1992/09/04 - PL. ÚS 5/92 (CZECHOSLOVAK CONST. COURT): HATE CRIMES

HEADNOTES

The security of the state and the safety of citizens (public security) require that the support and propagation of movements which threaten the security of the state and the safety of citizens be hindered. Movements, which are demonstrably directed at the suppression of civil rights or at declaring the defined hatred, however they may be named or by whatever ideals or goals motivated, are movements which threaten the democratic state, its security, and the safety of its citizens. For this reason, legal recourse against them is in full harmony with the limitations allowed by Article 17 para. 4 of the Charter.

The provisions of Article 2 para. 222) and Article 4 paras. 1, 2 of the Charter,3) together with the second paragraph of the Preamble, express the principle of the law-based state. The principle of legal certainty is, in addition, derived therefrom. Both principles require that commands and prohibitions be laid down in the law in such a manner as to give rise to no doubts regarding the basic content of the legal norm.

CONSTITUTIONAL COURT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC

JUDGMENT

The Constitutional Court of the Czech and Slovak Federal Republic (Plenum) of 4 September 1992 in the matter of the petitioners – a group of 52 Deputies of the Federal Assembly against the Federal Assembly concerning the conformity of § 260 and § 261 of the Criminal Act, as amended by Act No. 557/1991 Coll.,) with the Charter of Fundamental Rights and Basic Freedoms and with international treaties on human rights and fundamental freedoms,decided thusly:.

§ 260 para. 1 and § 261 of the Criminal Act, No. 140/1961 Coll., as amended by Article I, points 51 and 52 of Act No. 557/1991 Coll.,1) including the heading over these provisions, are in conformity with:

Article 2 of the Charter of Fundamental Rights and Basic Freedoms, promulgated by Constitutional Act No. 23/1991 Coll.2) (hereinafter „Charter"), prohibiting the state from being bound by an exclusive ideology;

Article 15 of the Charter5) guaranteeing the freedom of thought and of conscience;

Article 17 of the Charter6) guaranteeing freedom of expression and the right to information;

Article 40 para. 6 of the Charter8) prohibiting retroactive effect to criminal laws that are equally strict or stricter;

Article 42 para. 2 of the Charter9) granting foreigners human rights and fundamental freedoms on an equal basis with Czechoslovak citizens;

Article 15 of the International Covenant on Civil and Political Rights, promulgated under No. 120/1976 Coll. (hereinafter „Covenant"), prohibiting the retroactive application of stricter criminal laws and in principle also the criminalizing of acts with retroactive effect;

Article 19 of the Covenant, guaranteeing the right to advocate without hindrance one's own opinion, the right of free expression, and the right to information.

That part of § 260 para. 1 of the Criminal Act, as amended by Act No. 557/1991 Coll.,1 which precedes the brackets is in conformity with Article 39 of the Charter´7), which requires that the criminality of an act be provided for in a statute.

That part of § 260 para. 11) contained in the brackets is not in conformity with the provisions of Article 2 paras. 2, 32) and Article 4 paras. 1, 23) of the Charter, which express the principle of the state based on the rule of law and the requirement of legal certainty, unless it is unambiguously the case that the elements of the crime stated in the part of the sentence preceding the brackets must necessarily be satisfied also in the cases referred to in the brackets.

REASONING

I.

In their petition dated 14 April 1992, the petitioners requested that this Court declare the amended § 260 para. 1 and § 2611) to be incompatible with the cited provisions of the Charter and Covenant. They asked the Constitutional Court to declare that § 2611) lost effect as of 31 December 1991 on the grounds stated in Article 6 para. 1 of Constitutional Act No. 23/1991 Coll.,4) or alternatively that § 260 and § 2611) will loss effect as a result of the announcement of this decision by the Constitutional Court and then validity six months later.

