

# ACT ON INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

## Table of Contents

- [PART ONE Opening Provisions](#) (Section 1-14)
- [PART TWO Special Procedures of International Judicial Cooperation](#) (Section 15-38)
  - [Chapter I Protection of Information](#) (Section 15-20)
    - [Sub-chapter 1 Protection of Personal Data](#) (Section 15-19)
    - [Sub-chapter 2 Consent to Use of Information](#) (Section 20)
  - [Chapter II Representation of the Czech Republic in Eurojust](#) (Section 21-33)
  - [Chapter III European Judicial Network](#) (Section 34)
  - [Chapter IV Liaison Judges and Public Prosecutors](#) (Section 35)
  - [Chapter V Schengen Information System](#) (Section 36-38)
- [PART THREE Individual forms of International Judicial Cooperation](#) (Section 39-144)
  - [Chapter I Legal Assistance](#) (Section 39-77)
    - [Sub-chapter 1 Requesting Legal Assistance in a Foreign State](#) (Section 39-46)
    - [Sub-chapter 2 Providing Legal Assistance to Foreign Authorities](#)  
(Section 47-56)
    - [Sub-chapter 3 Special Provisions on some Actions of Legal Assistance](#)  
(Section 57-77)
  - [Chapter II Extradition of Persons](#) (Section 78-104)
    - [Sub-chapter 1 Requesting Extradition from a Foreign State](#) (Section 78-86)
    - [Sub-chapter 2 Extradition to Foreign States](#) (Section 87-104)
  - [Chapter III Takeover and Transfer of Criminal Proceedings](#) (Section 105-117)
    - [Sub-chapter 1 Transfer of Criminal Proceedings to a Foreign State](#)  
(Section 105-111)
    - [Sub-chapter 2 Takeover of Criminal Proceedings from a Foreign State](#)  
(Section 112-117)
  - [Chapter IV Recognition and Execution of Decision in Relation to Foreign States](#)  
(Section 118-140)
    - [Sub-chapter 1 Recognition and Execution of Foreign Decisions](#)  
(Section 118-135)
      - [Division 1 General provisions](#) (Section 118-120)
      - [Division 2 Proceedings on Recognition of Foreign Decisions](#)  
(Section 121-128)
      - [Division 3 Execution of Recognized Foreign Decision](#) (Section 129-135)
    - [Sub-chapter 2 Securing Execution of Decisions on Foreign States](#)  
(Section 136 -140)
  - [Chapter V Transit of Persons](#) (Section 141-144)

**Sub-chapter 1** Request for Authorization of Transit of Persons through the Territory of a Third State (Section 141)

**Sub-chapter 2** Transit of Persons through the Territory of the Czech Republic  
(Section 142-144)

**PART FOUR** Cooperation with International Criminal Courts and Tribunals  
(Section 145-184)

**Chapter I** General Provisions (Section 145-154)

**Chapter II** Legal Assistance (Section 155-154)

**Chapter III** Surrender of Persons (Section 164-170)

**Chapter IV** Execution of Decisions (Section 171-180)

**Chapter V** Takeover and Transfer of Criminal Proceedings (Section 181-183)

**Chapter VI** Transit of Persons (Section 184)

**PART FIVE** Special Procedures of International Judicial Cooperation with other Member States (Section 185-339)

**Chapter I** Joint Investigation Team (Section 185-188)

**Chapter II** Surrender of Persons (Section 189-225)

**Sub-chapter 1** General Provisions (Section 189-191)

**Sub-chapter 2** Surrender from another Member State (Section 192-201)

**Sub-chapter 3** Surrender to another Member State (Section 202-221)

**Sub-chapter 4** Surrender with Iceland and Norway (Section 222-225)

**Chapter III** Order for Freezing Assets or Evidence (Section 226-238)

**Sub-chapter 1** Common Provisions (Section 226-228)

**Sub-chapter 2** Freezing of Assets or Evidence in another Member State  
(Section 229-231)

**Sub-division 3** Seizure of Assets or Evidence in the Czech Republic  
(Section 232-236)

**Sub-division 4** Claims of Recourse (Section 237-238)

**Chapter IV** Recognition and Execution of Decisions Imposing Substitute Measure for Custody (Section 239-256)

**Sub-chapter 1** Recognition and Execution of Decision of another Member State Imposing Substitute Measure for Custody (Section 239-250)

**Sub-chapter 2** Securing Execution of Decisions Imposing Substitute Measures for Custody in another Member State (Section 251-255)

**Sub-chapter 3** Common Provisions (Section 256)

**Chapter V** Prevention of Competence Disputes (Section 257-260)

**Chapter VI** Recognition and Execution of Decisions Imposing Financial Penalty or other Financial Obligation (Section 261-277)

**Sub-chapter 1** Recognition and Execution of Decisions of other Member State Imposing Financial Penalty or other Financial Obligation  
(Section 261-272)

**Sub-chapter 2** Securing Execution of Decisions Imposing Financial Penalty or other Financial Obligation in other Member States (Section 273-277)

**Chapter VII** Recognition and Execution of Decisions Imposing Confiscation or Forfeiture of Assets, Items or other Asset Values (Section 278-297)

**Sub-chapter 1 Recognition and Execution of Decisions of other Member States Imposing Confiscation or Forfeiture of Assets, Items or other Asset Values**  
(Section 278-291)

**Sub-chapter 2 Securing Execution of Decisions Imposing Confiscation or Forfeiture of Property, Items or other Asset Values in other Member States**  
(Section 292-295)

**Sub-chapter 3 Claims of Recourse** (Section 296-297)

**Chapter VIII Recognition and Execution of Decisions Imposing Unsuspended Sentence of Imprisonment or Protective Measure Associated with Incarceration**  
(Section 298-322)

**Sub-chapter 1 Recognition and Execution of Decision of another Member State Imposing Unsuspended Sentence of Imprisonment or Protective Measure Associated with Incarceration** (Section 298-313)

**Sub-chapter 2 Securing Execution of Decisions Imposing Unsuspended Sentence of Imprisonment of Protective Measure Associated With Incarceration in another Member State** (Section 314-320)

**Sub-chapter 3 Transit in Relation to Securing Execution of Decisions Imposing Unsuspended Sentence of Imprisonment or Protective Measure Associated with Incarceration in other Member States**  
(Section 321-322)

**Chapter IX Recognition and Execution of Decision imposing Sentences not Associated with Incarceration, Supervision or Adequate Restrictions or Obligations**  
(Section 323-339)

**Sub-chapter 1 Recognition and Execution of Decision of another Member State Imposing Sentence not Associated with Incarceration, Supervision Adequate Restrictions or Obligations** (Section 323-335)

**Sub-chapter 2 Securing Execution of Decisions Imposing Sentence Not Associated with Incarceration, Supervision or Adequate Restrictions or Obligations in another Member State** (Section 336-339)

**PART SIX Transitional and Final Provisions** (Section 340)

**PART SEVEN Full Force and Effect** (Section 341)

# **Act**

of March 20, 2013

on International Judicial Cooperation in Criminal Matters

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

## **PART ONE** **OPENING PROVISIONS**

### **Section 1** **Subject of Regulation**

This Act regulates procedure of judicial, central and other authorities within the framework of international judicial cooperation in criminal matters (hereinafter referred to as „international judicial cooperation“) and incorporates the relevant regulations of the European Union<sup>1</sup>.

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<sup>1</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism.

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States

## **Section 2**

### Definition of Terms

For the purposes of this Act:

- a) a judicial authority will be understood as a court or public prosecutor's office,
- b) a central authority will be understood as the Ministry of Justice (hereinafter referred to as the "Ministry") and the Supreme Public Prosecutor's Office,
- c) a foreign authority will be understood as a judicial or other authority of a foreign state, which is according to an international treaty or the law of the other state competent for international judicial cooperation,
- d) an international treaty will be understood as a promulgated international treaty, to the ratification of which the Parliament granted its consent and which is binding for the Czech Republic, as well as an international treaty published in the Official Journal of the European Union entered into between the European Union and one or more foreign states, to conclusion of which the European Parliament gave its consent and which is binding for the Czech Republic,
- e) a request for international judicial cooperation will be understood also as another incentive for international judicial cooperation,
- f) a guarantee of reciprocity will be understood as:
  - 1. assurance of the Minister of Justice that a similar request of the other state submitted under similar circumstances will be granted,
  - 2. assurance of the competent foreign authority that a similar request of the Czech Republic submitted under similar circumstances will be granted, or
  - 3. declaration of the Minister of Justice on reciprocity on the part of the other state.

## **Section 3**

Criminal proceedings will be understood also as proceedings according to this Act. Unless this Act stipulates otherwise or if a certain issue is not regulated hereby, the Code of Criminal Procedure will apply.

## **Section 4**

### Guarantee of Reciprocity

(1) Unless the international judicial cooperation between the Czech Republic and a foreign state is regulated by an international treaty, the competent judicial authority will grant the request of the foreign state authority for international judicial cooperation only in case the foreign state provides a guarantee of reciprocity, which the Minister of Justice will accept,

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Council Framework Decision 2002/465/JHA on joint investigation teams.  
Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

or in case the foreign state has formerly accepted a guarantee of reciprocity from the part of the Czech Republic in a similar case. The Ministry will secure the request for guarantee of reciprocity from the foreign state.

(2) If the foreign state conditions granting the request for international judicial cooperation by a guarantee of reciprocity, the Minister of Justice will provide it, having considered all decisive matters of fact; in pre-trial proceedings he will do so upon a motion of the Supreme Public Prosecutor's Office.

(3) The Minister of Justice may accept or provide a guarantee of reciprocity only after a previous consultation with the Ministry of Foreign Affairs, and in case such a guarantee concerns also the kind of international judicial cooperation, for which the Supreme Public Prosecutor's Office is the central authority, then also after a previous consultation with the Supreme Public Prosecutor's Office.

(4) The Minister of Justice may grant a consent with service of documents to addressees in the Czech Republic by foreign authorities directly by virtue of operator of postal services only if the foreign authority guarantees reciprocity and only after a previous consultation with the Ministry of Foreign Affairs and the Supreme Public Prosecutor's Office. On the basis of such a consent the Minister of Justice will issue a declaration of reciprocity, in which he will state the extent of the consent and conditions, under which it was granted, especially that the served documents may not contain threats of enforcement.

(5) If a guarantee of reciprocity has been previously accepted in a similar case on the part of the foreign state and if there are no doubts about its observance, no further guarantee of reciprocity is necessary.

(6) Sections 1 to 5 will not apply for procedures referred to I Part five, unless this Act stipulates otherwise.

## **Section 5**

### Protection of Interests of the Czech Republic

(1) International judicial cooperation cannot be provided to a foreign authority, if it would be contrary to the constitutional order of the Czech Republic, or to such provisions of the legal order of the Czech Republic, which must be abided without any exceptions.

(2) International judicial cooperation need not be provided, if it could result in harm to another significant protected interest of the Czech Republic; this does not apply for procedures according to Part five, unless substantial security interests or other similarly important fundamental protected interests of the Czech Republic are concerned.

## **Section 6**

### Provision of Information

(1) Section 8a to 8d of the Code of Criminal Procedure will apply accordingly to provision of information by judicial, central and other authorities on procedures within the frame of international judicial cooperation.

(2) Authorities of the Czech Republic will not provide information obtained within the frame of international judicial cooperation without an explicit consent of the foreign authority, if it is so bound by an international treaty or if the information was provided under the condition of compliance with such a restriction.

### **Section 7**

#### Specialty Principle

(1) Authorities of the Czech Republic will not use without a previous consent of the foreign authority information or evidence acquired within the framework of international judicial cooperation for other purposes, than for which they were provided, if they are so obliged according to a promulgated international treaty binding the Czech Republic, or if the information or evidence was provided under the condition of observing these restrictions. This also applies for provision thereof to a third state or an international organization.

(2) In order to use information or evidence provided to a foreign state for another purpose, than it was provided for, an explicit consent of the judicial or central authority which provided the information or evidence will be necessary, unless an international treaty stipulates otherwise.

### **Section 8**

#### Forms of Cooperation

(1) Judicial authorities will liaise with foreign authorities through their central authorities; they may liaise directly, where an international treaty or this Act allows it.

(2) The central authorities will liaise with foreign authorities via diplomatic channels; they may liaise in another way, where an international treaty or this Act allows it.

(3) Liaison with foreign authorities will in principle be realized in documentary form.

(4) In case a judicial authority or central authority requests international legal assistance with a foreign state via telephone, facsimile, electronically, by the means of international police cooperation, personally or otherwise, they will always subsequently send the original of the request in documentary form to the foreign authority, unless this Act or an international treaty provide otherwise, or unless the foreign authority expressly declares that they do not require sending the original of the request in documentary form.

(5) If the matter clearly cannot be delayed and if there is no doubt about the credibility of the request, the judicial or central authority may initiate execution of actions of international judicial cooperation on the basis of a request of a foreign authority made via telephone, facsimile, electronically, through international police cooperation, personally via a representative of the foreign authority or otherwise. Unless an international treaty or this Act provide otherwise, they will always request the foreign authority to send the original of the request in documentary form within a time period specified by them.

(6) By the means of international police cooperation, judicial and central authorities may also exchange information with foreign authorities concerning execution of requests for international judicial cooperation, including information on time and other details of handover, takeover and transit of persons and items.

### **Section 9**

(1) Judicial authorities perform actions of international judicial cooperation or secure execution thereof without undue delay. In case supplemental information is necessary for its execution, they will request it at the foreign authority or make other appropriate measures in order to secure it.

(2) Evidence, as well as other information acquired on the basis of a request of a foreign authority for international judicial cooperation may be presented to the foreign authority only after the original of this request is delivered, unless the circumstances of the case necessitate its immediate handover.

(3) Authorities of the Czech Republic, decisions of which may affect duration of custody under this Act, will process these matters urgently and with dispatch.

(4) Judicial authorities and the Ministry acquire in the course of their activities pursuant to this Act in the necessary extent by the means of the information service of basic registers and in the necessary extent use referential data contained in the basic register of residents, basic register of legal entities, natural persons conducting business and public authorities and in the basic register of land identification, addresses and real estate conducted according to the Act on basic registers. The Ministry of the Interior provides in electronic form in a way enabling remote access to judicial authorities and the Ministry for the purpose of their procedure under this Act data from the information system of residents register conducted pursuant to the Act on Register of Residents and on Residents, in particular

- a) name, or names, surname, eventually change thereof, birth surname,
- b) date and place of birth,
- c) birth certificate number, if it was assigned,
- d) address of permanent residence,
- e) citizenship,



f) name or names, surname and address of permanent residence of children, parents or statutory representative, siblings and spouse or partner, if they are alive at the time of providing the data.

(5) Provisions of other legal regulations on provision of data from the information system or residents register conducted pursuant to the Act on Register of Residents to judicial authorities will not be affected thereby.

(6) Authorization of the Office for protection of personal data pursuant to the Act on the Protection of Personal Data will not be required for handover of personal data to a foreign state according to this Act.

## **Section 10**

### **Receiving and Transferring Persons and Items**

(1) Any person transferred within the framework of international judicial cooperation to the Czech Republic from a foreign state will be received from the foreign authority by the Police of the Czech Republic and handed over to a facility for execution of protective measures or the nearest custody prison, unless this Act stipulates otherwise. This facility or prison will inform the competent court and the public prosecutor conducting supervision in the facility or prison about the placement of this person into their care, and if the person is placed into the prison or facility in the pre-trial state of proceedings under the Code of Criminal Procedure, they will inform also the public prosecutor conducting supervision over maintaining legality in pre-trial proceedings. In relation to take-over of this person they will also take over items belonging to this person from the foreign authority and items, including documents, related to the actions of international judicial cooperation, for which is the person received, if it is possible; otherwise they will proceed pursuant to Sub-section (3).

(2) The person transferred to a foreign state will be taken by the Police of the Czech Republic from the prison or facility for the execution of protective measures and handed over to the foreign authority. In relation to transfer of this person the Police of the Czech Republic will hand over to the foreign authority also items belonging to this person and items, including documents, related to the actions of international judicial cooperation, for which is the person transferred.

(3) The Police of the Czech Republic will hand over to the foreign authority or take over from it items related to the action of international judicial cooperation, if it is not possible or appropriate to send it via the operator of postal services or to transfer it in another way. The Police of the Czech Republic will similarly secure transit of items through the territory of the Czech Republic, including its take-over and hand-over to the foreign authority.

(4) If a person, for which a court has issued an arrest warrant, order for apprehension or order for delivery for execution of a sentence, or concerning who the court took steps aimed towards his delivery for execution of a protective measure associated with incarceration, is

to be banished or otherwise transferred according to the law of this state, and the foreign state is willing to transfer this person to the Czech Republic without deciding on his extradition, the procedure of receiving such a person will be governed accordingly by Section 83 (1) first and third sentence, or the Police of the Czech Republic may reimburse the foreign state, authorities of which transferred this person to the territory of the Czech Republic, for the costs associated with his transfer. For these purposes may the judicial and central authority provide the foreign authority with necessary information, including personal data and translations of documents.

(5) The person, who is transferred to a foreign authority or received from it pursuant to this Act, does not need to be equipped with a travel document for the purpose of crossing state borders.

### **Section 11**

#### **Costs of International Judicial Cooperation**

(1) Costs incurred to the authorities of the Czech Republic in the course of performing actions of international legal cooperation will be borne by the Czech Republic.

(2) If an international treaty allows reimbursement of costs referred to in Sub-section (1) or any part thereof by a foreign state, or if it is common practice in mutual relations between the Czech Republic and the foreign state within the framework of international judicial cooperation, the judicial authority will present the Ministry a calculation of these costs and substantiation thereof, as well as other data necessary for the purpose of applying for their reimbursement by the foreign state. The Ministry will request the foreign state for reimbursement of the costs based on the calculation, with the exception of cases where the application is considered purposeless or for other reasons inappropriate.

(3) Costs incurred to the foreign state on the basis of a request of the judicial authority for international judicial cooperation, for reimbursement of which the foreign state applied in compliance with an international treaty or even without such a treaty, if it is common practice in mutual relations between the Czech Republic and the foreign state within the frame of international judicial cooperation, will be paid by the Czech Republic. Costs incurred to the foreign state in the course of transit of a person or items through its territory from another state into the Czech Republic on the basis of a request of the judicial authority, reimbursement of which this state requests, will be borne by the Czech Republic. The payment will be made by the Czech Republic.

(4) Provisions of Sub-sections (1) to (3) will not affect the right to claim compensation of costs against the convict.

### **Section 12**

#### **Translations**

(1) Unless an international treaty or this Act stipulate otherwise, the judicial authority will secure translation of the request for international judicial cooperation and its annexes into the foreign language.

(2) Translation of a decision or other document sent from a foreign state on the basis of a request of an authority of the Czech Republic for international judicial cooperation into the Czech language will be secured by the authority that needs it for its procedure in criminal proceedings.

(3) In case an authority of the Czech Republic does not receive a request if a foreign authority for international judicial cooperation and its annexes in the Czech language or provided with a translation into the Czech language, such a translation will be requested from the foreign state, unless an international treaty or this Act provides otherwise. If it cannot be requested, the translation will be secured by the authority that needs it for its procedure according to this Act.

### **Section 13**

#### Authentication of Documents

(1) Unless an international treaty provides otherwise or unless reciprocity is guaranteed, the judicial authority will request the necessary higher or other authentication of a request for international judicial cooperation and its annexes.

(2) Unless an international treaty provides otherwise or unless reciprocity is guaranteed, and the request of a foreign state for international judicial cooperation and its annexes is not provided with a higher or other authentication, the central authority will return it to the foreign state for supplementation of such authentication.

(3) If the foreign state requests a fee for authentication, it will be paid by the central authority.

(4) Sub-sections (1) to (3) will not apply on procedures referred to in Part five.

### **Section 14**

#### Mandatory Defense

(1) The defense counsel must always be representing a person

- a) against whom is being conducted proceeding on his extradition to a foreign state,
- b) against whom is being conducted proceeding on his surrender pursuant to provisions of Part five, Chapter II or proceedings on his surrender to an international juridical authority referred to in Section 145 (1) b) or c),
- c) against whom is being conducted proceedings on extension of extradition,

- d) against whom is being conducted proceedings on extension of surrender, or
- e) who is to make a declaration as to whether he waives the right for application of the principle of specialty in proceedings after being extradited to a foreign state or surrendered pursuant to provisions of Part five, Chapter II.

(2) The defense counsel must always represent also a person, against whom is being conducted proceedings on recognition and execution of a foreign decision, a decision of another state of the European Union /hereinafter referred to as “another Member State of the EU”), or a decision of an international juridical authority referred to in Section 145 (1) b) or c),

- a) by which was imposed an unsuspended sentence of imprisonment or protective measure associated with incarceration,
- b) if he is in custody, serving an unsuspended sentence of imprisonment or protective measure associated with incarceration,
- c) if he is legally incapacitated or if his legal capacity is restricted,
- d) he is a juvenile, or
- e) if the court considers it necessary, especially because it has doubts about the capacity of this person to properly defend himself in view of his physical or mental impairments.

## **PART TWO**

### **Special Procedures of International Judicial Cooperation**

#### **Chapter I**

##### **Protection of Information**

#### **Sub-chapter 1**

##### **Protection of Personal Data**

#### **Section 15**

Provisions of this Sub-chapter do not apply on transfer of personal data with the European Police Agency, European unit for judicial cooperation established by a legal regulation of the European Union (hereinafter referred to as “Eurojust”) or via the information system established by Member States, which participate on Schengen cooperation on the basis of Schengen regulations (hereinafter referred to as “Schengen Information System”). Provisions of Section 16, 17, 18 (1) and (2) and Section 19 do not apply to transfer of personal data on the basis of international conventions.

#### **Section 16**

##### **Protection of Personal Data Transferred from the Czech Republic**

(1) If the nature of personal data transferred to another Member State of the EU or a state associated through an international treaty to implement the Schengen regulations

(hereinafter referred to as "associated state") requires it and where it is possible, the available information enabling such a State to assess their accuracy must be enclosed thereto.

(2) If the authority of the Czech Republic that transferred the personal data to another Member State of the EU or an associated state finds that the transferred personal data is inaccurate or that it was not transferred in accordance with this Act or with a special Act, it shall notify the competent authority of the state that was received such transmitted data of this fact.

(3) If it considers it necessary for personal data protection, the authority of the Czech Republic may, along with the transfer of personal data to another Member State of the EU or an associated state, request compliance with the time limits for storing personal data prescribed by the law of the Czech Republic.

(4) If there is a threat to the fulfillment of the purpose of the criminal proceedings, or to the protection of life or health of persons, or for other serious reasons, the authority of the Czech Republic may, along with the transfer of personal data to another Member State of the EU or an associated state, request the authority of such a state that the person concerned by such data is informed of the transfer or other processing only with the prior consent of the authority of the Czech Republic.

(5) The request of a competent authority of another Member State of the EU or an associated state on the use of personal data, which was transferred to it from the Czech Republic, for a purpose other than that for which it was transferred, shall be assessed by the authority of the Czech Republic that transferred such personal data into this state. It shall grant its consent, if such use is admissible according to the law of the Czech Republic; this shall not affect the provisions of Section 7 (2) and Section 20.

(6) Granting a consent with further transfer of personal data to a state, which is not a Member State of the European Union or an associated state, or to an international authority, which is not an authority of the European Union, falls within the competence of the judicial or central authority of the Czech Republic, which obtained such data.

## **Section 17**

### **Protection of Personal Data Transferred to the Czech Republic**

(1) If the authority of another Member State of the EU or an associated state or an authority of the European Union limited the period of the storage of personal data during their transfer to the Czech Republic or if it requested compliance with other restrictions imposed by its law with respect to such personal data, such restrictions must be complied with, except in cases where the provided personal data is further necessary for the purposes of criminal proceedings, execution of a prison sentence or a protective measure, or for any other purposes set out by the law, which are referred to in Sub-section (3).

(2) If, during the transfer of personal data to the authorities of the Czech Republic, the authority of another Member State of the EU or an associated state requests to ensure that the person, whom such data concerns, was not notified of their transfer or further processing, such person may be informed only with the prior consent of the authority of such a state.

(3) Personal data transferred by an authority of another Member State of the EU or an associated State may be used for a purpose other than that for which it was provided only in case of use for the purpose of

- a) prevention, investigation, detection and prosecution of criminal offences, or for execution of a prison sentence or a protective measure,
- b) judicial or administrative proceedings related to prevention, investigation, detection and prosecution of criminal offences, or if execution of a sentence or protective measure is directly related thereto,
- c) prevention or elimination of an imminent serious threat to public safety, or
- d) the state statistical services, for scientific and archiving purposes.

(4) Unless a case referred to in Sub-section (3) is concerned, the personal data transferred by an authority of another Member State of the EU or an associated state may be used for a purpose other than that for which it was transferred only with the consent of such authority or the person whom it concerns. If the personal data is provided to a body other than a public authority or a department of the state beyond the scope of the criminal proceedings, the personal data transferred by an authority of Member State of the EU or an associated state may be transferred only if

- a) the competent authority of another Member State of the EU or an associated state expressed its consent to such provision,
- b) no special rights of the person whom the personal data concerns, set out by the law of the Czech Republic, prevent such provision and
- c) such provision is necessary for the purposes referred to in Sub-section (3) a) or c), to meet the legal obligations or to prevent a serious violation of the rights of natural persons.

(5) The competent authority of the Czech Republic shall instruct the authority to which it provides the personal data in accordance with Sub-section (4) about the purpose, for which the provided personal data may be used. If it deems it necessary for the purposes of personal data protection, the competent authority of the Czech Republic may request such an authority for information on the manner of use of the provided personal data at any time.

## **Section 18**

### **Further Transfer of Personal Data**

(1) Personal data transferred to an authority of the Czech Republic by an authority of another Member State of the EU or an associated state may be further transferred to another

state which is not a Member State of the EU or an associated state, or an international authority that is not an authority of the EU, only under the condition that

- a) the personal data is transferred to another state or an international authority for the purposes of prevention, investigation, detection and prosecution of criminal offences, or for execution of a prison sentence or a protective measure, and
- b) the state that transferred such personal data to the Czech Republic agrees to its further forwarding; such a consent is not required if further forwarding is necessary to prevent or eliminate an imminent and serious threat to public safety or the fundamental interests of a Member State of the EU or an associated state, or to prevent or eliminate an imminent and serious threat to the public safety of another state and the consent may not be obtained in time.

(2) This state must be notified of the further transfer of the personal data without the consent of the state referred to in Sub-section (1) b) without an undue delay.

(3) If the personal data transferred to an authority of the Czech Republic by an authority of another member State of the EU or an associated state is to be transferred to another state which is not a Member State of the EU or an associated state, or to an international authority which is not an authority of the EU, under a promulgated international treaty binding the Czech Republic, the competent authority of the Czech Republic shall request the opinion of this state that transferred such data to the Czech Republic for its further transfer; unless there are grounds referred to in Sub-section (1) b).

(4) In the request for the consent of another state with further forwarding of personal data pursuant to Sub-section (1) or in the request for its opinion pursuant to Sub-section (3), the competent authority of another state shall be given a reasonable time limit, during which it must submit its opinion and be advised that unless it sends its opinion within the set time limit, it shall be deemed that it gave its consent to such forwarding of the personal data.

## **Section 19**

### Claims of Recourse

(1) The Ministry of Justice shall, upon a request of another Member State of the EU or an associated state, to which was transferred inaccurate personal data by a procedure under this Chapter or which was provided with personal data contrary to this or a special Act, reimburse the amount that such State paid in accordance with its law in damages, to the extent to which the damage was incurred by the procedure of the authorities of the Czech Republic.

(2) In case that the request of another Member State of the EU or an associated state does not contain the required information, the Ministry of Justice shall ask the competent authority of such state for its completion and it shall determine a reasonable time limit therefor. Therein, it will always advise it about the consequences of failure to comply with

such call. Unless the competent authority of such State complies with the request within the set time limit, without giving significant reasons for which it could not have done so, the Ministry of Justice shall dismiss the request.

(3) The Ministry of Justice may request another Member State of the EU or an associated state that transferred the inaccurate personal data or that transferred personal data contrary to its national law to the Czech Republic for the reimbursement of the amount paid in damages according to the Act on Liability for Damage Caused in Execution of Public Authority by a Decision or Incorrect Official Procedure, to the extent, to which the damage was incurred by the procedures of such state.

(4) The claim for the reimbursement of the paid damages will be applied in the form of a request to the competent authority of another Member State of the EU or an associated state in accordance with the law and requirements of such state.

## **Sub-chapter 2**

### **Consent to Use of Information**

#### **Section 20**

(1) Information obtained within the framework of police cooperation from another Member State of the European Union or an associated may be used as evidence in criminal proceedings only on the basis of a consent of the competent authority of this state. Requesting such a consent lies within the competence of the public prosecutor and after lodging an indictment, the court; when requesting the consent, it will be proceeded *mutatis mutandis* in accordance with provisions of Part three, Chapter I, Sub-chapter 1. Requesting the consent is not necessary, if the competent authority of the foreign state has already granted the consent in the course of providing the information or if the national law of the foreign state does not require such a consent.

(2) For using the information provided within the framework of police cooperation to another Member State of the European Union or an associated state as evidence in criminal proceedings is necessary to have a consent of the judicial authority. Provisions of Part three Chapter I Sub-chapter 2 will apply accordingly to granting the consent. Granting the consent lies within the competence of the Regional Court, and in case pre-trial proceeding is being conducted in the foreign state, the Regional Public Prosecutor's Office, in the jurisdiction of which is stationed the police authority that obtained the information.

(3) The consent referred to Sub-section (2) cannot be granted if:

a) using such information as evidence would be inadmissible for the purposes of criminal prosecution in the Czech Republic, or



b) there is a risk that using such information as evidence would thwart criminal proceedings conducted in the Czech Republic or seriously imperil another significant interest.

(4) Information obtained or provided within the framework of cooperation between administrative authorities of the Czech Republic and authorities of the foreign state may be used as evidence in criminal proceedings only under the conditions stipulated by an international treaty. Procedure according to Sub-section (1) to (3) will apply accordingly also in case of information obtained or provided within the framework of cooperation between administrative authorities of the Czech Republic and authorities of the foreign state, provided that such a procedure is enabled by an international treaty.

## **Chapter II**

### **Representation of the Czech Republic in Eurojust**

#### **Section 21**

##### **National Member**

(1) The Czech Republic is represented in the European unit for judicial cooperation established by a legal regulation of the European Union<sup>2</sup> (hereinafter referred to as “Eurojust”) by the National Member in Eurojust (hereinafter referred as the “National Member”). The National Member is temporarily assigned to Eurojust.

(2) The National Member is appointed with his consent upon a petition of the Supreme Public Prosecutor by the Minister of Justice out of the ranks of public prosecutors assigned to hold office at the Supreme Public Prosecutor’s Office, whose professional and language skills and experience provide a guarantee due performance of this office, and is also removed from office by the Minister of Justice upon a petition of the Supreme Public Prosecutor.

(3) The term of office of the National Member is 4 years, he may be appointed repeatedly. In case the National Member is elected as the president or vice president of Eurojust and the remaining portion of the term of office of the National Member is shorter than the time for which he was elected, the term of office of the National Member will be extended so that it ends simultaneously with the end of the office of president or vice president of Eurojust.

(4) The Minister of Justice will inform the Council of the European Union in advance of removing the National Member from office before the set term of office expires.

#### **Section 22**

##### **Deputy and Assistant of the National Member**

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<sup>2</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime

(1) The deputy and eventually also the assistant of the National Member participate on fulfillment of duties and execution of competences of the National Member.

(2) Deputy of the National Member fulfills his duties and executes his competences in the time of his absence and is entitled to act in the name of the National Member in the extent of authorization given by him. Deputy of the National Member is appointed with his consent upon a motion of the Supreme Public Prosecutor by the Minister of Justice out of the ranks of public prosecutors assigned to hold office at the Supreme Public Prosecutor's Office, whose professional and language skills and experience provide a guarantee due performance of this office, and is also removed from office by the Minister of Justice upon a petition of the Supreme Public Prosecutor.

(3) Assistant of the National Member may represent him in the time of his absence or to act in his name only if he is a public prosecutor or judge and on the basis of authorization given by the National Member. Assistant of the National Member is appointed with his consent upon a petition of the National Member by the Minister of Justice out of the ranks of judges or employees of court, public prosecutors or other employees of the public prosecutor's office or employees of the Ministry, whose professional and language skills and experience provide a guarantee due performance of this office, and is also removed from office by the Minister of Justice upon a petition of the Supreme Public Prosecutor. Term of office of the assistant of the National Member is 4 years, he may be appointed repeatedly.

### **Section 23**

#### Other Auxiliary Personnel

Fulfillment of tasks of the National Member may be participated, on the basis of his authorization, by national experts delegated to Eurojust or by employees of Eurojust.

### **Section 24**

#### Eurojust Liaison Officer

A judge or public prosecutor may be, with their consent and with the consent of the Minister of Justice, delegated by the Eurojust collegium into a non-Member State to act there as a liaison officer of Eurojust. The minister of Justice grants his consent with the delegation upon a petition of the National Member; if the National Member is to be delegated in this way, it will be done upon a petition of the Supreme Public Prosecutor. By delegating the National Member, his deputy or assistant as a liaison officer of Eurojust is their position as the National Member, his deputy or assistant terminated.

### **Section 25**

#### National Correspondent

(1) The national correspondent provides the National Member with information necessary for performing his activities in Eurojust and exchanges with him important findings in the field, which he was appointed for.

(2) The national correspondent for Eurojust, national correspondent for terrorism and eventually for other areas are appointed, with their consent upon a petition of the National Member by

- a) the Minister of Justice out of the ranks of judges or employees of the Ministry,
- b) the Supreme Public Prosecutor out of the ranks of public prosecutors,
- c) the President of Police out of the ranks of members of the Police of the Czech Republic.

(3) The person who appoints the national correspondent according to Sub-section (2) may also dismiss them upon a petition of the National Member.

## **Section 26**

### Joint Supervisory Authority of Eurojust

A judge will be appointed to the list of judges, who may sit in the Joint Supervisory Authority of Eurojust as members or as ad hoc judges, with his consent by the Minister of Justice upon a petition of the Chairman of the Supreme Court out of the ranks of judges of the Supreme Court, and the Minister of judges may also dismiss him upon a petition of the Chairman of the Supreme Court. The term of office is 3 years, the same person may be appointed into the office repeatedly.

## **Section 27**

### National Coordination System of Eurojust

(1) The National Coordination System of Eurojust in the territory of the Czech Republic is composed of

- a) national correspondents,
- b) up to 3 persons, who are the contact points of the European judicial network<sup>3</sup> and who were with their consent appointed by the members of the National Coordination System of Eurojust as national correspondents for the European Judicial Network,
- c) persons, who are the members or contact points of networks established for the purposes of judicial cooperation in criminal matters between the Member States.

(2) The National Coordination System facilitates fulfillment of tasks of Eurojust in the Czech Republic especially by

- a) securing due and timely provision of information to Eurojust,
- b) facilitates determination of cases pertaining to the competence of Eurojust or case where the European Judicial Network is to provide the authorities involved in criminal proceedings the necessary cooperation,

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<sup>3</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network

- c) provides cooperation to the National Member in the course of identification of authorities for executing requests for international legal cooperation.
  - d) Cooperates with the National Unit of the European Police Agency.
- (3) The national correspondent for Eurojust will be responsible for due operation of the National Coordination System in the Czech Republic.
- (4) The persons referred to in Sub-section (1) (a), (b) and have access and the persons referred to in Sub-section (1) (c) may have access to the electronic register of files of Eurojust<sup>4</sup>.

## **Section 28**

- (1) Cooperation between Eurojust and the Czech Republic is realized via the National Member. In urgent cases the National Member may be contacted also via the Eurojust permanent service<sup>5</sup>.
- (2) Authorities involved in criminal proceedings and the National Member are in mutual direct contact.
- (3) If it is necessary for the purposes of coordination on criminal proceedings, for securing mutual informedness and cooperation with other states or with the European Union, the public prosecutor or court may request Eurojust via the National Member for provision of necessary cooperation.
- (4) If the National Member requests the authorities involved in criminal proceedings for cooperation for the purposes of fulfillment of his tasks, they will provide it without an undue delay; similarly the National Member will provide the necessary cooperation to these authorities for the purposes of criminal proceedings.
- (5) The National Member may forward the information provided by the authorities involved in criminal proceedings to other National Members or to foreign authorities, if it is necessary for fulfillment of their tasks.

## **Section 29**

### Competence of the National Member

- (1) The National Member is entitled, for the purposes of fulfillment of tasks within Eurojust, to
- a) inspect files kept for the purpose of criminal proceedings,
  - b) request full copy of entries in the Criminal Record,

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<sup>4</sup> Art. 16b of the Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

<sup>5</sup> Art. 5a of the Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

- c) acquire data from the central evidence of prosecuted persons conducted pursuant to the Public Prosecutor's Office Act,
- d) acquire information processed in police records according to the Act on the Police of the Czech Republic,
- e) acquire data from the register of persons in execution of security detention, custody and serving a sentence of imprisonment, conducted according to the Act of Prison Service and Judicial Guard of the Czech Republic,
- f) acquire information from the register of cases conducted by courts and public prosecutor's offices for the purposes of criminal proceedings,
- g) within the framework of international judicial cooperation send to Member States and to third states, which concluded an agreement of cooperation with Eurojust, and receive from these states requests and decisions, eventually also other related documents,
- h) coordinate execution of requests for international judicial cooperation,
- i) request the court and in pre-trial proceedings the public prosecutor for information on the status of execution of a request for international judicial cooperation, request elimination of delays and set a time limit to the public prosecutor for execution of such a request,
- j) participate in Joint Investigation Team.

(2) In urgent cases the National Member may elaborate or supplement a request for legal assistance for the purposes of international judicial cooperation, on the basis and in the extent of a written authorization of the public prosecutor performing supervision over maintaining legality in pre-trial proceedings or the presiding judge in trial proceedings. The authorization must contain the requisites referred to in Section 41 (1) in the extent necessary for elaboration or supplementation of the request for legal assistance.

(3) The Ministry of the Interior will provide the National Member for the purposes of fulfillment of his tasks in Eurojust the following information:

- a) referential data on the subjects of data from the register of residents,
- b) data on residents from the agenda information system of register of residents,
- c) data on natural persons, who were assigned a birth certificate number, but that are not listed in Paragraph b) from the register of birth certificate numbers.

(4) Data referred to in Sub-section (3) will be provided to the National Member in the same extent, in which it is provided to the public prosecutor's office according to the Act on Public Prosecution. If it is technically possible, these data will be provided in in electronic form in a way enabling remote access.

### **Section 30**

#### Exchange of Information with the National Member

(1) Authorities involved in criminal proceedings will provide the National Member without undue delay information necessary for fulfilling tasks of Eurojust; provision of such information will be considered as a request for cooperation of Eurojust only if it is explicitly

declared by the authority involved in criminal proceedings. This information may be transferred to other National Members or to foreign authorities, if it is necessary for fulfilling their tasks.

(2) The court and in pre-trial proceedings the public will inform the National Member especially of cases directly related to at least 3 Member States, where requests for international legal assistance were sent to at least 2 Member States, and

a) it concerns an act, for which may be imposed an unsuspended sentence of imprisonment with the upper limit of the extent of sentence of at least 5 years or a protective measure associated with incarceration, and which consists in one of the following types of conduct:

1. trafficking in human beings,
2. sexual abuse of children and child pornography,
3. illicit trade with narcotic and psychotropic substances,
4. illicit trade with arms, ammunition and explosives,
5. corruption,
6. fraud affecting interests of European Communities within the meaning of the Convention of June 26, 1995 on the Protection of Financial Interests of European Communities,
7. Forgery of the Euro currency,
8. legalization of proceeds from criminal activity,
9. attack against an information system,

b) factual findings indicate that the act was committed by an organized criminal group, or

c) they may have a consequential cross-border proportion or impact on the European Union level or they may concern other Member States as well.

(3) The court and in pre-trial proceedings the public prosecutor will also inform the National Member of

a) the creation of a Joint Investigation Team and results of its activity,

b) cases, where there are criminal proceedings being conducted against the same person concerning the same act in the Czech Republic and in one or more other Member States, or where there is a reasonable belief that such a case will occur,

c) monitored consignments concerning at least 3 states, at least 2 of which are Member States, and

d) repeated refusals or difficulties in the course of executing requests for international judicial assistance.

(4) The information will not be provided to the National Member, if it would cause imperilment to substantial national security interests or safety of persons.

(5) The National Member will immediately inform the competent authority involved in criminal proceedings of the result of processing of the information provided by this authority and will notify it of the related cases registered by Eurojust.

### **Section 31**

#### Cooperation with Eurojust

(1) In case the competent authority involved in criminal proceedings was requested by Eurojust to initiate criminal proceedings in a certain matter, takeover of criminal proceedings or criminal complaint from another Member State or to transfer it to another Member State, to coordinate its proceeding with the competent authorities of another Member State, to create a Joint Investigation Team or to provide information necessary for fulfillment of its tasks, whereas it concern a case, where Eurojust exercises its competence through the Eurojust Collegium, such a request will be executed without an undue delay. If the request of Eurojust is not substantiated, the authority involved in criminal proceedings will request Eurojust to immediately supplement the reasoning. If it refuses to comply with the request, it will state the reasons therefor with the exception of cases, where stating such reasons would imperil substantial national security interests or safety of persons.

(2) In cases, where Eurojust exercises its competence through the National Member and requests the authorities involved in criminal proceedings to perform actions referred to in Sub-section (1) or to perform actions in criminal proceedings, will be proceeded accordingly pursuant to Sub-section (1).

(3) If the cases referred to in Section 30 (3) b) or d) cannot be resolved by an agreement of the concerned Member States or through their National Members, the National Member will, on the basis of a notification of the public prosecutor or court or even without such notification, ask the Eurojust Collegium for its opinion, which he will send to the competent public prosecutor or court. If the public prosecutor or court disagree with the opinion of the Eurojust Collegium, he will inform the National Member thereof without an undue delay, with stating reasons of such disagreement; the reasons do not have to be stated in cases, where it would imperil substantial national security interests or security of persons.

