

2011-2012 National Report of the Czech Republic on the Implementation of the 1954 Hague Convention and its two Protocols

I. The 1954 Hague Convention

1. Article 3 – Safeguarding of cultural property

This Article provides for the obligation of the High Contracting Parties to adopt relevant peacetime safeguarding measures against the foreseeable effects of an armed conflict.

Have you undertaken such measures?

YES:

NO: X

If yes, please provide more specific information.

2. Article 7 – Military Measures (in peace time)

This Article provides for the obligations of the High Contracting Parties to introduce into their military regulations or instructions provisions that may ensure observance of the Convention, as well as to plan or establish within their armed forces services or specialists whose purpose will be to secure respect for cultural property.

(i) Have you introduced such provisions into your military regulations and instructions?

YES: X

NO:

If yes, please provide more specific information. *The primary duties of a member of military cover inter alia an obligation to observe the law, international humanitarian law (IHL) and treaties [§48 para 1 f) of the Act No. 221/1999 Coll., on Professional Soldiers]. This obligation also includes 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].*

(ii) Have you created such services or appointed specialists in your country?

YES: X

NO:

If yes, please provide more specific information. *Legal Advisers responsible for compliance with the 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

Do you mark cultural property with the distinctive emblem of the Convention?

YES:

NO: X

If yes, please provide more specific information.

If not, please state the reasons you have not done so.

The Act No. 122/2000 Coll., on the Protection of Museum Collections, sets out an obligation to mark cultural property which contains a museum collection with the distinctive emblem. The Ministry of Culture (MoC) and the Ministry of Defense (MoD) are currently in the process of selecting objects of cultural value for the protection according to the Convention.

4. Article 25 – Dissemination of the Convention

Knowledge of the laws of armed conflict is of capital importance for the civilian and military personnel required to apply them. Have you disseminated the provisions of the Convention within armed forces as well as among target groups and the general public?

YES: X

NO:

If yes, please provide more specific information. The 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 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.

Relevant international documents, including the provisions of the 1954 Hague Convention and both its Protocols, are fully integrated into career courses for conservation staff at the Institute of Public Administration in Prague (Ministry of Interior), as well as in other ad hoc or regular education, organized by the Ministry of Culture and National Heritage Institute (University of the Third Age in Telč at Masaryk University in Brno, Conservation seminar in the National Heritage Institute, etc.).

In 2011 and 2012, the Ministry of Interior executed the "Project of methodical assistance to improve the level of fire protection of monuments." The results led to the establishment of two working groups (WG on methodology for the inspection of monuments and the preparation of seminars and WG on training and education). Contact persons ("guarantors") in the Fire and Rescue Service who are specialized in the protection of monuments were also designated. In 2011, the guarantors in cooperation with the National Heritage Institute organized a seminar aimed at exchanging information the possible ways of protecting monuments from fires and their effects. The Fifth International Conference of the Professional Fire Protection Association on the topic of "Fire protection of tangible cultural heritage" was also held in Cesky Krumlov, in cooperation with the National Heritage Institute and the Fire and Rescue Service under the auspices of the Minister of the Interior and Minister of Culture. The aim of the conference was to find solutions and common approach to ensure the protection of monuments against fire and eliminate the irretrievable loss of cultural heritage. In the framework of enhancing cooperation in the field of fire protection of cultural heritage, the Fire and Rescue Service formed a partnership with the Association of castle owners in the Czech Republic. In cooperation with the Fire and Rescue Service and the National Heritage Institute 50 monuments managed by the National Heritage Institute have been inspected. To increase the awareness of the protection of cultural heritage, another seminar was organized in 2012 by the Ministry of the Interior on the protection of monuments from fires and their effects, this time for the conservation staff of regional authorities. An important element in the development of the protection of monuments from fires is professional and training education, mainly of engineers and technicians who design buildings. In the context of the cooperation with the Czech Chamber of Authorized Engineers and Technicians (ČKAIT) the first educational event was held for the Chamber members. In 2012, the Ministry of the Interior also certified the methodology "Technology of cultural heritage protection against fire" for the needs of owners of monuments.

