

# International Terrorism

## Current Challenges and Legal Means of Protection in the Czech Republic

*Jiří Jelínek*

The article analyses two current issues relating to the contemporary international terrorism. Firstly, it is the ingrowth or merging of international terrorism with organised crime, as a criminological or sociological problem. Secondly, it is the threat posed by the growing number of persons referred to as “foreign terrorist fighters,” i.e. persons leaving the countries of their origin and travelling to the world conflict areas with the intent to support and promote terrorist criminal offences, terrorist groups or to spread terrorist ideology. Upon return to the country of their origin, these persons pose a real threat not only to this country but also to other countries, especially for their possible contribution to the radicalization of local crime scenes in which they tend to be involved; also when connected with the domestic terrorist cells, they pose a risk to the society as a whole. The author analyses the amendment to the Czech Penal Code made by Act No. 455/2016 Coll. responding to this threat by the criminalisation of certain conduct that was not punishable in the past. The amendment to the Penal Code has brought further changes which shall eliminate the gap between Czech criminal legislation and the binding legal instruments of the European Union in the fight against terrorism.

*Keywords: terrorism, fight against terrorism, organised crime, criminal law, foreign terrorist fighters, Czech criminal law*



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## Introduction

A series of terrorist attacks in Europe and elsewhere, along with new manifestations of international terrorism, has revived the interest in the means of legal protection against terrorism. The phenomenon of terrorism is not confined to the territory of one state; instead, it crosses borders and does not have any limitations of time or resources. Nowadays, we thus encounter the concept of international terrorism (transnational terrorism).<sup>1</sup>

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International terrorism is an example of transnational crime; it is one of the global problems of humanity and one of its global threats. It is also one of the most serious attacks on democracy and the rule of law, i.e. the attributes of a modern European society. As such terrorism becomes more and more dangerous, the states need to take appropriate measures to combat it. Terrorism can no longer be perceived as a problem of only the states directly affected by it.

Terrorism is a particularly sensitive issue especially to its victims who may feel even more vulnerable than the victims of common crime since they have even less control over their destiny. They are not able to determine what went wrong or what could have been done to prevent their victimization, while there are not any clear instructions on how to protect themselves against further terrorist attacks.<sup>2</sup>

Terrorism presents a particularly dangerous threat to national security; since it first and foremost uses violence against the civilian population in order to maximise casualties and does not spare the lives of the terrorists' own combatants. The motive of a specific terrorist attack is sometimes difficult to identify, while the consequences can still be devastating for both the population and stability of political institutions.<sup>3</sup> The global threat that terrorism poses for humanity naturally calls for reactions towards its suppression at global (UN),<sup>4</sup> regional (OAS, Organisation for Security and Cooperation in Europe, Council of Europe),<sup>5</sup> European (EU),<sup>6</sup> and national level of individual states – members of the European Union.<sup>7</sup>

The fact that neither domestic nor international terrorism has significantly affected the Czech Republic does not relieve the country of its obligation to fight it. On one hand, the Czech Republic bears responsibility towards its own citizens and residents, to whom it shall ensure safety on its territory; on the other hand, the country bears responsibility also towards other countries to ensure that neither the Czech Republic nor its residents are involved in terrorism or unlaw-

ful promotion thereof. We also cannot underestimate any potential jeopardy of the interests of the Czech Republic abroad; e.g. concerning embassies, military missions, trade organisations etc.

A highly visible threat presents also the prospect of radicalization of domestic extremist groups or the “overgrowth” of all forms of intolerance and extremism in response to the manifestations of terrorism. We also cannot exclude any potential influence of persons departing abroad with the intention to participate in the terrorist activities in conflict areas, who return back to their countries to radicalise domestic extremist or criminal structures to terrorism; as will be discussed in the next section. It must be borne in mind that foreign terrorist fighters were linked to the recently planned and/or executed terrorist attacks in several member states of the European Union. Therefore, security threats are posed by both, Czech citizens travelling abroad for the purpose of terrorism, as well as any other nationals travelling to the territory of our country to carry out a terrorist attack or to support terrorist activities in the Czech Republic.

In addition, the European Union and its member states are facing an increased threat from individuals remaining in Europe who are being inspired or controlled by foreign terrorist groups.

Effective counterterrorism measures that a state possesses are both non-legal (technical, medical, communicational, organisational) and legal. The legal measures include both non-criminal and criminal legislation.

