

# THE CZECH CRIMINAL LAW: A handbook of basics of substantial law and proceedings for a practical use in English

## I. CZECH CRIMINAL CODE

### LEGAL SOURCES OF THE CZECH CRIMINAL LAW

The Czech Criminal Code, Act No. 40/2009 Coll.

The law on the Responsibility of Juveniles for illegal Acts, Act No. 218/2003 Coll.

The law on probation and mediation services, Act No. 257/2000 Coll.

The law on Execution of Imprisonment, Act No. 169/1999 Coll.

### APPLICABILITY OF CRIMINAL LAW

The liability of an offender for an act shall be considered according to the law in force at the time when the act was committed; it shall be considered under subsequent law only if consideration under such law is more favourable to offender.

The liability to punishment for criminal offence committed on the territory of the Czech Republic shall always be considered under the law of the Czech Republic

a) if an offender acted on its territory, even if the violation of, or threat to, an interest protected under this code resulted, or was to result, completely or partly abroad or

b) if an offender violated or threatened on its territory an interest protected under this Code, or if the consequence of such a criminal offence was to have occurred on its territory at least partly.

The liability to punishment for an act committed abroad by a citizen of the Czech Republic or by a stateless person authorized to reside permanently in the Czech Republic shall also be considered under Czech law.

The Czech law shall be applied to determine the liability for an act committed abroad by a foreigner or a stateless person who is not authorized to reside permanently on the territory of the Czech Republic if the act is also punishable under the law in force on the territory where it was committed and if the offender is apprehended on the territory of the Czech Republic and was not extradited for criminal prosecution to a foreign state.

A citizen of the Czech Republic may not be extradited to a foreign state either for criminal prosecution or for the enforcement of punishment. A citizen of the Czech Republic can be surrendered to other Members State of the European Union only according to the European Arrest Warrant.

## GENERAL PROVISION

### Exemption from the Competence of Bodies Active in Criminal Proceedings

Any person granted privileges and immunities under domestic or international law.

### Criminal offence and culpability

The criminal offence is an unlawful act that the Criminal Code marks as a crime and that meets the conditions stated in the Criminal Code. A crime is committed when the intent is present, unless states that the negligence is sufficient.

The criminal offence distinguishes between misdemeanour (all negligence offences, intent offences up to 5 years of imprisonment) and felony (all intent crimes). Particularly severe felony (intent crime with the minimal imprisonment of 10 years).

The Czech law distinguishes following forms of culpability:

A crime is committed intentionally if the offender:

(a) wished to encroach upon or endanger, in a manner stipulated in this Code, an interest

protected by this Code, or

(b) was aware that he/she could cause by his/her act such encroachment or danger and, if he caused it, he agreed with its result.

A crime is committed through negligence if an offender:

(a) knew that he could encroach upon or endanger an interest which is protected by this Code, in the manner stipulated in this Code, but without adequate grounds (reasons) he believed he would not cause such an encroachment or danger; or

(b) did not know that his act (conduct) could cause such an encroachment or danger, even though, given the circumstances and his personal situation, he should and could have known it.

### Concurrence and recurrence of offences (Multiple crimes)

If the court sentences an offender for two or more crimes, it shall impose an aggregate sentence (in Czech "úhrnný trest") upon him, according to the statutory provision relating to

whichever of the crimes is subject to the strictest punishment; in addition to the punishment admissible under such statutory provision, the court may, within the scope of the aggregate sentence, also impose another type of punishment if this is warranted by one of the crimes for which the offender is being sentenced. If the minimum limits of the prison terms differ, the highest of them shall form the minimum limit of the aggregate sentence in question. If this Code stipulates only prison terms for such other crimes, none of the types of punishments stated in provision 27 may be imposed as part of the aggregate sentence.

