

## Czech legislation overview

### Content

Introduction .....	2
Administrative Infringement.....	3
Domestic violence .....	5
Rape .....	9
Sexual Abuse.....	13
Stalking .....	16

## Introduction

The following model situations are to serve as a guideline when considering issues related to domestic and sexual violence.

The given cases, including their legal assessment, are provided with the reservation of possible different legal qualification of the case and assessment of the situation by investigative, prosecuting and adjudicating bodies. It is always necessary to remember that each act is individual, which is also how it is assessed by investigative, prosecuting and adjudicating bodies.

The following laws and regulations of the Czech Republic are particularly important in terms of protection against domestic and sexual violence:

- Act No. 135/2006 Sb. (Collection of Laws of the Czech Republic): an act amending some laws relating to the protection against domestic violence. This law was a breakthrough in terms of the introduction of protective measures and institutes in the system of law of the Czech Republic. It introduced the powers for the Police of the Czech Republic to banish a violent person from the common dwelling for a period of ten days.
- Act No. 40/2009 Sb., Criminal Code. It contains an extensive list of offences which can be committed by a violent partner.
- Act No. 141/1961 Sb., Rules of Criminal Procedure. This law defines the criminal procedure, in particular the rights of injured persons, e.g. the right to seek damages and compensation for non-proprietary damage during the course of the proceedings
- Act No. 45/2013 Sb., Act on Victims of Criminal Offences. It establishes the right of a victim of a criminal offence to gratuitous professional assistance, to access to information, the right to protection against secondary victimisation, as well as the right of defined victims to financial assistance provided by the state.
- Act No. 89/2012 Sb., Civil Code. It is the essential regulation of the civil law. For victims of violence, provisions regarding damages and compensation for non-proprietary damage are of special importance.
- Act No. 250/2016 Sb., Act on Liability for Administrative Infringements and on Procedures on Administrative Infringements. It came into effect on 1 July 2017, i.e. it is a new and complex code of administrative punishments. Its adoption significantly strengthened the rights of persons inflicted with administrative infringements.
- Act No. 251/2016 Sb., Act on Certain Administrative Infringements. It contains facts of administrative infringements not regulated by other laws. In case of domestic violence, we mostly encounter administrative infringements against civil co-existence.

## Administrative Infringement

Tereza (17) was dating Marek (18); and in the beginning, their relationship was absolutely all right. However, Tereza started suspending Marek over time that he was unfaithful to her. That is also why she often picked into a quarrel with him; she felt angry, which she could not master. During these quarrels, she was throwing things, shouting and crying.

One day, Marek went to see a football match, which is why he did not answer the phone when Tereza called. Although she knew very well where he was and what he was doing, she was convinced that he was out with another girl, cheating on her. She was annoyed all afternoon and was unable to think about anything else. She called Marek in the evening and he told her he was at home and invited her to come around. She was rude at him over the phone, she told him that he was a “bastard and asshole who was not worth anything, not even in bed”. When she came to his house, she was so angry that instead of ringing the bell, she started shouting around the street where there were several people “Get out you asshole and tell me with whom you did it today! You’re a whoremonger and impotent!” And she took a stone and threw it into Marek’s window and broke it. She went on shouting: “When you get out, I’m gonna smash your head with this stone!”

### **What could Tereza have committed?**

Tereza committed an **administrative infringement against civil co-existence** (*section 7(1) of the Act on Certain Administrative Infringements*). She offended Marek; she threatened to hurt him; she threatened to throw a stone at him and even broke a window in his house.

### **What could Marek do after this incident?**

- 1) He could **call the police** who would protect him from Tereza, calm her down and investigate what has happened.
- 2) He could file a petition **to institute proceedings on an administrative infringement** to a municipal authority.

He could also file this petition or a criminal complaint to the police which would refer the case to the municipal authority after an assessment that Tereza committed an administrative infringement, not a crime.

In addition to a penalty (e.g. warning or fine), this administrative authority could also impose a so-called restricting measure. It can also prohibit Tereza’s contact with Marek or order that she attend a programme to learn to master her aggression and violent behaviour.

- 3) If Marek felt to be a victim of Tereza’s behaviour, he could also seek help of an organisation assisting victims of crimes.

