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# **Selected Problems of Czech Criminal Law**

## **Introduction to the Special Part of the Czech Criminal Code – Chapters I. – VI.**

*17. 10. 2018*



## Relation Between General and Special part of the CC

- General part
  - lays down the conditions of criminal liability
  - prescribes sanctions
  - interprets some commonly used terms (mental illness, child, break-in, use of violence etc.)
- Special Part
  - enumerates particular criminal offences
- General and Special part mutually cooperate
  - both need each other
  - only when read in conjunction they give results

## Systematics of the Special part of the CC

- 13 chapters
  - sometimes divided into divisions
- Ordered by the rate of abstraction of the protected interest from individual to collective
  - criterion of order is group object
- Difference from the past regulation
  - special part began with interests of the state and just after them it followed with interests of individuals

- **Crimes against life and health**
- **Crimes against freedom and rights to protection of personality, privacy and confidentiality of correspondence**
- **Crimes against human dignity in sexual matters**
- **Crimes against family and minors**
- **Crimes against property**
- **Economic crimes**
- Generally dangerous crimes
- Crimes against environment
- Crimes against the republic, foreign state and international organization
- Crimes against order in public affairs
- Crimes against conscription duty
- Military crimes
- Crimes against humanity, peace and war crimes

## Chapter I. – Crimes against life and health

- Division 1 – Crimes against life
  - common object – human life
  - murder, manslaughter, murder of a newly born child by his/hers mother, negligent killing, participation in a suicide
- Division 2 – Crimes against health
  - common object – human health
  - grievous bodily harm, bodily harm, bodily harm out of excusable motives, negligent grievous bodily harm, negligent bodily harm
- Division 3 – Crimes endangering life or health
  - common object – life and/or health
  - torture and other inhuman and cruel treatment, failure to provide help, failure to provide help by a driver of a motor vehicle, spreading of a contagious human disease, brawl etc.

## Chapter I. – Crimes against life and health

- Division 4 – Crimes against pregnancy of a woman
  - common object – unproblematic course of pregnancy and protection of women’s health during abortion
  - illegal abortion without a women’s consent, illegal abortion with a women’s consent, assistance to abortion, tempting a woman to abortion
  - the pregnant woman is never criminally liable
- Division 5 – Crimes relating to illegal treatment of human tissues and organs, human embryo and human genome
  - common object – dignified treatment of human biological components
  - illegal extraction of tissues and organs, illegal handling with tissues and organs, extraction of tissues and organs and exercise of a transplantation for a consideration, illegal handling with human embryo and genome

## ECHR judgment (GC) *Vo v. France* of July 8, 2004 (app. No.53924/00)

- Ms. Vo (Vietnamese origin) was in her 6th month of pregnancy and went to hospital for a regular check
- At the waiting room, another Ms. Vo was present, who had an appointment to have her contraceptive coil removed
- When the nurse called „Ms. Vo, please come in“, the pregnant Ms. Vo entered, although the call was addressed to the other Ms. Vo
- While Ms. Vo didn't understand much French, the doctor stopped an effort to have a medical interview with her and according to the medical documentation, proceeded with the removal of the coil without medically examining her first
- When he realized his mistake, it was too late and in spite of every attempt to save the foetus and there was a miscarriage

## Vo v. France

- Was there a crime against a life of the foetus?
- Was there another crime?
- When does a foetus become a subject of protection fo criminal law?



## Vo v. France – the outcome

[...]it is neither desirable, nor even possible as matters stand, **to answer in the abstract the question whether the unborn child is a person** for the purposes of Article 2 of the Convention (“*personne*” in the French text). As to the instant case, it considers it unnecessary to examine whether the abrupt end to the applicant’s pregnancy falls within the scope of Article 2, seeing that, even assuming that that provision was applicable, **there was no failure on the part of the respondent State to comply with the requirements relating to the preservation of life in the public-health sphere**. With regard to that issue, the Court has considered whether the legal protection afforded the applicant by France in respect of the loss of the unborn child she was carrying satisfied the procedural requirements inherent in Article 2 of the Convention.

