

# **I. National reports on the implementation of the 1954 Hague Convention**

## **CZECH REPUBLIC**

### ***1. Article 3 – Safeguarding of cultural property***

The Ministry of Culture (MoC) is at present putting together the lists of cultural property to enjoy general or special protection under Chapter I and Chapter II of the Convention, respectively. It is envisioned that the real estate, which is now declared a *national cultural property* under Act No. 20/1987 Coll., on State Heritage Preservation, will entertain the *special protection* under Chapter II of the Convention. This property will likewise be marked with the distinctive emblem (based on Art. 16 and 17 of the Convention) and the special protection status will be registered in the Central list of national cultural heritage (maintained under the above Act). Same status will be granted to such real estate, which serves as a shelter for movable cultural property.

*General protection* under Chapter I of the Convention is to be awarded to such cultural property, which will be included in the list of cultural property, presently in the making by joint efforts of the MoC and the Ministry of Defense (MoD). The MoD uses the list of cultural property submitted by the MoC for the purposes of operational planning and operational preparation of the state territory.

MoD is also informed and consulted about the list of cultural property eligible for the application and planned for nomination for granting of special (Chapter I) or enhanced protection (Protocol II).

The MoC plans to first determine the exact geographic coordinates of the cultural property (and its sets) protected under Chapter II and Art. 10 of Protocol II, and arrange for their proper descriptions. The MoC is at present running a financial analysis of the costs of marking the cultural property.

### ***2. Article 7 – Military measures***

Primary duties of a member of military cover inter alia an obligation to observe the law, international humanitarian law (IHL) and international treaties [§48 para 1 f) of the Act No. 221/1999 Coll., on Professional Soldiers]. This obligation also covers the observance of the 1954 Hague Convention and both its Protocols. The same rule together with an obligation not to misuse the distinctive emblem is embodied in the Ground Rule of the Armed Forces of the Czech Republic [Chapter 1, Section 6 Para 35 and 38].

Legal Advisers responsible for abidance by IHL are assigned to each battalion commander. International Law Department of the Ministry of Defense closely cooperates with the Ministry of Culture on expert issues.

### ***3. Chapter V – The distinctive emblem***

The distinctive emblem has so far not been put in use in the Czech Republic because the lists of cultural property for the protection according to the Convention and Protocol II are only being completed. However, the financial and technical analyses of future marking are in progress.

### ***4. Article 25 – Dissemination of the Convention***

IHL, including the provisions of the 1954 Hague Convention and both its Protocols, is fully integrated into career courses (basic, specialist, NCO's, officers, staff) and into regular

training of soldiers. Upon request (mainly during pre-deployment training) the IHL specialists are conducting ad-hoc training focused on IHL issues. A specialized IHL course for instructors is organized once a year.

The Czech Committee of the Blue Shield has been established and operates in the Czech Republic. A non-profit national institution analogical to the International Committee of the Blue Shield, it associates the professional workers of the cultural property care, collections institutions, libraries and archives. The Czech Blue Shield has organized a number of events aimed at educating about the protection of cultural property in the event of an emergency situation, including the armed conflict.

#### **5. *Article 26 (1) – Official translations***

The Secretariat has already received the Czech translation of the Convention and the 1954 Protocol.

The translation of the Protocol II into Czech is attached as Annex II.

#### **6. *Article 28 – Sanctions***

Czech Criminal Code (further on “CC”) in its Section 262 (Using Prohibited Means of Combat and Unlawful Warfare) introduces a criminal act of using or ordering to use impermissible means or methods of combat and unlawful warfare, which are contrary to provisions and standards of international law. Under the scope of this Section, destroying or damaging an internationally recognised cultural or natural monument would be punished by two to seven years of imprisonment (in serious and severe cases by five to fifteen years). *See the Annex II: Sec 262 CC; for complex overview see also Sec 66, 167 and 168 CC.*

As far as personal jurisdictional matters are concerned, the Czech Criminal Code introduces in its Section 19 the concept of universality. *See the Annex II: Sec 19, 20 and 20a CC.*

#### **7. *1954 (First) Protocol***

The exportation of cultural property from the territory of the Czech Republic is governed by laws, which do not differentiate between time of peace, war or occupation.

