

Penal Code



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

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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 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

- a) prevented or rectified the detrimental consequence of a criminal offence, or
- b) reported a criminal offence at the time when the detrimental effects of the criminal offence could still be prevented; a report must be made to the public prosecutor or the police authority. A soldier may report it to their commander.

DIVISION 2

Limitation of Criminal Liability

Section 34

Period of Limitation

(1) Criminal liability for a criminal offence shall expire upon the lapse of the period of limitation, which amounts to

- a) twenty years where a criminal offence is concerned for which the criminal law permits the imposition of an exceptional punishment and a criminal offence committed as part of the drafting or approving of a privatisation project as set out under another legal regulation,
- b) fifteen years where the upper punishment limit of a prison sentence amounts to a minimum of ten years,
- c) ten years where the upper punishment limit of a prison sentence amounts to a minimum of five years,
- d) five years where the upper punishment limit of a prison sentence amounts to a minimum of three years,
- e) three years for other criminal offences.

(2) For criminal offences where the principle is the effect or those where the effect is a principle of the qualified merits of the case, the period of limitation shall start to run from the moment when such effect occurred; for other criminal offences, the period of limitation shall start to run upon the completion of their conduct. The period of limitation begins for the accessory following the completion of the act of the main offender.

(3) The following shall not be counted into the period of limitation

- a) the period of time during which the offender could not be brought to the court due to a legal obstacle,
- b) the period of time during which the criminal prosecution was suspended,
- c) the period of time during which a victim of human trafficking (Section 168) or any of the criminal offences referred to in Chapter III of a special part of this Act, on Sexual criminal offences against human dignity, was younger than 18 years,
- d) probational period applying to the conditional suspension of the criminal prosecution.

(4) The period of limitation shall be suspended

- a) at the commencement of the criminal prosecution for the criminal offence to which the period of limitation applies, as well as by the remand in custody, the issuance of an arrest order, an arrest warrant or the European Arrest Warrant, submission of an indictment, petition for punishment, pronouncement of the convicting judgment for a criminal offence or by serving a criminal warrant for such criminal offence to the accused, or

- b) if the offender has committed a new criminal offence at some point during the period of limitation for which criminal law sets out the same or a more severe punishment.

(5) Any suspension of the period of limitation shall cause the period of limitation to start again the beginning.

Section 35

Exclusions from Limitation

The lapse of the period of limitation shall not cause criminal liability to expire

- a) for criminal offences under Chapter XIII of a special part of this Act, save for any criminal offences involving the establishment, support and promotion of movements seeking to suppress human rights and freedoms (Section 403), expressions of sympathy for movements seeking to suppress human rights and freedoms (Section 404), denial, questioning, approval and justification of genocide (Section 405), including where such acts were committed in the past that would now meet the criteria of such criminal offences,
- b) for criminal offences of subversion of the Republic (Section 310), terrorist attack (Section 311) and terror (Section 312), where the same were committed under circumstances so that they constitute war crimes or crimes against humanity as specified under the regulations of international law,
- c) for any other criminal offences committed between 25 February, 1948 and 29 December, 1989, where the upper punishment limit of the prison sentence amounts to at least ten years, if, due to reasons incompatible with the fundamental principles of the legal order of a democratic State, final conviction or acquittal could not occur, and for any criminal offences committed by public officials or in association with the persecution of an individual or a group of people due to political, racial or religious reasons.

Chapter V

Criminal Sanctions

DIVISION 1

Types of Criminal Sanctions and General Principles Applying to their Administration

Section 36

Types of Criminal Sanctions

Criminal sanctions are penalties and protective measures.

Section 37

General Provisions Applying to the Administration of Criminal Sanctions

- (1) Criminal sanctions may only be imposed subject to criminal law.

(2) Cruel or disproportionate criminal sanctions may not be imposed on offenders. The execution of a criminal sanction must not undermine human dignity.

