

Penal Code



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www.wkcr.cz; e-mail: knihy@wkcr.cz, tel.: +420 246 040 444, fax: +420 246 040 401

**40/2009 Coll.
ACT
of 8 January 2009
Penal Code**

Amendment: 306/2009 Coll., 181/2011 Coll.

The Parliament has adopted the following Act of the Czech Republic:

**PART ONE
GENERAL PART**

**Chapter I:
Competency of Criminal Acts**

**DIVISION 1
No Criminal Offence without Law**

**Section 1
Prohibition of Retroactivity**

An act is punishable only if its culpability was stipulated by law prior to its commission.

**DIVISION 2
Time Competency**

**Section 2
Culpability of an Act and the Time of its Commission**

(1) Whether or not an act constitutes a criminal offence shall be assessed under the Act effective at the time of its commission; it shall only be assessed pursuant to a later Act if such an assessment is more favourable to the offender.

(2) Where the law changes during the commission of an act, the law effective at the time of the completion of the conduct by which the act was committed shall be applicable.

(3) During the later amendments of the law effective at the time of the completion of the conduct by which an act is committed, the most lenient law shall apply.

(4) An act is committed at the time when the offender or accomplice acted or in the case of negligence, were obliged to act. When the consequences occurred or were supposed to occur is immaterial.

Section 3**Application of the Law Effective at the Time of Decision Making**

(1) An offender may only be imposed punishment admissible by law effective at the time of deciding upon a criminal offence.

(2) The protective measures shall always be decided on pursuant to the law effective at the time of deciding upon the protective measures.

DIVISION 3**Local Competency****Section 4****Principle of Territoriality**

(1) The culpability of an act committed in the territory of the Czech Republic shall be assessed pursuant to the law of the Czech Republic.

(2) A criminal offence shall be deemed committed in the territory of the Czech Republic,

- a) if an offender committed the act here, either entirely or in part, even though the violation or endangering of the interest protected by the criminal law occurred or was supposed to occur, either entirely or in part, abroad, or
- b) if the offender violated or endangered an interest protected by criminal law or if such a consequence was supposed to ensue here, if only to a certain extent, even though they committed the conduct abroad.

(3) Accomplicity is committed in the territory of the Czech Republic,

- a) if the act was committed here by an offender and the place where such an act was committed shall be assessed similarly pursuant to Subsection 2, or
- b) if the accomplice of the act committed abroad acted, in part, here.

(4) If the accomplice acted in the territory of the Czech Republic, the law of the Czech Republic shall apply to the participation, notwithstanding whether the offender's act is punishable abroad.

Section 5**Principle of Registration**

The culpability of an act committed outside of the territory the Czech Republic, aboard a ship or another vessel, or aircraft or other means of air transport, which is registered in the Czech Republic, shall also be assessed pursuant to the law of the Czech Republic. The place of commission of such an act is assessed pursuant to Section 4 Subsection 2 and 3.

Section 6**Principle of Personality**

The law of the Czech Republic shall also assess the culpability of an act committed abroad by a citizen of the Czech Republic or a person with no nationality who has been granted permanent residence in their territory.

Section 7**Principle of Protection and Principle of Universality**

(1) The law of the Czech Republic assesses the culpability of torture and other cruel and inhumane treatment (Section 149), counterfeit and alteration of money (Section 233), presentation of counterfeit and altered money (Section 235), production and possession of counterfeiting equipment (Section 236), unauthorised production of money (Section 237), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage (Section 316), violence against public authority (Section 323), violence against an official person (Section 325), counterfeiting and alteration of public documents (Section 348), participation in an organised criminal group pursuant to Section 361 Subsection 2 and 3, genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414), abuse of internationally and State recognised symbols (Section 415), abuse of flag and armistice (Section 416) and harm of a parliamentarian (Section 417) even when such a criminal offence was committed abroad by a foreign national or a person with no nationality to whom permanent residence in the territory of the Czech Republic was not granted.

(2) The law of the Czech Republic shall also assess the culpability of an act committed abroad against a Czech national or a person without a nationality to whom permanent residence in the territory of the Czech Republic was granted if an act is punishable in the place of its commission and if the place where such an act was committed is not subject to any criminal capacity.

Section 8**Subsidiary Principle of Universality**

(1) The law of the Czech Republic shall also assess the culpability of an act committed abroad by a foreign national or a person with no nationality who was not granted a permanent residence in the territory of the Czech Republic even if

- a) the act is punishable even under the law effective in the territory where it was committed, and
- b) the offender was apprehended in the territory of the Czech Republic and was not extradited or transferred to another State or to another authority entitled to a criminal prosecution for criminal prosecution.