Non-criminal legislation includes, for example, the regulations governing the stay of foreigners in the territory of a state, the crossing of state borders, border surveillance, travel documentation, population registers, protection of important objects, cooperation with foreign countries and international exchange of information, powers of the secret services, regulating the availability and use of weapons, explosives, poisons or other hazardous substances, management of crisis situations for both peacetime and war etc. There are a long series of such legislations contextually usually falling under the provisions of constitutional or administrative law.

Criminal legislation is then a subset of anti-terrorism legislation which is, depending on the regulation of social relations, either substantial (criminalisation of terrorist offences and their sanctioning, or a prevention of crime) or procedural (measures to search, examine, and prove terrorist acts in criminal proceedings, protection of victims

of terrorist offences, protection of vulnerable witnesses of crime). An important role in protection against terrorism is also played by the criminal liability of legal entities enshrined in the Czech Republic on 1 January 2012. Under the current Penal Code amended by Act. No. 455/2016 Coll., all the “anti-terrorist” offences, i.e. a terrorist attack, terror, participation in a terrorist group, terrorism financing, support and promotion of terrorism, threatening to commit a terrorist criminal offence, can be committed by a legal entity (cf. Section 7(1) of Act No. 418/2001 Coll.).

Although the very concept of terrorism is controversial, or rather difficult to grasp,<sup>8</sup> which applies also to the phrase “fight against terrorism,” a precise definition of these terms in national law is essential for their compliance with the principle *nullum crimen sine lege* as a basis for criminal liability. A precise definition of this concept is important also with regard to international and European cooperation in the fight against terrorism.

Czech criminal law has never defined the concept of terrorism, however, the Czech Penal Code (Act No. 40/2009 Coll.) before amended by Act. No. 455/2016, contained only two key offences for the prosecution of terrorist actions; they were the offence of terrorist attack (Section 311 of Penal Code) and the offence of terror (Section 312 of Penal Code). After the above-mentioned amendment, the Penal Code contains also the definition of a terrorist group, terrorist criminal offence, four special “anti-terrorist” criminal offences (Sections 312a to 312f), and several other changes, the common objective of which is the protection of society against the threat of terrorism by criminalisation of conduct that supports or promotes terrorism.

The article analyses two current issues relating to the contemporary international terrorism.

Firstly, it is the ingrowth or merging of international terrorism with organised crime. Secondly, it is the threat posed by the growing number of people travelling abroad for the purpose of committing terrorist offences, their support or training. These individuals are often referred to as “foreign terrorist fighters.”

## **Terrorism and Organised Crime**

Terrorism is sometimes regarded as a subset of “organised crime.” However, some experts do not accept such a classification. According

to Novotný and Zapletal, the pursuit of monetary gain is not the dominant feature of terrorism, and thus it does not fall under the rubric of organised crime for which profit is a typical motive.<sup>9</sup> The authors further state that we can distinguish between nationalistic, ideological and state-sponsored terrorism, as well as left-wing and right-wing terrorism. However, the very definition of terrorist conduct depends very much on the political orientation of the assessor.<sup>10</sup>

Recently, Šimovčák and Jalč discussed this issue in a study devoted to organised crime. While the main objective (and one of the defining traits) of organised crime is financial or other material gain, the main goal of a terrorist conduct (and also a fundamental defining trait) is a change of policy direction through pressure on public authorities.

The authors note that the Council of Europe defines organised crime and terrorism as two a priori different concepts. Most criminal groups and networks in Europe are involved in frauds and other forms of economic crime, in production and trafficking of drugs, smuggling and trafficking of human beings, but they are not involved in terrorist activities. However, there are some similarities and links between organised crime and terrorism, which are reflected especially in the financing of terrorism by the revenues from organised crime.

The similarities lie also in the fact that both organised crime and terrorism operate on an international level, are organised in the form of a network or cellular structures, benefit from diaspora communities, and last but not least, they need a safe haven and secrecy of their financial transactions.<sup>11</sup>

The relationship between terrorism and organised crime is, however, somewhat more complex than how it is shown in the aforesaid sources; for example, difficulties lie in the fact that terrorists may organise themselves not only through the cells and networks but also with the use of modern communication technologies and may be managed not only from a central headquarters but also through internet coordination of like-minded people.

Terrorism and organised crime have certain features in common; although other features vary, they cannot be strictly separated from each other. Already in the past twentieth century, there existed their interaction, networking, and convergence; therefore, we talk about the theory of convergence of terrorism and organised crime creating a hybrid phenomenon.<sup>12</sup>

Both concepts are united mainly by the fact that they are difficult to generally define. There are a long series of definitions of organised crime and terrorism, however, none of is universally applicable. Both concepts are very general, vague and with a globalisation effect that has no limits and crosses national borders or even continents.

