

CZECH REPUBLIC

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LEGISLATIVE AND PRACTICAL ASPECTS OF PROSECUTION OF TERRORIST ACTS IN THE CZECH REPUBLIC

I. The occurrence of particular crimes related to terrorism in the Czech Republic

The effective Criminal Code contains even after its amendment carried out by the Act No. 537/2004 Coll. (effective as of 22 October 2004) certain bodies of crimes related to terrorism. As regards the occurrence of this kind of criminal acts, we have enclosed the tables concerning the occurrence of the crimes of Terror (sections 93 and 93a of the Criminal Code – before the above mentioned amendment), Sabotage (sections 95 and 96 of the Criminal Code – before the above mentioned amendment), eventually the crimes provided for in the sections 180a, 180b and 180c of the Criminal Code. It is obvious from the data provided that this kind of criminal acts occurs very rarely on the territory of the Czech Republic.

As regards the cases of so called individual terror, i.e. acts committed by solitary, isolated and psychically deranged individuals, not rarely on the grounds of hatred towards the society, it is possible to state that these cases are from the legal point of view considered as a crime of Common Danger (section 179 paragraphs 2 and 3 of the Criminal Code), eventually as a crime of Murder (section 219 of the Criminal Code) – however, it is not possible to make a statistical comparison in these cases due to the fact that the occurrence of crimes committed by the above mentioned individuals is not monitored, with one exception that is the period of 1991 – 2001 in relation to prosecuted and charged persons where these data were monitored for the purpose of drawing up a report on the work of the public prosecution for the year 2001 (see the tables 8 and 9 below.)

Table 1: Occurrence of crimes of Terror (section 93 of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	Convicted
1991-2003	0	0	0

Table 2: Occurrence of crimes of Terror (section 93a of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	Convicted
1991-2003	0	0	0

Table 3: Occurrence of crimes of Sabotage (section 95 of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	Convicted
1991	*	*	0



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Pour plus de renseignements, veuillez consulter les Profils nationaux sur la capacité de lutte contre le terrorisme: www.coe.int/gmt.



1992	5	0	0
1993-2003	0	0	0

* Not found.

Table 4: Occurrence of crimes of Sabotage (section 96 of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	
		Brought to the court	Convicted
1991	*	*	0
1992-2003	0	0	0

* Not found.

Table 5: Occurrence of crimes of crime of "Endangering the Safety of an Aircraft or Civil Vessel" (section 180a of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	
		Brought to the court	Convicted
1991	*	*	0
1992	0	0	0
1993	1	0	0
1994	1	1	0
1995	0	0	0
1996	1	1	0
1997	1	1	0
1998	0	0	0
1999	0	0	0
2000	1	0	0
2001-2003	0	0	0

* Not found.

Table 6: Occurrence of crimes of crime of "Endangering the Safety of an Aircraft or Civil Vessel" (section 180b of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	
		Brought to the court	Convicted
1991	*	*	0
1992-2003	0	0	0

* Not found.

Table 7: Occurrence of crimes of crime of "Unlawful Taking of an Aircraft Abroad" (section 180c of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	
		Brought to the court	Convicted
1991	*	*	0
1992-2001	0	0	0
2002	1	1	0
2003	0	0	0

* Not found

Table 8: Occurrence of crimes of crime of "Common Danger" (section 179 paragraph 2 of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	
		Brought to the court	Convicted
1991	0	0	0
1992	0	0	0
1993	0	0	0
1994	0	0	0
1995	7	7	7
1996	10	10	10
1997	14	14	14
1998	12	10	10
1999	13	11	11
2000	12	11	11
2001	8	7	7
2002	*	*	*
2003	*	*	*

* Not found.

Table 9: Occurrence of crimes of crime of "Common Danger" (section 179 paragraph 3 of the Criminal Code) on the territory of the Czech Republic in the period of from 1991 – 2003

Year	Prosecuted	Brought to the court	
		Brought to the court	Convicted
1991-2001	0	0	0
2002	*	*	*
2003	*	*	*

* Not found.

Prosecuted – a number of persons accused of a given crime in the monitored period.

