

COMPARATIVE LAW ELEMENTS REGARDING CRIMINAL LIABILITY FOR OFFENSES AGAINST SEXUAL FREEDOM AND INVIOABILITY OF THE PERSON

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Abstract. *As the Republic of Moldova advances its efforts toward European Union accession, this paper undertakes an analysis of criminal law systems within selected European countries. The issue of criminal liability for acts that violate a person's sexual freedom and inviolability is a particularly sensitive and multifaceted topic in the field of comparative criminal law. It reflects not only the cultural and social characteristics of each jurisdiction but also broader developments in international human rights law. The legal treatment of such offenses differs considerably across EU member states, with national regulations shaped by diverse legal traditions, societal values, and cultural norms. This study explores the legislative frameworks governing sexual offenses in several EU countries, identifying both common patterns and distinctive national approaches.*

Keywords: *legal consent, sexual offenses, comparative criminal law, penal sanctions across jurisdictions*

Introduction

The evolution of criminal legislation in European states reflects a growing concern for the protection of sexual autonomy and human dignity. A comparative analysis of sexual offenses in the criminal codes of Romania, Austria, France, Germany, Belgium, Bulgaria, Italy, and the Czech Republic demonstrates the existence of a shared legal foundation grounded in the respect for consent, bodily integrity, and the protection of vulnerable groups, especially minors. This convergence is closely linked to the influence of international human rights instruments and to national efforts to respond to contemporary manifestations of sexual violence.

Basic content.

In Romanian legislation, criminal liability for sexual offenses is regulated under Chapter VIII of the Romanian Criminal Code (hereinafter referred to as the RCC), entitled “*Offenses against Sexual Freedom and Integrity*.” This chapter includes a range of serious unlawful acts aimed at protecting the physical and psychological integrity of individuals, particularly vulnerable victims such as minors. These provisions are of particular importance given the gravity of the offenses and their profound impact on the victims.

This section examines serious offenses against sexual freedom and integrity, as regulated by the Romanian Criminal Code. Rape (Article 218) encompasses any act of forced penetration or acts committed by exploiting the victim's vulnerability and is punishable by imprisonment from 3 to 10 years, with increased penalties in aggravating circumstances. Sexual intercourse with a minor (Article 220) is severely punished, depending on the minor's age and the specific circumstances of the act. The corruption of minors (Article 221) involves engaging in or inducing a minor to participate in sexual acts, with harsher penalties applied in cases involving the production of pornographic material. The recruitment of minors for sexual purposes (Article 222) is criminalized even when the act is merely attempted or preparatory in nature.

In Austria, the Criminal Code, under Title X, defines "*Criminal Offenses against Sexual Freedom and Integrity*." Article 201 classifies rape as the act of forcing a person, through violence, threats, or deprivation of liberty, to engage in or tolerate a sexual act, with penalties reaching life imprisonment in aggravated cases. Article 202 criminalizes sexual assault, punishable by imprisonment ranging from six months to fifteen years, depending on the severity of the offense. Article 205 addresses sexual abuse of vulnerable persons, while Article 205a penalizes violations of sexual autonomy.

Articles 206 to 208a are dedicated to the protection of minors, covering sexual acts involving minors, their pornographic representation, and the initiation of sexual contact, with punishments extending up to life imprisonment. Other relevant provisions include Article 211 on incest, Article 212 concerning abuse of authority, Article 213 on arranging sexual relations involving minors, Article 214 regarding the facilitation of sexual acts with minors, and Articles 215 to 215a, which sanction inducement to prostitution and the promotion of child pornography.

These legislative provisions reflect a strong commitment to safeguarding sexual dignity and integrity, particularly in relation to minors and other vulnerable individuals.

The French Criminal Code (hereinafter referred to as the FCC), under Section 3, regulates "*Offenses relating to sexual assault*," which include rape, other forms of sexual assault, incest, sexual exhibitionism, sexual and moral harassment, as well as offenses related to the recording and dissemination of violent images. Below is a detailed summary of the relevant legal provisions.