If not, please state the reasons you have not done so.

5. Article 26(1) – Official translations

To date, the Secretariat has received 32 official translations of the Convention and of the Regulations for its execution (Arabic, Azerbaijani, Bulgarian, Burmese, Cambodian, Chinese, Czech, Danish, Dutch, Estonian, Finnish, German, Hebrew, Hungarian, Greek, Italian, Japanese, Kyrgyz, Latvian, Lithuanian, Montenegrin, Nepali, Norwegian, Persian, Polish, Romanian, Serbo-Croatian, Slovak, Slovenian, Swedish, Thai, and Turkish).

Have you officially translated the Convention and the Regulations for its execution?

YES: X

NO:

If yes, could you please provide the Secretariat with an electronic copy of the translation, if you have not already done so?

6. Article 28 – Sanctions

This Article provides for the obligations of the High Contracting Parties to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose

penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention.

Have you introduced this provision into your penal code?

YES:

NO:

If yes, please provide more specific information. *The new Criminal Code 2009 (Act No. 40/2009 of the Collection of Laws, as amended) provides for sanctions for all kinds of prohibited means and methods of warfare, including acts prohibited under the Convention, in Section 411 (Use of Forbidden Means and Methods of Combat), especially under Section 411(1)(b) and 411(2)(d). This offence is covered by the principle of universality provided for in Section 7(1) of the new Criminal Code. Abuse of ownership is prohibited by Art. 229 of the Criminal Code.*

If yes, we would be grateful if you could kindly provide the Secretariat with a copy of the relevant provision(s) in English or French.

*Section 411
Use of Forbidden Means and Methods of Combat*

- (1) Whoever, during a time of war or another armed conflict, or a combat situation*
- a) orders the use of means of combat or material of a similar nature or uses such means or material, or*
 - b) orders to wage combat in a forbidden way or wages combat in such a way by him/herself, shall be sentenced to imprisonment for a period between two and ten years.*
- (2) The same sentence shall be imposed to anyone who, contrary to provisions of international law on means and methods of waging war or another armed conflict, intentionally*
- a) by a military operation harms civilian population or persons on their lives, health or property or attacks them for retaliation reasons,*
 - b) leads an attack against an unprotected place or demilitarized zone,*
 - c) destroys a river dam, nuclear power plant or a similar facility that contains dangerous powers, or*
 - d) destroys or damages an object designated for humanitarian purposes or an internationally recognised cultural or natural monument, or exploit such object or monument for military purposes.*
- (3) An offender shall be sentenced to imprisonment for eight to twenty years or to an exceptional sentence of imprisonment, if he/she causes by the act referred to in Sub-section (1) or (2)*
- a) grievous bodily harm, or*
 - b) death.*
- (4) Preparation is criminal.*

*Section 229
Abuse of Ownership*

A person who damages an important interest in cultural, scientific, nature protection, landscape or environment, protected by other legislation by destroying, damaging, rendering useless or selling a

thing of his own, which enjoys protection under special provisions, shall be punished by a term of imprisonment of up to two years, by a pecuniary penalty or forfeiture of a (specific) thing.

II. Resolution II of the 1954 Conference

Have you established a national advisory committee in accordance with the wish expressed by the Conference in Resolution II?

YES:

NO: X

If yes, please provide more specific information.

Is such a committee a part of the national commission on the implementation of international humanitarian law?

YES: X

NO:

III. 1954 (First) Protocol (to be filled in only by the High Contracting Parties party to the 1954 Protocol):

The Protocol provides for the obligation of the High Contracting Parties to prevent the exportation of cultural property from a territory occupied by it and requires the return of such property to the territory of the State from which it was removed.