Brought to the court – a number of persons against whom the public prosecutor brought charges for a given crime to the court in the monitored period.

Convicted – a number of persons convicted by a court in the monitored period.

All the above-mentioned statistical data were provided by the Ministry of Justice of the Czech Republic.

The above-mentioned statistical data indicates only utterly petty occurrence of terrorist acts on the territory of the Czech Republic. Nevertheless, it doesn't mean that these cases aren't incorporated into the police statistics or publications. J. Chmelík states in his publication "Crime without borders", Linde, Praha, 2004, p. 9 and following, that outstanding social changes that have taken place in the Czech Republic since 1989 have been reflected even in the endangering of the republic by the terrorist acts. The Arabic terrorists know our country perfectly from the past; therefore, a reasonable apprehension exists there that retaliatory actions might be carried out, i.e. as a reaction to the presence of the Czech soldiers in certain military operations. Moreover, the Czech Republic became a member of NATO and therefore the risks of terrorist attacks have increased. Furthermore, the radio Free Europe has been moved to the Czech Republic evoking thereby threats of terrorist attacks. Further risks represent possible attacks focused on international companies or missions of foreign states.

Despite these risks, there has not been committed a "classic" terrorist attack with the links to the wide international groups in the Czech Republic. Neither a "classic" terrorist action has been noticed whose accompanying feature is violence as a mean of obtaining a certain aim, or an attack connected with extortionate conditions.

Nevertheless, there have been noticed series of attacks that constituted elements of terrorism on the territory of the Czech Republic, such as:

- the explosion of amateur bomb on the Old Town Square on 2nd June 1990 (the offender has not been identified),
- October 1994 – explosion in the gardener's colony in Pilsner, one dead and two grievous body harms,
- November 1996 – explosion of army grenade in the hospital in Ostrava – two dead women; it is supposed that the grenade had been found by one of the woman who took it to the hospital,
- January 1997 – explosion of the demolition bomb of tritol in front of the Olomouc High court; nobody was wounded; however, it was the first direct bomb attack against the judicial building,
- April 1997 – explosion of unknown bomb in front of the Peruan embassy in Prague, nobody was wounded. The day before the explosion several writings had appeared on the building concerned and surrounding buildings aimed against the Peruan government and its president,
- May 1997 – explosion of the bomb placed in the garbage bin in front of the sport area in Prague; the explosion lead to the serious injury of a woman,
- the beginning of 1998 – explosion of the bomb placed in the garbage bin at the tram station in Ostrava. On 6th September 1998 the same system was installed in the garbage bin in Prague and exploded at the time when many people were present on the place. The offender who committed these two serious attacks was apprehended, convicted in 1999 and sent to a 15-year imprisonment. These were the cases of individual terrorism with the aim to extort the state authorities.
- in 1998 the police disclose the extorter who extorted the food companies under the threat to poison their products with salmonella,
- in March 1999 the newspapers MF DNES were delivered anonymous letter in which the writer threatened with terrorist attack as a form of protest against the membership of the Czech Republic in NATO, radio broadcast carried out by the Radio Free Europe placed in Prague to the Near East and against the preparation of the Czech Republic for the membership in the EU,
- perhaps the biggest attack which is considered to be connected with terrorist actions is a case known by the public as a „Cripple Case“. This case raised unusual excitement both of the public and of the police due to its extent and seriousness as well as the cunning with which the offender committed his attacks. The offender had committed a suicide immediately before his apprehension.
- September 2001 – an offender informed the Ministry of Interior and the Czech TV that he would, in the name of Islam and Islamic revolution, contaminate several sources of drinking water by plutonium in Prague, Brno and other towns in the Czech Republic. As a consequence, certain measures to control and protect the sources of drinking water had to be adopted at the places concerned. Currently, the trial is pending in this matter.

II. Procedural aspects of terrorism combating

In the Czech Republic there are no specific criminal procedures referring to those accused of terrorist acts. Therefore, the general provisions contained in the Criminal Proceedings Act (Act No. 141/1961 Coll., as amended) are applied in these cases. However, any of such cases would be dealt as a high priority.

