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Selected Problems of Czech Criminal Law

Introduction to the Special Part of the Czech Criminal Code – Chapters VII. – XIII.

7. 11. 2018



- Crimes against Life and Health
- Crimes against Freedom and Rights to Protection of Personality, Pivacy 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 the Environment**
- **Crimes against the Czech Republic, a Foreign State and an International organization**
- **Crimes against Order in Public Affairs**
- **Crimes against Conscription Duty**
- **Military Crimes**
- **Crimes against Humanity, Peace and War Crimes**

Chapter VII. – Generally Dangerous Crimes

- Common object
 - public safety (life, health, property)
 - more of protection against specific type of attack (endangerment)
- Division 1 – Generally Endangering Crimes
 - general endangerment, endangerment under the influence of an addictive substance, violation of obligation during formidable disaster, damaging and endangerment of an operation of generally beneficial device, damaging geodetic point, illicit arming, development, production and possession of prohibited mean of warfare, illicit production and possession of a radioactive substance and of highly dangerous substance, illicit production and possession of nuclear material and special fissionable material, illicit production and other handling of narcotic and psychotropic substances and of poisons,

Chapter VII. – Particular Crimes

- Division 1 – Generally Endangering Crimes
 - possession of narcotic and psychotropic substances and of poison, illicit growing of plants containing narcotic or psychotropic substance, production and possession of an item for illicit production of narcotic and psychotropic substance or of poison, spreading of toxicomania, production and other handling of a substance with hormonal effect
- Division 2 – Crimes Endangering Aerial Mean of Transport, Civilian Vessel or a Fixed Platform
 - common object – safety of these items
 - gaining control over an aerial mean of transport, a civil vessel and a fixed platform, endangering the safety of an aerial mean of transport and a civil vessel, introduction of an aerial mean of transport abroad

General Endangerment - sec. 272 of the CC

Whoever intentionally causes general danger by putting people in the risk of death or heavy bodily harm or another's property in the risk of damage of large proportions by causing fire or flood or damaging effect of explosives, gas, electricity or similarly dangerous substances or forces or who acts in similarly dangerous manner, or who raises such a general danger or aggravates its averting or reducing, will be punished...

- Qualified bodies of this crime include
 - organized group, reoffending in short time, causing damage of large proportions, causing of heavy bodily harm or death of at least two people
 - intentionally causing death, committing in a state of war

Drugs regulation in the Czech Republic

What is not a crime

- possession of drugs in a merely small amount for personal use
- growing of cannabis or other plants or mushrooms containing narcotic or and addictive substance in a merely small amount for personal use
- it is not a crime, but it is an administrative delict

■ What is a crime

- any production, dealing, transfer, distribution etc. without any relevance of amount
- promoting toxicomania, which is inciting or supporting of abuse of all addictive substances with the exception of alcohol
- narcotic and addictive substance is a legal abbreviation (it does not cover e.g. caffeine, chocolate, nicotine etc.)

Weapons regulation in the Czech Republic

- Melee weapons unregulated
 - knives, swords, boxers, clubs etc.
- Missile weapons only over certain power
 - crossbows over 150 N of drawing power, gas pistols over 16 J of muzzle kinetic energy
- Firearms in four regimes according to their categories
 - prohibited weapons – military (automatic weapons, mortars, tanks etc.) or hidden (e.g. walking cane capable of shooting)
 - subjected to permission (most of pistols and rifles)
 - subjected to registration (most single-shot or double-barreled hunting rifles)
 - others (historical firearms such as muskets)

Firearms subjected to permission

- Legal reasons for permission
 - collection
 - sports
 - hunting
 - exercise of occupation or trade
 - defense of life, health and property
- **Legal claim** if conditions are met
 - no condition dependant on disgression
- Concealed carry
 - automatic when requested upon application for firearms licence
 - firearm may be prepared for immediate discharge

