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**History of Sexual Crimes in the 20th Century
on the Example of Slovakia¹**

SUMMARY: 1. Introduction. - 2. Definition of sexual crimes. - 3. Period until 1945. - 4. Period from 1945 to 1989. - 5. Period after 1989. - 6. Analysis of the historical changes. - 7. Conclusion.

1. Introduction.

Over the past 100 years, the society has gone through intensive development in all areas of scientific and technological life, thus the laws must reflect these changes and take into account the latest trends in society. With changing of the view of what is socially acceptable and what is banned, it is necessary to regularly adapt also the criminal law. On the following pages, the authors focus on how the 20th century changed the view of society in the sexual area and what types of conduct in this field should be considered as punishable according to criminal law. As an example, the legal order of the Slovak Republic is being described. As a country which legal order is based on the continental legal system, this legislation is also comparable with other member states of the European Union belonging to the continental legal system, since the development of these legal systems is closely linked to the European culture and is usually based on the international Conventions agreed within Europe as well as those agreed worldwide.

2. Definition of sexual crimes.

The term “*sexual offenses*” is not a legal term and most of the criminal codes have no such definition incorporated in the legal provisions. We can only define sexual offenses on the basis of an in-depth analysis of the criminal codes and there is a different perception of scientific community which crimes should be included.

For sexually motivated offenses, it is characteristic that they interfere with four basic areas:

- moral relations in a given society,
- life and health of the victim,
- moral and sexual development of youth,
- good morals in sexual relations between adults².

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Literature generally refers to sexually motivated offenses as «sexual behaviour beyond a lawful boundary that damages a person and his/her interests»³.

The primary object of these crimes is the protection of human dignity in the sphere of sexual relations and the secondary object is protection of the health of a person who is threatened by the attacks of offender, her/his personal freedom and freedom of decision-making in sexual relations. The common features of these crimes are as following:

- a) a typical way of committing a crime in the form of violence and other forms of coercion,
- b) abuse of dependence,
- c) these crimes protects females and also males,
- d) they are committed by perpetrators both women and men,
- e) for the fulfilment of a crime, usually an intention is required,
- f) they are punished with severe penalties,
- g) for some offenses, sexual intercourse is not required to commit a crime, for some of them touching of the body, kissing, undressing of clothes, etc. is enough.

3. Period until 1945.

In the territory of the former Czechoslovakia the laws of the 19th Century were valid during the period 1918-1945: the Hungarian Criminal Law no. 5/1878 Coll. and Austrian Criminal Code no. 117/1852 Coll.

Among the sexual crimes at that time we could find traditional crimes like “*Rape*”, “*Sexual Violence*” and “*Sexual Abuse*”. During this period, homosexuality was also considered as a criminal offense. In this period “*Intercourse between Relatives*” was also an offense. As an interesting aspect we can consider the criminality of “*Infidelity*”:

«Who misuses the woman's mistake by pretending to be her husband to have intercourse with her, shall be punished by imprisonment for three years»⁴. Another form of infidelity was the intentional intercourse with married person causing the divorce of the marriage⁵.

Relatively progressive provision was an article, according to which «a parent who induces his/her daughter to intercourse with someone, will be punished by imprisonment for up to 5 years. The guardian, administrator, educator,

³ CHMELÍK, *Mravnosť, pornografie a mravnostní kriminalita*, Praha, 2003, 18.

⁴ WEISS, *Sexuální deviace. 2. vydání*, Praha, 2002, 12.

⁵ Article 245 of Hungarian Criminal Law no. 5/1878 Coll., *mek.oszk.hu*.

⁶ Article 246 of Hungarian Criminal Law no. 5/1878 Coll., *mek.oszk.hu*.

teacher committing such crime shall be punished by the same punishment»⁶. This provision has retained in some varieties in Criminal Code of the Slovak Republic up to the present day⁷.

At that time, we can also find a crime of “*Corrupting Morals*”. This criminal act was committed, if the offender «sells, spreads or makes publicly accessible immoral papers, documents or photos»⁸, respectively if the perpetrator «causes public nuisance by threatening morals»⁹. In both cases, the offender should be sentenced to three months' imprisonment. These crimes found partial expression also in current Criminal Code of Slovak republic¹⁰.

The commission of crimes against human dignity resulted among other punishments also into the loss of employment or rank¹¹.

During the period between two world wars the Act no. 241/1922 Coll. on treatment of sexually transmitted diseases was adopted in the territory of the former Czechoslovakia, which prohibited the procuring and soliciting of prostitution and establishment of call-houses. Until the adoption of this law, prostitution in Czechoslovakia was a licensed business. Since 1922 prostitution was no longer an official allowed business and was banned what became the first step for later criminal liability for the offenses connected with prostitution.