(2) The law of the Czech Republic shall also assess the culpability of an act committed abroad by a foreign national or a person without a nationality to whom permanent residence was not granted in the territory of the Czech Republic even when the act was committed in favour of a legal entity with a registered office or branch in the territory of the Czech Republic, or in favour of a natural person who is an entrepreneur with an enterprise, branch or place of business in the territory of the Czech Republic.

(3) However, the offender cannot be imposed a more severe punishment than the punishment set out by the State in which territory the criminal offence was committed.

Section 9**Competency Set Out by International Treaty**

(1) The culpability of an act is assessed by the law of the Czech Republic even if an international treaty which is incorporated into the system of law (hereinafter referred to as “international treaty”) stipulates it.

(2) The provisions of Section 4 through 8 shall not apply if it is not admissible by an international treaty.

Section 10**Extradition and Transfer of Citizens of the Czech Republic**

(1) A citizen of the Czech Republic cannot be extradited for criminal prosecution or for the service of a sentence to a foreign State.

(2) A citizen of the Czech Republic may be transferred to another EU Member State only on the basis of a European Arrest Warrant.

Section 11**Execution of a Judgment of a Foreign State**

A criminal judgment of a foreign State cannot be executed in the territory of the Czech Republic or have other effects in such territory unless the law or an international treaty stipulates otherwise.

Chapter II:**Criminal Liability**

DIVISION 1

Fundamentals of Criminal Liability

Section 12**Principle of Legality and Principle of Subsidiarity of Criminal Repression**

(1) Only criminal law shall define criminal offences and set out the criminal sanctions that may be imposed for their commission.

(2) The criminal liability of an offender and the criminal consequences associated with it may only be applied in socially harmful cases where application of liability under another legal regulation is insufficient.

Section 13**Criminal Offence**

(1) A criminal offence is an illegal act identified as punishable by criminal law and which presents the characteristics set out under such law.

(2) An intentional wrongful act is necessary for the criminal liability of a criminal offence unless criminal law expressly stipulates that the fault of negligence is sufficient.

Section 14 **Offences and Crimes**

(1) Criminal offences are divided into offences and crimes.

(2) Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

(3) Crimes are all criminal offences that are not classified as offences under criminal law; particularly serious crimes are those intentional criminal offences for which criminal law sets out a prison sentence with an upper penalty limit of at least ten years.

DIVISION 2

Fault

Section 15 **Intention**

(1) A criminal offence is committed intentionally if the offender

- a) sought to violate or endanger, in a manner specified under criminal law, any interest protected by such law, or
- b) knew that their conduct may cause such violation or endangering, and in the case they committed it, they were consentient with it.

(2) An offender was consentient also if they atoned with the fact that, by the manner set out in criminal law, they may violate or endanger an interest protected under such law.

Section 16 **Negligence**

(1) A criminal offence is committed out of negligence if an offender

- a) was aware that they may violate or endanger, in a manner specified under criminal law, an interest protected by such law, but without adequate justification they believed that they would not commit such violation or endangering, or
- b) was unaware that their conduct may cause such violation or endangering although they could and should have been aware of it considering the circumstances and the personal situation.

(2) A criminal offence is committed out of gross negligence if an offender's approach to the requirements for due diligence attests to the evident irresponsibility of the offender in the interests protected by criminal law.

Section 17 **Fault with Especially Aggravating Circumstances**

Circumstances that qualify the application of a more severe penalty shall be taken into account

- a) if it is a more severe consequence and even if the offender caused it due to negligence, except for cases when criminal law requires intentional fault, or

- b) if it is another fact and even if the offender was unaware of such fact, although they could and should have been aware of it considering the circumstances and the personal situation, except for cases when criminal law requires that the offender was aware of such fact.

Section 18 **Error in Fact**

(1) Whoever neither knows nor presupposes any potential factual circumstances which has the character of a criminal offence, during the commission of an act, does not act intentionally; this shall not affect the liability for a criminal offence committed out of negligence.

(2) Whoever mistakenly presupposes factual circumstances which have the character of a less serious intentional criminal offence during the commission of an act shall be punished only for such less serious criminal offence, unless it is a criminal offence committed out of negligence.

(3) Whoever mistakenly presupposes factual circumstances which have the character of a more serious intentional criminal offence during the commission of an act shall be punished for an attempt of such a more serious criminal offence.

(4) Whoever mistakenly presupposes a factual circumstance, which excludes its illegality during the commission of such an act, does not act intentionally; this shall not affect the liability for a criminal offence committed out of negligence.

Section 19 **Error of Law**

(1) Whoever is unaware of the illegality of their act during the commission of such act does not act in fault provided that they could not avoid the error.