## Vo v. France – the outcome

[...] the Court has stated on a number of occasions that an **effective judicial system**, as required by Article 2, may, and under certain circumstances must, **include recourse to the criminal law**. However, if the infringement of the right to life or to physical integrity **is not caused intentionally**, the positive obligation imposed by Article 2 to set up an effective judicial system **does not necessarily require the provision of a criminal-law remedy in every case**. In the specific sphere of **medical negligence**, “the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, **enabling any liability of the doctors concerned to be established and any appropriate civil redress**, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may **also be envisaged**”

## **Murder (sec. 140 CC), manslaughter (sec. 141 CC), negligent killing (sec. 143 CC)**

- Whoever intentionally kills another, will be punished...
  - more severe punishment if he commits the act on multiple people, on a pregnant woman, repeatedly, in an especially brutal or tormenting way etc.
- Whoever intentionally kills another in a state of strong agitation caused by fear, fright, disarray or other excusable mind set or as a consequence of prior despicable behaviour of the injured person, will be punished...
- Whoever causes death of another's by negligence, will be punished
  - more severe punishment, if he did so due to a breach of an important duty

## Abortion in the Czech Republic

- Law no. 66/1986 Coll., on artificial termination of pregnancy
  - lays down conditions of legal abortion and its procedure
  - until the end of 12<sup>th</sup> week of pregnancy of a women – upon written request, if it is not impeded by a medical condition
  - later upon her request or with her consent, if her life or health is endangered, if a healthy development of the foetus is endangered or if there is a genetic malfunction in the foetuses' development
- Crime is only
  - conduction of abortion against the pregnant women's will
  - conduction of abortion by illegal medical procedure
  - conduction of abortion after 12<sup>th</sup> week of pregnancy if there is no medical reason for it
  - persuading or abetting the woman to an illegal abortion

## Chapter II. – Crimes against freedom and rights to protection of personality, privacy and confidentiality of correspondence

- Division 1 - Crimes against freedom
  - group object – human freedom (particular elements – freedom of movement, freedom of residence, freedom of religion, freedom of rally etc.)
  - human trafficking, entrusting child to another, deprivation of personal freedom, restriction of personal freedom, introduction (kidnapping), robbery, taking hostages, extortion, restriction of freedom of religion, oppression, breach of house freedom, breach of freedom of association rallying

## Chapter II. – Crimes against freedom and rights to protection of personality, privacy and confidentiality of correspondence

- Division 2 – Crimes against rights to protection of personality, privacy and confidentiality of correspondence
  - group object – protection of other rights and freedoms related to one's personality
  - illegal handling with personal data, damaging of other person's rights, violating the secrecy of transported messages, violation of secrecy of lists and other documents kept in private, defamation

## Robbery (sec. 173 CC), deprivation of personal liberty (sec. 170 CC), restriction of personal liberty (sec. 171)

- Whoever uses violence or a threat of immediate violence with an intention to seize another's item, will be punished...
  - the perpetrator does not have to be successful (no damage level)
  - the perpetrator has to use violence or threat of violence prior to seizing the item
- Whoever without authorization incarcerates or in another way deprives another person of personal liberty, will be punished...
- Whoever without authorization prevents a another person from enjoyment of personal liberty, will be punished...

## Crimes against confidentiality of messages and documents

- Every unauthorized opening or accessing
  - it is irrelevant whether the injured party took any precaution
- Every unauthorized using or sharing
  - even if the perpetrator got the information by accident or mistake
- Employee of postal or other delivery, transmitting or communication services
  - if he or she suppresses or changes the message or delivery
  - if he or she let another person to breach the secrecy of use its contents



## Defamation (sec. 184 CC)

- Whoever imparts an untrue information about another person, which is capable of substantially endangering his esteem among his co-citizens, especially damaging him in his employment, infringing in his family life or inflicting a serious harm to him, will be punished...
  - in principle no true information can trigger criminal liability for defamation
  - factual statement vs. value judgment
  - so called “hybrid statements” – criminal liability for defamation can be triggered

## Chapter III. – Crimes against human dignity in sexual matters

- No inner division
- Objects
  - **sexual self-determination,**
  - protection of orderly sexual development of minors,
  - protection of basic moral principles of sexual life,
  - protection against exploitation of sexual workers
- Individual crimes
  - rape, sexual coercion, sexual abuse, intercourse between relatives, pandering (procuring prostitution), prostitution endangering the moral development of minors, dissemination of pornography, production of and other handling with child pornography, abusing child to production of pornography, attending a pornographic performance, establishing illegal contacts with a minor