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Terrorism and organised crime are also similar in the fact that both of these phenomena pose a threat to the democratic rule of law and undermine the constitutional order, political and economic system of the state, and destroy the judicial system. Both the individual terrorist activities and the impact (manifestation) of organised crime consistently weaken and undermine the proper functioning of the official state structures.

However, organised crime and terrorism differ in their relations to the state. Although organised crime often tries to create a “state within a state,” and most often through corruption influences certain authorities; senior representatives of organised crime have an interest in creating or maintaining the apparent legality of their activities. Oppositely, terrorism acts openly against the state, it ostentatiously proclaims its opposition to state structures in order to gain public attention and to cause a reaction in society in order to destabilise the existing social order or to enforce a specific change. However, even terrorism may be exceptionally linked directly to the state; for example, in supporting terrorist groups directly by the government of a particular state. It shall be born in mind that a long-term objective of terrorist groups is a real communion with the state itself in sense of replacing its structures by a terrorist group itself.<sup>13</sup>

For both terms, there are typical (identical, similar) ways and means of committing offences. A typical manifestation of both phenomena is mainly the use of violence, threat of violence, and threat of another serious injury. The violence can function both externally, towards a person other than a member of a criminal or terrorist group, or it can be used to maintain control over a group of organised crime or a terrorist group. The use of weapons, explosives or other substances with effects on human life and health is also a typical attribute of both phenomena. To conceal their activities, both of them use various false identification documents, false documentations of origin and movement of goods; they also use information resources and technologies to create a false identity of their members or groups, and they create fictitious com-

panies to conceal their true activities etc. A certain current trend presents a creation of different legal structures serving as a cover for any illegal activities of the group. Until recently, this phenomenon used to be typical for organised crime; however. Nowadays it is becoming an example of takeover practices from organised crime to terrorism.<sup>14</sup> Organised crime and terrorism are thus connected by a certain level of structure and organisation. Both phenomena work through criminal networks that are consistently changing; it increases their flexibility and reduces the risk of exposing their planned activities. Both phenomena often operate on principles similar to business operations.<sup>15</sup>

A successful attack within organised crime, such as a bank robbery; as well as a successful terrorist attack, often requires careful planning, the ability to work undercover in order to avoid unnecessary suspicion and thus to avoid revelation of the planned attack. For both organised crime and terrorism, certain organisational units are typical such as cells or networks, within which the offenders are organised. For the reasons of safety, these cells may be functionally independent so that every member has little knowledge about the other cells and other members. The members of individual cells can provide emotional support and maintain loyalty. Only the leader of the cell knows how to communicate with the other cells or with the control centre. Revealing identity of a single cell does not uncover the identity of other cells. The number of cells and their composition depends on the size of a criminal or terrorist group; it can be a local or national group having fewer cells, but it can also be a large international organisation operating in various states.<sup>16</sup>

While organised crime cannot by definition operate with a single offender, a terrorist attack may be performed even by a single terrorist (“terrorist loner,” “lone wolf”), which represent an exception to the existence of internal organisational structure as an attribute of both organised crime and terrorism. The reality of the danger resulting from presence of the lone terrorist (“lone wolves”) is evidenced by the new directive of the European Parliament on combating terrorism, the draft of which was approved by the European Parliament on 16 February 2017, and which repeatedly emphasises the seriousness and dangerousness of these persons and their activities.

The fundamental difference between organised crime and terrorist groups is the primary motivation of their formation and operations. While organised crime is absolutely dominated by its focus on profita-

bility and maximisation of gain, terrorist groups are primarily characterized by their ideological motivations constituting the basis for their activities. For the terrorist organisations, financial gain is not an objective, but only a tool to achieve other, “higher” and “noble” goals.

Organised crime, unlike terrorism, does not have any long-term plans for its activities, with an exception of its efforts to maximise returns. If possible, it fulfils its aim gradually, quietly, secretly, and without getting any attention of investigating and judicial authorities. Principally, organised crime is not against the state; it only tries to inconspicuously weaken the state and to make its powers less functional in order to gain room for its activities. More than the state, the true enemy of criminal groups is the “rule of law,” which poses an inherent risk for the activities and existence of organised crime.

