



PERMANENT MISSION OF THE CZECH REPUBLIC
TO THE UNITED NATIONS

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The Permanent Mission of the Czech Republic presents its compliments to the Office of Legal Affairs of the United Nations – Codification Division and, with reference to its Notes No. LA/COD/50/1 and LA/COD/50/2, and pursuant to the General Assembly resolution 70/114 of 14 December 2015 entitled „**Criminal accountability of United Nations officials and experts on mission**“, has the honor to transmit the enclosed questionnaire on this matter, containing also the updated information supplementing the matter-related information transmitted in previous years. Currently, the Czech Republic does not identify any case where a crime may have been committed by United Nations officials or experts on mission in the Czech Republic (or Czech national serving as United Nations official or expert on mission abroad) as referred to in paragraph 15 of the respective resolution.

The Permanent Mission of the Czech Republic to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations – Codification Division the assurances of its highest consideration.

my



New York, July 7, 2016

Office of Legal Affairs
Codification Division
United Nations
New York

Implementation of the General Assembly resolution 70/114 of 14 December 2015 by the Czech Republic

The Czech Republic provides hereinafter updated information concerning criminal accountability of United Nations officials and experts on mission and supplements its information transmitted in previous years.

The Czech Republic does not identify at this moment any case, where the crime may have been committed by U. N. officials or experts on mission in the Czech Republic (or Czech national being an U. N. official or expert on mission abroad) as referred to in paragraph 15 of the resolution.

With reference to the Questionnaire on criminal accountability of United Nations officials and experts on mission pursuant to resolution 70/114, paragraph 23, the Czech Republic informs about the following:

1) Please indicate the available forms of jurisdiction and list the relevant national provision(s) through which criminal law is applicable to nationals while serving as United Nations officials or experts on mission; please also specify whether specific legislation applies to United Nations officials and experts on mission:

- (a) Territoriality**
- (b) Nationality**
- (c) Passive personality**
- (d) Effects doctrine**
- (e) Protective principle**
- (f) Universality**
- (g) Other (if any)**

A principle of active personality, which is set forth in Section 6 of the Act No. 40/2009 Sb., Criminal Code, is applicable when Czech nationals serve as United Nations officials or experts on mission. There is no specific national legislation applicable to these categories of persons. The Section 6 of the Criminal Code reads as follows:

Section 6

Principle of Personality

The punishability of an act committed abroad by a national of the Czech Republic or by a stateless person holding permanent residence status in the Czech Republic shall likewise be determined on the basis of the law of the Czech Republic.

The jurisdiction of Czech courts is further stipulated in the Act No. 141/1961 Sb., Criminal Procedure Code. Its Section 18(2) reads as follows:

Section 18

(2) If the place where the act was committed cannot be determined or if the act was committed abroad, the proceedings shall be conducted by the court having jurisdiction over the district where the accused habitually resides, works or is temporarily present; if it is not possible to determine these places or they are outside the territory of the Czech Republic the proceedings shall be conducted by the court having jurisdiction over the district where the act emerged.

2. To what extent do national provisions establish jurisdiction *ratione personae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission (please indicate all that apply and cite relevant national provisions):

- (a) General application to all persons**
- (b) Jurisdiction over nationals**
- (c) Jurisdiction over stateless persons**
- (d) Jurisdiction over foreign nationals (list specific exceptions)**
- (e) Specific legislation for particular categories of persons**
 - (i) Military United Nations officials and experts on mission**
 - (ii) Police United Nations officials and experts on mission**
 - (iii) Civilian United Nations officials and experts on mission**
 - (iv) Public officials acting in foreign jurisdictions**
 - (v) Other (if any)**