## Rape (sec. 185 CC)

- Whoever forces another person to a sexual intercourse with violence, threat of violence or of another severe harm, or who abuses somebody's defencelessness for such an act, will be punished...
- Sexual intercourse = any satisfaction of one's sexual instinct on another person's body
  - i.e. not only coitus or similar practices
  - if the act is committed by coitus or in a manner comparable to coitus (i.e. oral sex, anal sex etc.), it is punished more severely

## Sexual coercion (sec. 186 CC)

- Whoever forces another person with violence, threat of immediate violence or with threat of another serious harm to masturbation, undressing or another comparable behaviour, or who abuses another person's defencelessness to this end, will be punished...
- Whoever makes another person have sexual intercourse with him, masturbate, undress or another comparable behaviour by abusing victim's dependency or his own position and trustworthiness or influence stemming from it, will be punished the same.

## Pandering (sec. 189 CC)

- Whoever makes another person engage in prostitution, recruits, hires, lure or tempts another person for this purpose or whoever exploits prostitution conducted by another person, will be punished...
- Prostitution itself is not legally regulated in the Czech Republic
  - municipalities have authority to banish prostitution in certain areas

## Pornography and criminal law in the Czech Republic

- Generally speaking, pornography is legal in the Czech Republic
  - making of, obtaining watching, storing etc.
- Regulation by administrative law (conditions of broadcasting it on TV, ban on its use in commercials etc.)
- Criminal liability might come in play when:
  - it involves a minor or a person who appears to be a minor (under 18)
  - it involves violence or disrespect to a human
  - it involves sexual intercourse with an animal

## **ECHR's judgment *Laskey, Jaggard and Brown ca. UK* (21627/93; 21628/93; 21974/93)**

In 1987, the police found records of S&M orgies when conducting totally unrelated home searches. Cca 40 men appeared on these recordings going on for cca 10 years.

This discovery led to a prosecution of several of the participants for various crimes against health and against public order. Charges were pressed against a representative sample of the most severe acts, which included i. a. attacks on genitalia with hot wax, sandpaper, fishing hooks and needles, as well as ritual beatings with a bare hand, nettles, belts with studs and floggers. Due to the use of these practices, bleeding occasionally occurred and several participants developed scars.

All of these practice was consensual and done in strict privacy solely for the purpose of sexual arousal. Safety rules had been introduced to prevent injuries, i. a. „safe words“, following which the practice was immediately interrupted.

There was never an injury which would require a medical treatment or which would have permanent effects.

## Laskey, Jaggard and Brown ca. UK - outcome

After the court of the first instance:

Laskey - 5,5 years – aiding and abetting keeping a disorderly house  
possession of an indecent photograph of a child + various counts of  
assault occasioning actual bodily harm and aiding and abetting assault  
occasioning actual bodily harm.

Jaggard – 3 years (more or less the same)

Brown – 2 years and 9 months, just bodily harms

After appeal:

Laskey - 2 years

Jaggard – six months

Brown – 3 months

All three were also fired from their jobs, the case was heavily  
medialized and some of the participants developed various  
psychoological disorders due to the stress from the ongoing proceedings



*The Court observes that not every sexual activity carried out behind closed doors necessarily falls within the scope of Article 8 (art. 8). In the present case, the applicants were involved in consensual sado-masochistic activities for purposes of sexual gratification. There can be no doubt that sexual orientation and activity concern an intimate aspect of private life...**However, a considerable number of people were involved in the activities in question which included, inter alia, the recruitment of new "members", the provision of several specially equipped "chambers", and the shooting of many videotapes which were distributed among the "members"**). It may thus be open to question whether the sexual activities of the applicants fell entirely within the notion of "private life" in the*

*...one of the roles which the State is unquestionably entitled to undertake **is to seek to regulate, through the operation of the criminal law, activities which involve the infliction of physical harm. This is so whether the activities in question occur in the course of sexual conduct or otherwise.***

*The determination of the level of harm that should be tolerated by the law in situations where the victim consents is in the first instance a matter for the State concerned since what is at stake is related, on the one hand, to public health considerations and to the general deterrent effect of the criminal law, and, on the other, to the personal autonomy of the individual.*

*The applicants have contended that, in the circumstances of the case, the behaviour in question formed part of private morality which is not the State's business to regulate. In their submission the matters for which they were prosecuted and convicted concerned only private sexual behaviour.*

