**Questionnaire on criminalization and prosecution of rape in the Czech Republic**

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The Czech Helsinki Committee (CHC, [www.helcom.cz](http://www.helcom.cz)) is a non-governmental and non-profit organization fostering and protecting human rights on national and international levels founded in 1990. The CHC actively works on justice system, discrimination, racism, hate speech, Roma Rights, child rights, women rights, elderly’s rights, rights of disabled and freedom of religion. Through individual counseling, multi-faceted topical projects and advocacy, CHC is a recognized expert in those fields.

The CHC agrees to the publication of this report on the website of the Office of the High Commissioner for Human Rights.

 **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.**

In the Czech Republic, violent sexual crimes are regulated by the Criminal Code (Act No. 40/2009 Coll.), the Criminal Procedure Code (Act No. 141/1961 Coll.) and the Act No. 45/2013 Coll. on Victims of Crime, which regulates the rights of crime victims among which it distinguishes particularly vulnerable victims.

* Criminal Code

In the Criminal Code (Act No. 40/2009 Coll.) [[1]](#footnote-1), Title III deals with crimes against human dignity in the sexual area:

“Article 185 - Rape

(1) Whoever forces another person to engage in sexual intercourse by violence or threat of violence or threat of other serious harm, or

who abuses his helplessness for such an act,

will be punished by imprisonment for six months to five years.

(2) The offender shall be punished by imprisonment for two to ten years if he commits the act referred to in paragraph 1

a) intercourse or have other intercourse performed in a manner comparable to intercourse,

b) on a child, or

c) with a weapon.

(3) The offender shall be punished by imprisonment for five to twelve years,

a) if he commits the act referred to in paragraph 1 on a child under the age of fifteen,

b) if he commits such an act against a person in custody, imprisonment, protective treatment, pre-trial detention, protective or institutional upbringing or in another place where personal liberty is restricted, or

c) if he causes serious damage to health by doing so.

(4) The offender shall be punished by imprisonment for ten to eighteen years if he causes death by the act referred to in paragraph 1.

(5) Preparation is a criminal offense.

Article 186 – Sexual coercion

(1) Who, by force, threat of violence or threat of other serious harm, compels another to engage in sexual self-denial, exposure or other comparable conduct, or

who induces such behavior by abusing his helplessness,

will be punished by imprisonment for six months to four years or a ban on activity.

(2) An offender who induces another to have sexual intercourse, sexual self-denial, stripping or other comparable behavior by abusing his addiction or his position and the resulting credibility or influence shall also be punished.

(3) The offender shall be punished by imprisonment for one to five years if he commits the act referred to in paragraph 1 or 2

a) on a child, or

b) with at least two persons.

(4) The offender shall be punished by imprisonment for two to eight years,

a) if he commits the act referred to in paragraph 1 with a weapon,

b) he/she commits the offense referred to in paragraph 1 or 2 on a person in custody, imprisonment, protective treatment, pre-trial detention, protective or institutional care or in another place where personal liberty is restricted; or

c) if he commits such an act as a member of an organized group.

(5) The offender shall be punished by imprisonment for five to twelve years,

a) if he commits the act referred to in paragraph 1 against a child under the age of fifteen years, or

b) if he causes serious damage to health by doing so.

(6) An offender shall be punished by imprisonment for ten to sixteen years if he causes death by an act referred to in paragraph 1 or 2.

(7) Preparation is a criminal offense.

Article 187 – Sexual abuse

(1) Whoever engages in intercourse with a child under the age of fifteen or who otherwise sexually abuses them shall be punished by imprisonment for one to eight years.

(2) An offender shall be punished by imprisonment for two to ten years if he commits the act referred to in paragraph 1 on a child under fifteen years of age entrusted to his supervision, abusing his dependence or his position and the resulting credibility or influence.

(3) An offender shall be punished by imprisonment for five to twelve years if he causes serious damage to health by an act referred to in paragraph 1.

(4) The offender shall be punished by imprisonment for ten to eighteen years if he causes death by the act referred to in paragraph 1.

(5) Preparation is a criminal offense.”

In Title XIII concerning crimes against humanity peace and war criminal offenses, Part I related to crimes against humanity, there is Article 401 mentioning rape:

“Article 401 – Crime against humanity

(1) Who commits a large-scale or systematic attack against the civilian population

a) extermination of people,

b) enslavement,

c) deportation or forced relocation of a population group,

d) rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or other similar forms of sexual violence,

e) persecution of a population on a political, racial, national, ethnic, cultural or religious basis, on grounds of sex or any other similar reason,

f) apartheid or other similar segregation or discrimination,

g) deprivation of personal liberty, introduction into an unknown place or any other restriction of personal liberty with subsequent involuntary disappearance of persons,

h) torture,

i) murder, or

j) another inhuman act of a similar nature,

will be punishable by a term of imprisonment of twelve to twenty years or an exceptional sentence.

(2) Preparation is a criminal offense.”

* Criminal Procedure Code

In the Criminal Procedure code (Act No. 141/1961 Coll.)[[2]](#footnote-2), the relevant regulations concerning rape and analogous forms of serious sexual violenceare:

“Article 8b:

(…) (2) No one may, in connection with a crime committed against the injured party, disclose in any way information enabling the identification of the injured party who is a person under the age of 18 or against whom he was committed (…) one of the crimes against human dignity in sexual matters (…).

(3) The publication of video images, video and audio recordings or other information on the course of the main trial or public meeting, which would enable the identification of the injured party referred to in paragraph 2, is prohibited.

(4) The final judgment may not be published in the public media with the name, or names, surname and residence of the injured party referred to in paragraph 2. The President of the Chamber may, taking into account the person of the injured party and the nature and character of the offense committed, decide on further restrictions on the publication of a final conviction in order to adequately protect the interests of such injured party.”

“Chapter 5 - Proof

Section three - Some special ways of proving

Article 104a – Confrontation

(1) If the statement of the accused in serious circumstances does not agree with the statement of the witness or co-accused, the accused may be confronted by the witness or co-accused.

(2) If the testimony of a witness does not agree in serious circumstances with the testimony of the accused or another witness, the witness may be confronted with the accused or another witness. (…)

(5) (...) A victim under the age of eighteen may also be confronted with the accused in the case of crimes against human dignity in the sexual field.”

“Title X: Initiation of criminal proceedings, further procedure in them and abbreviated preparatory proceedings

Section two - Investigation

Article 163 - Prosecution with the consent of the injured party

(1) Criminal prosecution for criminal offenses (...) of sexual coercion pursuant to Article 186 para. 1, 2 of the Criminal Code, (...) against who is in relation to the injured party a person against whom the injured party would have the right to refuse to testify (Article 100 para. 2), and criminal prosecution for the crime of rape pursuant to Article 185 para. 1, 2 of the Criminal Code against who is or at the time the offense was committed in relation to the injured spouse, partner or species, (...) may be initiated and prosecution to continue only with the consent of the injured party. If there are several victims by one act, the consent of even one of them will suffice.”

