



PRIV-WAR Report – Czech Republic

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The Regulation of Private Military and Security Services in Czech Republic

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PRIV-WAR

Regulating privatisation of “war”: the role of the EU in assuring the compliance
with international humanitarian law and human rights

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1. Introduction¹

This report regarding Czech national law applicable on private military and security services is delivered pursuant to EU project on “Regulating Privatization of War: the role of the EU in assuring compliance with international humanitarian law and human rights”.

There is no special legislation in the Czech Republic either generally for regular security companies or for the specific area of PSCs/PMCs². Until the end of 2008 in the Czech Republic no national PSCs/PMCs were known of that would operate abroad and offered a significant amount of services related to the specific nature of this business. Thus the activities of PSCs/PMCs did not attract huge interest in Czech Republic so far.

As will be seen from the report, this might change dramatically in the near future. A first PSCs/PMCs company with strong links to the Czech Republic started operating abroad in January 2009. The mere fact of its existence abroad with linkage to the “mother” Czech company is a historical breakthrough. Now the Czech Republic legislators and politicians will begin to reflect on the new situation in the private security business.

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² Abbreviation of Private Security Companies/Private Military Companies

Due to absence of a specific regulation, general categories of law like corporate/commercial law, labor law, criminal law and law of public procurement, will apply to their activity. However it is evident that such generalities cannot satisfactorily cover all activities of PSCs/PMCs with respect to compliance and accountability with international humanitarian law and human rights law.

2. The private military and security industry

2.1. PSCs/PMCs registered at national level

In March 2008, the Czech Republic established its independent Provincial Reconstruction Team (PRT) in Afghanistan in Loghár province. As the nature of PRTs is to help locals with reconstruction of infrastructure and smoother transfer from wartimes to peace, the PRTs are not only composed of military personnel, but of civilians too. In the case of the Czech PRT there are approximately 270 soldiers and 10 civilian persons. Apart from the civilian component of PRT, there might also be present a number of Czech private companies helping with the reconstruction in the future, but in this moment there are no real plans.

Not only because of establishing the Czech independent PRT in Afghanistan, one of the biggest security companies operating in the Czech Republic has shown interest to offer its services as PSCs/PMCs in Afghanistan. The company is called ABL Inc. and was founded in 1992 under Czech national law and is based in the Czech Republic.³ ABL Inc. has created a special operational branch in Afghanistan, which was formally set up as ABL-AFG in January 2009, after receiving a special license for providing private security services from Afghan government. ABL-AFG is based in Kabul and set-up under Afghan national law.

2.2. Types of services offered

Based on its presentation⁴, the afore-mentioned active security company is able to offer services and skills needed for the safeguarding of the protection for VIP persons (in house, in office, during transport etc.) and other extraordinary situations such as assault by armed aggressors with assault rifles to the transport colony, launching a car attack etc. Moreover they are offering entry consultation for evaluation of potential risks, plan for adoption of relevant measures, administrative support (from visa application to needed vaccination). Their offer comprises a necessary training, which includes a survival course, including relevant information about cultural practices of the relevant country. In addition, they may provide military equipment, munitions, direct support in provision of transportation (armored cars), insurance and personnel assistance at the site etc.⁵

³ Czech Defence Industry and Security REVIEW, March 2008, “Czech companies going to Afghanistan”; also published on ABL Inc. company web page <http://www.abl.cz/czk/media/napsali-onas/archiv-2008>

⁴ On January 30, 2008 the ABL Company organized a presentation of services, which they would be able to provide in support for the Czech PRT in Loghar. The presentation took place at the former military airport in Milovice and was mainly directed for establishing cooperation with Ministry of Defence.

⁵ An article in Czech Defence Industry and Security REVIEW 3/2008, titled: „Czech Companies Going to Afghanistan“ and as well published on ABL company web page <http://www.abl.cz/czk/media/napsali-o-nas/archiv-20>

2.3. Personnel (national, foreign, level of skills)

ABL-AFG Company supposes to hire ex members of the Czech Armed Forces, especially of the two first class units like Military Police Special Operations Group and 601. Special Group. The ex-members of the Police Special Unit and former French Foreign Legion soldiers as well. Their assumption is to offer contracts to at least 20 such highly skilled Czech nationals coming from the above-mentioned groups until the end of 2009. The rest of their employees will be comprised of Afghan nationals according to actual needs.