(2) An error could be avoided if the obligation to peruse the relevant legal regulation resulted for the offender from law or another legal regulation, official decision or an agreement, from their employment, occupation, position or function, or if the offender could identify the act as illegal without any major difficulties.

DIVISION 3 **Premeditation and Attempt of a Criminal Offence**

Section 20 **Premeditation**

(1) Conduct that is based in an intentional creation of conditions for the commission of a particularly serious crime (Section 14 Subsection 3), especially in its organisation, the acquisition or adaptation of the means or instruments for its commission, in conspiracy, unlawful assembly, in the instigation or aiding of such a crime, shall be deemed a premeditation only if the criminal law applicable for a specific criminal offence expressly stipulates for it and an attempt or completion of a particularly serious crime did not occur.

(2) Premeditation is punishable pursuant to the criminal penalty set out for a particularly serious crime to which it leads, unless the criminal law stipulates otherwise.

(3) Criminal liability for the premeditation to commit a particularly serious crime shall expire if an offender voluntarily waived further conduct towards the commission of a particularly serious crime and

- a) removed the risk to an interest protected by criminal law which occurred due to the attempted premeditation, or
- b) reported the premeditation to commit a particularly serious crime at a time when the risk to an interest protected by criminal law which occurred due to the attempted premeditation could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.

(4) If there are several persons involved in an act, the criminal liability for the premeditation is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act if it is completed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other committed criminal offence which they have already committed by their conduct pursuant to Subsection 1.

Section 21 Attempt

(1) Any conduct that leads directly to the completion of a criminal offence and which the offender committed with the intention of the commission of a criminal offence, if the completion of the criminal offence did not occur, is defined as an attempt to commit a criminal offence.

(2) An attempted criminal offence shall be punishable under the criminal penalty set for a completed criminal offence.

(3) Criminal liability for an attempted criminal offence shall expire if an offender voluntarily waived further conduct leading to the completion of a criminal offence and

- a) removed the risk to an interest protected by criminal law which occurred due to the attempted criminal offence, or
- b) reported the attempted criminal offence at a time when the risk to an interest protected by criminal law which occurred due to an attempted criminal offence could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.

(4) If there are several persons involved in an act, the criminal liability for an attempt is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act if it is completed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other completed criminal offence which they have already committed by their conduct pursuant to Subsection 1.

DIVISION 4

Offender, Accomplice and Accessory to a Criminal Offence

**Section 22
Offender**

(1) An offender is someone whose conduct fulfils the criteria for the factual basis of a criminal offence, its attempt or premeditation, if it is punishable.

(2) An offender is also a person who used another person to commit an act who is not criminally liable on the grounds of being a legal minor, legal irresponsibility, error or because the person acted in self defence, extreme emergency or due to other circumstances excluding illegality, or where the person did not act themselves or in error. An offender is also a person who in order to commit an act used a person who did not act with special intent or motives stipulated by law; in such cases, the criminal liability of such person for any other criminal offences they have committed by such conduct is not excluded.

**Section 23
Accomplice**

If a criminal offence was committed by the intentional joint conduct of two or more persons, each of them shall be liable as if they committed a criminal offence on their own (accomplices).

**Section 24
Accessory**

(1) An accessory to a completed criminal offence (1) or its attempt is a person who intentionally

- a) plotted or managed (organiser) the commission of a criminal offence,
- b) instigated the commission of a criminal offence in another person (instigator), or
- c) allowed or facilitated the commission of a criminal offence by another person, in particular through the provision of means, removal of barriers, eliciting the victim to the place of an act, keeping watch during the commission of an act, providing advice, encouraging the resolve or vowing to participate in a criminal offence (accessory).

(2) The provision on the criminal liability and culpability of an offender shall be applied to the criminal liability and culpability of an accessory, unless the criminal law stipulates otherwise.

(3) The criminal liability of an accessory shall expire if they voluntarily waived any further complicity in the criminal offence and

- a) removed the risk to an interest protected by criminal law that occurred due to the attempted complicity, or
- b) reported the complicity in a criminal offence at a time when the risk to an interest protected by criminal law which occurred due to attempted complicity could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.

(4) If there are several persons involved in an act, the criminal liability of the accessory is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such an act if it is still committed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an accessory for any other criminal offence which they have already committed by their conduct pursuant to Subsection 1.

Section 25

Age

Those who, at the time of committing an act, had not reached fifteen years of age shall not be criminally liable.

Section 26

Legal Irresponsibility

Those who, due to a mental disorder, could not identify the illegal nature of an act at the time of its commission or control their conduct shall not be criminally liable for such an act.

Section 27

Diminished Legal Responsibility

Those who, due to a mental disorder, suffered from a substantially diminished capacity to recognise the illegal nature of an act at the time of its commission or to control their conduct shall have diminished legal responsibility.