Sexual assault is defined as any sexual touching committed through violence, coercion, threat, or surprise, while rape involves a sexual act of penetration committed under the same conditions. The standard penalty for rape is 15 years of imprisonment, but this may be increased to 30 years or even life imprisonment in the presence of aggravating circumstances, such as the victim's minority, vulnerability, the perpetrator's position of authority, acts of torture, or the victim's death.

Incest is treated as an aggravated form of rape or sexual assault, and the court may order the withdrawal of parental authority. The law also penalizes sexual harassment with up to 3 years of imprisonment, and moral harassment with up to 2 years. Sexual exhibitionism in public is likewise criminalized.

Furthermore, legal entities may be held criminally liable, and the dissemination of violent images is prohibited, except in cases involving journalism or judicial proceedings.

The Criminal Code of the Federal Republic of Germany (hereinafter referred to as the GCC), under Section XIII titled "*Offenses Related to Sexual Life*," encompasses a wide range of offenses, as follows:

The German Criminal Code regulates a variety of offenses related to sexual life within Section XIII, including sexual abuse committed by individuals in positions of authority, such as educators, public officials, or healthcare professionals. These offenses are punishable by imprisonment ranging from 3 months to 5 years, and attempts are also penalized.

Regarding sexual abuse of minors, the Criminal Code imposes severe penalties, ranging from 6 months to 10 years of imprisonment, with life imprisonment in cases of particularly severe offenses or when the victim dies as a result. Sexual assault, rape, and sexual coercion are punishable by imprisonment, and if the offense results in the death of the victim, the penalty may extend to 10 years or more.

Furthermore, the German Criminal Code addresses offenses related to child pornography and the distribution of pornographic material involving children or minors. The penalties for these offenses are severe, ranging from 3 months to 5 years of imprisonment, and in aggravating cases, up to 10 years. Additionally, offenses such as pimping, exploitation of prostitution, and acts of public exhibitionism are penalized by imprisonment or fines. Other offenses include encouraging sexual acts with minors or facilitating prostitution, especially involving minors, which may result in sentences of up to 5 years of imprisonment.

The Criminal Code of the Kingdom of Belgium (hereinafter referred to as the CCB) reflects, in Chapter V titled "*Voyeurism, Offenses Against Decency, and Rape*", the following offenses:

Article 371/1 of the CCB regulates voyeurism, establishing imprisonment penalties between 6 months and 5 years for individuals who view or record (video or audio) a person without their consent while the person is undressed or involved in explicit sexual activity. If the recording is broadcasted or made accessible without the victim's consent, the punishment remains the same. If the victim is a minor, the sentence becomes much more severe: between 5 and 10 years for minors aged 16 or older and between 10 and 15 years for minors under 16. Voyeurism is considered to have been committed at the moment the act is executed.

Regarding Article 372 of the CCB, penalties are provided for offenses against decency committed without violence or threats upon a child under 16, or with the assistance of a minor. The penalty is imprisonment ranging from 5 to 10 years. If the offense is committed by a person in a position of authority or an ascendant of the victim, the sentence is increased, reaching between 10 and 15 years of imprisonment.

Similarly, Article 373 of the CCB penalizes offenses against decency committed through violence, coercion, threats, or other acts of violence against the victim. The penalty for such acts is from 6 months to 5 years of imprisonment, and if the victim is a minor or if the act is committed with the help of a minor aged 16 or older, the punishment can be between 5 and 10 years. If the victim is under 16 years old, the penalty can range from 10 to 15 years.

Further, Article 374 of the CCB establishes that an offense against decency is considered committed from the moment the act begins.

Additionally, Article 375 of the CCB regulates rape, defining sexual penetration without consent as a crime. The punishment for rape is between 5 and 10 years of imprisonment, and if the victim is 16 or older, the penalty can range from 10 to 15 years. If the victim is under 16 years old, the penalty varies between 15 and 20 years, and if the victim is under 14 years old, the sentence can range from 15 to 20 years. If the victim is under 10 years old, the penalty will be between 20 and 30 years.