(2) The court shall impose a subsequent total sentence ("souhrnný trest"), according to the principles stipulated in sub-provision (1), when it passes a verdict relating to a crime committed by the offender before the court of first instance announced a verdict relating to another crime committed by the offender. When imposing such subsequent total sentence, the court shall cancel the verdict under which an earlier sentence was imposed on the same offender, as well as all other decisions connected thereto if, with regard to the modification caused by cancellation of the earlier verdict, they are no longer relevant. The subsequent total

sentence may not be lower than the sentence imposed under the previous verdict. Within the scope of the subsequent total sentence, the court shall impose punishment in the form of loss of honorary titles and decorations or military rank, or forfeiture of property or a thing, if the previous verdict included any of these punishments.

### Age

The minimal age of criminal liability is defined as 15 years of age. The person between age 15 and 18 is a juvenile and is liable under special code – the Act. 218/2003 Coll.

### Insanity

Insanity denotes a degree of mental illness which negates the individual's legal responsibility or capacity. Problems arise in practice if it is necessary to determine the sanity or insanity of an offender who suffered from a mental illness in the past. A particular individual's lack of competence (legal capacity) under the civil-law provisions is not decisive in criminal proceedings where insanity is strictly determined according to the provisions of the criminal law.

### Excuse for the use of force

#### Necessary Defence

An otherwise criminal act whereby a person averts a directly threatening (imminent) or persistent attack on an interest protected by this Code shall not be considered a crime. However, it shall not be regarded as a matter of necessary defence if the defence was obviously quite inappropriate to the manner of the attack in question.

#### Extreme Necessity

An otherwise criminal act, by which a person averts a danger directly threatening an interest protected under this Code, shall not be considered a crime. However, it shall not be regarded as a matter of extreme necessity if, in the given circumstances, the danger could have been averted otherwise, or if the resulting consequence is clearly as serious or even more serious than the one which had threatened.

#### Justified Use of a Weapon

A crime shall not be committed by a person who uses a weapon within the scope of the authorisation stipulated in statutory provisions.

### Stages of an offence

Criminal code involves three stages:

#### 1. Preparation of crime

Conduct which threatens society and which consists in the organising of an especially serious crime, the acquisition or adaptation of means or tools for the purpose of committing a crime or associating, assembling, instigating or giving assistance for such purpose, or other intentional creation of conditions for committing a crime shall be considered as preparation of a crime, even if such crime is not attempted or committed.

Preparation of a crime shall be punishable within the sentencing guidelines for the crime which was prepared, unless in its Special Part this Code provides otherwise.

Preparation of a crime shall not be punishable if the offender voluntarily:

(a) abandons any further conduct aimed at committing the crime and eliminates the threat represented by the preparation he has made to an interest protected by this Code; or

(b) reports the preparation of a criminal act at a time when the threat represented by its preparation to an interest protected by this Code could still be eliminated. The report must be made to the prosecutor or (an organ of) the police or, in the case of a soldier, to his commander or superior officer instead.

## 2. Criminal attempt

Conduct which is dangerous to society and directed towards the completion of a crime, and which has been undertaken by the offender with intent to commit such crime, shall be considered an attempt to commit the crime, if the crime was not completed.

Preparation of a crime shall be punishable within the sentencing guidelines for the crime at which it was aimed, unless in its Special Part this Code provides otherwise.

## 3. Completed crime

### **Offender, Accomplice and Participant in a criminal offence**

The offender of a crime is a person who fulfilled the substance of the crime, even in the stage of the attempt or preparation if criminal.

If a crime is committed by the joint conduct of two or more persons, each of them shall be criminally liable as if he alone had committed the crime (accomplices).

A participant in a completed crime, or an attempt to commit a crime, is a person who intentionally;

(a) organises or directs the commission of a crime (the organiser);

(b) instigates another person to commit a crime (the instigator);

(c) grants another person assistance in committing a crime, particularly by providing the means for committing such crime, removing obstacles, giving advice, strengthening the person's intent, or promising assistance after the commission of a crime (an assistant)

### **Criminal sanctions**

The Criminal Code only allows these types of punishment:

a) imprisonment

in form of      aa) a suspended prison sentence or a suspended prison sentence with parole

                    ab) a sentence of imprisonment

                    ac) exceptional punishment

b) home imprisonment

c) community service (publicly beneficial work)

d) forfeiture of property

e) pecuniary penalty

f) forfeiture of a certain thing or other property value

- g) prohibition of certain activity
- h) prohibition of stay
- i) prohibition of entering sport, culture or other events
- j) loss of honorary titles and decorations
- k) loss of military rank
- l) expulsion

**Protective measures**

Protective measures shall include protective therapy (medical treatment), reformatory training (protective education) and confiscation of a thing or other property value.