CHAPTER III

Conditions Excluding the Illegality of an Act

Section 28

Extreme Emergency

(1) An act, which is otherwise criminal, whereby a person tries to avert a risk imminently threatening an interest protected by criminal law, is not a criminal offence.

(2) Extreme emergency shall not apply if such risk could be otherwise averted under the given circumstances or if the consequences caused are evidently equally serious or even more serious than those imminent or if the person at risk was obliged to endure them.

Section 29

Self Defence

(1) An act, which is otherwise criminal, whereby a person tries to avert an imminently threatening or continuous assault on an interest protected by criminal law, is not a criminal offence.

(2) Self defence shall not apply if the defence was clearly disproportionate to the method of the assault.

Section 30 **Consent of the Victim**

(1) A criminal offence is not committed by those who act with the consent of the person whose interests, which such person is entitled to decide on without restriction, are thus affected by such an act.

(2) The consent under Subsection 1 must be given in advance or during the conduct of the person committing an otherwise punishable act, voluntarily, definitely, seriously and comprehensibly; if such consent is granted after the commission of an act, the offender shall not be criminally liable if they could reasonably assume that the person referred to in Subsection 1 would otherwise grant such consent due to the circumstances of the case and their personal circumstances.

(3) Except for cases that involve consent to medical interventions that conform to the legal order and the latest knowledge of medical science and practice at the time of an act, the consent to bodily harm or killing cannot be deemed as consent under Subsection 1.

Section 31 **Admissible Risk**

(1) A criminal offence is not committed by those who, in line with the current state of knowledge and information that they possessed at the time of their decision-making on taking further procedures, perform a socially beneficial activity as part of their employment, occupation, position or function in which they jeopardised or violated an interest protected by criminal law, unless the socially beneficial result could not be achieved otherwise.

(2) Admissible risk shall not apply if such activity jeopardises the life or health of a person without their consent with the activity in accordance with another legal regulation, or if the result to which it leads evidently does not correspond to the degree of the risk, or if the performance of the activity clearly defies the requirements of another legal regulation, public interest, principles of humanity or it contravenes good morals.

Section 32 **Authorised Use of Weapons**

A criminal offence is not committed by those who use a weapon within limitations stipulated by another legal regulation.

Chapter IV

Expiry of Criminal Liability

DIVISION 1

Expiry of Criminal Liability through Effective Remorse

Section 33

Effective Remorse

Criminal liability for criminal offences committed through failure to provide assistance (Section 150), failure to provide assistance by drivers of motor vehicles (Section 151), spreading of contagious human diseases (Section 152), spreading of contagious human diseases out of negligence (Section 153), endangering public health by defective foodstuff and other objects (Section 156), endangering public health by defective foodstuff and other objects out of negligence (Section 157), entrusting a child to the powers of another person (Section 169), kidnapping (Section 172), hostage-taking (Section 174), abandonment of a child or an entrusted person (Section 195), violation of obligations of trust (Section 220), violation of obligations of trust out of negligence (Section 221), violation of obligations in insolvency proceedings (Section 225), violation of obligation to make a true declaration of assets (Section 227), damage to a stranger's item (Section 228), reduction of taxes, fees and other similar mandatory payments (Section 240), failure to comply with reporting obligations in tax proceedings (Section 243), violation of prohibition at a time of emergency in the foreign exchange economy (Section 247), violation of regulations on the circulation of goods in relations with foreign States (Section 261), violation of regulations on the control of the export of dual-use goods and technologies (Section 262), violation of obligations in the export of dual-use goods and technologies (Section 263), execution of foreign trade with military material without a permit or license (Section 265), violation of obligations in connection with the issue of permits and licenses for foreign trade with military material (Section 266), general threats (Section 272), general threats out of negligence (Section 273), violation of obligations in extreme emergency (Section 275), damaging and endangering the operation of generally beneficial equipment (Section 276), damaging and endangering the operation of generally beneficial equipment out of negligence (Section 277), damage to a geodetic point (Section 278), damage and endangering of environment (Section 293), damage and endangering of environment out of negligence (Section 294), damage to forests (Section 295), unauthorised waste disposal (Section 298), unauthorised handling of protected wild fauna and flora (Section 299), unauthorised handling of protected wild fauna and flora out of negligence (Section 300), spreading of contagious animal diseases (Section 306), spread of contagious diseases and pests of useful plants (Section 307), treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), abuse of representation of state and international organisations (Section 315), espionage (Section 316), endangering classified information (Section 317), endangering classified information out of negligence (Section 318), insurrection of prisoners (Section 344), spreading of alarming news (Section 357), failure to prevent a criminal offence (Section 367), failure to report a criminal offence (Section 368) shall expire if the offender voluntarily