As the grounds for this request, the petition states that by placing some portion of the material elements defining the criminal offense (the disposition) into brackets, the legislature intended to lay down a binding interpretation of the term, "communism", one equivalent to the term, "fascism". It emphasizes that the term, communism, is not precisely defined either in the Criminal Act or elsewhere, such definition constituting an absolute prerequisite for the criminalization of conduct consisting in the support or propagation of communism. They consider it impermissible to criminalize conduct without defining its normative elements, for such is at variance with the principle nullum crimen sine lege. According to the petitioners, a restriction on the freedom of expression introduced in this way exceeds the bounds of permissible limitations on the freedom of

expression. They consider that the criminalization of the above-stated conduct is a politically motivated limitation on rights and freedoms, and they view it as impermissible for other state and public bodies or public law institutions to apply this criminal law prohibition. The fact that § 2601) was included among the criminal acts that cannot be statute-barred leads them to the conclusion that such inclusion applies retroactively, which neither the Charter nor international law permits. Despite the fact that the heading over the Criminal Act provisions in question refers the rights and freedoms of citizens and that the term, "citizen", is a constitutional law concept, the petitioners consider that § 260 and § 2611) protect the rights only of Czechoslovak citizens; they consider the exclusion of criminal law protection of foreigners and stateless persons to be in conflict with the protection of their rights under constitutional law. They express the view that § 2611) makes possible criminal prosecution merely for one's thoughts, that is, in the case of the expression of sympathy by non-verbal acts.

II.

In reviewing the requirements for a proceeding, the Constitutional Court also dealt with the fact that, after the election to the Federal Assembly for this electoral term, only 34 of the original 83 Deputies who submitted the petition were still Deputies. Pursuant to Article 8 para. 2 of Constitutional Act No. 91/1991 Coll., the Constitutional Court institutes a proceeding on the basis of a petition by one-fifth of the Deputies of the Federal Assembly, that is on the petition of 60 Deputies. For this reason, it was necessary to determine which moment is decisive, in other words, at which moment the conditions set out in Article 8 para. 2 of the cited constitutional act must be met. The Constitutional Court came to the conclusion that the decisive moment is that when the petition is submitted. That follows, above all, from the cited passage from Article 8 para. 2 (the Constitutional Court "institutes . . . a proceeding . . . on the basis of a petition"), from the fact that the law does not list a decline in the number of Deputies in the petitioning group as one of the grounds for dismissing an already-instituted action, and, above all, from the fact that the need for the protection of constitutionality places upon the Constitutional Court the responsibility to decide regardless of how much time elapses between the submission of the petition and the day it is decided.

III.

The Constitutional Court considers the greater part of the petition instituting the proceeding, as well as the assertions contained therein, to be without merit.

First of all, it is not true that, by adopting § 260 and § 2611), the state has bound itself to an exclusive ideology. By no means is it the case that only a certain „exclusive" ideology remains permitted merely due to the fact that the law criminalizes the support for and propagation of ideologies, or more precisely stated movements, demonstrably directed at the suppression of civil rights or at the declaration of a higher degree of hatred designated by the concept malicious ill-will, including movements just like those given as examples in the brackets, namely fascism and communism, (to the extent that they are directed at the suppression of civil rights or to the declaration of the specified type of hatred). This fact

merely signifies that the support or propagation of ideologies, satisfying the material elements of § 2601) of the Criminal Act, is impermissible and criminal, while all other ideologies may be disseminated, supported, and propagated without restriction imposed by the criminal law. This state of affairs is evidenced by the many political parties and movements which ran candidates in the elections, propagating views of the most diverse political, economic, ideological, political-legal, and other nature, also by their corresponding programs, by the existence of a considerable number of churches, together with the full possibility not to have a religious denomination, by the wide spectrum of philosophical movements, etc. If the state were to be bound by an exclusive ideology (Article 2 para. 1 of the Charter2)), then only one ideology would be permissible, which would mean that all others would be excluded. On the contrary, these criminal law provisions contribute to ensuring the plurality of opinions, ideologies, political and other movements, and to the genuine opportunity for them to be diffused, supported, and propagated due to the fact that it prohibits the support and propagation of an ideology which, by its doctrines and by the way it conducts itself in practice, excluded and excludes the spread of other ideologies. For this reason, § 260 and § 261 of the amended Criminal Act1) do not stand for the proposition that only an exclusive ideology is permitted; on the contrary, they constitute the criminal prohibition of an exclusive ideology and, thus, are entirely in conformity with Article 2 para. 1 of the Charter.2)

In addition, the criminal provision under consideration in no way represents a violation of the freedom of thought and conscience, guaranteed by Article 15 para. 1 of the Charter.5) This conclusion follows alone from the fact that the material elements of § 2601) define positive conduct in the form of support or propagation. To meet the requirements of the term, “support“, concrete assistance to a movement that is founded on the basis of the above-stated ideology is necessary; in addition, the term, “propagation“, requires the commendation or exhortation of such an ideology with the goal of disseminating it. For this reason, in no case may thoughts alone or the mere profession of them give rise to criminal prosecution.