Have you complied with this provision? In particular, have you implemented its provisions in your national legislation?

YES: X

NO:

The export 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 export of the movable cultural items, which were declared cultural heritage or national cultural heritage and provides for sanctions for disobedience of these rules. The Act 71/1994 deals with permanent export 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 covered by 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 its violations..

The Act No. 101/2001 Coll., on return of the illegally exported culture property, deals with return of the illegally exported culture property inside the EU countries. The Czech Republic includes, as far as

possible, in the bilateral cultural agreements with other states a provision which deals with cooperation and mutual assistance with regard of the illegally exported culture property and its return.

Have you have taken into custody cultural property imported into your territory from an occupied territory?

YES:

NO: X

If yes, please provide more specific information, including what steps you have taken to return this property at the close of a conflict.

IV. The 1999 Second Protocol (to be filled in only by the States party to the 1999 Protocol):

1. General provisions

(i) Article 5 - Safeguarding of cultural property

Article 5 of the Second Protocol complements Article 3 of the Hague Convention by providing concrete examples of peacetime preparatory measures, such as the preparations of inventories of cultural property or the designation of competent authorities responsible for the safeguarding of cultural property.

Have you undertaken these preparatory measures?

YES: X

NO:

If yes, please provide more specific information.

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. The most important 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.

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 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 those arising from 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. According to this Act, the MoC is responsible for the central evidence of museum collections.

(ii) Article 9 – Protection of cultural property in occupied territory

Article 9 of the Second Protocol complements the provisions in Article 5 of the Hague Convention by imposing a number of prohibitive measures on the occupying power. If applicable, please describe the implementation of such measures.

2. Enhanced protection (Chapter 3)

The Second Protocol establishes an enhanced protection regime for cultural property, provided that the property is cultural heritage of the greatest importance for humanity, is properly protected by administrative and legal measures, and is not and will not be used for a military purpose or to shield military sites.

(i) Do you intend to request the granting of enhanced protection for a cultural property?

YES: X

NO:

(ii) Do you intend to use the distinctive emblem to mark cultural property under enhanced protection?

YES: X

NO:

If not, please state the reasons you have not done so.

3. Articles 15 and 21 - Serious violations of this Protocol and measures regarding other violations, respectively

Article 15 obligates Parties to establish certain acts listed under its first paragraph as criminal offences under domestic law and to make them punishable by appropriate penalties.

Article 21 obligates Parties to adopt relevant legislative, administrative or disciplinary measures to suppress any intentional use of cultural property, illicit export, or other removal or transfer of ownership of cultural property from occupied territory, in violation of the Hague Convention or the Second Protocol.

Have you penalized each of these offences and adopted the above-mentioned measures?

YES:

NO:

If yes, please provide more specific information. *Acts listed in Article 15(1) of the Protocol are sanctioned under Section 411 of the new Criminal Code (please, see the reply to I.6 above); depending on the circumstances of a specific case, this provision could apply also to acts listed in Article 21(1) of the Protocol. Acts listed in Article 21 are sanctioned (also) as a criminal offence of Breach of Regulations on Circulation of Goods in Relation with Foreign States under Section 261 of the new Criminal Code. This offence is not covered by the principle of universality under Section 7(1) of the new Criminal Code but could be covered by the principle of subsidiary universality (aut dedere aut judicare) under Section 8(1) of the new Criminal Code. Depending on the circumstances of a specific case, Section 414 of the new Criminal Code (Pillage in the Area of Military Operations) could also be applied (in relation to both Article 15(1) and Article 21 of the Protocol). This offence is covered by the principle of universality under Section 7(1) of the new Criminal Code.*

If not, please state the reasons you have not done so. *For Section 411 of the new Criminal Code, see above sub I.6. Sections 261 and 414 of the new Criminal Code read:*

Section 261

Breach of Regulations on Circulation of Goods in Relation with Foreign States

(1) Whoever seriously impairs a public interest by breaching proscription, restriction or another important obligation stipulated for import, export or transit of goods, shall be sentenced to imprisonment for up to two years, to prohibition of activity or confiscation of a thing or other asset value.

