

# Penal Code



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

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

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

**PART ONE  
GENERAL PART**

**Chapter I:  
Competency of Criminal Acts**

**DIVISION 1  
No Criminal Offence without Law**

**Section 1  
Prohibition of Retroactivity**

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

**DIVISION 2  
Time Competency**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 5****Principle of Registration**

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

**Section 6****Principle of Personality**

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

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

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

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

**Section 8****Subsidiary Principle of Universality**

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

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

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

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

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

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

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

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

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

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

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

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

**Chapter II:****Criminal Liability**

## DIVISION 1

## Fundamentals of Criminal Liability

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

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

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

**Section 13****Criminal Offence**

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

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

### **Section 14** **Offences and Crimes**

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

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

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

## **DIVISION 2**

### **Fault**

#### **Section 15** **Intention**

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

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

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

#### **Section 16** **Negligence**

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

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

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

#### **Section 17** **Fault with Especially Aggravating Circumstances**

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

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

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

### **Section 18** **Error in Fact**

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

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

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

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

### **Section 19** **Error of Law**

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

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

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

### **Section 20** **Premeditation**

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

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

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

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

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

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

### **Section 21 Attempt**

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

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

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

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

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

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

## DIVISION 4

## Offender, Accomplice and Accessory to a Criminal Offence

**Section 22  
Offender**

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

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

**Section 23  
Accomplice**

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

**Section 24  
Accessory**

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

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

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

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

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

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

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

### **Section 25**

#### **Age**

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

### **Section 26**

#### **Legal Irresponsibility**

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

### **Section 27**

#### **Diminished Legal Responsibility**

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

## **CHAPTER III**

### **Conditions Excluding the Illegality of an Act**

#### **Section 28**

##### **Extreme Emergency**

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

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

#### **Section 29**

##### **Self Defence**

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

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

### **Section 30** **Consent of the Victim**

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

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

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

### **Section 31** **Admissible Risk**

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

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

### **Section 32** **Authorised Use of Weapons**

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

## Chapter IV

### Expiry of Criminal Liability

#### DIVISION 1

#### Expiry of Criminal Liability through Effective Remorse

##### Section 33

##### Effective Remorse

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

- 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

waived, having been found guilty thereby, they shall be deemed to have proven themselves competent.

(8) Where the court has pronounced that the offender, whose punishment was conditionally waived, has proven themselves competent or it is believed that they have proven themselves competent, they shall be regarded as if they had not been convicted.

### Subdivision 3 Supervision

#### Section 49 Definition and Purpose of Supervision

(1) Supervision denotes regular personal contact between the offender and an official from the Probation and Mediation Service (hereinafter referred to as a “probation officer”), co-operation in drawing up and implementing a probation plan for supervision during probational period and checking compliance with the requirements stipulated for the offender by the court or inherent in the law.

(2) The purpose of supervision is to

- a) monitor and check the offender’s behaviour; i.e. to ensure the protection of society and reduce the possibility of any repeated criminal activity,
- b) provide expert guidance and assistance to the offender with a view to ensuring that they lead an orderly life in the future.

(3) Supervision over the offender shall be entrusted to the probation officer.

#### Section 50 Obligations of the Offender

An offender upon whom supervision has been imposed is obligated to

- a) co-operate with the probation officer as required by the officer concerned and fulfil the probation plan for the supervision,
- b) attend appointments with the probation officer at a frequency specified by the officer concerned,
- c) inform the probation officer of their whereabouts, employment, means of support, compliance with the appropriate restrictions and obligations stipulated by the court and any other facts that are important in terms of carrying out the supervision by the probation officer concerned,
- d) allow the probation officer to enter the house where they live.

#### Section 51 Obligations and Entitlements of the Probation Officer

(1) The probation officer is obligated to perform their supervision over the offender in line with the drawn-up probation plan, assist the offender in their circumstances and carry out the instructions of the presiding judge conducive to the exercise of supervision and to ensure that the offender leads an orderly life. The probation officer is obliged to

regularly update the probation plan, taking into account the results of the supervision and the personal, family and other circumstances of the offender.