Contrary to the organised crime, terrorism is principally future-oriented, the activities of terrorist groups are planned in a relatively long time perspective. The state is a natural enemy of terrorism with whom it fights for its legitimacy. Terrorist attacks are directed against the powers of the state, which terrorism tries to weaken, bring under its control, and take over their function.<sup>17</sup> Contrary to criminal groups, terrorist groups do not restrict their membership. They are characterised by their effort to get as many members, supporters, and sympathizers as possible; and for this purpose, they do not hesitate to use social networks (while mafia, by the nature of things, will not advertise its needs for a skilled toolmaker, accountant or computer specialist).

There is a lot in common between terrorist organisations and organised crime; therefore, in many cases, terrorists may easily establish their contacts with organised crime, and start a successful and beneficial cooperation. The possibilities of cooperation between terrorist groups and organised crime stem also from the fact that terrorist groups might not possess the means to commit a crime through its own membership; however, they might be able to do so with the use of resources offered by organised crime.

Undoubtedly, there are other differences between organised crime and terrorism, such as a different motivation of members of organised crime and terrorist organisation members. Lately, there has been a mutual intertwining and influence between organised crime and terrorism; for example, when a terrorist group carries out the activities typical for organised crime in addition to its main “terrorist” activities, such as drug and human trafficking, extortion, kidnapping, robbery,



extortion of money for protection, oil smuggling, smuggling and trafficking of arms, cigarettes, counterfeit goods, human organs, cultural goods. Given the convergence of objectives, methods and the means of transnational terrorism and organised crime; it creates a new threat of a specific nature, for prevention and detection of which it is necessary to adopt appropriate measures.

## Foreign Terrorist Fighters and Czech Criminal Law

One of the current problems linked to international terrorism in the last decade is a question of European citizens migrating to the world conflict areas and their involvement in terrorist training or operations. There is a growing number of persons travelling or attempting to travel to the countries whose they are not resident or nationals, and where they are involved in the planning of terrorist activities, preparation of terrorist attacks or where they even participate in combat operations. They can be motivated by several factors such as ideology, money, religion, family relationships, desire for adventure, desire to help a “good cause,” sympathies to the group involved in the armed conflict, inability to succeed in the country of their origin, or other motives.

These people, often referred to as “foreign terrorist fighters,” pose a real threat to the internal security of individual states of the European Union after their return; both in terms of organising the recruitment of other persons or the propagation of terrorism, as well as in terms of the potential use of their combat experiences to commit terrorist acts or their potential involvement in the structures of organised crime.<sup>18</sup> The foreign fighters influence the duration of armed conflicts in a foreign country by the fact that they have no relationship (family, work) to it. Therefore, they only prolong the conflict by their conduct. As individuals accustomed to violence, they might, upon their return, radicalise the criminal structures in the countries of their origin, or they may directly introduce in the terrorist activities of foreign terrorist groups into the country of their origin.

Social seriousness of foreign fighters activities lies also in the fact that these persons are not often organised in conventional terrorist structures, and they are linked only by their common goal and common views (when leaving, they often do not even know to which country they will travel or to which terrorist organisation they will join).

To illustrate the topicality of this issue, we can refer to the statement of the French Prime Minister Mannuel Valls made in March 2016, according to which more than 6,000 people have left France to go to fight in the ranks of the Islamic state in Syria and Iraq, and additional 800 were ready to leave. According to this statement, the country makes daily efforts to trace the Islamist network, to locate their cells and arrest their members. Referring to the French secret service, Valls stated that also 283 women and 18 minors are believed to be fighting in the ranks of the Islamic state.<sup>19</sup>

Since then, the number of foreign fighters, returnees, dead and wounded persons has undoubtedly increased.<sup>20</sup>

It was the extraordinary social seriousness of various acts of the so-called “foreign fighters,” as well as the belief that the Czech penal provisions do not adequately punish these acts, and the obligations arising from the legal instruments of international law and European criminal law<sup>21</sup> that forced the Czech criminal legislation to react to this current social threat. It happened through Act No. 455/2016 Coll., amending the Penal Code and other related laws. The new legislation is effective from 1 February 2017; with its general objective to criminalise the conduct of individuals intending to join terrorist activities abroad, to plan and prepare them, and to participate in terrorist movements, or to receive terrorist training, etc.