* Act on Victims of Crime

In the Act on Victims of Crime (Act No. 45/2013 Coll. Act on Victims of Crime and on Amendments to Certain Acts)[[3]](#footnote-3), the relevant provisions concerning rape and analogous forms of serious sexual violence are:

“Title I – General provisions

Article 1 – Subject of adjustment

This Act incorporates the relevant regulations of the European Union[[4]](#footnote-4) and regulates

a) the rights of victims of crime,

b) the provision of financial assistance to victims of crime by the State; and

c) relations between the State and entities that provide services to victims of crime.

Article 2 – Definitions

(1) For the purposes of this Act, an otherwise criminal offense shall also be considered a criminal offense.

(2) Victim means a natural person who has been or should have been injured by a criminal offense, caused property or non-property damage or at whose expense the perpetrator became enriched by the crime.

(3) If the victim's death was caused by a criminal offense, if the victim has also suffered harm as a result of the victim's death, the victim is also his or her relative in the direct generation, sibling, adoptee, adopter, spouse or registered partner, species or person on the day of her death she provided or was obliged to provide maintenance. If there are several of these persons, each of them is considered a victim.

(4) For the purposes of this Act, a particularly vulnerable victim shall be deemed to fulfil the conditions specified in paragraph 2 or 3 understood as

a) a child,

b) a person who is of old age or who suffers from physical, mental or psychological handicap or sensory impairment, if these facts may, due to the circumstances of the case and the circumstances of this person, prevent his full and effective employment in society in comparison with its other members,

c) a victim of the crime of trafficking in human beings (Article 168 of the Criminal Code) or the crime of terrorist attack (Article 311 of the Criminal Code),

d) a victim of a crime against human dignity in sexual matters, a crime which involved coercion, violence or threats of violence, a crime committed for membership of a nation, race, ethnic group, religion, class or other group of persons, or a victim of a crime committed in favor of an organized criminal group if, in a particular case, there is an increased risk of causing secondary harm, in particular with regard to its age, sex, race, nationality, sexual orientation, religion, state of health, intellectual maturity, ability to express oneself, life situation, or with respect to a relationship with or dependence on a suspected suspect.

(5) For the purposes of this Act, secondary damage means damage that was not caused to the victim by a crime, but arose as a result of access by the Police of the Czech Republic, law enforcement agencies and other public authorities, health care providers, entities registered in the register of assistance to crime victims, experts, interpreters, lawyers and the media to her.

(6) Accredited entity means a legal entity that has been granted accreditation by a decision of the Ministry of Justice (hereinafter referred to as the “Ministry”) pursuant to Article 42.”

1. **Based on the wording of those provisions, is the provided definition of rape:**
	1. **Gender specific, covering women only** ~~YES~~/NO
	2. **Gender neutral, covering  all persons** YES/~~NO~~
	3. **Based on the lack of consent of victim** ~~YES~~/ NO
	4. **Based on the use of force or threat** YES/ ~~NO~~
	5. **Some combination of the above.** ~~YES~~ / NO
	6. **Does it cover only vaginal rape?** ~~YES~~ /NO
	7. **Does it cover all forms of penetration?** YES/~~NO~~. If yes, please specify: "Intercourse or have other intercourse performed in a manner comparable to intercourse" (Criminal Code, Article 185, (2) a)).
	8. **Is marital rape in this provision explicitly included?** ~~YES~~ / NO
	9. **Is the law silent on marital rape?** YES/~~NO~~
	10. **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?** YES/~~NO~~
	11. **Is marital rape excluded in the provisions, or is marital rape not considered as a crime?** ~~YES~~ /NO
2. **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 is no provision 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.

1. **What is the legal age for sexual consent?**

According to the Criminal Code, Article 187 (1) (see above), the legal age for sexual consent is 15 years old.

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

There is no provision that differentiate for sexual activity between peers.

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

In Article 185 of the Criminal Code, the duration of the criminal sanction for rape (“imprisonment for six months to five years”) does not correspond to the seriousness of the crime. Because of the duration of the sanction, rape is classified as a misdemeanor – which is less serious than crimes – and therefore can be heard before a single judge and special methods of proceedings can be used, such as conditional cessation of criminal prosecution or settlement.

A significant problem with the crime of rape in the Czech Republic is the low rate of its reporting: "Reliable statistics are still lacking, which, given the elusiveness of the problem and the high latency, are unlikely to be complete. Cases where more serious bodily injuries have occurred or the act was committed by an unknown aggressor are more often reported"[[5]](#footnote-5).

Moreover, conditional sentences of imprisonment are also imposed on perpetrators "who have committed sexually motivated crimes against child victims (i.e. victims under the age of 15)"[[6]](#footnote-6).Children and juveniles make up a significant percentage of victims of rape.

Between 2016 and 2018, the main penalty for rape was "suspended sentence" (“podmíněný trest odnětí svobody” 51%), then "unconditional imprisonment" was second (“nepodmíněný trest odnětí svobody” 35%), and the third most common punishment was "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem” 11%)[[7]](#footnote-7). During this period the total number of convicts was 259 people.

The average length of an unconditional sentence is around 5 years, with a maximum of 3 years for a suspended sentence[[8]](#footnote-8) and “more than half (57.14%) of the sentences of imprisonment (conditional and unconditional) imposed for sexually motivated crime consisted of sentences of 1 to 5 years"[[9]](#footnote-9).

In Article 186 of the Criminal Code, the duration of the criminal sanction for sexual coercion is “imprisonment for six months to four years or a ban on activity” and it does not correspond to the seriousness of the crime. Between 2016 and 2018, 11 persons were convicted, 8 were sentenced to "suspended sentence" (“podmíněný trest odnětí svobody”), one to “unconditional imprisonment” (“nepodmíněný trest odnětí svobody”), one had his punishment waived (“upuštění od potrestání”) and one was sentenced to "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem”)[[10]](#footnote-10).

In Article 187 of the Criminal Code, the duration of the criminal sanction for sexual abuse is “imprisonment for one to eight years”. Between 2016 and 2018, 747 persons were convicted. The main punishment was "suspended sentence" (“podmíněný trest odnětí svobody” 82%), then “waive of punishment” (“upuštění od potrestání” 9%) and "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem” 5%).

Regarding prescription of criminal offenses, the Criminal Code in Article 34 stipulates that:

“(1) Criminal liability for a criminal offense shall cease upon the expiry of the limitation period which it makes

a) twenty years, in the case of a criminal offense for which the Criminal Code allows the imposition of an exceptional punishment, and a criminal offense committed during the preparation or approval of a privatization project pursuant to another legal regulation,

b) fifteen years if the upper limit of the penalty of imprisonment is at least ten years,

c) ten years if the upper limit of the penalty of imprisonment is at least five years,

d) five years if the upper limit of the custodial sentence is at least three years,

(e) three years for other offenses.

