

Questionnaire on criminalization and prosecution of rape

Czech Republic

Legal provisions as of 15th of May 2020

- **Definition and scope of criminal law provisions**

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

Penal code provisions (40/2009 Coll. ACT of 8 January 2009)

Section 185 (CHAPTER III - CRIMINAL OFFENCES AGAINST HUMAN SEXUAL DIGNITY)

Rape

(1) Whoever forces another person to have sexual intercourse by violence or the threat of violence or a threat of other grievous harm, or whoever exploits the person's vulnerability for such an act shall be punished by a prison sentence of six months to five years.

(2) An offender shall be punished by a prison sentence of two to ten years, if they committed an act referred to in Subsection 1

a) by sexual intercourse or other sexual contact carried out in a manner comparable with intercourse,

b) on a child, or

c) with a weapon.

(3) An offender shall be punished by a prison sentence of five to twelve years, if ,

a) they committed an act referred to in Subsection 1 on a child under the age of fifteen years,

b) they committed such an act on a person serving detention, a prison sentence, protective treatment, security detention, protective or institutional care or in another place where personal freedom is restricted, or

c) they caused grievous bodily harm by committing such an act.

(4) An offender shall be punished by a prison sentence of ten to eighteen years, if they caused death by committing an act referred to in Subsection 1 .

2. Based on the wording of those provisions, is the provided definition of rape:

a. Gender specific, covering women only **NO**

b. Gender neutral, covering all persons **YES**

c. Based on the lack of consent of victim **NO**

d. Based on the use of force or threat **YES**

e. Some combination of the above. **YES**

f. Does it cover only vaginal rape? **NO**

g. Does it cover all forms of penetration? **YES**. If yes, please specify.

It covers also fingers and other objects used to penetrate (vaginal and anal). However, if the offender shall be punished by rape under subsection 2a, the court must seek on the intensity and duration of such penetration to classify it as rape under the more serious subsection (as the provision under the subsection 2a states, it is other sexual contact carried out in a manner comparable with intercourse). That means, that such form of penetration must be comparable with its intensity to sexual intercourse (court precedent). If the intensity and duration etc. of penetration by other objects is not comparable to intercourse, it will be punished by subsection

1 of rape. The courts have also stated that oral sex is comparable to sexual intercourse, therefore punished by subsection 2 of rape.

h. Is marital rape in this provision explicitly included? **NO**

i. Is the law silent on marital rape? **NO**

In case of marital rape (only subsections 1 and 2), the Criminal proceedings Act requires explicit consent of the victim with the prosecution of the perpetrator. If the consent is not given, or taken back, it is not possible to charge the perpetrator and prosecute him.

j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**

k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **NO**

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

There are no provisions of such manner.

4. What is the legal age for sexual consent?

15 years of age.

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

There is a difference (please see the provision on rape in question 1), when rape is carried out on a person younger than 18 years of age (subsection 2b), and younger than 15 years of age (subsection 3a). The possible penalty increases in those cases. In case of a victim younger than 18, it is 2 – 10 years in prison, in case of a victim younger than 15, it is 5 – 12 years in prison.

Otherwise there is no differentiation as for the age of perpetrator or the victim.

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

The criminal sanctions differ depending on what subsection of the provision the perpetrator has carried out (please see question no. 1). The rape provision prescribes only the sanction of prison sentence. For the „basic“ rape under subsection 1, it is 6 months – 5 years, for the rape under subsection 2, it is 2 – 10 years, for the rape under subsection 3, it is 5 – 12 years, for subsection 4, it is 10 – 18 years. However other provisions of the penal code allow under some circumstances for a different sanction. The other sanction in the Czech Republic is mainly conditional prison sentence (the highest possible is 3 years prison sentence with a 5 years long trial period), in some cases (minority) it is a financial fine.

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

The legislation provides for the victim the possibility to seek from the perpetrator a compensation for the financial damages that the victim suffered, meaning real damage (clothes, etc.), wage loss, costs of medical treatment etc., as well as compensation for the non-financial suffering, meaning physical and mental pain, or compensation for the loss of social employment.