In such an organisation, they would listen to Marek, provide him with the first support in the difficult moments after the act or even after a certain time lag. They would help him find a psychologist or psychotherapist, if it

were necessary. They would help him to draw a petition to institute proceedings on an administrative infringement or accompany him to the police station if he wished so. They will explain the course of the proceedings on an administrative infringement as well as his rights.

People working in these organisations have the relevant education and training in social work, psychology and law and they know how to behave to a person affected by such an act.

Also, they have no obligation to report the information they have learned to the police

Contacting other helping organization

- 4) He could also seek advice in another organisation to get legal advice, e.g. a civil advisory centre. He could also seek an organisation where therapists, psychologists and social workers provide pair/relationship therapy and counselling. Marek and Tereza could together or alone speak about their complicated relationship and work on its improvement.

### **What are Marek's rights in the proceedings on an administrative infringement?**

Marek has become a **person directly inflicted by a committed administrative infringement**. Therefore, he will have the following rights in the respective proceedings:

- 1) Right to be **notified about the commencement** of the proceedings
- 2) Right to **propose evidence**
- 3) Right to **make other proposals**
- 4) Right to **information** necessary to withdraw his consent to the commencement of the proceedings if any such consent was given
- 5) Right to give **his position**
- 6) Right to **inspect the files**
- 7) **Right to attend the oral hearing**
- 8) Right to be present at **all acts** in the procedure
- 9) **Right to express a view on documents** on which the decision is based before it is issued
- 10) Right to be **notified about the decision**

## Domestic violence

Adéla met David already at secondary school. After their school-leaving examination, they were both admitted to a university in the same town, and David had the idea of arranging a shared dormitory room. Adéla wasn't sure about it – she didn't even know if it would be possible – but David was charming and used his charm to arrange for a shared room.

David was an amazing boyfriend. He waited in front of the school building for Adéla every day even though he had to sometimes skip his own lecture to do so.

David loved her very much and therefore wanted to spend as much time with her as possible. Gradually, Adéla stopped going home on weekends, as David didn't like it. Every time he was very sad about it and told her that without her his life wasn't worth anything, that he only lied in bed all day, and that he couldn't sleep when she wasn't with him. Adéla suggested that he could join her, but David refused. According to him, her mother didn't like him, was absolutely against their lifestyle, and was always pushing some food in front of them. Anyway, it could always be seen when Adéla came back to the dormitory that she had put on weight.

One day after school, Adéla wanted to go with her classmates to a nearby pub, and she said it to David. She had a good time with her classmates and came back a bit late, after the time she usually had dinner with David. As soon as she entered the room, she knew something wasn't right. David started to ask her where she was, who she was with, what her lover's name was, and how long it had been going on. He didn't accept her answer that she was just out with friends. David slapped her a few times during the quarrel and told her she was a fat cow and that if it weren't for him, she'd die alone. She didn't recognise him at all and was very frightened of him.

All her female classmates envied Adéla when he picked her up the next day with a bouquet of flowers. Later at the dormitory, he apologised to her that he had overdone it and that he was sorry. He swore he only did it because he was afraid of losing her. And if she left him, he would kill himself, because without her his life would have no meaning.

David didn't want Adéla to go anywhere. Anyway, she wasn't smart enough, so why did she bother to go to school when she would certainly fail at exams. David repeated this to Adéla every day and slapped her from time to time when she tried to object. One time David came back from school upset because of a bad grade. He blamed Adéla and started to slap her again, and Adéla said she was leaving and going home. This angered David so much that he dragged her to the bathroom and locked her in.

Fortunately, a female student from the neighbouring room heard her desperate cries and called the police.

### **1) What crimes did David commit in terms of criminal law?**

- a) David mentally abused her for a long time by checking on her daily, preventing her from contact with her family, and threatening her with suicide. Subsequently, he also started to abuse Adéla physically. With these actions, according to section 199 of the Criminal Code, he committed the offence of maltreating a person living in a common place of residence.
- This can be any common place of residence – even a dormitory, etc. (however, a violent act can also be committed in a hotel or in public).
  - A close relationship between the victim and the offender is not necessary. The relationship can be between spouses/partners or siblings, but also between a tenant and the owner of a flat (if they share the flat).
- b) David locked Adéla in the bathroom.
- According to the intensity and length of time, this could either be a crime of illegal confinement (section 170 of the Criminal Code) or illegal restraint (section 171 of the Criminal Code).

