

Redefinition of the criminal offence of rape

Abstract

The thesis is concerned with redefinition of the criminal offence of rape enacted by the amendment to the Czech Penal Code No. 166/2014 Coll. coming into force from 1 January 2025. The thesis analyzes the definition of the criminal offence of rape and considers whether it was necessary to abandon the concept of rape based on overcoming resistance to sexual intercourse in favour of the concept based on absence of agreement with sexual intercourse based on the understanding of “no means no”, as already done in several European countries.

Thesis is based on research, study of academic writings and relevant official documents, critical analysis of the relevant legal regulation including available case law of international, Czech and foreign courts. The thesis also makes use of statistical and comparative methods. Namely the conclusion of the thesis and partial conclusions of individual chapters in their summaries and assessments make use of the synthesis method.

With reference to advantages and deficiencies of individual legal definitions is made in the context of historical development of the criminal offence of rape, international human rights documents including the Istanbul Convention, work of international courts and tribunals, case law of the European Court of the Human Rights and broad decision-making of the Czech courts.

Principal part of the thesis is dedicated to analysis of the merits of the criminal offence in both regulations including comparison with selected offences against human dignity in sexual sphere and with foreign legal regulation. The foreign legal regulation is presented on the example of Slovakia (with its concept of criminal offence of rape by overcoming resistance to sexual intercourse), Germany (with its concept of lack of agreement with sexual intercourse within the meaning of “no means no”) and the Kingdom of Spain (with its concept of lack of agreement with sexual intercourse within the meaning of “only yes means yes”).

Practical views on redefinition of the criminal offence of rape and accompanying issues and consequences of enactment of the new legal regulation are summarized in the chapter “Analyses of aspects of definitions of the criminal offence of rape” based on absence of agreement with sexual intercourse. The thesis further mentions and evaluates statistical data on the criminal offence of rape from 2019 to September 2024 to gain understanding of trends and potential impacts of legislative changes on the area of sexual violence.

The results of the analysis of the entire investigated issue showed that each of the definitions of the criminal offence of rape has its own specifics and strengths and weaknesses.

The shortcomings of the existing regulation based on overcoming resistance to sexual intercourse, which were particularly criticised in connection with the Istanbul Convention, have been largely eliminated by the extensive case law of the Czech and international courts, but in the perception of society this concept and legislative wording of the criminal offence of rape is outdated and insufficiently reflects the sexual autonomy of the individual.

The thesis concludes that in relation to the public perception of rape, there is a positive assessment of the adoption of the redefinition, although in terms of criminal sanctions the original definition seems to be sufficient. The new wording of section 185 and section 185a of the Criminal Code is clearer for the public and, in the context of the codification of abuse of defencelessness, it also simplifies the distinction between different sexual offences against human dignity.

Keywords: definition of rape, sexual intercourse without consent, sexual criminal offence