(2) An offender shall be sentenced to imprisonment for one year to five years or to a pecuniary penalty, if he/she

a) commits the act referred to in Sub-section (1) with at least two persons,

b) causes substantial damage by such an act, or

c) causes or elevates a risk of importation or spreading of a contagious animal disease in interest stock-breeding, among livestock or wild animals or contagious disease or parasite of productive vegetation.

(3) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) causes extensive damage by the act referred to in Sub-section (1), or

b) causes or elevates a risk of importation or spreading of a contagious human disease.

Section 414

Pillage in the Area of Military Operations

(1) Whoever, in the area of military operations, on the battlefield, in places affected by military operations, armed conflict, or in the occupied territory

a) steals from the dead or otherwise misappropriates items or other assets of a stranger, or

b) wilfully destroys, damages, removes, conceals, or abuses the property of a stranger,

shall be sentenced to imprisonment for eight to twenty years to to an exceptional sentence of imprisonment.

4. Article 16 – Jurisdiction

Have you taken the necessary measures to establish jurisdiction over offences mentioned in Article 15?

YES:

NO:

If yes, please provide more specific information. *The new Criminal Code applies the principles of territoriality and active personality (Article 16(1)(a)(b) of the Protocol) in relation to all offences (Sections 4 through 6 of the new Criminal Code). In relation Article 16(1)(c) of the Protocol, the principle of universality (Section 7(1) of the new Criminal Code) and/or the principle of subsidiary universality (aut dedere aut judicare; Section 8(1) of the new Criminal Code) would apply.*

5. Articles 29 (The Fund for the Protection of Cultural Property in the Event of Armed Conflict), 32 (International assistance) and 33 (Assistance of UNESCO)

Are you currently receiving international assistance from the Fund?

YES:

NO: X

If yes, please describe the project for which funds were received.

Are you currently providing or planning to provide international or technical assistance on a bilateral or multilateral level?

YES:

NO: X

If yes, please provide more details.

If not, please state the reasons you have not done so.

6. Dissemination (Article 30)

Article 30 calls for, among other things, the strengthening of the appreciation and the respect for cultural property, the dissemination of the Protocol and the establishment of military instructions, training and communication facilities.

Please describe the measures taken concerning the above-mentioned obligations.

See the replay to I.4. above.

7. The Fund for the Protection of Cultural Property in the Event of Armed Conflict

Have you contributed to the Fund?

YES:

NO: X

If yes, please provide detailed information concerning your contribution.

If not, would you consider the possibility of contributing to the Fund in the future?

YES:

NO:

8. National focal point

Please provide us with the name and address of a single national focal point for all official documents and correspondence related to the implementation of the Second Protocol.

V. Other issues related to the implementation of the Hague Convention and its two Protocols

The Secretariat would appreciate it if you could provide us with a copy of the following documents in English and/or French:

- the relevant administrative civilian and military regulations;
- national laws on the protection of cultural property as well as penal provisions not covered by Article 28 of the Hague Convention and Articles 15, 16, 21 of the Second Protocol; and, case-law on the protection of cultural property related to the implementation of the Hague Convention and its two Protocols.

VI. Official Translations of the Second Protocol to the 1954 Hague Convention

To date, the Secretariat has received 18 official translations of the Second Protocol (Armenian, Brazilian Portuguese, Burmese, Croatian, Czech, Danish, Dutch, Estonian, German, Greek, Italian, Japanese, Latvian, Nepali, Persian, Romanian, Slovak and Slovenian).

Have you officially translated the Second Protocol?

YES: X

NO:

If yes, could you please provide the Secretariat with an electronic copy of the translation, if you have not already done so?