2.4. Actors using national PSCs/PMCs (national government (which Departments?), foreign governments, international organizations, NGOs etc).

Currently, neither the Ministry of Defence nor the Ministry of Foreign Affairs of the Czech Republic is using any national PSCs/PMCs., which could be subsumed under the generally perceived concept of PSCs/PMCs. From the all information the author was able to acquire, it results that there is no such intent in the near future. Nevertheless the Czech Republic is using services of a variety of a security companies for guarding its official objects located in the territory of the Czech Republic and outside of its territory (e.g., embassies). Nevertheless these demanded services belong to pure security services with no “connotation” towards the military concept of PSCs/PMCs.

2.5. Professional associations

There is a professional association specialized in offering services abroad and it is a coalition of the Czech Industry called “PRO LOGHAR.” The coalition represents a dozens of Czech companies interested in providing services in the area of reconstruction of Afghanistan. Coalition PRO LOGHAR has been established in 2007 under the auspice of Czech-Middle Asian Chamber of Commerce.⁶ The leading position in this project of the ABL Inc., culminating in its decision to create ABL-AFG, which shall provide a systematic protection and security service, to Czech businessmen present in Afghanistan.⁷

2.6. Self-regulation and industry approach to regulation

Security companies would welcome more detailed regulation of the general security business. However the current political power still did not take action in the legislative area. Czech Republic belongs to one of the utmost countries in EU, which does not have a proper legal regulation concerning regular security business.⁸

⁶ The Czech-Middle Asian Chamber of Commerce is a voluntary coalition of Czech and foreign persons, which are interested in general cooperation between Czech Republic and foreign countries. The Chamber has been established according to S. 49 of the Act on Commercial Cooperation with foreign countries No. 42/1980 Coll., as subsequently amended. The Ministry of Industry and Trade has granted an accord with the creation of this Chamber. More information is available at www.csok.cz.

⁷ press release of the Czech-Middle Asian Chamber of Commerce available at www.csok.cz

⁸ Article “State when outsourcing security services violates a law” in weekly magazine EURO of 14. 1. 2008

Many professional and informal associations were created as a form of compensation for a lack of proper legal regulation of the security business itself. Generally the associations formulate recommendations and codes of conduct towards elevation of the quality of the services by virtue of standardizing regulatory rules.⁹ In addition they are trying to initiate adoption of proper legal regulation of the security business.

3. Domestic security and investigation services

3.1. Licence required for conducting private security or investigation services?

As indicated above the Czech Republic has no special legal regulation for PSCs/PMCs or the general security business. Legislation concerning conducting security business is contained in various legal acts.

The core regulation concerning conducting in security services contains the Act No. 455/1991 coll., on trade enterprise, as subsequently amended. This act is a general act containing conditions for acquiring a trade license for performing business activity. Generally before commencing any business activity a person (natural or legal) has to approach trade license office of the local competence and “to notify of a trade” or “to apply for the issuance of a license“. The Act determines which activities need a state license.

Upon S.6a of the Act on trade enterprise, securing property and protecting persons belongs to the category in which it is obligatory to apply for a state license.¹⁰ Nevertheless such regulation is aimed towards conducting security services in the Czech Republic and not towards conducting business involving security services or PSCs/PMCs services abroad.

3.2. Legal definition of security services; investigation services?

Until 31. December 2008 the Czech legal order did not offer any legal definition or any enumeration of services which would regulate the security business.

As of 1st January 2009 the Act on trade enterprise has been amended by introducing new S.6a. This section nowadays enumerates what is the content of trade licensed business activity concerning security guard of property and protection of persons.¹¹ The amendment certainly improves the current situation, because it more precisely determines the scope of the subject matter, and details requirements concerning personal integrity, professional qualification and health ability for the prospective employees.

⁹ Security club – an informal association www.securityclub.cz; member of the Union of the private security services of the Czech Republic.

¹⁰ see also Annex 3 to the Act on trade enterprise No. 455/1991 Coll., as subsequently amended.

¹¹ Unofficial author’s translation of the S. 6a(1) Act on trade enterprise No.455/1991 Coll.: „Trade license business activity concerning security guard of property and protection of persons covers providing services in relation to guard and security of immovable and movable property; protection during money transport and during its processing, valuables and other belongings, personal security and security of legal interests, safeguarding public order in places of public gathering, festivals, sports events or social enjoyment according to orders instruction, evaluation of security risks and conducting a central desk of protection.”