(2) If an offender, who is subject to the supervision, fails to comply, either repeatedly or in any material way, with the conditions of the supervision, probation plan or the appropriate restrictions and obligations, the probation officer shall report the fact without undue delay to the presiding judge who imposed the supervision. In the event of less serious violations of the specified conditions, probation plan or appropriate restrictions and obligations, the probation officer shall caution the offender with regard to the established deficiencies and instruct them that, in the event of any repeated or more serious violations of the specified conditions, probation plan or appropriate restrictions and obligations, they will report such violations to the presiding judge.

(3) Unless the presiding judge stipulates otherwise, the probation officer shall draft a report at least once every six months, advising the presiding judge of the court which imposed the supervision regarding how the execution of the supervision over the offender has progressed, on the offender's compliance with the specified conditions, the probation plan and appropriate restrictions and obligations, as well as the offender's general circumstances.

#### Subdivision 4

### Types of Penalties and Exceptional Punishment

#### Section 52

#### Types of Penalties

(1) The court may impose the following penalties for committed criminal offences

- a) prison sentence,
- b) house arrest,
- c) community service,
- d) forfeiture of property,
- e) monetary penalty,
- f) forfeiture of a possessed item or other assets,
- g) disqualification,
- h) prohibition of residence,
- i) prohibition of entry to sporting, cultural and other social events,
- j) loss of honorary degrees or accolades,
- k) loss of military rank,
- l) deportation.

(2) Unless defined otherwise under criminal law, punishment by a prison sentence denotes

- a) an unconditional prison sentence,
- b) a conditional conviction to the punishment by prison sentence,
- c) a conditional conviction to the punishment by prison sentence with supervision.

(3) The exceptional punishment is a special type of prison sentence (Section 54).

**Section 53****Imposing Multiple Penalties Separately and Concurrently**

(1) Where the criminal law stipulates multiple penalties for certain criminal offences, such penalties may be imposed consecutively or concurrently. In addition to the punishment specified by criminal law for any criminal offence, other penalties may be imposed as stipulated under Section 52. However, the punishment of house arrest can not be imposed concurrently with a prison sentence and community service, community service next to a prison sentence, nor a monetary penalty with the forfeiture of property or prohibition of residence alongside deportation.

(2) House arrest, community service, monetary penalties, prohibition of entry to sporting, cultural and other social events, deportation and prohibition of residence may be imposed separately, even though criminal law does not provide for such penalties for specific criminal offences.

**Section 54****Exceptional Punishment**

(1) The term exceptional punishment denotes both a prison sentence for over twenty to thirty years and a life prison sentence. An exceptional punishment may only be imposed for a particularly serious crime where provided for by criminal law.

(2) The court may only impose a prison sentence for over twenty to thirty years if the severity of a particularly serious crime is extremely high or the offender's susceptibility to reform is especially low.

(3) The court may only impose a life prison sentence to offenders who have committed a particularly serious crime of murder as provided for under Section 140 Subsection 3, or who, while committing a particularly serious crime of general endangerment under Section 272 Subsection 3, treason (Section 309), terrorist attack under Section 311 Subsection 3, terror (Section 312), genocide (Section 400), attack against humanity (Section 401), use of prohibited means of combat and clandestine warfare under Section 411 Subsection 3, war atrocities under Section 412 Subsection 3, persecution of the population under Section 413 Subsection 3 abuse of internationally and State recognised symbols under Section 415 Subsection 3 intentionally caused the death of another person, provided that

- a) such particularly serious crime is extraordinarily serious with regard to the particularly heinous method of execution or its particularly heinous motive or particularly severe and hard to remedy effects thereof and
- b) the imposition of such punishment is required to ensure the effective protection of society, or if there is no hope that the offender might be reformed by the punishment of prison sentence of twenty to thirty years.

(4) Where the court imposes a punishment of a life prison sentence, it may at the same time decide that the term of the prison sentence served in a prison with increased guard service shall not be included in the term of the prison sentence for the purposes of conditional release.