Conditions of the permission

- residence in the Czech Republic
- age (18 for sports or hunting, 21 in other cases)
 - 15 for an organised sportsman, 16 for student if hunting is part of the curriculum (e.g. forest management), 18 for students of gunsmithing
- full legal capacity
- medical qualification
- factual competence
 - theoretical knowledge, technical and practical skills
- clean criminal record
- reliability
 - no certain administrative delicts
 - no multiple administrative delicts in general
 - no excessive alcohol or drugs consumption
 - no diversions in criminal proceedings

Chapter VIII. – Crimes against the Environment

- Common object
 - environment and its particular components
- No internal division
 - damaging and endangerment of the environment, endangerment of water source, endangerment of forrest, illicit emission of polluting substance, illicit handling of waste, illegal production and other handling of substances damaging the ozon layer, illicit handling of protected wildly living animals and wildly growing plants, damaging of proteceted components of nature, maltreatment of animals, neglecting of animal out of negligence, poaching, illicit production, possession and other handling of medicine and other substances influencing utility of farm animals, spreading of a contagious animals' disease, spreading of a utility plants' contagious disease and of a pest

Maltreatment of an animal - sec. 302 of the CC

Whoever maltreats an animal

- a) in an **especially** brutal or tormenting way or
- b) in a brutal way **publicly** or on a publicly accessible place...

- Qualified bodies of this crime include
 - having being convicted or punished for this particular crime in last three years, causing a permanent impact on the health of animal or its death
 - committing this crime on a larger number of animals (at least 7)

Chapter IX. – Crimes against the Czech Republic, a Foreign State or an International Organisation

- Common object
 - existence of the Czech Republic, of foreign states and of international organizations and their constitutive elements
 - sovereignty, territorial integrity, constitutional settlement etc.
- Division 1 – Crimes against Foundations of the Czech Republic, of a Foreign State and of an International Organization
 - treason, subversion of the republic, terrorist attack, terror, participation in a terrorist group, financing of terrorism, support and promotion of terrorism, threatening with a terrorist crime, sabotage, abuse of a representation of a state or of an international organization

Chapter IX. – Crimes against the Czech Republic, a Foreign State or an International Organisation

- Division 2 – Crimes against the Safety of the Czech Republic, of a Foreign State and of an International Organization
 - espionage, endangerment of a classified information
- Division 3 – Crimes against the Defence of the State
 - collaboration with an enemy, war treason, serving in a foreign state's armed forces, violation of a personal and material obligation for protection of the state

Treason - sec. 309 of the CC and Subversion of the republic - sec. 310 of the CC

A citizen of the Czech Republic, who in connection with a foreign power or foreign agent commits a crime of subversion of the republic, terrorist attack, terror or sabotage...

Whoever participates in violent actions against the Czech Republic or its organs intending to subvert its constitutional settlement, territorial integrity or its defence capacity or to destroy its independence...

- Qualified bodies of this crime include
 - organized group, causing heavy bodily harm or death of at least two people, causing a damage of large proportions, causing a serious danger to the international position of the Czech Republic, committing during a state of endangerment of the state or in a state of war

Terrorist attack – sec. 311 of the CC

Whoever intending to damage the constitutional settlement or defence capacity of the Czech Republic, or to disrupt or destroy a fundamental political, economical or social structure of the Czech Republic or of an international organization, to frighten off the population in a serious matter or to illegally force a government or another body of public power or that of international organization to do, omit or bear something:

commits an attack endangering human life or health with an intention to cause death or a heavy bodily harm

takes a hostage or commits a kidnap

destroys or in a bigger extent damages public infrastructure with an intention to endanger human lives or security of the infrastructure

takes hold or control of an aircraft, a ship, another mean of personal or cargo transport or of a fixed platform on a continental shelf, destroys or interferes with operations of a navigation device, states a false information and by doing so endangers people, property or safety of such a mean of transportation

handles of dangerous substance (e.g. explosive, nuclear material, means of combat)

puts people or property in a general danger

Terror – sec. 312 of the CC and Sabotage – sec. 314 of the CC

Whoever intentionally kills another person intending to damage the constitutional settlement of the Czech Republic...

