

*Assumption of the rights to wear uniform, etc.*⁷⁵

108A. Any person who publicly and without authority wears the uniform or other distinctive mark of a member of the army or the National Guard or the police, which he is not authorised to wear or use is guilty of a misdemeanour and is liable to twelve months imprisonment's or to a fine of three hundred pounds or to both such penalties.

Personating public officers

109. Any person who –

(a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

is guilty of a misdemeanour, and is liable to three years imprisonment.

XXVII. CZECH REPUBLIC⁷⁶

SUMMARY OF LEGISLATION OF THE CZECH REPUBLIC RELATED TO TERRORISM

According to the Criminal Code of the Czech Republic, provisions relating to the following crimes can be utilised in the fight against terrorism:

Criminal acts against the foundations of the Republic

- High treason - Section 91 (can only be committed by a citizen of the Czech Republic)
- Subversion of the Republic - Section 92

⁷⁵ 3(l) of 59/74, 3(l) of 166/87.

⁷⁶ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1302, enclosure), on 23 July 2002 (S/2002/872, enclosure) and on 17 February 2003 (S/2003/261, enclosure) Information was also provided in respect of the following: Act No. 48/2000 Col., Decree No. 164/2000 Col., Measures in Relation to the Afghan Taliban Movement; Act No. 49/1997 Col. Decree No. 327/2001 Col., Further Measures in Relation to the Afghan Taliban Movement; Civil Aviation, Act No. 325/1999 Col.; Asylum, and Act No 61/1996 Col., Various Measures against Money Laundering.

- Terror - Section 93 (intentional killing, or attempted killing, with the objective of damaging the constitutional order of the Republic)
- Terror - Section 93a (the seizure of a hostage with the aim of using extortion to gain the fulfilment of conditions injurious to the constitutional order of the Republic)
- Sabotage - Section 95 (general endangerment)
- Sabotage - Section 96 (the destruction or damaging of objects)
- Sabotage - Section 97

The object group for these crimes are the interests protecting the foundation of the Republic, the security of the Republic, and the defence of the nation.

The legal order of the Czech Republic recognises the crime of terror. This crime is committed by a person who:

1. with the intention of damaging the constitutional order of the Czech Republic commits premeditated murder or attempts to do so (Section 93 of the Criminal Code), where a punishment of 12 to 15 years or an exceptional punishment is stated (an exceptional punishment is imprisonment for 15 to 20 years or life imprisonment), or
2. seizes a hostage and threatens to kill him/her or injure him/her with the aim of extorting the fulfilment of conditions damaging to the constitutional order of the Czech Republic (Section 93a Paragraph 1 of the Criminal Code).

Punishments are stated according to seriousness from three to ten years of imprisonment to a scale of ten to fifteen years or an exceptional punishment.

Endangerment crimes

Another category of offences applicable to terrorist acts is the general endangerment category. General endangerment is considered to constitute the type of behaviour that usually carries with it a threat to life or health or the danger of a large extent of damage to property. The offences in this category include:

- General endangerment - Section 179
- Endangering the safety of air transport and civilian planes - Section 180a
- Hijacking of an aircraft to a foreign country - Section 180c

- Damage and endangerment of the operation of generally beneficial equipment and utilities - Section 182
 - Public telecommunication equipment, the equipment and facilities of the holder of the postal licence or public transport equipment
 - Protective equipment against the leakage of pollutants
 - Water and electricity distribution equipment
 - Public protection equipment against fire, flood or other act of god
 - Seabed cables
 - Defence or protection equipment against aerial or other forms of attack and their consequences
- Hostage taking - Section 234a

According to Section 179 of the Criminal Code the crime of general endangerment is committed by a person who deliberately exposes people to the danger of death or serious injury or exposes the property of others to the risk of major damage by fire, flood or the effects of explosives, gas, electricity of other similarly dangerous materials or forces or who perpetrates similarly dangerous behaviour (general danger) or a person who increases general danger or impedes its prevention or abatement. The punishment is set at three to eight years. Qualified facts of the case relate to the committing of the crime by a member of an organised group, the repeated committing of the crime over a short period, a crime that causes serious injury or death to several people, major damage or other especially serious consequences. Also the causing of death intentionally. The punishment in this case is from twelve to fifteen years imprisonment or an exceptional punishment.

Air piracy is a specific general endangerment offence. Attacks against civil aviation are qualified as the crime of endangering the safety of air transport and civil aircraft according to Section 180a or the crime hijacking an aircraft and forcing it abroad according to Section 180c of the Criminal Code. The provisions of Section 180a of the Criminal Code provide greater protection to the safety of aviation against an attack of this nature than is required by the Convention on the Suppression of the Illegal Seizure of Aircraft – the Hague Convention, which only relates to the seizure of a plane during flight. The most severe punishment for this crime is from twelve to fifteen years or an exceptional punishment.