## 2) What should the police do?

- a) In this case, the police should apply the institution of banishment. David would be banished from the shared room in the dormitory for 10 days. Banishment is an institution which serves to protect the victim of violence from repeated attacks by the aggressor. It's not important whether David has a right to the flat or is its owner.
- b) As part of banishment, the aggressor cannot be present in the common place of residence.
- c) In the case of banishment, the police immediately notify an intervention centre (IC), which is obliged by law to offer first contact to a person threatened by domestic violence no later than within 48 hours from the receipt of a fax message from the Police of the Czech Republic containing an official record of banishment of a violent person from a common place of residence.

## 3) What can Adéla do next?

- a) Adéla can petition the court to issue an intermediate measure by which the court can order the violent person to:
- **Temporarily leave the flat/house** jointly inhabited with the threatened person as well as **its immediate surroundings** or **not to enter it**;
  - **Refrain from contacting** the threatened person;
  - **Refrain from any undesirable surveillance and/or harassment** of the petitioner – protection against stalking

The court decides on the issuance of the measure immediately – **within 48 hours** at the latest. There is no court fee for filing the petition.

**The decision stays in effect for one month**, but it can be extended by the court to up to six months.

**A minor over the age of 16 years is also entitled to file a petition.** For this procedure, he/she is fully entitled to sue or to be sued. Otherwise, a petition on behalf of a minor can be filed by his/her

statutory representative or by an authority of the social and legal protection of children (OSPOD).

**The petition can be submitted even if banishment has not occurred** (or criminal/administrative offence proceedings have not been initiated).

- b) Adéla can also file a criminal complaint. It can be filed in person or can be addressed in writing to any department of the Police of the Czech Republic or to the public prosecutor's office. This complaint can be filed not only by Adéla, but also by the student from the neighbouring room.
- 4) She can look for an **organisation which helps victims** of sexual violence.

In such an organisation, they would listen to Adéla, provide her with the first support in the difficult moments after the act or even after a certain time lag. They would help her find a psychologist or psychotherapist, if it were necessary. They would help Adéla to draw a criminal complaint or accompany her to the police station if she wished so. They can also help her arrange a lawyer for the criminal proceedings, if any, and they will explain her rights in the criminal proceedings.

People working in these organisations have the relevant education and training in social work, psychology and law and they know how to behave to a person affected by such a crime.

Also, they have no obligation to report the information they have learned to the police.

## **5) The rights of a victim (i.e. Adéla) based on the Victims of Criminal Offences Act**

- a) The right to gratuitous **professional assistance** (psychological, social and legal). The Ministry of Justice keeps a register of the providers of such assistance – link.
- b) The right to **information** about the progress of criminal proceedings and the rights the victim has within such proceedings. The information is provided by the police, the public prosecutor, an entity entered in the register of providers of assistance to victims (link), or a medical facility.
- c) The right to request that the victim **does not meet the offender** during the criminal proceedings.
- d) The right to **be interviewed by a person of the same or opposite sex.**
- e) The right to have a **fiduciary** during the criminal proceedings. This can be anyone whom the victim trusts. It is a person who will accompany the victim to an interview with the police and/or to the court and who will provide mental support. A fiduciary cannot talk nor perform any acts on behalf of the victim.
- f) The right to choose a representative for the criminal proceedings. A **representative** is a person who will represent the victim by dealing with the police and the court on the victim's behalf. He/she cannot testify on the

victim's behalf, but can raise an objection if the interview does not proceed as it should or file a complaint.

- g)** The right to claim at any stage of the criminal proceedings what impact the crime had on the life of the person against whom it was committed. The victim can thus let the police, court and offender know how his/her life has changed in terms of health, work, family relations, etc., either orally or in writing.
- h)** The right to **financial assistance from the state.**
- i)** The right to **damages and compensation for non-proprietary damage.**

## Rape

On the next day after celebrating her 16<sup>th</sup> birthday, Marika (17) went to see her best friend, Petra, to give her back the dress she borrowed for the party. She rang the doorbell. Petra's father opened the door – Marika had known him from her childhood; they had a familiar relationship; they had been on first name terms. He asked her to come in and told her that Petra had gone out shopping, but would be back in twenty minutes. He told to her to wait in Petra's bedroom.