**Criminal record**

The sentence is recorded in the Criminal Record. The Court has to delete on proposal or from the law the sentence if the convicted person after the punishment continuously led an ordinary life for a certain period of time that depends on the type and duration of the conviction.

## II. CRIMES IN THE CZECH REPUBLIC

### Head I: Crimes against life and health (Sections 140 - 167)

- Murder; Killing; Murder of a New-Born Infant by its Mother; Injury to health; Injury by negligence; Unauthorized abortion; Assisting suicide; Non-assistance of help; Non-assistance of help by the driver; Spreading of sexual illness; Fight (Brawl); Illegal use of cells and organs

### Head II: Crimes against freedom and against right to protect personality, privacy and secret of correspondence (Sections 168 - 184)

- Restriction of personal freedom; Deprivation of personal freedom, Robbery; Extortion; Hostage-taking; Abduction abroad; Violation of domestic freedom; Illegal use of data; Breach of secret of personal communication; Defamation (Slander)

### Head III: Crimes against human dignity related to sexuality (Section 185 - 193)

- Rape; Sexual compulsion; Sexual abuse; Incest; Trade in women (procuration); Dissemination of pornography; Production and dissemination of child pornography

### Head IV: Crimes against family and children (Sections 194 - 204)

- Bigamy; Abandonment of child; Evasion of alimony payment; Abduction; Cruelty to person in custody, to person living in the common home; Endangering of child moral; Supplying alcoholic beverages to juveniles; Seducing the child

### Head V: Crimes against property (Sections 205 - 232)

- Theft (Larceny); Damaging Another's Property; Embezzlement; Unauthorised Use of Another Person's Thing; Unauthorised Violation of Another's Right to a House, Flat or Non-Residential Premises; Fraud; Insurance, credit, grant fraud; Operation of Fraudulent Games and Wagers; Participation on conceal; Usury; Concealment of a Thing; Breaches of the Duty to Administer Another's Property; Fraud on creditor; Advantaging certain Creditor; Machinations in Bankruptcy and Composition Proceedings; Damaging or Misusing Data Carrier Record; Abuse of ownership

### Head VI: Economic crimes (Sections 233 - 271)

- The Counterfeiting and Altering of Money; Use of Counterfeit or Altered Money; Manufacture and Possession of Counterfeiting Equipment; Jeopardise the Circulation of Domestic Money; Failure to Transfer Taxes and Statutory Social Insurance and Health Insurance Contributions; Curtailment of Taxes, Fees and Similar Mandatory Dues; Crimes Breaching Rules on Unfair Competition, Trademarks, Protected Designs, Inventions and Copyright; Breaches of Rules on identification of Goods by Stamps; Violation of consumer rights; Fraudulent Manipulation of Public Tenders and Public Auctions; Misuse of Information in Business Relations;

### Head VII: Generally dangerous crimes (Sections 272 - 292)

- Common danger; Endangering Others under the Influence of an Addictive Substance; Damaging and Endangering the Operation of a Public Utility; Unauthorised Arming; Unauthorised Production and Possession of Radioactive Material and Other Highly Dangerous Substances; Unauthorised Production and Possession of Narcotic and Psychotropic Substances and Poisons; Spreading of Addiction; Unlawful growing of narcotic plants; Endangering the Safety of an Aircraft or Civil Vessel

### Head VIII: Crimes against environment (Sections 293 - 308)

- Endangering the Environment; Endangering wood, waters; Unlawful handling with waste; Torture of animals; Poaching; Spreading an Infectious Disease of plants and animals