Section 38

Proportionality of Criminal Sanctions

(1) Criminal sanctions must be imposed while taking account of the nature and seriousness of the criminal offence committed and the offender's personal circumstances.

(2) Where a more lenient criminal sanction may be imposed upon an offender, a more severe criminal sanction may not be imposed upon them.

(3) In imposing criminal sanctions, the interests protected by the law of such persons aggrieved by the criminal offence shall be taken into account.

DIVISION 2

Penalties

Subdivision 1

General Principles Applying to the Administration of Penalties

Section 39

Determination of the Type and Severity of Punishment

(1) In determining the type and severity of the punishment, the court shall take due account of the nature and seriousness of the criminal offence committed, of the personal, family, property and other relations of the offender and their existing way of life and the possibility of their personal reform; moreover, the offender's behaviour after the act shall also be taken into account, in particular their efforts at making good any damage or mitigating any other detrimental effects of the act, and where the offender has been designated as a co-operating accused; account shall further be taken of the extent to which they have contributed to the clarification of a particularly serious crime committed by members of an organised group, in connection with an organised group or in favour of an organised criminal group, or to what extent they have helped to prevent an attempted or completed criminal offence as described above. They shall also take account of the effects and consequences that may be expected from the punishment in terms of the offender's future life.

(2) The nature and seriousness of a criminal offence is particularly determined by the importance of the protected interest affected by the act, by the method in which the act was committed and its consequences, the circumstances under which the act was committed, and by the offender themselves, the extent of their fault and their motives, intentions or objectives.

(3) In determining the type and severity of the punishment, the court shall take into account any mitigating and aggravating circumstances (Section 41 and 42), the time that has lapsed since the criminal offence was committed, any change in the situation, and the length of criminal proceeding should it take a disproportionately long period of time. When assessing the proportionality of the length of a criminal proceeding, the court shall

take into account the complexity of the case, the actions taken by the law enforcement authorities, the importance of the criminal proceeding for the offender and their conduct as a result of which they may have contributed to delaying the criminal proceeding.

(4) A circumstance constituting a legal principle of a criminal offence, including such circumstances that condition the use of a more severe punishment, cannot be regarded as a mitigating or aggravating circumstance. A circumstance justifying an extraordinary reduction of the severity of a punishment by a prison sentence cannot be taken into account as a mitigating circumstance.

(5) An aggravating circumstance shall be taken into account,

- a) where the consequence is of a more severe nature, including where caused by the offender due to negligence, except for cases in which the criminal law also requires intentional error,
- b) where it is about a different fact, including where the offender was unaware of it, although in consideration of the circumstances and their personal circumstances they could and should have been aware thereof, except for cases in which criminal law requires that the offender be aware of such fact.

(6) When determining the type of punishment and its severity, the court shall further take into account

- a) accomplices, the extent to which the conduct of each of them contributed to the commission of the criminal offence,
- b) the organiser, instigator and abettor, the importance and nature of their involvement in the commission of the criminal offence,
- c) the premeditation to commit a particularly serious crime and for an attempted criminal offence, to what extent the offender's conduct came close to completing the criminal offence, as well as the circumstances and reasons for which the criminal offence was not completed.

(7) Where the offender gained or sought to gain property benefit through the criminal offence concerned, the court shall take due notice of it in determining the type and severity of the punishment; unless the offender's property or personal circumstance renders it impossible, the court shall impose one of the penalties on the offender's property (Section 66 through 72), taking into account the level of the property benefit; this shall be a separate punishment or an additional punishment to another punishment.

Section 40

Imposing Penalties to Offenders with Diminished Legal Responsibility

(1) Where the offender committed a criminal offence in a condition of diminished legal responsibility, the court shall take into account the fact in determining the type and severity of the punishment, unless the condition, even out of negligence, was incurred due to having used an addictive substance.

