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The Embassy of the Czech Republic to the Kingdom of the Netherlands presents its compliments to the Secretariat of the Assembly of States Parties and has the honor to submit information relevant to implementation of the Rome Statute.

In accordance with Assembly resolution ICC-ASP/5/Res.3 dated 1st December 2006 by which the Assembly decided, *inter alia*, to adopt and implement the plan of action for achieving universality and full implementation of the Rome Statute, the Czech Republic submits, in enclosure, information on status of the Rome Statute implementation.

The Embassy of the Czech Republic avails itself of this opportunity to present to the Secretariat of the Assembly of States Parties the assurances of its highest consideration. *rom*

The Hague, *29* September 2008

1 Enclosure

Secretariat of the Assembly of States Parties
International Criminal Court
The Hague



**Report of the Czech Republic
to the Secretariat of the Assembly of States Parties to the Rome Statute
on the Status of the Rome Statute Implementation**

This report is being submitted by the Czech Republic to the Secretariat of the Assembly of States Parties consequently to the appeal articulated for the States Parties under para 6, subparagraph (h), of Assembly resolution ICC-ASP/5/Res.3. To date, the Czech Republic has not ratified the Rome Statute it signed in 1999 and is thus not a State Party and as such not bound by the aforementioned provision. The Czech Republic, however, wishes to provide to the Secretariat the information relevant to promotion of the ratification and full implementation of the Statute.

The purpose of this report is consequently: first, it aims to update the Secretariat on the recent progress in the ratification process, secondly, it provides a legal overview of how the acts, constituting the Crimes under the Rome Statute, are prosecutable and punishable under the Czech criminal law and thirdly Events and activities in the promotion of ICC and information about National contact point.

I. Ratification Process

The Czech Constitution requires an approval of both chambers of Parliament and President for the Rome Statute's ratification to be completed.

The Czech Republic has supported the idea of an International Criminal Court from the very beginning and was among the countries that took an active part in the drafting of the Rome Statute. Since its signing by the Czech Republic on 13 April 1999,¹⁾ the treaty has twice come up before the Chamber of Deputies. The first time indirectly in 2000, when the Czech Government submitted draft constitutional amendments changing the organization of the judiciary, including a draft new Article 112a of the Czech Constitution that was to bring the Czech constitutional order into line with the Rome Statute. The whole set of amendments was rejected by the Chamber in the second reading.²⁾ The second time directly, in the autumn of 2001, when the Czech Government submitted to the Chamber the Rome Statute with a request for approval of its ratification,³⁾ accompanied by related draft constitutional amendments.⁴⁾ After the Chamber referred the draft constitutional amendments back to the Government for revision,⁵⁾ the Government also withdrew its proposal for the ratification of the Rome Statute.⁶⁾ On both occasions the ratification of the Rome Statute was tied to constitutional amendments; the reason was that the government expert group set up at that time came to the conclusion that before ratifying the Rome Statute it would be necessary to change the constitutional rules concerning the immunities of the President of the Czech Republic, deputies, senators and Constitutional Court judges, as well as the President's power to grant pardons and amnesties. In addition, the experts proposed amending the clause in the Charter of Fundamental Rights and Freedoms that provides that no national may be forced to leave the

¹⁾ The Statute was signed on behalf of the Czech Republic by Vladimír Galuška, Permanent Representative of the Czech Republic to the United Nations and Ambassador Extraordinary and Plenipotentiary, duly authorized by President Václav Havel and acting under Government Resolution No. 253 of 22 March 1999.

²⁾ Chamber Publication No. 541 in the 3rd election term.

³⁾ Chamber Publication No. 1112 in the 3rd election term.

⁴⁾ Chamber Publication No. 1078 in the 3rd election term.

⁵⁾ Resolution of the Chamber of Deputies of the Czech Parliament No. 1816 of 30 October 2001.

⁶⁾ Czech Government Resolution No. 104 of 23 January 2002.

country. These conclusions were based on the procedure foreseen in the then Article 10 of the Constitution, which put international treaties on an equal footing with ordinary laws, not with the constitutional order of the Czech Republic.

