits the rape in common with other person, or against a child under 15 or against descendant, ascendant, adoptee, adoptive parent, brother, sister (Art. 197§3 of the Penal Code),
 - or if the perpetrator acts with particular cruelty (Art. 197§4 of the Penal Code),
- all these actions are consider as a rape.¹⁶

The doctrine of criminal law, as well as the jurisprudence of the Supreme Court describes the deception (trick) as an introduction to an error/ misleading or using a mistake of victims in the field of victim's motivation process, or creating the situation when the victim has eliminated the decision-making or locomotors system.¹⁷

However, the most common cases of rape with deception element are situations when the perpetrator intoxicates the victim by giving her/him a substance (*date rape drug*). Victims lack the opportunity to express their will? in the field of sexual contact and their do not have the ability to defend against the actions of the perpetrator. The victim is not aware of the use of substances which suppress consciousness.

If the victims intentionally used this kind of substances and introduced themselves into a state of intoxication or drunkenness and then became a victim of sexual crime - it is a crime defined in Art. 198 of the Penal Code¹⁸ - not in Art. 197.

¹⁴ F. Cieply, *Law aspects of date rape drug*, (in:) P.J. Nowakowski (ed.), *Around date rape drug*, ed. Polish Sociology Society, Warsaw 2011, p. 109.; A. Michalska-Warias, *Legal aspects of rape*, (in :) Mozgawa M. (ed.), *The crime of rape*, ed. Wolters Kluwer, Warsaw 2012, p. 35.

¹⁵ The Act from 6 of June 1997 – Penal Code, Dz. U. z 1997 r., Nr 88, poz. 553 with amendment.

¹⁶ M. Filar, *Crimes against sexual freedom and morality* (in :) M. Filar (ed.), *Penal Code. Commentary*, ed. Lexis Nexis, Warsaw 2008. pp. 816-817.

¹⁷ M. Bielski, *Crimes against sexual freedom and morality* (in :) A. Zoll (ed.). *Penal Code. Volume II*, ed. Wolters Kluwer, Warsaw 2013, pp. 692-693.

¹⁸ Article 198 of the Criminal Code: whoever, taking advantage of the vulnerability of another person, or of the lack of ability to recognise the significance of the act or ability to control his/her conduct, resulting from mental disability or disorder, subjects such a person to sexual intercourse or makes him/her submit to another sexual act

Criminal liability for the rape with *date rape drugs* can be connected with cumulative liability for violation of other provisions of the Penal Code. For example, if the offender leaves the victim in such circumstances in which the victim dies (e.g. by freezing), the responsibility for the murder is possible (Art. 148 of the Penal Code). When the victim of rape after consuming *date rape drug* dies because of toxic level of this measure, the offender may be held liable for unintentional manslaughter (Art. 155 of the Penal Code) or if the result of the consumption of these measures are bodily injury or an impairment to health, it is the violation of Art. 156 of the Penal Code, or Art. 157 of the Penal Code. Undoubtedly, if the perpetrator exposes a human being to an immediate danger of loss of life, a serious bodily injury, or a serious impairment of health, they will be responsible for the violation of Art. 160 of the Penal Code, or if the perpetrator knowing that he or she is infected with the HIV virus, or another sexually transmitted disease (venereal disease) directly exposes another person to the infection with those diseases, he/she can be cumulatively responsible for the rape and violation of Art. 161 of the Penal Code.¹⁹

The rape defined in Art. 197 of the Penal Code is prosecuted *ex officio*.

Classification of crimes relating to drugs. Understanding the links between drugs and crime is not merely of theoretical interest but has profound implications for public policy as the knowledge of these links determines how society responds to drug-related crime.²⁰

The term 'drug-related crime' is used here to encompass four types of crimes:

- Psychopharmacological crimes: crimes committed under the influence of a psychoactive substance, as a result of its acute or chronic use. According to the psychopharmacological model, the acute or chronic use of psychoactive substances may result in aggression and violence, which may lead to criminal behaviour.²¹ Unfortunately, this group also includes crimes when the drug was given to the victim insidiously and then the same person became a victim of another crime such as rape. Without a doubt, these crimes are fundamentally different from all other in psychopharmacological crimes categories. Therefore, we should consider the possibility of separation to the new category of "drug-related crimes" such acts, when the victim is intoxicated by the drug, but taking the drug was without her/his awareness.

or to perform such an act shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

¹⁹ F. Cieply, *op. cit.*, pp.117-118

²⁰ Chloe Carpentier, *Drug and crimes – a complex relationship. Towards a definition of drug – related crime, in Drug in focus*, Briefing of the European Monitoring center for drugs and Drug Addiction, No 16/2007, <http://www.emcdda.europa.eu/html.cfm/index36331EN.html> access in 20 of February 2015

²¹ *Ibidem*

It is a part of the modus operandi of the perpetrator. This category would contain e.g.: rape with date rape drugs, some kinds of robberies and blackmail, for instance, by threatening the disclosure of embarrassing photos taken when the victim was intoxicated.