Criminal prosecution of the so-called foreign fighters operating in the armed entities that do not belong to the army of another state is possible under the current Czech penal legislation under several offences, which are:

*Terrorist Attack* (Section 311 of the Penal Code): An offender with a terrorist intent<sup>22</sup> performs a series of exhaustively enumerated acts, e.g. performs an attack threatening the life or health of a person with the aim of causing death or grievous bodily harm, seizes hostages or performs kidnapping, destroys or damages public facilities, transport or telecommunications system, including information systems, fixed platforms on the continental shelf, energy, water, medical or other important facilities, public spaces or property to a greater degree to endanger lives, equipment safety, systems, or an open space, or to put a property in danger of large-scale damage, disrupts or interrupts the water supply, hijacks an aircraft, ship or other means of passenger and freight transport or a fixed platform in shallow continental waters, or

takes control over such means of transport or platform, or destroys or seriously damages the navigation device, or interferes with its operation to a greater degree, illegally produces or otherwise acquires, possesses, imports, transports, exports or otherwise provides or uses an explosive, nuclear material, nuclear, biological, chemical or other weapons, combat equipment or material of a similar nature, or carries out research and development of nuclear, biological, chemical or other weapons or combat equipment or explosives prohibited by law or international treaty.

This provision protects also a foreign state to the same extent that it applies to the interests of the Czech Republic. (Section 313).

*Terror* (Section 312 of the Penal Code): An offender kills another person with the intention to damage the constitutional establishment of the Czech Republic.

*Participation in a Terrorist Group* (Section 312a of the Penal Code): An offender establishes a terrorist group or participates in the activities of a terrorist group.

*Terrorism Financing* (Section 312d of the Penal Code): An offender themselves or through another person financially or materially supports a terrorist group, its member, terrorist or the commission of a terrorist criminal offence, gathers funds or other items with the intention to use them for such a purpose.

*Support and Promotion of Terrorism* (Section 312e of the Penal Code): An offender publicly encourages the commission of a terrorist criminal offence or publicly approves a committed terrorist criminal offence or arranges another person to commit a terrorist criminal offence or provides another person with information or training concerning the use of weapons and explosives, or obtains information or the purpose of committing a terrorist criminal offence or provides or promises remuneration for the commission of a terrorist criminal offence. The provision further criminalises the cases of travelling abroad for the purpose of committing a terrorist attack or other listed terrorist criminal offences.

*Threatening to Commit a Terrorist Criminal Offence* (Section 312f of the Penal Code): An offender threatens to commit a terrorist criminal offence.

Section 312e of the Penal Code is of a fundamental importance in relation to the criminalisation of foreign fighters activities, as defined above. It is composed of three separate sets of constituent elements,

and one additional set of qualified constituent elements. The basic sets of constituent elements were adopted as follows:

*Section 312e  
Support and Promotion of Terrorism*

*International  
Terrorism*

*1) Whoever publicly encourages the commission of a terrorist criminal offence or whoever publicly approves a committed terrorist criminal offence or publicly extols the offender of such an offence shall be punished by a prison sentence of two to ten years.*

*2) Punishment by a prison sentence of three to twelve years or also in conjunction with such punishment by forfeiture of property shall be imposed upon a person*

*a) who arranges another person to commit a terrorist criminal offence or the criminal offence of participation in a terrorist group (Section 312a),*

*b) who provides another person with information or training concerning the production or use of explosives, weapons, hazardous substances or other similar methods or techniques for the purpose of committing a terrorist criminal offence,*

*c) who obtains information or acquires skills concerning the production or use of explosives, weapons, hazardous substances or other similar methods or techniques for the purpose of committing a terrorist criminal offence, or*

*d) who themselves or through another person provides or promises remuneration or indemnity to or on behalf of another person for the commission of a terrorist criminal offence or organises a fund-raising collection for such remuneration or indemnity.*

*3) The same punishment as that referred to in Subsection 2 shall be imposed upon*

*e) a person who is a citizen of the Czech Republic if they travel to another State of which they are not a citizen, or in which they were not granted permanent residence, in order to commit a terrorist criminal offence, the criminal offence of participation in a terror-*

*ist group (Section 312a), threatening to commit a terrorist criminal offence (Section 312f) or a criminal offence referred to in Subsection 2 Paragraph b) or c), or a person who is not a citizen of the Czech Republic if they travel from the Czech Republic or transit through the territory of the Czech Republic to another State of which they are not a citizen, or in which they were not granted a permanent residence, in order to commit a terrorist criminal offence, the criminal offence of participation in a terrorist group (Section 312a), threatening to commit a terrorist criminal offence (Section 312f) or a criminal offence referred to in Subsection 2 Paragraph b) or c).*

As follows from the content of this provision, it comprises a number of different sets of constituent elements for which was chosen not quite fitting overall title “Support and Promotion of Terrorism.”