PSCs/PMCs offer a wide scope of activities and it is their goal to offer services mainly in foreign territories, which are considered highly unstable areas. Therefore a major issue is how their activities will be politically perceived by other states. If PSCs/PMCs activities abroad are not properly regulated in the Czech Republic (e.g., granting licenses), then the presence of PSCs/PMCs in such unstable foreign territories itself could potentially undermine Czech foreign policy objectives. With that in mind it would be desirable to impose a condition to obtain a governmental (represented e.g., by MFA, MoD) approval before granting a “general license” for conducting a business.

4. Regulation of armed force

4.1. Possession and use of arms

In case that any of the regular security companies wish to use arms while carrying out their services, which would be a typical case of PSCs/PMCs, they have to comply with conditions sets in the Act on Fire Arms No. 119/2002 Coll., as subsequently amended. The Act regulates possession and use of arms; it determines conditions for their acquiring, conditions for import, export and transit of arms, including state control in this area.¹² Naturally the act only refers to arms, which are registered in the Czech Republic and retained by non military or non-police actors, thus this Act does not apply to military, police and armed state corps. State armed forces possess and use weapons on the basis of their special laws.

Upon an application of the business entity and upon fulfilling of the conditions sets in the Act, the Police department will issue “firearms certificate” for a class “G” (for the purpose of safeguarding property and protection of person). Such a certificate then entitles the holder to ask Police for exemption for acquiring and possessing arms of category A¹³ - otherwise prohibited category of arms (the exemption might be awarded, but it is on the Police consideration). The holder is entitled to acquire and possess arms pertaining to category B¹⁴ (when he fulfill legal conditions, he has right to be granted approval to acquire and possess arms permitted). Further, the firearms certificate class G holder is entitled to acquire and possess arms pertaining to category C¹⁵.

The company then may entrust arms where such certificate has been issued to their employees, but only under the condition that the employees are holders of “firearms certificate” of group D (category intended for purpose of their employment)¹⁶.

Automatic guns and special ammunition (SP, AP, etc.), which most probably would be the interest of PSCs/PMCs, belongs according to S.4 of this Act to prohibited arms and ammunition designated as category A. Upon S.9(2) of this Act the Police may grant an exemption towards their acquisition, on the condition that person is a holder of “firearms license”¹⁷ for conducting a transport, guarding of extraordinary dangerous or highly valuable consignments or for guarding of facilities which are of extraordinary importance or facilities important for defence of the state.

¹² S.1(1) of the Act on Fire Arms No. 119/2002 Coll., as subsequently amended.

¹³ S.3(1a) + S.4 of the Act on Fire Arms No. 119/2002 Coll., as subsequently amended.

¹⁴ S.3(1b) + S.5 of the Act on Fire Arms No. 119/2002 Coll., as subsequently amended.

¹⁵ S.3(1c) + S.6 of the Act on Fire Arms No. 119/2002 Coll., as subsequently amended.

¹⁶ S.16(2d) of the Act on Fire Arms No. 119/2002 Coll., as subsequently amended.

¹⁷ S.31 of the Act on Fire Arms No. 119/2002 Coll., as subsequently amended.

4.2. Arms export

The basic framework for the control regime with respect to arms export is provided by the Act on foreign sales with military material No. 38/1994¹⁸ Coll., as subsequently amended, together with an administrative decree No. 89/1994 Coll, which mainly provides the detailed list of military material.

The Act determines permitting procedure for foreign trade, conditions for licensing and its enjoyment and whole control over foreign trade military equipment transactions, including imposing relevant sanctions for its violation. Further, the Act allocates the role of concrete state bodies in related administrative proceedings. Instead of term “arms export” this report will use the term “military material”¹⁹, according to valid Czech legislation.

The foreign trade with military material belongs to the competence of Ministry of Industry and Trade, which conducts all administrative proceedings concerning issue of permission, granting, rescission and deprivation of license and infringement of law.²⁰

Violation of regulation concerning foreign sales with military material is incorporated under S.124d of the Criminal Code No. 140/1961 Coll., as subsequently amended, as a criminal offence.

