

Czech Penal Code

(excerpts)

Act No. 140/1962 Coll., as amended by later provisions (2001) Article 204

„(1) Whoever engages, forces or lures another person to carry out prostitution or profits from prostitution carried out by another person, shall be punished by imprisonment for a term of three years.

(2) Whoever commits such act as defined in paragraph 1 shall be sentenced to imprisonment for a term of two to eight years in case he made use of violence or threat or other violent means or if the person abused is in a dependent position in the relation to him/her.

(3) Two to eight years of imprisonment shall be served by a person

- a) who gains a substantial profit from the acts defined in paragraph 1 or 2,
- b) who commits the act as a member of an organized group; or
- c) who commits the act on a person younger than eighteen years.

(4) The imprisonment of five to twelve years shall be served by a perpetrator who has committed the act defined in paragraph 2 on a person younger than fifteen years."

Article 233

(1) Whoever entices another person abroad shall be punished by imprisonment for a term of three to eight years.

(2) The perpetrator shall be punished by imprisonment for a term of five to twelve years

- a) if he/she commits the crime defined in paragraph 1 as a member of an organized group,
- b) if he/she commits such act on a person younger than eighteen years or a person suffering from a mental disease or disorder; or
- c) if the act results in a severe damage to the health of the victim, his death or another severe consequence.

Article 246

(1) Whoever entices, hires or transports a woman abroad with the intent to have her used there for sexual intercourse with another person shall be punished by imprisonment for a term of one to five years.

(2) The perpetrator shall be punished by imprisonment for a term of three to eight years

- a) if he/she commits the crime defined in paragraph 1 as a member of an organized group,
- b) if he/she commits such crime on a woman younger than eighteen years, or
- c) if he/she commits the crime with the intent to have the woman used for prostitution.

PARLIAMENT OF THE CZECH REPUBLIC

Act No.137/2001 Coil.

on the special protection of a witness and other persons in connection with criminal proceedings and on the amendment of Act No. 99/1963 Coll. , Civil Legal Code, as amended.

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

PART I INTRODUCTORY PROVISIONS

Section 1 Purpose of the Act

(1) The purpose of this Act is to amend the provision of a special protection and assistance to a witness and other persons who are in danger of bodily harm or in other grave jeopardy (hereinafter "endangered person") in connection with criminal proceedings.

(2) This Act is applied, if the safety of the endangered person cannot be ensured in any other way .1

(3) There is no legal right pursuant to this Act to special protection and assistance.

Section 2 Endangered and Protected Person

(1) An endangered person shall for the purposes of this Act be a person who

a) has given or shall give an explanation, a testimony or has testified or shall testify as an accused, or has assisted in any other way or shall assist according to the provisions of the penal code for achieving the aim of criminal proceedings, or

1 E.g. Section 2, (1) a) Act No. 283/1991 Coil. On the Police of the Czech Republic, Section 55, (2) and Section 209 of Act No. 141/1961 Coil. On Criminal proceedings (penal code), as amended.

2. b) is an expert or an interpreter and/or attorney for the defence, if the accused whom the attorney represents testified or shall testify to assist in the achievement of the aim of criminal proceedings, and/or

3. c) is a person in close relationship 1 to the person mentioned in letter a) or b).

(2) A protected person is an endangered person referred to in (1), to whom special protection and assistance is provided.

Section 3 Special Protection and Assistance

(1) Special protection and assistance is a set of measures including

1. a) personal protection

2. b) moving of the protected person including members of his/her household² to another address and assistance to the protected person with the aim to achieve the person's social assimilation in a new environment,

3. c) concealing the real identity of the protected person.

(2) The special protection and assistance is provided by the Police of the Czech Republic (hereinafter the "Police") and the Penitentiary Service of the Czech Republic (hereinafter the "Penitentiary Service") by carrying out the measures referred to in (1). The Penitentiary Service can carry out only the measures referred to in (1), letters

a) and c). The Police and the Penitentiary Service are obliged to assist each other while fulfilling the tasks pursuant to this Act.

(3) Public Administration authorities are obliged within the scope necessary for meeting the purpose of this Act to co- operate with the Police and the Penitentiary Service when implementing the measures referred to in (1). To conceal the real identity of the protected person it is possible to create a legend on another personal existence and insert personal data ensuing from the legend into the information systems operated according to special laws.