Sabotage can be committed in the form of the destruction or damage of items (Section 257 of the Criminal Code – Damage as a Criminal Matter) by which an offender, with the intention of damaging the constitutional order or the

ability of the Republic to defend itself, causes material destruction or damage or renders an object unusable (Section 96 Paragraph 1 of the Criminal Code). For this crime the punishment is graded according to its seriousness. In its most serious form, the offender is faced with a punishment of twelve to fifteen years imprisonment or an exceptional punishment (if such an act causes serious injury or death).

Moreover, membership in a terrorist group on the assumption of closer connection with organised criminal groups is punishable similarly as participation in a criminal association (Section 163a of the Criminal Code). The fact that a person committed a criminal offence as a member of an organised group, which is characterised by a lower degree of organisation than a criminal association, does not prevent him/her, under the conditions stated in the Criminal Code, from being prosecuted as the perpetrator of a criminal offence committed in favour of a criminal association (Section 88, Paragraph 2 of the Criminal Code).

In addition, the prohibition on the supply of weapons to terrorists is set out in the Czech Criminal Code by the following substantive crimes:

- Breach of the regulations on the shipment of controlled goods and technology (concerning the breach of the ban or restrictions on the shipping of controlled goods and technology regulated by the special regulations for their import and export) - Section 124a, b, c.
- Breach of the regulations on foreign trade with military material – foreign trade without authorisation or a license - Section 124d.
- Breach of the regulations on foreign trade with military material – foreign trade using illegitimate authorisation or license - Section 124e.
- Breach of the regulations on foreign trade with military material – the acquiring of authorisation or a licence by extortion - Section 124f.
- Illegal arming - Section 185.
- Development, production and holding of banned weapons - Section 185a.
- Unauthorised production and holding of radioactive material and hazardous substances - Section 186.
- Unauthorised production and holding of intoxicating and psychotropic substances and poisons - Section 187.
- Production, procurement or receipt of an illegal product for the manufacture of intoxicating and psychotropic substances and poisons - Section 188.

The Czech legislation permits for specific crimes the imposing of an exceptional punishment (Section 29 of the Criminal Code; 15 to 25 years and life imprisonment) if the level of danger to society is very high and the task of rehabilitating the offender is especially difficult. The punishment of life imprisonment can only be applied in cases of murder according to Section 219 Paragraph 2, treason (Section 91), terror (Sections 93 or 93a Paragraph 3 – taking a hostage), general endangerment (Section 179 Paragraph 3) or genocide (Section 259). Preparation, an attempt and all forms of participation (organisation, instruction and support) are considered according to the punishment scale stated for the crime committed.

- An aggravating circumstance according to Section 34 is applicable for example if an offender has committed a crime as an organiser, a member of an organised group or member of an association, if the crime caused a high level of damage, if a crime was committed by a brutal method, if it involved treachery, is especially deceitful or if the crime was committed on the basis of particularly reprehensible motives etc.
- The possibility of a conditional release and a conditional waiving of the performance on the remainder of a ban on activity or a ban on residence is impeded (after the performance of 2/3 of an imprisonment sentence or, in the case of life imprisonment, only after the serving of at least 20 years) in relation to the crimes specified in Section 62 – for example espionage, sabotage, general endangerment, endangerment of air transport and civilian craft, the hijacking of an aircraft and forcing it abroad, the unauthorised production, holding of intoxicating and psychotropic substances and poisons, murder, the taking of a hostage and a criminal offence against peace according to Section 1 of Act No. 165/1950 Col. etc.

Financing

The basic standards preventing the provision of support to terrorists are the legal standards creating the constitutional order of the Czech Republic, including the implementation of the international agreements by which the Czech Republic is bound.

In the Criminal Code of the Czech Republic (Act No. 140/1961 Col., of the Criminal Code) the crime of financing terrorist acts is not specifically defined. An attempt to commit, or participation in the form of organisation, instruction and assistance in the below mentioned criminal acts is generally punishable, their preparation is only punishable on the condition that it is leading to the execution of a particularly serious criminal act. The action of an accomplice is punishable in the same way as the action of a direct offender. When prosecuting it is possible to proceed on the basis of the following crimes defined by law:

- The crime of terror (Section 93 of the Criminal Code – deliberate or attempted killing with the objective of damaging the constitutional order of the Republic and Section 93a of the Criminal Code – the seizure of

hostages with the aim of exacting the fulfilment of conditions damaging to the constitutional order of the Czech Republic):