Whoever with an intention to damage the constitutional settlement or the defence capacity of the Czech Rep. or to damage an international organization abuses his job, occupation, position or function or acts in another manner with an aim to

thwart or hinder the completion of an important task of an international organization, public power body, armed forces or security corps, economic organization or other institution or

cause a malfunction or another serious harm in the operation of such a body, organization or institution

- Qualified bodies of this crime include
 - organized group, state of endangerment of the state or state of war
 - death or heavy bodily harm of at least two people, damage of large proportions, endangers the international position of the Czech Republic or of an international organization, organizes such an act in a state of endangerment of the state or of war

Chapter X. – Crimes against Order in Public Affairs

- Common objects
 - proper exercise of public power
 - keeping of peaceful foundations of public space's operation
- Division 1 – Crimes against the Exercise of Authority of a Public Power Body or of a Public Official
 - violence against a public power body, threatening with an aim to affect a public power body, violence against a public official, threatening with an aim to affect a public official, usurping of a power of an office
- Division 2 – Crimes of Public Officials
 - abuse of power, negligent thwarting of a public official's important task

Chapter X. – Crimes against Order in Public Affairs

- Division 3 – Corruption
 - accepting of a bribe, bribery, indirect bribery
- Division 4 – Other Nuisances of the Operations of Public Power Body
 - interference with the independence of court, contempt of a court, thwarting an execution of an official decision and of expulsion, liberating of a prisoner, violent crossing of a state border, organizing and enabling of illegal crossing of a state border, assistance to an illegal stay on the state's territory, illegal employing of foreigners, violation of regulation of international flights, insurgency of prisoners, false accusation, false testimony and false expert opinion, false interpreting, counterfeiting and alteration of official documents, illicit production and possession of a state seal and official seal stamp, counterfeiting and false issue of a medical report, medical opinion or medical finding, thwarting of a preparation or of a course of elections and referendum

Chapter X. – Crimes against Order in Public Affairs

- Division 5 – Crimes Disrupting the Coexistence of People
 - violence against a group of people or an individual, dangerous threatening, dangerous pursuit, denigration of a nation, race, ethnic or other group of people, incitement to hatred towards a group of people or to restriction of their rights
- Division 6 – Other Nuisances of Public Order
 - spreading of an alarming message, disturbance, denigration of human remains, drunkenness
- Division 7 – Organized Criminal Group
 - participation on an organized criminal group
- Division 8 – Some Other Forms of Criminal Cooperation
 - incitement of a crime, approving of a crime, favouritism, failing to prevent a crime, failing to report a crime

Violence against a body of public power – sec. 323 of the CC and Threatening with an aim to affect public power body

Whoever uses violence with an intention to affect the exercise of authority of a body of state administration, local administration, court or other body of public power...

- Qualified bodies of this crime include
 - committing with a weapon, bodily harm, significant damage
 - heavy bodily harm, damage of large proportions, malfunction in the operations of the body
 - death

Whoever threatens another person with death, bodily harm or significant damage with an intention to affect the exercise of authority of a body of state administration, local administration, court or other body of public power, **or** because of such an exercise...

- Qualified body of this crime include
 - committing with a weapon

Abuse of power – sec. 329 of the CC

A public official, who

conducts his authority in a breach of another legal regulation,

exceeds his authority,

or fails to fulfil a duty arising from his authority

with an intention to cause harm to another person or to obtain an illicit benefit for himself or for another person...

■ Qualified bodies of this crime include

- significant benefit, committing because of a discriminatory mark, causing a serious malfunction in the operations of a body of state administration, local administration, court or another body of public power or in the operations of natural or legal person who is an entrepreneur, abusing defencelessness, dependency, distress, intellectual weakness or inexperience of another person, significant damage
- benefit of large proportions, damage of large proportions

Negligent thwarting of a public official's important task – sec. 330 of the CC

A public official, who while exercising his authority negligently thwarts or substantially hinder completion of an important task...