For the same reason, this conclusion applies as well to the relation § 260 and § 2611) bear to Article 19 of the Covenant.

A further objection to § 261 of the Criminal Act1) must be assessed in the same manner. The petitioners erroneously point out that it authorizes the prosecution of a person for non-verbal acts and, therefore, also the prosecution of a person for his thoughts. First of all, if it is to have any legal consequence at all, non-verbal conduct must also be conduct consisting of an act; inaction has legal consequences only in cases where the law or a contract so provides or where such results from the circumstances in which the expression of intention is made, and then only on the condition that there is no doubt as to what the expressed intent is. Criminal law, on the other hand, unambiguously requires an act or an overt failure to act in the form of an omission to do that which the offender is required to do. The provision of § 261 of the Criminal Act1) fully respects these principles, by requiring a “public expression of sympathy“, that is where a person, by his own act done in the presence of more than two persons or through the mass-media, expresses a positive attitude towards the conduct, the elements of which were described above.

Article 17 para. 1 of the Charter,6) which guarantees the freedom of expression and the right to gather information, also makes it possible for this freedom or this right to be limited by law, in the case of measures which are necessary in a democratic society for the protection of the rights and freedoms of others, for the security of the state, and public safety. All three of the stated grounds justifying the limitation of the freedom of expression and the right to information are satisfied by § 260 and § 261.1) The first element of the offense as defined in § 2601) is, in its verbal formulation, consistent with provisions permitting the freedom of expression and the right to the dissemination of information to be limited on the grounds of the protection of the rights and freedoms of others. Likewise, the security of the state and the safety of citizens (public security) require that the support and propagation of movements which threaten the security of the state and the safety of citizens be hindered. Movements, which are demonstrably directed at the suppression of civil rights or at declaring the defined hatred, however they may be named or by whatever ideals or goals motivated, are movements which threaten the democratic state, its security, and the safety of its citizens. For this reason, legal recourse against them is in full harmony with the limitations allowed by Article 17 para. 4 of the Charter.6)

For the same reasons, the stated conclusion applies also to the relationship that § 260 and § 2611) bear to Article 19 of the Covenant, including its provisions allowing limitations equivalent to those limits stated in Article 17 para. 4.6)

That part of § 260 para. 11) preceding the brackets sufficiently precisely defines the material elements of the criminal offense, so that it is in full accord with Article 39 of the Charter,7) which requires that a statute designate the conduct which constitutes a criminal offense. It is true that, viewed in conjunction with further provisions of the Criminal Act, all the necessary material elements of the criminal offense are normatively defined. However, overall the petitioners' objection is not directed against that part of the provision preceding the bracket, rather against the insertion of the term, "communism", among the examples stated within the brackets. Concerning the requirement to define the term, "communism", as used in the brackets, the stated objection would be well-founded only if that part of the provision in the brackets were considered in isolation from the remaining text of § 260.1) The relationship of the part of the provision preceding the brackets to the part within them, however, will be analyzed later on in the reasoning of this decision. The requirement laid down in Article 39 of the Charter,7) that the elements of a criminal offense be duly defined by statute, is met in the first part of § 260 para. 1.1)

The objection that § 2601) infringes Article 40 para. 6 of the Charter,8) prohibiting the retroactive effect of equally strict or stricter laws, is entirely unfounded. Nothing in the amendment, effected by Act No. 557/1991 Coll., or in the structure of the whole Criminal Act in its present form would suggest that either the amended version of § 2601) or, in consideration of the change of the heading, § 2611) has the least retroactive effect. The petition gave practically no reasons for this assertion, it merely refers to § 67a of the Criminal Act on the non-applicability of statutory limitation periods and asserts that the provision, whereby the statute of limitations does not apply to the support and propagation of communism, was introduced with retroactive effect. They consider that with the substantial changes in the material elements of § 260,1) which categorize it

among the criminal offenses to which the statute of limitations does not apply, § 67a(a), the statute of limitations has become non-applicable to the support and propagation of communism with retroactive effect. This reasoning does not take into account, however, the principles of criminal law, the whole structure of the Criminal Act, nor the explicit provision of Act No. 557/1991 Coll.