After a couple of minutes, he came in and asked her questions about the birthday party. Marika felt easy in his company; she spoke about her experiences from the previous day. However, after a while, her friend's father started asking questions about her experience with boys and whether she had already had sex. Marika felt uneasy about these questions and was rather equivocal on this matter. But he could not be fobbed off easily, telling her that she had grown into a beautiful girl and that she would deserve to be given a real fuck.

Marika did not like vulgar words and importunate questions, and therefore stood up from the chair, saying she needed to go to the loo, and she went off to the door. But Petra's father was faster, blocked her way and knocked her down on the bed; Marika did not even notice how. She was shocked, and when he rolled up her T-shirt and started kissing her on the breasts, she instinctively started twitching and breaking loose from his embrace, repeating: "No, I don't want it, let me go!" But he slapped her in her face, put his strong hand on her mouth and said: "Shut up or you'll get some more." With the other hand, he rolled up her skirt, slipped his fingers into her crutch, and said: "Will you be quiet now? Don't worry; you'll like it when you'll be fingered by a real man." Marika was scared to death, and so she nodded. And so he started masturbating with the hand he had previously on her mouth. When he was finished, he told her to go and shower off sperm from her leg so that Petra did not notice anything when she got back, and left.

### **What could have Petra's father committed?**

Petra's father committed **rape** under *section 185 of the Criminal Code*. He forced Marika to a sexual intercourse, also threatening her with even greater violence.

### **Is it really a rape when coitus was not completed?**

It is a rape even in case that coitus is not performed but another physical sexual intercourse takes place. Were the coitus performed, the offender would be liable to even higher punishment.

### **Does the fact that Marika did not defend herself more play any role?**

Marika made it completely clear for Petra's father that she did not agree with his acts; she even tried to break loose from his embrace. But she stopped, because she was paralysed with fear of what else he could do to her.

A rape is not conditioned by the fact that the victim defends by force.

#### Offences similar to rape:

Rape is an offence causing that a person cannot make a free decision under what conditions and with whom he or she will have sex, and when someone else has sex with him/her against his/her will.

There are also other offences interfering with the freedom of decision-making about one's sexual life:

For instance, if Marika were under 15 years old and Petra's father would engage her in any sexual practices without any violence or threats, he would commit **sexual abuse** under *section 187 of the Criminal Code*. He would commit sexual abuse even if Marika agreed with sex.

If Petra's father did not rape Marika (coitus or other sexual practices) but if he forced her to masturbate or strip off in front of him, it would be **sexual coercion** under *section 186 of the Criminal Code*.

#### **What could Marika do after the rape?**

- 1) She could **tell** Petra or some other person she trusts or another adult – parents, teacher, coach, etc. This could bring relief to Marika; she would not be alone with this traumatic experience. Another person could also help her deal with the situation – accompany her to the doctor or to the police station.
- 2) She could **file a criminal complaint**.

#### What is the time limit in which a criminal complaint can be filed?

Each offence is subject to a certain period when the offender can be prosecuted. The police can no longer deal with the case after the lapse of this period. It is a so-called limitation period and its length depends on the gravity of the crime (3, 5, 10, 15 or 20 years).

However, this period starts running first with your 18<sup>th</sup> birthday in case of sexual abuse and similar offences. So if you are still a minor child and decide not to file a criminal complaint for some reason, the start of the limitation period is postponed until your 18<sup>th</sup> birthday.

The later from the time of the offence you file the criminal complaint, the less likely it is that the offender will be punished (first and foremost, there will be no evidence which the police could use during investigation).

3) She could contact **an organisation helping victims of crime or directly victims of sexual violence.**

In such an organisation, they would listen to Marika, provide her with the first support in the difficult moments after the act or even after a certain time lag. They would help her find a psychologist or psychotherapist, if it were necessary. They would help Marika to draw a criminal complaint or accompany her to the police station if she wished so. They can also help her arrange a lawyer for the criminal proceedings, if any, and they will explain her rights in the criminal proceedings.

People working in these organisations have the relevant education and training in social work, psychology and law and they know how to behave to a person affected by such a crime.

Also, they have no obligation to report the information they have learned to the police.

4) She could go to see a gynaecologist/GP/surgeon

Although it was not coitus, the offender could have injured Marika or the sperm could have penetrated into her vagina, and even though it is highly unlikely, she could have become pregnant. She could have also been infected by a sexually transmitted disease.