(2) Where the court concludes that, with regard to the health of the offender under Subsection 1, their reformation could be best provided for by the imposition of a shorter punishment with simultaneous protective treatment (Section 99), it shall reduce the prison sentence below the lower limit of the penalty, without being liable to the restrictions under Section 58 Subsection 3 and at the same time, impose protective treatment.

Section 41 Mitigating Circumstances

The court shall consider as mitigating circumstances especially those in which the offender

- a) has committed a criminal offence for the first time and under such circumstances that were beyond their control,
- b) has committed a criminal offence in a state of extreme distress, out of compassion or due to a general lack of experience,
- c) has committed a criminal offence under the pressure of addiction or subordination,
- d) has committed a criminal offence under threat or duress,
- e) has committed a criminal offence under onerous personal and family relations, the nature of which they cannot be held responsible for,
- f) has committed a criminal offence at an age close to that of a legal minor,
- g) has committed a criminal offence while trying to avert an assault or other risk without having entirely met the conditions of self defence or extreme exigency, or has exceeded the limits of admissible risk or the limits of another circumstance which would have excluded illegality,
- h) has committed a criminal offence in legal error, which could have been avoided,
- i) has caused minor damage or other minor detrimental effects by committing the criminal offence,
- j) has contributed to the removal of the detrimental consequences of a criminal offence or voluntarily covered the damages,
- k) has reported their own criminal offence to the authorities,
- l) has contributed to the clarification of their own criminal activity or significantly contributed to the clarification of a criminal offence committed by another offender,
- m) has contributed, in particular as a co-operating accused, in clarifying the criminal activity committed by members of an organised group, in association with an organised group, or in favour of an organised criminal group,
- n) has sincerely regretted committing their criminal offence, or
- o) had been leading an orderly life before they committed the criminal offence.

Section 42 Aggravating Circumstances

The court shall consider as aggravating circumstances especially those in which the offender

- a) has committed a criminal offence deliberately or with prior consideration,
- b) has committed a criminal offence due to avarice, revenge, due to national, racial, ethnic, religious, class or other equivalent hatred, or out of another especially heinous motive,
- c) has committed a criminal offence in a cruel or tortuous way, insidiously, with especially malicious or in any other similar way,
- d) has committed a criminal offence by exploiting somebody's need, distress, vulnerability, addiction or subordination,
- e) has violated a special obligation due to a criminal offence,
- f) has exploited their employment, position or function to commit a criminal offence,

- g) has committed a criminal offence against a person participating in a rescue of human life and to protect health or property,
- h) has committed a criminal offence to the detriment of a child, family member, a pregnant woman, an ill person, a disabled person, elderly person or an infirm person,
- i) has led another person, especially a child under the age of fifteen, a minor or a person of an age close to the legal age of minor, to commit an act otherwise punishable, into misconduct or to commit a criminal offence,
- j) has committed a criminal offence during an emergency situation, natural disaster or other event seriously jeopardising lives, public order or property, or in a territory which is being or has been evacuated,
- k) has caused more serious damage or other more serious detrimental effects by committing the criminal offence,
- l) has gained greater benefit by committing the criminal offence,
- m) has committed a criminal offence of a greater extent, or which applies to more items or persons, or was committing or continued to commit a criminal offence for a longer period of time,
- n) has committed more criminal offences,
- o) has committed a criminal offence as the organiser, as a member of an organised group or member of a criminal association, or
- p) has already been convicted for a criminal offence; depending on the nature of the previous conviction, the court shall be entitled not to regard the circumstance as aggravating, especially in terms of the significance of the protected interest affected by the act, the method of carrying out the act and its consequences, the circumstances under which the act was committed, the offender, the extent of their fault, their motives and the period of time that has lapsed since the last conviction; and in cases where criminal offences were committed by an offender in a condition caused by a mental disorder, or where an offender who indulges in the abuse of addictive substances commits a criminal offence under their influence, or in connection to their abuse, and also where the offender has already begun their treatment or taken other action necessary to start treatment.