- Qualified bodies of this crime include
 - causing a serious malfunction in the operations of a body of state administration, local administration, court or another body of public power or in the operations of natural or legal person who is an entrepreneur, significant damage, significant benefit for another
 - damage of large proportions, benefit of large proportions
- Bribe – illicit advantage laying in direct property enrichment or other advantage that the bribed person or with his consent another person gets or is supposed to get and to which there is no legal entitlement

Corruption – passive bribery (sec. 331 of the CC)

Whoever in connection with administration of affairs of general interest by himself or through another person for himself or for another person accepts a bribe or lets a bribe be promised to him, or does so in connection with his or another person's business...

- Qualified bodies of this crime include
 - actively asking for a bribe
 - intention to gain a significant benefit, being a public official
 - intention to gain a benefit of large proportions
 - intention to gain a significant benefit while being a public official

Corruption – active bribery (sec. 332 of the CC) and indirect bribery (sec. 333 of the CC)

Whoever gives, offeres or promises a bribe to another person or on another person's behalf in connection to administration of affairs of public interest or in connection to his or other person's business...

Whoever ask for a bribe, lets a bribe be promised to himself or asks for a bribe in return for affecting an exercise of authority of a public official through his influence or through another person or because he has already done so...

or

whoever gives, offers or promises a bribe to such a person...

Denigration of human remains (§ 359)

Whoever without authorization opens a grave, a tomb or an urn with human remains, shall be punished...

The same applies for whoever arbitrarily removes human remains from a burial site or treats human remains in breach of law.

- Qualified bodies of this crime includes of committing this crime as a member of an organised group, intent to acquire a material profit, and intent to cover up another crime or to facilitate it.
- ECHR Sinkova v. Ukraine (39496/11)
 - denigration of a grave of an Unknown soldier by frying eggs on an eternal flame

General vs. Other Forms of Criminal Cooperation

- General Forms
 - (co-perpetration)
 - organization
 - abetment
 - assistance
- always **before** or **during** commitment,
- always provided to **an individual perpetrator**
- always provided to **an individual crime**
- With other forms in division 8 of chapter X, some of these elements is missing

Other Forms in Division 8 of Chapter X.

- Incitement of a crime
 - Whoever publicly incites a crime...
- Approving of a crime
 - Whoever publicly approves of a felony or who publicly praises its perpetrator because of it...
 - Whoever intending to express his approval of a crime rewards or compensates the perpetrator or his next of kin for the punishment or who organizes a fund-raising to that effect...
- Favouritism
 - Whoever helps the perpetrator with an intent to enable him to avoid the prosecution, punishment or protective measure...

Failing to prevent a crime – sec. 367 of the CC

- Failing to prevent a crime
 - Whoever learns in a trustworthy manner that a certain exclusively listed crime is being prepared or committed and fails to prevent such a crime from committing or completion...
 - Only serious crimes (murder, robbery, most serious bodies of crimes of fraud, embezzlement, extortion, subversion of republic, genocide etc.)
 - Criminal liability is excluded, if the person wasn't able to prevent the crime from happening without serious difficulties or without putting himself or his next of kin into a risk of death, bodily harm, other serious harm or of that of criminal prosecution (doesn't apply with some of the crimes against the republic and some crimes from Chapter XIII.)
 - It suffices to comply with this obligation if the crime is in timely manner reported to the proper authority

Failing to report a crime – sec. 368 of the CC

- Failing to report a crime
 - Whoever learns in a trustworthy manner that a certain exclusively listed crime has been committed and fails to report such a crime without any delay...
 - Criminal liability is excluded if the person wasn't able to comply with this rule without putting himself or his next of kin into a risk of death, bodily harm, other serious harm or of that of criminal prosecution.
 - Criminal liability is also excluded in the case of attorneys and their employees, if they learned about the crime in connection to their legal praxis and in the cases of clergyman, has they learned about the crime under confessional secrecy.