(2) The limitation period shall begin to run in the case of offenses in which the sign is an effect or in which the effect is a sign of a qualified factual substance, from the moment when such effect has occurred; for other criminal offenses, the limitation period begins to run from the end of the proceedings. The participant begins to run a limitation period from the end of the main offender's act.

(3) It is not included in the limitation period (…)

c) the period during which the victim of the crime of (…) a criminal offense referred to in Title Three a special part of this law on crimes against human dignity in the sexual field was under the age of eighteen”

Therefore, the prescription for rape is 10 years; for sexual coercion it is 5 years; for sexual abuse it is 10 years and there is no prescription for crimes against humanity.

1. **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?**

In general, the victim of a sexual crime has, as an injured party, procedural rights under the Criminal Procedure Code (Article 43 and following) as well as rights under the Act on Victims of Crime. These rights are the right to information in criminal proceedings (right to be notified of the measures taken, right to a copy of the initiation of criminal proceedings, right to instruction, right to inspect the file, service of document), the right to actively participate in criminal proceedings, the right to be represented by an agent (including a lawyer, the right to free assistance or for a reduced remuneration), the right to compensation for damage, non-pecuniary damage or the issue of unjust enrichment, rights and obligations of the victim in role of witness[[11]](#footnote-11).

After convicting the offender, the victim can claim the following rights under the Act on Victims of Crime: Right to information about the offender's stay at large (Article 11), right to protection against danger in connection with the offender's stay at large (Article 14), right to financial assistance (if the damage or damage caused by the crime has not been fully compensated; financial assistance to the victim referred to in Article 24 paragraph 1 d) consists in reimbursement of costs associated with the provision of professional psychotherapy and physiotherapy or other professional services aimed at remedying non-pecuniary damage).

**Aggravating and mitigating circumstances**

1. **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**
	1. **Is rape by more than one perpetrator an aggravating circumstance?** ~~YES~~/NO
	2. **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/~~NO~~
	3. **Is rape by spouse or intimate partner an aggravating circumstance?**

The rape by spouse or intimate partner is not an aggravating circumstance in the Czech criminal law. In the Criminal Code, neither Article 186 on rape nor Article 42 on “aggravating circumstances” stipulating that “the court will take into account, as an aggravating circumstance, in particular that the offender (…) d) has committed a criminal offense using someone's need, distress, helplessness, dependence or subordination” mention spouse or intimate partner as an aggravating circumstance.

1. **Does the law foresee mitigating circumstances for the purposes of punishment?** YES/~~NO~~ **If yes, please specify.**

According to Article 41 of the Criminal Code concerning “mitigating circumstances”:

“The court will take into account, as an attenuating circumstance, in particular that the offender

a) committed the criminal offense for the first time and under the influence of circumstances independent of it,

b) has committed a criminal offense with great agitation, compassion or lack of life experience,

c) has committed a criminal offense under the pressure of dependence or subordination,

d) has committed a criminal offense under the influence of threat or coercion,

e) has committed a criminal offense under the influence of difficult personal or family circumstances which he has not caused himself,

f) committed a criminal offense close to the age of juveniles,

g) has committed a criminal offense averting an attack or other danger without the conditions of necessary defense or extreme emergency being fully met, or has exceeded the limits of permissible risk or the limits of other circumstances precluding illegality,

h) committed a criminal offense with a lawful error which could have been avoided,

i) caused less damage or another less harmful consequence by a criminal offense,

j) caused the elimination of the harmful consequences of the criminal offense or voluntarily compensated the damage caused,

k) he himself reported his crime to the authorities,

l) assisted in the clarification of his / her criminal activity or significantly contributed to the clarification of a criminal offense committed by another,

m) contributed, in particular, as a cooperating accused, to the clarification of criminal activity committed by members of an organized group, in connection with an organized group or for the benefit of an organized criminal group,

n) sincerely regretted the offense; or

o) led a proper life before committing the crime.”

1. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response?** YES/~~NO~~**If so, at what stage and what are the consequences?**

In the case of criminal offenses of a less serious nature, which are described by the Criminal Code as misdemeanors (i.e. criminal offenses committed through negligence and those intentional criminal offenses for which a maximum sentence of imprisonment with a maximum penalty of up to five years can be imposed), it is possible that there is a conditional cessation of criminal prosecution of the offender, or to reach a settlement. The condition for the use of both of these procedures is, among others, the fact that the accused compensates the damage he caused to the injured party by his act. In the event of a settlement, the injured party must also consent to such a procedure.

In Act No. 257/2000 Coll., Act on Probation and Mediation Service and the Amendment to Act No. 2/1969 Coll., On the Establishment of Ministries and Other Central Bodies of the State Administration of the Czech Republic, as amended, Act No. 65/1965 Coll., the Labor Code, as amended, and Act No. 359/1999 Coll., on the social and legal protection of children (the Probation and Mediation Service Act)[[12]](#footnote-12), Article 2, paragraph (2) stipulates that “For the purposes of this Act, mediation means out-of-court mediation for the purpose of resolving a dispute between the accused and the injured party and activities aimed at resolving a conflict situation carried out in connection with criminal proceedings. Mediation can only be carried out with the express consent of the accused and the injured party."

According to Article 4 of the Act on Victims of Crime, mediation can be carried out from the beginning of the criminal prosecution or instead.

According to the Act on Victims of Crime, Article 17, it is also possible for the victim to ask not to come into direct contact with the offender during the whole process[[13]](#footnote-13).

* 1. **Regardless of the law, is reconciliation permitted in practice?** YES/~~NO~~ **and what is the practice in this regard?**

Civil society organizations such as Persefona[[14]](#footnote-14) and Bílý kruh bezpečí[[15]](#footnote-15) are focusing on helping victims of sexual violence by providing different types of services including mediation.

According to the Lawyer Journal (*Advokátní deník*), on the 8th October 2019, it was mentioned that “Currently, the number of criminal mediations involving negotiations between the perpetrator and the victim is declining, which is caused by the current situation of the Probation and Mediation Service, which “prioritizes the execution of alternative sentences over pre-trial activities decided by the court (…). Staff capacity is insufficient and the Probation and Mediation Service must ensure the enforcement of decisions. The Probation and Mediation Service must reduce the activities that lead to the preparatory proceedings””[[16]](#footnote-16).

1. **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?** YES/~~NO~~ **If yes, please specify.**
	1. **if the perpetrator marries the victim of rape?** ~~YES~~/NO
	2. **if the perpetrator loses his “socially dangerous” character or reconciles with the victim?** YES/~~NO~~

According to the Criminal Code, the prescription of the offense allows the non-prosecution of the perpetrator. The relevant articles are:

Article 34 – Limitation period

“(1) Criminal liability for a criminal offense shall cease upon the expiry of the limitation period which it makes

a) twenty years, in the case of a criminal offense for which it allows the imposition of an exceptional sentence, and a criminal offense committed during the preparation or approval of a privatization project pursuant to another legal regulation,

b) fifteen years if the upper limit of the penalty of imprisonment is at least ten years,

c) ten years if the upper limit of the penalty of imprisonment is at least five years,

d) five years if the upper limit of the custodial sentence is at least three years,

(e) three years for other offenses.”