4. Period from 1945 to 1989.

On July 12th 1950, the Criminal Code no. 86/1950 Coll. was adopted in the territory of former Czechoslovakia¹². The indent of the new regulation was to replace previous regulations of 19th century with modern and more practical regulation¹³. Criminal Code no. 86/1950 Coll. entered into force on August 1st 1950.

In Chapter VII of the Special Part, Title Two, the “*Offenses against Human Dignity*” were included:

- Rape (Article 238),
- Sexual Abuse (Articles 239 and 240),
- Sexual Intercourse with a Person of the Same Sex (Article 241),

⁶ Article 247 of Hungarian Criminal Law no. 5/1878 Coll., *mek.oszk.hu*.

⁷ Article 202 of Criminal Code no. 300/2005 Coll. as amended.

⁸ Article 248 of Hungarian Criminal Law no. 5/1878 Coll., *mek.oszk.hu*.

⁹ Article § 249 of Hungarian Criminal Law no. 5/1878 Coll., *mek.oszk.hu*.

¹⁰ Article 371 of Criminal Code no. 300/2005 Coll. as amended – Corruption Morals, resp. Article 364 sec. 1 letter e) of Criminal Code no. 300/2005 Coll. as amended – Disorderly Conduct.

¹¹ Article 250 of Hungarian Criminal Law no. 5/1878 Coll., *mek.oszk.hu*.

¹² IVOR, *Trestné právo hmotné. Všeobecná časť*, Bratislava, 2010, 16-17.

¹³ VOJÁČEK, KOLÁRIK, GABRIŠ, *Československé právné dějiny*, Žilina, 2013, 171-198.

- Incest (Article 242),
- Trafficking of Women (Article 243),
- Procuring and Soliciting Prostitution (§ 243a, included with effect since January 1st 1957),
- Threatening Morality (Article 244).

These crimes in the overwhelming majority were taken over from the previous legal regulation, with addition of the crime “*Trafficking of Women*”, which was considered relatively modern and progressive crime at that time. At the same time the crime “*Procuring and Soliciting Prostitution*” was introduced with effect since January 1st 1957. It was the first time we encounter the crime of prostitution in the territory of the former Czechoslovakia. Under this provision, a person who «hires, solicits, seduces another person to the prostitution or who profits from the proceeds of someone else’s prostitution» shall be punished by the sentence of deprivation of liberty ranged from 3 months to 3 years¹⁴.

No provision with the “*Sexual Violence*” occurred in that Criminal Code, although that provision had been part of the previous legal regulation.

In 1961, the new Criminal Code no.140/1961 Coll. was adopted. Sexually motivated crimes were not very different from previous legislation, even their order remained the same, only formal amendments were made concerning the names and the systematic classification of offenses. The type of sanctions and penalty ranges were slightly different in comparison with previous regulation. Sexually motivated offenses have been amended several times during the existence of this Code, but the core regulation was not changed until 1989.

5. Period after 1989.

The most significant changes in the Criminal Code were made along with social changes that lowered social tensions in countries of the former “*Eastern Bloc*” and opened these countries for the democratic political development.

Changes have been made in the perception of pornography and the sexual intercourse with the same person, which as such ceased to be criminal. With effect from July 1st 1990 criminal offenses remained only more serious forms of distribution of pornography, e.g. for the purpose of profit in the large extent or distribution of pornography for persons under 18 years of age¹⁵. “*Sexual Intercourse with a Person of the Same Sex*” as a particular con-

¹⁴ Article 243a of Criminal Code no. 86/1950 Coll. version of 1 January 1957.

¹⁵ Article 205 of Criminal Code no. 140/1961 Coll. version of 1 July 1990.

duct was not a crime anymore unless committing another crime incorporated in the Criminal Code (Rape, Sexual Abuse).

With effect from January 1st 1992, the sale and distribution of pornography has definitely ceased to be a criminal offense, only pornographic works have remained criminal, which «show human beings with disrespect and display violence, or depict sexual intercourse with an animal, or other pathological sexual practices»¹⁶. Similarly, there have been punished acts related to providing pornography to children¹⁷.

In connection with the fight against child pornography, the amendments to Criminal Code laid down specific criminal offenses based on the production of a child pornographic work, the spreading of child pornography and the possession of a child pornographic works with effect from September 1st 1999. The amendment also introduced the definition of the term “*pornographic work*” and “*child pornography*” for the first time. The amendment to the Criminal Code was based on the Joint Action of February 24, 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children¹⁸.

One of the most significant changes was the re-adoption of the crime “*Sexual Violence*” with effect from August 1st 2001 aimed at punishing violence and sexual practices not based in intercourse.