Namely, it is the Act No. 20/1987 Coll., on state heritage preservation, and Act No. 71/1994 Coll., on sale and export of items of cultural value. The Act 20/1987 regulates the regime of exportation of the movable cultural items, which were declared cultural heritage or national cultural heritage and provides for sanctions for disobedience of the rules set. The Act 71/1994 deals with permanent exportation of such movable cultural property, which was neither declared (national) cultural heritage, nor is a museum collection or archival object, nor has been brought to the Czech Republic for temporary use, nor is a piece of art by a living author. This Act likewise sets the sanctions for breaches. The protection of museum collections is legislated in the Act No. 122/2000 Coll., on the Protection of Museum Collections, which enumerates the conditions for legal export of museum collection items and sets the sanction for overstepping.

As far as the potential military occupation of territory other than Czech is concerned, we refer to the answer under I.4.

#### **8. *Resolution II of the 1954 Hague Conference***

No national advisory committee exists in the Czech Republic and neither does any other similar specialized coordination body for the purposes of Hague Convention and its Protocols. On initiative of the Ministry of Foreign Affairs (MFA), however, an inter-ministerial Commission for International Humanitarian Law is convening for the first time in September 2008. It will be advising the Government on the issues relating to or stemming from the IHL, including the Hague Convention and its two Protocols.

## **II. National reports on the implementation of the 1999 Second Protocol to the 1954 Hague Convention**

### ***1. Article 5 – Safeguarding of cultural property***

Apart from the steps taken and described in I.1 or II.2, the MoC has prepared the Methodic for Elaboration of the Plan of Protection of Cultural Property. The Methodic consists of three parts, covering the protection of the cultural property (excluding the museums and the libraries), protection of the museums and galleries and the protection of the libraries and documents. This Methodic has been (by a Regulation No. 328/2001 Coll.) incorporated into the Integrated Rescue System (operation of police, ambulances, fire-fighters) and should serve as the basis for preparation of Plans for Protection of Cultural Property by the regional governments.

General protection of cultural property is governed by the Act No. 20/1987 Coll., on State Heritage Preservation. This law sets for the owner and the user of the protected cultural property various duties applicable even in the event of an armed conflict. Most important such duties are: to protect the property from destroying, damage, loss of value or theft. The owner and the tenant are furthermore obliged to use the property in a way corresponding to its importance, value and technical state. State authorities are supervising the observance by the owners/users and have the right to impose fines or prohibit activities inconsistent with the maintenance of the property. MoC is at present working on the principles for the new Act to replace the Act No. 20/1987. This new law will also regulate the marking of the real estate under protection of the Hague Convention and its Protocols.

For the museum collections, the relevant rules are established in the Act No. 122/2000 Coll., on the Protection of Museum Collections. Apart from other duties, the owner has to protect the collection from damage and enable the marking of the building housing the collection with the international emblem to protect the collection in the event of an armed conflict. The marking foreseen by this Act has however not been launched yet. The Act provides for the monetary contribution from public budget to cover the owner's costs resulting from the compliance with international obligations of the Czech Republic (including from the Hague Convention and its Protocols).

### ***2. Chapter 3 – Enhanced protection***

The MoC is responsible for the preparation of inventory of the List of Cultural Property, subject to enhanced protection under Protocol II.

The MoC and MoD have in 2007 agreed on fulfillment of Art. 10 of the Protocol II. Such property will be (included in the List of Cultural Property under Enhanced Protection and as such) submitted to the Committee for the Protection of Cultural Property in the Event of

Armed Conflict, which is currently inscribed in the UNESCO List of World Heritage (based on the Convention for the Protection of the World Cultural and Natural Heritage of 1972)<sup>1</sup>.