He could have caused her scratches, bruises or other serious injuries. That is why it is good to **seek medical care after such an act.**

The doctor would have given Marika medical treatment. A doctor's report can also be used as evidence in the criminal proceedings, if any.

Does Marika have any legal options to defend herself if she is afraid that Petra's father will rape her again?

If Marika files a criminal complaint and the police investigation shows that an offence has really been committed and that there is a risk that the offender will repeat it, the public prosecutor/judge can issue a so-called **intermediate measure** for her protection in accordance with the *Rules of Criminal Procedure*.

In it, Petra's father will be banned from contacting and getting close to Marika.

This ban will be valid as long as it's necessary or until the end of the criminal proceedings, should the danger last all this time.

Marika can suggest that the police/public prosecutor issue such an intermediate measure if she fears that it will happen again.

**The rights of victims based on the Victims of Criminal Offences Act**

- 1) The right to gratuitous **professional assistance** (psychological, social and legal). The Ministry of Justice keeps a register of the providers of such assistance – link.
- 2) The right to information about the progress of criminal proceedings and the rights the victim has within such proceedings. The information is provided by the police, the public prosecutor, an entity entered in the register of providers of assistance to victims (link), or a medical facility.
- 3) The right to request that the victim **does not meet the offender** during the criminal proceedings.
- 4) The right to **be interviewed by a person of the same or opposite sex.**
- 5) The right to have a **fiduciary** during the criminal proceedings. This can be anyone whom the victim trusts. It is a person who will accompany the victim to an interview with the police and/or to the court and who will provide mental support. A fiduciary cannot talk nor perform any acts on behalf of the victim.
- 6) The right to choose a representative for the criminal proceedings. A **representative** is a person who will represent the victim by dealing with the police and the court on the victim's behalf. He/she cannot testify on the victim's behalf, but can raise an objection if the interview does not proceed as it should or file a complaint.

As Marika is not yet 18 years old, she is a particularly vulnerable victim (link to the paragraph on PVV) and is entitled to gratuitous legal assistance provided by the representative.

- 7) The right to claim at any stage of the criminal proceedings what impact the crime had on the life of the person against whom it was committed. The victim can thus let the police, court and offender know how his/her life has changed in terms of health, work, family relations, etc., either orally or in writing.
- 8) The right to **financial assistance from the state.**
- 9) The right to **damages and compensation for non-proprietary damage.**

## Sexual Abuse

Karin is 13 years old and still attends a primary school. During summer holidays, she met Pavel at an outdoor swimming pool, and he was so different than boys from her class. They started chatting via Facebook and subsequently started dating. They spent every day of the summer holiday together. Karin was head over heels in love and would dance attendance on him on and on.

They had to get back to school in September, and so there was not so much time left to see each other. Karin took it very hard, but luckily enough, they could write to each other and send each other photos of their days. When Karin was about to go to bed one evening, Pavel asked her for a photo. First, she sent him a picture of herself in pyjamas, but Pavel wanted another one, this time without pyjamas. After all, they went out swimming during the holidays and he saw her in a swimsuit, so what difference does it make? And so she sent him a few pictures without pyjamas – what’s such a big deal? Pavel liked it very much and sent her a few compliments, which encouraged her and when he was asking for another picture without clothes next time, she did not hesitate very much and sent him several photos in various positions. After some time, Pavel came up with an idea that she could shoot a video instead of pictures. Karin did not like this very much, but Pavel was wheedling and explaining for several days that it’s no big deal because he’d already had her pictures and seen everything. In the end, he told her she was a little girl and that she did not love him when she did not want to do it. She did not want to lose him and so she sent him a video. At his urging, she even filmed herself masturbating and caressing herself.

Karin had a bad feeling about it, but everything changed next day when he came to pick her up at the school and wanted to walk her home. Since her parents were still at work, she invited Pavel home. They were talking, laughing and after some time, Pavel came up with an idea that they could go to bed together. Karin rejected, but Pavel was persistent. He told her that no one would know and that it was normal because they loved each other. In the end, Karin agreed and they made love; she wanted to show him that she loved him.