- punishment of imprisonment for 12 to 15 years or an exceptional punishment (which refers to a punishment of between 15 and 25 years or the exceptional punishment of life imprisonment)
 - for basic facts of the case 3 to 10 years
 - for qualified facts of the case 5 to 12 years
 - 10 to 15 years or an exceptional punishment
- The crime of sabotage (Sections 95 and 96 of the Criminal Code):
- the punishment of imprisonment for 3 to 10 years for basic facts of the case
 - 12 to 15 years or an exceptional punishment for qualified facts of the case.
- The crime of general endangerment (Section 179 of the Criminal Code), in the case of terrorist attacks is subject to the strictest sentence of 12 to 15 years or an exceptional punishment.
- The crime of endangering the safety of civil aircraft and vessels (Section 180a of the Criminal Code)
- 8 to 15 years for basic facts of the case
 - 12 to 15 years for qualified facts of the case
- The crime of hijacking an aircraft and forcing it to a different country (Section 180c of the Criminal Code)
- 3 to 10 years for basic facts of the case
 - 10 to 15 years or an exceptional punishment for qualified facts of the case
- The crime of illegal arming (Section 185 of the Criminal Code), in its strictest form, 1-5 years
- The crime of the development, production and possession of forbidden arms (Section 185a of the Criminal Code), 1-5 years

- The crime of the illegal production and possession of radioactive material and other highly hazardous substances (Section 186 of the Criminal Code), according to the seriousness the applicable punishment is imprisonment for 1-5 years, 2-10 years, 8-15 years.
- The crime of extortion (Section 235 of the Criminal Code), in its most severe form 5-12 years.
- The crime of abduction (Section 216 of the Criminal Code) in its most severe form 3-10 years.
- The crime of seizing a hostage (Section 234a of the Criminal Code), according to seriousness the punishment is imprisonment for 2-8 years, 3 – 10 years or 10 – 15 years.
- The crime of murder (Section 219 of the Criminal Code), 10 – 15 years, 12– 15 years or an exceptional punishment.

Moreover, the act of legalizing the proceeds of organized crime was established as a criminal offence by Act No. 143/2002 amending the Criminal Code, effective from 1 July 2002 (Section 252, para a). The provision is specifically directed against money laundering as an activity closely connected with organized crime and terrorism.

Collection of money to reward or support perpetrators of terrorist attacks constitutes the crime of “advocating criminal activities” under Section 165, para 2 of the Criminal Code, as long as the act of collecting money is clearly separate from the terrorist act. A collection directly connected with a terrorist act would constitute participation in or preparation of a crime or complicity under the provisions mentioned above.

The Criminal Code contains also provisions for the prosecution of an organised criminal act, incitement to a criminal act and assistance in the committing of a crime, including the provision of means (Section 10 of the Criminal Code), actual participation in a criminal conspiracy including its support (Section 163a of the Criminal Code), the provision of encouragement for a criminal act (Section 164 of the Criminal Code) etc. An attempt at a crime is a crime and in relation to serious crimes (among which are the majority of crimes in the original Report) preparation alone is considered a crime.

Preparation of crimes is established as a criminal offence, including preparation of crimes committed against another State or planned to be committed in its territory. The Criminal Code contains sanctions against organizing, aiding and abetting the commission of crimes, including the provision of means (Section 10 of the Criminal Code), against participation in a conspiracy, including support for a conspiracy (Section 163 of the Criminal Code), incitement to crimes (Section 164 of the Criminal Code), etc. Attempts or even preparation to commit crimes are also established as a criminal offence. It is important that perpetrators and their

accomplices are equally liable for punishment and that attempted crimes and, in principle, preparation for a crime carry the same sanctions as completed crimes.

The classification would depend on the circumstances and facts of the case, especially on the intentions of the perpetrators and those who e.g. provided or collected funds with the knowledge that the funds will be or would be used for terrorist purposes. For instance, an offender may be charged with “participation in an offence by organizing, counselling or aiding and abetting” (Section 10 of the Criminal Code), preparation of a crime (Section 7 of the Criminal Code) or, if he acted in closer association with the principal perpetrators, with complicity (Section 9, para 2 of the Criminal Code).

Membership in an organized criminal group (Section 34g of the Criminal Code) is an especially aggravating factor in all cases, including completed, prepared or attempted crimes and participation in a crime.

The provisions on criminal conspiracy as defined in Section 89, para 17 of the Criminal Code are applied if there is a provable connection between the source of funds and a terrorist group. The participants covered by Section 163 of the Criminal Code are charged with “crimes committed for the benefit of a criminal conspiracy”, subject to the conditions laid down in Sections 43 and 44 of the Criminal Code.

XXVIII. DEMOCRATIC REPUBLIC OF THE CONGO⁷⁷

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO

(a) Code pénal

Les dispositions du Code pénal congolais ne comportent pas de définition expresse du terrorisme. Mais la République démocratique du Congo a toujours préconisé une politique de prévention et de répression des actes relevant de ce fléau tant sur le plan interne que sur les plans régional et international.

⁷⁷ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1331, enclosure) and on 6 March 2003 (S/2003/386, enclosure). Information was also provided in respect of décret No 070/2001 du 26 décembre 2001 portant création d’un Comité national de coordination de la lutte contre le terrorisme international.