The MoC also plans to include in the enhanced protection list those heritage sites, which will be added to the UNESCO list in the future. All the sites on the list will be marked in accordance with the Operational Directive adopted by the meeting of States Parties to Protocol II.

***Note for Consideration:***

MoC would like to see the development of the official centralized forms for inclusion of the historic sites in the List of Cultural Property under Enhanced Protection, whose existence is seen as necessary. Such forms exist and have proved to be helpful in listing of property under other international treaties to which the UNESCO Secretary General serves as a depositary (e.g. World Heritage List or the Representative List of Intangible Cultural Heritage). Such a form should be prepared by the UNESCO Secretariat and possibly agreed on by the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

***3. Article 15 – Serious violations of this Protocol***

All the five categories are covered by criminal acts of Using Prohibited Means of Combat and Unlawful Warfare (Sec 262 CC) and Plundering in the War Area (see Sec 264 CC).

Categories of offences as listed under letters a), b) and d) are covered by Sec. 262 CC and would be punished by two to seven years of imprisonment (in serious and severe cases by five to fifteen years).

Remaining two categories of offences as listed under letters c) and e) are covered by Sec 264 CC and would be punished by three to fifteen years or an exceptional sentence.

(For complex overview see also Sec 66, 167 and 168 CC.)

***4. Article 16 – Jurisdiction***

As far as jurisdictional matters are concerned, the Czech Criminal Code introduces in its Section 19 the concept of universality, which applies to all five categories of offences listed in Art 15 of the Second Protocol to the Convention. *See the Annex II: Sec. 19, 20 and 20a CC.*

***5. Article 21 – Measures regarding other violations***

The issue of sanctions for the unlawful exportation of cultural property has been dealt with in I.7 and also other misuses of cultural property are regulated in the legislation enumerated therein.

***6. Article 30 – Dissemination***

The issue has been dealt within the answer regarding Art. 7 (I.2) and 25 (I.4) of 1954 Hague Convention.

The MoC informs the public through its Annual reports, the Convention and its Protocols were also duly published in the Collection of Laws and Collection of International Treaties,

---

<sup>1</sup> The property concerned is namely: Historic Centre of Český Krumlov, Historic Centre of Telč, Kutná Hora: Historical Town Centre with the Church of St Barbara and the Cathedral of Our Lady at Sedlec, Pilgrimage Church of St John of Nepomuk at Zelená Hora, Lednice-Valtice Cultural Landscape, Gardens and Castle at Kroměříž, Historical Village Reservation Holašovice, Litomyšl Castle, Holy Trinity Column in Olomouc, Tugendhat Villa in Brno, Jewish Quarter and St Procopius' Basilica in Třebíč. In case of the historic city-center of capital Prague the decision on inclusion in the list for submission has not been passed yet.

respectively. The MoC-established and finances the National Institute for the Protection and Conservation of Monuments and Sites of the Czech Republic. This organization has in 2007 developed a publication entitled *International Documents on Protection of Cultural Heritage* containing, among other items, also the Convention and its Protocols in both original and translated versions.

A presentation was delivered in 2008 to the nation-wide meeting of the site-managers of monuments in the World Heritage List, which acquainted the participants with the Hague Convention system and issues.

The general public is also being educated on the Hague Convention and its Protocols through the media - lastly for instance through the Czech radio show "Monuments serious and not so serious" in the fall 2007, devoted fully to the Convention and the Protocols.

#### ***7. Article 37 – Translations and reports***

As mentioned under I.5, the translation of the Protocol II into Czech is attached as Annex II.