The foreign trade arms control is two-leveled:

- 1) granting a permission to carry on trade in area of military material

Before carrying a business with military material a legal person established in Czech Republic has to apply for special permission.²¹ The permission determines the concrete items and the list of countries with which they are allowed to trade.

The permission is issued by Ministry of Industry and Trade by its Licensing Office,²² after evaluation of national business interests and after receiving statements of approval from the Ministry of Foreign Affairs (considering Czech foreign political interests), the Ministry of Interior and the Ministry of Defence (also considering national security interests). The permission is limited in time for max. period of 5 years²³.

¹⁸ Due to indications that EU in 2009 shall adopt a directive concerning facilitations of conditions for free movement of goods of defense character in area of community, there is prevision that such transposition will lead to fundamental change of the whole legal regulation concerning trade export with military materiel and possibly in 2010 to adoption of a whole new legal regulation.

¹⁹ S. 5 ss. 1 of the Act on foreign sales with military materiel 38/1994 Coll., provides that for the meaning of this Act the military materiel comprises especially: “products or its parts, which are due to its characteristic technical-construction nature considered to be constructed mainly for usage in armed forces, armed security forces and services; units, plants or complete investing plant produced, modified, furnished or construed for military usage, especially for development, production, control and testing of others products, its items and spare parts”.

²⁰ In accordance with EU Code of conduct on Arms Exports (1998).

²¹ S.6 (1) of the Act on foreign sales with military materiel No. 38/1994 Coll, as subsequently amended.

²² more information available at the official web site of the Ministry of Industry and Trade www.mpo.cz.

²³ S.10 of the Act on foreign sales with military materiel No. 38/1994 Coll, as subsequently amended.

2) Granting a license for realization of concrete business activities

The holder of permission has to file an application for the license and a license will be granted only for realization of a specific business transaction.²⁴ Its validity is limited in time. The license also determines its scope and concrete conditions of such a transaction. All these proceedings are conducted in the area of administrative law and the decision is made by the Trade Office of the Ministry of Industry and Trade, once again after receiving statements from the afore-mentioned ministries. Each application is reviewed in light of the EU Code of Conduct on Arms Exports.

4.3. Government policy on outsourcing of armed force

No official policy concerning using PSCs/PMCs abroad exists. However there is a Ministry of Defence policy concerning the use of private security companies for the guarding of military objects (security guards, gatekeepers etc.). This policy refers only to objects of Ministry of Defense on territory of the Czech Republic (under the same conditions like every private company) and cannot be applied in foreign countries.

4.4. PSC/PMC contracts and armed force

It is known that since 2006 ABL Inc. has had close contact with the Czech Ministry of Foreign Affairs (the ministry responsible for a civil part of the Czech PRT project) and Czech Ministry of Defence with the aim of setting up possible cooperation. Their activity culminated in a presentation of ABL Inc. services and capabilities. However it is not known that Ministry of Defence would be using any PSCs/PMCs abroad in general and the Ministry has shown no significant interest in using their services in support of the Czech PRT in Loghar.²⁵

5. Corporate/Commercial law

5.1. Legal models for private military and security companies

The Commercial Code No. 513/1991 Coll., as subsequently amended, in S. 56(1) enumerates possible legal forms for establishing a company with legal personality. The forms are joint stock company (S.154), limited liability company (S.105), public business company (S.76) and “komanditni” company (S.93), which combines features of the two previously mentioned legal forms.

Due to the specificity of private security business and especially its exigency for a huge investing capital a form of Joint Stock Company seems to be the most proper choice, e.g., ABL Inc. a “mother” company of ABL-AFG is established as this type of company.

²⁴ S.14 of the Act on foreign sales with military materiel No. 38/1994 Coll, as subsequently amended.

²⁵ In interview broadcasted on January 31, 2008 by Czech national television 1 and Czech national television 24, major-general PROKŠ stated: “In case that such companies would get into trouble, we will not leave our colleagues on lurch, but our main task there is different”; The extract may be also downloaded from <http://www.abl.cz/czk/media/napsali-o-nas/archiv-2008>,

5.2. *Corporate purpose (any restriction?)*

Not applicable.

5.3. *Regulation on company registration, authorisation, or licensing (Is there any specific requirement for firms incorporated in the State, for those hired by the State and those operating within the State?)*

There is no special requirement; every company has to fulfill the same conditions when contracting with state. See point 3.1 and 5.1.