## Subdivision 5 Imposing and Serving Individual Punishments

### Section 55 Prison Sentence

(1) A punishment of an unconditional prison sentence shall be imposed for a maximum of twenty years unless it involves an extraordinary increase of a prison sentence (Section 59), imposition of a prison sentence upon an offender of a criminal offence committed in favour of an organised criminal group (Section 108) or an exceptional punishment (Section 54) is concerned.

(2) For criminal offences where the upper punishment limit of a prison sentence does not exceed three years, an unconditional punishment of a prison sentence may be imposed solely subject to the condition that, with regard to the character of the offender, imposing a different punishment would evidently not assist the offender to lead an orderly life.

(3) Unconditional punishment by prison sentence shall be served in prisons as specified under another legal regulation.

### Section 56 Serving a Prison Sentence

(1) Unconditional punishment by prison sentence shall be served in prisons differentiated as follows

- a) with supervision,
- b) with monitoring,
- c) with prison guard duty, or
- d) with increased prison guard duty.

(2) The court shall, as a general rule, place in prisons

- a) with supervision, such offenders upon whom a punishment has been imposed for an offence committed out of negligence and who has not previously served a punishment for an intentional criminal offence,
- b) with monitoring, such offenders upon whom a punishment has been imposed for an offence committed out of negligence and who has already served a punishment for an intentional criminal offence, or such offenders upon whom have been imposed punishments of a prison sentence of up to three years for intentional criminal offences and who have not previously served any punishment for an intentional criminal offence,
- c) with prison guard duty, such offenders upon whom a punishment for an intentional criminal offence has been imposed and where, at the same time, the conditions applying to the placement of such offenders in prisons with monitoring or increased prison guard duty have not been met, and such offenders who have been convicted of an offence committed out of negligence and who have not been placed to serve their prison sentence at a prison with supervision or monitoring,
- d) with increased prison guard duty, such offenders upon whom has been imposed an exceptional punishment (Section 54), upon whom has been imposed a prison sentence for a criminal offence committed in favour of an organised criminal group (Section 108), who have been imposed a punishment for a particularly serious crime

(Section 14 Subsection 3) with a lower punishment limit of an eight years' prison sentence or who have been convicted of an intentional criminal offence and have escaped custody or prison during the last five years.

(3) The court may place an offender into a prison of a different type than that to which they belong pursuant to Subsection 2 if it believes, after taking into account the severity of the criminal offence and the degree and nature of the offender's disturbance, that the effect of another type of prison establishment will have a greater chance of ensuring that the offender leads an orderly life; the court shall, however, always place offenders punished to life prison sentence in a prison with increased prison guard duty.

(4) The method of serving a prison sentence in the various types of prisons is regulated by another legal regulation.

### Section 57

#### Reallocating Convicts into another Type of Prison

(1) While serving their prison sentence, the court may decide to transfer the convict to another type of a prison; this may differ from the prison in which the convict is currently serving their punishment by one degree.

(2) The court shall decide to transfer the convict into a prison with a more lenient regime if the convict's conduct and the way in which they are complying with their obligations leads to the conclusion that such transfer will contribute to their reform.

(3) The court may decide to transfer the convict into a prison with a more severe regime if

- a) the convict materially or repeatedly violates prison rules or discipline, or
- b) the convict has been found finally guilty of a criminal offence committed during their prison sentence.

(4) No transfer may occur from a prison with increased prison guard duty

- a) for a convict upon whom a life prison sentence has been imposed and who has not served at least ten years of the sentence yet,
- b) for another convict serving their punishment in a prison with an increased prison guard duty before they have served at least one quarter of the punishment imposed.

(5) No convict shall be transferred to a prison with supervision or prison with monitoring who, pursuant to a court decision, is supposed to undergo institutionalised protective treatment, or who has been punished by deportation.

(6) Upon the request of any convict who has served at least one fourth of their punishment without interruption, but not, however, less than six months, the court may decide to transfer such convict to a prison with a more lenient regime; this shall not apply to a convict upon whom a life prison sentence has been imposed and who is serving their punishment in a prison with increased prison guard duty.

(7) Where a request pursuant to Subsection 6 is not granted, the convict may re-submit their request after six months has lapsed since the termination of the procedure dealing with their previous request.