1 Section 116 of the Civil Code

These data are not specifically marked and are not filed separately from other personal data. 1

PART TWO PROVISION OF SPECIAL PROTECTION AND ASSISTANCE

Section 4

(1) Special protection and assistance can be provided if a) the endangered person agrees with the means and conditions for providing special protection and assistance including procession and use of his/her personal data (Section 8),

and b) the Minister of the Interior (further on only "Minister") approves the proposal of the Police, a judge or public prosecutor to provide special protection and assistance to the endangered person; the judge or public prosecutor submit such a proposal through the Justice Minister.

(2) The consent pursuant to (1), a) is required before submitting a proposal on providing special protection and assistance to the Minister; this does not apply if this is a proposal of a judge or public prosecutor. The endangered person must be informed by the Police according to his/her age and aptitude about the danger facing him/her, acquainted with the means and conditions for providing special protection and assistance and with obligations specified in this Act. Further on he/she must be warned that the facts concerning special protection and assistance are kept secret according to a special law² and has to be informed pursuant to the law. The Police shall write down a record on the information.

(3) If the threat to the endangered person is of an immediate character, the Police with the approval of the Police President, and in case the endangered person is in custody or serving a prison term, the Penitentiary Service with the approval of the General Director of the Penitentiary Service shall provide special protection and assistance before the Minister approves the proposal for the provision of a special protection.

1 Section 5, (1),c) of Act No. 10112000Coll. On the Protection of Personal Data and Amendments to some Laws.

2 Act No.14811998 Coil., On the protection of Classified Data and on the amendment to some laws, as amended.

In such cases the special protection and assistance can be temporarily provided even without the consent referred to in (1), a) if a temporarily grave health condition does not enable the endangered person to give his/her consent.

Section 5

(1) If the endangered or protected person is under age¹ or is a person who was by a court decision relieved of their legal steps ability or whose legal steps ability was limited by a court decision, the consent is given pursuant to Section 4, (1), letter a) by his/her legal representative.

(2) If the endangered or protected person referred to in (1) is to be informed pursuant to this Act, the information is provided to the legal representative.

(3) If there could be a conflict of interest between the endangered or protected person and his/her legal representative, the consent pursuant to (1) can be requested only from a special representative² or a guardian³.

(4) Until the period when a legal representative, special representative or a guardian gives a consent only measures referred to in Section 3, (1), letter a) can be taken.

Section 6

The protected person is obliged to

1. a) adhere to the conditions for providing special protection

and assistance.

2. b) fulfil the orders of the members of the Police (hereinafter "policeman") and members of the Penitentiary Service,

3. c) inform without delay policemen and members of the Penitentiary Service about all new facts and changes, which can be significant for the course of action of the Police and Penitentiary Service pursuant to this Act.

1 Section 9 of the Civil Code.

2 Section 30 of the Civil Code.

3 Section 37 of Act No. 94/1963 Coil. On the Family, as amended by Act No.132/1982 Coil., Act No.91/1998 Coil. and Act No. 360/1999 Coil.

Section 7

(1) The provision of a special protection and assistance is terminated if the protected person takes back in a written form his/her consent pursuant to Section 4 (1), letter a).

(2) The Minister on the proposal of the Police shall decide about the termination of the special protection and assistance, if the danger threatening the protected person ceases.

(3) The Minister can on the proposal of the Police decide about the termination of the special protection and assistance if the protected person

a) refused to assist according to provisions of the criminal code in achieving the purpose of criminal proceedings, in connection with which the special protection and assistance was provided or

b) at the time during which special protection and assistance was provided, behaved in such a way which gave reasons for criminal prosecution for the perpetration of a deliberate crime or

c) does not fulfil obligations of a protected person established in Section 6 and/or

d) infringes the obligation of keeping secret the matters under restriction.

(4) General regulations on administrative proceedings with the exception of provisions on the means of correction will be used for the proceedings on the termination of a special protection and assistance pursuant to (2) and (3). The means of correction, with a postponing effect, can be submitted to court, against the Minister's decision

pursuant to (2) and (3) within 15 days of its reception in court. It is impossible to pardon the deadline for submitting the means of correction.

PART THREE

RIGHTS AND OBLIGATIONS OF THE POLICE AND THE PENITENTIARY SERVICE

Section 8 Authorisation to Process Personal Data

(1) The Police and the Penitentiary Service are authorised for the purpose of this Act to process and use the personal data of the endangered or protected person.