Chapter XI. – Crimes against Conscription Duty

- Common object
 - securing of personal supply of the armed forces
- No innter division
 - thwarting of the capacity to service, failure to comply with a conscription duty, circumventing a conscription duty, failure to enter a service in the armed forces, failure to enter an extraordinary service in the armed forces

Thwarting of the capacity to service - sec. 396 of the CC

Whoever makes himself or another person permanently or temporarily unfit or less fit for the exercise of a conscription duty during peace...

- Qualified bodies of this crime includes of committing this crime during the state of endangerment of the state or during the state of war

Chapter XII. – Military Crimes

- Common object
 - fitness to combat of the armed forces
- Division 1 – Crimes against the Military Subordination and Honour
 - disobeying an order, palling of and coercion to violation of a military duty, insult between soldiers, violence against a superior etc.
- Division 2 – Crimes against the Obligation to Exercise a Military Service
 - avoidance of the exercise of service, defection, arbitrary separation

Chapter XII. – Military Crimes

- Division 3 – Crimes against the Duties of Guard, Supervisory or Other Service
 - avoidance of the exercise of guard, supervisory or other service, violation of guard service's duty, violation of supervisory or other service's duty, violation of duty while defending the airspace
- Division 4 – Crimes Endangering the Fitness to Fight of the Armed Forces
 - endangerment of the moral status of the soldiers, violation of a soldier's service duty, cowardice before an enemy, failure to accomplish a combat objective, deserting of military material, giving up soldiers and military material to the enemy
- Division 4 – Crimes against the Service Duties of a Member of Security Corps
 - violation of a service duty by a member of the security corps

Disobeying an order – sec. 375 of the CC

Whoever refuses to or intentionally fails to obey an order...

- Qualified bodies of this crime include
 - committing with a group of soldiers, with a weapon, under circumstances that might lead to a thwarting or significant hindering of a completion of an important service task, endangerment of the combat readiness of a military unit, military facility, military rescue unit or another organization unit under the authority of Ministry of Defence, damage of large proportions or damage to the environment whose removal requires costs of large proportions, heavy bodily harm, death
 - committing in a state of an endangerment of the state or in a state of war

Chapter XIII. – Crimes against Humanity, Peace and War Crimes

- Common object
 - basic foundations of peaceful, humanistically oriented international community
 - usually protection of universal international treaties and of *ius cogens*
- Subsidiary jurisdiction of the ICC
 - the Rome statute
 - criminal code and code of criminal procedure *sui generis*
 - exclusion of inner-state immunities

Chapter XIII. – Crimes against Humanity, Peace and War Crimes

- Division 1 – Crimes against Humanity
 - genocide, attack against humanity, apartheid and discrimination against a group of people, establishment, support and promoting of a movement directed to suppression of rights and freedoms of a human, expressing of sympathy to a movement directed..., denial, questioning, approval and justification of a genocide
- Division 2 – Crimes against Peace and War Crimes
 - aggression, preparation of an offensive war, incitement of an offensive war, connections endangering peace, violation of international sanctions, use of a prohibited means of combat and prohibited conduct of warfare, war cruelty, persecution of the population, looting in the area of war operations, abuse of internationally recognized symbols and of state symbols, abuse of a flag and of truce, harming a parlementaire

Genocide

Whoever intending to wholly or partially destroy some of racial, ethnical, national, religious, class or other similar group of people

puts members of such a group into such living conditions that are supposed to cause their complete or partial physical destruction

makes arrangements so that such a group is prevented from having children born

violently transfers children from one of such groups to another

causes a heavy bodily harm or death to a member of such a group...

- Or whoever publicly incites such a crime



Thank you for your attention!

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