Section 43

Cumulative and Multiple Punishments

(1) Where the court convicts an offender of two or more criminal offences, it shall impose a cumulative punishment to the criminal offence under the present provision that draws the severest punishment; where concurrent multiple criminal offences are concerned, the court may impose a punishment of a prison sentence where the upper limit of the punishment shall be increased by one third; the upper punishment limit of a prison sentence following the increase must not, however, exceed twenty years, and where an exceptional punishment of a prison sentence of over twenty to thirty years is imposed, it must not exceed thirty years. In addition to the punishment admissible under such provision, another type of a punishment may be imposed as part of a cumulative punishment providing its imposition is justifiable by any of the criminal offences for which the offender has been convicted in the proceedings. Where the lower punishment limits of a prison sentence vary, the lower limit of the cumulative punishment shall be the most severe one. Where criminal law solely stipulates a prison sentence for any of the criminal offences, then a prison sentence can be the only form of punishment for a cumulative punishment.

(2) The court shall impose a multiple punishment subject to the principles set out under Subsection 1, where it convicts an offender for a criminal offence committed before the court in the first instance convicted the offender for another criminal offence. Along with the imposition of the multiple punishment, the court shall revoke the punishment imposed by the earlier judgment as well as all of the decisions substantively connected with the punishment if, due to the change that has occurred as a result of such revocation, they have lost their basis. The multiple punishment must not be more lenient than that imposed by any previous judgment. As part of the multiple punishment, the court must pronounce any punishment consisting of the loss of honorary degrees or accolades, a punishment consisting of the loss of military rank, or the forfeiture of property or possessed items or other assets if such a punishment has already been pronounced under any previous judgment.

(3) The convicting judgment under the provisions Subsection 2 shall also include such court judgments whereby, subject to the conditions under Section 48 Subsection 1, there is a conditional waiver of a punishment with supervision. Along with the imposition of a multiple punishment, the court shall revoke its verdict of a conditional waiver of a punishment with supervision, as well as all decisions substantively connected with the verdict if, due to the change that has occurred as a result of such revocation, they have lost their basis.

(4) The provisions on multiple punishment shall not be applied if a previous conviction is of such a nature that the offender is regarded as if they had not been convicted.

Section 44

Waiving the Imposition of a Multiple Punishment

The court shall waive the imposition of any multiple punishment under Section 43 Subsection 2, if it believes that a punishment imposed by an earlier judgment is adequate.

Section 45

Imposition of a Joint Punishment for the Continued Criminal Offence

(1) Where the court convicts an offender of a partial assault as part of a continued criminal offence (Section 116), the other assaults of which they were convicted by a judgment which has already come into full force and effect, it shall revoke its verdict of guilty in its previous judgment on the continued criminal offence and on the criminal offences committed in conjunction as concurrent single offences, and on the entire punishment, as well as any other statements that use the above verdict of guilty as their underlying basis, and once again, being bound by the factual findings of the revoked verdict, it shall decide upon the guilt concerning the continued criminal offence, including the new partial assault, and/or any criminal offences concurrent to the same, as well as upon the joint punishment for the continued criminal offence, which must not be more lenient than the one imposed by a previous judgment, and upon any associated verdicts that take the verdict of guilty as their underlying legal base. As part of a joint punishment for a continued criminal offence, the court must pronounce any punishment consisting of the loss of honorary degrees or accolades, a punishment consisting of the loss of military rank, the forfeiture of property or possessed items or other assets, if such a punishment has already been pronounced under any previous judgment.

(2) The provisions under Section 43 and 44 shall be similarly applied wherever a punishment is simultaneously imposed for multiple criminal offences.

(3) The provisions relating to joint punishment for a continued criminal offence shall also be applied if any previous conviction is of such a nature that the offender is regarded as if they had not been convicted.