(2) Act No.10112000 Coil. On the Protection of Personal Data and on the Amendment to some Laws, with the exception of Sections 16 to 19 and Section 27, applies to the activities of the Police and the Penitentiary Service referred to in (1) .

Section 9

Authorisation when Ensuring the Safety of Protected Persons

(1) If it is absolutely necessary for ensuring the safety of the protected person a policeman is authorised

1. a) to enter a building and carry out search of its premises, from where it would be possible to effectively endanger the protected person, and a search of persons, vehicles and things found in the premises,

2. b) to ban the entry and stay in the premises referred to in letter a) or in their parts for a period before necessary measures are taken so that the safety of the protected person could not be endangered from within the premises.

(2) A policeman is authorised to carry out the search of the premises pursuant to (1), letter a) only with the permission of the user. Without the permission he is authorised to carry it out if a reasonable suspicion exists, that an attack is to be carried out from the premises on the safety of the protected person. The policeman is obliged to ensure the presence of an impartial person. He does not have to do so if there is a danger of delay or if the impartial person's life or health could be put in jeopardy. Following the implementation of police acts connected with the entry into the premises, the policeman is obliged to without delay inform the user of the premises and ensure the security of the premises if neither the user nor other authorised person can do so.

(3) The policeman is authorised to carry out a personal search only if upon his request a person does not immediately leave the premises referred to in (1), letter a) or if there is a danger of delay. The personal search is carried out by a person of the same sex. If the personal search cannot be carried out by a person of the same sex and there is a reasonable suspicion that the person carries a weapon, the personal search can in an exceptional case, be carried out also by a person of another sex, if there is a danger of delay. If it is necessary to find out whether the weapon is not hidden in body cavities only a relevant medical expert can carry out the personal search.

(4) The searches referred to in (1), letter a) can follow no other purpose than ensuring the safety of the protected person.

Section 10

Authorisation when Safeguarding the Safety of Protected Premises

If a reasonable suspicion exists that an attack on the life and health of the protected person shall be carried out or on his/her property, the policeman is authorised, in the necessary scope and for a necessary period, to define the premises where the protected person stays or shall stay or where his/her property is found as protected premises (hereinafter "protected premises"). To mark or define the protected premises or their part, the policeman is authorised to use technical means. When securing the safety of the protected premises the policeman is authorised

1. a) to determine the identity of the person, who enters the protected premises or leaves the protected premises,

- 2. b) to determine the reasons for the person's entry into the protected premises,
- 3. c) to carry out a search of things carried in and out,
- 4. d) to stop the entering and exiting vehicles and carry out their search,
- 5. e) to make sure that the person entering the protected premises does not carry a gun and if so, for the time of stay in the premises, take the gun away,
- 6. f) to ban the entry or stay in the protected premises or in their part.

Section 11 Authorisation for Concealing Police Activities To conceal the activities of the Police when providing special

protection and assistance, a policeman is authorised to establish a commercial organisation, request trade authorisation or request permission for business enterprise on the basis other than trade authorisation according to special regulations. The purpose of the activity is, however, not business enterprise.¹

Section 12

A policeman when providing special protection and assistance is authorised to use cover documents, conspirative means, safety technology and special financial means.

Section 13

Cover Documents

(1) For the purposes of this Act a cover document shall be

an instrument, or some other document used, when providing special protection and assistance, to conceal the real identity of the protected person or a policeman, who provides special protection and assistance, and/or for other similar purposes.

(2) A cover document must not be an identity card of a deputy or senator, member of the Government, Governor of the Czech National Bank, member of the Supreme Audit Office and a judge of the Constitutional Court of the Czech Republic, official identity card of a judge and public prosecutor and a document of a living or dead person.

(3) Administration authorities and other state bodies shall execute, on the request of the Police, changes in information systems and shall issue cover documents.

1 Section 2, 1 of the Trade Code

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(4) The cover document is provided by the Police with the approval of the Minister. The Interior Ministry keeps a file with cover documents.

Section 14 Conspirative Means Conspirative means are a thing or premises used to conceal the

real identity of the protected person or policeman and/or Police activity when providing special protection and assistance.

Section 15 Security Technology Security technology are technical means, equipment and their

sets used with the aim of preventing or eliminating the threat to life and health of the protected person or safeguarding the protection of his/her property.

Section 16 Special Financial Means

(1) Special financial means are financial means set aside to be used to pay certain expenses in connection with the provision of special protection and assistance. Legal regulations valid for dealing with financial means of the state shall not apply for handling of special financial means.