The Criminal Code of the Czech Republic recognizes the jurisdiction committed by Czech nationals regardless of the territory where the crime was committed. Therefore, the Section 6 of the Criminal Code stated above is applicable. It further allows for jurisdiction over stateless person holding permanent residence status in the Czech Republic on the basis of the same Section. Regarding foreign nationals the Czech Criminal Code establishes in Section 7 (1) jurisdiction over such persons for having committed any of the acts mentioned in said Section which reads as follows:

Section 7

Principle of Protection and Universality

(1) The Czech law shall apply when determining the liability to punishment of Torture and Other Inhuman and Cruel Treatment (Section 149), Forgery and Alteration of Money (Section 233), Uttering Counterfeited and Altered Money (Section 235), Manufacturing and Possession of Forgery Tools (Section 236), Unauthorized Production of Money (Section 237), Subversion Against the Republic (Section 310), Terrorist Attack (Section 311) and Terror (Section 312), Sabotage (Section 314), Espionage (316), Violence Against an Public Organ (Section 323), Violence Against a Public Officer (Section 325), Forgery and Fraudulent Alteration of an Official Document (Section 348), Criminal Conspiracy (Section 361 Paragraph 2 and 3), Genocide (Section 400), Attack on Humanity (Section 401), Apartheid and Discrimination against a Group of People (Section 402), Preparation of Aggressive War (Section 406), Using Prohibited Means of Combat and Unlawful Warfare (Section 411), War Cruelty (Section 412), Persecution of a Population (Section 413), Plundering in the War Area (Section 414), Misuse of Internationally Acknowledged Symbols and Signs and State coat of Arms (Section 415), Misuse of a Flag and Cease-Fire (Section 416), Assaulting a Parliamentary (Section 417) even if such crime has been committed abroad by a foreign national or a stateless person with no permanent residence status in the Czech Republic.

Further also when a foreign national commits an act against Czech national such person can be prosecuted under passive personality principle as expressed in Section 7(2) of the Czech Criminal Code which reads as follows:

Section 7

(2) The Czech law shall apply when determining the liability to punishment for an act committed abroad against a national of the Czech Republic or against a stateless person holding permanent residence status in the Czech Republic, if the act is punishable under the law on the territory where it was committed or if a territory of a commission of a crime is not subject to any criminal jurisdiction.

In addition, the Czech Criminal Code stipulates that when a foreign national or a stateless person are present in the territory of the Czech Republic and has committed a crime which is punishable also on the territory where it was committed and the Czech Republic does not extradite such a person, such foreign national is also subjected to jurisdiction pursuant to Section 8 of the Czech Criminal Code.

Section 8

Subsidiary Principle of Universality

(1) The Czech law shall apply when determining the liability to punishment for an act committed abroad by a foreign national or a stateless person with no permanent residence status on the territory of the Czech Republic, if:

- a) the act is also punishable under the law in force on the territory where it was committed;*
- b) the offender is apprehended on the territory of the Czech Republic, the extradition or surrender proceedings was carried out and the offender was not extradited or surrendered for criminal prosecution or enforcement of a sentence to a foreign State or other authorized subject; and*
- c) the foreign State or the other authorized subject who had requested extradition or surrender of the offender for criminal prosecution or enforcement of a sentence requested to conduct criminal prosecution in the Czech Republic.*

(3) However, such offender shall not be sentenced to a more severe punishment than that stipulated under the law of the State on whose territory the crime was committed.

In case an international treaty, to which the Czech Republic is a Party, envisages jurisdiction on different basis than those mentioned above and principle of territoriality and principle of registration, than the Czech Republic applies also such jurisdiction as foreseen by Section 9 of the Czech Criminal Code.

Section 9

Jurisdiction under International Treaty Obligation

(1) The liability to punishment for an act shall also be considered under Czech law in cases stipulated in a promulgated international treaty which is part of the legal order (further on "international treaty").