It was her first sex and she did not like it at all, and so she decided that she did not want to have another sexual intercourse. When Pavel was waiting for her in front of the school again, she tried to explain him that she wanted to wait with sex for some time. Pavel got upset; he was no longer the boy she knew in the summer. He was not nice anymore and he started telling her that if she did not sleep with him, he would send her photos to the whole school and would also arrange that everyone saw the videos. And when all this stuff gets to the welfare, she will be put in a children’s home ...

### **1) What could Pavel have committed?**

- a) Pavel had a sexual intercourse with a person under 15 years of age, thus committing sexual abuse. Even though Karin agreed with it.

- b) “At his urging, she even filmed herself masturbating and caressing herself.”  
The intensity of his urging would have to be considered in this case. But if Pavel were threatening with publishing the original naked photos, it would mean sexual coercion under section 186 of the Criminal Code.
- c) Pavel kept pictures of Karin where she is shown without clothes and in various positions. Moreover, he has a video showing Karin caressing herself and masturbating. Since Karin is under 15 years of age, Pavel committed the offence of production and other treatment of child pornography (section 192 of the Criminal Code).
- d) *“If she does not sleep with him, he will send her photos to the whole school and will also arrange that everyone sees the videos. And when all this stuff gets to the welfare, she will be put in a children’s home ...”*
  - Karin was really afraid that everyone would see her pictures, and so she had a sexual intercourse with Pavel – Pavel forced Karin to a sexual intercourse with threats; such acts would be considered as a rape. And since Karin is under 15 years of age, a higher penalty would be applied for his punishment.
  - In the end, Pavel said that if Karin did not want to sleep with him, she should give him all the money they had at home, or else he would publish the photographs – Pavel committed blackmailing by blackmailing her that he would publish the pictures if she did not give him the money.

**2) Would Pavel’s age be important for the consideration of his acts? What would be different?**

- a) Pavel is under 15 years of age
  - Pavel is not criminally liable due to his low age. But if he were 12 years old, a protection measure could be imposed on him in case he were involved in an especially serious crime for which extraordinary sentence can be imposed. This would not be our case.
- b) Pavel is between 15-18 years old
  - According to the law, an offender who is between 15 and 18 years old when committing an offence is a juvenile offender. A juvenile offender is liable for crimes. The difference is in the penalty which is halved in this case; and other different institutes for juvenile offenders would subsequently be applied in the criminal proceedings.
- c) Pavel is over 18 years of age.
  - In this case, Pavel is fully liable for his acts.

**3) What could Karin do?**

- a) She could unload her troubles to her friends, parents or another trusted adult. This person could also help her deal with this situation; she could be accompanied to a doctor or to the police station
- b) She could file a **criminal complaint**.

What is the time limit in which a criminal complaint can be filed?

Each offence is subject to a certain period when the offender can be prosecuted. The police can no longer deal with the case after the lapse of this period. It is a so-called limitation period and its length depends on the gravity of the crime (3, 5, 10, 15 or 20 years).

However, this period starts running first with your 18<sup>th</sup> birthday in case of sexual abuse and similar offences. So if you are still a minor child and decide not to file a criminal complaint for some reason, the start of the limitation period is postponed until your 18<sup>th</sup> birthday.

The later from the time of the offence you file the criminal complaint, the less likely it is that the offender will be punished (first and foremost, there will be no evidence which the police could use during investigation).

**c) She could contact an organisation helping victims of crime or directly victims of sexual violence.**

In such an organisation, they would listen to Karin, provide her with the first support in the difficult moments after the act or even after a certain time lag. They would help her find a psychologist or psychotherapist, if it were necessary. They would help Karin to draw a criminal complaint or accompany her to the police station if she wished so. They can also help her arrange a lawyer for the criminal proceedings, if any, and they will explain her rights in the criminal proceedings.

People working in these organisations have the relevant education and training in social work, psychology and law and they know how to behave to a person affected by such a crime.

Also, they have no obligation to report the information they have learned to the police.

**d) Karin can file a criminal complaint. The public prosecutor's office or court could subsequently issue a so-called intermediate measure banning Pavel to contact Karin again.**

**4) The rights of victims based on the Victims of Criminal Offences Act**

10) The right to gratuitous **professional assistance** (psychological, social and legal). The Ministry of Justice keeps a register of the providers of such assistance – link.