### **Section 32**

#### Personal Data Protection

(1) The authorities involved in criminal proceedings or the national correspondent, who provided personal data to Eurojust, will request Eurojust for their correction or deletion, if it ascertains that the provided personal data is inaccurate.

(2) The person, whose personal data is being processed by Eurojust, may make a free of charge request to Eurojust through the Supreme Public Prosecutor's Office to be informed of the processing of his personal data. If this person finds or believes that the personal data being processed is inaccurate with regard to the purpose of the processing or that it is

processed contrary to a legal regulation of the European Union<sup>6</sup>, he may demand through the Supreme Public Prosecutor's Office that Eurojust rectified thus incurred situation, especially to block the personal data, make a correction, supplementation or erasure thereof.

(3) The Supreme Public Prosecutor's Office will immediately forward the request referred to in Sub-section (2) to Eurojust.

(4) If the person referred to in Sub-section (2) disagrees with the manner of execution of his request, he may submit the matter for a review to the mutual control authority of Eurojust<sup>7</sup> within 30 days following the service of the decision on such request.

(5) Claim for compensation of damage caused by Eurojust will be applied by the person, whose data is being processed by Eurojust in the state, in which Eurojust has its seat.

### **Section 33**

#### Claims of Recourse

(1) The Ministry will reimburse a financial sum requested by Eurojust, which was paid by Eurojust as compensation of damage in the extent, in which the inflicted damage was caused by the exercise of authority of the National Member referred to in Section 29.

(2) In case the request of Eurojust does not contain all necessary information, the ministry will request it for supplementing it and set a reasonable time limit therefor. Therein the Ministry will always caution it of the consequences of failure to comply with this request. If Eurojust fails to comply with this request within the stipulated time limit without stating serious reasons preventing it from doing so, the request will be refused.

### **Chapter III**

#### European Judicial Network

### **Section 34**

(1) Tasks arising from participation of the Czech Republic into the European Judicial Network<sup>8</sup> will be performed by contact points and by the technical correspondent for the European Judicial Network. The authorities involved in criminal proceedings and the Ministry will be obliged to provide them their cooperation for this purpose within their competencies.

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<sup>6</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

<sup>7</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

<sup>8</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.



(2) Persons, who serve as contact points of the European Judicial Network, will be appointed with their consent and dismissed by the Minister of Justice out of the ranks of judges, public prosecutors or employees of the Ministry, whereas he will take into account their professional and language skills and experience. In case of public prosecutors he will do so upon a petition of the Supreme Public Prosecutor.

(3) The Minister of Justice will appoint a national correspondent for the European Judicial Network with his consent out of the persons serving as contact points.

## **Chapter IV**

### **Liaison Judges and Public Prosecutors**

#### **Section 35**

(1) The Minister of Justice will appoint with their consent and dismiss liaison judges or liaison public prosecutors for facilitation of international judicial cooperation between the Czech Republic and foreign states, whereas he will take into account their professional and language skills and experience. In case of public prosecutors he will do so upon a petition of the Supreme Public Prosecutor.

(2) Authorities involved in criminal proceedings and the Ministry will be obliged to provide the liaison judge or liaison public prosecutor their cooperation within their competencies for the purposes of discharging this office.

## **Chapter V**

### **Schengen Information System**

#### **Section 36**

(1) The authorities involved in criminal proceedings may, for the purposes of criminal proceedings, acquire data through the police of the Czech Republic from the Schengen Information System.

(2) The National Member, his deputy and his assistant will have, access through Eurojust to records registered in the Schengen Information System on

- a) persons searched for the purpose of arrest and extradition or surrender,
- b) missing persons,
- c) persons whose residence has been searched for in order to deliver documents in criminal proceedings,
- d) items and asset values and evidence searched for the purpose of their freezing, seizure or confiscation.

(3) If the information investigated by the National Member, his deputy or assistant is recorded in the Schengen Information System, the National Member shall immediately notify this fact to the state that registered the record.

(4) The National Member, his deputy and his are, within the scope of their activity, entitled to investigate information referred to in Sub-section (2) and to dispose with such information within the scope necessary for fulfillment of their tasks; they must not use these information for purposes other than which the information were investigated for. The information may be forwarded to a State that is not bound by international treaties on abolition of checks at the common borders only with the consent of the State that registered the record in the Schengen Information System.

### § 37

#### Records for the Purpose of Arrest and Extradition or Surrender

(1) A record registered in the Schengen Information System for the purpose of arrest and extradition or surrender of a persons, which contains the requisites referred to in the European Arrest Warrant form<sup>9</sup>, will have the same effects for the purpose of surrender proceedings, as the European Arrest Warrant; registering such a record also substitutes sending of the European Arrest Warrant original to the state, in which is the person concerned by the surrender located.

(2) A record registered in the Schengen Information System for the purpose of arrest and extradition or surrender of a person substitutes, for the purposes of extradition proceedings in relation to Member States, which participate on Schengen cooperation on the basis of Schengen regulations, and to associated states, sending requests for imposing preliminary custody.

(3) In case a record has been registered in the Schengen Information System for the purpose of arrest and extradition or surrender of a person, it will be considered as if sufficient information referred to in Section 92 (3) is available.

(4) The Supreme Public Prosecutor's Office may, for the purpose of assigning a label forbidding the apprehension of the person to the record registered in the Schengen Information System for the purpose of arrest and extradition or surrender, specify by an instruction to the Police Presidium of the Czech Republic cases of the same kind, where extradition or surrender of the person on the basis of a European Arrest Warrant is precluded by a statutory impediment.

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<sup>9</sup> Annex of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.

(5) Provisions of Sub-section (1) and (4) will apply accordingly also to surrender proceedings pursuant to Part five of Chapter II, Sub-chapter 4.

### **Section 38**

#### Record for the Purpose of Searching for Persons

If it is necessary for service of documents in criminal proceedings to a person in a foreign state or in relation to a request for legal assistance to search for the place of residence of the person in a Member State participating in Schengen cooperation on the basis of Schengen regulations, or in an associated state, the court and in pre-trial proceedings the public prosecutor will ask the Police of the Czech Republic to register a record in the Schengen Information System for this purpose.

## **PART THREE**

### Individual forms of International Judicial Cooperation

#### **Chapter I**

##### Legal Assistance

#### **Sub-chapter 1**

##### Requesting Legal Assistance in a Foreign State

### **Section 39**

Legal assistance in a foreign state may be requested after initiating actions in criminal proceedings and for the purpose of these proceedings.

### **Section 40**

(1) Legal assistance in a foreign state may be requested solely on the basis of a request of the public prosecutor and after lodging an indictment, on the basis of a request of the court. This does not preclude the public prosecutor from requesting legal assistance from his own initiative also after lodging an indictment, if it concerns obtaining evidence necessary for representing prosecution in trial proceedings. The public prosecutor will submit the request for legal assistance to the Supreme Public Prosecutor's Office, the court to the Ministry.

(2) The central authority will review the request for legal assistance, especially with regard to the conditions and essentials implied by this Act or by an international treaty, and to the requirements arising from previous mutual relations, and will send it to the foreign state, unless it returns it along with stating reasons, for which it was impossible to send it to the foreign state. In relation to reviewing the request for legal assistance the central authority may request the judicial authority to make necessary corrections and amendments. Opinion of the central authority is binding for the judicial authority.

(3) The judicial authority may send a request for legal assistance and all other documents directly to the foreign authority only if an international treaty provides for a direct contact between judicial authorities in the course of realization of legal assistance.

#### **Section 41**

##### **Request for Legal Assistance**

(1) Request for legal assistance contains especially

- a) specification of the judicial authority requesting the legal assistance, date of drawing up the request,
- b) data on the person, against whom the criminal proceeding being is conducted,
- c) description of the act, its legal qualification with literal wording of the Criminal Code and eventually other legal regulations,
- d) accurate description of the requested actions of legal assistance, including the requirements for its execution and substantiation of the need for its execution.

(2) The request will be accompanied by documents and items necessary for executing the requested action of legal assistance.

(3) The judicial authority will provide additional information and supplementations necessary for executing the request upon a petition of the foreign authority.

#### **Section 42**

##### **Applicability of Evidence**

(1) The judicial authority may request the foreign authority to use the provisions of the Czech in the course of execution of actions of legal assistance in the extent allowed by the law of the foreign state.

(2) Evidence obtained on the basis of a request of the judicial authority by the foreign authority may be used in criminal proceedings in the Czech Republic, if it was obtained in compliance with the law of the foreign state in question, or in compliance with the law of the Czech Republic.

(3) Under the conditions referred to in Sub-section (2), evidence provided by a foreign authority without a request for legal assistance may also be used in criminal proceedings in the Czech Republic.

#### **Section 43**

##### **Service of Documents**

(1) The judicial authority will serve documents in criminal proceedings to an addressee in a foreign state on the basis of a request for legal assistance.

(2) Service of documents in criminal proceedings upon a request of the judicial authority by a foreign authority will be considered effective, if it was executed in compliance with the law of the foreign state in question or in compliance with the law of the Czech Republic.

(3) If it is provided for by an international treaty or by this Act, the judicial authority may serve documents in criminal proceedings to the addressee in a foreign state directly through a post service provider.

(4) Unless precluded by the regulations of the foreign state, in the territory of which the documents are to be served, the judicial authority may serve the documents to the addressee in the foreign state directly through a post service provider. Upon a request of the judicial authority the central authority will verify, whether the service is not precluded by regulations of the foreign state, and the manner, in which is such process service executed in the foreign state.

(5) The served documents must not contain threats of enforcement.

#### **Section 44**

##### **Summoning Persons from Foreign States**

(1) If the presence of a person located in a foreign state is necessary for the purposes of criminal proceedings in the Czech Republic, the judicial authority will serve him a writ of summons through the procedure according to this Sub-chapter. Presence of this person in the Czech Republic cannot be enforced by a threat of compulsory measures or sanctions.

(2) The person, who appears in the territory of the Czech Republic from a foreign state on the basis of a writ of summons, cannot be prosecuted or incarcerated for a criminal offence he committed prior to his entry to the territory of the Czech Republic. However, in such a case criminal prosecution or incarceration of the summoned person is permissible

- a) for a criminal offense, in relation to which he was summoned as the accused person,
- b) in case he willingly returns to the territory of the Czech Republic after leaving it, or in case he is transported to the territory of the Czech republic from a foreign state in a legal manner,
- c) if he stays in the territory of the Czech Republic after the lapse of 15 days from the day his presence was no longer necessary, despite the fact he could leave, or
- d) if he failed to appear at the procedural action he was summoned for, unless it was precluded by reasons independent on his will.

(3) A writ of summons of a person from a foreign state must also contain advice of the facts referred to in Sub-section (2).

(4) In case a foreigner is to be summoned, the judicial authority will inform the Directorate of Foreign Police Service at least 30 days in advance before the day the foreigner is to appear about the time period, for which is his presence in the Czech Republic necessary for

the purposes of criminal proceedings, and will ask it to verify, whether he is not considered a *persona non grata* according to the Act on the Stay of Foreigners in the Territory of the Czech Republic, and in case he is registered in the list of *personae non gratae*, it will request his temporary removal for this time period. In case the foreigner was recorded in the list of *personae non gratae* on the basis of a finally and effectively imposed sentence of banishment, the judicial authority will inform the presiding judge of the court competent for its execution about the time the presence of the foreigner is necessary in the Czech Republic, and will request suspension of execution of this sentence for this time period.

(5) Summoning a person subject to a visa duty from a foreign state must also contain an advice on the procedure of submitting a visa application and on the requirements of such application. At least 30 days in advance before the day the foreigner is to appear, the judicial authority will inform the Directorate of Foreign Police Service and the diplomatic authority competent for granting visa to the summoned foreigner on his summoning and the time period, for which is his presence in the Czech Republic necessary, and request it for necessary cooperation.

#### **Section 45**

The competent authority involved in criminal proceedings may render a decision on the actions referred to in Section 47 of the Criminal Code and in Chapter four, Sub-division four to seven of the Criminal Code also in case the action is to be carried out outside the territory of the Czech Republic and its execution cannot be achieved without this decision.

#### **Section 46**

In case the judicial authority request a foreign authority for execution of an action of legal assistance and the foreign authority considers the costs associated with the execution of the requested action to be inappropriate in relation to its purpose or for other reasons, the Ministry will negotiate with the foreign authority, upon a request of the judicial authority, how these cost will be reimbursed, or another appropriate measure.

#### **Sub-chapter 2**

##### **Providing Legal Assistance to Foreign Authorities**

#### **Section 47**

(1) Legal assistance may be provided to a foreign authority inly if there are criminal proceedings being conducted in the foreign state and only for the purposes of these proceedings.

(2) Legal assistance consisting in

a) performing actions pursuant to Chapter IV, Sub-division four and five of the Code of Criminal Procedure,

- b) securing execution of a sentence of confiscation of property pursuant to Chapter XXI, Sub-division five of the Code of Criminal Procedure,
- c) securing the claim of an aggrieved person pursuant to Chapter IV, Sub-division six of the Code of Criminal Procedure,
- d) intercepting and opening consignments and its replacement pursuant to Chapter IV, Sub-division six of the Code of Criminal Procedure,
- e) monitoring consignments Pursuant to Section 65,
- f) interception and recording of telecommunications pursuant to Chapter IV, Sub-division seven of the Code of Criminal Procedure,
- g) inspection of mental state pursuant to Section 116 (2) of the Code of Criminal Procedure,
- h) use of operative-search means pursuant to Section 158b to 158 f of the Code of Criminal Procedure, or
- i) covert investigation pursuant to Section 59 to 61,

may be provided to a foreign authority only in relation to an act, which would be criminal also under the law of the Czech Republic.

#### **Section 48**

##### Competence for Receiving Requests for Legal Assistance and their Execution

(1) In case there is pre-trial proceeding being conducted in a foreign state, the Supreme Public Prosecutor's Office will be competent to accept a request of the foreign authority for legal assistance; otherwise the Ministry will be competent.

(2) The central authority will review the request for legal assistance of the foreign authority especially in view of the conditions and requirements arising from this Act or by an international treaty and the conditions implied from previous mutual cooperation, and will forward it to a judicial authority competent for its execution, or return in along with stating reasons, for which it could not be forwarded for execution, or will request the required supplementations within a time limit set by it. If the foreign authority fails to send the requested supplementations within the set time limit without stating substantial reasons therefor, the central authority will send the request back.

(3) If an international treaty allows for a direct contact between judicial authorities in the course of realization of legal assistance, the competence to accept the request of the foreign authority for legal assistance will pertain to the judicial authority competent for its execution pursuant to Sub-section (5) and (6). This judicial authority will review the request of the foreign authority from the view of the aspects referred to in Sub-section (2) and will proceed to its execution, or it will return the request with stating reasons, for which it was impossible to execute it, or will request the necessary supplementations within a time limit set by it. In case the foreign authority failed to send the requested supplementations within the set time limit without stating substantial reasons therefor, the judicial authority will send the request back.

(4) If a request for legal assistance was delivered to an authority, which is not competent to accept it, it will immediately forward it to the authority competent to accept it and will notify the foreign authority thereof.

(5) In case there is pre-trial proceeding being conducted in a foreign state, the competence to execute it will pertain to the Regional Public Prosecutor's Office and otherwise to the Regional Court, in the jurisdiction of which is the requested action of legal assistance to be performed, unless this Act stipulates otherwise. In case the requested action of legal assistance consists solely in service of documents, competence for execution of the request of the foreign authority will pertain to the District Public Prosecutor's Office, if the proceeding conducted in the foreign state is in the pre-trial stage, and otherwise the District Court, in the jurisdiction of which is the service to be realized.

(6) In case several public prosecutor's offices or courts are competent pursuant to Sub-section (5) the request of the foreign authority for legal assistance will be executed by the public prosecutor's office or court, to which was the request forwarded by the Supreme Public Prosecutor's Office, or the court, to which was the request forwarded by the Ministry, or in case of direct liaison the public prosecutor's office or court, to which was the request first delivered or forwarded by an authority not competent to accept it. The central authority will forward the request of the foreign authority for legal assistance primarily to the public prosecutor's office or court competent pursuant to Sub-section (5), in the jurisdiction of which is supposed to be performed the majority of the requested actions of legal assistance or the most demanding action of legal assistance.

(7) If the matter cannot be delayed or if there is another important reason given, the public prosecutor's office or court competent to execute the request of the foreign authority for legal assistance may perform an action of legal assistance also out of its jurisdiction; therein it will proceed pursuant to Section 53 and 54 of the Code of Criminal Procedure accordingly.

(8) In case of a simple action of legal assistance, if it can facilitate execution of the action of legal assistance or if there is another important reason therefor, the Regional Public Prosecutor's Office or the Regional Court competent to execute to execute the request of the foreign authority for legal assistance may in exceptional cases perform the action of legal assistance by the means of requesting the District Public Prosecutor's Office or District Court, in jurisdiction of which is the action of legal assistance to be executed.

#### **Section 49**

##### **Using Provision of Foreign State Law**

Authorities involved in criminal proceedings proceed in the execution of requests of foreign authorities for legal assistance according to the law of the Czech Republic; provisions of law of a foreign state may be used only if the foreign authority requests it.

#### **Section 50**



## Special Forms of Witness and Expert Testimonies

(1) If the foreign authority requests it, witnesses and experts may be heard under oath. The oath for witnesses reads: "I swear on my honor to tell the truth, the whole truth and nothing but the truth and to withhold nothing". The oath for experts reads: "I swear on my honor to give my expert opinion according to my best knowledge and conscience."

(2) If the foreign authority requests it, the witness or expert testimony may be obtained with their consent in the form of a sworn affirmation. Unless the foreign authority request another procedure, the judicial authority will attach a clause to such sworn affirmation, certifying that it is a testimony of a witness or expert. Before submitting such sworn affirmation the person must be advised on the possibility to refuse the testimony in this form. In such a case the authority will question the witness or expert, if it is sufficient for the foreign authority.

### **Section 51**

#### Participation of Foreign Authorities and other Persons in Performing Actions of Legal Assistance

(1) Foreign authorities may not perform actions of criminal proceedings in the territory of the Czech Republic.

(2) Presence of representatives of foreign authorities and other persons participating in criminal proceedings in the foreign state is admissible in the course of performing actions of legal assistance in the territory of the Czech Republic only with the consent of the authority competent to execute the request of the foreign authority for legal assistance

(3) In case the representatives of foreign authorities or other persons referred to in Subsection (2) present during an interview conducted on the basis of a request for legal assistance in the Czech Republic, the authority involved in criminal proceedings conducting the interview will allow them to ask supplementary questions through his mediation. Questions that are in contradiction with the Code of Criminal Procedure are inadmissible.

### **Section 52**

#### Service of Documents

(1) Addressee in the Czech Republic may be served documents drawn up in the language that is assumed, with regard to all circumstances, to be understood by the addressee, or documents provided by a translation into this language.

(2) If the document is not drawn up in language according to conditions referred to in Subsection (1), or provided with a translation into this language, the foreign authority will be requested to provide translation of the document and at the same time will be advised that otherwise the document without a translation will be served to the addressee only under the conditions of sentence three. If an international treaty stipulates that the foreign authority is not obliged to provide translation of documents, it will be provided by the judicial authority

competent for executing the request of the foreign authority for legal assistance. Translation of documents is not necessary, if the addressee, after being advised on the option to refuse personal service of documents in a language he does not understand, which are not provided with a translation into a language he understands, declares that he is willing to accept the documents.

(3) Documents will be served to the addressee pursuant to the provisions of the Code of Criminal Procedure on process serving. On the basis of an explicit request on the foreign authority the documents may be served personally or through a judicial authority, which will draw up a protocol of the service. The protocol will reflect, in addition to requirements referred to in Section 55 (1) of the Code of Criminal Procedure also the exact specification of the served documents.

(4) The foreign authority may serve documents to an addressee in the Czech Republic directly through a postal services provider only if it is allowed by an international treaty or with a previous consent of the Minister of Justice according to Section 4 (4).

(5) If the served documents contain a threat of enforcement, such threat is ineffective in the territory of the Czech Republic.

### **Section 53**

#### **Suspension of Execution of Actions of Legal Assistance**

(1) The judicial authority competent to execute a request of a foreign authority for legal assistance may suspend execution of the requested action of legal, if its execution could imperil criminal proceedings conducted in the Czech Republic or if its execution is temporarily not possible with regard to specific circumstances of the case.

(2) The suspension of the action of legal assistance must be immediately notified to the foreign state. At the same time it must be informed of the reasons for the suspension and if possible, also about the supposed time it will be possible to execute the action of legal assistance.

### **Section 54**

#### **Refusal of Providing Legal Assistance**

(1) Unless this Act provides otherwise, the judicial authority competent for execution of a request of a foreign authority for legal assistance will refuse execution of the requested action of legal assistance, if

- a) the request of the foreign authority does not provide sufficient grounds for executing the requested action of legal assistance and the foreign state fails to supplement it within reasonable time despite being requisitioned to do so,
- b) the requested action of legal assistance cannot be executed under the Czech law, or

c) execution of the requested action of legal assistance is prevented by another serious reason.

(2) Before refusing execution of the requested action of legal assistance the judicial authority will request an opinion of the central authority; this does not apply, if an international treaty enables direct contact between judicial authorities in the course of realization of legal assistance.

(3) Refusing execution of legal assistance must be immediately notified to the foreign state with stating reasons for the refusal.

### **Section 55**

In case a foreign authority requests execution of legal assistance in the territory of the Czech Republic and the costs associated with the execution of the requested action would be clearly disproportional to its purpose, the Ministry will negotiate with the foreign authority how these costs will be covered, or other appropriate arrangement.

### **Section 56**

#### **Providing Information and Evidence without a Request**

(1) The judicial authority may provide information or evidence from criminal proceedings to a foreign authority without a request for legal assistance, if it believes that it may be utilized in criminal proceedings conducted in the foreign state. Provision of information or evidence must not cause impediments to the purpose of criminal proceedings in the Czech Republic.

(2) The judicial authority may set conditions for using the information or evidence in the foreign state. In such a case it will verify at the foreign authority in advance, whether it consents to such conditions.

(3) Accordingly to Sub-sections (1) and (2) will the judicial authority proceed in relation to reporting an act that does not fall in the scope of the Criminal Code, but could constitute a criminal offence pursuant to the law of the foreign state.

### **Sub-chapter 3**

#### **Special Provisions on some Actions of Legal Assistance**

### **Section 57**

#### **Interview via a Video-conference Device and Telephone upon a Request of the Czech Republic**

(1) The judicial authority may request a foreign authority to secure an interview of a suspect, accused, witness or expert via a technical device enabling transmission of picture and sound (hereinafter referred to as the “video-conference device”), if it is not appropriate or possible to interview the person in the Czech Republic.

(2) Under the conditions referred to in Sub-section (1) the judicial authority may request a foreign authority to secure interview of a witness or expert via telephone.

(3) Requests made pursuant to Sub-section (1) or (2) must contain, in addition referred to in Section 41 (1), including the basic questions that are to be asked to the interviewed person, also the name of the person conducting the interview in the territory of the Czech republic, also the reason, for which it is not appropriate to interview the person in the Czech Republic and the literal wording of the legal regulations of the Czech Republic, pursuant to which will be proceeded when conducting the interview.

(4) The judicial authority will conduct the interview via a video-conference device or telephone according to the Code of Criminal Procedure; at the same time it will take into account arrangements made the foreign authority in order to prevent breaching of basic principles of the law of the foreign state in question in the course of conducting the interview. If it cannot comply with these arrangements and fails to reach an agreement concerning the manner of conducting the interview, the interview will be terminated.

### **Section 58**

#### **Interview via a Video-conference Device or Telephone upon a Request of a Foreign State**

(1) The judicial authority may allow the foreign authority upon its request to interview a suspect, accused, witness or expert via a video-conference device, if it is not appropriate or possible to interview this person in the foreign state.

(2) Under the conditions referred to in Sub-section (1) the judicial authority may allow the foreign authority to interview a witness or expert via a telephone.

(3) If the request of the foreign authority does not contain basic questions to be asked to the interviewed person, or the literal wording of legal provisions of the foreign state, according to which will be proceeded in the course of the interview, the judicial authority will request supplementation thereof.

(4) Summoning the interviewed persons, co-opting an interpreter and procedure of drawing up a protocol of the interview will be governed by the provisions of the Code of Criminal Procedure accordingly. A protocol of the interview will always be drawn up, which will reflect, in addition to the basic requirements pursuant Section 55 of the Code of Criminal Procedure, also technical conditions, under which was the interview conducted.

(6) Before the interview begins, the judicial authority will verify the identity of the interviewed person and will advise him according to the provisions of the Code of Criminal Procedure and this Act. Then it will allow the foreign authority to conduct the interview via the video-conference device or telephone.

(7) The judicial authority will be present during the interview and will mind that the basic principles of criminal proceedings and interests of the Czech Republic referred to in Section

5 were not breached in the course of the interview. In case of their breach the interview will be stopped and measures will be taken in order to make the interview proceed in compliance with these principles, or the interview will be terminated.

(8) The interviewed person may exercise his right to refuse to testify pursuant to the Code of Criminal Procedure, as well as pursuant to the law of the concerned state. If the interviewed person refuses to testify, despite being obliged to do so, measures under the Criminal Code may be applied to him accordingly.

(9) The interviewed person may be provided protection under the conditions and in the manner stipulated by Section 55 (2) of the Code of Criminal Procedure and in the Act on Special Protection of Witnesses and other Persons in Relation to Criminal Proceedings.

### **Section 59**

#### **Covert Investigation in the Territory of the Czech Republic**

(1) A member of a foreign security corps may be used as an agent or conduct fictive transfer in the Territory of the Czech Republic.

(2) For the purposes of criminal proceedings conducted in the Czech Republic, the use of a foreign security corps member as an agent will be authorized upon a petition of a public prosecutor of the High Public Prosecutor's Office by a judge of the High Court, in the jurisdiction of which the public prosecutor filing the petition operates, after lodging the indictment by the presiding judge of the court of the first instance. Public prosecutor of the High Public Prosecutor's Office may file the petition, and after lodging the indictment the presiding judge of the court of the first instance may grant the authorization, only if the foreign authority granted a consent with the use of the member of his state security corps as an agent on the basis of a request for legal assistance. The request for legal assistance will be submitted by a public prosecutor of the High Public Prosecutor's Office, after lodging an indictment the court of the first instance.

(3) For the purposes of criminal proceedings conducted in a foreign state, use of a member of foreign security corps as an agent will be authorized by a judge of the High Court in Prague upon a petition of a public prosecutor of the High Public Prosecutor's Office in Prague. The public prosecutor of the High Public Prosecutor's Office in Prague may file the petition only upon a request of a foreign authority for legal assistance.

(4) For the purposes of criminal proceedings conducted in the Czech republic, fictive transfer performed by a member of foreign security corps will be authorized by a public prosecutor of the High Public Prosecutor's Office, after lodging an indictment the presiding judge of the court of the first instance, he may do so only if the foreign authority granted its consent with performing the fictive transfer by the member of its state security corps. The request for legal assistance will be filed by a public prosecutor of the High Public Prosecutor's Office, after lodging an indictment the court of the first instance.

(5) For the purposes of criminal proceedings conducted in a foreign state, fictive transfer performed by a member of foreign security corps will be authorized by a public prosecutor of the High Public Prosecutor's Office in Prague. The public prosecutor of the High Public Prosecutor's Office in Prague may do so solely on the basis of a request of a foreign state for legal assistance.

(6) In the course of fulfilling tasks pursuant to Sub-section (1) the member of foreign security corps exercises, in the extent necessary for fulfillment of these tasks, the rights and obligations of members of the Police of the Czech Republic or the general Inspection of Security corps. In the course of performing tasks in the territory of the Czech Republic he will be bound by the law of the Czech Republic and his activity will be directed by a member of the Police of the Czech Republic appointed according to the Act on the Police of The Czech Republic or a member of the General Inspection of Security Corps appointed according to the Act on General Inspection of Security Corps.

### **Section 60**

#### **Covert Investigation in the Territory of Foreign States**

(1) A member of the Police of the Czech Republic or a member of the General Inspection of Security Corps may be used in the territory of a foreign state as an agent or to perform fictive transfer there.

(2) For the purposes of criminal proceedings conducted in the Czech Republic, it is necessary to request a consent of the competent foreign authority, before using a member of the Police of the Czech Republic or a member of the General Inspection of Security Corps as an agent and after issuing an authorization according to Section 158e (4) and Section 158f of the Code of Criminal Procedure. The request for legal assistance will be filed by a public prosecutor of the High Public Prosecutor's Office, after lodging an indictment by the court of the first instance.

(3) For the purposes of criminal proceedings conducted in a foreign state, using a member of the Police of the Czech Republic or a member of the General Inspection of Security Corps as an agent will be authorized upon a petition of a public prosecutor of the High Public Prosecutor's Office in Prague by a judge of the High Court in Prague. The public prosecutor of the High Public Prosecutor's Office in Prague may file the petition solely on the basis of a request of the foreign state for legal assistance.

(4) For the purposes of criminal proceedings conducted in the Czech Republic, fictive transfer performed member of the Police of the Czech Republic or a member of the General Inspection of Security Corps will be authorized by a public prosecutor of the High Public Prosecutor's Office, after lodging an indictment the presiding judge of the court of the first instance. Before performing such fictive transfer and after issuing the authorization, it is necessary to request a consent of the competent foreign authority. The request for legal

assistance will be filed by public prosecutor of the High Public Prosecutor's Office, after lodging an indictment the court of the first instance.

(5) For the purposes of criminal proceedings conducted in a foreign state, fictive transfer performed member of the Police of the Czech Republic or a member of the General Inspection of Security Corps will be authorized by a public prosecutor of the High Public Prosecutor's Office in Prague. The public prosecutor of the High Public Prosecutor's Office in Prague may do so solely on the basis of a request of the foreign authority for legal assistance.

(6) A part of the request for legal assistance pursuant to Sub-section (2) and (4) is also a requirement for notification of conditions, under which the member of the Police of the Czech Republic or a member of the General Inspection of Security Corps will be allowed to be used as an agent in the territory of the foreign state, or to perform fictive transfer there.

(7) The decision on sending a member of the Police of the Czech Republic or a member of the General Inspection of Security Corps into the territory of a foreign state for their use as an agent or to perform fictive transfer will be made, subject to complying with the conditions referred to in Sub-section (2) to (6), in case of a member of the Police of the Czech Republic by the Police President, and in case of a member of the General Inspection by its Director.

### **Section 61**

Covert Investigation with the Use of a Member of the Police of the Czech Republic for the Purpose of Criminal Proceedings conducted in a Foreign State

(1) A member of the Police of the Czech Republic or a member of the General Inspection of Security Corps may be used in the territory of the Czech Republic as an agent or to perform a fictive transfer for the purposes of criminal proceedings conducted in a foreign state.

(2) The use of a member of the Police of the Czech Republic or a member of the General Inspection of Security Corps as an agent will be authorized upon a motion of a public prosecutor of the High Public Prosecutor's Office in Prague by a judge of the High Court in Prague. The a public prosecutor of the High Public Prosecutor's Office in Prague may file the petition solely on the basis of a request of the foreign authority for legal assistance.

(3) Fictive transfer performed by a member of the Police of the Czech Republic or a member of the General Inspection of Security Corps will be authorized by a public prosecutor of the High Public Prosecutor's Office in Prague. The a public prosecutor of the High Public Prosecutor's Office in Prague may do so solely on the basis of a request of the foreign authority for legal assistance.

### **Section 62**

Cross-border Surveillance Performed by Authorities of the Czech Republic

(1) If an international treaty stipulates so, the police authority that performs surveillance of persons and items may cross the state border and proceed with the surveillance of persons and items in the territory of a foreign state on the basis of an authorization issued by the competent foreign authority, following a previous request for legal assistance.

(2) If an international treaty stipulates so and if the matter cannot be delayed, the police authority may cross the state border and proceed with the surveillance even without a previous authorization, however they will be obliged to inform the competent foreign authority and the competent judicial authority immediately after crossing the border, and subject to fulfilling the statutory conditions the competent judicial authority will immediately request a post facto authorization. The police authority will be obliged to immediately terminate the surveillance, if they do not receive the authorization within 5 hours after crossing the state border; they will be also obliged to terminate the surveillance, if the competent judicial authority informs them that it will not request the supplementary authorization.

(3) Information gathered in cross-border surveillance, which was not authorized, cannot be used for evidentiary purposes in criminal proceedings.

(4) Requests for legal assistance pursuant to Sub-section (1) or (2) will be filed and related actions will be performed by the public prosecutor, after lodging an indictment by the court of the first instance.

(5) Provisions of Sub-section (1) to (4) will apply accordingly, if the cross-border surveillance in the territory of a foreign state is conducted by the means of technical or other device without the presence of the police authority of the Czech Republic. The condition that it must be stipulated by international treaty does not need to be met in this case.

### **Section 63**

#### **Cross-border Surveillance Performed by Foreign Authorities**

(1) If an international treaty stipulates so, a foreign authority conducting surveillance of persons or items may cross the state border and proceed with the surveillance of persons or items in the territory of the Czech Republic on the basis of an authorization issued by the competent judicial authority, following a previous request for legal assistance.

(2) If an international treaty stipulates so and if the matter cannot be delayed, the foreign authority may cross the state border and proceed with the surveillance even without a previous authorization, however they will be obliged to inform the competent the Police Presidium of the Czech Republic immediately after crossing the state border. The competent judicial authority may grant a post facto authorization of such surveillance on the basis of a request for legal assistance. The foreign authority will be obliged to immediately terminate the surveillance, if they do not receive the authorization within 5 hours after crossing the state border.



(3) Cross-border surveillance in the territory of the Czech Republic pursuant to Sub-section (1) and (2) will be authorized and related actions will be performed by the Regional Public Prosecutor's Office in Prague. The authorization also applies to the police authority of the Czech Republic, if it takes over the surveillance from the foreign authority in the same case in the territory of the Czech Republic.

(4) In the course of surveillance in the territory of the Czech Republic the foreign authority will be bound by the law of the Czech Republic and by instructions of the police authority of the Czech Republic. The foreign authority will not be entitled to perform searches, to enter residences, other premises and parcels, or to apprehend and interview the person under surveillance.

(5) Provisions of Sub-section (1) to (3) will apply accordingly, if the cross-border surveillance in the territory of the Czech Republic is to be conducted by the means of technical or other device without the presence of the foreign authority. The condition that it must be stipulated by international treaty does not need to be met in this case.

#### **Section 64**

##### **Cross-border Interception of Communications**

(1) If an international treaty stipulates that it is possible to perform interception of telecommunications in from a foreign state the territory of the Czech Republic without its technical assistance, the competent authority to decide on granting the authorization to performing the interception or with proceeding therewith and to related actions will be the Regional Court in Prague; if there is pre-trial proceeding being conducted in the state performing the interception, the Regional Court in Prague will decide upon a petition of a public prosecutor of the Regional Public Prosecutor's Office in Prague. The authorization to perform the interception or to proceed therewith may be granted only if the conditions of Section 88 of the Code of Criminal Procedure are met.

(2) If an international treaty stipulates that interception of communications may be performed in the territory of the Czech Republic without its technical assistance, the public prosecutor and after lodging an indictment the judge will inform the foreign state in a manner provided for by the international treaty of the anticipated or conducted interception.

#### **Section 65**

##### **Monitored Consignment**

(1) A consignment may be monitored in the Czech Republic for the purposes of criminal proceedings conducted in a foreign state. Monitoring of the consignment will be ordered and related actions will be performed by the Regional Public Prosecutor's Office in Prague.

(2) In the course of monitoring a consignment according to Sub-section (1) or in the course of monitoring a consignment conducted by a foreign authority in the territory of a foreign state on the basis of a request of the public prosecutor may the police authority make the

necessary steps in order to bring under control of the customs authorities consignments of items referred to in Section 87 of the Code of Criminal Procedure or items that replace them on the way from the Czech Republic into the foreign state or vice versa or from the foreign state through the territory of the Czech Republic into a third state.

(3) Actions aimed against further holding of items forming the contents of the monitored consignment will not be made, if the monitored consignment crosses the state border and its monitoring will be taken over by the competent foreign authority in the basis of a request of the public prosecutor or foreign authority for legal assistance.

## **Section 66**

### **Provision of Information from Criminal Register**

(1) If a request of a state other than a Member State for provision of information from the Criminal Register for the purposes of criminal proceedings is a part of the request of this state for legal assistance consisting in several actions, competence for its execution will pertain to the judicial authority competent for execution of the remaining portion of the request for legal assistance.

(2) If a request of a state other than a Member State concerns solely the provision for information from the Criminal Register for the purposes of criminal proceedings and in the foreign state is being conducted pre-trial proceedings, competence for execution of the request will pertain to the Supreme Public Prosecutor's Office; in other cases to the Ministry.

(3) If an international treaty enables direct contact of judicial authorities, the competence for execution of the request pursuant to Sub-section (2) will pertain to the Regional Public Prosecutor's Office in case a pre-trial proceeding is conducted in the foreign state, otherwise to the Regional Court, in jurisdiction of which has the person, regarding which is the information from the Criminal Register requested, his residence; in case such person does not have his place of residence in the territory of the Czech Republic, the competence for executing this request will pertain to the Regional Public Prosecutor's Office in Prague and the Regional Court in Prague. In case one request concerns several persons, it will be executed by the competent Regional Public Prosecutor's Office or the competent Regional Court, to which was the request first served or forwarded by an authority not competent for its execution.

(4) For the purposes of executing requests of foreign authorities for providing information from the Criminal Register according to Sub-section (1) and (2), the authority competent for its execution will be entitled to request a copy of this record conducted pursuant to the Act on the Criminal Register.

## **Section 67**

(1) Item surrendered or removed from possession on the basis of a request of a foreign authority for legal assistance may be transferred by the judicial authority competent for executing such a request for the necessary time for evidentiary purposes to the competent foreign authority; at the same time it will request its returning. Unless rights of third persons prevent it, the judicial authority competent for execution of the request for legal assistance may waive its returning to the Czech Republic.

(2) Transfer of items to a foreign authority may be temporarily suspended or the item may be transferred to a foreign authority only for a time specified by the judicial authority competent for execution of the request for legal assistance, if such item is necessary for criminal proceedings conducted in the Czech Republic.

(3) In case an item has been surrendered or removed from possession in criminal proceedings conducted in the Czech Republic, the judicial authority competent for execution of the request for legal assistance may, with a consent of the competent public prosecutor or presiding judge, transfer this item to a foreign authority for evidentiary purposes for the specified time.

### **Section 68**

In case an item, other asset value or property has been seized upon a request of a foreign authority, the judicial authority will verify at this authority, whether the reason for seizure still persists. If this authority fails to respond to these inquiries within a reasonable time, the reason for seizure will be considered to have expired.

### **Section 69**

#### **Temporary Takeover of Persons from Foreign States**

(1) In case participation of a person other than the accused or suspect is necessary in order to perform actions in criminal proceedings in the territory of the Czech Republic and this person is in custody or serving an unsuspended sentence of imprisonment or protective measure associated with incarceration in a foreign state, the public prosecutor and after lodging an indictment the court will request temporary surrender of this person. The request for legal assistance must specify, in addition to requisites referred to in Section 41 (1), also for which actions, for what time period and for what reasons is the presence of this person necessary, and a reassurance that this person will be held in custody for the time of the temporary surrender. If the foreign state requests a reassurance that restrictions implied by a certain reason for custody in its territory will be applied to this person, the public prosecutor and after lodging an indictment the presiding judge may provide such reassurance, provided that these restrictions are not contrary to the law of the Czech Republic.

(2) If the foreign state allows a temporary surrender of a person, the judge will decide upon a petition of the public prosecutor, and after lodging an indictment the presiding judge will decide that this person will be held in custody for the time of the temporary surrender. The custody will begin at the moment of taking over this person by the authorities of the Czech

Republic. The decision will be served to the person without an undue delay after his placement in the prison facility. Provisions of Chapter IV, Sub-division one of the Code of Criminal Procedure will not apply.

(3) Returning the person to the state that has temporarily surrendered him, and associated release of this person from custody will be secured by the public prosecutor and after lodging an indictment by the presiding judge. The time period, for which was the temporary surrender granted, may not be exceeded, unless the foreign state consents to it.

(4) In case the temporarily surrendered person applies for release from custody, the public prosecutor and after lodging an indictment the presiding judge will forward this application to the competent foreign authority.

(5) If the foreign authority responds that the temporarily surrendered person is to be released from custody, the public prosecutor and after lodging an indictment the presiding judge will secure his release from custody without undue delay; in this case they will not secure returning the person to the state that temporarily surrendered him. The foreign authority must be notified of the release from custody.

(6) Provisions of Sub-sections (2) to (5) will apply accordingly to temporary takeover of a person from a foreign state for the purpose of execution of actions of legal assistance in the territory of the Czech Republic on the basis of a request of the foreign state for legal assistance.

(7) Provisions of Sub-sections (1) to (5) will apply accordingly also to temporary takeover of a person serving a sentence of imprisonment in a foreign state, for which he was extradited to this state from the Czech Republic according to Chapter IV Sub-chapter 2, if his presence in the Czech Republic is necessary for the purpose of review of a judgment.

## **Section 70**

### **Temporary Surrender of Persons to Foreign States**

(1) A person placed in custody, serving an unsuspended sentence of imprisonment or protective measure associated with incarceration in territory of the Czech Republic may be temporarily surrendered to a foreign state for the purpose of execution of actions of criminal proceedings in the territory of this state, provided that

- a) this person consents to the temporary surrender,
- b) he is not in the position of suspect or accused in criminal proceedings in the foreign state,
- c) his presence in the territory of the Czech Republic is not necessary for the purposes of criminal proceedings,
- d) his surrender will not result in thwarting the purpose of custody, imposed sentence or protective measure,

e) the foreign state provides an assurance that for the time of the temporary surrender the person will be incarcerated and will be imposed the required restrictions implied by the reason for custody applicable in the territory of the Czech Republic.

