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EVALUATION OF THE LEGAL SYSTEMS OF THE EU MEMBER STATES AND THEIR IMPLEMENTATION AT NATIONAL LEVEL IN THE FIGHT AGAINST TERRORISM Legislative aspects of combating terrorism in the Czech Republic Criminal Substantive Law

I. Current criminal legal framework of the fight against terrorism in the Czech Republic

A. General issues

The relevant bodies of crimes related to terrorism are contained in the Act No. 140/1961 Coll., Criminal Code. From the general point of view, attempt and participation in a completed crime in a form of organisation, instigation or assistance are punishable. Preparation of a crime is punishable provided it is an illegal conduct which threatens society and which consists in the organising of an especially serious crime. If a crime is committed by the joint conduct of two or more persons, each of them is criminally liable as if he/she alone had committed the crime. The criminal liability and liability to punishment of a participant (organizer, instigator and assistant) is generally governed by the provisions on the offender's criminal liability and liability to punishment.

The liability to punishment for a crime committed on the territory of the Czech Republic is always considered under the law of the Czech Republic (principle of territoriality). A crime committed outside the territory of the Czech Republic falls within the scope of the Criminal Code, provided:

- a crime was committed on board a ship or an aircraft registered in the Czech Republic or was committed in Antarctica,
- a crime was committed abroad by a citizen of the Czech Republic or by a stateless person authorised to reside permanently in the Czech Republic (principle of personality),
- an illegal act has a character of an especially serious crime (principle of protection and universality); this category includes the crimes of terror, terrorist attack and participation in a criminal conspiracy,
- a crime was committed abroad by a foreign national or a stateless person who does not reside permanently on the territory of the Czech Republic provided such an act is punishable both in the Czech Republic and in the state on whose territory it was committed, the offender is apprehended on the territory of the Czech Republic and was not extradited for criminal prosecution to a foreign state,
- it is hereby stipulated in a promulgated international convention.

B. Relevant bodies of crimes related to terrorism

Under the crime of "Subversion of the Republic" (section 92 of the Criminal Code) a person who acting with intent to undermine the constitutional order, territorial integrity or defence capability of the Czech Republic or to destroy its independence, participates in violent acts against the Czech Republic or its organs is punishable by a term of imprisonment of from eight to twelve years (or twelve to fifteen years or exceptional imprisonment under certain circumstances). In comparison with the newly introduced crime of "Terrorist Act" mentioned below, the crime "Subversion of the Republic" has a narrower scope, because the crime of "Terrorist Act" covers even the cases where the intention to undermine the constitutional order is not present because the intention to damage the constitutional order of the republic (i.e. through a murder of a leading representative of the republic) is sufficient with respect to this new body of crime. Moreover, the



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crime of "Terrorist Act" covers violent acts not covered by the body of the crime of "Subversion of the Republic".

A crime of "Terror" has been maintained in the Criminal Code (section 93 of the Criminal Code) even after the below mentioned amendment. This body of crime covers attempt or completed homicide of other person with the intention to damage the constitutional order of the republic which is punishable by an imprisonment for a term of twelve to fifteen years or the exceptional punishment (that is the imprisonment for a term of fifteen to twenty five years or the exceptional punishment of life imprisonment). In comparison, the crime of "Terrorist Act" covers even attacks against things or facilities and negligence homicide.

The crime of "Sabotage" is punishable in two forms:

- firstly, a person who destroys, damages or makes useless another person's or his own thing with the intent to damage the constitutional order is punishable under the section 96 of the Criminal Code. Such behaviour is punishable by a term of imprisonment of three to ten years (ten to fifteen years within the qualified body of crime). Crimes of "Terrorist Act" doesn't cover these cases.
- secondly, a crime of "Sabotage" under the section 97 of the Criminal Code is to be mentioned. A person acting with the intent to damage the constitutional order or defence capability of the republic, abuses his employment, profession, position or office, or commits some other act for the purpose of frustrating or obstructing fulfilment of an important task by a state organ, the armed forces or an armed corps, or by an economic organisation or other institution; or causing a breakdown in the work of such organ or organisation, or causing serious damage to it is to be sentenced to a term of imprisonment of three to ten years. The acts envisaged within the qualified body of crime are punishable by a term of imprisonment of ten to fifteen years or by the exceptional punishment.