According to § 16 para. 1 of the Criminal Act, the criminality of an act is determined in accordance with the law in effect at the time the act was committed; it is determined in accordance with a subsequent law only in the case that such is more favorable for the offender. This principle, without exception, relates to all criminal acts listed in the Criminal Act, valid in original form and as amended. Without any doubt, this leads to the conclusion that an act which took place before the effective date of the amendment No. 557/1991 Coll., is considered in accordance with § 2601) as it was worded before the amendment, and an act committed after the effective date of the amendment is considered in accordance with the amended provision.

The above-stated criminal law principle is strengthened by Article 40 para. 6 of the Charter,8) which raises this criminal law principle to a constitutional one to the same effect, that the criminality of an act is to be considered in accordance with the law in effect at the time the act was committed. According to Article 1 para. 1 of Constitutional Act No. 23/1991 Coll., the interpretation and application of all laws, thus also § 260 and § 261 of the amended Criminal Act,1) must be in accord with the Charter, therefore, also with the cited provisions of Article 40 para. 6.8)

Act No. 557/1991 Coll., Article IV of which changed and supplemented the Criminal Act, provided that it would enter into effect on 1 January 1992. Transitional provisions, laid down in Article II, involve only the performance of a crime in a former military correctional division; it does not involve the provisions of § 260 and § 261.1) It contains other transitional provisions, but no kind of provision concerning retroactive effect. For this reason, there is not the least doubt that § 260 and § 261,1) as amended, involve only acts committed on 1 January 1992 or thereafter.

It is true that according to Article 1 of the Convention on the Non-Applicability of Statutory Limitation Periods to War Crimes and Crimes against Humanity, published as No. 53/1974 Coll., statutory limitations periods shall not apply to crimes against humanity regardless of when they were committed. According to Article I(b), however, this principle of international criminal law relates to those crimes against humanity which are defined in the Statute of the Nuremberg International Military Tribunal of 8 August 1945. An act corresponding to the support or propagation of any ideology or movement, including those which aim at the suppression of citizens' rights and freedoms, are not among the crimes against humanity listed in Article 6(c) of the Statute of the International Military Tribunal.

It follows therefrom that not all criminal offenses placed into the Tenth Chapter of the Czechoslovak Criminal Act with the heading, „Criminal Offenses against Humanity", are identical with the definition of crimes against humanity under the cited convention. This holds first of all with regard to § 260 and § 261.1) For this reason, Article I of the cited convention, which precludes the application of statutory limitation periods to internationally recognized crimes against humanity regardless of when they are committed, does not apply to § 260 and § 261. 1)

The above-stated interpretation applies as well to the consideration of the objection that the amendment makes statutory limitation periods non-applicable, with retroactive effect, to criminal acts under § 2601) not subject to the statute of limitations. The Constitutional Court considers the objection entirely groundless. To begin with, if the criminality of a certain deed is not to be subject to a limitation period, a criminal offense must be concerned. If a particular act committed before 1 January 1992 constituted a criminal offense under the § 260 of the Criminal Act1) then in effect, then under § 67a of the Criminal Act it was not subject to the statute of limitations. If, in accordance with the wording of § 260 of the Criminal Act1) then in effect, an act did not constitute a criminal offense, it follows that, since § 67a applies only to criminal offenses, the applicability of limitation periods cannot be discussed at all. Without any doubt, it follows therefrom that § 67a, concerning the non-applicability of limitation periods, applies to acts which up until 31 December 1991 were not criminal but which have been criminal since 1 January 1992, but only in the case that the act was committed after the amendment came into effect. Therefore, this is not a case where the prohibition on the retroactive effect of a criminal law has been violated, not even in relation to the non-applicability of the limitation period to a criminal act.