(2) Temporary surrender of a person according to Sub-section (1) will be authorized and the surrender secured, concerning

- a) custody in pre-trial proceedings, by the court competent under Section 26 of the Code of Criminal Procedure upon a petition of the public prosecutor,
- b) custody in proceedings after lodging an indictment, by the presiding judge of the court conducting the proceedings,
- c) execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, by the presiding judge of the District Court, in the jurisdiction of which is this sentence or protective measure being executed.

(3) Temporary surrender does not suspend execution of custody, unsuspended sentence of imprisonment or protective measure associated with incarceration in the Czech Republic.

(4) The court competent to authorize the temporary surrender of the person will set a reasonable time limit for his return to the Czech Republic. This time limit may be extended on the basis of an agreement with the foreign state solely for the same purpose, for which was the temporary surrender authorized; if it concerns custody in pre-trial proceedings, it may be realized only after a hearing an opinion of the public prosecutor. If return of the person is prevented by circumstances beyond the control of the foreign state, or if return of the person would put his life or health into danger, the person must be returned without an undue delay after this obstacle disappears. Temporary surrender of a person may be realized repeatedly.

(5) Prior to giving his consent with the temporary surrender, the person concerned by the temporary transfer must be made acquainted with the reason for the temporary surrender by the judge or presiding judge of the court competent pursuant to Sub-section (2) and advised on the meaning of such consent and the consequences associated thereto. The consent with temporary surrender may not be withdrawn.

(6) Provisions of Sub-section (1) to (5) will apply accordingly also to temporary surrender of a person to a foreign state for the purpose of execution of actions in criminal proceedings in the territory of the foreign state on the basis of a request of the judicial authority for legal assistance.

(7) Provisions of Sub-section (1) to (5) will apply accordingly also to temporary surrender of a person located in the Czech Republic, who is serving a sentence of imprisonment, for the execution of which was this person surrendered from a foreign state in accordance with Chapter IV, Sub-chapter 1, provided that his personal presence in the foreign state is necessary for the purpose of review of a judgment.

## **Section 71**

### **Agreement on Joint Investigation Team**

(1) An agreement on Joint Investigation Team may be negotiated with the competent authorities of one or more foreign states.

(2) Request for entering an agreement on Joint Investigation Team will be filed by the public prosecutor exercising supervision over maintaining of legality in pre-trial proceedings, via the Supreme Public Prosecutor's Office. In addition to the requisites referred to in Section 41 (1), the request will contain

- a) the proposed purpose of the Joint Investigation Team and the time, for which it should be established,
- b) the proposed composition of the Joint Investigation Team,
- c) the characteristics of the competencies of the authorities of the Czech Republic proposed to participate in the Joint Investigation Team,
- d) the proposed operation language of the Joint Investigation Team,
- e) the proposed place of operation of the Joint Investigation Team and manner of its operation, including the proposed leader of the Joint Investigation Team.

(3) Competence for accepting requests of foreign authorities for entering an agreement on Joint Investigation Team will belong to the Supreme Public Prosecutor's Office.

(4) On the part of the Czech Republic, agreements on Joint Investigation Team will be entered into by the Supreme Public Prosecutor's Office. An agreement on Joint Investigation Team will contain in particular

- a) specification of the parties to the agreement,
- b) provision on the creation of a Joint Investigation Team, its objective, purpose and time, for which it is established and which may be extended by agreement of the parties,
- c) composition of the team,
- d) characteristics of the competencies of the authorities participating in the Joint Investigation Team,
- e) operation language of the Joint Investigation Team,
- f) place of operation of the Joint Investigation Team and manner of its operation, including the proposed leader of the Joint Investigation Team.

## **Section 72**

### **Actions Performed by Joint Investigation Team**

(1) If it is necessary to perform actions in criminal proceedings in another state participating in the Joint Investigation Team, a member of the Joint Investigation Team from this state may request the competent authorities of his state to perform this action directly, if it is not contrary to the law of this state. In case authorities of the Czech Republic are requested in

this way, the request will be assessed as if it concerned actions in criminal proceedings conducted in the Czech Republic.

(2) Evidence gathered within the framework of the Joint Investigation Team may be used in criminal proceedings in the Czech Republic, if it was obtained in compliance with the law of the state, in the territory of which it was obtained, or in compliance with the law of the Czech Republic.

(3) Performing actions in criminal proceedings in a state not participating in the Joint Investigation Team must be requested on the basis of a request for legal assistance. Such a request must contain, in addition to the requisites referred to in Section 41 (1) also a notice that the legal assistance is requested for the purposes of Joint Investigation Team.

### **Section 73**

#### Operation of Joint Investigation Team in the Territory of the Czech Republic

(1) If the Joint Investigation Team operates in the territory of the Czech Republic, its leader will be the public prosecutor performing supervision over maintaining legality in pre-trial proceedings.

(2) Members of the Joint Investigation Team fulfill their tasks under the command of the leader, whereas they will be bound by the law of the Czech Republic and by the conditions stipulated in the agreement on the Joint Investigation Team.

(3) Foreign members of the Joint Investigation Team may be present during performance of actions in criminal proceedings in the territory of the Czech Republic, unless the leader of the Joint Investigation Team decides otherwise for substantial reasons. Participation of foreign members of the investigation team in interviews will be governed by Section 51 (3) accordingly. Foreign members of the Joint Investigation Team may not perform actions in criminal proceedings in the territory of the Czech Republic.

### **Section 74**

#### Exchange of Information

(1) Members of the Joint Investigation Team for the Czech Republic may provide information to the Joint Investigation Team in compliance with legal regulations of the Czech Republic and within the limits of their competence.

(2) Information obtained in legal manner by a member of the Joint Investigation Team for the Czech Republic within the framework of the Joint Investigation Team, which is not otherwise available to the authorities of the Czech Republic, may be used for

a) the purposes, for which was the Joint Investigation Team created,

- b) uncovering, investigation and prosecution of other criminal offense, if the state, in which was the information obtained, granted its consent,
- c) prevention or removal of immediate and serious imperilment of public safety, or
- d) other purposes, if it is agreed between the states that jointly created the Joint Investigation Team.

(3) The competence for requesting the consent pursuant to Sub-section (2) will pertain to the public prosecutor, who is or was the member of the Joint Investigation Team for the Czech Republic.

(4) In case the Czech Republic is requested by another state, which is or was participating in the Joint Investigation Team, for granting a consent with use of information obtained in legal manner in its territory within the framework of the Joint Investigation Team for the purpose of uncovering, investigation and prosecution of other criminal offense, the consent will be refused if its use could imperil criminal proceedings conducted in the Czech Republic or if a reason for refusing execution of legal assistance would be present. The competence for granting the consent will pertain to the public prosecutor, who is or was a member of the Joint Investigation Team for the Czech Republic.

#### **Section 75**

(1) Provisions of Sub-chapter 1 will apply accordingly to requests for convicting judgment and related records of convictions by foreign courts in the Criminal Register according to the Act on the Criminal Register.

(2) Provisions of Sub-chapter 2 will apply accordingly to providing convicting judgments of courts of the Czech Republic and information related thereto to foreign states for a similar purpose as referred to in Sub-section (1).

#### **Section 76**

##### **Service of Documents via Diplomatic Office**

(1) The judicial authority may delegate service of documents to a diplomatic office of the Czech Republic. Contentual requisites of such delegation will be governed by Section 41 () accordingly.

(2) Based on the delegation under Sub-section (1) the diplomatic office of the Czech Republic may perform

- a) service of documents to a person in the state, where it exercises its competence, unless legal regulations of the state, in the territory of which is the service to be performed, prevent it, and provided that the person is willing to accept the documents,



b) service of documents to a citizen of the Czech Republic, who enjoys diplomatic or consular privileges and immunities in the state, in the territory of which is the service to be performed.

(3) Diplomatic office of the Czech Republic will proceed accordingly pursuant to the legal regulation of the Czech Republic on service of documents; action performed by it have the same effect, as if performed by the judicial authority itself.

(4) Before delegating a diplomatic office of the Czech Republic to serve documents pursuant to Sub-section (2) (a), the judicial authority will request the central authority to verify, whether such procedure is not precluded by legal regulations of the state, where the service is to be performed.

### **Section 77**

#### Claims of Recourse

(1) Under conditions stipulated by an international treaty the Ministry will reimburse upon a request of a foreign state the sum expended by the foreign state in compliance with its law as compensation for damage caused by public officials of the Czech Republic in relation to actions of legal assistance performed in its territory.

(2) Under conditions stipulated by an international treaty the Ministry will be entitled to request a foreign state for reimbursement of a sum expended by it as a compensation for damage caused by a public official of the foreign state in relation to actions of legal assistance performed in the territory of the Czech Republic.

## **Chapter II**

### Extradition of Persons

#### **Sub-chapter 1**

#### Requesting Extradition from a Foreign State

### **Section 78**

#### Jurisdiction of Courts

The court competent to procedures under this Sub-chapter is the court conducting criminal proceedings, and in pre-trial proceedings the court competent according to Section 26 of the Code of Criminal Procedure.

### **Section 79**

#### Materials for Requesting Extradition from Foreign States

(1) In case an order to arrest, order to detain or order to deliver a person for execution of a sentence of imprisonment has been issued, or if the court took steps to deliver a person for execution of a protective measure associated with incarceration and the person was not

arrested, detained or delivered for execution of a such sentence or protective measure within a time limit of one year, the presiding judge will request the Ministry without an undue delay to take the necessary steps for requesting extradition of the person from a foreign state; in pre-trial proceedings the judge will do so upon a petition of the public prosecutor, who will file it without an undue delay after the time limit expires. If it can be reasonably expected that the person concerned by the request for extradition is staying in a foreign state, the Ministry may be requested to secure execution of the necessary steps even before the 1 year time limit expires.

(2) Request pursuant to Sub-section (1) will not be filed, if

- a) it can be expected that an unsuspended sentence of imprisonment under 4 months, or solely other penalty than an unsuspended sentence of imprisonment will be imposed,
- b) an unsuspended sentence of imprisonment that is to be served by the person concerned by the extradition, or its remaining portion, is under 4 months, unless this person is to serve also another unsuspended sentence of imprisonment or its remaining portion, sum of which totals to at least 4 months, and if it can be expected that the request pursuant to Sub-section (1) will be filed for this other sentence or its remaining portion as well,
- c) by extradition of the person concerned, would incur expenses or consequences to the Czech Republic clearly disproportional to the public interest on the criminal prosecution or execution of unsuspended sentence of imprisonment or protective measure associated with incarceration,
- d) the extradition would cause detriment to the person concerned clearly disproportional to the importance of criminal prosecution or consequences of the crime committed, especially with regard to his age, health condition or family relations, or
- e) the act constitutes a criminal offence, punishable according to the Criminal Code by a sentence of imprisonment with the upper limit of less than 1 year.

(3) The request pursuant to Sub-section (1) may be filed also for an act, concerning which there is an impediment referred to in Sub-section (2) (a) to (c) and (e), if it is filed for several acts, concerning at least one of which is the request not prevented from being filed by provisions of Sub-section (2).

(4) In pre-trial proceedings the court will notify the public prosecutor about the manner of execution of his petition. If the petition is not complied with, it will also state reasons for doing so.

(5) The court will attach to the request pursuant to Sub-section (1)

- a) order to detain, order to arrest or an order to deliver a person for execution of a sentence of imprisonment,
- b) declaration of identity of the person concerned by the extradition, containing his name and surname, other personal data enabling his identification and data on his nationality, eventually his description, photograph and fingerprints

- c) detailed description of the facts, with accurate indication of the time, place and manner of commission of the act,
- d) statutory designation of the criminal offence with literal wording of the applicable statutory provisions, including the criminal rate stipulated for the criminal offence in question,
- e) literal wording of the provision of Criminal Code on the statute of limitations on criminal liability or execution of a sentence, and in case more than 3 years have passed since the time of commission of the crime or more than 5 years have passed since the decision, on the basis of which the sentence is to be executed, came into full force and effect, also statement of actions, which caused suspension or discontinuation of the statute of limitations,
- f) full copy of entry in the Criminal Record in relation to the person concerned by the extradition and information whether there is any other criminal proceeding being conducted against this person in the Czech Republic.

(6) For the purposes of requesting extradition of persons from a foreign state for execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, the court will hand over to the Ministry also counterparts or verified copies of the decision of the court of first instance with a legal force clause and the decision of the court of second instance, if it was rendered. If the decision was issued in proceedings against a fugitive or in the absence of the person concerned by the extradition, the court will hand over to the ministry also a description of the manner of securing the defense rights; in case of proceedings against a fugitive, literal wording of Section 306a of the Code of Criminal Procedure and provisions of the Criminal Code on the statute of limitations will also be attached.

(7) In case an aggregate sentence has been imposed, the court will hand over the documents referred to in Sub-section (5) (c) to (e) and in Sub-section 6 to the Ministry also in relation to judgments on all concurring criminal offences the aggregate sentence has been imposed for.

(8) The court will hand over to the Ministry upon its request additional documents necessary for requesting extradition of a person from a foreign state; therein the public prosecutor will provide the necessary cooperation.

(9) The Ministry will determine the form, in which the documents referred to in Sub-section (5) to (8) are to be submitted by the court and to which language are they to be translated by the court, if it can be expected that such form or translation will be required by the foreign state, or should it be necessary for the purposes of international search.

(10) In case the person concerned by the extradition is sentenced by a final and effective judgment to an unsuspended sentence of imprisonment in the extent of at least 4 months, or if he is finally and effectively imposed a protective measure associated with incarceration and if a request pursuant to Sub-section (1) has been previously filed for the purpose of

extradition for criminal prosecution, or if the decisive circumstances leading to filing such a request change, especially the legal qualification or factual circumstances, the court will file a new request and withdraw the original request; if the change in the decisive circumstances occurs in pre-trial proceedings, the court will do so upon a petition of the public prosecutor, who will file it without an undue delay after such change occurs.

### **Section 80**

#### Competence of the Ministry

(1) The authority competent to request extradition of a person from a foreign state on the basis of a request of the court pursuant to Section 79 (1) is the Ministry. After it receives the request from the court along with the required annexes, it will adopt measures for the purpose of extradition of the person from the foreign state, in particular it will ask the Police of the Czech Republic to secure search for the person concerned by the extradition in the foreign state, and unless stipulated otherwise in Sub-section (2), it will submit a request for his extradition to the state, in the territory of which is this person located.

(2) The Ministry does not have to submit the request for extradition, if

- a) it can be reasonably expected that the foreign state will not extradite the person concerned by the extradition, or
- b) extradition of this person would be clearly purposeless, in particular if there are reasons referred to in Section 79 (2) (c), or inappropriate for reasons referred to in Section 79 (2) (d), unless the court states in the opinion according to Sub-section (3) that it insists on submitting the request.

(3) The Ministry will notify the court of the measures adopted in order to request extradition of persons from a foreign state. It will also notify the court of the reasons, for which it did not submit a request for extradition; in case reasons referred to in Sub-section (2) (b) are concerned, it will request an opinion of the court, as to whether the request should be submitted.

### **Section 81**

#### Preliminary Custody

(1) If the matter cannot be delayed, the presiding judge and in pre-trial proceedings the judge upon a petition of the public prosecutor may in the request pursuant to Section 79 (1) propose that the Ministry requested the foreign state for imposing preliminary custody to the person concerned by the extradition. If it is necessary for extradition of the person from the foreign state, the Ministry may do so even without such a petition.

(2) The court will attach to the request pursuant to Section 79 (1) the following:

- a) an order to arrest, order to detain or order to deliver a person for execution of a sentence of imprisonment,

- b) declaration of identity of the person concerned by the extradition, containing his name and surname, other personal data enabling his identification and data on his nationality, eventually his description, photograph and fingerprints
- c) if a request for extradition for the purpose of criminal prosecution is concerned, a declaration of the court about the upper limit of the extent of sentence for the criminal offence in question,
- d) if a request for extradition for the purpose of execution of a sentence is concerned, a copy of the operative part of the judgment,
- e) declaration of the court, that criminal liability or execution of the sentence has not been statute-barred.

(3) Annexes referred to in Section 79 (5) to (8) may be presented subsequently, however no later than 10 business days after the request is served to the Ministry pursuant to Section 79 (1). The Ministry may in well-founded cases extend or shorten this time period accordingly.

(4) If the ministry does not comply with the petition of the court pursuant to Sub-section (1), it will inform it of the reasons for such procedure.

## **Section 82**

### Reassurance

(1) If the foreign state conditions extradition of a person by a provision of reassurance concerning criminal proceedings, the Ministry may provide such reassurance only with a previous consent of the court; in pre-trial proceedings the court will take account of an opinion of the public prosecutor.

(2) If the person was extradited on the basis of a reassurance, such reassurance will be honored.

## **Section 83**

### Procedure after Extradition of a Person

(1) The person extradited by a foreign state, will be taken over by the Police of the Czech Republic. In case extradition for the purpose of criminal prosecution is concerned, Police of the Czech Republic will immediately deliver the person to the court for proceeding pursuant to Section 69 (5) sentence one, four and five and Sub-section (6) of the Code of Criminal Procedure, if an order to arrest was issued, or to the police authority for proceeding pursuant to Section 76a (4) and (5) of the Code of Criminal Procedure, if an order to detain was issued. If the person is being extradited for criminal prosecution on the basis of a request pursuant to Section 79 (1) filed by several courts, the Ministry will determine, after receiving comments from the concerned courts, to which authority it is to be submitted. In case extradition for the purpose of execution of a sentence or a protective measure associated with incarceration is concerned, the Police of the Czech Republic will immediately deliver the person to the nearest prison or facility for execution of the protective measure.

(2) The time the extradited person spent in the foreign state in custody for the purpose of extradition will not be counted into the time limits referred to in Section 72 of the Code of Criminal Procedure and the time referred to in Section 72a of the Code of Criminal Procedure; this does not apply for the time spent by transporting the person into the Czech Republic.

(3) If the person was extradited for execution of an unsuspended sentence of imprisonment only in relation to some of the criminal offenses, for which has been imposed an aggregate or cumulative sentence, or in relation to only some of the component attacks of a continuing criminal offense, the court that tried the case in the first instance will proportionally decrease the sentence in a public session. A complaint is admissible against this decision, which has a dilatory effect.

### **Section 84**

#### **Withdrawing the Request of Court**

(1) The court will withdraw the request pursuant to Section 79 (1), if

- a) order to arrest, order to detain or order to deliver a person for execution of a sentence of imprisonment has been withdrawn, or if the actions aimed towards delivering the person to execution of a protective measure associated with incarceration have been abandoned,
- b) reasons for which the request cannot be submitted have been subsequently found,
- c) the person was delivered to the court or police authority,
- d) the person was delivered to the prison or facility for execution of the protective measure,
- e) new request has been filed, or
- f) further search in the foreign state is no longer necessary.

(2) Withdrawal of the request will be notified to the public prosecutor.

(3) Following the withdrawal of the request pursuant to Sub-section (1) (a) to (d) or (f) the Ministry will secure taking necessary measures in order to terminate the procedure aimed towards extradition of the person from the foreign state.

### **Section 85**

#### **Specialty Principle**

(1) The extradited person may not be incarcerated, an indictment or motion for punishment may not be filed against him, criminal prosecution before a court may not be conducted against him, and no sentence or protective measure may be executed on him for another act, than for which he has been extradited, unless the person

- a) has left the territory of the Czech Republic and willfully came back or was transported into the territory of the Czech Republic in a lawful manner,
- b) stays in the territory of the Czech Republic longer than 45 days after being released from custody, execution of an unsuspended sentence of imprisonment or after termination of

- execution of a protective measure associated with incarceration., despite being able to leave the territory of the Czech Republic,
- c) has waived the right for application of the specialty principle in proceedings on his extradition in the foreign state in general or in relation to a specific act,
  - d) has expressly waived the right for the application of the specialty principle in accordance with Sub-section (2), or
  - e) the foreign state has waived the application of the specialty principle or granted a subsequent consent with extension of the extradition.

(2) If the extradited person has not waived the right for application of the specialty principle pursuant to Sub-section (1) (c) and if an international treaty or the law of the foreign state allows it, the presiding judge and in pre-trial proceedings the judge upon a petition of the public prosecutor will interview the person in the presence of his defense counsel and advise him on the option to waive the right for the application of the specialty principle in general or in relation to a specific act, as well as on the consequences of such declaration. This declaration cannot be withdrawn. If the person waives the right for the application of the specialty principle in relation to a specific act, he will describe it to the court in the protocol so that it could not be confused with another act.

(3) A subsequent consent of the foreign state pursuant to Sub-section (1) (e) will be requested by the ministry upon a request of the presiding judge and in pre-trial proceedings upon a request of the judge, filed upon a petition of the public prosecutor; therein will be proceeded pursuant to Sections 78 to 80 and 82 accordingly. Prior to filing the request, the court will allow the extradited person to comment on the subject of the request; this statement will be attached to the request of the court.

(4) In case there is no order to arrest, order to detain or an order to deliver a person for execution of a sentence of imprisonment issued for the act, concerning which it is necessary to request a subsequent consent pursuant to Sub-section (1) (e), the presiding judge and in pre-trial proceedings the judge upon a petition of the public prosecutor will issue such order for the purposes of requesting the subsequent consent; therein the conditions for issuing such orders pursuant to the Code of Criminal Procedure. Before the foreign state grants the subsequent consent, the orders referred to in sentence one may not be grounds for arresting or detaining the person or for his delivering for execution of a sentence.

(5) As subsequent consent pursuant to Sub-section (1) (e) will be considered also a request of the state, from which was the person extradited, for takeover of proceedings against this person or for execution of a sentence or a protective measure for criminal offences committed prior to his extradition. This applies also to criminal complaints filed by this state.

(6) Until the time the subsequent consent is granted by the foreign state pursuant to Sub-section (1) (e), only actions referred to in Section 183a of the Code of Criminal Procedure may be performed in criminal prosecution in court.

## **Section 86**

### Temporary Surrender

(1) If the foreign state, that granted extradition of a person, has suspended its execution, the Ministry may, upon a request of the presiding judge and in pre-trial proceedings upon a request of the judge filed upon a petition of the public prosecutor, request for temporary surrender of this person, if it is necessary for the purpose of performing actions in criminal prosecution. In its request the Ministry will provide a reassurance that this person will be held in custody for the time of temporary surrender. For providing other reassurances concerning the temporary surrender, Section 82 will apply accordingly.

(2) The presiding judge or the judge will state in the request, for which actions, for what time and for what reasons is the presence of the person necessary.

(3) If the foreign state authorizes temporary surrender of the person, the presiding judge and in pre-trial proceedings the judge will decide that this person will be held in custody for the time of the temporary surrender. The custody will start at the moment of takeover of this person by the authorities of the Czech Republic. The decision will be served to the person without an undue delay after his delivery to the prison. Provisions of Chapter four, Sub-division one of the Code of Criminal Procedure will not apply.

(4) Returning the person to the state that has temporarily surrendered him, and the related release of this person from custody, will be secured by the presiding judge and in pre-trial proceedings by the public prosecutor. The time, for which was the temporary surrender granted, may not be exceeded, unless the foreign state agrees to it.

(5) If the temporarily surrendered person requests to be released from custody, the public prosecutor and after lodging an indictment the presiding judge will forward such a request to the competent foreign authority.

(6) If the competent foreign authority responds that the temporarily surrendered person is to be released from custody, his release will be secured without an undue delay by the public prosecutor and after lodging an indictment the presiding judge; in this case they will not secure returning the person to the state that temporarily surrendered him. The foreign authority must be notified of the release from custody.

(7) The time spent in custody during the temporary surrender will be included into the extent of the imposed sentence according to Section 92 of the Criminal Code in the extent, in which it was not included in the foreign state.

## **Sub-chapter 2**

### Extradition to Foreign States

## **Section 87**

### Competence of Court and Public Prosecutor's Office



(1) The court competent for procedure according to this Sub-chapter is the Regional Court, in the jurisdiction of which was the person concerned by the extradition apprehended; if he was not apprehended, the competence will pertain to the Regional Court, in the jurisdiction of which has this person his residence. Change in the circumstances, on the basis of which was the local competence determined, if it occurred after the initiation of preliminary investigation, will be disregarded.

(2) Actions performed pursuant to this Sub-chapter will be performed by the public prosecutor of the public prosecutor's office operating at the court competent according to Sub-section (1).

### **Section 88**

#### **Accepting Extradition Requests**

(1) Competence for accepting request of foreign states for extradition will pertain to the Ministry. In case the request is served to another authority, it will immediately forward it to the Ministry.

(2) If the request has all requisites, the Ministry will forward it to the public prosecutor's office in order to perform preliminary investigation.

(3) If the request does not have all requisites, especially if it is not accompanied by an original or a verified copy of the decision imposing an unsuspended sentence of imprisonment or protective measure associated with incarceration, an order for incarceration or other decision of the same effect, or if it misses description of the act, for which is the extradition requested, and its legal qualification, including the wording of the applied legal regulations of the foreign state, or a notification that according to the law of the foreign state the statute of limitations has not expired, or if the provided information is not sufficient of assessment of the request, the Ministry will request its supplementation. For this purpose the Ministry will set a reasonable time limit and notify the foreign authority, that unless it supplements the request within the set time limit, the request will be refused or the extradition proceedings will be terminated. If the preliminary investigation was initiated before receiving the incomplete extradition request, the Ministry will forward it to the public prosecutor's office along with requesting its supplementation; otherwise it will forward the request after its supplementation by the foreign state.

### **Section 89**

#### **Refusing Extradition Requests**

(1) In case the Ministry receives an extradition request before the initiation of preliminary investigation, it will refuse this request if

- a) the person concerned by the extradition died,
- b) the person concerned by the extradition was not criminally liable under the Czech Law with regard to his age,

- c) the person concerned by the extradition may not be apprehended because of a privilege or immunity, which make him exempt from jurisdiction of authorities involved in criminal proceedings,
- d) the place of stay of the person concerned by the extradition in the territory of Czech Republic is unknown,
- e) the foreign state failed to supplement the request according to Section 88 (3), or
- f) the extradition request was served after full force and effect of the decision that the person concerned by the extradition will be surrendered to another state according to Part five, Chapter II, or after authorization of extradition to another state, or after authorization of surrendering to an international court authority.

(2) If the Ministry has doubts about whether or to what extent is the person concerned by the extradition exempted from jurisdiction of authorities involved in criminal proceedings, the Supreme Court will decide the matter upon its petition.

### **Section 90**

#### **Criminal Offences Subject to Extradition**

(1) Extradition into a foreign state is admissible, if the act, for which is the extradition requested, constituted a criminal offence under the law of the Czech Republic with the upper limit of imprisonment in the extent of at least 1 year.

(2) Extradition into a foreign state for the purpose of execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration for an act referred to in Sub-section (1) is admissible, if the sentence or protective measure to be executed are for at least 4 months. Subject to the condition of reciprocity, several sentences or protective measures shorter than 4 months, which are to be executed, will be counted together.

(3) If the foreign state requested extradition of a person for several acts, at least one of which meets the conditions referred to in Sub-section (1) and (2), extradition is admissible, subject to the condition of reciprocity, also for the other acts, if they constituted criminal offences according to the law of the Czech Republic.

### **Section 91**

#### **Inadmissibility of Extradition**

(1) Extradition of a person into a foreign state is inadmissible, if

- a) it concerns a citizen of the Czech Republic,
- b) it concerns a person that has been granted an international protection in the Czech Republic within the scope of protection provided by special legal regulations or by an international treaty,
- c) criminal prosecution or execution of the sentence of imprisonment have become statute-barred according to the legal regulations of the Czech Republic,

- d) the criminal prosecution is inadmissible as a result of granting a pardon or by an act of amnesty,
- e) the act, which the extradition is requested for, is not a criminal offence subject to extradition
- f) the act, which the extradition is requested for, is of an exclusively political or military nature,
- g) the act consists in the violation of tax, customs, currency regulations or in violation of other financial rights of the state, unless the principle of reciprocity is granted,
- h) the act, which the person is requested for, is punishable by death penalty in the requesting state, except for cases where the requesting state guarantees that the death penalty shall not be imposed,
- i) the requesting state requests the extradition for the purpose of executing death penalty,
- j) the requested person was not criminally liable at the time of commission of the act according to legal regulations of the Czech Republic, or there are other reasons precluding his criminal liability.
- k) there is a criminal prosecution being conducted against the same person for an act, for which is requested the extradition, or if the act, for which is requested the extradition, was committed fully in or in part in the territory of the Czech Republic, with the exception of cases, where it is necessary to give priority to conducting criminal prosecution in the foreign state, especially by virtue of appropriate ascertaining of the facts or for reasons related to the imposed sentence or protective measure or execution thereof,
- l) criminal prosecution for the same act conducted against this person in the Czech Republic was concluded by a final and effective judgment of court or was finally end effectively terminated by a decision of court or public prosecutor or was concluded by another decision of the same effect, provided that such a decision has not been repealed,
- m) criminal prosecution for the same act conducted against this person in another Member State or an associated state was concluded by a decision that constitutes preclusion or res judicata according to Section 11 (2) of the Code of Criminal Procedure, or if criminal prosecution for the same act conducted against this person in a third state was concluded by a final and effective judgment or other decision of court of the same effect, provided that such a decision was not repealed and that the sentence, if it was imposed to the person concerned by the extradition, has already been executed, is currently being executed or can be no longer be executed under the law of the condemning state,
- n) the state, from which was the person concerned by the extradition previously extradited or surrendered according to provisions of Part five, Chapter II, has not granted a consent with extradition to another state, with the exception of cases, where the principle of specialty does not apply,
- o) it would be contrary to the obligations of the Czech Republic arising from international treaties on human rights and basic freedoms, or
- p) there is a reasonable concern that the person concerned by the extradition would be exposed to persecution because of his origin, race, religion, sex, membership to a certain national or other group, citizenship or political beliefs or for other similar reasons, or that

it would impair his position in criminal proceeding or in serving a sentence of imprisonment or a protective measure associated with incarceration.

(2) Reassurance according to Sub-section (1) (h) and the consent according to Sub-section (1) (n) will be requested by the Ministry.

## **Section 92**

### **Preliminary Investigation**

(1) The purpose of preliminary investigation is especially to ascertain, whether extradition of a person to a foreign state is not obstructed by matters of fact referred to in Section 91 (1).

(2) The public prosecutor will perform preliminary investigation, if he learns about a criminal offence, for which a foreign state could request extradition, or if the Ministry forwards to the public prosecutor's office a request for extradition from a foreign state. Preliminary investigation is initiated by apprehension of the person concerned by the extradition, or by requesting the necessary information. In case preliminary investigation is initiated without an extradition request being received, the public prosecutor will immediately ask the Ministry to notify the competent foreign authority about the initiation of preliminary investigation and invite it to send a request for extradition.

(3) The procedure according to Sub-section (2) will not apply, if sufficient information is not available on

- a) the person concerned by the extradition,
- b) existence of a condemning judgment, arrest warrant or other decision with the same effect, issued in the foreign state against the person concerned by the extradition,
- c) the act, for which the extradition is or can be requested for, including the time and place of its commission and its legal qualification, as well as the upper limit of the sentence imposable therefor in the foreign state or the extent of sentence imposed in the foreign state.

(4) The public prosecutor will, unless he has already done so in the course of apprehension, interview the person concerned by extradition, make him acquainted with the reason for extradition and advise him on the possibility to give consent with his extradition to the foreign state and on the conditions and consequences of giving such consent, including that granting a consent with extradition is associated with waiving the application of the specialty principle.

(5) If the person concerned by the extradition states important reasons, which substantially dispute commission of the crime, for which the extradition is or can be requested, and offers specific evidence thereof, the public prosecutor will notify the foreign state via the Ministry and in justified cases will request the Ministry for securing an opinion of the foreign state.

(6) If there are doubts about whether or to what extent the person concerned by the extradition is exempted from jurisdiction of authorities involved in criminal proceedings, the matter will be decided by the Supreme Court upon a petition of this person or the public prosecutor.

(7) The public prosecutor will terminate preliminary investigation, if

- a) the foreign state, that could request extradition, has not sent an extradition request despite being asked to do so,
- b) the foreign state has not supplemented all required requisites of the request, including annexes,
- c) the person concerned by the extradition died,
- d) the person concerned by the extradition would not be criminally liable according to the law of the Czech Republic with regard to his age,
- e) the person concerned by the extradition may not be apprehended due to a privilege or immunity, which make him exempt from jurisdiction of authorities involved in criminal proceedings,
- f) the person concerned by the extradition is not staying in the territory of the Czech Republic or the place of his residence is unknown,
- g) the foreign state sent an information that it is no longer interested in extradition of the person, or
- h) the request for extradition was served after the full force and effect of the decision that the person concerned by the extradition will be surrendered to another state pursuant to Part five, Chapter II, or after authorization of extradition to another state, or after authorization of surrendering the person to an international court authority.

(8) Preliminary investigation is concluded also by filing a petition according to Section 95 (1) or Section 96 (2).

(9) The public prosecutor will immediately notify the Ministry of conclusion of preliminary investigation; if it is terminated pursuant to Sub-section (7), he will notify also the defense counsel.

### **Section 93** Apprehension

(1) The public prosecutor, or with his consent the police authority, may apprehend the person concerned by extradition, if there is a reason for imposing preliminary custody and if information referred to in Section 92 (3) is known. The police authority will be entitled to perform apprehension of such person also without a previous consent of the public prosecutor, if the matter cannot be delayed and the consent of the public prosecutor cannot be obtained in advance. However, the police authority will be obliged to notify the public prosecutor immediately after performing the apprehension and to present him a copy of the protocol drawn up in the course of the apprehension and other documents that the public

prosecutor needs in order to be able to eventually file a petition for imposing preliminary custody.

(2) The public prosecutor or police authority that performed the apprehension will interview the apprehended person and draw up a protocol, in which they will indicate the time, place and detailed circumstances of the apprehension and will state personal data of the apprehended person, as well as substantial reasons for the apprehension. The apprehended person will be advised on the possibility to give consent to his extradition to the foreign state and on the conditions and consequences of giving such consent as soon as in the course of the apprehension, including that giving the consent is associated with waiving application of the specialty principle. The apprehended person will be entitled to require that his defense counsel is present at the interview in the course of his apprehension, unless he is unavailable in the time limit referred to in Sub-section (3).

(3) The public prosecutor will deliver the apprehended person to the court with a petition for imposing preliminary custody within 48 hours following the apprehension. Otherwise this person must be immediately released.

(4) Pursuant to Sub-sections (1) to (3) cannot be proceeded after filing a petition for a decision according to Section 95 (1).

## **Section 94**

### **Preliminary Custody**

(1) If the ascertained matters of fact substantiate a concern that the person concerned by the extradition might flee, the presiding judge may decide upon a petition of the public prosecutor, and after filing a petition for a decision according to Section 95 (1) even without such petition, on taking the person into preliminary custody; provisions of Section 67 and 68 of the Code of Criminal Procedure will not apply. A complaint is admissible against the decision on imposing preliminary custody. Section 77 (2) of the Code of Criminal Procedure will apply accordingly to the decision-making about the apprehended person.

(2) Section 71 (1), sentence three, Sub-section 2 (b), Section 72 to 72b, Section 73b (1), (3) to (5), (6) sentence two, Section 73c (a) and Section 74a of the Code of Criminal Procedure will not apply to further procedure concerning the preliminary custody. Other provisions of Chapter four, Sub-division one of the Code of Criminal Procedure will apply accordingly, therewith where these provisions refer to pre-trial proceedings, it will be understood as preliminary investigation.

(3) The public prosecutor will release the person concerned by the extradition from preliminary custody, if the preliminary investigation has been initiated without receiving a request for extradition of a foreign state and this request was not delivered to the Ministry within 40 days following the day of imposing the preliminary custody; this does not apply in case of simplified extradition. Release from the preliminary custody does not preclude new imposing of preliminary custody, if the request for extradition is served subsequently.

Delivering the request to the Supreme Public Prosecutor's Office, to a diplomatic office of the Czech Republic in the foreign state or Ministry of Foreign Affairs has also the effect of service.

(4) The judicial authority will notify the Ministry of taking the person into preliminary custody and on his release from this custody.

### **Section 95**

#### Decision of Court

(1) After the preliminary investigation is concluded, the court will decide upon a petition of the public prosecutor in a public session, whether the extradition is admissible. Provision of Section 188 (1) e) of the Code of Criminal Procedure on return of the case to the public prosecutor for additional investigation will not apply. A complaint is admissible against this decision, which has a dilatory effect.

(2) In case of any doubts about whether or to what extent is the person concerned by the extradition exempted from jurisdiction of authorities involved in criminal proceedings, the Supreme Court will decide the matter upon a petition of this person, the public prosecutor or court.

(3) In case the person concerned by the extradition is not staying in the territory of the Czech Republic in the time the court makes its decision, or if his presence at the public session cannot be repeatedly secured due to his unknown place of stay, the court will dismiss the petition of the public prosecutor. The court will proceed similarly in case the reason for concluding the preliminary investigation referred to in Section 92 (7) (c), (e) or (g) occurs after filing the petition according to Sub-section (1), or if a reason for concluding the preliminary investigation referred to in Section 92 (7) d) is ascertained. In case the person concerned by the extradition is in custody in the time the court makes its decision, the court will decide on his release. These decisions can be made also in a closed session. A complaint of the public prosecutor is admissible against these decisions.

(4) If the court declares that the extradition is inadmissible and the person concerned by the extradition is in preliminary custody, the court will also decide on his release. A complaint of the public prosecutor is admissible against this decision, which has a dilatory effect only in case it is filed immediately after the decision is declared and only in case a complaint of the public prosecutor against the decision on inadmissibility of extradition is filed at the same time.

(5) After the full force and effect of the decision on whether the extradition is admissible the presiding judge will present the case to the Ministry. If the Minister of Justice has any doubts about the correctness of the court decision, he may file a petition to the Supreme Court to review this decision within three months from the day the case was presented to the Ministry at the latest.

(6) If the Supreme Court does not dismiss the petition of the Minister of Justice, it will repeal the contested decision and proceed accordingly pursuant to Sub-sections (1) to (5), or return the matter to the court, if the flaw cannot be rectified in proceedings before the Supreme Court.

## **Section 96**

### Simplified Extradition

(1) Simplified extradition will be executed, if the person concerned by the extradition declares in the presence of his defense counsel before the presiding judge that he consents with his extradition to a foreign state. Before declaring the consent with his extradition, the person must be advised by the presiding judge on the meaning of such consent, especially about that the extradition will be executed without a decision on admissibility and authorization of the extradition, and also on the consequences related thereto, including waiver of application of the specialty principle. The consent cannot be withdrawn.

(2) If the person concerned by the extradition declares according to Sub-section (1) that he consents to his extradition into the foreign state, Section 90, 91 (1) (a), (c) to (g), (j) and (m), Section 92 (7) (a), Section 95 and 97 will not apply and the public prosecutor will file a petition to the court, after conclusion of the preliminary investigation, to take this person into extradition custody or to convert preliminary custody to extradition custody or to file a petition for suspension of the extradition. If the public prosecutor finds that there is one of the grounds for inadmissibility of extradition referred to in Section 91 (1) (b), (h), (i), (k), (k), (l), (n), (o) or (p) present, he will proceed as if the person has not given a consent with the extradition.

(3) If the person concerned by the extradition is not placed in preliminary custody, the public prosecutor or the police authority with his consent will apprehend the person. The public prosecutor will deliver the apprehended person to the court with a petition for taking the person into extradition custody within 48 hours from apprehension at the latest, otherwise he must be released. When deciding on the apprehended person, the presiding judge will proceed accordingly pursuant to Section 77 (2) of the Code of Criminal Procedure.

(4) In case the person concerned by the extradition is placed in preliminary custody, the presiding judge will interview him and decide on the petition of the public prosecutor to convert preliminary custody into extradition custody. The presiding judge will notify the time and place of conducting the interview to the defense counsel and public prosecutor.

(5) In case that after filing the petition under Sub-section (2) arises a reason for termination of preliminary investigation referred to in Section 92 (7) (c), (e) or (g) or if a reason for termination of preliminary investigation referred to in Section 92 (7) (d) is ascertained, the presiding judge will dismiss the petition. If the person concerned by the extradition is placed in custody, the presiding judge will decide on his release. A complaint of the public



prosecutor is admissible against these decisions. Extradition proceedings are terminated upon full force and effect of the decision of dismissing the petition according to Sub-section (2).

(6) If the person concerned by the extradition gives his consent with the extradition in the course of public session held on the admissibility of extradition, the public prosecutor will withdraw his petition according to Section 95 (1) and proceed pursuant to Sub-section (2) sentence one. The petition may be withdrawn until the moment the court retires for final deliberation.

(7) Provision of Sub-section (6) will not apply, if the public prosecutor finds that there is one of the grounds for inadmissibility of extradition referred to in Section 91 (1) (b), (h), (i), (k), (l), (n), (o) or (p) present.

(8) The public prosecutor will immediately notify via the Ministry the foreign state that requested or could request the extradition about the consent of the person with his extradition, unless he proceeds as if the person has not given his consent

### **Section 97**

#### Decision of the Minister of Justice

(1) Extradition to a foreign state will be authorized by the Minister of Justice. He may do so only after full force and effect of the decision on admissibility of extradition.

(2) Even if a decision on admissibility of extradition has been made, the Minister of Justice may decide not to authorize the extradition. He will not authorize the extradition, if he decided on priority of execution of European Arrest Warrant.

(3) In relation to the decision of the Minister of Justice the Ministry may requisition the necessary documents from other public authorities, which will be obliged to provide their cooperation in the necessary extent.

(4) After full force and effect of the decision that extradition is inadmissible the Ministry will notify the foreign state that the extradition cannot be granted, with the exception of cases, where the Minister of Justice submits the case for a review to the Supreme Court.