The crime "Participation in a Criminal Conspiracy" is punishable under the section 163a of the Criminal Code by the term of imprisonment of two to ten years. The committing of a crime by a member of a criminal conspiracy is considered to be general or especial aggravating circumstance whereas this circumstance doesn't impede the punishability for committing a crime for the benefit of a criminal conspiracy.

Additionally, the activities related to terrorism may be punishable within the following bodies of crimes:

- A crime of "High Treason" (section 91 of the Criminal Code; only the Czech citizens may be the offenders) – a term of imprisonment of twelve to fifteen years, or exceptional punishment,
- A crime of "Common Danger" (section 179 of the Criminal Code) – the most severe imprisonment of twelve to fifteen years or exceptional punishment comes into question in cases of terrorist activities,
- A crime of "Endangering the Safety of an Aircraft or Civil Vessel" (section 180a of the Criminal Code) - a term of imprisonment of eight to fifteen years, twelve to fifteen years within the qualified body of crime,
- A crime of "Unlawful Taking of an Aircraft Abroad" (section 180c of the Criminal Code) – a term of imprisonment of three to ten years, ten to fifteen years or exceptional punishment within the qualified body of crime,
- A crime of "Unauthorised Arming" (section 185 of the Criminal Code) – the most severe imprisonment of one to five years of imprisonment,
- A crime of "Development, Production and Possession of Combat Equipment" (section 185a of the Criminal Code) – a term of imprisonment of one to five years of imprisonment,
- A crime of "Unauthorised Production and Possession of Radioactive Material and Other Highly Dangerous Substances" (section 186 of the Criminal Code) – a term of imprisonment differs depending on seriousness of the crime committed – one to five years, two to ten years, eight to fifteen years of imprisonment,
- A crime of "Extortion" (section 235 of the Criminal Code) – the most severe imprisonment of five to twelve years of imprisonment,
- A crime of "Abduction" (section 216 of the Criminal Code) – the most severe imprisonment of three to ten years of imprisonment,
- A crime of "Hostage-taking" (section 234a of the Criminal Code) – a term of imprisonment differs depending on seriousness of the crime committed – two to eight years, three to ten years, ten to fifteen years of imprisonment,
- A crime of "Murder" (section 219 of the Criminal Code) – a term of imprisonment of from ten to fifteen years, twelve to fifteen years of imprisonment or exceptional punishment,
- A crime of "Abduction Abroad" (section 233 of the Criminal Code), the most severe imprisonment of five to twelve years of imprisonment,

- A crime of "Illegal Crossing of the State Border" (sections 171a and 171b of the Criminal Code) – the most severe imprisonment of eight to fifteen years of imprisonment,
- A crime of "Breach of the Provisions on International Flights" (section 171c of the Criminal Code) – a term of imprisonment of six months to three years of imprisonment.

Prohibition of arm supplies to terrorists is dealt with by the Criminal Code through the following bodies of crimes:

- A crime of "Violation of Statutory Provisions on the Disposal of Goods and Technologies Liable to Control Procedures" (sections 124a, 124b and 124c of the Criminal Code). These crimes cover cases of violation of prohibition or restriction to dispose with goods and technologies controlled by specific legal regulation.
- A crime of "Violation of Statutory Provisions on Foreign Trade in Military Materiel" (section 124d of the Criminal Code). This crime refers to foreign trade in military materiel without permission or licence.
- A crime of "Violation of Statutory Provisions on Foreign Trade in Military Materiel" (section 124e of the Criminal Code). This crime refers to foreign trade in military materiel where the permission or licence has been issued unjustifiably.
- A crime of "Violation of Statutory Provisions on Foreign Trade in Military Materiel" (section 124f of the Criminal Code). This crime refers to foreign trade in military materiel where the permission or licence has been illegally elicited from the competent authorities.
- A crime of "Unauthorised Arming" (section 185 of the Criminal Code),
- A crime of "Development, Production and Possession of Combat Equipment" (section 185a of the Criminal Code),
- A crime of "Unauthorised Production and Possession of Radioactive Material and Other Highly Dangerous Substances" (section 186 of the Criminal Code),
- A crime of "Unauthorised Production and Possession of Narcotic and Psychotropic Substances and Poisons" (section 187 of the Criminal Code),
- A crime of Production, Acquisition or Possession of an Object Determined for Unauthorised Production of a Narcotic or Psychotropic Substance" (section 188 of the Criminal Code).