The provisions of Section 312e(1) contain special forms of encouragement (Section 364 of the Penal Code) and approval of a criminal offence (Section 365(1),(2) of the Penal Code). Second subsection comprises the acts of preparatory and supportive nature (recruitment of persons to commit a terrorist criminal offence or to participate in a terrorist group; provision of information and training for the purpose of committing a terrorist criminal offence; receipt of information or training from another person and acquittal of skills or provision or promise of remuneration or indemnity for the commission of a terrorist criminal offence, or organisation of a fund-raising collection for such remuneration or indemnity).

Finally, Section 312(3) of the Penal Code criminalises the cases of travelling to another state in order to commit a terrorist criminal offence, participation in a terrorist group, threats to commit a terrorist criminal offence or to commit a criminal offence referred to in Section 312e(2)(a),(b).

The lastly mentioned criminalisation of travelling abroad for the purpose of committing a terrorist criminal offence, or for the support and promotion of terrorism can be briefly commented as follows:

By criminalisation of travels to another state in order to commit a terrorist criminal offence, participation in a terrorist group, and threats to commit a terrorist criminal offence or to commit a criminal offence referred to in Section 312e(2)(b),(c) of the Penal Code, the legislators fulfilled the international and European obligations requiring the prosecution of the so-called foreign fighters, or any other persons,

consisting of organisation or facilitation of the travels abroad in order to commit a terrorist criminal offence. Czech criminal law did not prosecute such a conduct till 1 February 2017. The legislators did so by separate sets of constituent elements contained in Section 312e(3) (a),(b) of the Penal Code.

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The legislation prosecutes both the departure of a person who is a citizen of the Czech Republic when travelling to another State of which they are not a citizen, or in which they were not granted permanent residence, in order to commit a terrorist criminal offence; as well as the arrival of a person who is not a citizen of the Czech Republic if they travel from the Czech Republic or transit through the territory of the Czech Republic to another State of which they are not a citizen, or in which they were not granted a permanent residence, in order to commit a terrorist criminal offence. For prosecution of these activities, it is not necessary if a person leaving the Czech Republic or travelling through the Czech Republic to conflict areas had a specific knowledge of the state to which they travel in order to commit a terrorist criminal offence, to which terrorist organisation they join, whether their participation consist of a direct involvement in a terrorist attack, or whether they would support terrorism logistically, materially, financially and organisationally, by propaganda or otherwise. It also applies to completely independent fighters called “lone wolves.”

In applying these provisions, the key factor is to demonstrate a specific purpose of the travels or a specific terrorist intent. Travelling to another country without any specific terrorist intent, even if there exists an internal or external conflict or its territory is controlled by terrorists, such as travelling for the purpose of kinship ties or humanitarian assistance, would not be enough for conviction. “Another State,” referred to in the relevant provisions, means any state other than the Czech Republic, including other member states of the European Union.

Criminal prosecution of the so-called foreign fighters does not have to be necessary limited to the fulfilment of the constituent elements contained in the offence of Support and Promotion of Terrorism under Section 312e of the Penal Code; depending on the circumstances, the foreign fighters may also be prosecuted for the criminal offence of participation in a terrorist group pursuant to Section 312a of the Penal Code, or for the offence of Service in Foreign Armed Forces under Section 321 of the Penal Code.

The offence of service in foreign armed forces under Section 321 of the Penal Code applies only to a citizen of the Czech Republic who, contrary to another legal regulation, served in the army or armed forces of another state.

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Therefore, the application of this provision to the so-called foreign fighters is limited by the following two factors. Firstly, an offender must be a special entity – a citizen of the Czech Republic. Secondly, the foreign fighters participate in the combat operations of entities that are not subjected to any state jurisdiction, but instead, they fall under a terrorist organisation or movement.

## Conclusion

In recent years, the threats of international terrorism have intensified and developed. One of these threats is the phenomenon of so-called foreign fighters, persons travelling to conflict areas with the intent to engage in terrorist activities or to support terrorism in various forms. Upon return to the country of their origin, these persons pose a latent threat to the internal security of these states. In the past (till 1 February 2017), the Czech criminal legislation did not provide a sufficient reaction on the danger resulting from the presence of these foreign fighters. Therefore, in accordance with international and regional commitments, and pursuant to the obligations arising from criminal law of the European Union, the Czech Republic adopted Act No. 455/2016 Coll., effective from 1 February 2017, aiming to strengthen legal protection against terrorism and to criminalise conduct supporting or promoting terrorism, terrorist groups, or individual terrorists. The adopted legislation fully complies with international and European legislation, and only the future will show whether it provides effective and adequate protection against the threats arising from the contemporary forms of terrorism.