For similar reasons, the amendment of the cited provision of the Criminal Act does not at all result in a violation of Article 15 of the Covenant, which prohibits the retroactive effect of criminal legislation. It must be noted that Article 15 of the Covenant does not have a provision non-applicability of statutory limitation periods to criminal prosecutions, so that reference to the cited provision in this context is inaccurate. The rules regarding the possibility of prosecuting acts which were criminal according to the universal legal principles recognized by the international community (the community of nations) is an exception to the principle prohibiting retroactive effect; in content it is related to the institution of statutory limitation periods, but it does not set out a criteria for it.

The petition also incorrectly criticizes the above-cited amendment to the Criminal Act for being inconsistent with Article 42 of the Charter,9) which grants foreigners in principle the same human rights and fundamental freedoms as Czechoslovak citizens. The petitioners incorrectly assumed that the new heading over § 2601) only grants protection to Czechoslovak citizens. No doubt it is true that, in accordance with Article 42 para. 1 of the Charter,9) the term, “citizen“, is understood to mean a citizen of the Czech and Slovak Federal Republic, but the cited provision expressly discusses only the cases when this term is applied in the Charter („if the Charter . . .“). Moreover, in accordance with Article 42 para. 3 of the Charter,9) if the term, „citizen“, was employed in enactments that were in effect prior to the Charter coming into force, it shall be understood as referring to every person without regard to their citizenship. The term „citizen“ was inserted into § 260 of the Criminal Act1) by Act No. 175/1990 Coll., which took effect as of 1 July 1990. It is not significant that this term was introduced into the text of § 2601) and not into the heading; what is decisive is that the term, “citizen”, was employed in § 260 of the Criminal Act1) even before the adoption of the Charter. Therefore, it follows from the express provisions of Article 42 para. 3 of the Charter9) that § 260 and § 261,1) including the heading above them, do not provide criminal law protection solely to Czechoslovak citizens, but also to foreigners.

On the other hand, the wording of § 260 para. 11) raises doubts about the relation of the part of the provision preceding the brackets to the part of it contained within the brackets. It is a question whether the material elements consisting in the support or propagation of movements demonstrably directed at the suppression of rights and freedoms of citizens or proclaiming the types of hatred listed therein must be satisfied also in the case that a movement founded on the ideology of fascism or communism is involved, or whether the mere fact of support for and propagation of fascism or communism is alone sufficient irrespective of whether its concrete type, direction, or form is linked with the suppression of rights or the proclamation of hatred.

The wording of the provision under consideration distinctly supports the first above-suggested interpretation. This conclusion follows above all from the heading, „The Support and Propagation of Movements Directed at the Suppression of the Rights and Freedoms of Citizens“, which expresses an object of criminal protection defined by type, the material elements of which must be satisfied by a specific act. The wording of analogy in the text in the brackets explicitly indicates that the movements therein stated are only examples. By an example is meant a paradigm of a certain type of conduct, a concretization of a generally formulated proposition or concept; by the use of an example, an idea or concept is confirmed, verified, and illuminated. From this it follows that an example does not and cannot constitute an exception to a generally expressed proposition (in the case under consideration, that in the part of the provision preceding the brackets), much less the denial thereof, but has to satisfy all the elements which are generally expressed, in other words, those contained in the part § 260 para. 1 preceding the brackets.1)

In spite of that, it is not possible to entirely exclude the point of view which holds that the cases stated in the brackets constitute an authentic interpretation, a statutory term expressing the material elements defined before the brackets. That would mean, that the legislature regards fascist or communist movements, in and of themselves, as conceptually satisfying the elements of the crime, consisting in the suppression of the rights and freedoms or in the proclamation of hatred, so that it would not be necessary separately to ascertain and prove such facts. However, in that case the phrase, “fascist or communist movements”, would not be sufficiently defined in the law, so as to conform to Article 39 of the Charter.7) The cited provision of the Charter requires that the material elements of a criminal offense be determined or set down in the law with such precision, that the governmental authorities which make determinations concerning criminal offenses would take action against an accused only in the cases and in the manner which is regulated by the law, and not exceed the limits set down therein (Article 2 para. 22) and Article 4 para. 23) of the Charter). That means that the material elements of a criminal offense must be designated by law with the necessary precision.