Article 35 - Exclusion from the statute of limitations

“The expiration of the limitation period does not terminate criminal liability

1. for the criminal offenses listed in Chapter Thirteen of the Special Part of this Act”

Therefore there is no limitation for Article 401 concerning crimes against humnaity, they are imprescriptible.

According to the Criminal Procedure Code, the relevant article concerning the inadmissibility of criminal prosecution is the following:

Article 11 – Inadmissibility of criminal prosecution

“(1) Prosecution cannot be initiated, and if it has already been initiated, it cannot be continued and must be stopped.

a) if ordered by the President of the Republic, exercise his right to grant pardon or amnesty,

b) if the criminal prosecution is time-barred,

c) in the case of a person who is excluded from the competence of bodies active in criminal proceedings (Article 10), or a person whose prosecution requires consent according to the law, if such consent has not been given by an authorized body, unless it is a temporary exclusion or if the prosecution of a person for lack of consent of the competent authority is not only temporarily inadmissible,

d) **in the case of a person who is not criminally liable for lack of age**,

e) against someone who has died or been declared dead,

f) against a person whose **serious illness permanently precludes him from being brought to justice**,

g) against a person whose **mental illness, which occurred only after the commission of the act, permanently makes it impossible to understand the meaning of criminal prosecution**,

h) against which the previous prosecution for the same act ended with a final court judgment or was finally terminated by a decision of a court or other competent authority, if the decision was not annulled in the prescribed proceedings,

i) against whom the previous prosecution for the same act ended in a final decision approving the settlement, if the decision was not annulled in the prescribed proceedings,

j) against whom the previous prosecution for the same act ended with a final decision to transfer the case on suspicion that the act is a misdemeanor or disciplinary offense, if the decision was not annulled in the prescribed proceedings,

k) if the previous proceedings for the same act against the same person ended with a final decision on the offense and if the time limit for initiating review proceedings under another legal regulation in which the decision on the offense may be revoked has expired,

l) **if the criminal prosecution is conditioned by the consent of the injured party and the consent has not been given or has been withdrawn**,

m) if so provided by a promulgated international agreement by which the Czech Republic is bound, or

n) against whom criminal proceedings for the same act have been transferred to a foreign State, if he has been the subject of a final judgment by a foreign court for that act or of a protective measure which he or she is or has not enforced or cannot enforce under the law of that State; a foreign court has legally waived the imposition of a sentence or has a final decision on acquittal.”

Concerning paragraph l) of this article, even if the rape victims consents to the prosecution of the offender, the consent can be withdrawn any time until the court of appeal has taken it to the final hearing. Throughout the criminal proceedings, it is highly likely that the victim will be under great pressure not only from the rapist, who can live in the same household, but also from the family and friends.

Article 163a of the Criminal Procedure Code seeks to address this problem in part, stipulating that “The consent of the injured party with criminal prosecution for any of the criminal offenses referred to in Section 163 (1) is not required if (…) (d) it is clear from the circumstances that the consent was not given or was withdrawn in distress as a result of threats, coercion, dependence or subordination”. However, this paragraph does not change the fact that the victim may be subjected to environmental pressure throughout the criminal proceedings, which certainly does not help protecting the victim from secondary victimization.

In addition, Article 307 and 309 of the Criminal Procedure Code stipulate that:

“Section 3 - Conditional suspension of criminal prosecution

Article 307

 (1) In the proceedings on the offense, the court may, with the consent of the accused and in the preparatory proceedings, conditionally suspend the criminal prosecution, if

a) the accused confessed to the act,

b) compensated the damage, if it was caused by an act, or concluded an agreement with the injured party on its compensation, or took other necessary measures to compensate it,

c) issued unjust enrichment by an act acquired, or concluded an agreement with the injured party on its extradition, or took other appropriate measures for its extradition,

and with regard to the person of the accused, taking into account his or her life to date and the circumstances of the case, such a decision can reasonably be considered sufficient.”

“Section 4 – Settlement (*Narovnání*)

Article 309

(1) In proceedings for offense, the court may, with the consent of the accused and injured party and in preparatory proceedings, decide on the approval of a settlement and suspend criminal prosecution if the accused

(a) declares that he has committed the act for which he is being prosecuted and that there is no reasonable doubt that his statement was made freely, seriously and certainly;

b) compensates the injured party for the damage caused by the misdemeanor or takes the necessary actions to compensate for it, or otherwise redresses the damage caused by the misdemeanor,

c) issues unjust enrichment obtained through an offense or takes other appropriate measures for its extradition; and

d) deposits to the account of the court or in the preparatory proceedings to the account of the Public Prosecutor's Office a monetary amount intended for the state for financial assistance to victims of crime pursuant to a special legal regulation, and this amount is not apparently disproportionate to the seriousness of the offense,

and if he considers such a way of settling the case to be sufficient in view of the nature and gravity of the act committed, the extent to which the public interest was affected by the offense, the person accused and his personal and property relations.

(2) The accused, the injured party and, in proceedings before the court and the public prosecutor, may lodge a complaint against the decision pursuant to paragraph 1, which shall have suspensive effect.”

**Prosecution**

1. **Is rape reported to the police prosecuted ex officio (public prosecution)?** YES/~~NO~~

According to Article 158 on the procedure before criminal proceedings of the Criminal Procedure Code, “(1) The police authority is obliged on the basis of its own knowledge, criminal reports and suggestions of other persons and bodies on the basis of which it can be concluded about suspicion of a criminal offense, to make all necessary investigations and measures to reveal facts indicating that a criminal offense has been committed and to identify its perpetrator; it is also obliged to take the necessary measures to prevent crime. The police authority shall inform the public prosecutor of the facts indicating that a criminal offense has been committed in which the European Public Prosecutor's Office could exercise its jurisdiction in accordance with Articles 22 and 25 (2) and (3) of Council Regulation (EU) 2017/1939. The authorized bodies of the Prison Service of the Czech Republic shall immediately inform the General Inspectorate of Security Forces as soon as they initiate such an investigation.

(2) Notification of facts indicating that a criminal offense has been committed must be received by the public prosecutor and the police authority. In doing so, he is obliged to inform the notifier of the responsibility for knowingly false information and, if the notifier so requests, to inform him of the measures taken within one month of the notification”.

The article concerning the initiation of criminal prosecution is Article 160 of the Criminal Procedure Code stipulating that “(1) If the findings pursuant to Article 158 reveal established and substantiated facts that a criminal offense has been committed, and if the conclusion that it was committed by a certain person is sufficiently substantiated, the police authority shall immediately decide to initiate criminal proceedings against that person as the accused, unless there is reason to procedure pursuant to Article 159a (2) and (3), Article 159b (1), (3) and (4) or Article 159c (1). The operative part of the resolution to initiate criminal proceedings must contain a description of the act of which the person is accused so that it cannot be confused with another, the legal designation of the crime that is seen in this act; the accused must be marked in the resolution on the commencement of criminal prosecution with the same information as must be given about the person of the accused in the judgment (Article 120 para. 2). The statement of reasons for the resolution must specify the facts which justify the conclusion that the prosecution is justified”.