In 2007 the Ministry of Foreign Affairs, together with the Ministry of Justice, drafted a new proposal to ratify the Rome Statute of the International Criminal Court. This draft proposal took into account the constitutional changes made since 2001, in particular the so-called "Euro-amendment" to the Constitution (Constitutional Act No. 395/2001) that *i.a.* created a new category of "international treaties under Article 10a of the Constitution".⁷⁾

Article 10a of the Constitution regulates the relationship between international and national law in a way unprecedented in Czech and Czechoslovak constitutions before 2001. That is why no precedent can be found for the application of the mechanism established by Article 10a of the Constitution. Since by ratifying the Rome Statute the Czech Republic would transfer, albeit conditionally, some of its powers to an international institution, the process falls within the scope of Article 10a of the Czech Constitution. Therefore, the approval of the ratification of the Rome Statute requires a constitutional majority in the Czech Parliament under Article 39 (4) of the Constitution, the same as for the approval of a constitutional act. **From the Czech government's point of view**, since the provisions of the Rome Statute are sufficiently explicit and their content is directly applicable, no amendments to the Constitution or Charter will be necessary. The provisions of the Rome Statute will be directly binding, will have the force of a constitutional act and in the constitutional situation of the Czech Republic they will be applied directly instead of the corresponding provisions of the Constitution and Charter. The ratification of the Rome Statute will thus break through the existing constitutional rules in areas where the provisions of the Rome Statute differ from the existing constitutional rules. To cite the clearest example: the President, deputies, senators and Constitutional Court judges will no longer enjoy immunity from prosecution by the national authorities of the Czech Republic for the crimes covered by the Rome Statute. Moreover, in the event of a request for surrender of a Czech national (including the President, a deputy, etc.) to the International Criminal Court, nothing in the Czech constitutional order would prevent it.

Ratification Progress in 2008

Government

In January 23, the Government of the Czech Republic gave its approval to the proposal of ratification of the Rome statute of International Criminal Court.⁸

Parliament

Senate (upper chamber of the Czech Parliament)

⁷⁾ Article 10a (1) of the Constitution provides that "an international treaty can transfer some powers of the authorities of the Czech Republic to an international organization or institution". The explanatory report on the Euro-amendment (cf. Explanatory Report on the draft Act amending the Constitution of the Czech Republic of 22 March 2001, Chamber of Deputies of the Parliament, Chamber Publication 884/01) states that "the constitutional amendment creates room for the Czech Republic's accession to the treaties forming the legal basis of the European Union, or for accession to any other international institutions that will be associated, for example, with common criminal jurisdiction (common prosecution and punishment of certain crimes)". Already at the time the new Article 10a of the Constitution was being drafted, it was assumed that in the future this provision would be used for the purposes of ratifying the Rome Statute.

⁸ Government Resolution No. 63 of 23 January 2008.

In the Senate the material was discussed in Constitutional Legal Committee, which took on April 16, the decision to postpone the decision of the Senate on the later date.⁹ The Foreign Affairs, Defense and Security Committee took on April 16, the decision to recommend to the Senate the ratification.¹⁰ The Permanent Commission of the Senate for the Constitutional Act and Parliamentary Proceedings took on April 17, the decision that the Governmental proposal is not unconstitutional.¹¹ **In July 16, the Senate gave its approval to the proposal of ratification of the Rome statute of International Criminal Court.**¹²

Chamber of Deputies (lower chamber of the Czech Parliament)

In the Chamber of Deputies the material was discussed in Foreign Affairs Committee, which took on June 24, the decision to recommend to Chamber of Deputies the ratification.¹³ The Constitutional Legal Committee took on September 11, the decision to recommend to Chamber of Deputies the ratification.¹⁴ The final decision of Chamber of Deputies will follow up.

President

The Presidential decision on the ratification – which is to follow after the Parliament consented to ratification – cannot be predicted at this stage.

II. Rome Statute Implementation in Czech Criminal Law

The following section of the present report illustrates how the Czech criminal legislation reflects the provisions of the Rome Statutes. It is divided into two subsections dealing with material (inclusion of relevant criminal behavior in the Czech Criminal Code) and procedural law.

a. Crimes

The Czech Criminal Code (Act No. 140/1961 Coll.) is going to be replaced in the near future (with effect most likely from 2010) by a new one. The relevant provisions of the draft new Criminal Code (presently in the Parliamentary stage of the legislative process) are likewise listed in the table below.

The **Crime of Genocide** exists in the Czech Criminal Code under the heading “**Genocide**” (paragraph 259 of the Criminal Code). This provision covers all the cases arising under Art. 6(a) through 6(e) of the Rome Statute. The incitement to commit genocide under Art. 25(3)(e) of the Rome Statute is covered by a general ban on “**Incitement**” (paragraph 164).

Crimes against Humanity constitute a special section (Chapter X.) in the Czech Criminal Code. However, besides of “**Torture**” [Art. 7(1)(f) of the Rome Statute and paragraph 259a of the Czech Criminal Code, respectively], none of the crimes enumerated in Art. 7(1)(a)

⁹ Resolution of the Constitutional Legal Committee No. 64 of 16 April 2008.