(5) The Minister of Justice will terminate the extradition proceedings, if any reason for termination of preliminary investigation referred to in Section 92 (7) (c), (e), (f) or (g) occurs after the case is submitted to him according to Section 95 (5), or if a reason for termination of preliminary investigation referred to in Section 92 (7) (d) is ascertained.

(6) Releasing the person, whose extradition the Minister of Justice did not authorize according to Sub-section (2) sentence one, or concerning which he terminated the extradition proceedings, from preliminary custody will be ordered by the presiding judge.

## **Section 98**

### Additional Information

If there is additional information necessary for assessment of the case, the Ministry will request the foreign state to provide it.

## **Section 99**

### Suspension of Extradition

(1) The presiding judge may decide to suspend extradition of a person for the time his presence in the Czech Republic is necessary in relation to another criminal offence, than which is the subject of the extradition request, for the purposes of criminal proceedings conducted in the Czech Republic, execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration, which were finally and effectively imposed by courts of the Czech Republic. The decision to suspend extradition may the presiding judge make after the Minister of Justice has authorized extradition of the person concerned by the extradition, or after the person concerned by the extradition granted his consent, in the course of simplified extradition until the time the person is handed to the authorities of the foreign state. If a new reason for suspending extradition arises during this period, the presiding judge may decide to suspend the extradition also for this reason. When deciding on suspension of extradition, the presiding judge will take into account especially the seriousness of the criminal offence, for which is the person to be extradited, seriousness of the criminal offence, in relation to which is the suspension proposed, possibility of surrendering or extraditing the person from the foreign state back to the Czech Republic, as well as the possibility of temporary surrender of the person to the foreign state.

(2) The presiding judge may decide on suspension of extradition upon a petition of the

- a) Ministry,
- b) public prosecutor,
- c) court and in pre-trial proceedings the public prosecutor competent to conduct criminal proceedings in the Czech Republic,
- d) court that decided the case in the first instance, where the person concerned by the extradition was finally and effectively imposed an unsuspended sentence of imprisonment or a protective measure associated with incarceration, or
- e) person concerned by the extradition.

(3) If the petition for suspension of extradition was not filed by the court or public prosecutor referred to in Sub-section (2) (c) or (d), the presiding judge will request their opinion before making the decision on suspension of extradition.

(4) In case the person is placed in preliminary or extradition custody, the presiding judge will decide on his release from such custody along with the decision on suspension of his extradition.

(5) A complaint is admissible against the decision pursuant to Sub-section (1) to (4). A complaint against the decision on the release from custody may be filed only if a complaint against the decision on suspension of extradition is filed at the same time.

(6) If the same state submits another request for extradition of the person during the time his extradition is suspended for another act, than for which the extradition was authorized, competence for conducting proceedings on such a request will pertain to the authorities that were involved in proceedings on the original request for extradition of this person.

(7) If the reason for suspension of extradition expires, the presiding judge will proceed according to Section 101.

(8) The presiding judge will terminate the extradition proceedings, if a reason for termination of preliminary investigation referred to in Section 92 (7) (c), (e), (f) or (g) arises or if a reason for termination of preliminary investigation referred to Section 92 (7) (d) is ascertained. The presiding judge will proceed similarly, if the Minister of Justice repealed his decision on authorization of extradition with regard to change of circumstances and did not authorize the extradition.

### **Section 100**

#### **Temporary Surrender**

(1) In case extradition has been suspended, the presiding judge may decide upon a request of the foreign state that he will authorize temporary surrender of the person concerned by the extradition, which is placed in custody, serves an unsuspended sentence of imprisonment or a protective measure associated with incarceration in the Czech Republic, into the foreign state for criminal prosecution.

(2) Execution of the temporary surrender will be secured by the presiding judge.

(3) Temporary surrender may be authorized only if the foreign state provides a reassurance that the person will be incarcerated for the time of the temporary surrender and that the required restrictions implied by the reason for custody in the territory of the Czech Republic will be applied to him.

(4) In case the person, who is to be temporarily surrendered, is placed in custody, the temporary surrender may be authorized only with a previous consent of the court and in pre-trial proceedings the public prosecutor competent to conduct criminal proceedings in the Czech Republic.

(5) Temporary surrender does not discontinue execution of custody, unsuspended sentence of imprisonment or a protective measure associated with incarceration in the Czech Republic.

(6) The presiding judge will set a reasonable time limit in the decision, which must not exceed 1 month, within which the temporarily surrendered person must be returned. This time limit may be extended on the basis of an agreement with the competent foreign authority solely for the same purpose, for which was the temporary surrender authorized. If return of the person is prevented by circumstances beyond the control of the foreign state or if returning the person would endanger his life or health, the person must be returned without an undue delay after such impediment ceased to exist. Temporary surrender may be granted repeatedly.

### **Section 101**

#### **Extradition Custody and Execution of Extradition**

(1) After the Minister of Justice decides to authorize extradition and in case of simplified extradition upon a petition of the public prosecutor will the presiding judge decide on taking the person into extradition custody or on conversion of preliminary custody into extradition custody, unless he decided on suspension of the extradition. Provision of Section 67 and 68 of the Code of Criminal Procedure will not apply. If the presence of the person concerned by the extradition in the course of deciding on the extradition custody cannot be secured otherwise and if it is not a case of simplified extradition, it will be proceeded pursuant to Section 69 of the Code of Criminal Procedure accordingly; in this case Section 79 (1) and Section 193 (1) will not apply. The presiding judge will immediately inform the Ministry about his decision.

(2) Procedure under Sub-section (1) will apply even if the person is placed in custody, serving an unsuspended sentence of imprisonment or protective measure associated with incarceration. In this case the person will be released from custody by the presiding judge of the court conducting the proceedings, in pre-trial proceedings the public prosecutor exercising supervision over maintaining of legality and from execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration the presiding judge of the court, that decided the case, in which was such a sentence or protective measure imposed, in the first instance.

(3) Section 71(1) sentence two and three, Sub-section (2) (b), Section 72 to 74a of the Code of Criminal Procedure will not apply in further proceeding concerning the extradition custody Other provisions of Chapter four, Sub-division one of the Code of Criminal Procedure will apply accordingly. Petition of the person concerned by the extradition for release from extradition custody will be decided by the court. A complaint of the public prosecutor is admissible against the decision on the release from extradition custody, which has a dilatory effect. A complaint is admissible against the decision on dismissing the petition for a release from extradition custody.

(4) After the notification by court according to Sub-section (1) the Ministry will negotiate the date of extradition of the person with the competent authorities of the foreign state.

Extradition of the person to the competent authorities of the foreign state and related release of the person from extradition custody will be secured by the presiding judge.

(5) Extradition custody may not last longer than 3 months. The person concerned by the extradition must be released from extradition custody on the last day of this time period at the latest. In case the extradition could not be realized due to unforeseeable circumstances, the presiding judge may decide, upon a petition of the Ministry, to extend the time limit before its expiration by up to 3 months. The total duration of extradition custody may not exceed 6 months; this does not preclude imposing extradition custody on the basis of a new request of the foreign state for extradition of the person for the same act.

(6) Into the longest permissible duration of extradition custody will not be counted the time

- a) the person concerned by the extradition was considered to be an applicant for granting international protection,
- b) for which the enforceability of the decision on authorization of extradition was suspended by the Constitutional Court,
- c) that passed from serving a request of the European Court for Human Rights to the Ministry for not executing the extradition before the European Court for Human Rights decides on the complaint of the person concerned by the extradition, until the time such a decision is made.

(7) The presiding judge will immediately release the person from extradition custody and terminate the proceedings, if a reason for termination of preliminary investigation referred to in Section 92 (7) (c), (e), (f) or (g) arises or if a reason for termination of preliminary investigation referred to Section 92 (7) (d) is ascertained. The presiding judge will proceed accordingly, if the Minister of Justice repealed his decision on authorization of extradition with regard to change of circumstances and did not authorize the extradition. The presiding judge will terminate the extradition proceedings also in case a reason for termination of preliminary investigation referred to in Section 92 (7) (f) arises.

## **Section 102**

### **Concurrence of Requests for Extradition from Several States**

(1) In case requests of several foreign states for extradition of the same person are received, conditions of admissibility of extradition will be assessed in relation to each of these requests separately. In such a case the competence for proceedings on assessment of admissibility of extradition on the basis of an extradition request served later will pertain to the court competent for proceedings on admissibility of extradition on the basis of a request received earlier. After the decision on admissibility of extradition comes to full force and effect, the Minister of Justice will decide, to which state this person will be extradited. At the same time he may grant a consent to his extradition to another state that requested his extradition.

(2) When deciding to which foreign state will the person be extradited, the Minister of Justice will consider especially the order, in which the requests were received, circumstances of commission of the criminal offences, for which the extradition is requested, including their seriousness, the type and extent of the imposed sentences and the probability of each state in question to achieve subsequent extradition of the person from the state, to which the person would be extradited from the Czech Republic, as well as the fact, whether the extradition is requested for the purpose of criminal proceedings or execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration.

(3) Provision of Section 96 will not apply in case of concurrence of requests for extradition; if the person concerned by the extradition already gave his consent with his extradition, such consent will not be taken into account.

### **Section 103**

#### Extension of Extradition

(1) Provisions of this Sub-chapter will apply accordingly to proceedings on requests of foreign state, to which was extradited a person, for granting a consent with

- a) with prosecution of the person for another act committed before the extradition, than for which was the extradition authorized,
- b) with execution of a sentence or protective measure imposed for such an act, or
- c) with extradition to a third state for criminal prosecution for such an act or for execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration imposed for such an act.

(2) Competence for conducting proceedings on such request will pertain to the authorities involved in proceedings on the original request for extradition of this person.

(3) The court will decide, whether granting the consent with extradition is admissible in a public session in the presence of the public prosecutor and the defense counsel of the person, concerning which the was consent requested. The person, concerning which the consent was requested, will be served only a notice to select a defense counsel, appointment of a defense counsel and the decision on admissibility or inadmissibility of granting the consent with extension of extradition. If the foreign state did not submit a comment of the person on extension of extradition, the Ministry will proceed pursuant to Section 88 (3) accordingly.

(4) The consent according to Sub-section (1) is not necessary, if the person declared before a foreign court after being extradited that he waives the application of the principle of speciality or in case simplified extradition was realized. In this case the Ministry will notify the foreign authority about this fact.

### **Section 104**

#### Transfer of Items

(1) Items in possession of the person concerned by extradition that may serve as evidence in criminal proceedings in the foreign state or that come from criminal activity, may be secured upon a request of the foreign state for transfer of items. Therein will be proceeded pursuant to Chapter I Sub-chapter 2 and 3 accordingly. These items may be transferred to the foreign state, even if the person concerned by the extradition dies or flees.

(2) Seizure of items expires upon their transfer to the foreign state, unless a third person claims rights to these items. In such a case transfer of these items will be conditioned by their return to the Czech Republic.

### **Chapter III**

#### **Takeover and Transfer of Criminal Proceedings**

#### **Sub-chapter 1**

#### **Transfer of Criminal Proceedings to a Foreign State**

#### **Section 105**

(1) Criminal proceedings may be transferred to a foreign state, if the act, for which it is conducted, is criminal also under the law of this state and belongs to the competence of its authorities.

(2) Criminal proceedings may be transferred to a foreign state, if all available evidence has been gathered in the territory of the Czech Republic and it can be reasonably assumed that the purpose of criminal proceedings will be better achieved in this state than in the territory of the Czech Republic.

(3) Criminal proceedings may not be transferred to a foreign state, if one of the grounds referred to in Section 91 (1) (h), (o) or (p) present.

(4) When assessing the justification of transfer of criminal proceedings to a foreign state, it is necessary to consider especially whether

- a) extradition or surrender of a person, against whom the criminal proceeding is conducted, to the Czech Republic may be achieved,
- b) the person, against whom the criminal proceeding is conducted, is located in the territory of this foreign state,
- c) the evidence, in particular witnesses, is located in the territory of this foreign state,
- d) this foreign state is already conducting criminal proceedings against this person for the same act,
- e) transferring criminal proceedings to this foreign state would cause delays in the proceedings,
- f) trying the case in the Czech Republic is required by the nature of the protected interest affected by the criminal offense, or circumstances, under which the act was committed,

g) transferring the case to this foreign state would deprive the aggrieved person of the possibility to claim his rights.

### **Section 106**

(1) Transfer of criminal proceedings to a foreign state is possible only upon a request of the public prosecutor and after lodging an indictment upon a request of the court. The public prosecutor will submit the request for takeover of criminal proceedings to the Supreme Public Prosecutor's Office, the court will submit it to the Ministry.

(2) The central authority will review the request for takeover of criminal proceedings especially in view of the conditions and requisites arising from this Act or an international treaty and requirements resulting from the previous mutual contact, and will send it to the foreign state, unless it returns it along with stating reasons, for which it was not possible to send it to the foreign state. In relation to reviewing the request for takeover of criminal proceedings the central authority may request the judicial authority to make necessary corrections and amendments. The judicial authority will be bound by the opinion of the central authority.

(3) The judicial authority may send the request for takeover of criminal proceedings and all other documents directly to the foreign authority only in an international treaty allows a direct contact of judicial authorities in the course of transferring criminal proceedings.

### **Section 107**

#### **Request for Takeover of Criminal Proceedings**

(1) Request for takeover of criminal proceedings will contain especially

- a) identification of the judicial authority requesting the takeover of criminal proceedings and the date the request is drawn up,
- b) data on the person, against whom the criminal proceeding is conducted,
- c) description of the act, its legal qualification with the literal wording of the provisions of the Criminal Code and eventually other legal regulations,
- d) reasons, for which the takeover of criminal proceedings is requested, including the reasons, for which it can be expected that the purpose of criminal proceedings will be achieved better in the foreign state than in the territory of the Czech Republic,
- e) information on the duration of incarceration and seizure of items, other asset values and property,
- f) a requirement that the foreign state sent information on final end effective decision made in the proceedings that it took over, and eventually sent an original or a verified copy of such a decision,
- g) a requirement for returning material evidence, if it is attached to the request and if it is needed in the Czech Republic.



(2) The request will be accompanied by a verified copy or an original of the criminal file or its relevant portion. Material evidence will be attached, if it is possible in view to its nature, otherwise will be attached a list and description thereof, including identification of its relation to the criminal proceedings.

(3) Upon a request of the foreign authority, the public prosecutor, and after lodging an indictment the court will provide additional information and supplementations necessary for the purposes of making a decision on the request for takeover of criminal proceedings.

### **Section 108**

#### Temporary Abandonment of some Actions in Criminal Proceedings

(1) Before sending a request for takeover of criminal proceedings into a foreign state, the judicial authority will decide to temporarily abandon some actions in criminal proceedings conducted for the act, for which the takeover of criminal proceedings is requested.

(2) In the time of the temporary abandonment of some actions in criminal proceedings, only urgent and unrepeatable actions may be taken, or actions necessary in order to transfer the criminal proceedings to the foreign state; a sentence or a protective measure cannot be executed.

(3) In case urgent or unrepeatable actions have been taken, the judicial authority will notify this matter of fact to the foreign authority competent to accept the request for takeover of criminal proceedings via the central authority, and will forward it the file made in relation to taking the action.

(4) The judicial authority will decide to terminate temporary abandonment of some actions in criminal proceedings, if

- a) the request for takeover of criminal proceedings was withdrawn,
- b) the foreign states announces that it will not conduct the proceedings,
- c) the foreign state subsequently withdraws its decision to take over the criminal proceedings,
- d) the foreign state announces that it will not continue the proceedings or that it will terminate the proceedings, or
- e) the foreign state fails to announce whether it will take over the criminal proceedings, despite being repeatedly asked and cautioned that the authorities of the Czech Republic may continue in the criminal proceedings or order execution of a sentence.

### **Section 109**

#### Withdrawing Requests for takeover of Criminal Proceedings

Request for takeover of criminal proceedings may be withdrawn until the time the foreign state decides on it. If the foreign state has already decided on takeover of criminal proceedings, it may be requested to repeal its decision.

## **Section 110**

### **Transfer of Criminal Proceedings against a Person in Custody**

(1) Transfer of criminal proceedings conducted against a foreign state citizen placed in custody in the Czech Republic and transfer of such person to a foreign state is possible only if it is necessary to give priority to performing criminal prosecution in the foreign state especially for the reason of appropriate clarification of the facts or for reasons related to the imposed sentence or protective measure or execution thereof. Transfer of criminal proceedings in such case is possible only

- a) on the basis of an international treaty,
- b) if there is a guarantee of reciprocity also in case of transfer of criminal proceedings against a person in custody,
- c) if it concerns a criminal offence, which
  1. was in fully or in part committed in the territory of the foreign state,
  2. is closely related to a criminal offence that is being prosecuted the foreign state,
  3. was committed against persons not located in the territory of the Czech Republic, or
- d) if there is a criminal proceeding being conducted in the foreign state against the same person for the same act.

(2) Request for takeover of criminal proceedings conducted against a person in custody in the Czech Republic will contain also a detailed description of the ascertained circumstances justifying the custody and information on the time served in custody and the place of its execution. The judicial authority will at the same time request the foreign authority for an expeditious decision on such request within the time limit stated therein; the time limit will be determined with regard to the time limits referred to in Section 72 of the Code of Criminal Procedure.

(3) After the foreign state announces that it has granted its consent with taking over of criminal proceedings and the person, the central authority will negotiate with the foreign authority the date of transferring the person. Transfer of the person to the foreign authority and the related release from custody will be secured by the presiding judge and in pre-trial proceedings the public prosecutor.

## **Section 111**

### **Transfer of Proceedings on Imposing Protective Treatment of Security Detention**

Pursuant to this Sub-chapter will be proceeded accordingly also in the course of transfer of proceedings on the imposition of protective treatment or security detention to a foreign state.

## **Sub-chapter 2**

### **Takeover of Criminal Proceedings from a Foreign State**

## **Section 112**

Criminal proceedings may be taken over from a foreign state, if the act, for which it is conducted, is criminal also under the law of the Czech Republic and if it belongs to the competence of authorities of the Czech Republic.

### **Section 113**

#### Decision on Takeover of Criminal Proceedings

(1) A request of a foreign authority for taking over criminal proceedings will be decided by the Supreme Public Prosecutor's Office. If it decides to take over criminal proceedings, it will immediately give an incentive to initiate criminal proceedings to the competent public prosecutor's office, otherwise it will return the request for takeover of criminal proceedings to the foreign authority with stating reasons, for which the criminal proceedings was not taken over.

(2) If an international treaty allows a direct contact of judicial authorities in the course of transfer of criminal proceedings, the decision on the request of a foreign authority for takeover of criminal proceedings will be made by the public prosecutor, who would otherwise be competent to exercise supervision over maintaining of legality in pre-trial proceedings.

(3) In case information contained in the request of a foreign authority for takeover of criminal proceedings and its attachments are not sufficient for a decision on the takeover of criminal proceedings, the authority competent to decide on such a request will request the foreign authority for its supplementation in within a time limit set by the public prosecutor. If the foreign authority fails to send the requested supplementations in the set time limit without stating substantial reasons therefor, the request will be returned.

(4) In relation to deciding on a request of a foreign authority for takeover of criminal proceedings the authority competent to decide on such a request may require necessary information from other public authorities.

(5) The authority that decided to take over criminal proceedings will immediately notify this decision to the foreign authority.

### **Section 114**

#### Applicability of Evidence Obtained by Foreign Authorities

Evidence obtained by foreign authorities in compliance with the law of this state may be used in criminal proceedings that have been taken over in the same way, as if it was obtained by an authority of the Czech Republic involved in criminal proceedings.

### **Section 115**

The authority that has decided on takeover of criminal proceedings will notify the foreign authority of a final and effective decision made in the proceedings that have been taken over.

### **Section 116**

#### Return of Criminal Proceedings

In case a reason arises in the course of proceedings that were taken over, for which it may be assumed that the purpose of criminal proceedings will be achieved better in the foreign state that has transferred the proceeding to the Czech Republic, than in the territory of the Czech Republic, the authority that decided to take over the criminal proceedings may return the criminal proceedings to the foreign authority. In the course of return of proceedings will be proceeded pursuant to Sub-chapter 1 accordingly.

### **Section 117**

#### Takeover of Proceedings on Imposing Protective Measure Corresponding to Protective Treatment or Security Detention

Pursuant to this Sub-chapter will be proceeded accordingly also in the course of takeover of proceedings on imposing a protective measure corresponding to protective treatment or security detention from a foreign state.

## **Chapter IV**

### Recognition and Execution of Decision in Relation to Foreign States

#### **Sub-chapter 1**

#### Recognition and Execution of Foreign Decisions

#### **Division 1**

#### General provisions

### **Section 118**

#### Foreign Decisions

Pursuant to this Division will be proceeded in the course of recognition and execution of decisions issued by foreign authorities in relation to a criminal offense or an act otherwise criminal, which imposed a sentence or protective measure or which conditionally waived execution thereof (hereinafter referred to as a “foreign decision”).

### **Section 119**

(1) In proceedings on recognition and execution of foreign decisions the foreign authorities will liaise with foreign authorities strictly via the Ministry

(2) Citizens of the Czech Republic who are serving sentences of imprisonment, protective measures associated with incarceration or are otherwise restricted in their personal liberty, will be served the documents in proceedings on recognition and execution of foreign decisions via the Ministry.

## **Section 120**

### Conditions of Recognition

- (1) A foreign decision may be recognized in the territory of the Czech Republic, if
- a) stipulated by an international treaty or if reciprocity is guaranteed,
  - b) it was issued in relation to an act that would fulfill the merits of a criminal offense under the law of the Czech Republic,
  - c) it was issued in proceedings corresponding to the obligations arising for the Czech Republic according to the law of the Czech Republic,
  - d) the act concerned by the decision is not of an exclusively political or military nature,
  - e) execution of the sentence is not statute-barred according to the law of the Czech Republic,
  - f) there was no criminal prosecution in the Czech Republic conducted against the same person for the same act, which was concluded by a final and effective judgment of court or by final and effective discontinuation of criminal prosecution or by another decision of the same effect, unless such decision has been repealed,
  - g) no other foreign decision against the same person for the same act was recognized in the territory of the Czech Republic,
  - h) the person, against whom the foreign decision is directed, would be criminally liable according to the law of the Czech Republic in respect his age,
  - i) the person, against whom the foreign decision is directed, is a citizen of the Czech Republic and
  - j) the person, against whom the foreign decision is directed, does not enjoy privileges and immunities which would make him exempt from the jurisdiction of authorities involved in criminal proceedings.

(2) Provision of Sub-section (1) (i) will not apply, if a decision on recognition of a foreign decision imposing a sentence of prohibition of a certain activity, sentence of confiscation of property or confiscation of items or other asset values or a protective measure consisting in forfeiture of items or other asset values is concerned. This provision will also not apply in case of takeover of execution of an unconditional sentence of imprisonment or a protective measure associated with incarceration imposed by a foreign decision and if it was decided on inadmissibility of extradition of the person concerned for a reason referred to in Section 91 (1) (b), (c), (k), (o) or (p), if the Minister of Justice decided not to authorize his extradition, or if it was decided to surrender him to another Member State for a reason referred to in Section (205) (2) (g), (l) or (m) or to the Republic of Island (hereinafter referred to as "Island") or to the Kingdom of Norway (hereinafter referred to as "Norway") for similar reasons.

(3) In case recognition and execution of a foreign decision involving a citizen of the Czech Republic is concerned, such a decision may be recognized with his consent also without fulfilling the condition referred to in Sub-section (1) (a).

(4) In case of takeover of a citizen of the Czech Republic for execution of a foreign decision imposing an unsuspended sentence of imprisonment or a protective measure associated with incarceration in the Czech Republic, the foreign decision may be recognized with his consent for humanitarian reasons also without fulfilling the conditions referred to in Sub-section (1) (b) to (h).

(5) If any doubts arise in proceeding pursuant to this Sub-chapter as to whether or to what extent is the person concerned by the foreign decision exempted from the jurisdiction of authorities involved in criminal proceedings, the matter will be decided by the Supreme Court upon a petition of this person, public prosecutor, court or the Ministry.

## **Division 2**

### **Proceedings on Recognition of Foreign Decisions**

#### **Section 121**

(1) Proceedings on recognition and execution of a foreign decision are initiated by filing a petition by the Ministry for recognition and execution of a foreign decision or by forwarding a request of a foreign state for taking the person, against whom the foreign decision is directed, into custody, to the court. The Ministry will be entitled to obtain necessary documents in relation to such proceedings, especially to request necessary reports from other public authorities. The Ministry may withdraw the petition until the time the court of the first instance retires for final deliberation. The proceeding is terminated by withdrawing the petition.

(2) In case recognition of a foreign decision is conditioned by a consent of the person, against whom the foreign decision is directed and which is serving an unsuspended sentence of imprisonment or a protective measure associated with incarceration in a foreign state, the Ministry may request the competent diplomatic office of the Czech Republic in the foreign state for obtaining his consent. In case the person, against whom the foreign decision is directed, is located in the territory of the Czech Republic, the Ministry may request the District Court, in the jurisdiction of which this person has his permanent residence or where he stays, for obtaining his consent. The authority obtaining the consent will advise the person, against whom the foreign decision is directed, on the meaning of the consent and of the consequences associated therewith before the person grants his consent. The consent may not be withdrawn.

(3) The court competent to conduct proceedings on recognition and execution of foreign decisions is the Regional Court, in the jurisdiction of which the person, against whom the foreign decision is directed, has or had the last permanent residence or place of stay. If the

foreign decision concerns items or other asset values, the competence to conduct proceedings will pertain to the Regional Court, in the jurisdiction of which is the item or other asset value located. If the court cannot be determined in this way, the competence will pertain to the Regional Court in Prague.

(4) In case several Regional courts are competent, the proceeding will be conducted by the court, to which the Ministry has filed the petition for recognition and execution of foreign decision.

(5) Change of circumstances for determination of competence of the Regional Court that occur after initiation of the proceedings will not be taken into account.

(6) Provisions of Sub-section (3) to (5) will not affect special competence of court in execution proceedings pursuant to Chapter twenty five of the Code of Criminal Procedure.

## **Section 122**

(1) In proceedings on recognition and execution of a foreign decision imposing an unconditional sentence of imprisonment or a protective measure associated with incarceration, the presiding judge may decide to take the person, against whom the foreign decision is directed, into recognition custody, provided that this person is located in the territory of the Czech Republic and that the ascertained facts substantiate a concern that the person will flee or hide and thus obstruct the recognition and execution of the foreign decision; provisions of Section 67 and 68 of the Code of Criminal Procedure will not apply. If the presence of this person in decision-making on the recognition custody cannot be secured otherwise, it will be proceeded pursuant to Section 69 of the Code of Criminal Procedure accordingly; in this case Section 79 (1) and Section 193 (1) will not apply. A complaint is admissible against the decision on imposing recognition custody. Provisions of Section 71 (1) sentence three, Sub-section (2) (b), Section 72 to 73b, Section 73c (a) and Section 74a of the Code of Criminal Procedure will not apply to further procedure regarding the recognition custody. Other provisions of Chapter four, Sub-division one of the Code of Criminal Procedure will apply accordingly. Requests of the person, against whom the foreign decision is directed, to be released from recognition custody, will be decided by the court.

(2) If the Ministry receives a request of the foreign state for taking the person, against whom this decision is directed, into custody, before the service of the request for recognition and execution of a foreign decision, it will forward it to the court. The court will notify the Ministry, whether and what measures it has made on the basis of this request.

(3) In case the request of the foreign state for taking the person, against whom this decision is directed, into custody, does not provide sufficient grounds for a decision of the court on recognition custody, especially data on the identity of such person, basic data on such decision, including description of the act, its legal qualification and the imposed sentence or protective measure and matters of fact substantiating such custody, the Ministry will request

its supplementation within a time limit set by it, before forwarding it to the court. If the foreign state failed to send the requested supplementation within the set time limit without stating substantial reasons therefor, the request will be dismissed.

(4) The person, who was taken into recognition custody on the basis of a request of a foreign state before the service of a request for recognition and execution of a foreign decision must be immediately released from custody, if the request of the foreign state for recognition and execution of a foreign decision was not served to the Ministry within 40 days after taking this person into recognition custody; the proceedings will be thereby terminated. The court will notify the Ministry of releasing the person from recognition custody. Releasing the person from recognition custody does not preclude a new imposition of recognition custody in newly initiated proceedings on the recognition and execution of a foreign decision on the basis of a subsequently served request for recognition and execution of such decision. Serving the request to the Supreme Public Prosecutor's Office, to a diplomatic office of the Czech Republic in a foreign state or to the Ministry of International Affairs also has the effect of service.

### **Section 123**

(1) Decision on the petition for recognition and execution of a foreign decision is made by the court in a public session in the presence of the public prosecutor. In case the person, against whom is the foreign decision directed, is in custody, serving a sentence or a protective measure associated with incarceration, he will be served only a call to select a defense counsel, appointment of a defense counsel and the decision on the petition for recognition and execution of the foreign decision; the public session is held in the presence of his defense counsel.

(2) In case of a decision imposing an unsuspended sentence of imprisonment or a protective measure associated with incarceration, the presiding judge will request a written opinion of the public prosecutor before conducting the public session.

(3) The decision on the petition for recognition and execution of a foreign decision will the court serve also to the Ministry.

### **Section 124**

(1) If the conditions for recognition are met, the court will recognize the foreign decision for the territory of the Czech Republic by a judgment.

(2) The court will decide simultaneously with the decision on the recognition of the foreign decision also that the sentence or protective measure imposed by the foreign authority will be executed, whereas



- a) if the type of the sentence or protective measure is not compatible with the law of the Czech Republic, the court will adapt it to a type of sentence or protective measure according to the Criminal Code, which correspond to it best, or
- b) if the extent of the sentence imposed exceeds the upper limit of the criminal rate for the corresponding criminal offense under the Criminal Code, the court will adapt it by reducing it to this upper limit of the criminal rate.

(3) Adapting the imposed sentence or protective measure may not aggravate the position of the person, against whom the foreign decision is directed, in relation to its type or term.

(4) In case the recognized foreign decision imposed an unsuspended sentence of imprisonment, the court will simultaneously decide to place the convicted person into a certain type of prison.

(5) If the court recognizes the foreign decision only for some of the criminal offences concerned by the foreign decision, it will determine, when making the decision under Sub-section (2), what proportional part of the imposed sentence or protective measure will be executed in the Czech Republic.

(6) A sentence in a higher extent than is allowed by the Criminal Code may be executed in the Czech Republic only if it is stipulated by an international treaty or if the citizen of the Czech Republic, who is to be transferred to the Czech Republic, gives his consent and his transfer from the foreign state may not be achieved otherwise.

## **Section 125**

(1) The court will dismiss the petition of the Ministry, if

- a) conditions for recognition are not met,
- b) the person, against whom the foreign decision is directed, died or was declared dead, or
- c) it is clear that it would be impossible to secure execution of the foreign decision, especially if the person, against whom the foreign decision is directed, which imposed an unsuspended sentence of imprisonment or a protective measure associated with incarceration, is unreachable due to his unknown place of stay.

(2) A complaint is admissible against the decision referred to in Sub-section (1), which may be filed also by the Ministry. Proceeding on the complaint referred to in Section 149 (1) (a) of the Code of Criminal Procedure will not apply.

(3) If the court dismisses the petition of the Ministry and the person, against whom the foreign decision is directed, is in recognition custody, it will simultaneously decide to release him. A complaint of the public prosecutor is admissible against this decision, which has a dilatory effect only if filed immediately after the decision is declared and if the public prosecutor filed a complaint pursuant to Sub-section (2) at the same time.

## **Section 126**

If the foreign state requests an assurance before transferring the execution of a decision imposing an unsuspended sentence of imprisonment, that time limits and other conditions for a conditional release from execution of an unconditional sentence of imprisonment or premature termination of such execution provided for by the law of this state are complied with, the court will additionally decide, upon a petition of the Ministry, when recognizing the foreign decision or subsequently, whether such conditions or time limits will be complied with in the territory of the Czech Republic. If such time limits or conditions are more strict than stipulated by the law of the Czech Republic, it is possible, in case a consent of the person, against whom the foreign decision is directed, with the takeover of execution of the foreign decision, is requested, to decide that such conditions or time limits will be complied with only with the consent of such person. If the court grants this petition, it will decide by a judgment, in the operative part of which it will state these time limits and conditions, otherwise it will dismiss the petition by a resolution. A complaint is admissible against this resolution, which may be filed also by the Ministry. In proceedings on the complaint, Section 149 (1) (a) of the Code of Criminal Procedure will not apply.

## **Section 127**

- (1) Judgments according to Section 124 and 126 may be challenged by an appeal filed by
  - a) the public prosecutor and the Ministry for wrongness of operative part of any decision, also to the detriment of the person, against whom the foreign decision is directed, and
  - b) the person, against whom the foreign decision is directed, for wrongfulness of any operative part thereof directly concerning him.
- (2) The appeal may not challenge the grounds, for which was the foreign decision issued.
- (3) Provisions of Section 249 (2) and Section 251 (1) of the Code of Criminal Procedure will also apply to an appeal filed by the Ministry.
- (4) If the appeal of the person, against whom the foreign decision is directed and who is located in a foreign state, free, and does not have a defense counsel, does not comply with the requisites of the content of appeal according to Section 249 (1) of the Code of Criminal Procedure, than provisions of Section 251 (2) and Section 253 (3) of the Code of Criminal Procedure will not apply and the appeal court will review the correctness of all operative parts of the challenged judgment, which this person may challenge by an appeal.
- (5) If the appeal court decides by a judgment, it will do so in a public session. Section 123 (1) sentence two will apply accordingly.
- (6) The appeal court will repeal the challenged judgment and dismiss the petition of the Ministry, if it finds any of the grounds referred to in Section 125 (1). The appeal court may repeal the challenged judgment also if the reviewed part of the judgment was in breach of

another provision of this Act, if this breach could have affected the correctness of the reviewed part of the judgment.

(7) The appeal court may change the challenged judgment to the detriment of the person, against whom the foreign decision is directed, also on the basis of an appeal of the Ministry filed to the detriment of this person.

(8) Provisions of Section 247 (1), Section 257 (1) (a) to (c), Sub-section (2) and (3), Section 258 (1) (d) to (f), Section 259 (3) and (5), Section 260, 261 and 265 of the Code of Criminal Procedure will not apply.

### **Section 128**

(1) In case the Minister of Justice has any doubts about the correctness of the decision of court on the petition for recognition and execution of a foreign decision imposing an unsuspended sentence of imprisonment or a protective measure associated with incarceration, he may file a petition to the Supreme Court for reviewing such decision within 2 months from the full force and effect of the decision at the latest. Such petition may not be filed, if the Ministry failed to exercise its right to file a regular appeal for the same reason.

(2) If the Supreme Court does not dismiss the petition of the Minister of Justice, it will repeal the challenged decision and proceed accordingly pursuant to Section 124 to 126, or return the case to the court, if the found flaw may not be rectified in proceedings before the Supreme Court. If the Supreme Court decides by a judgment, it will do so in a public session; provision of Section 123 (1) sentence two will apply accordingly.

### **Division 3**

#### **Execution of Recognized Foreign Decision**

### **Section 129**

#### **Consent with Takeover of Execution of Foreign Decision**

If a foreign decision has been finally and effectively recognized, the Ministry will grant its consent with takeover of its execution, unless it finds substantial reasons, for which is takeover of the foreign decision inappropriate. The Ministry will notify its opinion to the foreign state that issued the recognized foreign decision, and the court competent for execution of such recognized foreign decision.

### **Section 130**

(1) The court will order execution of the recognized foreign decision as soon as the Ministry informs it that both the foreign state and the Ministry have granted their consent with the transfer of execution of the recognized foreign decision into the Czech Republic.

(2) The court will decide to include a portion of the sentence imposed by the recognized foreign decision, which has been executed in the foreign state, into the sentence that is to be executed in the territory of the Czech Republic. An unsuspended sentence of imprisonment will include also the time spent in recognition custody, in custody for the same act in the foreign state and the time of transportation for execution of the sentence to the Czech Republic.

(3) As soon as the Ministry notifies the court about an amnesty, pardon or another decision or measure of the foreign state, as a result of which the recognized foreign decision becomes unenforceable, the court will immediately take measures directed to waiver of execution of the recognized foreign decision. If the amnesty, pardon or other decision or measure of the foreign state, as a result of which the recognized foreign decision becomes unenforceable, has such effect that the person is considered to have never been convicted, he will be considered as such also in the Czech Republic. If the foreign decision was finally and effectively repealed in the foreign state, the court will also repeal the decision on its recognition.

(4) If the ministry notifies the court about an amnesty, pardon or another decision or measure of the foreign state, as a result of which the recognized foreign decision became partially unenforceable, the presiding judge will decide what part of the foreign decision will not be executed. A complaint is admissible against this decision, which has a dilatory effect.

### **Section 131**

#### Takeover of Person from Foreign State

(1) The person transferred by a foreign state for execution of a sentence of imprisonment or protective measure associated with incarceration will be taken over by the authorities of the Prison Service and delivered to a prison or facility for execution of protective measures. The Ministry and the court will be immediately notified thereof.

(2) In case transfer of a person, who is serving an unsuspended sentence of imprisonment or a protective measure associated with incarceration in a foreign state, concerning whom was the foreign decision recognized, into the Czech Republic for the purpose of execution of such a sentence or protective measure did not take place, execution of the recognized foreign decision concerning such a sentence or protective measure in the territory of the Czech Republic will be inadmissible.

### **Section 132**

#### Costs of Takeover

(1) Costs of takeover of a person from a foreign state will be borne by the Czech Republic.

(2) The person, who was taken over with his consent from a foreign state for the purpose of execution of an unsuspended sentence of imprisonment imposed by a recognized foreign

decision, will be obliged to reimburse the Czech Republic for the expenses expended in relation to his takeover by a flat-rate sum.

(3) The flat-rate sum referred to in Sub-section (2) will the Ministry determine by a regulation.

(4) The presiding judge will decide on the obligation for reimbursement of expenses after transfer of the person to the territory of the Czech Republic. A complaint is admissible against this decision, which has a dilatory effect.

### **Section 133**

#### Costs of Proceedings

(1) Costs of proceedings on recognition and execution of a foreign decision will be borne by the Czech Republic.

(2) In case execution of the recognized foreign decision has been ordered, the person, against whom this decision is directed, will be obliged to reimburse the Czech Republic for the expenses referred to in Section 152 (1) (a) to (d) of the Code of Criminal Procedure; that does not apply in case referred to in Section 132 (2).

### **Section 134**

#### Supervision and Control of the Convict

In case execution of a recognized foreign decision in the Czech Republic consists in supervision and control of the convict, the competence for securing execution of such a decision will pertain to the District Court, in jurisdiction of which the convict stays. After the full force and effect of the decision on recognition and execution of the foreign decision, the court referred to in Section 121 (3) will forward the case to this court.

### **Section 135**

#### Sharing of Forfeited or Confiscated Property

(1) If such procedure is permitted by an international treaty or if reciprocity is guaranteed, the Czech Republic may enter into an agreement with a foreign state on sharing property confiscated or forfeited on the basis of a recognized foreign decision. The competence for entering such an agreement will pertain to the Ministry of Finance; petition for entering such an agreement may be filed by the court that decided on recognition and execution of the foreign decision in the first instance or the Ministry. The court or the Ministry will provide the Ministry of Finance upon its request the necessary cooperation for the purposes of entering the agreement.

(2) The shared property will be transferred to the foreign state by organizational unit of the state competent to administer the property of the Czech Republic according to the Act on the Property of the Czech Republic and its Representation in Legal Relations.

## **Sub-chapter 2**

### Securing Execution of Decisions in Foreign States

#### **Section 136**

##### Transfer of Execution of Decisions

(1) If it is purposeful, the Ministry will, upon an incentive or with a consent of the court that decided in the case in the first instance, under the conditions stipulated by an international treaty or under the conditions stipulated for execution of decisions of court by the law of the foreign state, request the competent authority of this state to secure execution of this decision in its territory. The court will provide the Ministry with the necessary cooperation.

(2) If the law of the foreign state or an international treaty allows it and if it is required by the circumstances of the case, the Ministry will request the foreign state to take the person into custody for the purposes of securing execution of a decision imposing an unsuspended sentence of imprisonment or protective measure associated with incarceration.

#### **Section 137**

##### Transfer of Persons

(1) In case the person is located in the Czech republic, serving an unsuspended sentence of imprisonment or protective measure associated with incarceration, the Ministry may request the state, this person is a citizen of, or the state, concerning which may be expected that it will take over execution the decision, for takeover of this person in order to execute such a sentence or protective measure, or it may grant a consent with transferring such person, if

- a) the court that decided in the case in the first instance granted a consent with transfer of the person,
- b) transferring the person will not obstruct or thwart achievement of the purpose of the sentence or protective measure,
- c) at the time of filing the request or granting the consent of the ministry the person is to serve a sentence or protective measure in the extent of at least one year; in cases worth of special consideration the person may be transferred for execution of a sentence or protective measure of a shorter term,
- d) execution of the sentence or protective measure in the foreign state will not breach the obligations arising for the Czech Republic from international treaties on human rights and basic freedoms and
- e) transferring the person will not thwart or obstruct achievement of the purpose of criminal proceedings conducted in the Czech Republic against this person for another act.

(2) If transfer of persons is not regulated by an international treaty, the Ministry may proceed according to Sub-section (1) under the conditions stipulated for execution of decisions of court by the law of the foreign state.

(3) For the purpose of procedure according to Sub-section (1) or (2), the court will provide the Ministry with the necessary cooperation.

(4) If the procedure according to Sub-section (1) or (2) requires a consent of the person serving an unsuspended sentence of imprisonment or protective measure associated with incarceration in the territory of the Czech Republic, the Ministry will be entitled to request the District Court, in the jurisdiction of which is such sentence or protective measure being executed, for obtaining the consent. The presiding judge will advise the person on the meaning and consequences associated with granting the consent before the person grant it. The consent cannot be withdrawn.