1. **Is rape reported to the police prosecuted ex parte (private prosecution)?** YES/~~NO~~

See the articles mentioned in the anszer of the previous question.

The Criminal Code also stipulates that:

“Article 367 – Non-infrigment of a criminal offense

(1) Whoever learns in a credible manner that another is preparing or committing a criminal offense (...) rape (Article 185), sexual abuse (Article 187), (...) attack against humanity (Article 401), (...) and committing or completing such a criminal offense will not be punished by imprisonment for up to three years; if this law provides for a lesser punishment for any of these crimes, it will be punished with that lesser punishment.

(2) Whoever commits an act referred to in paragraph 1 shall not be a criminal offense if he has not been able to prevent the criminal offense without considerable difficulty or without putting himself or a close person in danger of death, injury, other serious harm or criminal prosecution. However, the identification of a person close to the risk of criminal prosecution does not relieve the perpetrator of criminal responsibility if it concerns the non-obstruction of the criminal offense (...) attack on humanity (Article 401), (...)

(3) A criminal offense may also be prevented by timely notification to the public prosecutor or a police authority; the soldier may instead notify the superior.

Article 368 - Failure to report a crime

(1) Whoever learns in a credible manner that another has committed a criminal offense (...) assault against humanity (§ 401), (...) and does not report such a criminal offense without delay to the public prosecutor or police authority or, in the case of a soldier, to a superior, will be punished by imprisonment for up to three years; if this law provides for a lesser punishment for any of these crimes, it will be punished with that lesser punishment.

(2) A person who commits an act referred to in paragraph 1 shall not be a criminal offense if he could not make the notification without putting himself or a close person in danger of death, injury, other serious harm or criminal prosecution.

(3) A lawyer or his employee who learns of the commission of a criminal offense in connection with the performance of advocacy or legal practice shall not have the obligation to notify pursuant to paragraph 1. Clerical registered churches and religious societies with the right to exercise special rights also have no obligation to notify if they become aware of a criminal offense in connection with the exercise of a secrecy secret or in connection with the exercise of a right similar to a secrecy secret. The person providing assistance to victims of crime also has no obligation to report the crime of trafficking in human beings pursuant to Article 168 (2) and deprivation of personal liberty (Article 170). ”

1. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?** YES/~~NO~~

Article 309 on settlement of the Criminal Procedure Code stipulate that:
“(1) In proceedings for offense, the court may, with the consent of the accused and injured party and in preparatory proceedings, decide on the approval of a settlement and suspend criminal prosecution if the accused

(a) declares that he has committed the act for which he is being prosecuted and that there is no reasonable doubt that his statement was made freely, seriously and certainly;

b) compensates the injured party for the damage caused by the misdemeanor or takes the necessary actions to compensate for it, or otherwise redresses the damage caused by the misdemeanor,

c) issues unjust enrichment obtained through an offense or takes other appropriate measures for its extradition; and

d) deposits to the account of the court or in the preparatory proceedings to the account of the Public Prosecutor's Office a monetary amount intended for the state for financial assistance to victims of crime pursuant to a special legal regulation, and this amount is not apparently disproportionate to the seriousness of the offense,

and if he considers such a way of settling the case to be sufficient in view of the nature and gravity of the act committed, the extent to which the public interest was affected by the offense, the person accused and his personal and property relations.

(2) The accused, the injured party and, in proceedings before the court and the public prosecutor, may lodge a complaint against the decision pursuant to paragraph 1, which shall have suspensive effect.”

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

Article 309 on settlement of the Criminal Procedure Code stipulate that:
“(1) In proceedings for offense, the court may, with the consent of the accused and injured party and in preparatory proceedings, decide on the approval of a settlement and suspend criminal prosecution if the accused

(a) declares that he has committed the act for which he is being prosecuted and that there is no reasonable doubt that his statement was made freely, seriously and certainly;

b) compensates the injured party for the damage caused by the misdemeanor or takes the necessary actions to compensate for it, or otherwise redresses the damage caused by the misdemeanor,

c) issues unjust enrichment obtained through an offense or takes other appropriate measures for its extradition; and

d) deposits to the account of the court or in the preparatory proceedings to the account of the Public Prosecutor's Office a monetary amount intended for the state for financial assistance to victims of crime pursuant to a special legal regulation, and this amount is not apparently disproportionate to the seriousness of the offense,

and if he considers such a way of settling the case to be sufficient in view of the nature and gravity of the act committed, the extent to which the public interest was affected by the offense, the person accused and his personal and property relations.

(2) The accused, the injured party and, in proceedings before the court and the public prosecutor, may lodge a complaint against the decision pursuant to paragraph 1, which shall have suspensive effect.”

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

Article 11 of the Criminal Procedure Code concerns the inadmissibility of criminal prosecution and stipulates that:

 “(1) Prosecution cannot be initiated, and if it has already been initiated, it cannot be continued and must be stopped.

a) if ordered by the President of the Republic, exercise his right to grant pardon or amnesty,

b) if the criminal prosecution is time-barred,

c) in the case of a person who is excluded from the competence of bodies active in criminal proceedings (Article 10), or a person whose prosecution requires consent according to the law, if such consent has not been given by an authorized body, unless it is a temporary exclusion or if the prosecution of a person for lack of consent of the competent authority is not only temporarily inadmissible,

d) **in the case of a person who is not criminally liable for lack of age**,

e) against someone who has died or been declared dead,

f) against a person whose **serious illness permanently precludes him from being brought to justice**,

g) against a person whose **mental illness, which occurred only after the commission of the act, permanently makes it impossible to understand the meaning of criminal prosecution**,

h) against which the previous prosecution for the same act ended with a final court judgment or was finally terminated by a decision of a court or other competent authority, if the decision was not annulled in the prescribed proceedings,

i) against whom the previous prosecution for the same act ended in a final decision approving the settlement, if the decision was not annulled in the prescribed proceedings,

j) against whom the previous prosecution for the same act ended with a final decision to transfer the case on suspicion that the act is a misdemeanor or disciplinary offense, if the decision was not annulled in the prescribed proceedings,

k) if the previous proceedings for the same act against the same person ended with a final decision on the offense and if the time limit for initiating review proceedings under another legal regulation in which the decision on the offense may be revoked has expired,

l) **if the criminal prosecution is conditioned by the consent of the injured party and the consent has not been given or has been withdrawn**,

m) if so provided by a promulgated international agreement by which the Czech Republic is bound, or

n) against whom criminal proceedings for the same act have been transferred to a foreign State, if he has been the subject of a final judgment by a foreign court for that act or of a protective measure which he or she is or has not enforced or cannot enforce under the law of that State; a foreign court has legally waived the imposition of a sentence or has a final decision on acquittal.”