A company (as every other company) has to be registered in a Commercial Register upon conditions set in Commercial Code²⁶ and when contracting with the state has to observe Act No. 137/2006 Coll., on Public Contracts, as subsequently amended.

5.4. *Legislation on the import of military and security services*

(e.g. contract licensing regimes) (link with point 4.3)

Not applicable (general regulation).

5.5. *Legislation on the export of military and security services*

Not applicable. However Czech legislation does not place constraints on private security companies wishing to offer its services abroad, if a legal regulation of the receiving state permits.

6. Labor Law

The Czech legal order does not boast any specific rule concerning PSCs/PMCs. As stated above, the basic regulation on the conduct of security business is comprised in Act No. 455/1991 on trade enterprise, thus its new S.6a and S.31a²⁷ especially would apply on security business in general. The legal regulation is then completed by a general Labor Code No. 262/2006 Coll., as subsequently amended, especially in area of recruitment process, conditions of contract, personnel health and safety regulations.

1. *Regulation of personnel recruitment procedures*

The recruitment process in this business is not especially formalized; it is more likely on personal basis and recommendations. In practice any PSCs/PMCs recruiting personnel would most probably “head-hunt” them out of Czech police and armed forces and/or from Czech personnel enrolled in the French Foreign Legion.

²⁶ S.27 and further of the Commercial Code No. 513/1991 Coll., as subsequently amended.

²⁷ S.31a(1) of the Act on trade enterprise states that, an enterpriser conducting licensed enterprise „guarding of facilities and persons“ is obliged to ensure that a concrete activities are exercised by qualified and health capable employees.

6.2. Employment contract: terms and conditions

The contracts will probably be based on law applicable in the territory of the business activity.²⁸

6.3. Personnel health and safety

According to S. 31a (2) of the Act on trade enterprise, any prospective employee has to attest to the employer a valid document concerning his/her health capability to practice in the security business. Such a document is issued by his/her medical practitioner and it is based on physical and mental examination of the person concerned.

6.4. Is there any specific legal discipline in training?

Usually it is presupposed that the prospective contractors have already acquired sufficient training elsewhere. However, for example one active Czech PSCs/PMCs claims that it will provide aimed and structured training for Afghan national employees, concerning physical conditioning, precise shooting, secure handling with gun, etc.

7. Government Procurement

The Czech Republic has no specific policy concerning procurement of PSCs/PMCs. The governmental authorities are gradually starting to outsource its services towards private business, but the scope of services does not step out of ordinary outsourcing activities (e.g., messing, cleaning, guarding of buildings etc.).

All government authorities when contracting must comply with the Act on Public Contract No. 137/2006 Coll., as subsequently amended, which impose restrictions on the whole acquisition process. The aim of this Act is principally to set up fair competition.

7.1. Government procurement policy and PSCs/PMCs:

Not applicable.

7.2. Policy limitations on government outsourcing

With the aim to implement the Act on Public Contracts, the Ministry of Defence has issued an Order of the Minister of Defence No. 39 as of 29. 8. 2008, concerning public acquisition in the Ministry of Defence. The scope of applicability is on acquisition of property, acquisition of services and construction work, acquisition of military material etc.

²⁸ For example, the one active Czech PSCs/PMCs claims it will provide for free meals, housing, transportation and the necessary equipment and material (protective masks, arms, vehicles). The contract shall define the amount of salary, period of rotation and insurance (strict delimitation on what covers the company and what has to cover the contractor).

8. Criminal Responsibility

8.1. Legislation on mercenarism / on enlistment of nationals in foreign armed forces

The Czech Republic is a party to all four Geneva Conventions (1949) and its three Additional Protocols (1977, 2005). The Czech Republic is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989).

Under the Czech Criminal Code, the activity of mercenarism is dealt with only in relation to service in a foreign army. It is regulated under S.115 “Service in foreign army”,²⁹ where it is stated that only a Czech citizen, who without permission conducts military service in a foreign army or foreign armed corps, may be punished under this section.