**Head IX: Crimes against Czech Republic, foreign country and international organization (Sections 309 - 322)**

- High Treason; Subversion of the Republic; Terror, Terroristic attack; Diversionist Activities; Sabotage; Espionage; Endangering an Official Secret; Collaboration with Enemy;

**Head X: Crimes against public order (Sections 323 - 368)**

- Attacks on a State Organ; Assaults on Public Officials; Abuse of Power by a Public Official; Thwarting of a Task by Public Official's Negligence; Bribe-Taking; Bribe-Giving; Indirect Bribery; Participation in a Criminal Conspiracy; Instigation; Connivance of a Crime; Assistance to an Offender; Failure to Act to Prevent a Crime; Failure to Report a Crime; Failure to Report a Crime; Obstructing Execution of an Official Decision; Perjury; Illegal Crossing of the State Border; Forging and Altering a Public Document; Violence against a Group of Citizens or an Individual; Defamation of a Nation, Race or Conviction; Incitement of National and Racial Hatred; Spreading Alarming News; Drunkenness; Rowdiness (Brawl, fight)

**Head XI: Crimes against the obligation to serve in the armed forces (Sections 369 - 374)****Head XII: Military crimes (Sections 375 - 399)****Head XIII: Crimes against humanity, against peace and war crimes (Sections 400 - 418)**

- Genocide; Torture and Other Inhuman and Cruel Treatment; Support and Propagation of Movements Aimed at Suppressing Citizens' Rights and Freedoms; Use of a Forbidden Weapon or an Unpermitted Form of Combat; Wartime Cruelty;

### III. CZECH CRIMINAL PROCEDURE CODE

#### LEGAL SOURCES

The Czech Criminal Procedure Code, Act No. 141/1961 Coll.

The law on Courts and Judges, Act No. 6/2002 Coll.

The law on Public Prosecution, Act No. 283/1993 Coll.

#### THE RIGHT TO USE MOTHER LANGUAGE

Everyone has a right to use his or her mother language before the authorities of the criminal proceedings. If there is a need to translate the content of a statement or a written document or if the accused declares that he does not speak the language of the proceedings, he shall be assigned an interpreter; the interpreter may also act as the clerk.

#### PROCEDURE

##### The courts

The system of criminal courts constitutes of District courts, Regional courts, two High courts and the Supreme Court. The Constitutional Court has a special position. The decisions are made either by a single judge or in a senate consisting of three judges. Which courts is competent depends on the sanction set for the crime in a prosecution. Proceedings before the court is possible only after the submission of an indictment by a Public Prosecutor. No private indictment exists in the Czech criminal law. However, the main part of preliminary proceedings is the investigation carried out by the Police.

##### The rights of the Accused

Any person suspected of having committed a crime shall be considered as accused only after he was charged with the crime. The accused has the right to give his opinion on any allegation of his guilt and the supporting evidence without, however, having the obligation to testify. He may state the circumstances and give evidence for his defence, file motions and petitions and apply for legal remedies. He shall have the right to elect and consult a counsel (defence lawyer) also in the course of procedures carried out by the bodies active in criminal proceedings. The accused who cannot afford to pay the defence costs shall have the right to a free counsel or to the defence for a reduced legal fee.

##### Defence lawyer

The accused has the right to be given the time and opportunity to find a defence lawyer. There is a difference between a chosen defence lawyer and assigned (mandatory) defence lawyer. The accused shall have a counsel already during pre-trial proceedings if he

a) is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution

b) is deprived of legal capacity or his legal capacity is restricted,

c) is a juvenile or

d) is an escaped prisoner.



A counsel shall be mandatory also if the court or a prosecutor in pre-trial proceedings deem it necessary because they are in doubt whether, in view of his physical or mental handicap, the accused is capable of proper defence or If the proceedings is held in respect of an offence punishable by the sentence of a minimum five years of imprisonment, the counsel shall be mandatory already at the pre-trial stage of the proceedings. A defence counsel shall be mandatory also in the proceedings held in respect of extradition and imposition of protective treatment, except for protective alcohol abuse treatment.