11) The right to information about the progress of criminal proceedings and the rights the victim has within such proceedings. The information is provided by the police, the public prosecutor, an entity entered in the register of providers of assistance to victims (link), or a medical facility.

12) The right to request that the victim **does not meet the offender** during the criminal proceedings.

13) The right to **be interviewed by a person of the same or opposite sex.**

14) The right to have a **fiduciary** during the criminal proceedings. This can be anyone whom the victim trusts. It is a person who will accompany the victim to an interview with the police and/or to the court and who will provide mental support. A fiduciary cannot talk nor perform any acts on behalf of the victim.

15) The right to choose a representative for the criminal proceedings. A **representative** is a person who will represent the victim by dealing with

the police and the court on the victim's behalf. He/she cannot testify on the victim's behalf, but can raise an objection if the interview does not proceed as it should or file a complaint.

As Marika is not yet 18 years old, she is a particularly vulnerable victim (link to the paragraph on PVV) and is entitled to gratuitous legal assistance provided by the representative.

- 16) The right to claim at any stage of the criminal proceedings what impact the crime had on the life of the person against whom it was committed. The victim can thus let the police, court and offender know how his/her life has changed in terms of health, work, family relations, etc., either orally or in writing.
- 17) The right to **financial assistance from the state**.
- 18) The right to **damages and compensation for non-proprietary damage**.

## Stalking

Two years after a difficult divorce, Dáša met Michal. He was a pleasant, nice man, and they dated for a few weeks. At that time, Michal suggested that they could move in together. Dáša thought it was too early for such a step; she wanted to get to know Michal first and said it to him. However, he didn't take her answer well, was sad, and continued to try to persuade Dáša on each date. Dáša thought his behaviour was immature and told him straight away that if he didn't stop with the pressure and didn't respect her decision, they would have to break up. Even this didn't have the desired effect and Michal was more and more insistent. Dáša felt bad about it, but she decided to break up. One day she told him that she didn't want to commit herself and that she was terminating their relationship. Michal didn't take it well and the same evening texted to Dáša that he loved her very much and wanted to get back together with her. She replied that she had made her decision and that for her it was the end. However, Michal didn't stop texting her; he started to send her messages with similar content every day – that he loved her and that he couldn't live without her. Dáša got tired of it and stopped answering the messages. That didn't work either; Michal didn't want to be brushed off and started sending her emails and calling her, from various numbers, as many as twenty times a day. Dáša was bothered by it and changed her phone number. However, she had to do so repeatedly, as Michal always somehow got her new number, usually from Dáša's female friends to whom she had introduced Michal when they had been dating. From them Dáša learned that Michal was also calling them, asking them if they could meet, to get information about her. As they felt sorry for him, they communicated with him for some time, until they started to think that it was weird and unpleasant. Then they agreed with Dáša that they would ignore him. Michal reacted by starting to appear in front of Dáša's apartment house when she returned from work, leaving presents in front of her door, and trying to visit her at work as well. This was very unpleasant for Dáša; she didn't know how to explain the things lying in the hall to her neighbours and at work she had to come up with excuses to her boss as to why someone was trying to get in touch

with her so frequently – as she was worried about losing her job, she didn't feel well at work and couldn't concentrate. She agreed with her boss to change her working hours and she also asked a female colleague to accompany her home, as she knew that Michal would be there waiting for her, urging her to get back together with him and trying to get into her flat. In these situations, Dáša was very nervous, trembled, felt anxious, and sometimes spent the whole evening crying. Everything peaked when Michal got hold of her sister's number and told her that he was Dáša's friend and wanted to surprise her, and the sister told him that there would be a family celebration at the weekend and that he could come. So on a Saturday, he rang the bell at the gate of Dáša's parents' place and Dáša came to open the door and only then realised that Michal was standing at the gate. He hugged her tightly and whispered in her ear that he couldn't live without her and that he knew that she couldn't live without him. At that moment, Dáša froze for several seconds; when she realised what was happening, she started screaming and convulsing, and Michal left. Dáša ran inside the house, lied down on a sofa, couldn't stop trembling and crying, and kept on repeating: "I can't anymore, I can't stand it."

### **What crime could Michal have committed?**

Michal committed the offence of **stalking** under *section 354 of the Criminal Code*. He had been following Dáša over a long term, sought her personal presence, contacted her by phone and email, and abused the information from her sister to be in contact with her. With all this, he interfered with Dáša's normal life (she was scared to go home unaccompanied; she had to change her working hours, and she also changed her phone number, which was inconvenient). Michal's conduct raised fear in her.