### Section 58 Extraordinary Reduction of a Prison Sentence

(1) Where the court, in consideration of the circumstances of the case or the offender's circumstances, believes that use of the prison sentence set out by criminal law would be inappropriately severe and that the offender's reformation could be secured by a shorter prison sentence, it may reduce the length of the punishment to under the lower punishment limit stipulated by this Act.

(2) The court may also reduce a prison sentence to under the lower punishment limit where it convicts an offender who helped prevent a criminal offence that was premeditated or attempted by another person if, in consideration of the offender's situation and the nature of the criminal activity they committed, it is believed that the offender's reformation could be secured through a shorter prison sentence.

(3) Where a punishment of a prison sentence is reduced under Subsection 1 and 2, no punishment may be imposed

- a) shorter than a five years' prison sentence, where the lower punishment limit of the prison sentence amounts to a minimum of twelve years,
- b) shorter than a three years' prison sentence, where the lower punishment limit of the prison sentence amounts to a minimum of eight years,
- c) shorter than a one year's prison sentence, where the lower punishment limit of the prison sentence amounts to a minimum of five years.

(4) The court may also reduce a punishment of a prison sentence to under the lower punishment limit where an offender, who is identified as a co-operating accused, has met the conditions set out under another legal regulation; in doing so, the court shall take into account the nature of the criminal offence as described in the offender's confession compared to the particularly serious crime committed by members of an organised group, in connection with an organised group or in favour of an organised criminal group, whose completion they helped prevent or in whose clarification they contributed; it shall further take into account the importance of such conduct, the character of the offender themselves and the circumstances of the case, especially whether and to what extent the offender contributed to such a particularly serious crime, whose completion they helped prevent or whose clarification they committed to, as well as the impact their conduct has had, if any. The court shall not be liable to the restrictions stipulated under Subsection 3

(5) The court may further reduce a punishment of a prison sentence to under the lower punishment limit where it convicts an offender of premeditation to commit a criminal offence or attempted criminal offence or for abetting a criminal offence and believes, in consideration of the nature and seriousness of the premeditation, attempt or abetting, that application of the prison sentence stipulated by this Act would be inappropriately severe upon the offender and that the offender's reformation could be achieved with the use of a shorter punishment. The court shall not be liable to the restrictions stipulated under Subsection 3.

(6) The court may further reduce a punishment of a prison sentence to under the lower penalty limit where the offender has acted in legal error yet could avoid the error (Section 19 Subsection 2), has committed a criminal offence while trying to avert an assault or other risk without having entirely met the conditions of extreme emergency (Section

28) or self defence (Section 29), or exceeded the limits of admissible risk (Section 31) or the limits of another circumstance excluding illegality. The court shall not be liable to the restrictions stipulated under Subsection 3.

### **Section 59**

#### **Extraordinary Increase of a Prison Sentence**

(1) An offender who has recommitted a particularly serious crime (Section 14 Subsection 3), despite having been punished for an identical or another particularly serious crime in the past, may be punished by the court to a punishment in the upper half of the prison sentence punishment range as specified under criminal law, with the upper limit increased by one third where the severity of a particularly serious crime is particularly grave with regard to such re-offence and other circumstances of the case, or where the chances of the offender's reform are low.

(2) The upper limit of a prison sentence increased in accordance with Subsection 1 may exceed twenty years. When imposing an exceptional prison sentence of over twenty to thirty years, the upper punishment limit must not exceed thirty years.

### **Section 60**

#### **House Arrest**

(1) The court may impose a punishment of up to two years' house arrest when convicting an offender of an offence where

- a) in consideration of the nature and seriousness of the offence committed and the character and personal circumstances of the offender, it may be reasonably believed that imposition of such a punishment, perhaps concurrently with another punishment, will suffice, and where
- b) the offender shall sign a written pledge to the effect that during the period of time stipulated they will remain resident at a determined address and will provide all the necessary co-operation during any checks.

(2) House arrest may be imposed as a separate punishment where, considering the nature and seriousness of the offence committed and the character and personal circumstances of the offender, no other punishment need be imposed.