- **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

a. Is rape by more than one perpetrator an aggravating circumstance? **NO**

b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)

YES (only the age of the victim, as mentioned in question no. 5)

- c. Is rape by spouse or intimate partner an aggravating circumstance? **NO**

9. Does the law foresee mitigating circumstances for the purposes of punishment? **YES**

The penal code gives the court the possibility to take mitigating circumstances into account, when choosing the sanction, for example when deciding on the type of the sanction or the length of the sanction. As a mitigating circumstance can be considered anything, that the court finds mitigating, as a demonstration, the penal code states couple of common mitigating circumstances, namely (young age, first offence, regret etc.). However the penal code does not foresee any specific mitigating circumstances directly for rape, it is always up to the court to find them.

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **NO**

The law does not know anything as reconciliation between the victim and the perpetrator that can happen only privately and can be taken into account as mitigating circumstance, as stated in question no. 9.

- a. Regardless of the law, is reconciliation permitted in practice? **YES** and what is the practice in this regard?

There is not much practice in the Czech Republic in this regard, it does not happen very often.

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **YES**

As stated in question no. 2i, in case of rape (only subsections 1 and 2) between married couple or life partners in the time of the rape or in the

time of the prosecution, the Criminal proceedings Act requires explicit consent of the victim with the prosecution of the perpetrator. If the consent is not given, or taken back, it is not possible to charge the perpetrator and prosecute him. In that case the law allows for non-prosecution of perpetrator.

a. if the perpetrator marries the victim of rape? **YES**

If the victim marries the perpetrator after the rape (only subsection 1 and 2) was committed, then the prosecuting office must seek the consent of the victim with prosecution of the perpetrator (as stated in question no. 11a).

b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **NO**

- **Prosecution**

12. Is rape reported to the police prosecuted ex officio (public prosecution)?
YES

Again apart from the situation when the consent of the victim is required (subsections 1 and 2 of rape provision and between married couple or life partners in the time of the rape or in the time of the prosecution).

13. Is rape reported to the police prosecuted ex parte (private prosecution)?
NO

14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?

YES (However only „basic“ rape under subsection 1 of the provision stated in question no. 1)

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **NO**

16. Please provide information on the statute of limitations for prosecuting rape.

„Basic“ rape under the subsection 1 is barred by the statute of limitations after 10 years.

Rape under subsection 2, 3 and 4 is barred by the statute of limitations after 15 years.

Meaning, that the prosecution must be started in the above mentioned time period, otherwise the perpetrator cannot be prosecuted anymore.

17. Are there provisions allowing a child who was the victim of rape to report it after reaching adulthood? **NO**

There are no specific provisions regarding this, however, if the victim of rape decides to report it later in her/his life, it can still be prosecuted, if the provisions of the statute of limitations are not met.

18. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? **NO**

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? **YES**

The law on crime victims states, that the victim must be protected from secondary victimisation. Questions aiming on sexual history and other intimate areas can be asked only if it is necessary for clarification of the criminal case. These questions should be asked only once and not to be repeated, as well as they should be asked thoughtfully and carefully. The victim can raise an objection against the focus of the question.

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **YES**. If yes, please specify.

Apart from mentioned in previous question, victims can also seek to be interrogated by the same sex police officer. If the victim is a child, the

interrogation is held by a person, who is specifically trained for such interrogation. If it is possible the interrogation should be held in a special room designed for such interrogations.

The victim can also seek not to come into contact with the perpetrator during the proceedings, such as to be interrogated during the court hearing via videolink.

The victim also has the right to be accompanied by a person of trust. This person can attend all the hearings as a support. The victim can also write a statement about the impact of the crime on her/his life.

- **War and/or conflict**

21. Is rape criminalized as a war crime or crime against humanity? **YES**

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **NO**

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **YES**

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **YES**

- **Data**

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

2016 – 649 reported cases (covers all forms), 230 cases were prosecuted, 147 cases are not finished and other cases were held differently.

2017 – 598 reported cases (covers all forms), 228 were prosecuted, 141 are not finished and other cases were held differently.

2018 – 651 reported cases (covers all forms), 224 were prosecuted, 143 are not finished and other cases were held differently

In the years 2016, 2017, 2018 there were together 575 rape cases found guilty by the courts. 572 of them were committed by men, 3 were committed by women.