### **How do I know that it's stalking and not just a display of love?**

Similarly to Dáša's case, one of the conditions of stalking is that the person continues to act in such a way, even though the other person has clearly shown that it is undesired and unpleasant (e.g. after a clean break). However, stalking can also occur between people who don't know each other personally.)

Even though the person continues to act this way – e.g. confessing love, giving presents – this doesn't mean it's stalking. It becomes stalking when the stalker's behaviour raises fear for life or health in the followed person. For instance, Dáša felt hopeless, started having physical symptoms (trembling, crying), and felt anxious. After a longer period of time, she was worried that she wouldn't know how to cope mentally with the situation and that she would have a breakdown.

### **Criminal offences similar to stalking:**

Dangerous following (stalking) is a criminal offence that interferes with the personal freedom and privacy of the followed person. It also restricts his/her normal life and feeling of safety (he/she is worried about himself/herself or the people close to him/her).

In this sense, a similar criminal offence is **dangerous threatening** under *section 353 of the Criminal Code*. A person commits dangerous threatening if he/she threatens another person with death, grievous bodily harm, damaging a thing that

is important to him/her, harming someone who is close to the other person, kidnapping, ruining his/her good name, or filing a criminal complaint – in the case that this person is capable of making good on such threats and that the person who is being threatened fears it could happen.

### **How could Dáša have defended herself against this behaviour?**

1) Dáša took some measures – she repeatedly and **clearly told** Michal **that the break-up was final**. When this wasn't enough, **she changed her phone number** and working hours, **asked her female colleague to accompany her**, and she and her female friends **ignored** Michal's **attempts to contact her**.

2) She could have filed a **criminal complaint**.

### **Can Dáša protect herself legally if Michal continues his behaviour even after the criminal complaint has been filed?**

If Dáša files a criminal complaint, and if it appears from the police investigation that a crime really has been committed and that there's a risk that the offender will repeat it/continue, the public prosecutor/judge can issue a so-called **intermediate measure** according to the *Rules of Criminal Procedure*.

In it, Michal will be banned from contacting and getting close to Dáša.

This ban will be valid as long as it's necessary or until the end of the criminal proceedings, should the danger last all this time.

Dáša can suggest that the police/public prosecutor issue such an intermediate measure if she fears that it will happen again.

3) She could file an application to issue an **intermediate measure** according to *section 400 of the Special Judiciary Proceedings Act*.

The application is filed with the court at the place of residence of the followed person.

The court can order the stalker to refrain from the undesired following and harassment.

The court decides on the application within 48 hours.

The imposed ban lasts one month from the date of issuing of the measure.

During this time, a new application can be filed with the court to extend the intermediate measure to a necessary period of time. However, in total, the intermediate measure can last six months at most.

### **The rights of victims based on the Victims of Criminal Offences Act**

19) The right to gratuitous **professional assistance** (psychological, social and legal). The Ministry of Justice keeps a register of the providers of such assistance – [link](#).

20) The right to information about the progress of criminal proceedings and the rights the victim has within such proceedings. The information is provided by the police, the public prosecutor, an entity entered in the register of providers of assistance to victims ([link](#)), or a medical facility.

21) The right to request that the victim **does not meet the offender** during the criminal proceedings.

22) The right to **be interviewed by a person of the same or opposite sex.**

23) The right to have a **fiduciary** during the criminal proceedings. This can be anyone whom the victim trusts. It is a person who will accompany the victim to an interview with the police and/or to the court and who will provide mental support. A fiduciary cannot talk nor perform any acts on behalf of the victim.

24) The right to choose a representative for the criminal proceedings. A **representative** is a person who will represent the victim by dealing with the police and the court on the victim's behalf. He/she cannot testify on the victim's behalf, but can raise an objection if the interview does not proceed as it should or file a complaint.

The right to claim at any stage of the criminal proceedings what impact the crime had on the life of the person against whom it was committed. The victim can thus let the police, court and offender know how his/her life has changed in terms of health, work, family relations, etc., either orally or in writing.

25) The right to **financial assistance from the state.**

26) The right to **damages and compensation for non-proprietary damage.**