*The Court is not persuaded by this submission. It is evident from the facts established by the national courts **that the applicants' sado-masochistic activities involved a significant degree of injury or wounding which could not be characterised as trifling or transient.** This, in itself, suffices to distinguish the present case from those applications which have previously been examined by the Court concerning consensual homosexual behaviour in private between adults where no such feature was present.*

*Nor does the Court accept the applicants' submission that no prosecution should have been brought against them since their injuries were not severe and since no medical treatment had been required. In deciding whether or not to prosecute, **the State authorities were entitled to have regard not only to the actual seriousness of the harm caused - which as noted above was considered to be significant - but also,...to the potential for harm inherent in the acts in question.** In this respect it is recalled that the activities were considered by Lord Templeman to be "unpredictably dangerous".*

## Chapter IV. – Crimes against family and minors

- No inner division
- Objects
  - proper upbringing, nutrition and overall development of children
  - keeping peaceful relations between cohabitants and/or between caretaker and caregiver
  - marital monogamy
- Individual crimes
  - double marriage, abandonment of a child or caretaker, neglecting compulsory nurturement, maltreatment of caretaker, maltreatment of cohabitant, abduction of a child or a person suffering from a mental illness, endangerment of child's upbringing, tempting to sexual intercourse, serving alcohol to a minor

## Neglecting compulsory nurturement (sec. 196 CC)

- Whoever, even just out of negligence, does not fulfil his obligation prescribed by law to nurture another person or to provide for him for a period longer than four months, will be punished...
  - More severe punishment if the perpetrator intentionally avoid said obligation for a period longer than 4 months
  - Most severe punishment if the perpetrator has put the entitled person into risk of hardship
- Special case of effective remorse
- Special provision on punishment
  - on one hand, deprivation of liberty only in extreme cases, on other hand possibility to revoke perpetrator's driving license

## Maltreatment of a caretaker (sec. 189 CC) and of cohabitant (sec. 199 CC)

- Whoever maltreats a person that is in his custody or under his upbringing, will be punished
  - maltreatment is not legally defined
  - physical, psychical, economic
  - the more intense it is, the less it has to last
- Whoever maltreats a next of kin or another person who lives with him in a common place of residence, will be punished
  - does not have to be a blood relative, does not to have any close relationship to the perpetrator

## Chapter V. – Crimes against property

- No legal division, division by theory
  - enriching crimes (theft, embezzlement)
  - damaging crimes (damaging of creditor, damaging another's property)
  - stealing of utility (illegal use of another's property)
  - looting crimes (fencing, money laundering)
- Object – right to ownership, ownership legal relations
- Levels of damage (sec. 138 CC)
  - damage not marginal  $\geq 5.000$  CZK (app. 196 EUR)
  - damage not small  $\geq 25.000$  CZK (app. 980 EUR)
  - larger damage  $\geq 50.000$  CZK (app. 1.960 EUR)
  - significant damage  $\geq 500.000$  CZK (app. 19.960 EUR)
  - damage of large proportions = 5,000.000 CZK (app. 199.600 EUR)
  - used also as level of benefit

## Chapter V. – Individual crimes against property

- Individual crimes
  - theft, embezzlement, illegal use of another's property, infringement of another's rights to a flat, house or non-residential space, fraud (generic, credit, insurance, subsidy), conducting unfair games and bets, fencing (also negligent), legalization of criminal profits (also negligent), usury (loan-sharking), withholding of a found item, breach of obligation while administering another's property (also negligent)
- Insolvency related crimes
  - damaging creditor, preferential treatment of creditor, causing a bankruptcy, breach of obligation in insolvency proceedings, scheming in insolvency procedure
- violation of obligation to make a true declaration of property, damaging of another's property, abuse of ownership

## Chapter V. – Individual crimes against property – continuation

- So-called “cybernetic crimes”
  - illegal access to a computer system or information carrier, obtaining or possession of access device and passport to a computer system or other such data, negligent damaging an entry in a computer system or in data carrier and intervention to a computer equipment



## Theft (sec. 205 CC)

- Whoever appropriates another's item by seizing it and:
  - inflicts a not marginal damage on another's property by doing so,
  - commits this act by break-in,
  - attempts to keep the item by violence or by a threat of immediate violence immediately after the act,
  - commits this act on an item that another has on him or by him,
  - commits this act on territory that was or has been subjected to evacuation of people,
  - has been convicted or punished for such an act in past three years.
- will be punished...