II. Relevant amendments of the Criminal Code relating to the issue of terrorism

As regards relevant bodies of crimes related to terrorism, it is necessary to stress that an amendment of the Criminal Code implementing, among others, the requirements of anti-terrorist EU legislation was approved by the Parliament on 24 September 2004 and entered into force on 22 October 2004. This amendment has extended the substantive scope of the Criminal Code to the crimes that were committed abroad by a foreign national or a stateless person who does not reside permanently on the territory of the Czech Republic provided such an act was committed for the benefit of a legal person residing on the territory of the Czech Republic.

This amendment of the Criminal Code introduced a new body of crime "Terrorist Act" in order to comply with the requirements of the EU Council Framework Decision 2002/472/JHA on combating terrorism. This body of crime covers even the acts of persons who threaten to commit a terrorist attack or who knowingly provide support, especially financial, for terrorist activities. The wording of this body of crime is as follows:

"§ 95

Terrorist act

(1) A person who, with the intention to damage the Czech Republic's constitutional system or defence capability, to undermine or destroy fundamental political, economic or social structures of the Czech Republic or of an international organization, to seriously intimidate the population or to unlawfully compel the government or other body or an international organization to perform, to abstain from performing or to tolerate a certain action,

- a) commit an attack against the life or health of a person with the intention to cause death or serious bodily harm;*
- b) take hostages or commit an abduction;*
- c) destroy or seriously damage public utilities, transport or telecommunication systems, including information systems, fixed platforms on continental shelf, electric energy and water supply, health service or other important facilities, public sites or public property with the intention to endanger human lives, safety of the facilities, systems or sites or to expose property to the risk of major damage;*

- d) *disrupt or stop the supply of water, electric energy or other basic natural resources with the intention to endanger human lives or to expose property to the risk of major damage;*
- e) *seize or control an aircraft, vessel or other means of passenger or freight transport, and/or destroy, seriously damage or extensively interfere in the operation of navigation systems or facilities; or provide false information on important facts, thus endangering human lives and health, safety of the means of transport or exposing property to the risk of major damage;*
- f) *without due authorization, manufacture or otherwise acquire, store, import, transport, export or otherwise deliver or use explosives, nuclear, biological, chemical or other weapons with mass destructive effects; and/or engage in unauthorized research and development of nuclear, biological, chemical or other weapons or combat means or explosives prohibited by law or by an international treaty; or*
- g) *expose human beings to the danger of death or serious bodily harm, or expose the property of other persons to the risk of major damage by causing a fire or flood or the harmful effects of explosives, gas, electricity or similarly dangerous substances or forces; or commit a similarly dangerous act; or aggravate the imminent danger or obstruct the efforts to counter or alleviate it,*

shall be sentenced to a term of imprisonment of five to fifteen years and/or forfeiture of property.

The same sentence shall be imposed on a person who threatens to commit a terrorist act under the paragraph 1, or who provides financial, material or other support to such acts.

(2) An offender shall be sentenced to imprisonment for a term of twelve to twenty years, and/or forfeiture of property or exceptional punishment,

- a) *if he commits the act a member of an organized group*
- b) *if he causes serious bodily harm or death*
- c) *if as a result of his act a considerable number of people have become homeless*
- d) *if he stops the transport in a greater extent*
- e) *if he causes substantial damage by this act*
- f) *if he commits such crime with the intention of acquiring a substantial benefit*
- g) *if he endangers the international position of the Czech Republic or of an international organization of which the Czech Republic is a member by this act*
- h) *if he commits the act during the state of emergency or state of war.*

(3) The preparation is punishable. "

Besides the above-mentioned new body of crime, a crime of "Terror" as described in the Section I. has been maintained in the Criminal Code (section 93 of the Criminal Code).