Concerning paragraph l) of this article, even if the rape victims consents to the prosecution of the offender, the consent can be withdrawn any time until the court of appeal has taken it to the final hearing. Throughout the criminal proceedings it is highly likely that the victim will be under great pressure not only from the rapist, who can live in the same household, but also from the family and friends.

Article 163a of the Criminal Procedure Code seeks to address this problem in part, stipulating that “The consent of the injured party with criminal prosecution for any of the criminal offenses referred to in Section 163 (1) is not required if (…) (d) it is clear from the circumstances that the consent was not given or was withdrawn in distress as a result of threats, coercion, dependence or subordination”. However, this paragraph does not change the fact that the victim may be subjected to environmental pressure throughout the criminal proceedings, which certainly does not help protecting the victim from secondary victimization.

Another limit is the prescription stipulated in Article 34 of the Criminal Code (quoted in the answer to question 6). The prescription for rape is 10 years, for sexual coercion it is 5 years and for sexual abuse it is 10 years. However, there is no prescription for crimes against humanity.

1. **Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?** YES/~~NO~~

Article 34 of the Criminal Code dealing with prescriptions stipulates that : “ (3) It is not included in the limitation period

a) the period during which the offender could not be brought before a court for a legal obstacle,

b) the period during which the criminal prosecution was suspended,

c) the period during which the victim of the crime of grievous bodily harm consisting of genital mutilation or sterilization (Section 145), illegal abortion without the consent of a pregnant woman (Section 159), trafficking in human beings (Section 168), introduction for coercion another to marriage (§ 172), extortion (§ 175) or oppression (§ 177) committed for the purpose of coercing another to marry or to tolerate an intervention aimed at causing serious bodily harm consisting in genital mutilation or **a criminal offense referred to in Title Three a special part of this law on crimes against human dignity in the sexual field was under the age of eighteen**”.

1. **Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?** ~~YES~~/NO **If yes, please specify.**
2. **Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?** YES/~~NO~~

According to Article 18 entitled “Giving an explanation and questioning the victim” of the Act on Victims of Crime : “(1) Questions directed to the intimate area of the interrogated victim may be asked only if this is necessary to clarify the facts relevant to the criminal proceedings. These questions should be asked particularly carefully and in a comprehensive manner so that the interrogation does not have to be repeated; their wording must be adapted to the age, personal experience and mental state of the victim, while maintaining the necessary consideration”.

Unfortunately, questions about the victim's previous sexual relationships and behavior continue to arise. In practice, "we encounter standard cases where the main trial de facto turns into only the parade of all the victim's former sexual partners, so that the court can determine whether the act in question is not just a standard sexual activity damaged, no matter how brutal there are, significant biological traces of damaged, bruised, and swollen rape have been reported in medical reports. Everything is protected in order to properly establish that the act presented to the injured party in the sequence and run as described, and as if the preference for certain sexual practices precluded the injured party from being raped in another case. In order for lawyers not to defest victims with their questions and to deepen their secondary to tertiary victimization, it is therefore necessary for the legislator to proceed to a more detailed definition of this provision so that the wording of Article 54 of the Istanbul Convention is fulfilled. There is also a need, especially in the interest of protecting the group of women who may be raped in the exercise of their profession of prostitution, and the interrogation of previous sexual partners thus, in essence, already predicts the court's negative attitude to convicting a potential perpetrator. "[[17]](#footnote-17)

1. **Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?** YES/~~NO~~**. If yes, please specify.**

In the Criminal Procedure Code, the law provisions aimed to avoid re-victimizations during the prosecution and court hearings are:

“ Providing information on criminal proceedings and persons involved in it

Article 8a

(1) When providing information on their activities to the public, law enforcement authorities shall ensure that they do not jeopardize the clarification of facts relevant to criminal proceedings, do not disclose data on persons directly involved in criminal proceedings that are not directly related to crime, and do not violate the principle that until guilt is pronounced by a final conviction, the person against whom criminal proceedings are being conducted cannot be regarded as guilty (Article 2 para. 2). In the pre-trial proceedings, they may not disclose information enabling the identity of the person prosecuted, the injured party, the person concerned and a witness to be identified.

(2) When providing information pursuant to paragraph 1, bodies active in criminal proceedings shall pay special attention to the protection of personal data and the privacy of persons under the age of 18. ”

“Article 88d – Prohibition of contact with certain persons

(1) The prohibition of contact with certain persons consists in the inadmissibility of any contact or search for the injured party, persons close to him or other persons, in particular witnesses, including through an electronic communications network or other similar means.

(2) For important reasons, a meeting of the accused with the injured party, a person close to him or another person shall be permitted. The meeting shall always take place in the presence of a law enforcement authority conducting the proceedings at the time of the meeting or, on the basis of its authority, in the presence of a probation officer. The meeting shall be terminated immediately if circumstances arise during it that prevent its continuation, in particular if the accused raises a reasonable concern in the injured party, a person close to him or another person about carrying out the conduct referred to in § 88b paragraph 2 or tries to influence their termination.

Article 88e - No entry into the dwelling

(1) The prohibition on entering a dwelling consists in the inadmissibility of the accused's entry into a common dwelling inhabited with the injured party and his immediate surroundings, and in the inadmissibility of staying in such a dwelling.”

“Article 183a

(1) In court proceedings, the President of the Chamber or another authorized member of the Chamber may exceptionally, for important reasons, hear the accused, a witness, an expert or provide other evidence outside the main trial or public hearing. The public prosecutor and the defendant's lawyer to whom such an act relates are entitled to participate in such an act and to be notified of its act in good time, unless the execution of the act cannot be postponed and their notification cannot be ensured. The participation of the accused in such an interrogation may be admitted in particular in cases where he does not have a lawyer, and in the case of the interrogation of a witness who has the right to refuse to testify. Notification of the examination of a witness or of another act with such a witness, whose identity is to be kept secret for the reasons stated in Article 55 para. 2 shall not contain information which would make it possible to establish the true identity of the witness” .

“Taking additional evidence

Article 209

(1) The President of the Chamber shall ensure that a witness who has not yet been heard is not present during the examination of the accused and other witnesses. If there is a fear that a witness in the presence of the accused will not tell the truth, or if he is a witness who or a person close to him from the testimony is in danger of injury, death or other serious danger, the President of the Chamber shall take appropriate measures to ensure security or confidentiality. witness, or expel the accused during the hearing of such a witness from the courtroom. However, after returning to the Chamber, the accused must be acquainted with the content of the witness's statement, may comment on it and, without meeting the witness, may ask him questions through the President of the Chamber. In the case of a witness whose identity is to remain secret (Section 55 (2)), the President of the Chamber shall take measures which make it impossible to establish the true identity of the witness.

(...)