Moreover, Article 376 of the CCB regulates penalties in cases where rape or offenses against decency result in the victim's death, with penalties ranging from 20 to 30 years. If these offenses are committed with additional violent acts such as kidnapping or threats with a weapon, the punishment will range from 15 to 20 years.

Similarly, Article 377 of the CCB details circumstances in which the sentence can be doubled, such as when the offender is an ascendant, a sibling, or a person in a position of authority over the victim, or if the victim is vulnerable for various reasons (e.g., ill, pregnant, or having physical/mental disabilities). The sentence can also be aggravated if multiple accomplices are involved in the commission of the crime.

In this context, Article 377bis of the CCB provides for an increase in the sentence by two years if the offense was committed due to hate, contempt, or hostility towards the victim's traits, such as race, gender, sexual orientation, religion, health condition, or other personal characteristics.

Moreover, Article 377ter of the CCB regulates the increase of the minimum penalty when the offense is committed against a minor under 16 years old and the offender had arranged a meeting with the intent to commit sexual violence-related offenses.

On the other hand, Article 377quater of the CCB establishes penalties for adults who, through information technologies, propose a meeting with a minor under 16 with the intent to commit a sexual offense. The penalty may be between 1 and 5 years of imprisonment if the proposal leads to a physical meeting.

Simultaneously, Article 378 of the CCB provides for the possibility of offenders being prohibited from certain rights and functions, such as a ban on working with vulnerable individuals or holding positions of authority in institutions that care for vulnerable persons.

Finally, Article 378bis of the CCB prohibits the publication or dissemination of the victim's image in offenses regulated by this chapter without the victim's consent. This offense is punishable by imprisonment ranging from 2 months to 2 years, and with a fine from 300 to 3,000 euros, or with either of these penalties alone.

The Criminal Code of the Republic of Bulgaria (hereinafter referred to as the *CCB*) in Section VIII titled "*Depravity*" stipulates the following offenses:

Article 149 CCB regulates depravity towards a person under 14 years of age and defines penalties for actions that involve attempts to satisfy sexual desires towards a person under 14 years of age, without copulation. The emphasis is on imprisonment penalties ranging from 1 to 6 years. Additional details in paragraphs (2), (3), (4), and (5) increase the severity of penalties if the acts are committed with violence, threats, or under conditions of vulnerability (e.g., victims in a state of helplessness).

Article 150 CCB addresses "*Depravity towards a person over 14 years of age*" and continues to explain penalties for acts of depravity towards persons over 14 years of age. Such offenses are punished with imprisonment ranging from 2 to 8 years if force, threats, or dependency are used, and more severe sentences apply for particularly serious cases (3 to 10 years).

In the same vein, Article 151 CCB titled "*Maintaining a sexual act with a person under 14 years of age*" regulates penalties for maintaining a sexual act with a person under 14 years of age, with sentences ranging from 2 to 6 years. Penalties are higher if the acts involve minors engaged in prostitution or multiple persons.

Article 152 CCB addresses sexual violence, defining acts of rape and corresponding penalties, which range from 2 to 15 years in prison, depending on the victim's age and aggravating circumstances such as violence or multiple offenders.

Article 153 CCB pertains to "*Sexual acts forced through material or service dependency*" and sets penalties for sexual acts forced through the use of material or service dependency, with sentences of up to 3 years in prison.

Article 154 CCB titled "*Sexual acts between close relatives*" criminalizes sexual acts between close relatives (ascendants-descendants, siblings) or between adoptive parents and adoptees, with penalties of up to 3 years imprisonment.

Similarly, Article 155 CCB "*Forced prostitution and acts of depravity*" addresses the issue of forced prostitution and acts of depravity, with penalties ranging from imprisonment of up to 3 years to imprisonment of up to 20 years, depending on the seriousness and circumstances of the offense (including recidivism and commission by organized groups).