(2) *The provisions of Sections 4 to 8 shall not apply if it is not permitted under a promulgated international treaty.*

3. To which extent do national provisions establish jurisdiction *ratione materiae* over crimes committed extraterritorially by nationals while serving as United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

- (a) General application of criminal law
- (b) Application limited to international treaty obligations
- (c) Application limited to crimes of a 'serious nature'
- (d) Application limited to 'international crimes', including genocide, crimes against humanity and war crimes
- (e) Application limited to crimes accompanied with minimum imprisonment term (e.g. 3/5 years)
- (f) Application limited to crimes affecting 'essential interest(s) of the State'
- (g) Application limited to crimes affecting public security
- (h) Application limited to specific list of crimes
- (i) Other limitations to the application *ratione materiae* of domestic law (if any)

Should there be a waiver of the Secretary-General of United Nations on immunity of nationals serving as United Nations officials or experts on mission, criminal law is generally applicable.

4. Which, if any, prerequisites are placed before the application of extraterritorial jurisdiction for United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

- (I)
 - (a) Agreement (SOFA/SOMA) with host State on extraterritorial jurisdiction
 - (b) Agreement (SOFA/SOMA) with host State with respect to United Nations officials or experts on mission
 - (c) Any other agreement
 - (d) National law

- (II)
 - (a) Offence must be extraditable
 - (b) Double criminality, with/without specific limitations to its application
 - (c) Presence of the offender in territory of forum State, with/without specific limitations to its application
 - (d) Application of principles of *ne bis in idem*
 - (e) Permission to prosecute required by Public Prosecutor/Attorney-General/other specific government official(s)

I. Should there be a SOFA/SOMA with host State, if it follows a model SOFA/SOMA, it is the troops contributing state that exercises exclusive jurisdiction over its military personnel for crimes committed on mission.

II. For application of Section 7 of the Czech Criminal Code, there is no need for double criminality standard and any other prerequisites. It is the application of Section 8 of the Czech Criminal Code that requires the presence of the offender on the territory of the Czech Republic, double criminality and uses the *ne bis in idem* principle.

5. What is the legal basis for the application of rules of immunity to United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

- (a) Convention on Privileges and Immunities of the United Nations, 1946, as applicable**
- (b) Specific agreement with the United Nations (SOFA/SOMA/other)**
- (c) Specific agreement with the host State (SOFA/SOMA/other)**
- (d) Other general privileges and immunities applicable, including those accorded by national law.**

The basic legal sources for the application of immunity for these persons are the relevant provisions of the Convention on Privileges and Immunities of the United Nations of 1946. As stated above, SOFA/SOMA generally sets forth the exclusive jurisdiction of state of nationality over military personnel.

6. To what extent is military and/or civilian law applicable to crimes committed by United Nations officials or experts on mission (please indicate all applicable categories and cite relevant national provisions):

- (a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission**
- (b) Exclusive use of military courts for military personnel deployed as United Nations officials or experts on mission**
- (c) Potential application of civilian law/courts to military personnel**

In the Czech Republic there are no military courts and there is no military law. The Czech criminal law does not make any difference between the military personnel and civilian population and applies to the military personnel to the same extent as to any other person subject to national law of the Czech Republic.

An exception can be found in the Czech Criminal Code under Chapter XII called "Military Criminal Acts". Chapter XII defines criminal offences that can be committed only by the military personnel. Again, jurisdiction of Czech civil courts applies even to these criminal offences without any reservation.

Outside the criminal law area, the military personnel is (under section 51(1) of the Act No. 221/1999 Sb., on Career soldiers and other associated acts) subject to disciplinary authority of respective commander who imposes sanctions for breaches of disciplinary rules. Respective commander has the same disciplinary authority over non-military minor offences committed by the military personnel (section 51(2) of the Act No. 221/1999 Sb., on Career soldiers and other associated acts). Generally, minor offences are less serious breaches of law that do not constitute a criminal offence and that are defined in special laws (e.g. Minor Offences Act No. 200/1990 Sb.). The sentence of imprisonment cannot be imposed for committing a minor offence.

7. Please provide any other comments.