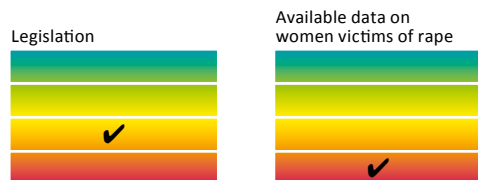


NATIONAL ANALYSIS

Czech Republic



Expert

Jitka Polakova, with the help of Adriena Budinova

Legislation

On 1 January 2010, a new Penal Code No. 40/2009 Coll took effect, which replaced the old Act, No. 140/1961 Coll., the Penal Code. Section III covers “offences against human dignity in the sexual area”.

Rape is defined in § 185 as a criminal offence committed by a person who by violence, by threat of violence or by threat of other severe injury, forces sexual contact on anyone, or commits such an act on a defenceless person.

A new § 185 (compared with the old Penal Code) will also include in the crime of rape acts which previously qualified as extortion. This was achieved by removing the condition calling for the threat to violence to be immediate and by expanding the scope of the law to include the threat of another severe injury and by expanding the law to include as a crime all forms of sexual contact (previously only coitus, like sexual intercourse).

The new Penal Code distinguishes among:

- a) sexual intercourse
- b) coitus and
- c) other sexual intercourse comparable with coitus

Within the law, **sexual intercourse** as a more general term includes any kind of satiation of sexual instinct on the body of another person (e.g., genital touching). **Coitus** means conjunction of the genital organs, therefore, **sexual intercourse comparable with coitus** includes cases where the genital organs make contact but don't join,, as well as cases of anal and oral sex. The conditions for rape can also be met by using the **defencelessness** of the victim in cases of unwanted sexual intercourse (a child's youth is also seen as a state of defencelessness, and takes account of the fact that the child is able to identify and evaluate the reasons for rejection of a sexual contact). Rape of a child (a person under the age of 18) results in a higher penalty (paragraph. 2). However, when a child is under 15, the act results in an even more severe criminalisation and penalty (paragraph 3).

A new criminal offence in § 186 of the new Penal Code is **sexual coercion**. It states that:

1. A person who by violence, threat of violence or threat of other severe injury engages in sexual self-abuse, stripping or other comparable action, will be punished by six months up to four years' imprisonment or prohibition of activity. (2) The same punishment exists for those who force another person to engage in sexual intercourse, sexual self-abuse, stripping or other comparable conduct by abusing his or her addiction, defencelessness or position § 187 also includes an offence of **sexual abuse** when the victim is a child under 15 years.



24

Additional comments

The insufficient protection of the victim in criminal proceedings has an especially negative impact on victims of violent crimes.

Another barrier to addressing interpersonal violence lies in the requirement of victim's consent with criminal proceedings. If the perpetrator is the husband/wife, a domestic partner or another close relative, the prosecution of certain crimes cannot start or sometimes cannot continue without the consent of the victim. In the past, the victim's consent was necessary for the prosecution of rape per Sec. 241 (1) and (2). Today it is required in cases of sexual coercion according to Sec. 186 (1) and (2), but also for some offences of bodily harm and the offence of stalking. Even though at first sight this provision seems to afford autonomy to the victims and respect for their right to decide about the course of the prosecution, in reality it burdens the victims with the responsibility for prosecuting a close person and exposes them to pressure under which they often revoke their consent. (A consent once revoked cannot be granted again).

The legislators have tried to address this issue by adopting Section 163 a that allows exceptions in situations where the victim gives or withdraws consent under obvious pressure or threat, or if she clearly acts from a subordinate or dependent position.

How far this provision really protects the victims who are under the pressure of their abusers is questionable.

Available data on women victims of rape

The research suggests that sexual violence is among the least reported crimes, although, with the exception of murder, rape is considered to be the most painful crime. Official statistics are accompanied by high latency (concealing and hiding offences).

In the Czech Republic one to two rapes per day are officially recorded – it is assumed that rape is reported in only 8% of the cases (and rape occurring in the context of family and partnership, is reported only in 3% of cases).

Sexual violence affects up to 25% of women and 6-10% of men within their lifetime--official statistics show only a fraction of the actual incidences.

Useful Contact

PERSEFONA, o.s. help line +420. 545 245 996,
+420. 737 834 345