Article 155a CCB "*Acts of depravity using information technology*" details offenses related to acts of depravity using information technology or other forms of contact to facilitate prostitution or the exploitation of minors for sexual purposes, with penalties ranging from 1 to 6 years in prison.

In the same context, Article 155b CCB "*Exploitation of minors for sexual purposes through information technology*" regulates offenses that involve recruiting minors for pornographic shows or acts of sexual exploitation, with sentences ranging from 1 to 6 years in prison.

Furthermore, Article 157 CCB, "*Sexual acts between persons of the same sex*" regulates acts of sexual satisfaction between persons of the same sex, imposing penalties for behaviors of this type that involve force, threats, or dependency, with sentences reaching up to 20 years for particularly serious cases.

In the same order of ideas, Article 158a CCB "*Recruiting minors for pornographic shows*" focuses on offenses involving the recruitment of minors for pornographic shows, with penalties ranging from 1 to 6 years, depending on the severity of the offense.

Finally, Article 159 CCB "*Creation and distribution of pornographic materials*" details penalties for the creation and distribution of pornographic materials, with imprisonment of up to 1 year. However, these penalties can increase if distribution occurs via the internet or other communication technologies.

In the **Penal Code of Italy** (hereinafter referred to as *CP of Italy*), under Section A II titled "*Offenses Against Personal Liberty*", articles such as Article 605 CP of Italy – *Kidnapping*, Article 606 CP of Italy – *Illegal Arrest*, Article 607 CP of Italy – *Unlawful Deprivation of Personal Liberty*, Article 608 CP of Italy – *Abuse of Power Over Arrested or Detained Persons*, and Article 609 CP of Italy – *Arbitrary Search and Body Search*, address abuses that affect the physical integrity and liberty of a person. These offenses are not directly related to sexual offenses, but are included in this section

because they involve the restriction or violation of personal freedom, a fundamental principle that must be protected within the rule of law.

Furthermore, Article 609-bis CP of Italy – *Rape* defines sexual violence (through violence, threats, or abuse of power) and punishes it with imprisonment between 5 and 10 years. If the victim is a minor or if the act involves aggravating circumstances (e.g., abuse of physical or psychological superiority), the penalty is more severe.

According to Article 609-ter CP of Italy – *Aggravating Circumstances in Cases of Rape*, sexual violence committed against minors or in aggravating conditions (e.g., the use of weapons, violence, or committed by a group) carries penalties from 6 to 12 years. If the victim is under 10 years of age, the penalty increases to 7 to 14 years.

Similarly, Article 609-quater CP of Italy – *Sexual Relations with a Minor* criminalizes sexual relations with a minor under the age of 14, or relations with a person in a position of authority over the minor (e.g., parent, guardian), with penalties ranging from 3 to 6 years. In less serious cases, the sentence may be reduced.

In line with Article 609-quinquies CP of Italy – *Corruption of Minors*, individuals who encourage a minor to witness sexual acts or participate in any other way in sexual activities, or who show them pornographic material to stimulate sexual desire, are punished with imprisonment between 1 and 5 years.

In the context of Article 609-sexies CP of Italy – *Ignorance of the Age of the Victim*, in cases of rape, corruption, or sexual relations with minors, the defendant cannot invoke ignorance of the victim's age as a defense, unless such ignorance was inevitable.

According to Article 609-septies CP of Italy – *Prior Complaint*, offenses specified in the articles relating to rape, aggravating circumstances, and sexual relations with minors require the victim's prior complaint, and the deadline for filing such a complaint is 6 months.

According to Article 609-octies CP of Italy – *Gang Rape*, the participation of multiple individuals in acts of sexual violence (gang rape) is punished with imprisonment from 6 to 12 years. The sentence may be aggravated based on aggravating circumstances.