(2) A policeman dealing with special financial means is obliged to use them in an economic way and properly in accordance with the purpose for which they were provided.

(3) The rules for using special financial means shall be established by the Minister on the proposal of the Police President.

Section 17

Other Authorisation

If it is necessary for providing special protection and assistance, the Police are authorised

1. a) to represent the protected person in the extent of their authorisation,
2. b) provide the protected person with financial means.

Section 18

A policeman and a member of the Penitentiary Service are obliged, when using the authorisation referred to in this Act, to behave in such a way as to honour and respect the dignity of persons and their own and not allow the persons in connection with this activity to suffer unreasonable damage, and a possible violation of their rights and liberties to exceed the extent necessary for the purpose specified by this Act.

Section 19

Compensation for Damages

(1) The state is responsible for the damages inflicted by

the Police or policeman in connection with providing special protection and assistance pursuant to this Act.

(2) The compensation for damages is provided by the Ministry of Interior.

Section 20

General regulations on administrative proceedings do not apply to proceedings provided for by this Act unless specified otherwise by this Act.

PART FOUR JOINT PROVISIONS

Section 21 International Co-operation

(1) In the framework of international co-operation classified facts are provided abroad without the approval of the pertinent state body. 1

(2) If it is necessary for the fulfilment of Police tasks pursuant to this Act, it is possible on the basis of an international agreement by which the Czech Republic is bound or if such an agreement has not been concluded, with the approval of the Police President and with the approval of the pertinent body of the foreign state to use for the fulfilment of these tasks a member of a foreign law enforcement agency. A member of the foreign law enforcement agency has the rights and obligations of a policeman pursuant to this Act.

(3) When carrying out tasks pursuant to (2) the activity of the member of the foreign law enforcement body is supervised by an officer designated by the Police President.

Section 22 Costs The costs for the provision of special protection and assistance are covered by the state.

PART FIVE

AMENDMENT TO THE CIVIL LEGAL CODE Section 23

Act No.99/1963 Coil., Civil Legal Code, Act No.36/1967 Coil. I

Act No. 158/1969 Coil., Act No. 49/1973 Coil. I Act No.20/1975 Coil., Act No. 133/1982 Coil., Act No. 180/1990 Coil., Act No. 328/1991 Coil., Act No. 519/1991 Coil., Act No. 263/1992 Coil., Act No. 24/1993 Coil., Act No.171/1993 Coil., Act No. 117/1994 Coil., Act No. 152/1994 Coil., Act No. 216/1994 Coil., Act No. 84/1995 Coil., Act No. 118/1995 Coil., Act No. 160/1995 Coil., Act No. 238/1995 Coil., Act No. 247/1995 Coil., Finding of Constitutional Court No. 31/1996 Coil. , Act No. 142/1996 Coil., Finding of Constitutional Court No. 269/1996 Coil. I Act No.

1 Section 67 (2) of Act 148/1998 Coll.

202/1997 Coil., Act No. 227/1997 Coil., Act No. 15/1998 Coil., Act No. 91/1998 Coil., Act No. 165/1998 Coil., Act No. 326/1999 Coil., Act No. 360/1999, Finding of the Constitutional Court No. 2/2000 Coil., Act No. 27/2000 Coil., Act No. 30/2000 Coil., Act No. 46/2000 Coil. I Act No.1 OS/2000 Coil. I Act No.130/2000 Coil., Act No. 155/2000 Coil., Act No. 204/2000 Coil., Act No. 220/2000 Coil., Act No. 227/2000 Coil., Act No. 367/2000 Coil. and Act No. 370/2000 Coil. shall be amended as follows:

After Section 250s a new Section 250t shall be inserted, which including footnote No.57a) shall read as follows:

"Section 250t

The Court shall decide on the means of correction of the decision on terminating special protection and assistance according to a special law57a) within 30 days

57a) Act No... ...12001 Coil. On the Special Protection of a Witness and other Persons in Connection with Criminal Proceedings and on an Amendment to Act No.9911963 Coil., Civil Legal Code, as amended."

PART SIX Effect

Section 24

This Act shall come into effect on July 1 st, 2001.

57a) Act No... ...12001 Coil. On the Special Protection of a Witness and other Persons in Connection with Criminal Proceedings and on an amendment to Act No.9911963 Coil., Civil Legal Code, as amended.

PART SIX

Section 23 Effect

This Act shall come into effect on July 1 st , 2001.