¹⁰ Resolution of the Foreign Affairs, Defense and Security Committee No. 146 of 16 April 2008.

¹¹ Resolution of the Permanent Commission of the Senate for the Constitutional Act and Parliamentary Proceedings No. 8 of 17 April 2008.

¹² Resolution of the Senate No. 437 of 16 July 2008.

¹³ Resolution of the Foreign Affairs Committee No. 133 of 24 June 2008.

¹⁴ Resolution of the Constitutional Legal Committee No. 109 of 11 September 2008.

through 7(1)(j) of the Rome Statute can be prosecuted under the crimes defined in this section of the Criminal Code.

The draft new Criminal Code brings about a legislative solution similar to the logic of the Rome Statute: most of the crimes falling under Article 7 of the Rome Statute will be prosecuted under the heading “**Assault on Humanity**” (para 374), a criminal act which can be committed in several forms enumerated under subparagraph 374(1)(a)-(j). A new crime is being added under the heading “Apartheid and discrimination against group of people” in para 375.

Nevertheless, even at present none of the crimes foreseen in the Article 7 provisions of the Rome Statute would go unpunished under the Czech law – the general crime definitions (mostly in the qualified/grave form) would apply. The applicable provisions of the Czech Criminal Code are as follows [in the order roughly corresponding to the listing of crimes in Art. 7(1)(a) through 7(1)(j) of the Rome Statute]: murder (para 219); attempted murder (para 7, 219), preparation for murder (para 8, 219); deprivation of personal liberty (para 232), trafficking in humans (para 232a); infliction of bodily harm (para 221, 222), violence against group of people or against an individual (para 196, 197, 197a), torture and other inhuman and cruel treatment (para 259a); rape (para 241), restriction of personal liberty (231), deprivation of personal liberty (232); restriction of freedom of religion (para 236).

Most of the **War Crimes** under Article 8(2) of the Rome Statute are to be found in the Chapter X. of the Czech Criminal Code (Crimes against Humanity). As was the case with the actual Crimes against Humanity accounted for in the Art. 7 of the Rome Statute, the provisions of the Chapter X. are complemented by the use of provisions on the general criminal acts (murder, burglary, rape etc.).

The draft new Criminal Code does not change this approach dramatically.

The Art. 8(2) of the Rome Statute War Crimes would be punished under the following provisions: employment of prohibited means and methods of warfare (para 262), murder (para 219); war cruelty (para 263); pillaging in the area of military operations (para 264), damaging of other’s property (para 257), theft (para 247); restriction of personal liberty (para 231); persecution of population (para 263a); taking of hostages (para 234a); infliction of bodily harm (para 221, 222); abuse of internationally recognized and state emblems (para 265), violation of home freedom (para 238), violence against group of people or against an individual (para 196, 197, 197a); torture and other inhuman and cruel treatment (para 259a); rape (para 241), deprivation of personal liberty (para 232), procurement (para 204).

Summary

To summarize, all the Crimes (with the two exceptions mentioned hereinafter) under the provisions of Articles 6, 7 and 8 of the Rome Statute are criminal under the effective Czech criminal law. Not in all cases is their criminality established under the provisions of Chapter X. of the Criminal Code on “Crimes against Humanity” – in some cases the Rome Statute Crimes would be prosecuted under the provisions defining the *general criminal acts* (infliction of bodily harm, murder, hostage-taking, damaging of property etc.). The latter applies mainly in prosecution of Article 8 War Crimes.

The two acts where their criminality under the Czech Criminal Code might be questionable are the War Crime under Art. 8(2)(c)(ii) – “Committing outrages upon personal dignity”, and Art. 28 provisions – “Responsibility of commanders and other superiors”. The first act could

be prosecuted in the Czech Republic as “torture and other inhuman and cruel treatment” (para 259a) which, however, can only be committed in connection with the exercise of public powers. Should this condition not be met and should the act invoked not reach the intensity of some other general crime (such as the “infliction of bodily harm” – para 221, 222), the Rome Statute Crime would not be criminal under the Czech criminal law. The latter case poses a problem because the special responsibility of commanders and other superiors is an institute unknown to the Czech criminal law. In most cases, however, the acts would be of such intensity that they would qualify at least as some form of participation in a crime (para 10) under the Criminal Code.

The draft new Criminal Code – to enter into force most likely in the beginning of 2010 – largely removes the dependence on the general criminal acts when prosecuting the Rome Statute Crimes (this is done mainly by the introduction of a “Assault on Humanity” in para 374 – a complex category enumerating most of the Art. 7 Crimes).