In this order of ideas, Article 609-nonies CP of Italy – *Ancillary Penalties and Other Criminal Effects* provides that a conviction for sexual violence offenses may result in the loss of parental authority, prohibition from holding public office, suspension from certain professions, as well as other safety measures and restrictions for a period of at least one year after the sentence has been served.

In accordance with Article 609-decies CP of Italy – *Notification to the Juvenile Court*, in cases of offenses committed against minors, the prosecutor informs the juvenile court, and the court ensures emotional and psychological support for the minor throughout the procedures.

The Penal Code of the Czech Republic (Czech Penal Code) defines in Chapter III – "Offenses Against Human Dignity in the Sexual Sphere": Article 185 of the Czech Penal Code – "Rape". Paragraph (1) stipulates that the act of a person forcing another to engage in sexual acts through violence, threats of violence, or other serious harm, or exploiting the vulnerability of the person to commit this act, shall be punished by imprisonment from 6 months to 5 years. Paragraph (2) increases the penalty to between 2 and 10 years if the act is committed against a minor, with the use of a weapon, or through a sexual act or contact comparable to sexual intercourse. Paragraph (3) establishes a penalty from 5 to 12 years if the act is committed against a minor under 15 years old, against a person deprived of liberty, or if the act causes serious bodily harm. If the rape results in the death of the victim, the penalty under Paragraph (4) will be between 10 and 18 years. Paragraph (5) stipulates that preparatory acts are considered a criminal offense.

Regarding Article 186 of the Czech Penal Code – "Sexual Assault", Paragraph (1) regulates the act of forcing someone to masturbate, indecently expose themselves, or engage in other sexual behaviors through threats of violence or exploitation of vulnerability, punishable by imprisonment from 6 months to 4 years. Paragraph (2) applies the same penalty to a person who causes another to engage in sexual intercourse, masturbate, or indecently expose themselves, abusing the victim's dependence

or influence. If the act is committed against a minor or involves at least two people, the penalty increases to between 1 and 5 years (Paragraph (3)). If a weapon is used or the act is committed against a person deprived of liberty, the penalty increases to between 2 and 8 years (Paragraph (4)). If the sexual assault results in serious bodily harm, the penalty will be between 5 and 12 years (Paragraph (5)). If the sexual assault leads to the victim's death, the penalty will range from 10 to 16 years (Paragraph (6)). Preparatory acts are also considered a criminal offense under Paragraph (7).

Regarding Article 187 of the Czech Penal Code – "Sexual Abuse", Paragraph (1) provides that engaging in sexual acts with a minor under 15 years old, or committing sexual abuse against a minor by other means, shall be punishable by imprisonment from 1 to 8 years. If the act is committed by a person responsible for the minor's supervision, the penalty increases to between 2 and 10 years (Paragraph (2)). If the act causes serious bodily harm, the penalty will range from 5 to 12 years (Paragraph (3)). If the sexual abuse results in the death of the victim, the penalty will be between 10 and 18 years (Paragraph (4)). Preparatory acts are also considered a criminal offense under Paragraph (5).

Article 188 of the Czech Penal Code – "Incest" stipulates that the act of engaging in a sexual act with a direct line relative or a sibling is punishable by imprisonment for up to 3 years.

Similarly, Article 189 of the Czech Penal Code – "Pimping", Paragraph (1) regulates the act of inciting, organizing, employing, or enticing another person to practice prostitution, punishable by imprisonment from 6 months to 4 years. If the act is committed for the purpose of gaining substantial profits or as a member of an organized group, the penalty is between 2 and 8 years (Paragraph (2)). If the act causes serious bodily harm, the penalty will be between 5 and 12 years (Paragraph (3)). If the act results in the death of the victim, the penalty will be between 8 and 15 years (Paragraph (4)).

At the same time, Article 190 of the Czech Penal Code – "Prostitution That Threatens the Moral Development of Minors", Paragraph (1) stipulates that practicing prostitution near a school or places designated for minors is punishable by imprisonment for up to 2 years. Organizing or protecting prostitution in these places is punishable by imprisonment for up to 3 years (Paragraph (2)). If the act is committed in at least two locations or repeatedly, the penalty will range from 6 months to 5 years (Paragraph (3)).