Prof. JUDr. JIŘÍ JELÍNEK, csc. is Head of the Department of Criminal Law at Faculty of Law, Charles University. He can be reached at [jelinek@prf.cuni.cz](mailto:jelinek@prf.cuni.cz)

## Notes

- 1 Cf. e.g.: Statistics on the number of victims of terrorist attacks in Western Europe in the period 1970-2015 available at <<http://eurodenik.cz/zpravy/statistika-pocty-obeti-teroristicky-ch-utoku-v-zapadni-evrope-v-letech-1970-2015>> [accessed 11 February 2017] or Overview of the largest terrorist attacks in Europe since 2000 available at <<http://www.security-magazin.cz/zpravy/nejvetsi-teroristicke-utoky-v-evrope-od-roku-2000>> [accessed 11 February 2017].
- 2 Brown, S. E., Esbensen, F. A., Geis, G.: *Criminology. Explaining Crime and Its Context*. 9th. ed., Oxon: Routledge, 2015, p. 456.
- 3 Jakš, J.: Mezinárodní terorismus jako klíčová hrozba mezinárodní bezpečnosti zítřka, in Souleimanov, E. (ed.): *Terorismus. Pokus o porozumění*. Sborník. Praha: SLON, 2010, p. 8.
- 4 UN Security Council Resolution 2178 of 24 September 2014 requiring states to criminalise certain conduct, such as travelling abroad or attempting to do so in order to commit, plan, prepare, or participate in terrorist activities, or to provide or receive terrorist training. Furthermore, to provide financial resources to support such activities, and to organise or recruit persons for this objective. Resolution 2178 was adopted under Chapter VII of the UN Charter, and thus is binding on all countries of the world. For analysis of the cited resolution, see Bílková, V.: *Idealisté nebo fanatici? Zahraniční (terorističtí) bojovníci z pohledu mezinárodního práva*, Jurisprudence č. 6/2015, s. 17-18.
- 5 Cf. e.g. Council of Europe Convention on the Prevention of Terrorism, available at <<http://data.consilium.europa.eu/doc/document/st-9975-2015-INIT/cs/pdf>> [accessed 6. March 2016]. The abovementioned UN Security Council Resolution 2178, requiring the states themselves or under regional arrangements to adopt specific, mainly criminal law, measures against foreign terrorist fighters, gave rise to the draft of the Council of Europe Protocol to the Convention on the Prevention of Terrorism adopted in 2005.  
The Protocol was opened for signature on 22 October 2015 and can be acceded by the state parties to the Convention on the Prevention of Terrorism. The protocol is more specific and narrow than the Resolution 1278, since it is of a purely criminal law nature and provides a list of the conduct that the states shall criminalise and sanction in their national law. This conduct includes participation in an association or group for the purpose of terrorism, receipt of terrorist training, travelling abroad for the purpose of terrorism, funding of such travelling or organising and otherwise facilitating such activities.
- 6 The cornerstone of the criminal justice of the European Union is the EU Council Framework Decision 2002/475/svv of 13 June 2002 on combating terrorism, amended by the EU Council Framework Decision 2008/919/svv of 28 November 2008 introducing, inter alia, the obligation of member states to criminalise the conduct linked to terrorist activities, such as



public provocation to commit a terrorist criminal offence, or terrorists recruitment and training. Reaction to the latest developments and the new threats of terrorism, especially to the phenomenon of foreign terrorist fighters called lone wolves (lone terrorist fighters who are not members of any group or association), is the new directive of the European Parliament and of the Council of the EU on combatting terrorism, approved by the European Parliament on 16 February 2017 that shall replace the EU Council Framework Decision of 2008. The parliament approved the directive by a large majority of votes: 498 (for), 114 (against) and 29 abstentions. The directive expands the list of offences that shall be considered criminal and contains the provisions on assistance to victims of terrorist attacks. To enter into force, the directive still needs to be formally approved by the EU Council (text written in February 2017). It will then be published in the Official Journal of the European Union and the member states will be given the period of eighteen months to convert the new rules into their national legal systems.