### **Section 138**

#### **Transfer of Execution of Supervision and Control of Convicts**

(1) Transfer of execution of supervision and control of convicts may consist in

- a) monitoring the behavior of the convict in the probation period and in submitting reports in the determined dates on the behavior of the convict, as well as about complying with the imposed restrictions and obligations, or
- b) in performing tasks referred to in Paragraph (a) and following execution of an unsuspended sentence of imprisonment in case the convict did not approve himself.

(2) If the foreign authority complied with the request of the Ministry to perform tasks referred to in Sub-section (1) (a), the court will decide, whether the convict has approved himself in the probation period, or whether the sentence will be executed, or it will decide to impose a sentence. If this sentence is to be executed in the foreign state, it will proceed pursuant to Section 136.

### **Section 139**

The court will immediately inform the Ministry about granting an amnesty, participation in amnesty or other decision or measure, as a result of which the decision imposing a sentence or protective measure became fully or partially unenforceable. The ministry will immediately notify the foreign authority thereof.

### **Section 140**

#### **Sharing of Forfeited or Confiscated Property**

(1) When sharing property that has been confiscated or forfeited in a foreign state upon a request of the Czech Republic, it will be proceeded according to Section 135 (1) sentence one and two; upon a petition for entering into an agreement on sharing property may be filed to the Ministry of finance by the court that imposed the sentence or protective measure, on the basis of which was the property forfeited or confiscated, or the Ministry. The court or the Ministry will provide the Ministry of finance with the necessary cooperation for the purposes of entering the agreement upon its request.

(2) The shared property will be taken over from the foreign state by the organizational unit of the state competent to administer the property of the Czech Republic according to the Act on the Property of the Czech Republic and its representation in Legal Relations.

## **Chapter V**

### **Transit of Persons**

#### **Sub-chapter 1**

##### **Request for Authorization of Transit of Persons through the Territory of a Third State**

#### **Section 141**

(1) The Ministry will be competent to file requests for authorization of transit through the territory of a third state in relation to

- a) requesting extradition of a person from a foreign state into the Czech Republic,
- b) takeover of a person transferred to the Czech Republic by a foreign state, without having decided on his extradition,
- c) request of court for legal assistance,
- d) transfer of criminal proceedings from the Czech Republic into a foreign state after lodging an indictment, or
- e) takeover of a convict from a foreign state into the Czech Republic.

(2) The Supreme Public Prosecutor's Office will be competent to file requests for authorization of transit through the territory of a third state in relation to

- a) request of public prosecutor's office for legal assistance,
- b) takeover of criminal proceedings from a foreign state into the Czech Republic, or
- c) transfer of criminal proceedings from the Czech Republic into a foreign state prior to lodging an indictment.

(3) The judicial authority will provide the central authority upon its request and within a time limit set by it documents necessary to file requests for transit, including translations of documents into a language accepted by the third state. If the matter cannot be delayed, the central authority may secure translation of the necessary documents into a language accepted by the third state.

#### **Sub-chapter 2**

##### **Transit of Persons through the Territory of the Czech Republic**

#### **Section 142**

(1) The Ministry will be competent to accept requests of foreign states for authorization of transit of persons through the territory of the Czech Republic within the framework of international judicial cooperation between two or more foreign states, and to authorize the



transit. In case the request is served to another authority of the Czech Republic, it will immediately forward it to the Ministry.

(2) The Ministry will not authorize transit of persons through the territory of the Czech Republic, if

- a) a citizen of the Czech Republic is concerned,
- b) the state requesting the transit through the territory of the Czech Republic fails to document, for what purposes is the transit to be authorized,
- c) there is a possibility to impose a death penalty in the criminal proceedings, concerning which is the transit requested, and the state conducting the proceedings does not provide a guarantee that the death penalty will not be imposed or executed,
- d) transit for the purpose of extradition of a person for execution of a death penalty is concerned,
- e) transit in relation to a criminal offense of a strictly political or military character is concerned,
- f) it would be contrary to the obligations arising for the Czech Republic from international treaties on human rights and basic freedoms,
- g) there is a reasonable concern that the person would be subject to persecution for his race, religion, sex, membership to a certain national or other group, nationality or for his political beliefs in the state, to which he is to be extradited or surrendered,
- h) an order to arrest, order to detain or order to deliver a person for execution of a sentence of imprisonment, European Arrest Warrant or an arrest warrant issued pursuant to Part five Chapter II Sub-chapter 4 was issued in the Czech Republic for the person, whose transit is requested, or if the court took steps aimed towards delivering the person to execution of a protective measure associated with incarceration, or
- i) such transit between the Czech Republic and the state requesting the transit through the territory of the Czech Republic is not regulated by an international treaty and this state does not provide assurance of reciprocity; this will not apply, if the transit is requested by another Member State within the procedure under Part five.

(3) Authorization of transit of a person through the territory of the Czech Republic for a kind of international judicial cooperation that comprises returning the person, will apply also to his eventual return transit.

(4) Authorization of transit of a person through the territory of the Czech Republic is not necessary in case of flight transit without landing in the territory of the Czech Republic.

### **Section 143**

(1) In case of a flight transit of a person with a scheduled landing in the territory of the Czech Republic, if the expected duration of transit does not exceed 8 hours and if leaving the airport premises is not expected, the person whose transit is concerned will be restrained

for the time of the transit by authorities of the foreign state accompanying him, with the assistance of the authorities of the Police of the Czech Republic.

(2) If the time of transit incidentally exceeds 8 hours or if it is necessary to leave the premises of the airport, authorities of the Police of the Czech Republic will take the person from the authorities of the foreign state, restrain him and draw up a protocol thereof. Taking over the person and restraining him will be immediately notified to a public prosecutor of the Regional Public Prosecutor's Office, in jurisdiction of which is the place of landing located, and the public prosecutor will be given a copy of the protocol and other documents necessary for the public prosecutor in order to file a petition for taking the person into transit custody. The public prosecutor will file such a petition within 24 hours after the landing, otherwise the person must be released.

(3) The presiding judge of the Regional Court, in jurisdiction of which is the place of landing located, will decide on imposing the transit custody within 24 hours after the petition is filed. Provisions of Chapter four, Sub-division one of the Code of Criminal Procedure will not apply. After deciding on taking the person into transit custody the Ministry will set a reasonable time limit not exceeding 18 days from the landing to the state that requested the transit to take over the person and finish the transit; if this state fails to do so in the set time limit, the presiding judge will order release of the person from the transit custody on the last day of this time limit at the latest. Release of the person from transit custody in relation to the conclusion of the transit will be secured by the presiding judge of the Court, which has decided on the transit custody.

(4) In other cases than referred to in Sub-section (1) and (2) the Ministry will, before authorizing the transit, file a petition to the Supreme Court for a decision that the person, whose transit is concerned, will be placed in transit custody for the time of the transit through the territory of the Czech Republic. The Supreme Court will grant such petition only in case the conditions stipulated by an international treaty are present or if there is no reason for not authorizing the transit. Provisions of Chapter four Sub-division one of the Code of Criminal Procedure will not apply. If the Supreme Court dismisses the petition, the Ministry will not authorize the transit.

(5) In other cases than referred to in Sub-section (1) and (2), transit of persons through the territory of the Czech Republic, including the handover of the person to the competent authority of the foreign state, will be realized by the Police of the Czech Republic.

#### **Section 144**

(1) If in case of a flight transit without a scheduled landing in the territory of the Czech Republic occurs an incidental landing in its territory, authorities of the Czech Republic will take the person from the authorities of the foreign state, restrain him and draw up a protocol thereof. Takeover of the person and his restraining will be immediately notified to the public prosecutor of the Regional Public Prosecutor's Office, in jurisdiction of which is the place of

landing located, and he will be given a copy of the protocol and other documents necessary in order to file a petition for taking the person into transit custody. The public prosecutor will file such petition within 24 hours after the incidental landing, otherwise the person must be released. The public prosecutor will not file petition for taking the person into transit custody and will order his release, if it is clear that the conditions stipulated by an international treaty are not met or if there is any reason for not authorizing the transit through the territory of the Czech Republic referred to in Section 142 (2) (a) to (h).

(2) Taking the person into transit custody will be decided on by the presiding judge of the Regional Court, in the jurisdiction of which is the place of the incidental landing located, within 24 hours after filing the petition. Provisions of Chapter four Sub-division one of the Code of Criminal Procedure will not apply. If it is clear that the conditions stipulated by an international treaty are not met or if there is any reason for not authorizing the transit through the territory of the Czech Republic referred to in Section 142 (2) (a) to (h), they will order release of the person.

(3) In case the person was taken into transit custody and if a request for authorization of transit is not served within the time limit of 18 days after the incidental landing, the presiding judge will order release of the person from the transit custody on the last day of this time limit at the latest. If the Ministry authorizes the transit after the request is served, it will set a reasonable time limit not exceeding 18 days to the state that requested the transit for taking over the person and concluding the transit; if this state fails to do so in the set time limit, the presiding judge will order release of the person from the transit custody on the last day of this time limit at the latest. Releasing the person from the transit custody in relation to conclusion of the transit or non-authorization of the transit will be secured by the presiding judge of the court that decided on the transit custody.

(4) Provisions of Sub-sections (1) to (3) will apply accordingly also if an incidental landing occurs in the course of a flight transit through the territory of the Czech Republic, if the transit cannot be resumed for a time period exceeding 8 hours, or if it is necessary to leave the premises of the airport, where the incidental landing occurred. After taking the person into transit custody will the Ministry set a reasonable time limit not exceeding 18 days to the state that requested the transit for taking over the person and concluding the transit.

## **PART FOUR**

### **Cooperation with International Criminal Courts and Tribunals**

#### **Chapter I**

#### **General Provisions**

#### **Section 145**

(1) According to the provisions of this Part will be proceeded in the course of executing requests and orders of an international criminal court, international criminal tribunal or

similar international judicial authority with jurisdiction in criminal matters and its bodies (hereinafter referred to as “international court”),

- a) if
  1. it was established by an international treaty according to art. 10a of the Constitution of the Czech Republic,
  2. it was established by a decision of the United Nations Security Council issued pursuant to Chapter VII of the Charter of United Nations, which is binding to the Czech Republic, or
  3. the Czech Republic is obliged to cooperate with such international court according to a decision of the United Nations Security Council, which is binding to the Czech Republic,
- b) if it was established by an international treaty between an international organization, the Czech Republic is a member of, or a body of such an organization, and a foreign state and if it is referred to in a government directive according to Sub-section (2), or
- c) if the obligation of the Czech Republic to cooperate with such international court arises from another Act or an international treaty.

(2) The government will stipulate by a directive, with which international courts referred to in Sub-section (1) (b) will the Czech Republic cooperate.

#### **Section 146**

(1) Judicial authorities will provide the international court the necessary cooperation in relation to investigation and prosecution of offenses, prosecution and punishment of which lies within its jurisdiction, including acts directed against the execution of justice by an international court, and in relation to execution of sentences imposed by an international court for such offenses.

(2) According to the provisions of this Part will be proceeded only if an international treaty regulation the cooperation with an international court or regulations of an international organization or international court regulating the proceedings before such international court (hereinafter referred to as “regulations of international court”) provide otherwise, if an international court referred to in Section 145 (1) (a) is concerned.

(3) For cooperation with an international court, provisions of Part one will apply accordingly, unless this Part stipulates otherwise. Provisions of Section 4, Section 12 (3) and Section 13 (2) will not apply. Provisions of section 5, Section 7 (2) and Section 9 (2) will not apply in case of an international court referred to in Section 145 (1) (a).

(4) Requests and orders of an international court will be executed by authorities of the Czech Republic in preference and with dispatch.

(5) Authorities of the Czech Republic will not publish without a consent of the international court any information about its request or order and about the manner of their execution.

When providing information pursuant to Section 6, authorities of the Czech Republic will proceed according to the instructions of the international court, which they will request.

### **Section 147**

#### Translations

(1) If an international court sends the central authority a request or order in a foreign language without a translation, the central authority will provide the translation, if an international court referred to in Section 145 (1) (a) is concerned; possibilities of reimbursement of costs of the translation will be then consulted with the international court.

(2) If an international court referred to in Section 145 (1) (b) or (c) is concerned, the translation will be provided by the central authority if the international court provides an assurance that it will bear the costs of the translation. Otherwise the central authority may return the request or order to the international court without execution.

### **Section 148**

(1) The judicial authority will allow the representatives of an international court referred to in Section 145 (1) (a), defense counsels and legal representatives in proceedings before such international court and other persons appointed by this international court to participate in an action executed on the basis or in relation to a request or order of this international court. The judicial authority will allow these persons to ask supplementary questions directly to the person concerned by the action.

(2) If the representatives of an international court referred to in Section 145 (1) (a) perform actions in the territory of the Czech Republic in compliance with the regulations of the international court autonomously, Section 8 (1) sentence one of the Code of Criminal Procedure will apply accordingly. Upon a request of a representative of the international court, performance of such action will be attended by a public prosecutor of the Regional Public Prosecutor's Office, in jurisdiction of which is this action to be performed.

(3) In case of an international court referred to in Section 145 (1) (b) or (c), Section 51 will apply accordingly.

(4) Representatives of an international court and defense counsels, legal representatives, witnesses, interpreters, accused persons and convicts and other persons summoned to participate in an action in proceedings before such international court enjoy privileges and immunities in the extent provided by international law, if

- a) they pass through or are transported through the territory of the Czech Republic for a hearing held by an international court or if they are returning directly from such hearing,
- b) they pass through or are transported through the territory of the Czech Republic for attending an action performed in the territory of a foreign state on the basis of a request or order of an international court or if they are returning directly from this foreign state, or

c) they participate in an action performed in the territory of the Czech Republic on the basis of a request or order of an international court.

(5) In case of any doubts about the legitimacy or extent of a privilege and immunity of any of the persons referred to in Sub-section (4) the authorities of the Czech Republic will immediately consult their procedure with the international court through the Ministry of Foreign Affairs.

### **Section 149**

#### Contact of Persons with International Court

(1) A person located in a facility where his personal liberty is being restricted, against whom are being conducted proceedings before an international court and who is concerned by a request or order of an international court or who is serving a sentence imposed by an international court, has the right to freely

- a) receive and at his own expense send written notices to the international court and its authorities,
- b) receive visits from the representatives of the international court and his defense counsel or legal representative in proceedings before the international court and to consult them without the presence of third persons.

(2) Checking of written notifications referred to in Sub-section (1) (a) is inadmissible.

(3) The obligation to maintain discretion imposed by the state, which the person may be relieved of by a state authority or which does not apply to providing information to authorities involved in criminal proceedings will not apply to interview of the person by an international court referred to in Section 145 (1) (a).

### **Section 150**

#### Costs of Cooperation

(1) Costs incurred to the authorities of the Czech Republic in the course of executing requests and orders of an international court will be borne by the Czech Republic, unless they are borne by the international court.

(2) If the regulations of the international court allow that the international court bore some of the costs referred to in Sub-section (1), such costs will be borne according to an agreement between the central authority and the international court. The authority, to which these costs were incurred, will submit a calculation of these costs and reasoning thereof, as well as other necessary data, to the central authority.

### **Section 151**

#### Concurrence of Requests

In case requests or orders of several international courts or of an international court and a foreign state are served to the authorities of the Czech Republic and they concern the same person or the same matter and providing cooperation on the basis of all such requests or orders is not possible, conditions and possibilities of providing cooperation will be assessed in relation to each request and order individually. Therein will be considered especially the nature of the obligation to cooperate with the international court, the order, in which these requests and orders were served to the authorities of the Czech Republic, circumstances of commission of the criminal offenses concerned by these requests and orders, including their seriousness, furthermore the type and extent of sentences that may be or have been imposed and the probability, with which the international courts and states, requests and orders of which were served to the authorities of the Czech Republic, may achieve provision of cooperation in mutual relations.

### **Section 152**

#### Not Granting and Suspension of Execution of Request or Order

(1) The judicial authority will consult the international court, before not granting or partially granting its request or order, about the conditions, under which it would be possible to grant the request or order, including eventual correction or supplementation thereof

(2) The judicial authority may postpone execution of a request or order of an international court only after a previous consultation with the international court and only for a fixed time period; its duration will the judicial authority notify to the international court along with a notification of suspension of execution of the request or order. If a request or order of an international court referred to in Section 145 (1) (a) is concerned, it may do so only after a consultation with this international court.

### **Section 153**

#### Provision of Information and Evidence without a Request

The Supreme Public Prosecutor's Office will transfer upon a request of the public prosecutor and the Ministry will transfer upon a request of the court information and evidence obtained in criminal proceedings to an international court even without its previous request or order, if the public prosecutor or court believe that provision of such information or evidence may facilitate investigation and prosecution of offenses conducted by the international court in its jurisdiction, including offenses against the execution of justice by the international court, or in execution of sentences imposed by the international court for such offenses.

### **Section 154**

#### Protection of Witnesses

Requests of an international court for securing protection of a witness will the judicial authority forward to the authority competent for providing special protection according to the Act on Special Protection of Witnesses and other Persons in relation to Criminal Proceedings.

## **Chapter II**

### Legal Assistance

#### **Section 155**

Provisions of Part three Chapter I Sub-chapter 2 and 3 will apply accordingly to assistance provided to an international court, unless stipulated otherwise in this Part. Provisions of Section 48 (3), Section 56 and Section 70 (1) (a) will not apply. Provisions of Section 47 (2), Section 49, 51, Section 52 (1), (2) and (5), Section 54 (1) (c), Section 58 (6) sentence two and Section 70 (1) (c) to € will not apply, if an international court referred to in Section 145 (1) (a) is concerned. Provision of Section 47 (2) will not apply also if an international court referred to in Section 145 (1) (b) is concerned.

#### **Section 156**

##### Competence for Accepting Requests or Orders

The competence for accepting a request or order of an international court issued in proceedings before an international court will pertain before initiation of trial to the Supreme Public Prosecutor's Office and after initiation of trial the Ministry.

#### **Section 157**

##### Execution of Requests and Orders

- (1) If an international court referred to in Section 145 (1) (a) requests special procedure in the course of execution of its request or order, the authorities involved in criminal proceedings will comply with such request. If a request of an international court referred to in Section 145 (1) (b) or (c) is concerned, the authorities involved in criminal proceedings will comply with such request if it is not contrary to Section 5.
- (2) In case an order or authorization of a judicial authority is necessary to perform an action in the territory of the Czech Republic on the basis of a request or order of an international court referred to in Section 145 (1) (a), this judicial authority will issue it upon a request or order of the international court; conditions for issuing this order or authorization will in such case be considered as fulfilled.
- (3) If the international court requests it, the course of the action performed on the basis of its request or order will be recorded with the use of a stenograph, audio or video record or other means determined by the international court, if it is technically possible; the stenograph or record will be handed to the international court along with a protocol on the action.
- (4) In case the information contained in the request or order of an international court is not sufficient for granting such request or order, the judicial authority will either through the central authority or directly, if it is required by urgency of the case, consult further procedure with the international court and if necessary, request the international court for additional information.



## **Section 158**

### Refusal to Transfer Information or Evidence

(1) In case information classified according to the Act on Protection of Classified Information are to be transferred to an international court referred to in Section 145 (1) (a) upon its request or order, the judicial authority will consult the international court and the National Security Agency about the manner of protection of the information by the international court before transferring the information. Transfer of such information may be refused only in case that it is impossible to secure adequate protection of the information from publishing in proceedings before the international court; the refusal to transfer will be decided on by the Supreme Court upon a petition of the judicial authority executing the request or order of the international court.

(2) Transfer of information or evidence to an international court referred to in Section 145 (1) (a) may be refused for the reason of protection of substantial national security interests, if it is decided by the Supreme Court upon a petition of the judicial authority, which executes the request or order of the international court. Before filing the petition to the Supreme Court the judicial authority will consult the international court about the conditions, under which the information or evidence may be transferred.

(3) In case transfer of information or evidence, which the Czech Republic obtained from a foreign state or international organization, to an international court would be contrary to the obligations of the Czech Republic arising from the principle of specialty or to similar international obligations of the Czech Republic, the judicial authority will request the foreign state or international organization, from which the Czech Republic obtained such information or evidence, to give their consent with provision thereof to the international court.

(4) If the foreign state or international organization does not grant the consent according to Sub-section (3), the judicial authority will not grant the request or order and will inform the international court about the reasons therefor and about the actions taken for obtaining the consent of the foreign state or international organization.

## **Section 159**

### Interview of Persons

(1) Witnesses and experts may be interviewed upon a request or order of an international court under oath, wording of which will be determined by the international court. If the international court does not determine the wording of the oath in the request or order to interview a witness or expert, Section 50 (1) sentence two and three will apply accordingly.

(2) A person interviewed on the basis of a request or order of an international court referred to in Section 145 (1) (a) may exercise his right to refuse testimony according to the regulations of the international court, as well as according to the Code of Criminal Procedure, if the regulations of the international court allow it. Provisions of Section 99 (2)

of the Code of Criminal Procedure will not apply to interview of persons on the basis of a request or order if an international court referred to in Section 145 (1) (a).

(3) The judicial authority will allow the international court on the basis of its request or order to conduct interview of a person by the means of a video-conference device or telephone. Provisions of sib-section (2) will apply accordingly.

(4) If the person interviewed on the basis of a request or order of an international court by authorities involve in criminal proceedings or interviewed by the international court by the means of a video-conference device or telephone or the representatives of the international court participating in the interview do not understand the language, in which the interview is conducted, and if the international court does not secure interpretation services, the authority involved in criminal proceedings that conducts the interview or that allowed conducting the interview by the means of a video-conference device or telephone will appoint an interpreter after a consultation with the international court. This applies accordingly also in case of persons that cannot be communicated with in other ways that in one of the communication systems for the deaf and deaf-blind persons.

### **Section 160**

#### Summons of Persons

If an international court requests it, the judicial authority that serves summons for participation in an action in proceedings before the international court on the basis of a request or order of the international court will provide the summoned person with an advance payment of the witness fee in an amount determined by the international court. The judicial authority will submit a calculation of costs associated with provision of the advance payment of the witness fee to the central authority for the purposes of its reimbursement by the international court.

### **Section 161**

#### Process Serving in the Territory of the Czech Republic

International court referred to in Section 145 (1) (a) may serve documents to addressees in the territory of the Czech Republic directly through the provider of postal services.

### **Section 162**

#### Cooperation in Relation to Compensation of Entitled Persons

The Ministry will provide an international court, a fund established by an international court for the purposes of compensation of entitled persons, or a similar institution that may be considered an auxiliary body of an international court, upon their request or order the necessary cooperation in relation to compensation of entitled persons. For these purposes the Ministry will be entitled to request the Police of the Czech Republic to identify and search for the place of stay of entitled persons.

### **Section 163**

#### Requesting Legal Assistance from International Court

Provisions of Part three Chapter I Sub-chapter I will apply to requesting legal assistance from an international court accordingly.

### **Chapter III**

#### Surrender of Persons

### **Section 164**

Provisions of Part three Chapter II Sub-chapter II will apply to surrender of persons to an international court accordingly, unless stipulated otherwise in this Part. Provisions of Section 90, Section 91 (1) (b), (c), (e) to (g) and (j) will not apply. Provisions of Section 87, Section 88 (3), Section 89 (1) (b) and (e), Section 91, Section 92 (7) (d) and (h), Section 95 (1), (5) and (6) and Section 97 will not apply also if an international court referred to in Section 145 (1) (b) is concerned.

### **Section 165**

#### Competence of Court an Public Prosecutor's Office

In case surrender of a person to an international court referred to in Section 145 (1) (a) or (b) is concerned, the court competent to proceed according to this Chapter is the Regional Court in Prague. Actions, competence for which under this Chapter pertains to a public prosecutor, will be performed by a public prosecutor of the Regional Public Prosecutor in Prague.

### **Section 166**

#### Preliminary and Extradition Custody

(1) In case of surrender of a person to an international court referred to in Section 145 (1) (a), the presiding judge will take the person into preliminary custody upon a request of this court for preliminary custody or upon an order of this court for arrest and surrender of the person after his delivery to the court according to Section 93 (3). Therein the court will not be bound by the grounds for custody according to Section 94 (1).

(2) In case surrender of a person to an international court referred to in Section 145 (1) (a) or (b) is concerned, the public prosecutor will release the person from preliminary custody pursuant to Section 94 (3), if the preliminary investigation was initiated without a request or order of the international court for surrender of the person and such request or order was not delivered to the Czech Republic within the time limit stipulated by the regulations of the international court, or within 60 days from taking the person into preliminary custody, if regulations of the international court do not stipulate any such time limit. In case an international court referred to in Section 145 (1) (a) is concerned and the request or order is delivered subsequently, the presiding judge will take the person into preliminary custody according to Sub-section (1).

(3) The court will immediately inform the international court through the Ministry about every application of the person for release from preliminary or extradition custody, including the reasons of such application. At the same time it will request an opinion on such request and advise the international court about a time limit, within which it is necessary to decide on such application for release from preliminary or extradition custody. When deciding on such request the court will take into account the opinion of the international court, if it was delivered on time. If an international court referred to in Section 145 (1) (a) is concerned, the person concerned by the surrender may be released from preliminary custody only if it is substantiated by urgent and extraordinary circumstances and at the same time some of the measures supplementing custody according to the Code of Criminal Procedure; upon a request of the international court the court will send it reports whether the supplementation of preliminary custody still remains in effect and whether the person concerned by the surrender remains in the territory of the Czech Republic and whether he does not avoid the surrender proceedings.

### **Section 167**

(1) In case surrender of a person to an international court referred to in Section 145 (1) (a) is concerned, the purpose of preliminary investigation will be to ascertain, whether

- a) the person concerned by the extradition is the person, for whom the international court issued an arrest warrant,
- b) apprehension of the person was realized in compliance with the law,
- c) the authorities of the Czech Republic observed the rights of the person stipulated by legal regulations of the Czech Republic and legal regulations of the international court.

(2) In case surrender of a person to an international court referred to in Section 145 (1) (a) is concerned and the public prosecutor or after conclusion of preliminary investigation the court ascertains matters of fact referred to in Sub-section (1), they will immediately inform the international court thereof through the Ministry and request it to declare whether it insists on surrender of the person.

(3) If the person concerned by the surrender objects that his surrender to an international court referred to in Section 145 (1) (a) is prevented by immunity according to international law, the public prosecutor and after the conclusion preliminary investigation the court will inform the international court through the Ministry about such objection and request its opinion on further procedure.

(4) If the person concerned by the surrender objects that his surrender is prevented by an ongoing proceedings on admissibility of proceedings before the international court or other similar matter, the public prosecutor and after the conclusion preliminary investigation the court will inform the international court through the Ministry about such objection and request its opinion on further procedure.

(5) In case the an international court requests that the person concerned by the surrender is handed copies of arrest warrant or other documents related to proceedings before the international court, it will be done by the public prosecutor within the framework of preliminary investigation and the protocol on handover of such documents with a list thereof will be immediately sent to the international court.

### **Section 168**

#### **Surrender and its Realization**

(1) In case surrender to an international court referred to in Section 145 (1) (a) is concerned, surrender of the person will be ordered by the court after the conclusion of preliminary investigation upon a petition of the public prosecutor, generally within 30 days after the service of the request or order of the international court for surrender of the person. Failure to comply with this time limit will be notified to the international court by the court and in preliminary investigation by the public prosecutor through the Ministry.

(2) In case surrender to an international court referred to in Section 145 (1) (b) is concerned, surrender of the person will be decided on by the court after the conclusion of preliminary investigation in a public session upon a petition of the public prosecutor. If there is any of the grounds for inadmissibility of surrender referred to in Section 91 (1) (a), (h), (i), (n), (o) or (p) present, the court will decide not to authorize the surrender. A complaint is admissible against these decisions, which has a dilatory effect.

(3) In case surrender to an international court referred to in Section 145 (1) (a) is concerned and if the authorities of the international court or other authorities delegated by the international court to take over this person in the territory of the Czech Republic are unable to do so, the Police of the Czech Republic will hand it to the authorities of the international court or other authorities delegated by the international court in a place designated by the international court, also in a foreign state.

### **Section 169**

#### **Suspension of Surrender and Temporary surrender**

(1) In case surrender of a person to an international court referred to in Section 145 (1) (a) is concerned and if there is a reason for suspension according to Section 99 (1), the presiding judge may, upon a petition of any of the authorities or persons referred to in Section 99 (2), request the international court upon the surrender of the person to return him to the Czech Republic after his presence at the international court ceases to be necessary for the purpose of proceedings before the international court or for the purposes of execution of a sentence imposed by the international court.

(2) In case surrender of a person to an international court referred to in Section 145 (1) (b) is concerned, surrender may be suspended only with a previous consent of the international court. In the decision on the suspension the presiding judge will set a time limit, before expiration of which must the person surrendered to the international court. If the reason for

the suspension of surrender is a criminal proceeding conducted in the Czech Republic, the presiding judge will set this time limit so that it did not exceed 6 months; if the reason for the suspension of surrender is execution of an unsuspended sentence of imprisonment finally and effectively imposed by a court of the Czech Republic, the presiding judge will set this time limit so that its last day fell upon the last day of the expected term of execution of the sentence. The presiding judge may extend this time limit with the consent of the international court, also repeatedly.

(3) In case surrender of a person to an international court referred to in Section 145 (1) (b) is concerned, temporary surrender to this international court may be authorized only with its consent.

### **Section 170**

#### Consent with Extension of Surrender

(1) Consent according to Section 103 (1) is not required also if

- a) the person was surrendered to an international court referred to in Section 145 (1) (a) and if prosecution this person before such international court or execution of a sentence imposed by such international court is concerned, or
- b) the person was extradited from the Czech Republic to a foreign state and if his transfer from the foreign state to an international court referred to in Section 145 (1) (a) is concerned.

(2) Consent pursuant to Section 216 (1) will not be required also if surrender of a person from a Member State, to which he was surrendered from the Czech Republic, to an international court referred to in Section 145 (1) (a) is concerned.

## **Chapter IV**

### Execution of Decisions

### **Section 171**

Recognition and execution of decisions of an international court will be governed by provisions of Part three Chapter IV Sub-chapter 1 accordingly, unless this Part stipulates otherwise. Provisions of Section 120 (1) (a), (b), (d), (e) and (i) and Sub-section (3), Section 132 (2) to (4) and Section 133 (2) will not apply. Section 120 (1) (c), (f) and (g), Section 121 (1) and (2), Section 123, 124 and 127 will not apply in case of an international court referred to in Section 145 (1) (a). Provision of Section 124 (6) will not apply also in case of an international court referred to in Section 145 (1) (b).

### **Section 172**

(1) In case a decision of an international court referred to in Section 145 (1) (a) is concerned, the court will order its execution upon a petition of the Ministry. If the international court

changes the extent of the sentence in the course of its execution, the court will order execution of the sentence in this new extent and decide on the inclusion of the so far served portion of the sentence.

(2) A sentence imposed by an international court referred to in Section 145 (1) (a) or (b) may be executed in the Czech Republic also in a higher extent than allowed by the Criminal Code.

(3) In case a decision of an international court referred to in Section 145 (1) (c) is concerned and if the extent of the sentence exceeds the upper limit of criminal rate for the corresponding criminal offense according to the Criminal Code, the court will adjust the extent of the sentence pursuant to Section 124 (2) (b) after a consultation with this international court.

### **Section 173**

#### **Request for Review of Decision of International Court**

In case the authorities of the Czech Republic receive a petition or request for review of a decision of an international court, which is being executed or is to be executed in the territory of the Czech Republic, they will forward such request without an undue delay to the international court through the Ministry.

### **Section 174**

#### **Takeover of Execution of Unsuspended Sentence of Imprisonment**

(1) In order to execute an unsuspended sentence of imprisonment imposed by an international court may be taken over

- a) a citizen of the Czech Republic or a person with a permanent residence in the territory of the Czech Republic, or
- b) another person, if the international court undertakes to bear the costs of execution of the sentence.

(2) In case takeover of a person for execution of an unsuspended sentence of imprisonment imposed by a decision of an international court referred to in Section 145 (1) (a), the court will decide upon a petition of the Ministry before ordering the execution by a judgment on placing the person the convict into a specific type of prison. Proceedings on the petition of the Ministry will be governed by Section 123, Section 125 (1) (b) and (c) and Sub-section (2) and Section 127 accordingly.

(3) In case an international court referred to in Section 145 (1) (a) requests before surrendering a person for execution of an unconditional sentence of imprisonment for a reassurance that any time limits or other conditions for conditional release from execution of the unconditional sentence of imprisonment or for premature termination of execution of

such execution pursuant to the regulations of the international court will be complied with, then consent of such person under Section 126 will not be required.

(4) In case a change of the conditions referred to in Sub-section (1) occurs in the course of execution of an unconditional sentence of imprisonment or if it comes to light that these conditions were not complied with in the time of the takeover, the Ministry will immediately inform the international court thereof and consult it about next proceeding. In case none of the conditions referred to in Sub-section (1) is complied with, the Ministry will request the international court to determine another state, in which the person will continue to serve the unconditional sentence of imprisonment. If the international court fails to grant this request, execution of the sentence will continue in the Czech Republic.

### **Section 175**

(1) The person, with whose takeover for execution of an unsuspended sentence of imprisonment imposed by an international court has the Ministry granted its consent, will be taken over by the authorities of the Prison Service upon an instruction of the Ministry from the authorities of the international court or foreign state in the place and time specified by the Ministry after a consultation with the international court. In a place outside the territory of the Czech Republic authorities of the Prison Service will take over a person only in case the international court or foreign state undertakes to bear the costs associated with his transport into the Czech Republic.

(2) In case a person taken over according to this Chapter into the Czech Republic for execution of a decision of an international court referred to in Section 145 (1) (a) or (b) is concerned, prosecution of this person in the Czech Republic, execution of another sentence or protective measure imposed to this person and extradition or surrender of this person into a foreign state or another international court will be governed by Section 85 accordingly.

(3) In case the regulations of an international court do not permit that a court of the Czech Republic decided on suspension of execution of a sentence, intermission of execution of a sentence or on conditional release of a person taken over according to this Chapter into the Czech Republic, and if the authorities of the Czech Republic receive a request or incentive for such a decision, the Ministry will forward it to the international court; provision of Section 159 (3) and (4) will apply accordingly also for proceedings held before an international court on such request. If the regulations of the international court permit that a court of the Czech Republic decided on such request, this court will ask the international court for its opinion through the Ministry before making a decision.

(4) In case a citizen of the Czech Republic or a person with a permanent residence in the territory of the Czech Republic is not concerned, the Ministry may stipulate, before releasing the person from execution of an unsuspended sentence of imprisonment, that after his release the person taken over according to this Chapter into the Czech Republic is to be surrendered to a state, he is a citizen of or in which he is authorized to stay, or to a state that



is willing to accept him, is such state or international court undertakes to bear the costs associated with his transport into this state, or if the person is to be handed over to the authorities of this state at a border crossing. When determining into which state is the person to be surrendered, the Ministry will take into account also the opinion of this person. The authorities of the Prison Service will hand over the person to the authorities of the foreign state in place and time determined by the Ministry after a consultation with the international court or foreign state.

### **Section 176**

(1) If it is necessary that the person taken over into the Czech Republic pursuant to this Chapter participated in proceedings before an international court, authorities of the Prison Service will surrender the person to the authorities of international court upon an instruction of the Ministry for a time period determined by the international court in the time and place determined by the Ministry. In a place outside the territory of the Czech Republic the authorities of the Prison Service will hand over the person to the authorities of the international court only in case the international court undertake to bear the costs associated with his transport to this location. Taking the person back from the authorities of the international court will be governed by provisions of sentence one and two accordingly.

(2) If an international court decides, after surrendering a person into the Czech Republic, that this person is to be returned to the international court or that it is to continue serving an unsuspended sentence of imprisonment in a foreign state, the authorities of the Prison Service will surrender the person to the authorities of the international court or foreign state in time and place determined by the Ministry. In a place outside the territory of the Czech Republic the authorities of the Prison Service will hand over the person to the authorities of the international court or foreign state only in case the international court or foreign state undertakes to bear the costs associated with his transport to this location.

### **Section 177**

(1) If the person surrendered according to this Chapter into the Czech Republic escapes from execution of an unsuspended sentence of imprisonment, the Ministry will immediately inform the international court thereof and consult it about the next procedure. The court that decided on recognition and execution of a decision of the international court or that decided on placing this person into a specific type of prison will immediately issue an order to deliver the person for execution of an unsuspended sentence of imprisonment. In case the person has fled abroad, it will be proceeded according to Part three Chapter UU Sub-chapter 1, unless the Ministry and the international court agree otherwise after a mutual consultation.

(2) The court will withdraw the order to deliver a person for execution of an unsuspended sentence of imprisonment issued in accordance with to Sub-section (1) also in case this person was surrendered from a state, in the territory of which he was apprehended, to the

international court, or if he was surrendered or extradited from a state, in the territory of which he was apprehended, to another state determined by the international court.

### **Section 178**

#### Takeover of Execution of Property related Decisions

(1) In case of execution of a decision of an international court referred to in Section 145 (1) (a) or (b), which imposed a financial penalty, the financial amount collected by execution of the decision will belong to the international court and the court will transfer it to the international court or to whomever the international court designates to a bank account of their choosing.

(2) In case of execution of a decision of an international court referred to in Section 145 (1) (a) or (b) which imposed a sentence of confiscation of property or confiscation of items or other asset values, the organizational unit of the state, to which pertains, according to the Act on the Property of the Czech Republic and its Representation in Legal Relations, to administer the property of the Czech Republic, will sell the property, item or asset value obtained by execution of the decision and transfer the financial amount acquired by the sale to the international court and the court will transfer it to the international court or to whomever the international court designates to a bank account of their choosing. If an item that is part of the national cultural treasure of the Czech Republic or another state is concerned, and if the property, item or other asset value cannot be sold due to their nature or for other reasons, further procedure will be consulted with the international court.

(3) Payment of the financial penalty in installments may be authorized or its execution may be waived inly with a consent of the international court.

### **Section 179**

(1) According to this Chapter will be proceeded also in the course of recognition of orders of international court referred to in Section 145 (1) (b) and (c) for compensation of entitled persons. An order of an international court referred to in Section 145 (1) (a) for compensation of entitled persons will be executed without having to decide on its recognition.

(2) In the course of execution of an order for compensation of entitled persons, the person, to whom such decision granted a claim, or the court, if it is requested by an international court or a fund established for the purposes of compensation of entitled persons by an international court, or a similar institution that can be considered as an auxiliary body of an international court, will proceed according to the Code of Civil Procedure.

(3) If the court proceeds pursuant to Sub-section (2), the financial sum acquired by execution of a decision of an international court will pertain to the international court and the court will transfer it to this international court or a fund established for the purposes of

compensation of entitled persons by an international court, or a similar institution that can be considered as an auxiliary body of an international court to a bank account of their choosing.

### **Section 180**

Upon a request of an international court referred to in Section 145 (1) (a), a decision of this international court imposing a disciplinary fine may be executed. In the course of execution of such a decision will be proceeded pursuant to the Code of Criminal Procedure accordingly. The financial sum acquired by execution of a decision of an international court will pertain to the international court and the court will transfer it to the international court to a bank account specified by it.

## **Chapter V**

### **Takeover and Transfer of Criminal Proceedings**

### **Section 181**

(1) Upon a request of an international court referred to in Section 145 (1) (a), criminal proceedings will be transferred to this international court by the public prosecutor through the Supreme Public Prosecutor's Office or by the court through the Ministry. Provision of Section 107 (2), Section 108 and Section 110 (2) and (3) will apply accordingly.

(2) Provisions of Part three Chapter II Sub-chapter 1 will apply accordingly to such transfer of criminal proceedings to an international court referred to in Section 145 (1) (a) upon a request of the public prosecutor or court. Provision of Section 110 (1) will not apply.

(3) The Supreme Public Prosecutor's Office, if criminal proceeding was transferred to an international court before lodging an indictment, and the Ministry, if criminal proceeding was transferred to an international court after lodging an indictment, will be competent to file appeals against the decision of the international court on takeover of such proceeding, petitions for changing such decision and to related actions, if filing such regular appeals or petitions is permitted by regulations of the international court.

### **Section 182**

Provisions of Part three Chapter III Sub-chapter 1 will apply accordingly to transfer of criminal proceedings to an international court referred to in Section 145 (1) (b) or (c). Provision of Section 110 (1) will not apply. Provision of Section 12 (1) will apply only if the criminal proceeding is transferred to the international court upon a request of the public prosecutor.

### **Section 183**

(1) Takeover of criminal proceedings from an international court to the Czech Republic will be governed by provisions of Part three Chapter III Sub-chapter 2 accordingly.

(2) Judicial authorities will inform the international court regularly on the course of the criminal proceeding that was taken over. Representatives of the international court will be allowed upon their request to attend the actions performed in the criminal proceeding that was taken over.

## **Chapter VI**

### Transit of Persons

#### **Section 184**

(1) Transit of persons through the territory of the Czech Republic in relation to assistance provided by a foreign state to an international court will be governed by provisions of Part three Chapter V Sub-chapter 2 accordingly, unless this part stipulates otherwise. Provisions of Section 142 (2) (a), e), (f), (g) and (i) will not apply.

(2) As assistance provided by a foreign state to an international court according to Sub-section (1) will be considered also surrender of a person between two foreign states in relation to execution of an unsuspended sentence of imprisonment imposed by an international court.

(3) Authorization of transit of a person through the territory of the Czech Republic will not be required, if an international court referred to in Section 145 (1) (a) is concerned.

## **PART FIVE**

### Special Procedures of International Judicial Cooperation with other Member States

#### **Chapter I**

##### Joint Investigation Team

#### **Section 185**

(1) Provisions of this Chapter will apply to Joint Investigation Teams established between Member States.

(2) According to this Chapter will be proceeded, if another Member State applies legal regulations for execution of the applicable regulation of the European Union<sup>10</sup>.

(3) Provisions of this Chapter do not preclude proceeding under provisions on legal assistance.