Furthermore, Article 191 of the Czech Penal Code – "Distribution of Pornographic Materials", Paragraph (1) regulates the distribution of pornographic materials that include violence or lack of respect for human beings, punishable by imprisonment for up to 1 year. If the materials are intended for minors, the penalty is between 6 months and 2 years (Paragraph (2)). Distributing pornographic materials through organized groups or with the aim of gaining substantial profit can result in imprisonment from 6 months to 3 years (Paragraph (3)). If the act is committed as a member of an organized group or for the purpose of gaining considerable profit, the penalty will be between 1 and 5 years (Paragraph (4)).

Regarding Article 192 of the Czech Penal Code – "Production and Use of Child Pornography", Paragraph (1) stipulates that handling pornographic materials involving a minor or a person who appears to be a minor is punishable by imprisonment for up to 2 years. The production, import, export, or distribution of such materials is punishable by imprisonment between 6 months and 3 years (Paragraph (2)).

If these acts are committed by an organized group or with the purpose of gaining substantial profit, the penalty will range from 2 to 6 years (Paragraph (3)). The production or distribution of child pornography for the purpose of obtaining considerable profit or as a member of an organized group operating in multiple states carries a penalty of imprisonment from 3 to 8 years (Paragraph (4)).

In this context, Article 193 of the Czech Penal Code – "Abuse of a Minor for the Production of Child Pornography", Paragraph (1) regulates the act of persuading, organizing, employing, enticing, or exploiting a minor for the production of pornographic materials, punishable by imprisonment from 1 to 5 years. If the act is committed by a member of an organized group or with the intention to gain substantial profit, the penalty is between 2 and 6 years (Paragraph (2)). If the act is committed by an organized group operating across multiple states, with the purpose of obtaining considerable profit, the penalty will range from 3 to 8 years (Paragraph (3)).

In conclusion, the regulations in Chapter VI of the Penal Code of the Republic of Moldova are designed to strengthen the criminal liability of individuals and legal entities involved in crimes of sexual assault and harassment, while also providing concrete measures for the protection of victims and the prevention of recidivism. These regulations ensure a coherent and effective response, contributing to a fairer and more protected justice system for the victims of these crimes.

Key similarities with the regulations in the Penal Code of the Republic of Moldova include: the definition of rape by the lack of consent and the use of coercion, violence, or intimidation; the sanctioning of sexual acts with minors under the age of consent, even in the absence of violence; the incrimination of non-penetrative sexual assaults and sexual harassment.

At the same time, there are significant differences regarding: the age threshold for sexual consent (ranging between 13 and 16 years). Other comparative aspects concern legal terminology and the classification of acts (e.g., the separation between consensual sexual acts with a minor and the corruption of a minor); the level of criminal penalties and the degree of detail in the norms, with some systems being more extensive (e.g., Austria, Germany), while others are more concise (e.g., Bulgaria). In comparison with the Penal Code of the Republic of Moldova, it can be observed that the national legislation adheres to the general European framework, with clear regulations for rape, non-consensual sexual acts, sexual harassment, and sexual acts with minors. The Republic of Moldova maintains a system with progressive gradations of penalties depending on the severity of the offense and the circumstances of its commission, similar to the practices in most of the European countries analyzed. At the same time, the Moldovan Penal Code could benefit from certain adjustments to reflect international trends, such as: explicitly enshrining consent as a central element in defining sexual offenses; more nuanced criminalization of forms of psychological violence and abuse of power; strengthening regulations regarding the recruitment of victims through information technology.

Therefore, although the Moldovan legal framework is in line with European standards, full harmonization with the criminal laws of European Union member states requires a proactive and continuous approach to legislative reforms, in order to enhance the protection of fundamental rights and freedoms.

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