

## Crimes against humanity

The definition of the „attack against humanity“ in the Criminal Code of the Czech Republic (Act. No. 40/2009 Coll.) reads as follows:

„Section 401 - Attack against Humanity

(1) Whoever commits within an extensive and systematic attack aimed against civilians

- a) extermination of people,
- b) enslavement,
- c) deportation or forced transfer of a group of civilians,
- d) rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation or other forms of sexual violence,
- e) persecution of a group of civilians on political, race, national, ethnic, cultural or religious grounds, on sex or another similar grounds,
- f) apartheid or another similar segregation or discrimination,
- g) illegal restraint, kidnapping to an unknown location or any other restriction of personal freedom with following involuntary disappearance of persons,
- h) torture,
- i) murder, or
- j) another inhumane act of similar nature,

shall be sentenced to imprisonment for twelve to twenty years or to an exceptional sentence of imprisonment.

(2) Preparation is criminal.“

According to the academic commentary to this provision, the phrase „attack aimed against civilians“ means „a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack“ and distinguishes this crime from „ordinary“ crimes, where the aim of the perpetrator is to obtain a financial or other gain or advantage.

„Exceptional sentence of imprisonment“, mentioned in Section 401, paragraph (1), means a sentence of imprisonment beyond twenty years up to thirty years and a sentence of imprisonment for life.

As far as the term „preparation“ in paragraph (2) is concerned, Section 20, paras. (1) and (2) of the Criminal Code provides that „conduct that consists in intentional creation of conditions for the commission of an especially serious felony (Section 14 (3)), especially in its organisation, acquisition or adaptation of the means or instruments for its commission, in conspiracy, unlawful assembly, in inducing of or assisting with such a crime, shall be considered as preparation only if the Criminal Code expressly stipulates it for a specific criminal offence and an attempt or completion of an especially serious felony did not occur.“.

In a addition, „preparation is criminal according to the term of sentence stipulated for an especially serious felony to which it led, unless the Criminal Code stipulates otherwise.“

Under Section 7 of the Criminal Code, Czech authorities can exercise universal jurisdiction over the crime “attack against humanity” defined in Section 401, i.e. they are entitled to prosecute this crime regardless of the place where the offence was committed and the person of the offender. Thus, the prosecution is possible even when such a crime has been committed in a foreign country by a foreign citizen or a stateless person, who has not been granted permanent residence in the territory of the Czech Republic.

A person convicted for a criminal offence „attack against humanity“ may be conditionally discharged no sooner than after serving two thirds of the imposed sentence, if with regard to the circumstances of the deed for which he/she was convicted and the nature of his/her character there is no threat of repeating the committed or another similar especially serious felony.

Currently, a draft amendment of the Act on the criminal responsibility of legal persons (Act No. 418/2011 Coll.) is being discussed in the Parliament of the Czech Republic. According to this amendment, the criminal responsibility of the legal persons would be extended so as to cover (on the basis of universal jurisdiction) also the felony of attack against humanity under Section 401 of the Criminal Code.

There are no decisions of Czech courts concerning the crime „attack against humanity“ defined in Section 401 of the Criminal Code.