The condition for acquiring permission is directly linked to the Act on military ability No. 585/2004 Coll., as subsequently amended. According to its S. 34 the Czech citizens may join foreign armed forces only with the permission of the president of the Czech Republic. Such permission may be revoked at anytime and its validity may cease under specific circumstances such as a state of war or state of imperilment.³⁰ The term foreign army or foreign armed corps designates an army of any foreign state, including service in a foreign legion.³¹ S.34(4) of this Act amends that permission of the president of the Czech Republic is not necessary in case that applicant wishes to serve in a member state of international organization providing collective defence, and of which the Czech Republic is a member. In the case that a citizen holds several citizenships, the permission is not necessary either.

8.2. Individual criminal responsibility of PSC/PMC personnel

The Czech Criminal code does not comprise any special criminal offence, which would in fact be applicable to the activities of PSCs/PMCs personnel. Apart from the above described S. 115 “Service in foreign army”, which under special circumstances could be used, the most applicable provision would probably be S.219 “Murder” and/or S. 221 “Injury” or S. 222 “Gross Injury” if intentionally, and S. 223 “Neglectful injury”³².

Furthermore, depending on the nature of their commitments S. 171d “Violation of international sanctions” is applicable (meaning sanctions resulting from the membership of the Czech Republic in United Nations or European Union); S. 185 “Unauthorized armament”; S. 207 “Withhold of the first aid”; S. 231 “Constraints on personal liberty”; S. 232 “Deprivation of personal liberty” etc.

²⁹ unofficial translation of the author: S.115 (1) „The citizen of the Czech Republic, who without permission is performing a military service in army of foreign power or in foreign armed corps, will be punished by imprisonment for 3 years up to 8 years. (2) The wrongdoer will be charged by imprisonment for 5 years up to 10 years, if the criminal offence from the above section is committed during state of imperilment or during state of war“.

³⁰ S.54(3) of the Act on military ability No. 585/2004 Coll., as subsequently amended.

³¹ Šámal, Půry, Rizman: Commentary to the Criminal Code, 6th edition, p. 750-751

³² Injury can include also injury resulting in killing of a person both intentional and neglectful.

8.3. Command responsibility and PSCs/PMCs

The Act on Professional Soldiers No. 221/1999 Coll, as subsequently amended, in its s.48(2) states: “If a soldier deems that a superior order is in contradiction with legal regulation, then he is obliged to refer it to his superior; if a superior insists on complying with the order, then a soldier is obliged to comply with it. A soldier is obliged to refuse complying with an order of superior, if by its fulfillment it would constitute a criminal offence, such a fact he immediately reports to a higher superior”³³.

As of January 1, 2010 a re-codified criminal code will take effect³⁴. In this re-codification the legislators introduced a specific provision concerning responsibility of superiors.³⁵

8.4. Immunity from local criminal law

The Czech legal order does not boast any special legislation concerning activities of PSCs/PMCs. The Czech Republic still has not ratified the Rome Statute³⁶ establishing the International Criminal Court. Therefore, such a lack of regulation may represent an obstacle to effective responsibility or punishment of PSCs/PMCs.

8.5. Is criminal responsibility of corporations recognized?

The Czech Criminal Code is strictly based on individual criminal responsibility. The re-codified proposal of the criminal code does not recognize the criminal responsibility of corporations either.

9. Civil Liability

9.1. Civil Liability in contract

In general civil liability is in the Czech Republic regulated under Civil Code No. 40/1964 Coll., as subsequently amended, which represents a *lex generalis* regulation of the liability for a whole area of private law. The exemption only concerns with cases, where a concrete special private law regulation concerning liability stipulates something different³⁷ (e.g., Commercial Code, Labor Code, etc.).

³³ Unofficial author’s translation

³⁴ In February 2009 approved by Czech Parliament and signed by the President of the Czech Republic. Promulgate under No. 40/2009 Coll.

³⁵ S.415 of the re-codified Criminal code: “Military or other superior is criminally responsible for criminal offence of genocide, acts against humanity, preparation of aggression war, promotion of aggression war, use of prohibited means and methods of combat, war cruelty, persecution of civilians, pillage in area of military operations, abuse of internationally recognized signs and state signs, abuse of flag and cease-fire or violation of parliamentarian perpetrated by its subordinate, to whom he has effectuated his authority and control, when, caused even by negligence, he did not prevented him from committing such an act, committing such an act he did not forbid him or for committing such an act he did not punish him for it or he did not release him to relevant authority for appropriate sanction”. “Provisions concerning criminal liability and culpability of subordinate offender shall be used for a criminal liability and for a culpability of a military of other superior”.

