

Criminal Code

Chapter V. Indecent assault and rape

Art. 372.

1° Any indecent assault, committed without violence or threats of persons of either sex shall be punished with imprisonment from one month to two years and a fine of 251 to 10.000 euros.

2° Any indecent assault, committed with violence or threats of persons of either sex shall be punished with imprisonment from one to five years and a fine of 251 to 20.000 euros.

3° Any indecent assault, committed on the person or with the help of the person of a child of either sex, under the age of 16, shall be punished with imprisonment from one to five years and a fine of 251 to 50.000 euros.

The sentence shall be reclusion from five to ten years, if the assault has been committed with violence or threats or if the child is under the age of 11.

Art. 374.

The assault exists as soon as there is commencement of execution.

Art. 375.

Any act of sexual penetration¹, of whatever nature, by any means whatsoever, committed on a person who does not consent, including using violence or serious threats², by ruse or artifice, or abusing a person incapable of giving free consent or to oppose resistance, constitutes rape and shall be punished with imprisonment from five to ten years.

Any act of sexual penetration is considered rape if committed by abuse on a person incapable of giving free consent to any act of sexual penetration, of whatever nature, by any means whatsoever, if committed on a child under the age of 16. In such case, the perpetrator shall be punished with imprisonment from ten to fifteen years.

Art. 376.

If the rape did result in a disease or a permanent work incapacity, the perpetrator shall be punished with imprisonment from ten to fifteen years under the provisions of article 375 paragraph 1 and with imprisonment from fifteen to twenty years under the provisions of article 375 paragraph 2.

If the rape results in the death of the person on which it was committed, the perpetrator shall be punished with imprisonment from fifteen to twenty years under the provisions of article 375,

¹ CSJ corr. 8 May 2011, n° 150/01 V : The material element of rape is constituted by any act of sexual penetration by sex or another object, whether penetration is vaginal, anal or oral.

² Art. 483. By violence the law means acts of physical coercion exercised on people. By threats, the law means all means of moral restraint by fear of imminent harm.

paragraph 1 and with imprisonment from twenty to thirty years under the provisions of article 375 paragraph 2.

Murder if committed to facilitate the rape or to ensure impunity for the rape shall be punished with life imprisonment.

The sentence in the previous paragraph shall apply, even if consumption of rape was prevented by circumstances beyond the control of the perpetrator.

Art. 377.

The minimum sentences referred to in the preceding articles will increase in accordance with article 266 and the maximum sentences may be doubled :

1° if the rape or the indecent assault has been committed by a legitimate, natural or foster parent or by any other person with authority over the victim ;

2° if the rape or the indecent assault has been committed by a person who abuses his authority conferred on him by his duties;

3° if the rape or the indecent assault has been committed by several people acting as authors and accomplices or within the framework of a criminal organization.

4° if the rape or the indecent assault has been committed, with the use or threat of weapons, or accompanied by acts of torture or caused serious harm to the child ;

5° if the victim is :

- a person whose particular vulnerability, due to age, illness, infirmity, physical or psychological disability or pregnancy, is apparent or known to the author,
- the spouse or divorced spouse, or the person with whom the author usually lives or lived,
- a legitimate, natural or foster parent of the author,
- a brother or a sister,
- a legitimate or natural parent, one of the foster parents, a descendant, a brother or a sister of the person referred to in the first indent.

Art. 378.

In the cases provided for in this chapter, the perpetrators shall be sentenced to a prohibition of rights laid down in article 11, points 1, 3, 4, 5 and 7.

The courts will also be able to pronounce a prohibition either for life, or for a duration of more than ten years, to exercise a professional, voluntary or social activity, involving regular contacts with minors. Any violation of this prohibition shall be punished with imprisonment from two months to two years.

In the cases provided for in the articles 372, paragraph 1 and 373, paragraph 1, an additional prohibition of rights to vote, to elect or to be elected for a term of five to ten years might be effective.

If the assault has been committed by one of the parents, the perpetrator shall, in addition, be deprived of rights and benefits granted to him over the person and the property of the child by the Civil Code, Book 1, Title IX, "Parental authority".