(3) Unless the court stipulates otherwise in its judgment, house arrest shall involve the convict's obligation to remain at a designated residence on all rest days and public holidays throughout the entire day, and on other days between 20.00 and 05.00, unless they are prevented from doing so for important reasons, especially their employment or pursuit of their occupation or the provision of health care at a medical establishment as a result of their illness; the medical establishment concerned shall be obliged to report such facts to the law enforcement authority upon its request. The court may allow the convict to attend regular church services or religious assemblies on rest days and public holidays.

(4) During the process of serving this punishment, the court may impose appropriate restrictions or obligations upon the offender as provided for under Section 48 Subsection 4 with a view to ensuring that the offender leads an orderly life; as a general rule, the convict shall also be ordered to compensate any damage or redress the non-material damage they

have caused by committing the criminal offence or to surrender any unjust enrichment obtained through a criminal offence, according to their ability to do so.

(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 one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4.

### **Section 61**

#### **Replacement Prison Sentence**

(1) Where the court imposes a house arrest and where the convicted defeats the serving of such punishment, it shall impose a replacement punishment of a prison sentence of up to one year.

(2) A defeated house arrest denotes failure to comply with the conditions of the house arrest stipulated under Section 60 Subsection 3 through 5; in such cases, the court shall decide on whether the entire replacement prison sentence shall be served and, at the same time, on the method in which the punishment is to be served.

### **Section 62**

#### **Community Service**

(1) The court may impose community service where it convicts the offender of an offence; community service may be imposed as a separate punishment where, with regard to the nature and seriousness of the offence committed and the character of the offender and their personal circumstances, no other punishment needs to be imposed.

(2) The court shall generally not impose community service where the offender's community service punishment has been transformed, during the three years preceding the imposition of this type of punishment, into a prison sentence pursuant to Section 65 Subsection 2.

(3) A punishment of community service consists of a convict's obligation to complete a determined work for the sake of the community. Such work shall involve the maintenance of public spaces, the maintenance and cleaning of public buildings and roads or other activities in favour of municipalities or in favour of the State or other institutions working for public benefit in education and science, culture, the school system, healthcare, the fire service, environmental protection, the support and protection of youth, protection of animals, humanitarian, social, charitable, religious, fitness and sporting activities. The work must not be connected to any income generating activities of the convict.

### **Section 63**

#### **Severity of Community Service**

(1) Generally, the court may impose between 50 and 300 hours of community service.

(2) The court may further impose appropriate restrictions and obligations upon the offender to apply during the term of the punishment as provided for under Section 48

Subsection 4 with a view to ensuring that they lead an orderly life; as a general rule, the convict shall also be ordered to compensate, depending on their ability, any damage or redress the non-material damage they have caused by committing the offence or to surrender any unjust enrichment obtained through a criminal offence.

(3) 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 one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4.

#### **Section 64**

##### **Standpoint of the Offender and their Medical Health**

When imposing community service, the court shall take into account the offender's own standpoint, their health, as well as whether such a punishment can be practicably imposed. The court shall not impose community service if the offender's medical health will not allow for the systematic performance of such work.

#### **Section 65**

##### **Serving a Community Service Punishment**

(1) Community service must be completed by the convict in person, for no remuneration and in their spare time, at the latest within one year of the court imposing the obligation to serve the punishment. The above time limit shall not include the period during which the convict

- a) could not carry out community service due to health-related or statutory barriers, or
- b) was in custody or serving a prison sentence.

(2) Where the offender does not lead an orderly life between their conviction and the termination of the community service punishment, or avoids starting serving their community service punishment, or without serious justification violates the agreed conditions of the community service, or otherwise defeats the execution of such a punishment or culpably fails to serve the punishment as imposed during the specified term, the court may transform the community service punishment or its remaining part, even during the term specified for serving the punishment, into a punishment of a prison sentence and, at the same time, decide on how such prison sentence shall be served; simultaneously, every hour of a non-served community service punishment and every hour only started but not finished shall correspond to one day of a prison sentence.

