

[Rape as a felony de lege lata and de lege ferenda]

Abstract

Rape is one of the most serious crimes with significant negative impacts on both individuals and society. Low penalties imposed in individual cases, and thus the legal regulation and legislative definition of this crime in general, resonate in the public debate, which is often, for understandable reasons, inflamed by emotion.

Although international treaties have for many years required signatory states to criminalise and effectively prosecute all non-consensual sexual acts, until recently, legislation in the Czech Republic was based on the presence of an element of violence, although case law has gradually softened this feature. However, as a result of civic activities, a cross-party political consensus and the overall responsiveness of the legislator, the crime of rape has been redefined in the Czech Republic with effect from 1 January 2025, and is thus newly based on the concept of "no means no", i.e. it consists in acting despite the non-consent, or against the perceived will of the other person.

In this thesis I therefore focus on what preceded the redefinition of rape in the Czech legal system, i.e. the aforementioned international obligations, as well as on the historical context and the modern legal regulation. I also describe in more detail the legislative process accompanying the amendment to the Czech Criminal Code that redefined the offence of rape. I then turn to the specific parts and the most interesting aspects of the redefined provisions. I also briefly describe other offences involving sexual violence. In addition to the applicable law, I then try to outline some de lege ferenda considerations, including the concept of affirmative consent, which is based on a "yes means yes" approach.

Unfortunately, the thesis does not deal in detail with criminological aspects of sexual violence or with the legal framework for the protection of victims of crime.

Klíčová slova: [rape, consent, law]