The laws implementing the Framework Decision on the European Arrest Warrant (amendments of the Act No. 140/1961 Coll., Criminal Code and Act No. 141/1961 Coll., Criminal Proceedings Act) were approved by the Parliament of the Czech Republic on 24 September 2004 and they entered into force on 1 November 2004.

III. A project of recodification of criminal law

A draft Criminal Code drawn up within the recodification of criminal law (it was approved by the Czech Government on 9th June 2004 and is currently under discussion in the Czech Parliament; it is envisaged that it will enter into force on January 1st, 2006) extends its substantive scope to the participation on a crime that is punishable under the Czech criminal law, provided a crime of a main offender was committed on the territory of the Czech Republic or the participant acted at least partly on the territory of the Czech Republic, regardless of whether the act is punishable abroad. Additionally, the Czech criminal law will according to the draft apply even as regards a crime committed abroad against a Czech citizen or a stateless person who resides permanently on the territory of the Czech Republic, provided that such act is punishable even abroad or isn't subject to the criminal jurisdiction.

As far as the issue of terrorism is concerned, the provisions on the terrorist or related crimes have been in principle taken over from the effective Criminal Code to the draft Criminal Code drawn up within the recodification of the criminal law. However, certain amendments have been made in the sense of tightening up the criminal sanctions for the most serious crimes. Furthermore, slight changes concerning the bodies of crimes in terms of their extension have been done as well. The exceptional imprisonment is newly defined as an imprisonment of from twenty to thirty years of imprisonment or life imprisonment.

The crimes are structured in a new way in the draft and new bodies of crimes have been incorporated, mainly those reflecting new illegal conducts related to new technologies and their abuse, e.g. a crime of "Unauthorised Access to Computer System and Damaging or Misusing Data in Computer System and in Carrier Record" (the most severe imprisonment of from three to eight years of imprisonment) or a crime of "Acquisition and Possession of Access Equipment and Password to Computer System and Other Such Data" (the most severe imprisonment of from six months to five years of imprisonment).

Moreover, a bill introducing the criminal liability of legal persons, that was a part of the project for recodifying the substantive criminal law, was approved by the Government of the Czech Republic on 9th June 2004. This bill provided for the regulation of the exercise of criminal justice in respect of legal persons and set the principles of criminal liability of legal persons and the sanctions from them. However, this bill was rejected by the Parliament of the Czech republic on 2nd November 2004 and therefore a new arrangement for this issue will have to be found.

IV. An issue of confiscation and seizure of proceeds and other funds

As regards the issue of freezing of funds intended for terrorism financing from the criminal law point of view, it is dealt with above all by the Act No. 141/1961 Coll., Criminal Proceedings Act. The freezing of funds may be ordered in the course of the criminal proceedings under sections 79a, b, c a of the Criminal Proceedings Act. If there are grounds for believing that funds deposited in a bank account have been (or are intended to be) used to commit a crime, or that they are proceeds of crime, the presiding judge (or a public prosecutor in pre-trial proceedings) may order the freezing of such funds. Securities may also be frozen. In urgent cases the freezing may be ordered by the police; however, within 48 hours the police order has to be presented to a public prosecutor for approval or cancellation.

Currently, the amendments to the Criminal Proceedings Act and Criminal Code are being drawn up by the Ministry of Justice. These amendments will supplement securing measures with the measure of securing of real estate or other asset values, which were used to commit a crime or were determined to be used to commit a crime or are proceeds of a crime. Thereto, a possibility to secure the property the value of which corresponds to the proceed that cannot be secured is newly envisaged in the amendments.

The securing measures are followed by confiscation measures (thereupon, a sanction of forfeiture of a thing, forfeiture of property, protective measure of seizure of a thing as well as the possibility to impose a pecuniary sanction). The above mentioned currently prepared amendments as well as the draft Criminal Code extends the confiscation measures in the sense that the possibility to confiscate or forfeit the property value of which corresponds to the proceed that cannot be confiscated or forfeited is set.

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