(3) In exceptional circumstances, the court, considering the circumstances of the case and character of the convict, may decide to leave the punishment by community service in effect or extend its term by up to six months, even if the conduct of the convict has given good grounds for transforming the punishment as provided for under Subsection 2, and

- a) set out supervision over the convict covering the term of the punishment or its remaining part,

- b) impose upon the convict during the term of their punishment or its remaining part any hitherto non-imposed appropriate restrictions or obligations under Section 48 Subsection 4, or
- c) impose upon the convict during the term of their punishment or its remaining part any of the educational measures as provided for under Section 63 Subsection 3, if the convict is of an age close to the age of a legal minor.

The carrying out of supervision shall be similarly liable to Section 49 through 51.

(4) An offender upon whom community service has been imposed shall be regarded as if they had never been convicted once the punishment has been completed or where the punishment or its remaining part has been finally waived.

### **Section 66 Forfeiture of Property**

(1) The court may, in consideration of the circumstances of the criminal offence committed and the offender's personal circumstances, impose the forfeiture of property if it punished an offender to an exceptional punishment or if it punished them for a particularly serious crime in which the offender sought to gain or gained for themselves or for another person material benefits.

(2) Where the conditions under Subsection 1 have not been met, the court may only impose the forfeiture of property in the event that the criminal law permits the imposition of such punishment for the criminal offence committed; as a separate punishment, forfeiture of property may be imposed if, in consideration of the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstances, the imposition of any further punishment is unnecessary.

(3) Forfeiture of property shall apply to the entire property of the convict or such part of it as determined by the court; the forfeiture, however, shall not apply to those items of possession that are essential in terms of satisfying the convict's fundamental needs or the needs of persons for whose alimentation and upbringing the convict is obliged to provide under the law.

(4) A tenancy by the entirety shall expire upon a statement of forfeiture of property.

(5) The confiscated property falls to the State.

### **Section 67 Monetary Penalty**

(1) The court may impose a monetary penalty where the offender sought to secure or secured for themselves or for another person any material benefit by committing an intentional criminal offence.

(2) Where the conditions under Subsection 1 have not been met, the court may only impose a monetary penalty if

- a) criminal law allows the imposition of such punishment for the criminal offence committed, or

b) it is imposed for an offence and given the nature and severity of the offence committed and the character of the offender and their circumstance, they do not impose the unconditional prison sentence simultaneously.

(3) A monetary penalty may be imposed as a separate punishment where, in consideration of the nature and seriousness of the criminal offence committed and the character of the offender and their situation, no other punishment need be imposed.

### **Section 68**

#### **Severity of a Monetary Penalty**

(1) A monetary penalty shall be imposed in terms of daily rates, the total number of which shall be at least 20 and at most 730 full daily rates.

(2) A daily rate shall amount to at least CZK 100 and at most CZK 50,000.

(3) The court shall determine the number of daily rates by taking into account the nature and seriousness of the criminal offence committed. The court shall determine the amount of the single daily rate of a monetary penalty upon consideration of the personal and property-related situation of the offender. In so doing, the court shall, as a general rule, draw upon the offender's actual or potential average daily net income.

(4) The offender's incomes, property and revenues generated from property, as well as the other assessment bases required for determining the daily rate may be set out by the court.

(5) The court shall note the number and amount of daily rates in their decision. If, with regard to the offender's property-related and personal circumstances, the offender cannot be expected to pay the monetary penalty immediately, the court may set out that the monetary penalty be paid in reasonable monthly instalments; in so doing, it may decide that the concession whereby the monetary penalty is paid in instalments shall be dropped if the offender fails to provide payment of an instalment on time.

(6) The court shall not impose a monetary penalty if it is evident that such punishment would be uncollectible.

(7) Sums paid as a monetary penalty shall fall to the State.

### **Section 69**

#### **Replacement Prison Sentence**

(1) Where the court imposes a monetary penalty, it shall impose a replacement punishment of a prison sentence of up to four years in cases where payment of the monetary penalty is not set out within the specified period of time. The replacement punishment together with the imposed prison sentence, however, must not exceed the upper punishment limit.

(2) An offender upon whom a monetary penalty has been imposed for an offence committed out of negligence shall be regarded as if they had never been convicted once the punishment is completed, or after the punishment or its remaining part is finally waived.