Responsible person:

Ms. Renata Kleckova

Department of International Law

MINISTRY OF FOREIGN AFFAIRS OF THE CZECH REPUBLIC

tel. +420 224 182 790

renata\_kleckova@mzv.cz)

## ANNEX II

### Relevant Sections of the Criminal Code (Act No. 140/1961 Coll., as amended) (UNOFFICIAL TRANSLATION)

#### Section 262

##### Using Prohibited Means of Combat and Unlawful Warfare

- (1) Whoever in time of war or in combat:
- a) orders the use of prohibited weapons or materiel, or who uses such weapons or materiel; or
  - b) orders a use of impermissible methods of combat, or who himself uses such methods,

shall be sentenced to imprisonment for *two to seven years*.

- (2) The same sentence shall be imposed on a commander who, contrary to provisions of international law on means and methods of warfare, intentionally:
- a) harms civilian population or civilians on their life, health or property by a military action, or leads an attack against them for reasons of 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 serving for humanitarian purposes, or an internationally recognised cultural or natural monument.

- (3) An offender shall be sentenced to imprisonment for five to fifteen years or an exceptional sentence if, by the act given in paragraph 1 or 2 he causes an extremely serious effect.

#### Section 264

##### Plundering in the War Area

Whoever in a war area, on a battlefield, in places affected by military operations or on an occupied territory:

- a) appropriates a thing of another, abusing such person's anxiety;
- b) wilfully destroys a property of another or forfeitures it under pretence of military necessity; or
- c) preys on dead,

shall be sentenced to imprisonment for three to fifteen years or an exceptional sentence.

### **Relevant Sections on jurisdiction (Criminal Code):**

#### Section 17

- (1) The liability to punishment of an act committed on the territory of the Czech Republic shall always be considered under the law of the Czech Republic.
- (2) A crime shall be considered as having been committed on the territory of the Czech Republic, if:
- a) an offender acted on its territory, even if the violation of, or threat to, an interest protected under this Code resulted, or was to result, completely or partly abroad, or
  - b) an offender violated or threatened on its territory an interest protected under this Code, or if the consequence of such act was to at least partly occurred on its territory, even though the crime was committed abroad.

(3) Under the law of the Czech Republic shall also be considered the liability to punishment of an act committed outside the territory of the Czech Republic on board a ship or an aircraft registered in the Czech Republic, or in the Antarctic. The place where the crime in question is committed shall be considered accordingly to paragraph 2.

#### Section 18

The liability to punishment of an act committed abroad by a citizen of the Czech Republic or by a stateless person with a permanent residence permit in the Czech Republic shall also be considered under Czech law.

#### Section 19

The Czech law shall apply when determining the liability to punishment of subversion against the Republic (Section 92), terror (Section 93), terrorist attack (Section 95), diversionist activities (Section 96), sabotage (Section 97), espionage (Section 105), counterfeiting and altering money (Section 140), uttering counterfeit and altered money (Section 141), illicit manufacturing and possession of instruments for counterfeiting and forgery (Section 142), assaulting a state organ (Section 153) and assaulting public official under (Section 155), participation in criminal conspiracy (Section 163a par. 2 and 3), genocide (Section 259), use of a prohibited means of combat and unlawful warfare (Section 262), war cruelty (Section 263), persecution of civilians (Section 263a), plundering in the war area (Section 264), misuse of internationally recognised and state emblems (Section 265) and an offence against peace under section 1 of the Peace Protection Act, No. 165/1950 Coll., even if such an offence was committed in a foreign country by a foreign national or a stateless person with no permanent residence permit on the territory of the Czech Republic.

#### Section 20

(1) The Czech law shall be applied to determine the liability to punishment for an act committed abroad by a foreign national or a stateless person with no permanent residence permit 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, and
- b) the offender is apprehended on the territory of the Czech Republic and was not extradited for criminal prosecution to a foreign state.

(2) The Czech law shall be applied to determine the liability to punishment for an act committed abroad by a foreign national or a stateless person with no permanent residence permit on the territory of the Czech Republic, if the offence was committed in the benefit of a legal person or other organization with a seat, firm, structural component or business premises on the territory of 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.