The following general instruments may be used within the criminal proceedings (both in cases of terrorist acts and other crimes):

- **Section 8 paragraph 2 of the Criminal Proceedings Act** - if it is necessary in the criminal proceedings for proper clarification of the circumstances indicating that a crime was committed, or in trial before court also for consideration of the charged person's conditions or for execution of decision, the public prosecutor and, after the indictment has been brought, the chairman of the panel of judges, may **require the data being the subject of bank secret, the data obtained in tax administration, the data from the securities register and the data for statistic purposes**. These data may be required in the pre-trial proceedings only by the public prosecutor (however, in tax cases this right belongs to the specialised police body determined by the minister of interior in specified cases) while during the trial it is the judge who may require them. The conditions under which the authority responsible for criminal proceedings may require the data obtained in tax administration are specified by a special law. The data thereby obtained must not be used for any other reason than the criminal proceedings, in terms of which it has been required.
- **Section 8 paragraph 3 of the Criminal Proceedings Act – order to control the bank account or Securities Centre account**, for a maximum period of six months (this period may be extended, even repeatedly) – this is the identical competence as the one described in the previous intent, as regards its extent, conditions and subjects that are entitled to proceed thereby
- **Sections 79a and 79b of the Criminal Proceedings Act - judicial seizure of a bank (or analogous) account** - If the facts ascertained indicate that the financial means on a bank (or analogous) account are intended for committing a crime or have been used to commit a crime or they are proceeds of a crime, the presiding judge and in pre-trial proceedings the public prosecutor or police body may decide to seize the bank (or analogous) account. The police body needs a prior consent of the public prosecutor for such decision. No prior consent of the public prosecutor is needed in urgent cases that must be performed immediately. In such event the police body shall be obliged to submit its decision to the public prosecutor within 48 hours; the public prosecutor shall either approve or cancel the decision.
- **Section 79c of the Criminal Proceedings Act - securing the book securities** - If the presiding judge or in pre-trial proceedings the public prosecutor decides to seizure the book securities, the Securities Centre, the legal entity authorised to keep parts of records and to perform other activities of the Securities Centres under a special law, or the Czech National Bank shall open a special account for the holder of such securities, on which the securities shall be kept. The police body may also decide to seizure the book securities in urgent cases that must be performed immediately. The police body shall be obliged to submit its decision to the public prosecutor within 48 hours; the public prosecutor shall either approve or cancel the decision.
- **Section 86 and following of the Criminal Proceedings Act – detention and opening of consignment** - if it is necessary to ascertain the contents of undelivered mail consignments, other consignments or telegrams to clarify the facts important for criminal proceedings in a particular matter, the presiding judge and in pre-trial proceedings the public prosecutor shall order the post office or the person performing their transport to deliver consignments to the presiding judge and in pre-trial proceedings either to the public prosecutor or the police.
- **Section 87a of the Criminal Proceedings Act – Consignment Substitution** - in the interest of ascertaining the persons participating in disposing of a consignment containing narcotics, psychotropic substances, precursors, toxins, radioactive materials, forged money and forged securities, firearms or armament of mass effect, ammunition and explosives or any other thing for possession of which a special permit is required, things intended for committing a crime or things coming from a crime, the presiding judge and in pre-trial proceedings the public prosecutor with the consent of the judge may order to substitute the contents of such a consignment with another and such an altered consignment to be given over for further transport. The substitution is carried out by the police.
- **Section 87b of the Criminal Proceedings Act – Controlled delivery** – in pre-trial proceedings the public prosecutor may order to monitor any consignment for which there is a justified suspicion that it may contain things specified under § 87a provided that it is necessary to clarify a crime or reveal all perpetrators thereof and it would be ineffective or substantially hindered to ascertain the necessary facts

in another way. Monitoring of the consignment shall be carried out by the police based on instruction of the public prosecutor; at the same time no act shall be done aimed at delivery or taking away of the thing in respect of the persons disposing of the monitored consignment. A report shall be made of the course of monitoring of the consignment and also a video or other record shall be made, if necessary. It is carried out by the police.

