

**Information by the Czech Republic
to the Secretariat of the Assembly of States Parties to the Rome Statute of the ICC
on the promotion of the ratification and full implementation of the Rome Statute in the
Czech Republic**

The Czech Republic would like to provide relevant information regarding items (v), (vi) and (viii) of paragraph 6, sub-paragraph (h), of the Plan of action.

(v) Examples of implementing legislation for the Rome Statute

Legal force of the Rome statute in the Czech law

Under the Czech Constitution, the Rome Statute is an international treaty, through which the exercise of some sovereign powers of the Czech Republic was transferred, albeit conditionally, to an international institution (i.e., the ICC). As such, the self-executing provisions of the Rome Statute are directly binding and directly applicable (monistic approach). Following this legal approach, there was no legal need to pass any direct implementing legislation. Nevertheless, with regard to the non-self executing provisions, and because of the traditional, rather politic concept of “autonomy” of criminal law (dualistic approach), some minor changes were passed in the area of substantive law (crimes). From the procedural aspect (cooperation), the new Act on International Cooperation and Judicial Assistance is in process of consideration. The Czech authorities incorporated provisions of the Rome statute as follows:

Cooperation

The Czech authorities are currently able to cooperate with the ICC on the basis of the Criminal Procedural Code (Act No. 141/1961 Coll., as amended). The paragraphs 375(2)-(5) thereof provide 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).

Crimes

All the Crimes under the provisions of Articles 6, 7 and 8 of the Rome Statute are criminal under the Czech criminal law in force – the Czech Criminal Code (Act No. 40/2009 Coll., as amended).

Section 149

Torture and Other Inhumane and Cruel Treatment

(1) Who, in connection with the exercise of the powers of a state authority, a local authority or a court or another authority of public power, causes to another person bodily or mental suffering by means of torture or other inhumane or cruel treatment shall be punished by imprisonment for six months to five years.

(2) The perpetrator, who

- a) commits the act mentioned in Paragraph 1 as a public official;
 - b) commits such an act on a witness, an expert or a sworn interpreter in connection with their performance of their duties;
 - c) commits such an act on another person by reason of his/her real or perceived race, ethnicity, nationality, political persuasion, religious confession or because he/she is in fact or is perceived to be without a religious confession;
 - d) commits such an act with at least two other persons; or
 - e) commits such an act repeatedly,
- shall be punished by imprisonment for two to eight years.

(3) The perpetrator, who

- a) commits the crime mentioned in Paragraph 1 on a pregnant woman;
 - b) commits such an act of a child younger than fifteen years;
 - c) commits such an act in an especially brutal or tormenting manner; or
 - d) causes grave bodily harm by such an act,
- shall be punished by imprisonment for five to twelve years.

(4) The perpetrator, who causes death by the act mentioned in Paragraph 1, shall be punished by imprisonment for eight to eighteen years.

(5) Preparation is punishable.

Section 400 Genocide

(1) Who with intent to destroy, in whole or in part, a racial, ethnical, national, religious, class or other similar group of people

- a) inflicts on the members of such a group conditions of life calculated to bring about their physical destruction in whole or in part;
- b) imposes measures intended to prevent births within such a group;
- c) forcibly transfers children of one such a group to another group;
- d) causes serious harm to or death of a member of such a group;

shall be punished by imprisonment for twelve to twenty years or by an exceptional punishment.

(2) Who publicly incites to the act mentioned in Paragraph 1 shall be punished in the same way.

(3) Preparation is punishable.

Section 401 Attack against Humanity

(1) Who, within the framework of a large-scale or systematic attack directed against civilian population, commits

a) extermination of people;

b) enslavement;

c) deportation or forcible transfer of a group of population;

d) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other similar form of sexual violence;

e) persecution against a group of population on political, racial, national, ethnic, cultural or religious grounds, by reason of gender or for other reasons;

f) apartheid or other similar segregation or discrimination;

g) deprivation of physical liberty, abduction to an unknown location or any other restriction of physical liberty followed by enforced disappearance of persons;

h) torture;

i) murder; or

j) another inhumane act of a similar character,

shall be punished by imprisonment for twelve to twenty years or by an exceptional punishment.

(2) Preparation is punishable.

Section 402 Apartheid and Discrimination of a Group of Persons

(1) Who practices apartheid or racial, ethnic, national, religious or class segregation or other similar discrimination of a group of persons shall be punished by imprisonment for five to twelve years.

(2) The perpetrator, who

a) by the act mentioned in Paragraph 1 places such a group of persons into grave life conditions; or

b) by such an act exposes such a group of persons to inhumane or degrading treatment,

shall be punished by imprisonment for ten to twenty years or by an exceptional punishment.

(3) Preparation is punishable.

Section 406 Preparation of a War of Aggression

Who prepares a war of aggression, in which the Czech Republic is to take part, and thus causes to the Czech Republic danger of war, shall be punished by imprisonment for twelve to twenty years or by an exceptional punishment.

Section 411 Use of Forbidden Means of Combat and Leading Illicit Warfare

(1) Who, in time of war or other armed conflict or in a combat situation,

a) orders to use forbidden means of combat or materiel of a similar nature or who uses such means or materiel; or

b) orders to lead illicit warfare or leads such warfare him-/herself,

shall be punished by imprisonment for two to ten years.

(2) Who, in violation of the provisions of international law on methods and means of war or other armed conflict, intentionally

a) causes harm to civilian population or civilians on their life, health or property by a military operation, or who leads an attack against them as reprisals;

b) leads an attack against a defenceless place or a demilitarised zone;

c) destroys or damages a water dam, a nuclear power plant or a similar facility containing dangerous forces; or

d) destroys or damages premises designed for humanitarian purposes or an internationally-recognised cultural or natural landmark,

shall be punished in the same way.