#### **Section 186**

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<sup>10</sup> Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams

(1) Agreement on Joint Investigation Team may be entered into with one or several Member States.

(2) A Joint Investigation Team may be established upon a request of the judicial authority or a competent authority of another Member State, especially if

- a) criminal proceeding is being conducted either in the Czech Republic or in another Member State, in the course of which it is necessary to perform difficult and challenging actions in other Member States, or
- b) criminal proceeding is being conducted either in the Czech Republic or in another Member State and the circumstances of the case require coordinated proceeding in the Member States in question.

(3) Section 71 to 74 will apply accordingly to establishing a Joint Investigation Team and its activity, including the exchange of information.

### **Section 187**

#### Claims of Recourse of another Member State

(1) The Ministry will pay upon a request of another state that participated in a Joint Investigation Team any sum this state expended in compliance with its law as a compensation of damage to a certain person in an extent, in which this damage was caused by incorrect official procedure or unlawful decision of public officials of the Czech Republic in the course of their activity in the Joint Investigation Team.

(2) In case a request of another Member State does not contain all necessary information, the Ministry will bid the competent authority of this state to supplement it and provide a reasonable time limit therefor. Therein the Ministry will always advise it about the consequences of not complying with such bidding. If the competent authority of the other Member State fails to comply with this bidding within the set time limit without stating substantial reasons, which prevented it from doing so, the request will be refused.

### **Section 188**

#### Claims of Recourse against another Member State

(1) The Ministry will be entitled to request another state for reimbursement of a financial sum expended as compensation of damage to a certain person according to the Act on Liability for Damage Caused in Execution of Public Authority by a Decision or Incorrect Official Procedure in the extent, in which the damage was caused by procedure of officials of this Member State in the course of their operation within the Joint Investigation Team established in the territory of the Czech Republic.

(2) Claims for the reimbursement of the expended compensation of damage will be applied in the form of a request to the competent authority of another Member State in compliance with the law and requirements of this state.

## **Chapter II**

### Surrender of Persons

#### **Sub-chapter 1**

#### General Provisions

#### **Section 189**

(1) Provisions of Sub-chapter 1 to 3 of this Chapter will apply to surrender of persons between the Czech Republic and another Member State on the basis of European Arrest Warrant and to related actions.

(2) According to Sub-chapter 1 to 3 of this Chapter will be proceeded, if another Member State applies legal regulations for execution of an applicable regulation of the European Union<sup>11</sup>.

#### **Section 190**

#### European Arrest Warrant

European Arrest Warrant will be understood as a decision

- a) of a court of the Czech Republic issued for the purpose of arrest and surrender of persons from other Member States into the Czech Republic for criminal prosecution or execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, or
- b) of a judicial authority of another Member State issued for the purpose of arrest and surrender of persons into this Member State or for the execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration.

#### **Section 191**

(1) The Ministry will provide its cooperation upon a request of court in the course of gathering information from another Member State, necessary for issuing a European Arrest Warrant or in relation to deciding on surrender of persons. The Supreme Public Prosecutor's Office will provide such assistance upon a request of the a public prosecutor in relation to submitting a petition for issuing a European Arrest Warrant or in relation to preliminary investigation.

(2) For the purpose of submitting reports to authorities of the European Union and facilitation of cooperation with other Member States, the court will provide the Ministry upon its request the necessary information, especially on the number of proceedings on surrender into other Member States and their results, as well as similar information

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<sup>11</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by the Council Framework Decision 2009/299/JHA of 26 February 2009

concerning European Arrest Warrants issued for the purpose of surrender from other Member States.

## **Sub-chapter 2**

### Surrender from another Member State

#### **Section 192**

##### Competence of Court

The court competent to proceed pursuant to this Chapter is the court conducting the criminal proceeding, and in pre-trial proceedings the court competent according to Section 26 of the Code of Criminal Procedure, unless further stipulated otherwise.

#### **Section 193**

(1) In case an order to arrest, order to detain or order to deliver a person for execution of a sentence of imprisonment has been issued or if the court has taken actions directed towards delivering a person for execution of a protective measure associated with incarceration and if the person was not detained, arrested, or delivered for execution of such a sentence or protective measure within 6 months from issuing the order or taking the stated actions, the presiding judge will issue a European Arrest Warrant without an undue delay; in pre-trial proceeding will the judge do so upon a petition of the public prosecutor, who will file it without an undue delay after the expiration of the same time limit. If it can be reasonably assumed that the person concerned by the surrender stays in another Member State, the European Arrest Warrant may be issued also before the expiration of the 6 month period.

(2) European Arrest Warrant is issued on the prescribed form<sup>12</sup> and will contain all requisites stated therein. European Arrest Warrant may be issued for an act, for which

- a) may be imposed an unsuspended sentence of imprisonment with the upper limit of at least 1 year or a protective measure associated with incarceration with the longest duration of at least 1 year, or
- b) is to be imposed an unsuspended sentence of imprisonment or a protective measure associated with incarceration in the term of at least 4 months.

(3) European Arrest Warrant will not be issued, if there is any of the impediments referred to in Section 79 (2) (a), (c) or (d).

(4) European Arrest Warrant may be issued also for an act not fulfilling the conditions referred to in Sub-section (2) sentence two or concerning which there is an impediment referred to in Section 79 (2) (a) and (c), if it is issued for several acts, at least one of which

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<sup>12</sup> Annex of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by the Council Framework Decision 2009/299/JHA of 26 February 2009

fulfills any of the conditions referred to in Sub-section (2) sentence two and concerning which there is no impediment according to in Sub-section (3).

(5) In pre-trial proceedings the court will notify the public prosecutor on the manner of execution of his petition. If the petition is not granted, the court will also state reasons therefor.

(6) The court will serve the European Arrest Warrant to the Police Presidium of the Czech Republic with a request for making a record in the Schengen Information System for the purpose of arrest and extradition or surrender of a person and for initiating a search in Member States that have not joined the Schengen Information System. If it is known where the person is located, the court will serve the European Arrest Warrant also to the competent authority of the surrendering state with a translation to the official language of this state or into another language, in which this state is willing to accept the European Arrest Warrant.

(7) Upon a request of the authority of the surrendering state the court will provide additional information and supplementations for the purpose of deciding on the surrender. In pre-trial proceedings the public prosecutor will provide cooperation to the court in the course of obtaining such information and supplementations. The court may even without such a petition provide also other information it deems necessary for deciding on the surrender.

(8) In case a European Arrest Warrant has been issued for the purpose of execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration imposed by a decision issued *in absentia*, and the person concerned by the extradition has not yet received any official information on the fact that criminal proceeding is being conducted against him, and he requests through the competent authority of the surrendering state that he was provided a copy of the decision before his surrender, then the court will immediately send it to this authority. Providing a copy of this decision is not considered as its service.

(9) In case the person concerned by the surrender is sentenced to an unconditional sentence of imprisonment or if a protective measure associated with incarceration is imposed to him by a final and effective decision, which fulfills the conditions referred to in Sub-section (2), and if a European Arrest Warrant was previously issued to this person for the purpose of surrender for criminal prosecution, or if the decisive circumstances, which led to issuing the European Arrest Warrant, especially the legal qualification or the factual circumstances, change, the court will issue a new European Arrest Warrant; in case decisive circumstances change in pre-trial proceedings, the court will do so upon a petition of the public prosecutor, who will file it without an undue delay after such change occurs.

#### **Section 194** Reassurance



(1) If the surrendering state conditions surrender of a person by providing a reassurance concerning criminal proceedings, such reassurance may be provided by the court; in pre-trial proceedings the opinion of the public prosecutor will be taken into account.

(2) If a person was surrendered on the basis of a reassurance, such reassurance will be complied with.

(3) In case a person was surrendered from a Member State he is a citizen of, or in which he has his permanent residence, under the condition that if he is sentenced to an unsuspended sentence of imprisonment or imposed a protective measure associated with incarceration, he will be returned to this Member State, then the presiding judge will inform the competent authority of the surrendering state about such final and effective decision and provide it with the necessary cooperation for the purpose of execution of the decision in the surrendering state.

### **Section 195**

In case the surrendering state refuses to surrender a person for execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration because this person is its citizen, has his permanent residence in its territory or stays in its territory, the presiding judge will provide the competent authority of the surrendering state with the necessary cooperation in order to execute the decision in this state.

### **Section 196**

Section 83 will apply accordingly to the procedure after surrender of persons.

### **Section 197**

#### **Withdrawal of European Arrest Warrant**

(1) The court will withdraw the European Arrest Warrant, if

- a) an order to arrest, order to detain or order to deliver a person for execution of a sentence of imprisonment has been waived or if actions directed towards delivering a person for execution of a protective measure associated with incarceration have been waived,
- b) grounds, for which the European Arrest Warrant may not be issued, were additionally discovered,
- c) the person was delivered to the court or police authority,
- d) the person was delivered to a prison or facility for the execution of protective measures,
- e) a new European Arrest Warrant has been issued, or
- f) further search in another Member State is no longer necessary for other reasons.

(2) Waiver of the European Arrest Warrant will be immediately notified to the Police Presidium of the Czech Republic for the purpose of taking necessary measures and in pre-trial proceedings also to the public prosecutor.

## **Section 198**

### Specialty Principle

(1) The surrendered person may not be incarcerated or subject to criminal prosecution and no sentence or protective measure may be executed on him for a another act committed before the act, for which he was surrendered, unless

- a) the person incarcerated or his personal liberty restricted within the framework of criminal prosecution,
- b) the person left the territory of the Czech Republic and returned, or was transported to the territory of the Czech Republic in a lawful manner,
- c) stays in the territory of the Czech Republic longer than 45 days after his release from custody, execution of an unsuspended sentence of imprisonment or termination of execution of a protective measure associated with incarceration, despite having an opportunity to leave the territory of the Czech Republic,
- d) the surrendered person merely faces imposition of another penalty than an unsuspended sentence of imprisonment or imposition of a protective measure not associated with incarceration, even if these sentences may be converted under statutory conditions to an unsuspended sentence of imprisonment or protective measure associated with incarceration,
- e) the surrendered person has waived the right for application of the specialty principle, or eventually waiver of this right was included in his consent with his surrender to the Czech Republic,
- f) the surrendered person has explicitly waived the right for application of the specialty principle after his surrender, or
- g) the competent authority of the surrendering state granted its consent with prosecution of the surrendered person or with execution of a sentence or protective measure.

(2) If the surrendered person has not waived the right for application of the specialty principle according to Sub-section (1) € , the presiding judge and in pre-trial proceedings the judge upon a petition of the public prosecutor will interview the person in the presence of his defense counsel and advise him on the possibility to waive the application of the specialty principle, as well as on the consequences of such declaration. This declaration may not be withdrawn. The act, concerning which the person has waived the right for application of the specialty principle, will the court describe in the protocol so that it could not be confused with any other act.

(3) Request for the consent according to Sub-section (1) (g) will be filed in pre-trial proceedings by the judge upon a petition of the public prosecutor and in trial proceedings by the presiding judge. The request will contain data corresponding to contentual requirements of European Arrest Warrant. The request will be served to the competent authority of the surrendering state with a translation into the official language of this state or to another language, in which this state is willing to accept the European Arrest Warrant.

(4) As subsequent consent according to Sub-section (1) (g) will be considered also request of the surrendering state to take over criminal proceedings against this person or execution of a sentence or protective measure imposed for criminal offenses committed before his surrender. This applies also in case of a criminal complaint submitted by this state.

### **Section 199**

#### Subsequent Surrender from the Czech Republic into another Member State

(1) A surrendered person may be surrendered further to another Member State for an act committed before his surrender into the Czech Republic only with a consent of the surrendering state, unless further stipulated otherwise.

(2) Without the consent of the surrendering state may the person be surrendered further to another Member State, if

- a) this person consents with his subsequent surrender to another Member State, or
- b) the specialty principle does not apply to this person for reasons referred to in Section 198 (1) (a) to (c) or (e) to (g).

(3) The consent of the surrendering state according to Sub-section (1) will be requested by the presiding judge of the Regional Court, in jurisdiction of which operates the public prosecutor conducting preliminary investigation, upon a petition of this public prosecutor. He will further proceed pursuant to 198 (3) accordingly.

(4) A person extradited into the Czech Republic may be surrendered to another Member State for an act committed before his surrender into the Czech Republic only with a previous consent of the extraditing state. The Ministry will perform the necessary actions to secure consent of the extraditing state on the basis of an incentive of the competent public prosecutor's office.

### **Section 200**

#### Temporary Takeover of Persons

(1) The presiding judge and in pre-trial proceedings the judge upon a petition of the public prosecutor may request, before making a decision on surrender, the authority of the surrendering state for a temporary surrender of the person, for whom was issued European Arrest Warrant, into the territory of the Czech Republic for the purpose of criminal prosecution.

(2) The court will state in the request, for which actions, for what time period and for what reasons is the presence of the person in the Czech Republic necessary, and a reassurance that the person will be held in custody for the time of the temporary surrender.

(3) If the surrendering state authorizes temporary surrender of a person, the presiding judge and in pre-trial proceedings the judge will decide that this person will be held in custody for

the time of the temporary surrender. The custody will begin at the moment the person is taken over by the authorities of the Czech Republic. The decision will be served to the person without an undue delay after his delivery to prison. Provision of Chapter four Sub-division one of the Code of Criminal Procedure will not apply. Provision of Section 86 (7) will apply accordingly.

(4) Returning the person into the state that surrendered him and the related release of the person from custody will be secured by the presiding judge and in pre-trial proceedings by the public prosecutor. The time, for which the temporary surrender was authorized, may not be exceeded, unless the surrendering state consents to it.

(5) If the temporarily surrendered person applies for release from custody, the public prosecutor and after lodging an indictment the presiding judge will forward such application to the competent authority of the surrendering state.

(6) If the authority of the surrendering state notifies that the temporarily surrendered person is to be released from custody, his release will be secured without an undue delay by the public prosecutor and after lodging an indictment the presiding judge; in this case they will not secure return of the person into the state that has temporarily surrendered him. Release of the person from custody will be notified to the competent authority of the surrendering state.

(7) Section 194 will apply accordingly to providing assurance in temporary surrender.

(8) If the surrendering state decided on a surrender, realization of which has been suspended, the presiding judge and in pre-trial proceedings the judge upon a petition of the public prosecutor may request the authorities of the surrendering state for a temporary surrender of the person, for whom has been issued European Arrest Warrant, into the territory of the Czech Republic for the purposes of criminal prosecution. Otherwise it will be proceeded pursuant to Sub-sections (2) to (7) accordingly.

### **Section 201**

#### Transit of Persons through the Territory of Third States

The competence for filing a request for authorization of transit through the territory of a third state in relation to surrender of a person from another Member State into the Czech Republic will pertain to the Ministry.

### **Sub-chapter 3**

#### Surrender to another Member State

### **Section 202**

#### Competence

(1) The court competent for procedure under this Sub-chapter is the Regional Court, in the jurisdiction of which was the person concerned by the surrender apprehended; if the person was not apprehended, the competence will pertain to the Regional Court, in jurisdiction of which this person has his permanent residence. Change of circumstances, on the basis of which was the local competence determined, will not be taken into account.

(2) Actions pursuant to this Sub-chapter will be performed by a public prosecutor of the public prosecutor's office operating in the jurisdiction of the court competent according to Sub-section (1). This public prosecutor's office will also be competent for accepting a European Arrest Warrant.

(3) In case European Arrest Warrant was served to an authority not competent to accept it, it will immediately forward it to the competent public prosecutor's office and inform the authority that issued it thereof.

### **Section 203**

#### **Preliminary Investigation**

(1) The purpose of preliminary investigation is especially to ascertain, whether surrender of the person in question to another Member State is not prevented by matters referred to in Section 205.

(2) The public prosecutor will conduct preliminary investigation, if he learns about a criminal offense, for which another Member State could issue European Arrest Warrant, or if the public prosecutor's office receives a European Arrest Warrant from another Member State. Preliminary investigation is initiated by apprehending the person concerned by the surrender, or by requesting the necessary information. In case preliminary investigation is initiated without a European Arrest Warrant being served, the public prosecutor will immediately request the competent authority of the other Member State for its service.

(3) In case the other Member State has not yet issued the European Arrest Warrant, procedure according to Sub-section (2) will not apply, unless sufficient information is known about

- a) the person concerned by the surrender,
- b) the existence of a condemning judgment, arrest warrant or another decision of the same effect issued in the requesting state for the person concerned by the surrender, which may constitute grounds for issuing a European Arrest Warrant; instead of this information will suffice a promise of the other Member State that the European Arrest Warrant will be immediately issued,
- c) the act, for which the other Member State could issue a European Arrest Warrant, including the upper limit of punishment imposable for this offense in this state, or the extent of sentence imposed for this offense in this state.

(4) In case the information contained in a European Arrest Warrant is not sufficient for deciding on the surrender, the public prosecutor will request the competent authority of the requesting state for its supplementation. He will set a time limit for this purpose and advise the competent authority that unless it supplements such information within the provided time limit, the preliminary investigation will be terminated.

(5) If the person concerned by the surrender is a citizen of the Czech Republic or a citizen of another Member State with a permanent residence in the territory of the Czech Republic and the European Arrest Warrant was issued for the purpose of surrender for criminal prosecution, the public prosecutor will request a reassurance from the competent authority of the requesting state that this person will be allowed to serve an unsuspended sentence or a protective measure associated with incarceration in the Czech Republic, if such a type of sentence or protective measure is imposed and the person does not give consent with execution of the sentence or protective measure in the requesting state.

(6) If he has not done so in the course of apprehension, the public prosecutor will interview the person concerned by the surrender and acquaint him with the contents of the European Arrest Warrant and advise him in the possibility to consent to his surrender into another Member State and on the conditions and consequences of giving such consent, including that granting the consent is associated with waiver of the principle of specialty.

(7) In case the European Arrest Warrant is issued for the purpose of execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration imposed by a decision rendered in the absence of the person concerned by the surrender, and this person still has not received any official information on the fact that criminal proceeding is being conducted against him, he may request, after being acquainted with the contents of the European Arrest Warrant, to be served a copy of the decision before his surrender. The public prosecutor will inform the competent authority of the requesting state about such requirement and after receiving a copy of such decision, he will provide it to the person concerned by the surrender. Execution of this requirement does not affect further course of the surrender proceeding.

(8) The public prosecutor will terminate preliminary investigation, if

- a) the Member State that could issue the European Arrest Warrant fails to serve it, despite being bid to do so,
- b) the requesting state fails to supplement the required information within the set time limit,
- c) the person concerned by the surrender died,
- d) the person concerned by the surrender was not criminally liable due to his age according to the law of the Czech Republic,
- e) the person concerned by the surrender may not be apprehended due to a privilege or immunity, which make him exempt from the jurisdiction of the authorities involved in criminal proceedings,

- f) the person concerned by the surrender does not stay in the territory of the Czech Republic, or his place of stay is unknown, or
- g) the European Arrest Warrant was served after full force and effect of a decision that the person concerned by the surrender will be surrendered to another state pursuant to this Chapter, or after authorization of extradition to another state or after authorization of surrender to an international court.

(9) The public prosecutor will immediately notify the termination of preliminary investigation according to Sub-section (8) to the competent authority of the requesting state, the Police Presidium and the Ministry. Preliminary investigation is terminated also by filing a petition according to Section 205 (1) or a petition according to Section 208 (2).

### **Section 204**

#### Apprehension and Preliminary Custody

(1) The public prosecutor or with his consent the police authority may apprehend the person concerned by the surrender, if there is a reason for imposing preliminary custody and if a European Arrest Warrant was issued, or in case information referred to in Section 203 (3) is known.

(2) The police authority is entitled to apprehend the person even without a previous consent of the public prosecutor, if the matter cannot be delayed and the consent of the public prosecutor may not be acquired in advance. They are however obliged to immediately notify the apprehension to the public prosecutor and hand him a transcript of the protocol drawn up in the course of the apprehension and other documents necessary for the public prosecutor in order to be able to eventually file a petition for imposing preliminary custody.

(3) If a European Arrest Warrant was issued, a petition for taking the person concerned by the surrender to preliminary custody may not be filed, if the information referred to in Section 203 (3) is not known. In the course of apprehension and filing a petition for imposing preliminary custody will be proceeded pursuant to Section 93 (2) to (4) accordingly.

(4) Preliminary custody of the person concerned by the surrender will be governed by Section 94 (1), (2) and (4) accordingly. The public prosecutor will immediately release such person from preliminary custody, if the preliminary investigation was initiated without the service of a European Arrest Warrant and the European Arrest Warrant was not served to the competent public prosecutor's office within 20 days after the imposition of preliminary custody; this does not apply in case of simplified surrender. Release from preliminary custody does not preclude new imposition of preliminary custody, if the European Arrest Warrant is served subsequently.

### **Section 205**

#### Decision on Surrender

(1) After the termination of preliminary investigation the court will decide upon a petition of the public prosecutor in a public session, whether the person will be surrendered to the requesting state; a complaint is admissible against this decision, which has a dilatory effect. The court will decide that the person is to be surrendered to the requesting state, if there is no reason for not surrendering the person referred to in Sub-section (2) or a reason for declining the petition of the public prosecutor referred to in Sub-section (5). Provision of Section 188 (1) (e) of the Code of Criminal Procedure on returning the case to the public prosecutor for further investigation will not apply.

(2) The person will not be surrendered into the requesting state, if

- a) he is a citizen of the Czech Republic or a citizen of another Member State with a permanent residence in the territory of the Czech Republic, the European Arrest Warrant was issued for the purpose of surrender for criminal prosecution and the competent authority of the requesting state failed to provide sufficient reassurance according to Section 203 (5),
- b) he is a citizen of the Czech Republic or a citizen of another Member State with a permanent residence in the territory of the Czech Republic, the European Arrest Warrant was issued for the purpose of surrender for execution of an unsuspended sentence of imprisonment or protective measure associated with imprisonment, conditions for recognition and execution of the decision in the territory of the Czech Republic, imposing such a sentence or protective measure, are met, and this person declares before the court into the protocol that he does not consent with execution of this sentence or protective measure in the requesting state.
- c) Criminal prosecution for the same act is inadmissible in the Czech Republic as a result of an amnesty, if the act falls within the scope of applicability of the Criminal Code,
- d) The European Arrest Warrant was not issued for an act, for which may be imposed under the law of the requesting state an unsuspended sentence of imprisonment with the upper limit of at least 1 year or a protective measure associated with incarceration with the longest duration of at least 1 year, or for which is to be executed an unsuspended sentence of imprisonment or protective measure associated with incarceration in the term of at least 4 months,
- e) The act does not fulfill the characteristics of a criminal offense according to the law of the Czech Republic, and it is not a conduct referred to in Section 207; in case of taxes, fees, customs fees or currency the decision not to surrender cannot be made on the grounds that the legislation of the Czech Republic does not impose the same type of taxes, fees or customs fees or because it does not contain the same provisions related to taxes, fees, customs fees or currency as the legislation of the requesting state,
- f) criminal liability or execution of an unsuspended sentence of imprisonment are statute-barred according to the law of the Czech Republic, if the act pertains to the scope of the Criminal Code,
- g) it concerns surrender of the person for criminal prosecution for an act, which is the subject of criminal prosecution conducted in the Czech Republic against the same person, or for an act committed in full or in part in the territory of the Czech Republic, with the



- exception of cases, where criminal prosecution in the requesting state must be given precedence in particular for the reason of appropriate clarification of the facts or for the reasons related to the sentence or protective measure or execution thereof,
- h) criminal prosecution for the identical act conducted against this person in the Czech Republic was concluded by a final judgment of court or was finally and effectively terminated or discontinued by a decision of court or public prosecutor or was concluded by another decision of the same effect, provided that such decision has not been repealed,
  - i) criminal prosecution for the same act conducted against this person in another Member State or an associated state was concluded by a decision that constitutes preclusion or res judicata according to Section 11 (2) of the Code of Criminal Procedure, or if criminal prosecution for the same act conducted against this person in a third state was concluded by a final and effective judgment or other decision of court of the same effect, provided that such a decision was not repealed and that the sentence, if it was imposed to the person concerned by the extradition, has already been executed, is currently being executed or can be no longer be executed under the law of the condemning state,
  - j) European Arrest Warrant was issued for the purpose of execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, which were imposed by a decision rendered in the absence of this person, unless further stipulated otherwise,
  - k) a consent of another Member State according to in Section 199 (1) has not been granted or any of the conditions referred to in Section 199 (2) has not been complied with or a consent of the extraditing state according to Section 199 (4) has not been given,
  - l) the surrender would be contrary to the obligations of the Czech Republic arising from international treaties on human rights and basic freedoms, or
  - m) there is a reasonable concern that the person concerned by the extradition would be exposed to persecution because of his origin, race, religion, sex, membership to a certain national or other group, citizenship or political beliefs or for other similar reasons, or that it would impair his position in criminal proceeding or in serving a sentence of imprisonment or a protective measure associated with incarceration.

(3) If the European Arrest Warrant was issued for several acts, concerning at least of which there is no reason for not surrendering referred to in Sub-section (2) (d), the person may be surrendered to the requesting state for all such acts.

(4) A person may be surrendered into the requesting state even if there is a reason for not surrendering referred to in Sub-section (2) (j), if

- a) the person concerned by the surrender was timely summoned in person and thus informed of the time and place of conducting the court hearing, which lead to issue of the decision, or received an official information about the time and place of conducting the hearing otherwise is such a way that it was unambiguously ascertained, that the person knew about the court hearing and was informed that the hearing may take place and the decision may be rendered in his absence,
- b) the person concerned by the surrender knew about the court hearing and he has assigned his defense counsel which he personally chose or which was appointed to him, to defend him in the court hearing, and the defense counsel has done so,

- c) the person concerned by the surrender, after being personally served and expressly advised on his right for a new hearing of the case or to file an appeal, which would enable him to participate in a new or appeal proceedings, allow a repeated assessment or review of the case and production of new evidence and may lead to a change of the original decision, has expressly waived such right or failed to apply it in the relevant time limit, or has withdrawn the appeal, or
- d) the decision was not personally served to the person concerned by the extradition, however it will be done immediately after his surrender and the person will be expressly advised on his right for a new hearing of the case or to file an appeal, which would enable his participation, new assessment or review of the case and production of new evidence, which may lead to a change of the original decision, and will be informed about the time for its application.

(5) If in the time of decision making of the court the person concerned by the surrender does not stay in the territory of the Czech Republic, or his presence cannot be repeatedly secured in the public session held on the surrender, the court will dismiss the petition of the public prosecutor. The same procedure will apply if after filing the petition according to Sub-section (1) occurs a reason for termination of preliminary investigation referred to in Section 203 (8) (c), (e) or (g) or a reason for termination of preliminary investigation referred to in Section 203 (8) (d) was found. If the person concerned by the surrender is in custody, the court will decide to release him. These decisions may be also made in a closed session. A complaint of the public prosecutor is admissible against these decisions.

(6) If the court decides that the person will not be surrendered and if the person is in preliminary custody, it will at the same time decide on his release, unless it is a case referred to in Sub-section (2) (b). A complaint of the public prosecutor is admissible against this decision, which has a dilatory effect only if filed immediately after the decision is declared and if at the same time was filed a complaint of the public prosecutor against the decision not to surrender the person.

(7) Decisions according to Sub-section (1) and (5) will be immediately notified to the competent authority of the requesting state and the Police Presidium if the Czech Republic, and subsequently also to the Ministry.

## **Section 206**

### Surrender Custody

(1) If the court decides that the person will be surrendered, it will at the same time take him into surrender custody, or decide on transformation of preliminary custody into surrender custody; in case of simplified surrender will be done so upon a petition of the public prosecutor. A complaint is admissible against this decision. Provisions of Chapter four Sub-division one of the Code of Criminal Procedure will not apply, with the exception of Section 70, 70a. Section 71 (1) sentence one and Sub-section (2) (a), which will apply accordingly.

(2) Procedure according to Sub-section (1) will apply even if the person is in custody or serving an unsuspended sentence of imprisonment or protective measure associated with incarceration. In such case the person will be released from custody by presiding judge of the court conducting the proceedings, in pre-trial proceedings by the public prosecutor performing supervision over maintaining of legality, or released from execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration by the presiding judge of the court, which decided the case in the first instance, where such sentence or protective was imposed measure.

### **Section 207**

#### Exceptions from Rule of Double Criminality

In cases of surrendering for an act, for which may be imposed in the requesting state an unsuspended sentence of imprisonment with the upper limit of at least 3 years or a protective measure associated with incarceration with the longest duration of at least three years, consisting in a conduct, which the requesting state marks in Paragraph (e) of division I of the European Arrest Warrant form<sup>13</sup>, the court will not investigate, whether the act fulfills the characteristics of a criminal offense according to the law of the Czech Republic, unless description of the act or legal qualification referred to in the European Arrest Warrant clearly do not correspond to the indicated conduct.

### **Section 208**

#### Simplified Surrender

(1) Simplified surrender will be realized, if the person concerned by the surrender declares before the presiding judge in the presence of his defense counsel that he consents to his surrender into another Member State. Before giving the consent to his surrender the person must be instructed by the presiding judge about the meaning of such consent, especially that the surrender will be realized without a decision on surrender, as well as about the consequences associated therewith, including the waiver of application of the specialty principle. The consent with surrender cannot be withdrawn.

(2) If the person concerned by the surrender declares according to Sub-section (1) that he consents to his surrender, then Section 203 (8) (a) and Section 205 (1) and (2) (a), (b), (d) to (f), (j) and (k) will not apply and after the conclusion of preliminary investigation the public prosecutor will file a petition to the court for taking the person into surrender custody or for transformation of preliminary custody to surrender custody, or he will file a petition for suspension of the surrender. If the public prosecutor finds that there is a reason not to surrender the person referred to in Section 205 (2) (c), (g) to (i), (l) or (m), he will proceed as if the person did not consent to his surrender.

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<sup>13</sup> Annex of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by the Council Framework Decision 2009/299/JHA of 26 February 2009

(3) In case the person concerned by the surrender is not placed in preliminary custody, the public prosecutor or with his consent the police authority will apprehend the person. The public prosecutor will hand the apprehended person to the court with a petition for taking him into surrender custody within 48 hours after the apprehension at the latest, otherwise the person must be released. When deciding on the apprehended person, the presiding judge will proceed pursuant to Section 77 (2) of the Code of Criminal Procedure accordingly.

(4) In case the person concerned by the surrender is in preliminary custody, the presiding judge will interview him and decide on the petition of the public prosecutor for transformation of preliminary custody to surrender custody. The time and place of conducting the interview will the presiding judge notify to the defense counsel and public prosecutor.

(5) In case a reason for termination of preliminary investigation referred to in Section 203 (8) (c), (e) or (g) occurs after filing the petition according to Sub-section (2), or if a reason for termination of preliminary investigation referred to in Section 203 (8) (d) is found, the presiding judge will dismiss the petition. If the person concerned by the surrender is in custody at the time of decision making of the court, the presiding judge will decide on his release. A complaint of the public prosecutor is admissible against these decisions. The surrender proceeding is terminated upon full force and effect of the decision to dismiss the petition according to Sub-section (2).

(6) If the person concerned by the surrender gives his consent with his surrender no sooner than in the course of the public session held on the surrender, the public prosecutor will withdraw his petition according to Section 205 (1) and proceed further according to Sub-section (2) sentence one. The petition may be withdrawn until the time the court retires for final deliberation.

(7) Provisions of Sub-section (6) will not apply, if the public prosecutor finds that there is any of the reasons for not surrendering referred to in Section 205 (2) (c), (g) to (i), (l) or (m).

(8) Final and effective decisions according to Sub-section (3) to (5) will the court immediately notify to the competent authority of the requesting state and the Police Presidium of the Czech Republic and subsequently also to the Ministry; if the decision came into full force and effect before a court of the second instance, the information will be notified by this court.

## **Section 209**

### **Time Limits for Decisions**

(1) When executing European Arrest Warrant, it will be proceeded with maximum dispatch. The court will decide on European Arrest Warrant generally within 60 days after apprehending the person concerned by the surrender. In case of simplified surrender the public prosecutor will generally file the petition according to Section 208 (2) so that the court could decide on it within 10 days after the person gave his consent to his extradition.

(2) If in exceptional cases the decision cannot be made within the time limits referred to in Sub-section (1), the court will decide on the European Arrest Warrant or on surrender custody generally within a time limit extended by 30 days.

(3) Failure to comply with the time limits and reasons therefor will the court, and in preliminary investigation the public prosecutor, notify to the competent authority of the requesting state and Eurojust.

### **Section 210** Suspension of Surrender

(1) The court may decide to suspend surrender of a person for the time his presence is necessary in the Czech Republic in relation to another criminal offense, than for which was the European Arrest Warrant issued, for the purposes of criminal proceedings conducted in the Czech Republic, execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, which was finally and effectively imposed by a court of the Czech Republic. The decision on suspension of surrender may the court make when deciding on the surrender; exceptionally also after authorizing the surrender, if the reason for suspension of the surrender is found afterwards, or if a new reason for the suspension arises, until the moment of realization of the surrender. Therein the court will take into account especially the seriousness of the criminal offense, for which the person is to be surrendered, seriousness of the criminal offense in relation to which is the suspension of surrender being decided the possibility to surrender the person from the requesting state back to the Czech Republic, as well as the possibility of temporary surrender of the person into the requesting state. Before deciding on suspension of surrender, the court will request an opinion of the court and in pre-trial proceedings of the public prosecutor competent to conduct proceedings in the Czech Republic, or the court that decided the case in the first instance, if a sentence or protective measure was finally and effectively imposed.

(2) In case the decision on suspension of surrender is made when deciding on the surrender, Section 206 will not apply. If the person concerned by the surrender is in custody, the court will decide along with to release him from such custody along with the decision on suspension of his surrender. If the decision on suspension of surrender is made after deciding on the surrender, the court will decide to release the person from surrender custody along with the decision on suspension of his surrender.

(3) A complaint is admissible against the decisions according to Sub-section (1) and (2). A complaint may be filed against the decision on release from custody only if filed along with a complaint against the decision on suspension of surrender.

(4) If the same Member State serves another European Arrest Warrant in the time the surrender is suspended for this person for another act, than concerning which was decided on surrender of the person, proceeding on such European Arrest Warrant will be conducted

by the authorities involved in proceedings on the original European Arrest Warrant for this person.

(5) If the reason for suspension of surrender passes, the presiding judge will decide to take the person into surrender custody. Provision of Section 206 (1) sentence two will not apply. If the presence of the person concerned by the surrender in the decision making on the surrender custody cannot be secured otherwise and if simplified surrender is not concerned, it will be proceeded pursuant to Section 69 of the Code of Criminal Procedure accordingly; in this case Section 79 (1) and Section 193 (1) will not apply.

(6) The presiding judge will terminate the surrender proceedings, if a reason for termination of preliminary investigation referred to in Section 203 (8) (c), (e), (f) or (g) occurs or if a reason for termination of preliminary investigation referred to in Section 203 (8) (d) is found.

### **Section 211**

#### **Temporary Surrender**

(1) Before deciding on surrender the presiding judge may decide to authorize temporary surrender of a person, who is in the Czech Republic in custody or serving an unsuspended sentence of imprisonment or protective measure associated with incarceration, into the requesting state in order to perform necessary actions of criminal prosecution. In the course of preliminary investigation it will be done upon a petition of the public prosecutor. In the decision will be set a reasonable time limit not exceeding 10 days, within which the temporarily surrendered person must be returned to the Czech Republic, unless it is prevented by circumstances beyond the control of the requesting state or if returning the person would endanger his life or health. The time the person is temporarily surrendered will not be counted into the time limits according to Section 209 (1) and (2).

(2) After deciding on a surrender, realization of which has been suspended, the presiding judge may decide to authorize temporary surrender of a person, who is in the Czech Republic in custody or serving an unsuspended sentence of imprisonment or protective measure associated with incarceration, into the requesting state in order to perform necessary actions of criminal prosecution. In the decision will be set a reasonable time limit not exceeding 1 month, within which the temporarily surrendered person must be returned to the Czech Republic, unless it is prevented by circumstances beyond the control of the requesting state or if returning the person would endanger his life or health.

(3) Temporary surrender may be authorized only if the requesting state provides a reassurance that the person will be incarcerated for the time of the temporary surrender and that other required restrictions arising from the grounds for custody in the territory of the Czech Republic will be applied to him.

(4) Realization of temporary surrender will be secured by the presiding judge.

(5) If the person concerned by the temporary surrender is in custody in criminal proceedings conducted in the Czech Republic, the temporary surrender may be authorized only with a consent of the court and in pre-trial proceedings the public prosecutor competent to conduct such proceeding.

(6) Temporary surrender does not intermit execution of custody, unsuspended sentence of imprisonment or protective measure associated with incarceration in the Czech Republic.

(7) The time limit referred to in Sub-section (2) may be extended after a consultation with the competent authority of the requesting state only for the same purpose, for which was the temporary surrender of the person authorized. Temporary surrender according to Sub-section (2) may be realized also repeatedly.

## **Section 212**

### **Privileges and Immunities**

(1) In case of any doubts about whether or to what extent is the person concerned by the surrender exempted from jurisdiction of authorities involved in criminal proceedings, the Supreme Court will decide the matter upon a petition of this person, the public prosecutor or court.

(2) In case the competence for removing a privilege or immunity pertains to an authority of the Czech Republic, the public prosecutor or court will request this authority to remove privileges or immunities from the person concerned by the surrender.

(3) If the person concerned by the surrender enjoys privileges or immunities, the time limits referred to in Section 209 (1) will begin on the day the competent judicial authority receives information that the person has been relieved of such privilege or immunity.

## **Section 213**

### **Surrender**

(1) Surrender of persons and the related release from surrender custody will be secured by the presiding judge.

(2) The person must be surrendered to the requesting state within 10 days following the full force and effect of the decision on surrender; in case of simplified surrender within 10 days following the decision on taking the person into surrender or the decision on transformation of preliminary custody into surrender custody. If a decision on suspension of surrender was made, the person must be surrendered to the requesting state within 10 days following the decision on taking the person into surrender custody, after the reason for suspension of surrender has passed.

(3) In case of concurrence of a European Arrest Warrant and an extradition request, the time limit for surrender of the person does not run. In such case the person must be surrendered

within 10 days following the notification of court of the decision on preferring the surrender or notification according to Section 218 (3).

(4) If the surrender of a person in the stipulated time limit is precluded by circumstances beyond the control of the requesting state or authorities of the Czech Republic, the presiding judge will immediately take actions necessary for negotiating a new time of surrender so that it could be realized as soon as possible after these circumstances pass. The surrender must be realized within 10 days following such stipulated time. Similar procedure will apply in case of serious humanitarian reasons, especially if the surrender could endanger the life or health of the person concerned.

(5) The person concerned by the surrender must be immediately released from the surrender custody, at the latest on the last day of the time limit referred to in Sub-section (2), (3) or (4).

(6) The presiding judge will provide the competent authority of the requesting state information on the duration of custody and the course of the surrender proceedings in the territory of the Czech Republic.

#### **Section 214**

Seizure and surrender of items designated in a European Arrest Warrant will be governed by Section 104 accordingly.

#### **Section 215**

##### **Execution of Sentence or Protective Measure Imposed in Requesting State**

(1) If it was decided not to surrender a person for the reason referred to in Section 205 (2) (b), the presiding judge will call the competent authority of the requesting state to make a comment within 30 days from the service of the notice as to whether the decision, on the basis of which was issued the European Arrest Warrant, is to be recognized and executed in the territory of the Czech Republic, and to deliver a certified copy of the enforceable decision and its translation into the Czech language for these purposes, unless it has been provided in the course of the surrender proceedings.

(2) If the competent authority of the requesting state fails to comply with the call of the presiding judge according to Sub-section (1) and the person is in preliminary custody, the court will release him. The presiding judge will advise the requesting state about these consequences in the call. In case the decision with the translation is served within the set time limit, the court will forward it to the ministry or court competent to proceed according to Chapter VIII.

(3) If the court was served or if it obtained certified copy of the enforceable decision of the requesting state and its translation into the Czech language in the set time limit and the competent authority of the requesting state requests recognition and execution of this



decision in the territory of the Czech Republic, if the person is in preliminary custody and there is a reason for recognition custody, the court will immediately decide to transform the preliminary custody into recognition custody; a complaint is admissible against this decision.

(4) If the person was surrendered on the basis of a reassurance according to Section 203 (5), the presiding judge will ascertain at the competent authority of the requesting state, whether he was imposed an unsuspended sentence of imprisonment or protective measure associated with incarceration and whether the person gave his consent with its execution in the requesting state, or whether the requesting state requests his takeover for execution of such a sentence or protective measure, unless it received such information within a reasonable time after surrendering the person.

(5) Competence for recognition and execution of an enforceable decision of the requesting state pertains to the court, which decided in the first instance, whether the person will be surrendered. Therein it will proceed pursuant to Part three chapter IV Sub-chapter 1 to 3 accordingly, with the exception of Section 119, 121 (1) to (4), Section 122 (2) to (4), Section 123 (3), Section 127 (1), (2) and (7), Section 128, 129, 134 and 135; instead of deciding to dismiss the petition of the Ministry according to Section 125 (1) and (127 (6), the court will decide to refuse to recognize the decision of the requesting state. If the other Member State applies legal regulations for implementation of the relevant legal regulation of the European Union<sup>14</sup>, the court will proceed pursuant to Chapter VIII accordingly. In case of a citizen of another Member State with a permanent residence in the territory of the Czech Republic, who was surrendered into another Member State on the basis of a reassurance referred to in Section 203 (5), or concerning whom was decided not to surrender into another Member State for the reason referred to in Section 205 (2) (b), than Section 120 (1) (i) will not apply and a consent of the court according to Section 299 (3) will be considered as granted.

## **Section 216**

### Extension of Surrender

(1) Provisions of this Sub-chapter will apply accordingly to proceedings on a request of another Member State, to which was surrendered a person, for granting a consent with

- a) prosecution for another act committed before the surrender, than for which the person was surrendered,
- b) execution of a sentence or protective measure imposed for such act,
- c) surrender into another Member State for criminal prosecution for such act or for execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration imposed for such act, or

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<sup>14</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

d) with extradition into a third state for criminal prosecution for such act or for execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration imposed for such act.