Article 211

(1) Instead of questioning a witness, the minutes of his testimony may be read in the main trial, if the court does not consider personal questioning necessary and the public prosecutor and the defendant agree to this. If the accused, who has been duly summoned to the main trial, does not appear without an apology or withdraws from the courtroom without a serious reason, the defendant's consent to read such a report on the examination of a witness is not required and the public prosecutor's consent is sufficient. The accused must be informed of these facts in the summons. ”

“Article 263 - Proceedings before the Court of Appeal

(...) (5) After the opening of a public session, the chairman of the senate or a member of the senate appointed by him shall deliver the contested judgment and report on the state of affairs. The appellant shall then lodge his appeal and state the reasons therefor; if the appellant is not present, the appeal, including the reasons, shall be read by the President of the Chamber or a member of the Chamber designated by him. The public prosecutor and the persons who may be directly affected by the decision of the Court of Appeal, if they are not appellants, shall present their observations and proposals for the taking of evidence; if any of these persons is not present and if the statement is contained in the file, or if he / she so requests, the content of their submission shall be presented by the chairman of the senate or a member of the senate appointed by him.”

In the Act on Victims of Crime, the law provisions aimed to avoid re-victimizations during the prosecution and court hearings are:

“Part 5 – Right to protection against secondary damage

Article 17 – Prevention of contact between the victim and a person close to him or her with the person whom the victim has identified as the perpetrator, with a suspect or with a person against whom criminal proceedings are being conducted

(1) The victim and a person close to him/her have the right to request at any stage of the criminal proceedings, or even before its commencement, that the necessary measures be taken during the acts in which they participate to prevent contact with the person identified by the victim as the perpetrator. suspected of having committed a criminal offense or being prosecuted.

(2) Requests pursuant to paragraph 1 shall be complied with by the competent authorities if the victim is particularly vulnerable and the nature of the act performed does not preclude it. If this request cannot be complied with because it precludes the nature of the act being performed, the competent authorities are obliged to take appropriate measures to prevent the victim from coming into contact with a person whom he or she has identified as having been or suspected of having committed a criminal offense. leads, before and after the action.

Article 18 – Giving an explanation and questioning the victim

(1) Questions directed to the intimate area of the interrogated victim may be asked only if this is necessary to clarify the facts relevant to the criminal proceedings. These questions should be asked particularly carefully and in a comprehensive manner so that the interrogation does not have to be repeated; their wording must be adapted to the age, personal experience and mental state of the victim, while maintaining the necessary consideration.

(2) The victim has the right to object at any time to the focus of the issue. The objection shall be recorded in the minutes. The hearing shall decide on the merits of the objection.

Article 19 - Giving an explanation and questioning by a person of the same or opposite sex

(1) The victim may request to be heard in the preparatory proceedings by a person of the same or opposite sex. Requests from particularly vulnerable victims must be complied with unless there are important reasons to the contrary. The reasons which led to the rejection of the application shall be recorded in the record of the action.

(2) A particularly vulnerable victim may also request that an interpreter of the same or opposite sex be recruited in the event that his/her statement needs to be interpreted. The law enforcement authority shall comply with the request, unless the execution of the act can be postponed or an interpreter of the requested sex can be provided.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis to the submission of explanations pursuant to another legal regulation.

Article 20 - Explanation and interrogation of particularly vulnerable victims

(1) A particularly vulnerable victim must be interrogated in criminal proceedings particularly sensitively and in view of the specific circumstances which make him or her particularly vulnerable.

(2) If possible, the interrogation of particularly vulnerable victims in the preparatory proceedings shall be carried out by a person trained in the premises adapted or adapted for this purpose. If the victim is a child, the pre-trial hearing is always carried out by a trained person, except in cases where the act is urgent and the trained person cannot be detained.

(3) The questioning of a particularly vulnerable victim shall be carried out in such a way that it does not have to be repeated later. In the case of a further hearing before the same authority, the interrogator shall normally be the same person, unless there are important reasons to the contrary.

(4) If a particularly vulnerable victim does not wish to have direct visual contact with a person suspected of having committed a criminal offense or with a person being prosecuted, the necessary measures shall be taken to prevent such visual contact, unless there are serious grounds for doing so, in particular: uses audiovisual techniques where technically possible. In doing so, it must be ensured that the rights of the defense are not infringed.

(5) Paragraphs 1 to 4 shall apply mutatis mutandis to the submission of explanations pursuant to another legal regulation.

Article 21 - The right to be accompanied by a confidant

(1) The victim has the right to be accompanied to the acts of criminal proceedings and to provide explanations by a confidant.

(2) A trustee may be a natural person qualified for legal acts, which the victim chooses. The trustee provides the victim with the necessary, especially psychological, help. The trustee may also be the victim's agent. A confidant cannot be a person who has the status of an accused, a lawyer, a witness, an expert or an interpreter in criminal proceedings.

(3) The trustee may not interfere in the course of the act.

(4) A trustee may be excluded from participation in an act only exceptionally if the trustee's participation would disrupt the course of the act or endanger the achievement of the purpose of the act. If the trustee has been excluded, the victim must be allowed to choose another trustee, unless the act cannot be postponed or the postponement would involve disproportionate difficulties or costs.

Article 22 - Declaration of the victim on the impact of the crime on her life

The victim has the right at any stage of the criminal proceedings to make a statement as to the impact of the crime committed on his or her life to date. The victim may also make a statement in writing.”

**War and/or conflict**

1. **Is rape criminalized as a war crime or crime against humanity?** YES/~~NO~~
2. **Is there a statute of limitations for prosecuting rape in war or in conflict contexts?** ~~YES~~/NO
3. **Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?** YES/~~NO~~

According to the Criminal Code, the prescription of the offense allows the non-prosecution of the perpetrator. The relevant articles are:

Article 35 - Exclusion from the statute of limitations

“The expiration of the limitation period does not terminate criminal liability

1. for the criminal offenses listed in Chapter Thirteen of the Special Part of this Act”

Therefore there is no limitation for Article 401 concerning crimes against humnaity, they are imprescriptible.

1. **Has the Rome Statute of the International Criminal Court (ICC) been ratified?** YES/~~NO~~

**Data**

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

Between 2016 and 2018, the main penalty for rape was "suspended sentence" (“podmíněný trest odnětí svobody” 51%), then "unconditional imprisonment" was second (“nepodmíněný trest odnětí svobody” 35%), and the third most common punishment was "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem” 11%)[[18]](#footnote-18). During this period the total number of convicts was 259 people.

The average length of an unconditional sentence is around 5 years, with a maximum of 3 years for a suspended sentence[[19]](#footnote-19) and “more than half (57.14%) of the sentences of imprisonment (conditional and unconditional) imposed for sexually motivated crime consisted of sentences of 1 to 5 years"[[20]](#footnote-20).

In Article 186 of the Criminal Code, the duration of the criminal sanction for sexual coercion is “imprisonment for six months to four years or a ban on activity” and it does not correspond to the seriousness of the crime. Between 2016 and 2018, 11 persons were convicted, 8 were sentenced to "suspended sentence" (“podmíněný trest odnětí svobody”), one to “unconditional imprisonment” (“nepodmíněný trest odnětí svobody”), one had his punishment waived (“upuštění od potrestání”) and one was sentenced to "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem”)[[21]](#footnote-21).