- **Section 88 of the Criminal Proceedings Act – Intercepting and recording the telecommunication operation** – the act enables to use this instrument in the cases of the extremely serious intentional crimes or crimes which have to be prosecuted according to the international convention binding upon the Czech Republic. The presiding judge and in pre-trial proceedings the judge based on motion of the public prosecutor may order to intercept and record the telecommunication operation provided that there is a justified assumption that any fact significant for the criminal proceedings would be communicated hereby. It is not allowed to execute any interception or record of telecommunication operation between the counsel and the charged person. If the police from the interception and records of the telecommunication operation that the charged person communicates with his/her counsel, the police shall be obliged to discontinue the intercepting immediately, destroy the record of the contents, and prevent from using in any way the information it has ascertained in this respect. An order to tapping and registration of phone communications should be issued in written form and justified. At the same time, the length of the tapping and registration of phone communications, which cannot be longer than 6 months with possibility of repeated extension for 6 months, should be stipulated by judge. Judge forwards the copy of an order to a public prosecutor immediately. The Police of the Czech Republic carry out a tapping and recording of the telecommunication operations for the needs of all agencies involved in the criminal proceedings.
- **Section 88a of the Criminal Proceedings Act – Disclosure of information concerning the telecommunications services.** It is ordered by a chairman of the bench or the judge in the pre-trial proceedings. The order to identify the data of the telecommunication operation must be issued in writing and on justified grounds.
- **Section 158c of the Criminal Proceedings Act – Undercover transfer** – an undercover transfer means the simulation of purchase, sale or any other method of transfer of the subject of performance including the transfer of a thing for possession of which a special permit is necessary, the possession of which is impermissible, that comes from a crime, or that is intended for committing a crime. An undercover transfer may be transferred based on written permit of the public prosecutor or, under exceptional circumstances, the police body with the subsequent consent.
- **Section 158d of the Criminal Proceedings Act – Surveillance of persons and things** – surveillance of persons and things means the obtaining of knowledge about persons and things carried out in a secret manner using the technical or other means. If the police ascertains during the surveillance that the charged person communicates with his/her counsel, the police shall be obliged to destroy the record containing such communication and prevent from using in any way the information it has ascertained in this respect. The permission is granted for a maximum period of 6 months; this period may be extended. The surveillance is carried out based on the written permission of the public prosecutor or on the permission of a judge, depending on what is to be surveyed.
- **Section 158e of the Criminal Proceedings Act – Use of Agent** – if the criminal proceedings are conducted with regards to especially serious intentional criminal offence committed in favour of a criminal conspiracy or another criminal offence the prosecution of which results from the international treaty which the Czech Republic is bound with, the police body if it is a unit of the Police of the Czech Republic, is entitled to use an agent. The agent is a member of the Police of the Czech Republic who fulfils the tasks charged by the police agency and who acts, as a rule, while hiding the actual purpose of his/her activity. If it is necessary with regards to using, preparing or protecting the agent, certain measures are allowed for the purpose of hiding his/her identity. Use of the agent is allowed based on the motion of the public prosecutor within the High Public Prosecutor's Office by the judge of the High Court within the circuit of which the public prosecutor concerned performs his/her office. The permission has to indicate the purpose of application and the period for which the agent is to be used, and the data enabling identification of the agent. Based on the new suggestion including the evaluation of the existing performance of the agent, the period of permission may be extended, even repeatedly.

As regards the proceedings conducted for terrorist crimes, generally, the public prosecutors from the Regional Public Prosecutor's Office act within these proceedings. It is a consequence of the fact that the majority of these crimes are the crimes for which a sanction of imprisonment is set the lower limit of which is at least five years. These are the proceedings where the jurisdiction of the Regional Court is established in the first instance, and, consequently, the jurisdiction of the regional public prosecutors.

The public prosecutors from the High Prosecutor's Office exercise the control over the respective criminal proceedings conducted for terrorist crimes. Furthermore, they perform their office within the decisions on complains and in proceedings for remedies held before a superior court.

The public prosecutors of the Supreme Prosecutor's Office would operate in the concerned matters only as regards the cases of appellate review; complain for breach of law and in other, rather hypothetical cases.