Subdivision 2 Waiving Punishment

Section 46 General Provisions

(1) The punishment for an offender who has committed an offence and who regrets having committing the act and demonstrates genuine efforts at reformation may be waived if it can be reasonably expected, with regard to the nature and seriousness of the offence committed and the current way of life of the offender, that merely discussing the matter at hand will suffice to ensure their reformation and the protection of society.

(2) The court may further waive a punishment where an offender found guilty of pre-meditating or attempting a criminal offence did not recognise, with respect to the nature or type of subject of assault against which the act was to be committed, or the nature or type of the means by which the act was to be committed, that the premeditation or attempt could not possibly have lead to completion of the act.

(3) Where the court decides to waive a punishment, the offender shall be regarded as if they had not been convicted.

Section 47 Waiving Punishment while Simultaneously Imposing Protective Treatment or Protective Detention

(1) The court may further waive a punishment where the offender has committed an act in a state of diminished legal responsibility or in a state induced by a mental disorder and where the court believes that protective treatment (Section 99), which it simultaneously imposes, shall be more effective in ensuring the reformation of the offender and protecting society than the punishment itself. The present provision shall not apply if the offender had brought the condition of diminished legal responsibility or mental disorder upon themselves due to the abuse of addictive substances, even if out of negligence.

(2) The court may further waive a punishment if the offender has committed a crime in a condition of diminished legal responsibility or in a condition induced by a mental disorder and if it cannot be expected at the same time that the imposed protective treatment, considering the nature of the mental disorder and the possibility of it working on the offender would sufficiently lead to protect society, and where the court believes that protective detention (Section 100), which it simultaneously imposes upon the offender, will be more effective at protecting society than the punishment itself.

Section 48

Conditional Waiver of Punishment with Supervision

(1) Subject to the conditions stipulated under Section 46 Subsection 1 or 2 the court may waive a punishment and stipulate the supervision of the offender if it deems it necessary to monitor the offender's behaviour over a specified period of time.

(2) In the event of a conditionally waived punishment, the court shall determine probational period of up to one year and at the same time shall impose supervision upon the offender (Section 49 through 51).

(3) The court may impose upon an offender, whose punishment has been conditionally waived, appropriate restrictions and obligations aimed at ensuring the offender leads an orderly life; as a general rule, the court shall further impose upon them the obligation to compensate the damage or redress the non-material damage caused by their criminal offence or to surrender any unjust enrichment obtained through a criminal offence, depending on their ability to do so.

(4) The court may, in particular, impose the following as appropriate restrictions and obligations

- a) to undergo training to obtain the required qualifications,
- b) to undergo appropriate social training and re-education,
- c) to undergo treatment of addiction to addictive substances, which does not qualify as protective treatment as provided for under this Act,
- d) to undergo appropriate psychological counselling,
- e) to refrain from frequenting inappropriate environments, sports, cultural and other social events and contact with certain persons,
- f) to refrain from unauthorised interventions into other person's rights or interests protected by the law,
- g) to refrain from gambling, using slot machines and betting,
- h) to refrain from consuming alcoholic drinks or other addictive substances,
- i) to provide payment of any outstanding alimony or any other outstanding sum,
- j) to personally apologise to the aggrieved party in public, or
- k) to provide the aggrieved party with adequate compensation.

(5) Where the offender is of an age close to the legal age of a minor, the court may also impose educational measures set out under the Act on Juvenile Courts, subject to the equivalent conditions stipulated for young persons. This shall be done with a view to securing educational benefits of the family, school and other institutions, either as a separate measure or as a measure taken concurrently with the appropriate restrictions and obligations under Subsection 4.

(6) If an offender whose punishment has been conditionally waived leads an orderly life during their probational period and complies with all of the conditions specified, the court shall pronounce that the offender has proven themselves competent; otherwise it shall decide to impose a punishment including, where relevant, during the probational period.

(7) Unless the court issues a decision under Subsection 6 within one year of the lapse of the probational period without the offender, whose punishment has been conditionally