#### Section 20a

(1) The liability to punishment for an act shall also be considered under Czech law in cases stipulated in a promulgated international agreement which is binding on the Czech Republic.

(2) The Sections of sections 17 to 20 shall not apply if it is not admitted under a promulgated international agreement binding on the Czech Republic or a special law.

## **Related Sections (Criminal Code) excerpts:**

### Section 66

#### Effective Repentance

Punishability of [...]use of a prohibited means of combat and unlawful warfare (section 262), ..., plundering in the war area (Section 264) shall cease if the offender has voluntarily:

- (a) prevented or redressed the harmful effect of his crime; or
- (b) reported the crime at a time when its harmful effects could still be prevented. The report (notification) must be made to the office of public prosecution or police, or in the case of a soldier, to his commander or chief.

### Section 167

#### Failure to Act to Prevent a Crime

(1) Whoever reliably learns that another person is preparing or committing a criminal act of [...]use of a prohibited means of combat and unlawful warfare (Section 262), ..., plundering in the war area (Section 264), or whoever does not get to thwart the commission or completion of any such crime shall be sentenced to imprisonment up to three years; where this Code provides a more moderate sentence for one of the above-mentioned acts, this moderate sentence will be inflicted on him.

(2) Where a person commits an offence pursuant to subsection (1), it shall not be punishable if the person could not report the criminal act in question without exposing himself or a close person to the danger of death, a bodily injury, some other serious detriment or criminal prosecution. However, exposure of a close person to the danger of criminal prosecution shall not exonerate the offender from his culpability if his failure to report the criminal act concerns high treason (Section 91), subversive activity against the Republic (Section 92), terrorism (Section 93), terrorist attack (Section 95), diversionism (Section 96), sabotage (Section 97), espionage [Section 105(2)(3) and (4)], endangering an official secret (Sections 106 and 107), participation in a criminal conspiracy [Section 163a(2)(3) or genocide (Section 259).

(3) A crime can also be thwarted by being timely reported to the office of public prosecution or police, or in the case of a soldier, to his commander or chief.

### Section 168

#### Failure to Report a Crime

(1) Whoever reliably learns that another person has committed an act of [...] use of a prohibited means of combat and unlawful warfare (section 262), and fails to report the crime, without delay, to the office of public prosecution or police, or in the case of a soldier, to his commander or chief, shall be sentenced to imprisonment of up to three years; where this Code provides a more moderate sentence for one of the above-mentioned acts, this moderate sentence will be inflicted on him.

(2) Where a person commits an offence pursuant to subsection (1), it shall not be punishable if the person could not report the criminal act in question without exposing himself or a close person to the danger of death, a bodily injury, some other serious detriment or criminal prosecution. However, exposure of a close person to the danger of criminal prosecution shall not exonerate the offender from his culpability if his failure to report the criminal act concerns high treason (Section 91), subversive activity against the Republic (Section 92), terrorism (Section 93), terrorist attack (Section 95), diversionism (Section 96), sabotage (Section 97), espionage [Section 105(2)(3) and (4)], endangering an official secret (Sections 106 and 107), participation in a criminal conspiracy [Section 163a(2)(3) or genocide (Section 259).



(3) The reporting duty shall not apply to an attorney-at-law who learns of commission of a criminal act (criminal offence) in connection with performance of his duties as an attorney-at-law or his practice of law. The reporting duty shall further not apply to priests of registered churches and religious societies (being authorised to the exercise of special rights) if they learn of commission of a criminal act (criminal offence) in a confessor's or similar capacity and it is a secret of the confession.

**Related legal acts:**

Act No. 20/1987 Coll. - on State Monument Care;

Act No. 71/1994 Coll. - on the Sale and Export of Objects of Cultural Value;

Act No. 122/2000 Coll. - on protection of collections of a museum nature