With respect to a very low occurrence of the terrorist cases on the territory of the Czech Republic, there have not been established special units dealing with terrorist crimes within the public prosecutor's offices. However, the Supreme Public Prosecutor issued the binding Instruction of general nature concerning the specialisation of prosecutors (Instruction No. 3/2000, as amended). This instruction enables to establish such specialisation within the Supreme Prosecutor's Office, High Prosecutor's Offices and Regional Prosecutor's Offices (not within the District Prosecutor's Offices). Nevertheless, according to the Instruction, there are prosecutors specialised on the serious violent criminality covering even the terrorist cases.

As regards the principles of procedure of the public prosecutors pursuing the supervision over the pre-trial proceedings in cases of terrorist crimes, these are not regulated by a specific instruction. However, the provisions of the general instruction No. 12/2003 regulating the procedures of public prosecutors within the criminal prosecution and supervision over the pre-trial proceedings are to be applied even for terrorist cases.

As well as in cases of non terrorist crimes, the public prosecutors are entitled to perform certain procedural actions in cases of terrorist crimes (i.e. to bring an indictment, to seizure a property...); certain procedural acts may be performed only with the prior consent or permission of the public prosecutor (i.e. seizure of a bank or analogous account). Furthermore, the public prosecutor is entitled to cancel certain measures. Moreover, the public prosecutor is entitled and obliged to carry out the supervision over the pre-trial proceedings.

III. International cooperation, the European Arrest Warrant

The international legal cooperation is in the Czech Republic accomplished (generally, not only in relation to terrorism) in the following spheres:

- Extradition procedures;
- Takeover of the criminal proceedings from abroad;
- Transfer of the criminal cases to abroad;
- Mutual legal assistance in criminal matters;
- Execution of foreign judgements and relating transfer of sentenced persons to execution of the sentences in their home states.

The general trend of recent years aims at direct relations in the legal cooperation between competent authorities of particular states that means with no intervention of other intermediary bodies. This trend has been reflected in series of international conventions and other instruments that in either all or at least urgent cases enable direct contacts between the bodies concerned.

If it is thereby specified in a declared international convention, by which the Czech Republic is bound in relation to a particular state, it is however necessary to proceed either by the way of transmission of letters rogatory through the central authorities (state prosecution via the Supreme Public prosecutor's Office, courts via the Ministry of Justice) or through the diplomatic channels. The relevant factor as to how to proceed in a particular matter is therefore the international convention.

The direct contact between the inferior bodies of the public prosecution, i.e. between a public prosecution that exercises the control over the pre-trial proceedings and a foreign judicial authority, is currently possible in relation to Austria, Hungary, Poland, Slovakia and Germany, under certain conditions.

In urgent cases a direct contact between the public prosecutions and foreign authorities is enabled under the European Convention on Mutual Assistance in Criminal Matters or the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime etc.

Furthermore, the direct contact between the EU Member States is enabled by the „Schengen Agreement“ of 14th June 1985.

Otherwise, the process of the public prosecutors within the international legal assistance is governed by the instruction of general character No. 3/1994. However, this instruction is considered to be out-of-date and nowadays a new instruction is being prepared that would reflect the relevant amendments of criminal law done recently.

In particular, the framework decision on the European Arrest Warrant is to be mentioned in this connection. This framework decision has an exceptional importance for the extradition of persons among the EU Member States due to the fact that it significantly alters the up-to-now pattern of dealing with this kind of international judicial cooperation.

The Czech Republic implemented the provisions of the Framework Decision on the European Arrest Warrant through the amendments of the Criminal Code and the Criminal Proceedings Act that were approved by the Parliament of the Czech Republic on 24 September 2004 and entered into force on 1 November 2004.

Whereas the Czech Republic is bound to respect the obligations arising from international treaties and international law in general, the Czech Republic has to notify first the Secretary General of the Council of Europe in accordance with Article 28 paragraph 3 of the European Convention on Extradition of 13 December 1957 that in relations between the Czech Republic and other Member States of the European Union extradition takes place on the basis of a uniform law and the application of the European Convention on Extradition is therefore excluded.

Supreme Prosecutor's Office
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