Under some conditions the free defence is available.

#### **The injured party (victim)**

The injured is a person who suffered bodily injury, property damage, moral or other damage as a result of a criminal offense or whose legal rights or freedoms were violated or threatened. The injured who has the legal right to claim damages from the accused in respect of damage caused by a criminal offense shall also have the right to submit a motion asking the court to impose, in its sentencing judgment, the accused a duty to compensate such damage. He or she shall have to submit such motion not later than at the main hearing before the taking of evidence and clearly state the grounds and the amount of the damage claim.

#### **Detaining person and things**

The accused shall only be remanded in custody when there are reasonable grounds to believe that

a) he would escape or go into hiding to avoid prosecution or punishment, in particular if his identity cannot be immediately established and if he does not have a permanent residence,

b) he will try to influence the witnesses or co-accused or otherwise frustrate the investigation of facts relevant for criminal prosecution or

c) he will continue in his criminal activity, accomplish the attempted crime or commit the crime he had prepared or had threatened to commit.

Only a person against whom a charge has been lodged may be placed in custody detention. The length of custody in pre-trial and judicial proceedings shall be limited. There is a possibility to replace the custody with a guarantee, pledge or a bail.

There are other coercive measures to be taken:

- a) apprehension of a suspect
- b) apprehension of an accused
- c) house search and searching of other premises
- d) seizure of an item
- e) attachment of a bank account or an account with another financial institution
- f) attachment of a booked security
- g) person search
- h) entry to a houses, other premises and lands
- i) seizure, track, search and replacement the undelivered mail

j) interception and phone calls recording

### Stages of criminal proceedings

#### 1. Preliminary proceedings (verification of facts; investigation; shortened preliminary procedure)

Investigation is led by the Service of the Criminal police. Criminal prosecution of the accused starts by the written charge. The written charge has to be delivered to the accused in person. It contains the description of the criminal act, legal qualification and instruction on remedy. The public prosecutor supervises the proceedings. The public prosecutor is entitled to transfer the case, discontinue or stop prosecution or approve settlement. The shortened preliminary procedure concerns lesser serious offences with simplified evidence procedure.

#### 2. Proceedings before the Court

The proceedings starts with the presentation of the indictment. Then follows the examination of an accused and the witnesses. The proceedings ends with the closing statements

#### 3. Enforcement of the sentence

A sentence of imprisonment is served in prisons which are divided in four types according to the method of external guarding and security: with supervision, with control, with security, with stricter security.

### Remedy – Appeal

#### 1. Regular remedies

Complaint – against the decision of the police, the prosecutor and the court when applicable.

It has to be exercised within 3 days since delivery of the decision.

Appeal – against a judgement issued by the first instance court

It has to be exercised within 8 days since the judgement delivery. The appeal has a suspensive effect of enforceability of the judgement.

Protest – against criminal court order

Criminal court order is issued in a simplified proceedings.

#### 2. Extraordinary remedies

Appeal review – against the decision of the court of the second instance

The reasons to apply the review are strictly listed in the code.

Complaint against violation of law – against all decisions

It is filed only by Minister of Justice but the person may send the proposal to the Minister.

Re-opening (Retrial) of the criminal proceedings – against all decisions

A retrial of proceedings which ended in a final judgement shall be permitted if facts or evidence unknown to the court before, emerge and these themselves or in combination with facts and evidence known before would justify another decision on guilt. The court primary decides about re-opening the case and that the proceedings begins again. It has to be lodged within

#### 3. Constitutional Court complaint

### Special proceedings

#### 1. Proceedings against juvenile

#### 2. Proceedings against a Fugitive

### 3. Conditional Stay of Criminal Prosecution

In proceedings on a criminal offence for which the law stipulates a sentence of imprisonment with an upper limit below five years, the court, and in pre-trial proceedings after the completion of investigation the prosecutor, may conditionally stay criminal proceedings, with the consent of the accused, if

a) the accused admitted the criminal offence, and

b) compensated the damage, if caused by the act, or concluded an agreement on its compensation with the injured party or took other measures necessary for its compensation, and if the person of the perpetrator in consideration of his/her life so far and circumstances of the case suffice to justify such a decision.