## Embezzlement (sec. 206 CC) and withholding of found item (sec. 219 CC)

- Whoever appropriates another's item that has been entrusted to him and inflicts a not marginal damage on another's property by doing so will be punished...
  
- Whoever appropriates another's item of not marginal worth that has got to his power by finding, mistake or by another way without a assent of an entitled person will be punished

## Fraud (sec. 209 CC)

- Whoever enriches himself or somebody else by putting somebody else into error, by using somebody else's error or by withholding substantial facts and inflict a not marginal damage on another's property by doing so, will be punished
- Credit, insurance and subsidy fraud
  - basically it suffices to state false or distorted information in the application (request etc.) documentation

## Squatting in the Czech Republic

- Controversial finding of the Constitutional Court (I. ÚS 3080/2016) - squatting in the homestead “Cibulka”
- the squatters had an written agreement with the owner at first, then he cancelled it because of the breach of the conditions, so a notice period of three months started
- the squatters disagreed and tried to negotiate another deal with the owner during the notice period (they wanted a new place to stay or a longer period to move out etc.), the negotiations allegedly continued even after the expiration of the notice period
- the owner refused and submitted a criminal notice due to suspicion of a crime under § 208 CC

## § 208 - Unlawful interference with another's rights to a house, flat or non-residential space

*“(1) Who in a breach of law occupies or uses another person's house, flat or a non-residential space, will be punished with up to two years of imprisonment or with a financial penalty.*

*(2) The same penalty will be imposed on anyone who in a breach of law obstructs the use of these premises by an authorised person.*

*(3) Punished with an imprisonment of from six months up to five years shall be anyone who*

*a) commits an act according to the par. 1 or 2 as a **member of an organised group***

*b) causes damage of large proportions by such an act.”*

## I. ÚS 3080/16

- *“The CC basically preserved the formal-material concept of the criminal act. The solution contained in the CC is based on a combination of a formal term of a criminal act (sec. 13 par. 1) and a material corrective of the scope of the criminal lawlessness through the subsidiarity of criminal repression (sec. 12 par. 2, sec. 39 par. 2).”*
- This idea contradicts the opinion of the Supreme Court
- Should that mean that the material aspect of a criminal act ought to play the same role as it did in the former CC?

## Chapter VI. – Economic Crimes

- Division 1 – Crimes against currency and payment instruments
  - object – protection of fundamental instruments of economic exchange
  - individual crimes – counterfeiting and alteration of money, illegal obtaining, counterfeiting and alteration of payment instrument, passing off a counterfeited money, production and possession of counterfeiting instruments, illegal production of money, endangerment of domestic money circulation
- Division 2 – Tax, fee and foreign exchange crimes
  - tax, fee and other mandatory payment evasion, failure to pay taxes, fees and other mandatory payments, breach of an obligation to declare in the tax proceedings, breach of regulation regarding labels and other items for goods identification, endangerment of foreign exchange economy etc.

## Chapter VI. – Economic Crimes

- Division 3 – Crimes against binding rules of market economy and commodities circulation regarding foreign trade
  - violation of economic competition's regulation, damaging a consumer, illegal emission of securities, manipulation with investment instrument's rate, illegal conduct of business, illegal conduct of gambling, distortion of state of business and wealth's records, abuse of information in business relations (insider trading), abuse of position in business relations, arranging an advantage in public procurement, tender or auction, scheming in..., emission of false certification or report, damaging EU's financial interests, violation of regulation of goods circulation in international trade, violation of export or control regulation of dual-use goods and technologies, conducting a foreign trade with military material without a permission or licence etc.
- Division 4 – Crimes against industrial and author's rights
  - violation of trademark or another protecting indications, violation of protected industrial rights, violation of author's rights, related rights and database rights, art forgery and imitation



## Counterfeiting and alteration of money (sec. )

- Whoever procures counterfeited or altered money or elements of money serving for their protection against counterfeiting for himself or for another person, will be punished...
- Whoever counterfeits or alters money with an intention to pass them off as real or as money of higher (nominal) value, or whoever passes counterfeited or altered money as real or as money of higher (nominal value), will be punished...

**Thank you for your attention!**

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