**Section 70**  
**Forfeiture of a Possessed Item or Other Asset**

- (1) The court may impose the forfeiture of an item of possession or other asset,
- a) which was used in committing a criminal offence,
  - b) which was designated for the commission of a criminal offence,
  - c) which the offender obtained by committing a criminal offence or as a reward for such an act, or
  - d) which the offender, if only in part, obtained in return for a possessed item or other asset as specified under Paragraph c), unless the value of the possessed item or other asset under Paragraph c) is negligible with regard to the value of the possessed item or other asset obtained.
- (2) The court may only impose forfeiture of a possessed item or other asset where the possession or asset concerned belongs to the offender.
- (3) If, contrary to another legal regulation, the offender has an item or other assets referred to in Subsection 1 and 2, in possession, with regard to which the forfeiture of a possession or other asset may be imposed, the court shall always impose this punishment as well.
- (4) Before the decision enters into full force and effect, the prohibition on misappropriating a confiscated possession or other asset applies; this includes the prohibition on any activities that would lead to the defeating the punishment involving the forfeiture of an item of possession or other asset.
- (5) The confiscated possessed item or other asset falls to the State.

**Section 71**  
**Forfeiture of a Replacement Value**

- (1) If, prior to the imposition of the forfeiture of a possessed item or asset which the court may declare confiscated under Section 70 Subsection 1 and 2, the offender destroys, damages or otherwise depreciates, misappropriates, renders unusable, removes or exploits, in particular by consumption of such possessed item or other asset, or if they otherwise defeat its forfeiture, the court may impose the forfeiture of a replacement value up to the amount corresponding to the value of such possessed item or other asset. The value of the item or other assets that the court could declare confiscated may be set out based on an expert statement or report.
- (2) Where the item or other assets is only in part depreciated, rendered unusable or removed, the court may impose forfeiture of a replacement value alongside the forfeiture of the possessed item or other asset under Section 70 Subsection 1.
- (3) The confiscated replacement value falls to the State.

**Section 72**  
**Forfeiture of a Possessed Item or Other Asset as a Separate Punishment**

The court may only impose the forfeiture of a possessed item or other asset as a separate punishment where criminal law permits the imposition of such punishment and if, with regard to the nature and seriousness of the criminal offence committed and the

character of the offender and their personal circumstance, no other punishment need be imposed.

### **Section 73** **Punishment by Disqualification**

(1) The court may impose a punishment consisting of a punishment by disqualification of one to ten years if the offender has committed a criminal offence in association with such activity.

(2) The court may only impose a punishment by disqualification as a separate punishment where the criminal law permits the administration of such punishment for the criminal offence committed and if, with regard to the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstance, no other punishment need be imposed.

(3) The punishment by disqualification consists of the convict being prevented for the duration of the punishment from pursuing certain employment, occupation or function or such an activity which is conditioned by a special licence, or whose pursuit is regulated by another legal regulation.

### **Section 74** **Serving a Punishment by Disqualification**

(1) Serving a punishment by disqualification shall not include any time serving a prison sentence; however, the period for which the offender was entitled to pursue an activity that is the subject of the prohibition, prior to the judgment of the court taking full force and effect, but during which, as a consequence of committing the criminal offence, the offender's licence was revoked under another legal regulation or on the basis of a measure taken by a public authority, shall count towards the serving of the punishment.

(2) Once the punishment by disqualification has been served, the offender shall be regarded as if they had not been convicted.

### **Section 75** **Prohibition of Residence**

(1) The court may impose a one to ten years prohibition of residence for an intentional criminal offence if, after taking into account the offender's current way of life and the place of committing an act, it deems it necessary for protecting the public order, family, health, good morals or property; a punishment of prohibition of residence shall not apply to the place or district in which the offender has their residence.

(2) The punishment of prohibition of residence may be imposed as a separate punishment for a criminal offence for which the criminal law stipulates a prison sentence whose upper punishment limit does not exceed three years if, in consideration of the nature and seriousness of the committed criminal offence, the character of the offender and their situation, no other punishment need be imposed.

(3) The court may impose appropriate restrictions and obligations on the offender to apply during the term of the punishment as provided for under Section 48 Subsection 4

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