The European legal framework for combatting terrorism analyses Navrátilová, see Navrátilová, J.: Terorismus, in Jelínek, J., Gřivna, T., Herczeg, J., Navrátilová, J., Syková, A., et al.(ed.): *Trestní právo Evropské unie*. Praha: Leges, 2014, p. 82 and cf. Škohel, D.: Postavenie Európskej únie v boji proti terorizmu, in Ivor, J. (ed.): *Spoločnosť proti terorizmu*. Plzeň: Aleš Čeněk, 2014, p. 314 et seq. Cf. also Council of Europe Convention on the Prevention of Terrorism.

- 7 In the Czech Republic most recently the Act. No. 455/2016 Coll., effective since 1 February 2017.
- 8 For definition of terrorism cf. Jelínek, J.: Trestné činy teroru a teroristického útoku v evropském kontextu, in Jelínek, J., Ivor, J. a kol.(ed.): *Trestní právo Evropské unie a jeho vliv na právní řád České republiky a Slovenské republiky*. Praha: Leges, 2015, p. 201 et seq.
- 9 Novotný, O., Zapletal, J. et al.: *Kriminologie*. Praha: Eurolex Bohemia, 2001, p. 308. Identically Gřivna, T., Scheinost, M., Zoubková, I. Et al.: *Kriminologie*. 4. vydání. Praha: Wolters Kluwer, 2014, p.400.
- 10 Novotný, O., Zapletal, J. et al.: Id. at p. 275.
- 11 Šimovček, I., Jalč, A.: Národní a mezinárodní nástroje boja proti organizovanému zločinu. In Jelínek, J. (ed.): *Organizovaný zločin (trestněprávní, trestněprocesní a kriminologické aspekty)*, Praha: Leges., 2015, p. 73.
- 12 Malíková, E. V., Laciaková, L.: Terorismus a organizovaný zločin v 21. storočí. In Ivor, J. (ed.): *Spoločnosť proti terorizmu*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2014, p. 163- 178.
- 13 Malíková, E. V., Laciaková, L. (2014) p. 167.
- 14 Malíková, E. V., Laciaková, L. (2014) p. 169.
- 15 Mallory, S., L.: *Understanding Organized Crime*. Second ed. USA: Jones and Barlett Learning, 2012, p. 260.
- 16 For details on terrorist group organisation see for instance Siegel, L. J.: *Criminology: Theories, Patterns and Typologies*. 10th edition. Wadsworth, 2010, s. 346.
- 17 Malíková, E. V., Laciaková, L. (2014) p. 169.

- 18 Kováč, R.: Aktuálne teroristické trendy: zahraniční bojovníci a osamelí aktéri, in Ivor, J. (ed.), id. at p. 435; Bílková, V.: *Idealisté nebo fanatici? Zahraniční (terorističtí) bojovníci z pohledu mezinárodního práva*, Jurisprudence č. 6/2015, p. 16-23.
- 19 <<http://www.novinky.cz/zahranicni/evropa/398174-z-francie-odjelo-valcit-za-is-600-lidi-dalsich-800-se-k-tomu-chysta.html>> [accessed 21 March 2016].
- 20 Cf. Statistics on the number of victims of terrorist attacks in Western Europe in the period 1970-2015, available at <<http://eurodenik.cz/zpravy/statistika-pocty-obeti-teroristicky-utoku-v-zapadni-evrope-v-letech-1970-2015>> [accessed 11 February 2017] or Overview of the largest terrorist attacks in Europe since 2000, available at <<http://wwwsecuritymagazin.cz/zpravy/nejvetsi-teroristicke-utoky-v-evrope-od-roku-2000>> [accessed 11 February 2017].
- 21 Cf. The international instruments listed in the notes 5-7 and in the literature, e.g. Navrátilová, J.: Id. at p. 82, listing the legal instruments. Cf. Also Jelínek, J.: Trestné činy teroru a teroristického útoku v evropském kontextu, in Jelínek, J., Ivor, J. et al.: *Trestní právo Evropské unie a jeho vliv na právní řád České republiky a Slovenské republiky*, Praha: Leges, 2015, p. 200-223.
- 22 With an intent to damage the constitutional establishment or the defensibility of the Czech Republic, disrupt or destroy the fundamental political, economic or social structure of the Czech Republic or international organisations, seriously intimidate the population or illegally compel the Government or another public authority or international organisation to do something, or fail to do or suffer

Jiří Jelínek