A probation term of 6 months to 2 years shall be determined in the decision on conditional stay of criminal prosecution. The probation term shall start with the validity of this decision on conditional stay of criminal prosecution.

### 4. Conciliation

In the proceedings concerning a criminal offence liable to a sentence of imprisonment for a term whose upper limit does not exceed three years in wilful criminal offences, or five years in negligent criminal offences, the court - or a prosecutor during formal investigation - may decide to approve the conciliation and terminate the prosecution, subject to the consent of both the defendant and the aggrieved, and provided that the defendant

a) admits to have committed the offence which gave rise to the prosecution and where there are no reasonable grounds to doubt that the admission was made of his free will, seriously, intelligibly and unambiguously,

b) has paid the compensation for damages caused by the criminal offence, has taken other steps to compensate the damage, or otherwise eliminated harm caused by the offence

and provided that, considering the character and seriousness of the committed offence, degree of harm to public interest caused by the criminal offence, and considering the defendant's person and his personal and property status, the court or the prosecutor during formal investigation deem this kind of decision to be adequate.

### 5. Proceedings Before a Single Judge

A single judge shall perform proceedings on criminal offences for which the law stipulates an imprisonment below five years. A single judge may issue a penal order without hearing the case at a main hearing provided that the facts are established with the acquired evidence beyond doubt. A penal order may be used to impose

a) sentence of imprisonment to one year,

b) ban on activity for five years,

c) pecuniary penalty,

d) forfeiture of the thing.

## IV. INTERNATIONAL AND EUROPEAN COLLABORATION

Since 1.1.2014 regulated by the new Act on the international judicial collaboration, Act No. 104/2013 Coll.

The Czech Republic is bound by multilateral and bilateral treaties and conventions. The Act regulates

Extradition – Request, Abroad

Enforcement of foreign judgements

Transfer of criminal proceedings

Providing or requesting of legal assistance

Taking over of an offender from abroad

Co-operation within EU: European Arrest Warrant

The warrant applies when the person is requested for conducting a criminal prosecution; executing a custodial sentence; executing a detention order.

The warrant is issued under conditions where a final sentence of the imprisonment lasts at least four months and for offences punishable by imprisonment or a detention order by a maximum period of one year.

### Sources available in the Czech

The Criminal Code, Act No. 40/2009 Coll. Trestní zákon, zák. č. 40/2009 Sb.

<http://www.zakonyprolidi.cz/cs/2009-40>

The Criminal Procedure Act, Act No. 141/1961 Coll. Trestní řád, zák. č. 141/1961 Sb.

<http://www.zakonyprolidi.cz/cs/1961-141>

The law on the Responsibility of Juveniles for illegal Acts, Act no. 218/2003 Coll. Zákon o odpovědnosti mladistvých, zák. č. 218/2003 Sb.

<http://www.zakonyprolidi.cz/cs/2003-218>

The Act on the international judicial collaboration, Act No. 104/2013 Coll., Zákon o mezinárodní justiční spolupráci, zák. č. 104/2013 Sb.

<http://www.zakonyprolidi.cz/cs/2013-104>

### Sources available in English

The Criminal Code in English is only available in version of the Act valid by 1.1.2010 – The Act 140/1961

[http://www.coe.int/t/dlapil/codexter/Source/country\\_profiles/legislation/CT%20Legislation%20-%20Czech%20Republic%20Criminal%20Code.pdf](http://www.coe.int/t/dlapil/codexter/Source/country_profiles/legislation/CT%20Legislation%20-%20Czech%20Republic%20Criminal%20Code.pdf)

The Criminal Procedure Code in English is only available in version that was not updated since 2002. However still valid. <http://www.legislationline.org/documents/id/3850>

This handbook is intended to highlight issues, provide basic information about Criminal law and Proceedings in English. It is intended to be comprehensive, nor to provide legal advice. Should you have any questions or issues reported here or on other areas of law, please contact us.

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