³⁶ February 15, 2009 – to this date the Rome Statute has been already approved by Czech Parliament and currently is waiting for ratification (signature) by the Czech President.

³⁷ *Lex specialis derogat lex generalis*.

In case of civil liability in contract law, the type of contract according to which the PSCs/PMCs offer their services would be decisive, whether the contract would comprise any special regulation. If not, the contract would fall under the scope of general provisions contained in the Civil Code. The general premise is that everyone is liable for damage, which was caused by his/her violation of legal obligation,³⁸ and a person that demonstrates, that he/she did not cause the damage, is acquitted of the liability.

Regarding potential civil liability of the employees (contractors) the decisive regulation is in Labor Code No. 262/2006 Coll., as subsequently amended.

9.2. Civil Liability in tort

Generally applies the same as for point 9.1.

9.3. Civil jurisdiction over tort claims

Civil courts – see point 9.1.

9.4. Civil jurisdiction over contract claims

Civil courts – see point 9.1.

9.5. International arbitration

General regulation for contracts - depends on choice of parties. For other legal areas such as criminal law is not applicable.

9.6. Civil litigation before domestic tribunals

Point 3 – 6 not applicable. No pending cases before domestic tribunals and/or international arbitration, nor there is any case law addressing to PSCs/PMCs activities.

10. Case law

10.1. Case law or pending cases on mercenary activities

The crucial decision concerning mercenaries is decision R 43/2000³⁹ where the court held that formal signs of the criminal offence “Service in foreign army” according to S. 115 (1) are fulfilled by unpermitted conducting of the military service of the Czech citizen in army or armed corps of the any other state. In addition the Court held that the mere fact that a person conducted military service in army of the state, which is a Czech Republic ally, by itself need not lead to the conclusion about insufficiency of the material element of the culpability of the criminal offence.⁴⁰

³⁸ S. 420 (1) of the Civil Code No. 40/1964 Coll., as subsequently amended.

³⁹ Decision R 43/2000, of Supreme Court (Nejvyšší soud).

⁴⁰ S.3(1) of the Criminal Code No. 140/1961 Coll., stipulates: „A Criminal offence is only an act dangerous for a society and which elements are enlisted in this Act“

The author is not aware of any pending case regarding the activities of mercenaries.

10.2. Case law or pending cases on activities involving PSCs/PMCs

Currently in the Czech Republic there is no case law or pending cases on activities involving PSCs/PMCs.

11. Government policy on the status of PSCs/PMCs and other aspects

The Czech Republic has no government policy on the status of PSCs/PMCs. Governmental and scholarly experts consider them to be civilians, who would lose their protective status in case of direct participation in hostilities.

12. Conclusion

As shown in this report the Czech Republic has no specific regulation for PSCs/PMCs. The general legislation, like corporate/commercial law, labor law, criminal law etc. basically covers the business of ordinary security companies with no “military” aspects of its business, offering their services in the territory of the Czech Republic. In addition, the Czech Republic has no policy statements on using PSCs/PMCs in armed conflict.

However, even though there is currently only one known Czech PSCs/PMCs company offering its services in the theatre of armed conflict, due to generally growing tendency in this business its very probable that the numbers of PSCs/PMCs companies will increase in the future. So far no incidents involving Czech PSCs/PMCs or any Czech national citizen employed by any foreign PSCs/PMCs have been reported.

Based on the facts stated above, the Czech Republic should acknowledge the existence of PSCs/PMCs and open a public debate regarding regulation of private security/military business. The outcome of this public debate should be reflected in a survey on an applicable national legislation with special impact on accountability of PSCs/PMCs, followed by proposal of a relevant policy and/or legislative improvements.

The author welcomes the initiative of the EU collaborative research project focused on such a “hot spot” of today’s globalized security and hopes that the project will lead towards formulating concrete proposals and recommendations on how the EU could contribute to the regulation of such an increasing business, especially in the area of accountability. The EU as player on the international scene shall coordinate, act, and engage in the project of taking a firm position.

S. 3(2), „An act which level of danger is minuscule for a society, does not become a criminal offence, however otherwise embodies a criminal offence elements. A remark of the author: The Czech Criminal Code is based on premise that both elements (materiel and formal) has to be present in order to classify an act as a criminal offence.