In Article 187 of the Criminal Code, the duration of the criminal sanction for sexual abuse is “imprisonment for one to eight years”. Between 2016 and 2018, 747 persons were convicted. The main punishment was "suspended sentence" (“podmíněný trest odnětí svobody” 82%), then waive of punishment (“upuštění od potrestání” 9%) and "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem” 5%).

**Other**

1. **Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.**

There has been positive progress in the related legislation during the past decade. However, the Czech Republic is one of the few remaining countries that have not yet signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (so called Istanbul Convention).

Despite the positive steps, some concerns remain in practice as some activities are still insufficient and have to be improved such as:

* Special trainings for police and people in direct contact with gender based violence victims (including judges). A good practice would also be through quality management by the introduction of another criteria of the evaluated work and for each authority a person should be responsible for the treatment victims[[22]](#footnote-22).
* “Local accessibility of specialist services for victims of violence, including working with violent individuals”[[23]](#footnote-23).
* Funding for civil society organizations supporting victims of gender based violence is insufficient[[24]](#footnote-24). In the case of co-funding from the state budget, the situation is no better (subsidies are provided only for one calendar year and with a delay of several months).

In addition, the estimated number of reported rape is only eight percent. The reasons for this low percentage are the victims’ fear of trauma during the criminal proceedings, the fact that perpetrators are often close relatives (spouses, neighbours, colleagues, etc.), and the negative impacts on their economic and social situation by making this accusation[[25]](#footnote-25).

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1. Criminal code available at: <https://www.zakonyprolidi.cz/cs/2009-40?text=trestní+zákon> [↑](#footnote-ref-1)
2. Criminal Procedure Code available at : [www.zakonyprolidi.cz/cs/1961-141?text=trestn%C3%AD+%C5%99%C3%A1d](https://www.zakonyprolidi.cz/cs/1961-141?text=trestní+řád) [↑](#footnote-ref-2)
3. Available at: [www.zakonyprolidi.cz/cs/2013-45](https://www.zakonyprolidi.cz/cs/2013-45) [↑](#footnote-ref-3)
4. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. [↑](#footnote-ref-4)
5. ProFem, o. p. s.: *Jen ano je ano. Trestný čin znásilnění ve světle Istanbulské smlouvy.* 2017. Available at: [www.profem.cz/shared/clanky/550/A5-JenAnoJeAno\_WEB.pdf](http://www.profem.cz/shared/clanky/550/A5-JenAnoJeAno_WEB.pdf). [↑](#footnote-ref-5)
6. Ibidem. [↑](#footnote-ref-6)
7. Interactive application of Charles University and Czech Radio on the issue of punishment in the Czech Republic, available at: <https://jaktrestame.cz/aplikace/#appka_here>. Source of the data of the application: Ministerstvo spravedlnosti České republiky. [↑](#footnote-ref-7)
8. Ibidem. [↑](#footnote-ref-8)
9. ProFem, o. p. s.: *Jen ano je ano. Trestný čin znásilnění ve světle Istanbulské smlouvy.* 2017. Available at: [www.profem.cz/shared/clanky/550/A5-JenAnoJeAno\_WEB.pdf](http://www.profem.cz/shared/clanky/550/A5-JenAnoJeAno_WEB.pdf). [↑](#footnote-ref-9)
10. Interactive application of Charles University and Czech Radio on the issue of punishment in the Czech Republic, available at: <https://jaktrestame.cz/aplikace/#appka_here>. Source of the data of the application: Ministerstvo spravedlnosti České republiky. [↑](#footnote-ref-10)
11. For more information about these rights, see the website of the Czech Police: <https://www.policie.cz/clanek/prava-obeti-trestnych-cinu-a-poskozenych.aspx>. [↑](#footnote-ref-11)
12. Available at: <https://www.zakonyprolidi.cz/cs/2000-257?text=proba%C4%8Dn%C3%AD+a+media%C4%8Dn%C3%AD> [↑](#footnote-ref-12)
13. For more information for the victims, see : [www.infovictims.cz/cz/003\_prava/paginas/003\_003.html#003](http://www.infovictims.cz/cz/003_prava/paginas/003_003.html#003) [↑](#footnote-ref-13)
14. <https://www.persefona.cz/jake-poskytujeme-sluzby-sexualni-nasili> [↑](#footnote-ref-14)
15. <https://www.bkb.cz/> [↑](#footnote-ref-15)
16. <https://advokatnidenik.cz/2019/10/08/podminene-zastaveni-trestniho-stihani-a-narovnani-v-novem-trestnim-radu-recentni-uvahy-zakonodarce-a-navrhy-de-lege-ferenda-2-cast/> [↑](#footnote-ref-16)
17. ProFem, o. p. s.: *Jen ano je ano. Trestný čin znásilnění ve světle Istanbulské smlouvy,* 2017, page 39. Available at: [www.profem.cz/shared/clanky/550/A5-JenAnoJeAno\_WEB.pdf](http://www.profem.cz/shared/clanky/550/A5-JenAnoJeAno_WEB.pdf). [↑](#footnote-ref-17)
18. Interactive application of Charles University and Czech Radio on the issue of punishment in the Czech Republic, available at: <https://jaktrestame.cz/aplikace/#appka_here>. Source of the data of the application: Ministerstvo spravedlnosti České republiky. [↑](#footnote-ref-18)
19. Ibidem. [↑](#footnote-ref-19)
20. ProFem, o. p. s.: *Jen ano je ano. Trestný čin znásilnění ve světle Istanbulské smlouvy.* 2017. Available at: [www.profem.cz/shared/clanky/550/A5-JenAnoJeAno\_WEB.pdf](http://www.profem.cz/shared/clanky/550/A5-JenAnoJeAno_WEB.pdf). [↑](#footnote-ref-20)
21. Interactive application of Charles University and Czech Radio on the issue of punishment in the Czech Republic, available at: <https://jaktrestame.cz/aplikace/#appka_here>. Source of the data of the application: Ministerstvo spravedlnosti České republiky. [↑](#footnote-ref-21)
22. ProFem, o. p. s.: *Jen ano je ano. Trestný čin znásilnění ve světle Istanbulské smlouvy.* 2017. Available at: [www.profem.cz/shared/clanky/550/A5-JenAnoJeAno\_WEB.pdf](http://www.profem.cz/shared/clanky/550/A5-JenAnoJeAno_WEB.pdf). [↑](#footnote-ref-22)
23. Czech Womens Lobby, Shadow Report, CEDAW, 2015. [↑](#footnote-ref-23)
24. *Alternative report of the Czech Helsinki Committee for the 4th periodic review of implementation of the International Covenant on Civil and Political Rights by the Czech Republic*, The Czech Helsinki Committee, September 2019, para. 6, available at: <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CZE/INT_CCPR_ICS_CZE_37286_E.pdf> [↑](#footnote-ref-24)
25. Eva KLÍČOVÁ, SALON, *Právo*, 13 May 2020. [↑](#footnote-ref-25)