(3) The perpetrator, who by the act mentioned in Paragraph 1 or 2 causes

a) grave bodily harm; or

b) death,

shall be punished by imprisonment for eight to twenty years or by an exceptional punishment.

(4) Preparation is punishable.

Section 412 War Cruelty

(1) Who, in time of war or other armed conflict, violates provisions of international law by treating defenceless civilian population, refugees, the wounded, the sick, members of armed forces who have laid down their weapons, or prisoners of war inhumanly, shall be punished by imprisonment for five to twelve years.

(2) Who, in time of war or other armed conflict, violates provisions of international law by

a) failing to take effective measures to protect persons who need assistance, particularly children, women, the wounded and the sick or by obstructing such measures; or

b) preventing or obstructing civil defence organisations of the enemy, a neutral country or another country in the performance of their humanitarian tasks,

shall be punished in the same way.

(3) The perpetrator, who by the act mentioned in Paragraph 1 or 2 causes

a) grave bodily harm; or

b) death,

shall be punished by imprisonment for eight to twenty years or by an exceptional punishment.

(4) Preparation is punishable.

Section 413 Persecution of Population

(1) Who, in time of war or other armed conflict, practises apartheid or commits other inhumane acts arising from racial, ethnic, national, class or other similar discrimination or terrorises defenceless civilian population with violence or threat of violence, shall be punished by imprisonment for five to fifteen years.

(2) Who, in time of war or other armed conflict,

a) destroys or seriously disrupts a source of the necessities of life for civilian population in an occupied area or contact zone or wilfully fails to provide assistance to population necessary for their survival;

b) delays, without grounds, return of civilian population or prisoners of war;

c) resettles or expels civilian population of an occupied territory without grounds;

d) settles an occupied territory with population of his/her own country; or

e) wilfully makes it impossible for offences of civilian population or prisoners of war to be tried in impartial judicial proceedings,

shall be punished in the same way.

(3) The perpetrator, who by the act mentioned in Paragraph 1 or 2 causes

a) grave bodily harm; or

b) death,

shall be punished by imprisonment for ten to twenty years or by an exceptional punishment.

(4) Preparation is punishable.

Section 414 Plunder in a Combat Area

(1) Who, in an area of war operations, on a battlefield, in places affected by war operations, armed conflict or in an occupied territory

a) robs the fallen or otherwise seizes another person's thing or another asset; or

b) wilfully destroys, damages, takes away, hides or misuses another person's property,

shall be punished by imprisonment for eight to twenty years or by an exceptional punishment.

(2) Preparation is punishable.

Section 415 Misuse of Internationally Recognized and State Emblems

(1) Who, in time of a state of national emergency or a state of war or in time of war or other armed conflict, misuses the insignia of the Red Cross or other signs or colours recognised by international law as designating medical institutions or vehicles used for medical assistance or evacuation, shall be punished by imprisonment for two to eight years.

(2) Who, in time of war or other armed conflict, misuses the sign of the United Nations Organisation or a flag or a state or military emblem, insignia or uniform of a neutral country or other country that is not a party to the conflict, shall be punished in the same way.

(3) The perpetrator, who by the act mentioned in Paragraph 1 or 2 causes

a) death or grave bodily harm;

b) large-scale damage;

c) reprisals of the other warring party or the other party in the armed conflict of the same or similar nature,

shall be punished by imprisonment for ten to twenty years or by an exceptional punishment.

(4) Preparation is punishable.

Section 416 Misuse of a Flag and of Truce

(1) Who, in time of war or other armed conflict, misuses a flag or a state or military emblem, insignia or uniform of another country that is a party to the conflict, shall be punished by imprisonment for one to five years.

(2) Who, in time of war or other armed conflict, abuses declared truce or abuses the flag of truce, shall be punished by imprisonment for two to eight years.

Section 417 Assaulting a Negotiator under Flag of Truce

Who

insults a negotiator under flag of truce or a member of his entourage; or

unlawfully detains such a person

shall be sentenced to a term of imprisonment of up to five years.

Section 418 Responsibility of a Superior

(1) A military or other superior is criminally responsible for a crime of Genocide (Section 400), Attack against Humanity (Section 401), Preparation of a War of Aggression (Section 406), Incitement to a War of Aggression (Section 407), Using Prohibited Means of Combat and Leading Illicit Warfare (Section 411), War Cruelty (Section 412), Persecution of Population (Section 413), Plunder in a Combat Area (Section 414), Misuse of Internationally Recognized and State Emblems (Section 415), Misuse of a Flag and of Truce (Section 416)

and Assaulting a Negotiator under Flag of Truce (Section 417) committed by his subordinate over whom he/she exercised his/her jurisdiction and control if, even by negligence, he/she failed to prevent the subordinate from committing such a crime, failed to stop the subordinate's commission of such a crime or failed to punish the subordinate for commission of such a crime or failed to hand over the subordinate to an authority competent to impose such a punishment.

(2) Provisions on criminal responsibility and criminality of the subordinate perpetrator shall apply to criminal responsibility and criminality of the military or other superior perpetrator.

(vi) Bilateral cooperation agreements between the Court and States Parties

There is no such agreement between the Czech Republic and the Court.

(viii) National contact points for matters related to promotion of ratification and full implementation

International Law Department
Ministry of Foreign Affairs of the Czech Republic
e-mail: s_mpo@mzv.cz
tel.: +420 224 18 2409
fax: +420 224 18 2038