(2) Competence for proceedings on such requests will pertain to the authorities, which were involved in the proceedings on the surrender. The requests must be decided on generally within 30 days from service.

(3) The court will decide on a request of another Member State in a public session in the presence of the public prosecutor and the defense counsel of the person, concerning whom was requested granting the consent. The person, concerning whom was requested granting the consent, will be served only a notice to select a defense counsel, appointment of a defense counsel and the decision on granting or not granting the consent with extension of the surrender.

(4) The consent according to Sub-section (1) is not necessary, if the person waived the application of the specialty principle before a court of another Member State after his surrender, or in case simplified surrender was realized. In this case the public prosecutor will notify this matter of fact to the competent authority of the other Member State.

### **Section 217**

#### **Concurrence of European Arrest Warrants**

(1) In case European Arrest Warrants of several requesting states were served to the authorities of the Czech Republic for the same person, the court will assess, upon a petition of the public prosecutor, the conditions in relation to each one of them separately, and if such conditions are fulfilled by several requesting states, it will determine, into which state will the person be surrendered and at the same time it will decide on surrender of the person into this requesting state. Therein the court will take into account all circumstances, especially the seriousness and place of commission of the criminal offenses, dates of issuing the European Arrest Warrants and whether they were issued for the purpose of criminal prosecution or execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration. At the same time it may grant a consent with surrender of the person into an additional Member State. The court will notify its decision to the competent authorities of the other requesting states.

(2) If the European Arrest Warrant was served by the requesting state after the public prosecutor filed a petition to the court for a decision on the surrender on the basis of a European arrest Warrant that was served earlier, it will withdraw this petition, unless the court has already decided on it. Further procedure will be governed by Sub-section (1).

(3) A complaint is admissible against the decisions according to Sub-section (1), which has a dilatory effect.

### **Section 218**

## Concurrence of European Arrest Warrant and Extradition Request

(1) In case a European Arrest Warrant and an extradition request for the same person were served to the authorities of the Czech Republic, the court will decide, upon a petition of the public prosecutor, firstly on surrender according to Section 205 and on admissibility of extradition according to Section 95. After the full force and effect of the decision on admissibility of surrender the presiding judge will immediately submit the case to the Ministry. If the Minister of Justice has any doubts about the correctness of the decision of court on admissibility of the extradition, he will file a petition to the Supreme Court for a review of such decision within 15 days following the day the case was submitted to the Ministry; the Supreme Court will decide on such petition immediately.

(2) If the Minister of Justice did not file a petition a review of the decision on admissibility of the extradition, he will decide within 15 days following the day the case was submitted to the Ministry whether the extradition will be given a priority. If the Supreme Court decided that the extradition is admissible or if it dismissed the petition of the Minister of Justice for review of the decision that the extradition is admissible, the Minister of Justice will decide within 15 days following the day the case is returned by the Supreme Court, whether the extradition will be given a priority. Therein he will take into account all circumstances, especially seriousness and place of commission of the criminal offences, date of service of the European Arrest Warrant and extradition request and whether the surrender or extradition is requested for the purpose of criminal prosecution or execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration.

(3) If the Minister of Justice did not file a petition for review of the decision on inadmissibility of extradition, if the Supreme Court decided that the extradition is inadmissible or if it dismissed a petition of the Minister of Justice for review of the decision on inadmissibility of extradition, the Ministry will immediately notify this matter of fact to the court, which will proceed further according to Section 213.

(4) In case extradition is not given a priority, the Ministry will immediately notify this matter of fact to the court, which will proceed further according to Section 213.

(5) In case extradition is given a priority, the Minister of Justice will at the same time decide to authorize the extradition. The ministry will immediately notify this matter of fact to the court. After being notified, the court will repeal its decision on surrender by a resolution and will immediately proceed with the extradition proceedings according to Section 101.

### **Section 219**

(1) In case of concurrence of European Arrest Warrant or concurrence of a European Arrest Warrant with an extradition request, the competence to conduct proceedings on the European Arrest Warrant or extradition request served later will pertain to the court, which is competent to conduct proceedings on the European Arrest Warrant or extradition request served earlier.

(2) Provisions of Section 96 and 208 will not apply in case of concurrence of European Arrest Warrants or concurrence of a European Arrest Warrant with an extradition request; if the person already gave consent to his surrender or extradition, such consent will not be taken into account.

### **Section 220**

#### **Transit of Persons through the Territory of the Czech Republic in Relation to Surrender**

(1) In case a request for authorization of transit was served by fax, electronically, via international police cooperation or in another manner enabling a written record, subsequent service in documentary form will not be required.

(2) In case the request for transit does not contain information on the identity and nationality of the surrendered person, on issuing a European Arrest Warrant, on the nature and legal qualification of the criminal offense or description of circumstances of commission of the criminal offense, including the time and place of its commission, the Ministry will call the other Member state requesting the transit to supplement the request within a reasonable time limit set by the Ministry.

(3) In other matters will transit of persons through the territory of the Czech Republic in relation to his surrender on the basis of European Arrest Warrant be governed by the provisions of Part three Chapter V Sub-chapter 2, with the exception of Section 142 (2) (a), (e) and (i).

### **Section 221**

Provisions of Section 220 will apply accordingly to transit of a person, who is to be extradited from a foreign state into another Member State.

### **Sub-chapter 4**

#### **Surrender with Iceland and Norway**

### **Section 222**

(1) Provisions of this Sub-chapter will apply to surrender of persons between the Czech Republic and Iceland or Norway in the basis of an arrest warrant issued by a court of the Czech Republic or a judicial authority of Iceland or Norway for the purpose of arrest and surrender of persons for criminal prosecution or execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration.

(2) The arrest warrant will be issued on the form determined by an international treaty<sup>15</sup> and will contain the requisites stipulated therein.

### **Section 223**

(1) The Ministry will provide the court upon its request cooperation in acquiring information from Iceland or Norway, necessary for issuing an arrest warrant or in relation to deciding on extradition. The Supreme Public Prosecutor's Office will provide the public prosecutor upon his request such cooperation in relation to filing a petition for issuing an arrest warrant or in relation to preliminary investigation.

(2) For the purposes of submitting reports to authorities of the European Union and facilitation of cooperation with Iceland and Norway the court will provide the Ministry upon its request the necessary information, in particular on the number of proceedings on extradition to Iceland or Norway and results thereof, as well as similar information on arrest warrants issued for the purpose of extradition from Iceland or Norway.

### **Section 224**

#### Surrender into the Czech Republic

Surrender of persons from Iceland or Norway into the Czech Republic and related actions will be governed accordingly by the provisions of this Chapter on surrender on the basis of European Arrest Warrant.

### **Section 225**

#### Surrender from the Czech Republic

(1) Surrender of persons from the Czech Republic to Iceland or Norway and related actions will be governed accordingly by the provisions of this Chapter on European Arrest Warrant. Provisions of Section 203 (5), Section 205 (2) (a), (b) and (e) and Section 207 will not apply. Provisions of Section 209 (3) will not apply in case of providing information to Eurojust.

(2) The person concerned by the surrender will not be surrendered to Iceland or Norway also in case

- a) he is a citizen of the Czech Republic,
- b) the act does not fulfill the characteristics of criminal offense according to the law of the Czech Republic and it is not a conduct, concerning which it is not possible to refuse the execution of an arrest warrant according to the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure

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<sup>15</sup> Annex of the Agreement of 28.6.2006, concluded between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

between the Member States of the European Union and Iceland and Norway<sup>16</sup> for lack of dual criminality; in case of taxes, customs fees or currency, a decision not to surrender may not be made solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, customs fees or do not contain the same provisions concerning taxes, customs fees or currency, as legal regulations of the requesting state, or

- c) the criminal offense, for which the arrest warrant was issued, has an exclusively political nature and the requesting state does not guarantee reciprocity<sup>17</sup>.

(3) Provisions of sub-section (2) will apply accordingly also in case that Norway or Iceland request authorization of extension of surrender.

### **Chapter III**

#### Order for Freezing Assets or Evidence

#### **Sub-chapter 1**

#### Common Provisions

#### **Section 226**

#### Applicability

(1) Provisions of this Chapter will apply to

- a) movable assets, financial means in an account, book-entry securities, real estate or other asset values, if the ascertained facts indicate that these are designated for commission of a criminal offense or were used to commit a criminal offense or are proceeds of a criminal offense.
- b) equivalent value, or
- c) evidence according to Section 112 of the Code of Criminal Procedure (hereinafter referred to as "evidence"),

if these are to be seized in another Member State on the basis of a freezing order issued by the judicial authority or if they are to be seized in the Czech Republic on the basis of a freezing order issued by a judicial authority of another Member State in criminal proceeding for the purpose of confiscation or forfeiture or for evidentiary purposes.

(2) According to this Chapter will be proceeded also if another Member State applies legal regulations for the implementation the relevant legal regulation of the European Union<sup>18</sup>.

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<sup>16</sup> Article 3 (3) of the Agreement of 28.6.2006, concluded between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.

<sup>17</sup> Article 6 (2) of the Agreement of 28.6.2006, concluded between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.

<sup>18</sup> Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

**Section 227**  
Freezing Order

Freezing order will be understood as

- a) an order for removal of items or a decision on seizure according to Chapter four Sub-division four of the Code of Criminal Procedure, if they were issued by the presiding judge and in pre-trial procedure by the public prosecutor,
- b) a decision, which is supposed to prevent the destruction, transformation, displacement, transfer or sale of items or other asset values referred to in Section 226 (1) (a) and (b) (hereinafter referred to as (asset”) or evidence, if it was issued by a judicial authority of another Member State.

**Section 228**  
Relation to other Provisions

(1) Unless this Chapter stipulates otherwise, provisions of Part three Chapter I will apply to freezing of assets or evidence.

(2) Provisions of this Chapter do not preclude procedure according to the provisions of Part three Chapter I.

**Sub-chapter 2**  
Freezing of Assets or Evidence in another Member State

**Section 229**  
Issue of Freezing Order

(1) If it is necessary to seize assets or evidence in another Member State, the presiding judge and in pre-trial proceedings the public prosecutor will issue a freezing order and attach to it a certificate on the designated form<sup>19</sup> with a translation into the official language or one of the official languages of the other Member State or into the language, in which is the other Member State willing to accept the freezing order.

(2) In case of seizure of evidence the freezing order will be accompanied by a request for transfer of the evidence into the Czech Republic; if it is not possible, the certificate contains an instruction to keep the evidence seized in the other Member State until the time such request is executed.

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<sup>19</sup> Annex of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

(3) In case of seizure of evidence the judicial authority may state formal requisites and procedures in the certificate, which the judicial authority of the other Member State should follow in the course of execution of the freezing order.

(4) In case of seizure of assets the certificate will contain an instruction that the asset stays seized in the other Member State until the time the request for recognition and execution of a decision on confiscation or forfeiture is executed, or if the asset is to be confiscated or forfeited in another Member State on the basis of a decision of court sent for recognition and execution according to Chapter VII Sub-chapter 2, until the time of recognition and execution of such decision.

(5) An order for freezing assets in another Member State may be issued also after the full force and effect of a decision on confiscation or forfeiture, if it was impossible to do so earlier for important reasons.

### **Section 230**

#### Service of Freezing Order

(1) The presiding judge and in pre-trial proceedings the public prosecutor will send a freezing order including a certificate and eventually other annexes without an undue delay after its issue to the competent authority of another Member State. The person, against whom is the freezing order directed, will the freezing order be served after the competent judicial authority of the other Member State secured execution of this order in this Member State or refused to recognize or execute this order.

(2) The Ministry will provide its cooperation upon a request of the presiding judge and the Supreme Public Prosecutor's Office will provide its cooperation upon a request of the public prosecutor in the course of acquiring the necessary information, especially concerning the identification of the competent judicial authority of another Member State, to which is the freezing order to be sent, or verification of conditions stipulated by the law of this other Member State for recognition and execution of such freezing order.

(3) For the purposes of submitting reports to the authorities of European Union and facilitation of cooperation with other Member States, the court will provide the Ministry upon its request the necessary information, especially on the number of freezing orders from other Member States to be recognized and executed and on the results of proceedings on recognition and execution of these freezing orders in other Member States.

### **Section 231**

#### Termination or Limitation of Seizure

(1) In case a seizure is finally and effectively terminated or limited or if a freezing order is repealed according to the Code of Criminal Procedure, the presiding judge and in pre-trial proceedings the public prosecutor will immediately notify his fact to the competent judicial authority of the other Member State



(2) If the item seized in another Member State on the basis of an order for removal of items is no longer necessary for further proceedings, and if its confiscation or forfeiture is out of the question, the presiding judge and in pre-trial proceedings the public prosecutor will immediately notify this fact to the competent judicial authority of the other Member State. If thus seized item was surrendered to the Czech Republic as evidence, it will be at the same time returned to the competent authority of the other Member State, with the exception of cases, where the competent authority of the other Member State waived the right for returning the item; in such case it is not necessary to send the information referred to in sentence one.

### **Sub-division 3**

#### Seizure of Assets or Evidence in the Czech Republic

### **Section 232**

#### Competence

(1) Section 48 (4), Sub-section (5) sentence one, Sub-section (6) and (7) will apply accordingly to determination of competence for deciding on recognition of freezing orders issued by a judicial authority of another Member State and for securing execution of decisions on recognition of these orders.

(2) The Ministry of the Supreme Public Prosecutor's Office will provide its cooperation to authorities of another Member State upon its request in the course of acquiring the necessary information, in particular when identifying the competent judicial authority, to which should be sent a freezing order issued by a judicial authority of another Member State, or when verifying the conditions stipulated by the law of the Czech Republic for recognition and execution of such an order.

(3) For the purposes of submitting reports to the authorities of the European Union and facilitation of cooperation with other Member States, the court will provide the Ministry upon its request the necessary information, especially on the number of proceedings on the recognition and execution of freezing orders issued by judicial authorities of other Member States and results thereof.

### **Section 233**

#### Recognition and Execution of Freezing Orders

(1) The judicial authority will immediately decide to recognize a freezing order, unless it is prevented by reasons referred to in Sub-section (4) or (6), and immediately secure execution of this decision by proceeding pursuant to Chapter four Sub-division four of the Code of Criminal Procedure, unless it decides to suspend execution of the decision, or if execution of the decision cannot be realized, because the asset or evidence subject to the seizure have been lost, destroyed or cannot be located in the place referred to in the certificate, or because the place of their location was not sufficiently specified in the certificate.

(2) In the course of execution of a decision on recognition of an order for freezing evidence, it is necessary to follow the formal requisites and procedures stated by the judicial authority of the other Member State in the certificate, unless it is contrary to the basic legal principles of the Czech Republic.

(3) Searches according to Chapter four Sub-division five of the Code of Criminal Procedure may be performed in the course of execution of a freezing order issued by a judicial authority of another Member State only under the condition, that the act would constitute a criminal offense also under the law of the Czech Republic.

(4) The judicial authority will immediately decide to refuse recognition of a freezing order, if

- a) the act does not fulfill the merits of a criminal offense under the law of the Czech Republic and it is not a conduct referred to in Section 234; in case of criminal offenses related to taxes, fees, customs fees or currency, recognition of a freezing order issued by a judicial authority of another Member State may not be refused solely for the reason that legal regulations of the Czech Republic do not impose the same type of taxes, fees or customs fees or do not contain the same provisions concerning taxes, fees, customs fees or currency, as legal regulations of the Member State in question,
- b) its recognition and execution would be contrary to the impediment of *res judicata*,
- c) the seizure is prevented by a privilege or immunity according to the law or international law, for which the person in question is exempted from jurisdiction of the authorities involved in criminal proceedings,
- d) the freezing order was not issued in criminal proceedings in another Member State, or
- e) the asset that is the object of the proceedings, is exempted from confiscation or forfeiture according to other legal regulations.

(5) In case of any doubts about whether or to what extent is the person, against whom is a freezing order directed, exempted from the jurisdiction of authorities involved in criminal proceedings, the matter will be decided upon a petition of this person or the judicial authority by the Supreme Court.

(6) Furthermore, the judicial authority does not have to decide to recognize a freezing order, if this order is not accompanied by a certificate on the prescribed form<sup>20</sup>, this certificate is clearly incomplete, does not correspond to the contents of the order or is not translated into the Czech language or another language, in which the certificate may be accepted according to the declaration of the Czech Republic<sup>21</sup>. The judicial authority will immediately, before deciding to refuse the recognition, call the judicial authority of the other Member State to send the certificate, its amended version or its translation into the appropriate language

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<sup>20</sup> Annex of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

<sup>21</sup> Article 9 (3) of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

within a time limit set therefor. At the same time it will advise it that if it fails to do so within the set time limit without stating substantial reasons therefor that prevented it from doing so, recognition of the order will be refused.

(7) A complaint is admissible against the decision on recognition of the order. The complaint cannot contest the reasons, for which the order was issued.

(8) The judicial authority will immediately inform the judicial authority of the other Member State about recognition or non-recognition of the order, securing execution of the decision or about matters preventing execution of the decision, about filing a complaint against the decision on recognition of the freezing order and on the result of proceedings on this complaint.

(9) In the course of execution of a request for transferring seized evidence into another Member State, the judicial authority will proceed pursuant to Section 67 (1) and (3) accordingly.

#### **Section 234**

##### Exceptions from Rule of Double Criminality

In cases, where an act, for which another Member State may impose an unsuspended sentence of imprisonment with the upper limit of at least 3 years and which consists in conduct, which judicial authorities of the other Member State indicate in Paragraph (i) of Section 1 of the certificate form<sup>22</sup> is concerned, the judicial authority will not inspect, whether the act fulfills the characteristics of a criminal offense according to the law of the Czech Republic, unless the description of the act or legal qualification stated in the certificate clearly do not correspond to the indicated conduct.

#### **Section 235**

##### Suspension of Execution of Decision on Recognition of Freezing Order

(1) The judicial authority may decide to suspend execution of a decision on recognition of a freezing order, if

- a) its execution could affect criminal proceedings conducted in the Czech Republic, or
- b) the asset or evidence stated in such order has already been seized for the purposes of other criminal proceedings conducted in the Czech Republic or in another state.

(2) As soon as the reason for suspension of execution of the decision referred to in Subsection (1) passes, the judicial authority will secure its execution. If in the meantime the order was repealed in the other Member State, or if the seizure was limited or cancelled, the

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<sup>22</sup> Annex of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

judicial authority will abandon securing the execution of the decision or secure its execution in a limited extent.

(3) The judicial authority will immediately notify the competent judicial authority of the other Member State about suspension of execution of the decision, including the reasons for the suspension, and its expected duration, if it can be estimated, and about other restrictions that apply to the asset or evidence referred to in the freezing order, if such are known, and about securing execution of the decision after the reason for suspension passes.

### **Section 236**

#### Duration of Seizure

(1) Seizure of assets remains in effect until the time of execution of the decision on recognition of a decision of a judicial authority of another Member State, which imposed confiscation or forfeiture of assets referred to in the freezing order.

(2) Seizure of evidence will remain in effect until the time it is returned or disposed of in another way referred to in Section 80 to 81b of the Code of Criminal Procedure. If the judicial authority waives returning of the evidence into the Czech Republic, the seizure will remain in effect until the time of transferring the evidence to a competent authority of another Member State.

(3) If such order was repealed or if the seizure was cancelled or limited in another Member State, the judicial authority will decide to cancel or limit the seizure according to the Code of Criminal Procedure or will proceed according to Section 80 to 81b of the Code of Criminal Procedure.

### **Sub-division 4**

#### Claims of Recourse

### **Section 237**

#### Claims of Recourse of another Member State

(1) The Ministry will reimburse another Member State, which recognized and secured execution of a freezing order, upon its request for a financial sum expended by this state in compliance with its law as a compensation of damage to a certain person, if

- a) the damage compensated to the person by the other Member State according to its domestic legal regulations was caused by such freezing order,
- b) the request of the other Member State for reimbursement of the damages paid or annexed documents contain the amount of the paid damages, reimbursement of which is requested, its reasoning and information on the authority competent to accept the payment, including a bank account specification for the purpose of transferring the required sum or a request for another manner of execution of the payment, and

c) request of the other Member State is accompanied by a final and effective decision of the competent authority of the other Member State on compensation of damage.

(2) In case a request of another Member State does not contain all necessary data, the Ministry will call the competent authority of this state to supplement it and set a reasonable time limit therefor. Therein the Ministry will always advise it about the consequences of failure to comply with this call. If the competent authority of the other Member State fails to comply with this call within the set time limit without stating substantial reasons, which prevented it from doing so, the request will be refused.

### **Section 238**

#### Claims of Recourse against another Member State

(1) The Ministry will be entitled to request another Member State for reimbursement of a financial sum expended as compensation of damage to a certain person according to the Act on Liability for Damage Caused in Execution of Public Authority by a Decision or Incorrect Official Procedure in case the judicial authority recognized a freezing order and secured execution of its decision on recognition and this damage was caused by the freezing order.

(2) Claim for reimbursement of the damages paid will be applied in the form of a request to the competent authority of the other Member State in compliance with the legal order and requirements of this state

### **Chapter IV**

#### Recognition and Execution of Decisions Imposing Substitute Measure for Custody

#### **Sub-chapter 1**

#### Recognition and Execution of Decision of another Member State Imposing Substitute Measure for Custody

### **Section 239**

(1) According to this Sub-division and Sub-division 3 will be proceeded in the course of recognition and execution of an enforceable decision of a competent authority of another Member State, by which was decided in criminal proceedings to take some of the substitute measures for custody referred to in Section 240.

(2) According to this Sub-division and Sub-division 3 will be proceeded if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>23</sup>.

### **Section 240**

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<sup>23</sup> Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

## Conditions for Takeover of Decisions

(1) A decision of another Member State may be taken over for the purpose of its recognition and execution, if it imposes any of the following obligations:

- a) to inform the competent authority about any change of the place of stay or address for service,
- b) to refrain from visiting certain places,
- c) to remain in a certain place, even if only for a limited time,
- d) prohibition to travel abroad,
- e) to report to the competent authority at the stated time,
- f) to refrain from contact with certain persons, who are associated with criminal activity.

(2) A decision of another Member State that fulfills the condition referred to in Sub-section (1) will be taken over for the purpose of its recognition and execution, if the person, against whom it is directed, has his permanent residence in the Czech Republic and consents to his return to the Czech Republic.

(3) A decision of another Member State fulfilling the condition referred to in Sub-section (1) may be taken over for the purpose of its recognition and execution even without fulfilling the conditions referred to in Sub-section (2), if

- a) the person, against whom this decision is directed, request its service to the Czech Republic for the purpose of its recognition and execution,
- b) the person, against whom this decision is directed, stays outside the territory of the Czech Republic or it can be reasonably assumed that he intends to stay there, and
- c) the sole judge consents with the takeover of the decision of this Member State for recognition and execution in the Czech Republic for the reason of convenience and expediency of such procedure, as far as securing effective influence on this person and effective control over his behavior is concerned.

### **Section 241**

#### Competence

(1) Competence for proceeding pursuant to this Sub-division and Sub-division 3 will pertain to the District Court, in the jurisdiction of which stays the person, against whom the decision of another Member State is directed. If this person does not stay in the Czech Republic, the competence will pertain to the District Court, in the district of which the person had his last place of permanent residence. If the competence of court cannot be determined according to sentence one and two, the competence for proceeding according to this Sub-division will pertain to the District court for Prague 6.

(2) Change of circumstances decisive for the determination of local competence, which occur after initiation of the proceedings, will not be taken into account.

(3) In case a decision of another Member State was sent to an authority not competent to proceed according to this Sub-chapter and Sub-chapter 3, it will immediately forward it to the competent court and at the same time will notify the competent authority of the other Member State, which send the decision. If the court, to which was the decision forwarded, any doubts concerning its competence, it will proceed pursuant to Section 24 of the Code of Criminal Procedure accordingly.

### **Section 242**

#### **Proceedings on Recognition and Execution**

(1) Proceeding on recognition and execution of a decision of another Member State is initiated at the moment a decision of another Member State is served to the competent court along with a certificate, or eventually at least a certificate, or a decision of another Member State with a request to proceed according to this Sub-division.

(2) Unless the conditions for takeover of a decision of another Member State are fulfilled, the sole judge will terminate the proceeding on recognition and execution of such decision and immediately notify the termination and reasons therefor to the competent authority of the other Member State, the public prosecutor, if he was already involved in the case, and the defense counsel, if he was chosen or appointed.

(3) If the proceeding cannot be continued for a reason, which is not a reason for not recognizing a decision of another Member State, the sole judge will notify this matter of fact to the competent authority of the other Member State and request it to comment on whether it insists on recognition and execution of such decision within a time limit set therefor. If the competent authority of the other Member State does not send its comment within the set time limit or does not state circumstances disproving the reason, for which the proceedings cannot be continued, the sole judge will terminate the proceedings and immediately notify the termination and the reasons therefor to the competent authority of the other member the public prosecutor, if he was already involved in the case, and the defense counsel, if he was chosen or appointed.

### **Section 243**

#### **Exceptions from Rule of Double Criminality**

In case of an act, for which another Member State may impose an unsuspended sentence of imprisonment with the upper limit of at least 3 years or a protective measure associated with incarceration with the longest duration of at least 3 years, and which consists in a conduct the other Member State marks in Paragraph (f) division 2 of the certificate form<sup>24</sup>, the sole judge will not investigate, whether the act fulfills the characteristics of a criminal offense according to the law of the Czech Republic for the purposes of deciding, whether the

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<sup>24</sup> Annex I of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

decision of the other Member State will be recognized and executed, unless the description of the act or the legal qualification referred to in the certificate clearly do not correspond to the indicated conduct. Section 246 (2) (b) is not affected thereby.

### **Section 244**

#### Decision on Recognition and Execution

(1) If the sole judge does not consider the certificate and decision sent by another Member State to be sufficient grounds for a decision on recognition and execution, it will request the competent authority of this Member State to send the necessary supplementary information within a time limit set by it. If the other Member State fails to send the supplementary information within the set time limit without stating substantial reasons therefor, the sole judge will terminate the proceedings and notify it to the competent authority, the public prosecutor, if he was already involved in the case, and the defense counsel, if he was chosen or appointed. The competent authority of the other Member State must be advised on these consequences.

(2) The sole judge will decide without an undue delay, generally within 20 business days from the day it received a decision of another Member State along with a certificate, whether the decision of the other Member State will be recognized and execute or not. In case an appeal has been filed against the decision of the other Member State, the time taken by translating the decision or certificate or acquiring documents necessary for making the decision will not be counted into time limit referred to in sentence one and two. If this time limit cannot be kept, the sole judge will immediately notify the competent authority of the other Member State thereof and state reasons for the delay, including the expected duration of such delay.

(3) The sole judge will serve the decision on recognition and execution to the person, against whom the decision of the other Member State is directed, to the public prosecutor and the defense counsel, if he was chosen or appointed. If the decision cannot be served to the person, against whom the decision of the other Member State is directed because of his unknown place of stay, the sole judge will terminate the proceedings and notify the termination and the reasons therefor to the competent authority of the other Member State, the public prosecutor and the defense counsel, if he was chosen or appointed.

(4) The sole judge will immediately notify the competent authority of the other Member State about a decision on recognition and execution that has not yet become final and effective; in case of recognition and execution he will also inform this authority about the adaptation of the imposed measure, including the limitation of its duration to the longest permissible duration stipulated by the Code of Criminal Procedure, and the reasons for such adaptation and in case of non-recognition also about the reasons of such procedure. The sole judge will also notify the competent authority of the other Member State about the fact that a complaint has been filed against its decision, as well as about the fact that the decision has become final and effective.



## Section 245

### Grounds for Non-recognition of Decisions

- (1) The sole judge will not recognize a decision of another Member State, if
- a) recognition and execution of such decision would be contrary to and impediment of *res judicata*,
  - b) the act does not fulfill the characteristics of a criminal offense according to the law of the Czech Republic, unless a conduct referred to in Section 243 is concerned; in case of criminal offenses related to in case of taxes, customs fees or currency, a decision not to surrender may not be made solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, customs fees or do not contain the same provisions concerning taxes, customs fees or currency, as legal regulations of the Member State in question,
  - c) the person, against whom the decision of the other Member State is directed, enjoys privileges and immunities according to the law of the Czech Republic or according to international law, which make him exempt from jurisdiction of the authorities involved in criminal proceedings,
  - d) the person, against whom the decision of the other Member State is directed, would not have been criminally liable according to the law of the Czech Republic due to his age,
  - e) there would be a reason for not surrendering the person, against whom the decision of the other Member State is directed, in case it would be subsequently decided on surrendering the person back to this Member State on the basis of European Arrest Warrant for the reason of violation of the substitute measure for custody, or
  - f) criminal liability has expired according to the law of the Czech Republic, and such decision has been issued for an act, prosecution of which lies within the competence of the authorities of the Czech Republic according to the law of the Czech Republic.
- (2) In case of any doubts about whether or to what extent is the person, against whom the decision of another Member State is directed, exempted from the competence of authorities involved in criminal proceedings, the matter will be decided by the Supreme Court upon a petition of this person, the public prosecutor or the sole judge.
- (3) Furthermore, the sole judge does not have to recognize a decision of another Member State, if he did not receive the decision, if this decision is not accompanied by a certificate on the prescribed form<sup>25</sup>, if this certificate is clearly incomplete, if it does not correspond to the contents of the decision, to which it is attached, or if it is not translated into the Czech Language or another language, in which it may be accepted according to a declaration of the Czech Republic<sup>26</sup>. Before deciding not to recognize the decision, the sole judge will call the

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<sup>25</sup> Annex I of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

<sup>26</sup> Article 24 of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

competent authority of the other Member State to send him the decision, certificate, its amended wording or translation of the certificate into the relevant language within a time limit set therefor. At the same time the sole judge will advise the competent authority of the other Member State that if it fails to do so without stating substantial reasons therefor, the decision will not be recognized.

(4) If there is a reason not to recognize a decision of another Member State referred to in Sub-section (1) (a), the sole judge will always request an opinion of the competent authority of the other Member State before deciding not to recognize the decision; such opinion may be requested also if there is another reason for non-recognition.

### **Section 246**

#### Recognition

(1) In cases other than referred to in Section 242 (2) or (3) or in Section 244 (1), or if there is no reason not to recognize a decision of another Member State, the sole judge will recognize such decision in the territory of the Czech Republic. Along with the decision of the competent authority of the other Member State on the imposition of a substitute measure for custody, he will always recognize a decision of the competent authority of the other Member State on custody.

(2) Along with the decision on recognition the sole judge will decide that the measure substituting custody imposed by a decision of another Member State will be executed, whereas

- a) if the type of such measure does not comply with the law of the Czech Republic, he will adapt it to a measure according to the Code of Criminal Procedure, which corresponds to it the most, or
- b) if the duration of such measure exceeds the longest possible duration of custody stipulated for the criminal offense in question by the Code of Criminal Procedure, he will reduce it to this longest permissible duration.

(3) Adapting the measure substituting custody cannot aggravate the position of the person, against whom the decision of another Member State is directed.

### **Section 247**

#### Complaint Proceedings

(1) A complaint is admissible against the decision according to Section 245 (1) or (3) or Section 246, which has a dilatory effect. The complaint may not contest the reasons, for which the decision of another Member State was issued.

(2) The court deciding on the complaint will repeal the contested decision and terminate the proceedings, if it finds a reason referred to in Section 242 (2) or (3). If the court finds a reason referred to in Section 242 (3), it will at first notify this fact to the competent authority of the other Member State and request it to comment, whether it insists on recognition and execution of this decision, within a time limit set therefor. The court will terminate the proceedings in case the competent authority of the other Member State fails to send its comment within the set time limit, or if it fails to state circumstances disproving the reason, for which the proceedings cannot be continued.

### **Section 248**

#### Withdrawing Decisions and Certificates

If the competent authority of another Member State withdrew the decision along with the certificate, the sole judge and in complaint proceedings the presiding judge will take the withdrawal of the decision and certificate into account, whereas the proceedings will be terminated. If however the execution of the substitute measure for custody has already begun, the sole judge will notify the competent authority of the other Member State thereof and advise it that in this case the withdrawal of the certificate cannot be taken into account.

### **Section 249**

#### Execution of Recognized Decision

(1) Unless further stipulated otherwise, in the course of executing measures substituting custody will be proceeded according to the law of the Czech Republic. If the person in question fails to comply with the obligations imposed by the measure substituting custody, the sole judge will immediately notify the competent authority of the other Member State thereof for the purpose of further proceeding. The notification will be sent on the prescribed form<sup>27</sup>.

(2) If the competent authority of the other Member State does not render any decision despite being repeatedly notified about the matters of fact referred to in Sub-section (1), the sole judge will call it to make such decision within a time limit set by it and at the same time it will advise him about the consequences associated with its inactivity. If the sole judge does not receive such decision in the set time limit and the competent authority of the other Member State does not state substantial reasons therefor, he will take measures directed towards the termination of the measure substituting custody. This procedure will the sole judge immediately notify to the competent authority of the other Member State.

(3) In case the competent authority of the other Member State extends the duration of the recognized measure substituting custody, changes this measure or imposes an additional measure substituting custody to the person in question, the sole judge will decide whether to

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<sup>27</sup> Annex II of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

change the recognized measure substituting custody in this way or whether to keep it in the recognized form; Provision of Section 246 (2) and (3) will apply accordingly. If the changed or additional measure substituting custody imposes another obligation than referred to in Section 240 (1), the sole judge will keep the measure in the recognized form. A complaint is admissible against this decision, which has a dilatory effect. The complaint cannot contest the reasons, for which the decision of the competent authority of the other was Member State issued.

(4) The sole judge will inform the competent authority of the other Member State about any change of the place of stay or address for service of the person, to whom was the substitute measure for custody imposed. If in the course of execution of the measure substituting custody the person changes his habitual place of residence so that it is located in a state other than the Czech Republic, the sole judge will immediately notify the competent authority of the other Member State thereof and take measures directed towards termination of execution of the measure substituting custody. In the same way will the sole judge proceed if the person, to whom was the measure substituting custody imposed, cannot be found in the territory of the Czech Republic.

(5) The sole judge will immediately take measures directed towards waiving execution of the measure substituting custody as soon as the competent authority of the other Member State notifies him about any decision or measure, as a result of which the recognized decision became unenforceable.

## **Section 250**

### **Costs of Proceedings**

Costs of proceedings on recognition and execution of a decision of another Member State will be borne by the Czech Republic.

## **Sub-chapter 2**

### **Securing Execution of Decisions Imposing Substitute Measures for Custody in another Member State**

## **Section 251**

(1) A final and effective decision of the public prosecutor or court, by which it was decided that an accused person will stay free or will be released from custody, while at the same substituting the custody by a guarantee, promise or supervision of a probation office according to Section 73 of the Code of Criminal Procedure, may be sent to another Member State for recognition and execution according to this Sub-chapter and Sub-chapter 3.

(2) The decision referred to in Sub-section (1) may be sent to another Member State for recognition and execution only in case it imposes restrictions or obligations referred to in

Section 240 (1) or restrictions and obligations, concerning which has the foreign state declared<sup>28</sup> that such can be supervised or otherwise controlled in its territory.

(3) According to this Sub-chapter will be proceeded, if another Member State applies legal regulations for implementation of legal regulations of the European Union<sup>29</sup>.

## **Section 252**

### **Sending Decisions for Recognition and Execution**

(1) If it is necessary for securing appropriate execution of a decision, the judicial authority that decided in the first instance will send this decision to the competent authority of another Member State for the purpose of its recognition and execution, if the accused person has his permanent residence in this state and consents to his return to this state. The decision may be sent for the purpose of its recognition and execution also to a Member State, concerning which the conditions referred to in sentence one are not met, if the accused persons requests if and this Member State consents to take over the decision. However, the decision may not be sent for the purpose of recognition and execution concurrently to several Member States.

(2) Before sending the decision into another Member State the judicial authority will ascertain, if possible, whether successful achievement of the purpose of the substitute measure in the course of its recognition and execution in this state and whether this procedure ensures sufficient protection of the aggrieved person.

(3) The judicial authority will send the decision to the competent authority of the other Member State along with a certificate on the prescribed form<sup>30</sup>, translated into the official language or on of the official languages of this Member State, or into a language, in which is this state willing to accept the certificate according to its declaration<sup>31</sup>.

(4) The judicial authority will provide the competent authority of the other Member State upon its request additional information and supplementations necessary for the purpose of recognition and execution of the decision.

## **Section 253**

### **Withdrawing Decisions and Certificates**

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<sup>28</sup> Article 8 (2) of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

<sup>29</sup> Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

<sup>30</sup> Annex I of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

<sup>31</sup> Article 24 of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

(1) The judicial authority may withdraw the decision along with the certificate, if the competent authority of the other Member State notified it about adapting the type of the measure substituting custody in compliance with its law or about limitation of duration of this measure and the judicial authority believes that such adaptation leads to significant aggravation of the position of the accused person, or if it considers such adapted measure or its duration sufficient in view of securing the purpose of the substitute measure for custody.

(2) The judicial authority may withdraw the decision along with the certificate also in case the competent authority of the other Member State notifies it that it is willing to recognize and execute the decision, by which was the measure substituting custody imposed, even though there is a reason to refuse the surrender of the accused person into the Czech Republic on the basis of a European Arrest Warrant, if the accused person violates the obligations imposed to him by the measure substituting custody.

(3) The judicial authority must notify the competent authority of the other Member State about withdrawing the decision and certificate within 10 days after receiving the information referred to in Sub-section (1) or (2) at the latest.

#### **Section 254**

##### **Consequences of Sending Decisions for Recognition and Execution**

(1) Even after sending a decision of the judicial authority into another Member State for the purpose of its recognition and execution, this decision will be executed according to the legal regulations of the Czech Republic, until the time execution of the recognized decision in the other Member State is initiated.

(2) After the initiation of execution of the recognized decision in the other Member State, execution of such a decision in the Czech Republic may continue only if

- a) the accused person no longer has his habitual residence in the other Member State, or if the accused person cannot be located in its territory,
- b) the competent authority of the other Member State notified the judicial authority about termination of execution of the recognized decision for the reason of inactivity of the judicial authority after being repeatedly notified by the competent authority of the other Member State about that the accused person has violated his obligations imposed within the recognized measure substituting custody.
- c) the competent authority of the other Member State refused to execute the measure substituting custody, which the judicial authority has changed after it was recognized in the other Member State, or which it imposed in place of the originally recognized measure substituting custody, or
- d) the longest permissible duration of the recognized measure stipulated by the law of the other Member State has passed.

(3) Even in case execution of the recognized decision has been initiated in the other Member State, the judicial authority is still competent to decide on changing the measure substituting

custody, on request of the accused person for cancelling a restriction consisting in prohibition of traveling abroad, to review the presence of the grounds for custody in case the accused person failed to comply with his obligations imposed within the recognized measure substituting custody, as well as to make all other decision in custody proceedings, which do not concern supervision over fulfillment of obligations imposed within the recognized measure substituting custody.

(4) Before the time, to which the other Member State limited the duration of the recognized measure, expires, the judicial authority may, with regard to all circumstances of the case, request the competent authority of this Member State for its extension.

(5) The judicial authority will immediately notify the competent authority of the other Member State about all decisions, measures or matters of fact, as a result of which the recognized decision became unenforceable or only partially enforceable.

### **Section 255**

#### Surrender of Persons

In case the judicial authority is notified by the competent authority of another Member State about the fact that the accused person has violated the obligations imposed within the recognized measure substituting custody and if the grounds for custody still exist, the court conducting the criminal proceedings and in pre-trial proceedings the judge upon a petition of the public prosecutor will issue a European Arrest Warrant for the purpose of surrender of the person back to the Czech Republic; in the course of surrender of the accused person to the Czech Republic it will be proceeded according to Chapter II Sub-chapter 2.

### **Sub-chapter 3**

#### Common Provisions

### **Section 256**

(1) The competent judicial authority will cooperate with authorities of another Member State when proceeding according to Sub-chapter 1 and 2, in particular they will exchange all necessary information, including information allowing identification and place of habitual residence of the person, against whom is the decision directed. Within the framework of judicial cooperation the judicial authority will heed in particular that a continuous execution of the decision imposing a measure substituting custody is secured, as far as supervision over the obligations imposed within this decision is concerned.

(2) The Ministry will provide its cooperation upon a petition of court and the Supreme Public Prosecutor's Office will provide its cooperation upon a request of the public prosecutor in the course of ascertaining necessary information, especially when determining the competent authority of another Member State, to which is a decision supposed to be served, or when verifying the conditions stipulated by the law of this state for recognition and execution of such decision. The same cooperation will the Ministry provide upon a

request of an authority of another Member State in the course of ascertaining necessary information, as far as the competent authorities of the Czech Republic or verification of conditions stipulated by the law of the Czech Republic are concerned.

(3) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of proceedings on recognition and execution of decisions of other Member States and their results, as well as other similar information concerning decisions sent to other Member States for recognition and execution.

## **Chapter V**

### **Prevention of Competence Disputes**

#### **Section 257**

According to this Chapter will be proceeded, if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>32</sup>.

#### **Section 258**

(1) The judicial authority will request authorities of another member state to inform it within a time limit set by it, whether there are or were criminal proceedings being conducted in this Member State for the same act against the same person (hereinafter referred to as “concurrent criminal proceedings”), if it can be reasonably expected that such proceedings.

(2) In the request the judicial authority will state

- a) its contact information,
- b) description of the facts of the case,
- c) name and surname of the person, against whom is the proceeding being conducted, eventually also the name and surname of the aggrieved person and other personal data enabling their identification, and
- d) the state of the criminal proceedings.

(3) The judicial authority may state additional information in the request, concerning criminal proceedings conducted in the Czech Republic, especially whether the accused person is in custody.