The provisions of Article 2 para. 22) and Article 4 paras. 1, 23) of the Charter, together with the second paragraph of the Preamble, express the principle of the law-based state. The principle of legal certainty is, in addition, derived therefrom. Both principles require that commands and prohibitions be laid down in the law in such a manner as to give rise to no doubts regarding the basic content of the legal norm. This general requirement varies in intensity in relation to different provisions of the Czechoslovak legal order. It manifests itself differently in relation to dispositive norms than it does in relation

to mandatory norms. The requirement that legal norms be comprehensive manifests itself differently in branches of the law or in statutory provisions which should allow for varying interpretation, depending on a change in conditions brought on by new and changing facts, than it does in relation to enactments which do not permit the body applying them to exceed the limits set by law. It is true that the requirement that a law be clear and precise cannot be taken to extremes to require that a legal provision be formulated so as not to require interpretation. Not even criminal law can manage without the need for the interpretation of the words which the law employs. However, in view of the requirements laid down in Article 2 para. 22) and Article 4 paras. 1, 23) of the Charter, in conjunction with the provision of Article 39 of the Charter,7) it is not possible in criminal law to tolerate statutory provisions which, in basic questions of criminal responsibility, admit of entirely contradictory interpretations, due to which wholly diverse conclusions may be reached as to whether specific conduct is criminal or not.

The mere fact that the statute sets forth examples and that they were placed in brackets is neither an impediment to the due application of criminal law nor to full compliance with the Charter. In addition, the term, "communism", was inserted into § 2601) in harmony with the Czechoslovak legal order. It is a criminal law response to the provision of Act No. 480/1991 Coll., on the Era of Non-Freedom, § 1 of which declares that "in the years from 1948 until 1989, the communist regime violated human rights as well as its own laws". In these circumstances, it is justifiable to prevent by means of criminal law the support and propagation of movements which would seek once again to suppress the rights and freedoms of citizens.

So the core of the problem is the requirement that the support or propagation of a communist movement may be criminally prosecuted only in the case that the movement calls for or (as shown by its program, its recognized doctrines, or its specific acts) is oriented toward the suppression of rights and freedoms of citizens or toward the manifestation of intensified hatred (malicious ill-will), described in the provision in question. Such an orientation or manifestation is evidenced, in particular, by a program, doctrine, or effort to seize power by force, and after the acquisition of power to abolish free elections, by the recognition of the teaching of the dictatorship of the proletariat (which, rather than the dictatorship of a class, always manifested itself as the dictatorship of a political party, more precisely the governing head of that party), by the theory or practice of the leading role of a single political party, etc. However, teaching about a classless society would not, in and of itself, constitute sufficient grounds for criminal prosecution, so long as it were accompanied by the effort to attain the above-stated goals by the democratic route and, after their attainment, to preserve democracy and political plurality. Article 17 of the Charter6) and Article 19 of the Covenant would prevent this. Moreover, it is not the Constitutional Court's role to inquire into the issue of whether it is possible to attain such a goal (by such a method or at all) or whether the teaching referred to would still remain communist.

The law has to ensure that the support or propagation of communist movements may be criminally prosecuted only in the first of the stated cases, that is, in the case where the above-stated movement is directed at the suppression of rights and freedoms of citizens or the proclamation of one of the enumerated types of hatred. It is possible to achieve this by means of several different statutory formulations (for example, by deleting the text up

till now contained in the brackets and placing it into a separate sentence, which would contain the requirement that the elements listed in the first sentence must be met as well). The principle of the law-based state and legal certainty, however, requires that the relationship between the generally formulated elements and examples be expressed in such a manner as to admit of no doubt concerning the fact that the generally formulated elements must also be satisfied in cases which are stated as examples.

