

The crime of rape in the light of the current discussion regarding the necessity of its redefinition

Abstract

This thesis addresses the question of whether the current formulation of the essential elements of the criminal offense of rape is outdated and in need of redefinition. The topic is particularly relevant as there is an ongoing public debate on the necessity of redefinition, and the Ministry of Justice has submitted a proposal outlining how the new definition of rape should appear. The aim of the thesis is to utilize available data to determine whether the current legislation is inadequate and whether the adoption of a new one is necessary.

The first chapter of the thesis describes the evolution through which the concept of the essential elements of rape has passed and how this criminal offense was defined in previous legal frameworks. A comparison with past legal regulations clearly demonstrates how the scope of cases falling under the essential elements of the criminal offense has expanded up to its current form.

The second chapter focused on the current legal framework and the recent case law of the Supreme Court. The third chapter concentrates on the legal framework of the Slovak Republic and selected European countries that have embraced a shift in the conceptualization of the criminal offense of rape, emphasizing non-consent rather than violence. The fourth chapter examines arguments from both proponents and critics of the new definition of rape based on non-consent. The fifth chapter investigates whether the sanction imposed under the current legal framework are sufficiently stringent and further explores how rape should be penalized under the new legal framework.

The opinion of the professional community is not unanimous. Some consider the existing definition of the criminal offense to be sufficient, given the established case law of the Supreme Court, while others find the proposed new definition inadequate, suggesting that it should be based on consent. From European countries where rape is now defined based on non-consent, however, it is clear that the new definition sends a signal to society that sexual intercourse without consent is not acceptable and should not be tolerated.

Klíčová slova: rape, new definition, factual basis of a crime