- Economic-compulsive crimes: crimes committed in order to obtain money (or drugs) to support drug use. Dependence on an expensive substance can lead users to engage in criminal acts to obtain the money they use to fund their drug habit. They may resort to consensual crimes, such as drug selling or acquisitive crimes (e.g. shoplifting, robbery, burglary).

- Systemic crimes: crimes committed within the functioning of illicit drug markets, as part of the business of drug supply, distribution and use. Systemic criminality refers mainly to violent acts (e.g. assaults, homicides) committed within the functioning of illicit drug markets, as part of the business of drug supply, distribution and use.

- Drug law offences: crimes committed in violation of drug (and other related) legislations. Violations of drug-related legislation may include drug law offences such as drug use, possession, cultivation, production, importation and trafficking. Some of date rape drug are part of the anti drug regulation, so its production, possession and trafficking are prohibited as a crime.²²

The psychological consequences of rape are very serious. Victims of sexual crimes experience serious trauma. As a rule, two phases of trauma can be observed. First, the initial phase is dominated by fear for personal safety. In the second phase, there are consequences in various areas of life of the victim, e.g. the depression, phobias, chronic stress, insomnia, difficulty in establishing and maintaining interpersonal relationships.²³ Additionally, the victim does not remember what has happened and who is responsible for it - this enhances the trauma. Many victims also fear the reaction of the society. They feel co-responsible for what has happened to them.

Paradoxically, for the perpetrators of rape with date rape drug it is an insignificant incident. The offender does not regard his/her act as a serious crime because the victim did not defend themselves, did not call for help.²⁴

From the criminological and victimological perspective, defining the role of the victim of rape in this crime is very important for a better understanding of the mechanism of such an

²² Ibidem

²³ M. Budyń-Kulik, *Selected victimological (and psychological) aspects of rape*, (in :) Mozgawa M. (ed.), *The crime of rape*, ed. Wolters Kluwer, Warsaw 2012, pp. 255 - 257

²⁴ Ibidem

incident. There are various theories about this role but when we consider a rape with date rape drugs, the role of victim involves a form of carelessness (random victim) - the victim was in the wrong time and in the wrong place.²⁵

Dangerous places particularly where a person is exposed to *date rape drug* include discos and other entertainment venues. Women more often than men become victims of this type of crime.

Everyone should undertake a few simple rules to avoid to become a victim of a crime with *date rape drug*:

- Don't accept drinks from other people.
- Open containers yourself.
- Keep your drink with you all times, even you go to the bathroom.
- Don't drink from punch bowls or other common, open containers. They may already have drugs in them.
- Have nondrinking friend with you to make sure nothing happens.
- If you feel drunk and haven't drunk any alcohol – or, if you feel like the effects of drinking alcohol are stronger than usual – get a help right away.²⁶

There are also a lot of drink testers on the market for instance "Date Rape Detector", "Drink Guard" or "Drink Spike Detector" but preventative actions "mind your own drink" or "zero tolerance for drink spiking" are very helpful too. All these rules and measures could help to avoid a very serious crime.

CONCLUSIONS

The paper is dedicated to the analyses of the situation of *date rape drug (drd)* usage in Poland taking into account direct connection between drug and crime. It is noted that in Poland, *date rape drug* appeared several years later. It is emphasised that at the beginning Poles were involved in the smuggling of Rohypnol: the press reported criminal use of this kind of pills in criminal case (rape or robbery). As the author points out one of the main problems in the field is the difficulty to monitor situation, because there are even some doubts about that the statistics, available to the law enforcement (as not all the incidents are reported). Paper provides some

²⁵ Ibidem

²⁶ <http://www.4woman.gov/faq/date-rape-drugs.cfm> access in 20 of February 2017

practical and legal suggestions in order to avoid (or at least minimise) the risk associated with the drd.

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IŠŽAGINIMAS APSVAIGINUS NARKOTIKAIS – NAUJA PRIEVARTOS IR AGRESIJOS RŪŠIS

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Santrauka

Išžaginus auką, apsvaigintą narkotikais, padaroma didelė žala, kuri nagrinėjama straipsnyje, be to, atsižvelgiama į tai, kad agresijos aukos patiria didelės traumos sąlygotas pasekmes. Tai visų rūšių lytinis santykiavimas (vaginalinis, oralinis, analinis), įvykdytas prieš asmens valią ar naudojant fizinę prievartą, gąsdinant auką ar kitą asmenį sužaloti. Nusikaltimas gali būti įvykdytas naudojant pinkles.

Pastaruoju metu prievartos aukos vis dažniau apsvaiginamos nusikaltėlių, naudojančių specialias medžiagas, vadinamas *išžaginimo periodo narkotikais*.

Pagrindinės sąvokos: išžaginimas, išžaginimo periodo narkotikai, auka, nusikaltėlis

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