The new Criminal Code will introduce a new Chapter XIII. (“Crimes against Humanity, against Peace and War Crimes”). Chapter XIII. crimes will comprise a wider group of acts than corresponding crimes do today – they will explicitly apply not only to situations of “war” but also to the “armed conflict” (i.e. non-international armed conflict).

The draft new Criminal Code also solves both above-mentioned exceptional issues.

b. Extradition/Surrender of Czech Nationals to ICC

Firstly, it is necessary to note that if, upon the ratification of the Rome Statute, the Czech authorities duly prosecute the crimes in the ICC’s jurisdiction, the ICC arrest warrant will not be issued against any of the Czech nationals. Nevertheless, should such a situation occur, the following applies.

In the present constitutional situation, the Article 14(4) of the Charter stipulates that a Czech citizen cannot be forced to leave the Czech Republic.

The ratification of the Rome Statute according to the Constitution’s Article 10a procedure (as described above) solves the possible conflict of the Rome Statute and the Art. 14(4) of the Charter without the need to amend the Charter.

Furthermore, the Czech Constitutional Court elaborated on the purpose of Art. 14(4) of the Charter in the European Arrest Warrant case (this ruling would most likely apply also to the extradition under the Rome Statute). The Court held that the extradition of a Czech national for the criminal proceedings abroad, where all the guarantees of a fair trial under international legal standards are met, represents a situation different from the one foreseen by the drafters of the Art. 14(4). According to the Court, this provision was meant to protect the citizens from a forcible and permanent removal from the Czech territory. The extradition for fair trial before the ICC, with granted return upon the decision of the ICC (whether upon the acquittal by the ICC, or upon the judgment of conviction for the execution of the sentence), should thus not be precluded by the provision of Art. 14(4).

Following the ratification of the Rome Statute, the Czech authorities will be able to cooperate with the ICC without the need to amend the Criminal Procedural Code (Act No. 141/1961 Coll., as amended). This Act in its paragraphs 375(2)-(5) provides for the proportional application of the Code’s Chapter XXV. on “International Cooperation and Judicial

Assistance” (which regulates, among other things, the surrender/extradition, the transfer of the person through the Czech territory, and the execution of judgments) in cases of cooperation with the international criminal courts and tribunals (both UN *ad hoc* tribunals and those established by a Treaty). The paragraph 375(1) establishes the priority of the binding International Treaties in cases of conflict between the Criminal Procedural Code’s Chapter XXV. and such a Treaty.

III Events and activities in the promotion of ICC – 2007/2008

Seminar on the International Criminal Court, which took place at the Chamber of Deputies of the Czech Parliament on 4 October 2007. The seminar was organized by the Ministry of Foreign Affairs of the Czech Republic in cooperation with the Foreign Affairs Committee of the Chamber of Deputies of the Czech Parliament, the Swiss and Royal Netherlands Embassies in Prague and the International Committee of the Red Cross. Among the participants in this discussion forum were the top representatives of the Court - the ICC President Philippe Kirsch and Prosecutor Luis Moreno-Ocampo. The other speakers were Karel Schwarzenberg, Minister of Foreign Affairs of the Czech Republic, Jan Hamáček, Chairman of the Foreign Affairs Committee of the Chamber of Deputies of the Czech Parliament, Claude Janiak, Member of the National Council of the Swiss Parliament, Jiří Malenovský, Judge of the Court of Justice of the European Communities, Aleš Gerloch, Dean of the Law Faculty of Charles University, Daniel Cavoli, Head of the Regional Delegation of the International Committee of the Red Cross for Central Europe, Edmond Wellenstein, Director General of Task Force ICC at the Ministry of Foreign Affairs of the Netherlands, Pavel Šturma, Vice-Dean and Head of the International Law Department of the Law Faculty of Charles University, Georg Witschell, Director General of the Legal Department of the German Foreign Office, Jürg Lindemann, Deputy Legal Advisor at the Department of Foreign Affairs of Switzerland, and David Donat-Cattin, Legal Advisor of the non-governmental organization Parliamentarians for Global Action. The seminar was divided into three panels. The contributions in the first panel concerned the International Criminal Court as the key player in international criminal justice. The second panel was devoted to the issue of implementation of the Rome Statute in the national legislation of the Czech Republic. The third panel discussed the interaction between the International Criminal Court, EU, UN and civil society.

Proceedings of the Seminar on the International Criminal Court, which was edited by Ministry of Foreign Affairs of the Czech Republic in November 2007.

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