The petition urges the Constitutional Court to declare in its judgment that, pursuant to Article 6 para. 1 of Constitutional Act No. 23/1991 Coll.,4) § 261 of the Criminal Act1) lost force and effect on 31 December 1991. Such an assertion would be unfounded, however, since § 2611) does not satisfy the conditions set down in Article 6 para. 1.4) Section 2611) criminalizes the public expression of sympathy for fascism or other similar movements defined in § 260.1) On the decisive day, that is 31 December 1991, the unamended version of § 260 was still in effect, and the petitioners have raised no objections to the wording of § 260 as it stood prior to the adoption of the amendment under consideration. Owing to this, no reference to § 260, made in § 261, can be unconstitutional since, according both to the petitioners' view expressed in their petition and to the Constitutional Court's view, on 31 December 1991, the provision to which it refers was in full harmony with constitutional requirements. The amended § 2601) could not have lost effect sooner than it gained it; thus, before the amended § 2601) came into effect, no reference to § 260,1) made in § 261,1) could have been deficient, so that § 2611) could not have lost effect, by virtue of Article 6 para. 1 of Constitutional Act No. 23/1991 Coll.,4) as of 31 December 1991.

That part of § 260 para. 1, as amended by Act No. 557/1991 Coll.,1) which is contained in the brackets shall lose effect on the day this decision is published in the Collection of Laws. If the Federal Assembly does not bring that part of § 260 para. 1,1) as amended, which is contained in the brackets, into harmony with Article 2 paras. 2, 32) and with Article 4 paras. 1, 23) of the Charter, then that part of § 260 para. 1,1) as amended, which is contained in the brackets shall lose validity six months following the publication of this decision.

Pl. US 5/92

Overview of the most important legal regulations

1. § 260 par. 1 of Act no. 140/1961 Coll., as amended by Act no. 557/1991 Coll., which supplements the Criminal Code reads: Anyone who supports or propagates a movement which aims at suppressing the rights and freedoms of citizens, or which promotes national, racial, class or religious hatred (such as, for example, racism or communism) shall be sentenced to a term of imprisonment of from one to five years. The heading for § 260 and 261 reads: "Support and Propagation of Movements Aimed at Suppressing Citizens' Rights and Freedoms".

§ 261 of Act no. 140/1961 Coll., as amended by later regulationd, reads: Anyone who publicly expresses support for fascism or a similar movement specifired in § 260 shall be sentenced to a term of imprisonmnent of six months to three years. Note: This provision was not affected by the amendment of the Criminal Code, Act no. 557/1991 Coll.

2. Art. 2 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms provides that Democratic values constitute the foundation of the state, so that it may not be bound either by an exclusive ideology or by a particular religious faith. Par. 2 provides that state authority may be asserted only in cases and within the bounds provided for by law and only in the manner prescribed by law. Par. 3 provides that everyone may do that which is not prohibited by law; and nobody may be compelled to do that which is not imposed upon him by law.

3. Art. 4 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides in paragraph 1, that duties may be imposed only on the basis of and within the bounds of law, and only while respecting the fundamental rights and freedoms. Par. 2 provides that limitations may be placed upon the fundamental rights and freedoms only by law and under the conditions prescribed by the Charter of Fundamental Rights and Freedoms.

4. § 6 par.1 of Constitutional Act no. 23/1991 Coll., which enacts the Charter of Fundamental Rights and Freedoms, provides that statutes and other legal regulations must be brought into accordance with the Charter of Fundamental Rights and Freedoms no later than 31 December 1991; on that day provisions which are not in accordance with the Charter of Fundamental Rights and Freedoms cease to have effect.

5. Art. 15 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that the freedom of thought, conscience and religious conviction is guaranteed.

6. Art. 17 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that the freedom of expression and the right to information are guaranteed. Par. 4 provides that the freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures that are necessary

in a democratic society for protecting the rights and freedoms of others, the security of the state, public security, public health, or morals.

7. Art. 39 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that only a law may designate the acts which constitute a crime and the penalties or other detriments to rights or property that may be imposed for committing them.

8. Art. 40 par. 6 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that the question whether an act is punishable or not shall be considered, and penalties shall be imposed, in accordance with the law in effect at the time the act was committed. A subsequent law shall be applied if it is more favorable to the offender.

9. Art. 42 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms provides that Whenever the Charter uses the term "citizen", this is to be understood as a citizen of the CSFR. Par. 2 provides that While in the CSFR, aliens enjoy the human rights and fundamental freedoms guaranteed by this Charter, unless such rights and freedoms are expressly extended to citizens alone. Par. 3 provides that Whenever legal enactments in force employ the term "citizen", this shall be understood to refer to every individual if it concerns the fundamental rights and basic freedoms that this Charter extends to everybody irrespective of his citizenship.