In the year 2005 the current Criminal Code no. 300/2005 Coll. was adopted with effect from January 1st 2006. In the current Criminal Code sexual offenses might be, in particular, defined as following:

- Trafficking in Human Beings (Article 179),
- Rape (Article 199),
- Sexual Violence (Article 200),
- Sexual Abuse (Article 201 to 202),
- Incest (Article 203),
- Procuring and Soliciting Prostitution (Article 367),
- Production of Child Pornography (Article 368),
- Spreading of Child Pornography (Article 369),
- Possession of Child Pornography and Participation in Child Pornographic Work (Article 370),
- Threatening Morality (Article 371 to 372).

¹⁶ Article 205 sec. 1 of Criminal Code no. 140/1961 Coll. version of 1 January 1992.

¹⁷ Article 205 sec. 2 of Criminal Code no. 140/1961 Coll. version of 1 January 1992.

¹⁸ OJ L 63, 4.3.1997, 2-6, *eur-lex.europa.eu*.

Since the adoption of this law in the year 2005, there have been made slight changes to particular crimes, e.g. the crime of the “*Sexual Abuse*”. Amended provisions has been in effect from August 1st 2013 according to which the offender shall be punished when he/she contacts a child under fifteen years via electronic communications service to commit a crime of sexual abuse or crime of production of child pornography, for example via Internet. Likewise, the Article 201b was amended: «Whoever misuses for sexual pleasure a child younger than fifteen years by involving this child in participation in sexual activities or sexual abuse, even if such child does not have to participate directly in sexual activities or sexual abuse, or who also allows a child to be abused by third person for such purpose, shall be punished by imprisonment for up to two years»¹⁹.

These changes affected also other provisions, e.g. the “*Possession of Child Pornography*”. This crime has been also amended by the form of committing the offense by gaining access to child pornography through an electronic communications service.

6. Analysis of the historical changes.

During the course of the development of sexual offenses from the beginning of the 20th century to the present the range and the character of sexual offenses has changed significantly. Sexual crimes are very sensitive topic in society. Including of a particular conduct as a crime into the framework of the criminal code varies from country to country and this issue is influenced by various factors, such as geographic conditions, the level of social and economic development, social structure of society and we cannot disregard the historical legal culture and the current status of legal system as factors influencing the range and the character of sexual crimes. The differences between countries in this area are depending from their traditions, the prevailing religion and the prevailing political traditions. It should also be pointed out that this category of offenses is closely linked, in particular, to perception of the society to the sexuality in terms what should be perceived as inappropriate or unlawful. Some crimes were judged to be extremely serious in the past, while they are not currently the subject of criminal law²⁰.

Some of the sexual offenses are criminal today as well as they were criminal 100 years ago, some sexually motivated crimes have been omitted, some have been added.

¹⁹ Article 201b Criminal Code no. 300/2005 Coll. version of 1 August 2013.

²⁰ SCHELLE, TAUCHEN, *Sexuální trestné činy včera a dnes*. Ostrava, 2014, 321-323.

Obvious sexual crimes in almost all developed European countries are undoubtedly such crimes as “rape” or “sexual abuse”. Like in the past, violent sexual practices that do not involve intercourse but are done with the violence or non-voluntarily, are punishable mostly as “sexual violence”.

During the 20th century, there has been added other harmful conduct between sexual offenses – acts related to the prostitution as an unwanted phenomenon in the society, so they have slowly become commonly labelled as “trafficking of women/human beings” and also “procuring and soliciting prostitution”.

Some offenses have fallen out of catalogue of criminal offenses, e.g. “homosexuality” or “infidelity”. Such sexual behaviour is today perceived only in the contrary to the moral and ethical values of some societies and those conducts are considered presently not socially harmful or dangerous to be punishable by criminal law. Similarly, “pornography” ceased to be considered as threatening morality and moral values and modern and developed European countries punish only more serious forms of pornography, such as spreading and distribution of child pornographic works or pornographic works depicting pathological sexual practices. Thus among the new offenses, we mainly find offenses related to “child pornography” because previous formulations were not specifically aimed at fighting with child pornography, today we can find it as a separate category of crimes with strict and severe punishments.

Also with the development of electronic communications and Internet, it was necessary to adapt the formulations of the provisions in criminal codes so that criminal conduct carried out on the Internet and through the communications networks should be punished as well.

7. Conclusion.

The perception of sexual behaviour in the course of historical development in the last 100 years has changed as the whole society has been changing. It is likely, that the catalogue and the wording of the particular offenses in different countries could be subject of changes and is not final even today. As shown by development over the last 100 years, changes in legislation have been numerous. It is not viable to think that the sexual crimes would not undergo further changes. We can only guess which changes would be made – changes of titles, changes of formulations of provisions, defining special terms... However, maybe we can await also more radical changes, such as extension or reduction of the number of offenses. In recent years, the number of offenses significantly increased. The question is, if there is another scope for extension of sexual offenses or if it is possible

to think about narrowing of the extent of these crimes. It depends on the society's view on the sexual issue if we can meet with new approaches also to other offenses, such as it has happened, for example, in cases of homosexuality, infidelity and pornography.