(4) The request will be sent to the other Member State in a language, in which this state is willing to accept it.

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<sup>32</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.



## **Section 259**

(1) The judicial authority will notify the authority of another member state upon its request within a time limit set by it, whether there is or was any concurrent criminal proceeding being conducted in the Czech Republic; if the person concerned is apprehended or placed in custody according to information of the authority of the other member state, it will be done immediately.

(2) If the judicial authority cannot comply with the time limit set for execution of the request, it will notify the authority of the other Member State thereof, including the reason therefor and the expected date of execution of the request. In case the time limit for execution of the request is not set, the judicial authority will notify the requested information to the authority of the other member state without an undue delay.

(3) In case a concurrent criminal proceedings are or were conducted in the Czech Republic, the judicial authority will send the authority of the other Member State its contact information and inform it about the current stage of such proceeding, and in case it has already been finally and effectively concluded, also about the manner of its conclusion. The judicial authority may communicate also other necessary information to the authority of the other Member State concerning criminal proceedings conducted in the Czech Republic.

(4) In case the request pursuant to sub-section (1) was sent to an authority that does not and did not conduct the concurrent criminal proceeding, it will immediately forward it to the judicial authority that may be considered to conduct such proceedings and at the same time it will notify forwarding of the request to the authority of the other Member State, which has sent it. In case such proceeding is not conducted in the Czech Republic, the competence for sending the information according to Sub-section (1) will pertain to any judicial authority.

## **Section 260**

(1) In case concurrent criminal proceeding is being conducted in another Member State, the judicial authority will consult the competent authority of the other member state about further procedure in order to achieve an effective solution preventing adverse consequences caused thereby.

(2) In the course of consultations the judicial authority will inform the competent authority of the other member state about the important procedural steps that have been taken and notify further necessary information to this authority upon its request; however, such information will not be provided, if it would imperil substantial national security interest or the security of persons.

(3) Information and requests between the judicial authority and authority of another member state will be exchanged in writing or in any way enabling written recording. Consultations will be conducted in a language agreed upon between the judicial authority and the authority of the other member state.

(4) Provisions of this Chapter are without prejudice to the provisions of Part two Chapter II.

## **Chapter VI**

### **Recognition and Execution of Decisions Imposing Financial Penalty or other Financial Obligation**

#### **Sub-chapter 1**

#### **Recognition and Execution of Decisions of other Member State Imposing Financial Penalty or other Financial Obligation**

#### **Section 261**

(1) According to this Chapter will be proceeded in the course of recognition and execution of final and effective decisions of another Member State, by which

- a) was imposed a financial penalty or fine,
- b) was decided on compensation of a victim of crime,
- c) was imposed an obligation to the person, against whom such decision is directed, to reimburse the costs of proceedings in which the person was sentenced for a criminal offense or penalized for another wrong, for the benefit of the state, or
- d) the person, against whom such decision is directed, was imposed an obligation to pay a financial sum to a public fund or for the benefit of an organization supporting victims,

If it was issued by a court of another member state in criminal proceedings or in cases referred to in Paragraph (a), (c) and (d), even if it was issued by another authority of such state in criminal or other proceedings, under the condition that hearing the case before a court in criminal proceedings can be claimed.

(2) According to this Sub-chapter will be proceed, if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>33</sup>.

#### **Section 262**

#### **Conditions for Takeover of Decisions**

Decision of another Member State will be taken over for the purpose of its recognition and execution, if the person, against whom such decision is directed, has his habitual residence or property in the territory of the Czech Republic. In the course of verification of compliance with the conditions for the takeover, it will be worked on the basis of the matters of fact stated in the certificate and eventually also on the basis of additional information

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<sup>33</sup> Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

provided by the Member State, which has sent the decision for recognition and execution, or ascertained by own investigation.

### **Section 263**

#### Competence

(1) The competence for proceeding pursuant to this Sub-chapter will pertain to the District Court, in the jurisdiction of which stays the person, against whom the decision of the other Member State is directed, and if such place cannot be determined, the competence will pertain to the District Court, in the jurisdiction of which this person has or had the last place of permanent residence; otherwise the competence will pertain to the District Court, in the jurisdiction of which this person has property. In case several courts are competent according to sentence one, the competence will pertain to the court, where the proceedings on recognition and execution were initiated first.

(2) Change of the circumstances decisive for determination of local competence that occurred after initiation of the proceedings will not be taken into account.

(3) If a decision of another Member State was served to an authority no competent according to this Sub-chapter, it will immediately forward the request to the competent court and at the same time it will notify the forwarding to the competent authority of the other Member State that has sent the decision. If the court, to which was the decision forwarded, has doubts concerning its competence, it will proceed pursuant to Section 24 of the Code of Criminal Procedure accordingly.

(4) The Ministry will provide its cooperation upon a request of the authority of another Member State in the course of acquiring the necessary information, in particular in the course of determination of the competent court, to which is the decision of the other Member State to be sent, or in the course of verification of conditions stipulated by the law of the Czech Republic for recognition and execution of such decision.

(5) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of proceedings on recognition and execution of decisions of other Member States and their results.

### **Section 264**

#### Proceedings on Recognition and Execution

(1) Proceedings on recognition and execution of a decision of another Member State are initiated at the moment of service of decision of another Member State along with a certificate to the court, eventually at least the certificate or a decision of another member state with a request for procedure according to this Sub-chapter.

(2) In case the conditions for takeover of a decision of another Member State are not met, the sole judge will terminate the proceedings on recognition and execution of such decision and immediately notify the reasons for its termination to the competent authority of the other Member State, the public prosecutor involved in the case and the defense counsel, if he was selected or appointed.

(3) If the proceeding cannot be continued for a reason, which is not a reason for not recognizing a decision of another Member State, the sole judge will notify this matter of fact to the competent authority of the other Member State and request it to comment on whether it insists on recognition and execution of such decision within a time limit set therefor. If the competent authority of the other Member State does not send its comment within the set time limit or does not state circumstances disproving the reason, for which the proceedings cannot be continued, the sole judge will terminate the proceedings and immediately notify the termination and the reasons therefor to the competent authority of the other member the public prosecutor, if he was already involved in the case, and the defense counsel, if he was chosen or appointed.

### **Section 265**

#### Exceptions from Rule of Double Criminality

In case an act referred to in Paragraph (g) Sub-section 3 of the certificate form<sup>34</sup>, the sole judge will not inspect, for the purposes of deciding whether the decision of the other Member State will be recognized and executed, whether the act fulfills the characteristics of a criminal offense according to the law of the Czech Republic, unless the description of the act or legal qualification stated in the certificate clearly do not correspond to the indicated conduct. Section 268 (2) will not be affected thereby.

### **Section 266**

#### Decision on Recognition and Execution

(1) If the sole judge does not consider a certificate and decision sent by another Member State to be sufficient grounds for a decision on recognition and execution, he will request the competent authority of this Member State to send necessary supplementary information within a time limit set by him. If the other member state does not send the supplementary information within the set time limit without stating substantial reasons therefor, the sole judge will terminate the proceedings and notify the termination to the competent authority of the other Member State, the public prosecutor involved in the case and the defense counsel, if he was selected or appointed. The competent authority of the other Member State must be advised of these consequences.

(2) The sole judge will decide whether the decision of the other Member State will be recognized and executed, or whether it will not be recognized, without an undue delay;

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<sup>34</sup> Annex of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

before making the decision he will request a written opinion of the public prosecutor. If he considers it necessary for making the decision, he will order a public session. If the person, against whom such decision is directed, is in a foreign state in custody, serving an unsuspended sentence of imprisonment or protective measure associated with incarceration, he will not be notified of the public session and the public session will be held in the presence of his defense counsel.

(3) The sole judge will serve the decision on recognition and execution to the person, against whom the decision of another Member State is directed, to the public prosecutor and the defense counsel, if he was selected or appointed. The decision on recognition and execution of a decision referred to in Section 261 (1) (b) or on its non-recognition will be served also to the victim of the criminal offense.

(4) The sole judge will notify the competent authority of the other Member State about the final and effective decision on recognition and execution. In case of recognition of the decision it will also notify it about reducing the amount of financial penalty or fine and in case of non-recognition of the decision also about the reasons for such procedure.

### **Section 267**

#### **Grounds for Non-recognition of Decisions**

(1) The sole judge will not recognize a decision of another Member State, if

- a) recognition and execution of such decision would be contrary to and impediment of res judicata,
  - b) the act does not fulfill the characteristics of a criminal offense according to the law of the Czech Republic, unless a conduct referred to in Section 265 is concerned; in case of criminal offenses related to in case of taxes, customs fees or currency, a decision not to surrender may not be made solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, customs fees or do not contain the same provisions concerning taxes, customs fees or currency, as legal regulations of the Member State in question,
  - c) the person, against whom the decision of the other Member State is directed, enjoys privileges and immunities according to the law of the Czech Republic or according to international law, which make him exempt from jurisdiction of the authorities involved in criminal proceedings,
  - d) the person, against whom the decision of the other Member State is directed, would not have been criminally liable according to the law of the Czech Republic due to his age,
  - e) such decision was issued in proceedings conducted in absence of the person, against whom it is directed, unless further stipulated otherwise,
  - f) the imposed financial penalty or obligation is lower than 70 EUR; a sum stated in another currency will be calculated from the foreign currency to euro according to the foreign exchange rate published by the Czech National Bank on the day this decision was issued,
- or

g) the claim for performance or execution of the penalty imposed by such decision is statute-barred according to the law of the Czech Republic and this decision was issued for an act, prosecution of which lies within the competence of authorities of the Czech Republic according to the law of the Czech Republic.

(2) In case of any doubts about whether or to what extent is the person, against whom the decision of another Member State is directed, exempted from the competence of authorities involved in criminal proceedings, the matter will be decided by the Supreme Court upon a petition of this person, the public prosecutor or the sole judge.

(3) A decision of another Member State may be recognized even if there is a reason for non-recognition referred to in Sub-section (1) €, if the person, against whom such decision is directed

a) was summoned timely and in person and thus informed of the time and place of conducting the court hearing, which lead to issue of the decision, or received an official information about the time and place of conducting the hearing otherwise is such a way that it was unambiguously ascertained, that the person knew about the court hearing and was informed that the hearing may take place and the decision may be rendered in his absence

b) knew about the court hearing and he has assigned his defense counsel which he personally chose or which was appointed to him, to defend him in the court hearing, and the defense counsel has done so,

c) after being personally served and expressly advised on his right for a new hearing of the case or to file an appeal, which would enable him to participate in a new or appeal proceedings, allow a repeated assessment or review of the case and production of new evidence and may lead to a change of the original decision, has expressly waived such right or failed to apply it in the relevant time limit, or has withdrawn the appeal,

(4) The sole judge will not be obliged to recognize a decision of another Member State, if the decision was issued for an act committed

a) fully or in part in the territory of the Czech Republic or outside the territory of the Czech Republic onboard a ship or other vessel or aircraft or other air transport vehicle registered in the Czech Republic; therein he will take into account especially the circumstances of commission of the act, or

b) outside the territory of the state, decision of which is concerned, and according to the law of the Czech Republic it would be impossible to prosecute or otherwise penalize such act, had it been committed outside the territory of the Czech Republic.

(5) Furthermore, the sole judge will not be obliged to recognize a decision of another Member State, if he has not received the decision, if it was not accompanied by a certificate

on the prescribed form<sup>35</sup>, if this certificate is clearly incomplete, if it does not correspond to the contents of the decision it accompanies, or if it is not translated into the Czech language or another language, in which the certificate may be accepted according to the declaration made by the Czech Republic<sup>36</sup>. Before deciding on non-recognition the sole judge will call the competent authority to send it the certificate, its amended wording or translation into the appropriate language within a time limit set by him. At the same time he will advise this authority that if it fails to do so within the set time limit without stating substantial reasons therefor, the sole judge will not recognize the decision.

(6) If there are grounds for non-recognition of a decision of another Member State referred to in Sub-section (1) (g) or (e), the sole judge will always request an opinion of the competent authority of the other Member state before deciding on non-recognition of such decision; the sole judge may request such opinion also if there is another reason for non-recognition.

## **Section 268**

### Recognition

(1) In cases other than referred to in Section 264 (2) or (3) or in Section 266 (1), or if there are no grounds for non-recognition of a decision of another Member State, the sole judge will recognize such decision in the territory of the Czech Republic and at the same will decide that the financial penalty or another financial obligation imposed by this decision will be executed.

(2) If the decision of another Member State imposed a financial penalty, the sole judge will execute the financial penalty as a financial penalty only in case it was imposed by a court of the other Member State for an act, which fulfills the characteristics of a criminal offense according to the law of the Czech Republic. In case the financial penalty was imposed for an act consisting in conduct referred to in Section 265, which does not fulfill the characteristics of a criminal offense according to the law of the Czech Republic, or if it was imposed by another authority than a court, the sole judge will convert the financial penalty to a fine.

(3) In case a decision of another Member State imposed a fine, the sole judge cannot convert it to a financial penalty.

(4) When recognizing a decision of another Member State, the sole judge will keep the financial penalty or other financial performance imposed therein in unchanged amount. In case the act was committed fully outside the territory of the other Member State, decision of which is concerned, and prosecution of the act lies within the competence of the Czech Republic according to the law of the Czech Republic, the sole judge will reduce the amount

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<sup>35</sup> Annex of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

<sup>36</sup> Article 16 (1) of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

of the financial penalty or fine imposed in such decision to the maximum amount, in which it could be imposed, if the case was tried according to the law of the Czech Republic.

(5) The sole judge will recalculate the financial penalty or another financial performance imposed by a decision of another member state from the foreign currency to the Czech currency according to the foreign exchange rate published by the Czech National Bank on the day this decision was issued.

(6) If the decision of another Member State imposed an obligation to pay a financial sum to a public fund or for the benefit of an organization supporting victims of crime, the sole judge will transform this obligation to an obligation to pay this sum to the Czech Republic for financial assistance to victims of crime and will order the person, against whom such decision is directed, to deposit the financial sum to the account of the court within a time limit set by the sole judge.

(7) A substitute sentence of imprisonment for an unexecuted financial penalty may the sole judge impose only in case the Member State, decision of which is concerned, allows this option in the certificate, whereas the extent of the substitute sentence of imprisonment cannot exceed the extent set by this state in the certificate and at the same time it cannot exceed the upper limit of a substitute sentence of imprisonment stipulated in the Criminal Code.

### **Section 269**

#### Complaint Proceedings

(1) A complaint is admissible against a decision according to Section 267 (1) and (3) to (5) or Section 268, which has a dilatory effect. The complaint cannot contest the reasons, for which the decision of another Member State was issued.

(2) The court deciding on the complaint will repeal the contested decision and terminate the proceedings, if it finds a reason referred to in Section 264 (2) or (3). If it finds a reason referred to in Section 264 (3), it will at first notify the competent authority of the other Member State and request it for a comment, whether it insists on recognition and execution of such decision within a time limit set therefor. If the competent authority of the other Member State does not send its comment within the set time limit or does not state circumstances disproving the reason, for which the proceedings cannot be continued, the proceedings will be terminated.

### **Section 270**

#### Execution of Recognized Decision

(1) Unless further stipulated otherwise, the court will proceed



- a) in the course of execution of a financial penalty or exaction of fine pursuant to provisions of Chapter twenty one of the Code of Criminal Procedure regulating execution of financial penalty or exaction disciplinary fine accordingly,
- b) in the course of exaction of costs of proceedings incurred to the state pursuant to the provisions of the Code of Criminal Procedure regulating exaction of the costs of criminal proceedings set by a lump-sum accordingly.

(2) If the person, against whom the decision of another Member State is directed, fails to deposit a financial sum to the account of the court within the set time limit according to Section 368 (6), the court will proceed in the course of administration of payment of this sum according to the Tax procedure Code.

(3) The victim of crime will apply his claim for compensation in civil law proceedings.

(4) If the person, against whom the decision of another Member State is directed, proves that he has fully or partially paid the financial penalty or another financial obligation in another state, the sole judge will decide to fully or partially waive execution of such decision. Before making the decision the sole judge will request an opinion if the competent authority of the other Member State; in case of need he may request it to immediately send supplementary information. A complaint is admissible against this decision, which has a dilatory effect.

(5) As soon as the competent authority of the other Member State notifies the court about an amnesty, pardon or another decision or measure, as a result of which the recognized decision became unenforceable, the sole judge will take measures directed towards waiver of execution of the recognized decision of the other Member State. In this case the sole judge will request the competent authority of the other Member State for information, whether the amnesty, pardon or other decision or measure have such effect in this other Member State, that the person is considered as if he was never convicted; if it has such effects, the person will be regarded as such also in the Czech Republic. If the recognized decision was finally and effectively repealed in the foreign state, the court will repeal its decision on recognition of this decision.

(6) The sole judge will immediately decide which part of the recognized decision will be executed as soon as the authority of the other Member State notifies it about an amnesty, pardon or another decision or measure, as a result of which the recognized decision became partially unenforceable. A complaint is admissible against this decision, which has a dilatory effect.

### **Section 271** Information Duty

(1) The sole judge will notify the competent authority of another Member State without an undue delay about

- a) termination or waiver of execution of the recognized decision according to the legal regulations of the Czech Republic regulating execution of decisions, including the reasons for such procedure,
- b) waiver or partial waiver of execution of the recognized decision according to Section 270 (4) to (6),
- c) execution of the recognized decision, and
- d) ordering execution of a substitute sentence of imprisonment.

(2) The sole judge will notify the competent authority of the other Member State about other matters of fact, if he considers it necessary in view of securing appropriate execution of the recognized decision.

## **Section 272**

### Sharing Finances with other Member States

(1) Finances acquired by execution of a recognized decision of another Member State referred to in Section 261 (1) (a), (c) and (d) will belong to the Czech Republic. Financial means acquired by execution of a recognized decision of another Member State referred to in Section 261 (1) (b) will belong to the victim of the criminal offense.

(2) The Czech Republic may agree with the other Member State to share the finances acquired by execution of the recognized decision of this Member State. The Ministry of Finance will be competent to negotiate this agreement; the petition for entering such agreement may be filed by the court, which decided on recognition and execution of the decision of the other Member State in the first instance. The court will provide the Ministry of Finance upon its request the necessary cooperation for the purposes of reaching the agreement.

(3) Costs of proceedings on recognition and execution of decisions of other Member States will be borne by the Czech Republic

## **Sub-chapter 2**

### Securing Execution of Decisions Imposing Financial Penalty or other Financial Obligation in other Member States

## **Section 273**

(1) According to this Sub-chapter may be proceeded when sending another Member State a final and effective decision of court for recognition and execution, which imposes a financial penalty or stipulates an obligation of the convict to reimburse the costs of criminal proceedings for the benefit of the state.

(2) Provisions of this Sub-division will be applied accordingly also for securing execution of a decision of an authority involved in criminal proceedings, which imposes a disciplinary fine, in another Member State.

(3) According to this Sub-chapter will be proceed, if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>37</sup>

### **Section 274**

#### Sending Decisions for Recognition and Execution

(1) If it is necessary for securing appropriate execution of a decision, the court, which decided the case in the first instance, may send this decision to another Member State for the purpose of its recognition and execution, if it can be reasonably expected that the convict has property in this state, or into another Member state, in which he has his habitual residence.

(2) If the decision may be sent to several Member States, the court will send it to the state, where its successful execution can be most probably expected.

(3) The court will send the decision to the competent authority of another Member State along with a certificate on the prescribed form<sup>37</sup>, translated into the official language or languages of this Member State, or into a language, in which is this state willing to accept the certificate according to its declaration<sup>38</sup>. The decision along with the certificate may be withdrawn at any time.

(4) The Ministry will provide its cooperation upon a request of the court in the court of acquiring the necessary information, in particular concerning the identification of the competent authority of the other Member State, to which is the decision being sent, or in the course of verification of the conditions stipulated by the law of this Member State for recognition and execution of such decision.

(5) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of decisions sent to other Member States for recognition and execution and their results, and on the results of proceedings on recognition and execution of these decisions in other Member States.

### **Section 275**

#### Information Duty

(1) The court will provide the competent authority of another Member State upon its request additional information and supplementations necessary for the purposes of recognition and execution of decisions.

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<sup>37</sup> Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

<sup>38</sup> Annex of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

(2) The court will immediately notify the competent authority of another Member State about the fact that the person, against whom is the decision directed, was granted amnesty or pardon in the Czech Republic, or about another decision, measure or matter of fact, as a result of which the decision became unenforceable or only partially enforceable, including the fact that the person has already paid the full financial sum, reimbursement of which was imposed, or a portion thereof.

### **Section 276**

#### Consequences of Sending Decisions for Recognition and Execution

(1) If a decision of court was sent to another Member State for the purpose of its recognition and execution, it may be executed in the Czech Republic only if

- a) the decision was not recognized or executed in this Member State; however, the right for execution of such decision does not pass to the Czech Republic in case the decision was not recognized or executed by the competent authority of the other Member State because of an impediment of res judicata, or
- b) the court has withdrawn the decision along with the certificate back from the other Member State.

(2) The right to execute the decision will pass back to the Czech Republic in the extent, in which this decision was not executed in the other Member State.

### **Section 277**

#### Sharing Finances with other Member States

The Ministry of Finance will be competent to enter an agreement with another Member State on sharing finances acquired by the other Member State by execution of a decision of court of the Czech Republic; the petition for entering such an agreement may be filed by the court that decided the case in the first instance. The court will provide the Ministry of finance upon its request the necessary cooperation for the purposes of entering the agreement.

## **Chapter VII**

### Recognition and Execution of Decisions Imposing Confiscation or Forfeiture of Assets, Items or other Asset Values

#### **Sub-chapter 1**

#### Recognition and Execution of Decisions of other Member States Imposing Confiscation or Forfeiture of Assets, Items or other Asset Values

### **Section 278**

(1) According to this Sub-chapter will be proceeded in the course of recognition and execution of a final and effective decision of court of another Member State issued in criminal proceeding, which imposed

- a) confiscation of forfeiture of items or other asset values obtained by a criminal offense or as a reward therefor, or was, event partially, acquired for an item or other asset value obtained by a criminal offense or as a reward therefor, or which is an equivalent value for an item or other asset value, which the court may declare confiscated or forfeited, or
- b) confiscation or forfeiture of items or other asset values intended or used to commit a criminal offense.

(2) According to this Sub-chapter will be proceeded also in the course of recognition and execution of a final and effective decision of court of another Member State issued in Criminal Proceedings, which imposed confiscation of property of a perpetrator convicted for conduct fulfilling the characteristics of a criminal offense of terrorist attack (Section 311 of the Criminal Code) or for conduct committed within an organized criminal group, consisting in

- a) counterfeiting currency or payment means,
- b) legalization of proceeds of crime and participation,
- c) trafficking in human beings,
- d) facilitation of illegal crossing of state border, illicit transportation through the territory of the state and unauthorized stay,
- e) sexual abuse of children and child pornography,
- f) unauthorized trade in narcotic and psychotropic substances,

it the perpetrator acquired or tried to acquire proprietary profit by this conduct, and this conduct is punishable according to the law of the Member State, a court of which has issued the decision, by an unsuspended sentence of imprisonment with the upper limit of at least 5 years; in case of conduct referred to in paragraph (b) will suffice the upper limit of at least 4 years<sup>39</sup>.

(3) According to this Sub-chapter will be proceeded also in the course of recognition and execution of a final and effective decision of court of another Member State issued in criminal proceedings, imposing confiscation or forfeiture of property not referred in Sub-section (1) and (2), if confiscation of such property could be ordered in criminal proceedings also according to the law of the Czech Republic.

(4) According to this Sub-chapter will be proceeded, if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>40</sup>.

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<sup>39</sup> Articles 2 and 3 of the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

<sup>40</sup> Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

## **Section 279**

### Conditions for Takeover of Decisions

Decision of another Member State will be taken over for the purpose of its recognition, if the person, against whom such decision is directed, has his habitual residence in the territory of the Czech Republic, or if a legal entity is concerned, its registered office or property. In the course of verification of compliance with the conditions for the takeover, it will be worked on the basis of the matters of fact stated in the certificate and eventually also on the basis of additional information provided by the Member State, which has sent the decision for recognition and execution, or ascertained by own investigation.

## **Section 280**

### Competence

(1) The competence to proceed according to this Sub-chapter will pertain to the District Court, in the jurisdiction of which stays the person, against whom is the decision of another Member State directed, and if such a place cannot be determined, the competence will pertain to the District Court, in jurisdiction of which this person has or had his last permanent residence; in case of a legal entity the competence will pertain to the District Court, in jurisdiction of which it has its registered office. If the competence of court cannot be determined according to sentence one, the competence will pertain to the District Court, in jurisdiction of which is located the property concerned by the decision. In case competence of several courts is established, the competence will pertain to the court, where the proceedings on recognition and execution were initiated first.

(2) Change of circumstances decisive for determination of local competence that occurred after the initiation of proceedings will not be taken into account.

(3) In case a decision of another Member State was sent to an authority not competent according to this Sub-chapter, this authority will immediately forward it to the competent court and at the same time will notify the forwarding to the competent authority of the other Member State which has sent it the decision. If the court, to which was the decision forwarded, has any doubts about its competence, it will proceed pursuant to Section 24 of the Code of Criminal Procedure accordingly.

(4) The Ministry will provide the authority of the other Member State upon its request cooperation in the course of acquiring necessary information, in particular concerning determination of the competent court, to which is the decision of the other Member State to be sent, or in the course of verification of conditions stipulated by the law of the Czech Republic for recognition and execution of such decision.

(5) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of proceedings on recognition and execution of decisions of other Member States and results thereof.

## **Section 281**

### Proceedings on Recognition and Execution

(1) Proceedings on recognition and execution of a decision of another Member State will be initiated at the moment the decision of another Member State is served to the competent court along with a certificate, eventually at least the certificate or a decision of another Member State with a request for proceeding according to this Sub-chapter. If the property concerned by confiscation or forfeiture is not seized, the sole judge will call the competent authority of the other Member State to request freezing of such property or issue an order for its freezing.

(2) If the conditions for takeover of a decision of another Member State are not met, the sole judge will terminate the proceedings on recognition and execution of such decision and notify the termination and the reasons therefor to the competent authority of the other Member State, the public prosecutor, if he was already involved in the case and the defense counsel, if he was selected or appointed.

(3) If the proceedings cannot be continued for a reason, which does not constitute grounds for non-recognition of the decision, the sole judge will notify this matter of fact to the competent authority of the other Member State and request it to comment, whether it insists on recognition and execution of the decision, within a time limit set for this purpose. If the competent authority of the other Member State fails to send its comment within the set time limit or fails to state circumstances disproving the reason, for which the proceedings cannot be continued, the sole judge will terminate the proceedings and immediately notify the termination and reasons therefor to competent authority of the other Member State, the public prosecutor, if he was already involved in the case and the defense counsel, if he was selected or appointed.

## **Section 282**

### Exceptions from the Rule of Double Criminality

In cases, where an act, for which another Member State may impose an unsuspended sentence of imprisonment with the upper limit of at least 3 years and which consists in conduct, which judicial authorities of the other Member State indicate in Paragraph (i) of Section 2.3 of the certificate form<sup>41</sup> is concerned, the judicial authority will not inspect, whether the act fulfills the characteristics of a criminal offense according to the law of the Czech Republic, unless the description of the act or legal qualification stated in the certificate clearly do not correspond to the indicated conduct.

## **Section 283**

### Decision on Recognition and Execution

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<sup>41</sup> Annex of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

(1) In case the sole judge does not consider a certificate and decision sent by another Member State to be sufficient grounds for a decision on recognition and execution, he will request the competent authority of this Member State to send it the necessary supplementary information within a time limit set therefor. If the other Member State fails to send the supplementary information within the set time limit without stating substantial reasons therefor, the sole judge will terminate the proceedings and notify the termination to the competent authority of the other Member State, the public prosecutor, if he was already involved in the case and the defense counsel, if he was selected or appointed. The competent authority of the other Member State must be advised of these consequences.

(2) The sole judge will decide without an undue delay, whether a decision of another Member State will be recognized and executed, or whether it will not be recognized; before making the decision he will request a written opinion of the public prosecutor. If the sole judge deems it necessary for the purposes of making the decision, he will order a public session. If the person, against whom such decision is directed, is in a foreign state in custody, serving an unsuspended sentence of imprisonment or a protective measure associated with incarceration, the person will not be notified about the public session and the public session will be held in the presence of his defense counsel. The decision of the sole judge will be served to the person, against whom the decision of the other Member State is directed, to the public prosecutor and to the defense counsel, if he was selected or appointed.

(3) The sole judge will notify the competent authority of the other Member State about the final and effective decision on recognition and execution. In case the decision is recognized, the sole judge will request the competent authority of the other Member State to inform him, which authority is competent to share the confiscated or forfeited property and in case the decision is not recognized, he will state the reasons for such procedure.

## **Section 284**

### **Grounds for Non-recognition of Decisions**

- (1) The sole judge will not recognize a decision of another Member State, if
- a) recognition and execution of such decision would be contrary to an impediment of res judicata,
  - b) the act does not fulfill the characteristics of a criminal offense according to the law of the Czech Republic, unless conduct referred to in Section 282 is concerned; in case of criminal offenses related to taxes, fees, customs fees or currency, the decision not to recognize a decision of another Member State cannot be made solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, customs fees or do not contain the same provisions concerning taxes, customs fees or currency, as legal regulations of the Member State in question,
  - c) the property concerned by confiscation or forfeiture is not subject to confiscation or forfeiture according to other legal regulations,



- d) the person, against whom the decision of another Member State is directed, enjoys privileges or immunities according to the law of the Czech Republic or international law, which exempt him from jurisdiction of authorities involved in criminal proceedings,
- e) execution of such decision is prevented by rights of third persons,
- f) such decision was issued in proceedings conducted in the absence of the person, against whom it is directed, unless further stipulated otherwise,
- g) the property concerned by the confiscation or forfeiture has already been confiscated or forfeited, lost or destroyed or cannot be found in the location referred to in the certificate, or such location is not marked in the certificate with sufficient accuracy,
- h) the sentence or protective measure related to confiscation or forfeiture of property imposed by the decision of the other Member State, has already been fully executed in another state or the person, against whom the decision of the other Member State is directed has already voluntarily paid the required financial sum in another state, or
- i) execution of the sentence imposed by such decision is statute barred according to the law of the Czech Republic and such decision has been issued for an act, prosecution of which lies within the competence of the authorities of the Czech Republic according to the law of the Czech Republic.

(2) In case of any doubts about whether or to what extent is the person concerned by the extradition exempted from jurisdiction of authorities involved in criminal proceedings, the Supreme Court will decide the matter upon a petition of this person, the public prosecutor or court.

(3) A decision of another Member State may be recognized even if there is a reason for non-recognition referred to in Sub-section (1) (f), if the person, against whom such decision is directed,

- a) was timely summoned in person and thus informed of the time and place of conducting the court hearing, which lead to issue of the decision, or received an official information about the time and place of conducting the hearing otherwise is such a way that it was unambiguously ascertained, that the person knew about the court hearing and was informed that the hearing may take place and the decision may be rendered in his absence,
- b) knew about the court hearing and he has assigned his defense counsel which he personally chose or which was appointed to him, to defend him in the court hearing, and the defense counsel has done so,
- c) has expressly waived such right or failed to apply it in the relevant time limit, or has withdrawn the appeal, after being personally served and expressly advised on his right for a new hearing of the case or to file an appeal, which would enable him to participate in a new or appeal proceedings, allow a repeated assessment or review of the case and production of new evidence and may have led to a change of the original decision.

(4) The sole judge does not have to recognize a decision of another Member State, if it is a decision

- a) issued for an act committed fully or in part in the territory of the Czech Republic or outside the territory of the Czech Republic onboard a ship or other vessel or aircraft or other air transport vehicle registered in the Czech Republic; therein he will take into account especially the circumstances of commission of the act, or
- b) issued for an act committed outside the territory of the state, decision of which is concerned, and according to the law of the Czech Republic it would be impossible to prosecute or otherwise penalize such act, had it been committed outside the territory of the Czech Republic,
- c) referred to in Section 278 (2), in the extent in which confiscation or forfeiture of such property cannot be ordered in similar proceedings conducted in the Czech Republic, or
- d) referred to in Section 278 (3).

(5) Furthermore, the sole judge does not have to recognize a decision of another Member State, if he has not received the decision, the decision was not accompanied by a certificate on the prescribed form<sup>42</sup>, this certificate is clearly incomplete, it does not correspond to the contents of the decision, to which it is attached, or if it is not translated into the Czech language or into another language, in which the certificate may be accepted according to the declaration of the Czech Republic<sup>43</sup>. Before making the decision on non-recognition, the sole judge will call the competent authority of the other Member State, to send it the certificate, its amended wording or translation into the relevant language within a time limit set therefor. At the same time he will advise the competent authority that if it fails to do so within the set time limit without stating substantial reasons which prevented it from doing so, the decision will not be recognized.

(6) If there is a reason for non-recognition of a decision of another Member State referred to in Sub-section (1) (a), (e), (f), (g) or (h) or in Sub-section 4 (a) or (b), the sole judge will always request an opinion of the competent authority of the other Member State before deciding not to recognize the decision, such opinion may be requested also if there is another reason for non-recognition.

## **Section 285**

### **Recognition**

(1) Unless a case referred to in Section 281 (2) or (3) or in Section 283 (1) is concerned, or if there is no reason for non-recognition or for suspension of recognition and execution of a decision of another Member State, the sole judge will recognize such decision in the territory of the Czech Republic and at the same time will decide that the sentence or protective measure imposed by this decision will be executed; therein, Section 124 (2) to (4) will apply accordingly.

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<sup>42</sup> Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

<sup>43</sup> Article 19 (2) of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

(2) In case the object of confiscation or forfeiture is a financial sum, the sole judge will recalculate it from the foreign currency to Czech currency according to the foreign exchange rate published by the Czech National Bank on the day the decision of the other Member State was issued.

(3) In case the sole judge is informed, before he recognizes a decision of another Member State, that the sentence or protective measure related to confiscation or forfeiture of property has already been partially executed in another state, or about other matter of fact, as a result of which the decision of the other Member State became partially unenforceable, he will recognize the decision of the other Member State in the remaining extent. In this case he will stipulate in the decision, which proportional part of the sentence or protective measure will be executed in the Czech Republic. Before deciding on the partial recognition and execution of a decision of another Member State the sole judge will request an opinion of the competent authority of the other Member State, whether it consents to such procedure, or whether it will withdraw the decision with the certificate.

### **Section 286**

#### Concurrence of Decisions of other Member States

(1) If the sole judge conduct simultaneous proceedings on recognition and execution of two or more decisions of other Member States imposing confiscation or forfeiture of the same item or other asset value or confiscation or forfeiture of a financial sum belonging to the same person, property of which is not sufficient for execution of all decisions of other Member States, he will assess the conditions for recognition and execution of all such decisions. If these conditions are fulfilled in case of several such decisions, he will determine, which decision will be recognized and executed, and at the same time he will recognize this decision and decide on its execution. Therein he will consider all decisive matters of fact known to him, in particular the rights of aggrieved persons, seriousness and place of commission of the criminal offenses, dates of issue and service of decisions of the other Member States, as well as the fact, whether the property in question has been seized in any of the criminal proceedings, for the purposes of which is the property to be confiscated or forfeited.

(2) The sole judge will notify the competent authorities of all other Member States concerned about its decision.

### **Section 287**

#### Suspension of Recognition and Execution

(1) The sole judge may suspend recognition and execution of a decision of another Member State, if

a) the gathered information imply that given the concurrent execution of a decision of another Member State in several states, the total financial sum collected by execution of the recognized decision in several states could exceed the sum stated in such decision,

- b) its recognition and execution could obstruct criminal proceedings conducted in the Czech Republic,
- c) there is a criminal proceeding being conducted in the Czech Republic, which can be assumed to lead to confiscation, forfeiture, distraintment or another permanent deprivation of property, confiscation or forfeiture of which is concerned.

(2) As soon as the reason for suspension of recognition and execution of a decision passes, the sole judge will continue in the proceedings on recognition and execution of another Member State.

(3) The sole judge will immediately notify the competent authority of the other Member State on suspension of recognition and execution of the decision, including the reasons for the suspension and its expected duration, if it can be estimated, and about the fact that the reasons for suspension of recognition and execution have passed.

### **Section 288**

#### Complaint Proceedings

(1) A complaint is admissible against the decision according to Section 284 (1) and (3) to (5) and according to Section 285 or according to Section 286 (1), which has a dilatory effect. The complaint cannot contest the reasons, for which the decision of another Member State was issued.

(2) The sole judge will notify the competent authority of the other Member State about filing the complaint without an undue delay.

(3) The court deciding on the complaint will repeal the contested decision and terminate the proceedings, if it finds a reason referred to in Section 281 (2) or (3). If it finds a reason referred to in Section 281 (3), it will at first notify this matter of fact to the competent authority of another Member State and request it to comment, whether it insists on recognition and execution of such decision within a time limit stipulated therefor. The proceedings will be terminated, if the competent authority of the other Member State fails to send its comment within the time limit or fails to state circumstances disproving the reasons that prevent continuing the proceedings.

### **Section 289**

#### Execution of Recognized Decision

(1) Unless further stipulated otherwise, in the course of execution of a sentence or protective measure it will be proceeded pursuant to Chapter twenty one of the Code of Criminal Procedure accordingly. If it is not clear from the decision, the sole judge will notify the organizational unit if the state competent to administer the property of the Czech Republic according to the Act on Property of the Czech Republic and its Representation in Legal Relations, about the fact that the property concerned has been confiscated or seized on the basis of a recognized decision of another Member State, and will state when the decision

came into full force and effect. In case shared property according to Section 290 is concerned, the sole judge will at the same time notify this organizational unit, to which authority of the other Member State should the state send the corresponding portion of the shared property.

(2) The sole judge will notify the competent authority of the other Member State without an undue delay of all matters of fact impeding the execution of a recognized decision of the other Member State.

(3) Furthermore, the sole judge will immediately notify the competent authority of the other Member State about confiscation or forfeiture of property and at the same time will advise it, that unless it is informed within 3 months from the full force and effect of the decision on recognition and execution of the decision of the other Member State about a reason preventing confiscation or forfeiture of such property or its portion, such property will be further disposed with as the property of the Czech Republic in compliance with its law, and in case of payment of compensation of damage incurred to a person, against whom the decision of the other Member State is directed, the Czech Republic will claim reimbursement of the financial sum it paid as compensation of damage to such person according to the Act on Liability for Damage Caused in Execution of Public Authority by a Decision or Incorrect Official Procedure.

(4) If the competent authority of the other Member State sends information on a reason preventing confiscation or forfeiture of the property or its portion within the set time limit, in particular that the sentence or protective measure have already been fully or partially executed in another state or that the person, against whom the decision of the other Member State is directed, voluntarily paid the required sum, the sole judge will immediately notify this matter of fact to the organizational unit of the state referred to in Sub-section (1). Subsequently, the sole judge will repeal his previous decision on recognition and surrender of the decision of the other Member State. In case the stated reason applies only to a portion of the confiscated or forfeited property, the sole judge will recognize the decision of the other Member State in the remaining extent after repealing his previous decision. The sole judge will serve the repealing decision and eventually also the new decision on recognition and execution of the decision of the other Member State in the remaining extent to the person, against whom the decision of the other Member State is directed, to the public prosecutor, the defense counsel, if he was selected or appointed, to the organizational unit of the state referred to in Sub-section (1) and to the competent authority of the other Member State.

(5) If the competent authority of the other Member State notifies the sole judge before the end of the set time limit that there is no reason impeding the confiscation or forfeiture of such property or its portion, the sole judge will immediately notify this matter of fact to the organizational unit of the state referred to in Sub-section (1).

## **Section 290**

## Sharing Confiscated or Forfeited Property with another Member State

(1) In case a financial amount not exceeding 10 000 EUR was confiscated or forfeited on the basis of a recognized decision of another Member State, this sum will belong to the Czech Republic.

(2) In case a financial amount exceeding 10 000 EUR was confiscated or forfeited on the basis of a recognized decision of another Member State, half of this financial sum will belong to the Czech Republic and half will belong to the other Member State that issued the decision, which has been recognized and executed.

(3) Item or other asset value not referred to in Sub-section (1) and (2) that was confiscated or forfeited on the basis of a recognized decision of another Member State will be sold, if it is not a part of the national cultural treasure of the Czech Republic or another state. Concerning the financial sum obtained by the sale will be proceeded pursuant to Sub-section (1) and (2) accordingly.

(4) In case the property cannot be sold due to its nature or for other reasons, it will belong to the Czech Republic. An item, which is a part of cultural treasure of another Member State, will be disposed with according to the Act on returning Illegally Exported Cultural Assets.

(5) Provisions of Sub-sections (1) to (4) and Section 291 will apply, unless the Czech republic agrees otherwise with another Member State concerning sharing of property or reimbursement of costs of proceedings. Competence for entering the agreement will pertain to the Ministry of Finance; a petition for entering such agreement may be filed by the court that decided on recognition and execution of the decision of the other Member State in the first instance. The court will provide the Ministry of finance upon its request the necessary cooperation for the purposes of entering the agreement.

(6) The confiscated or forfeited property, which is subject to sharing, will be disposed with, in particular sent to the competent authority of the other Member State, by the organizational unit of the state competent to administer the property of the Czech Republic.

### **Section 291**

#### Costs of Proceedings

Costs of proceedings on recognition and execution of a decision of another Member State will be borne by the Czech Republic.

### **Sub-chapter 2**

Securing Execution of Decisions Imposing Confiscation or Forfeiture of Property, Items or other Asset Values in other Member States

### **Section 292**

(1) According to this Sub-chapter may another Member State be sent a final and effective decision of court for the purpose of recognition and execution, by which

- a) was imposed a sentence of confiscation of property,
- b) was imposed a sentence of confiscation of an item or other asset value or confiscation of an equivalent value for proceeds of crime, or
- c) was ordered forfeiture of an item or other asset value or forfeiture of an equivalent value for proceeds of crime.

(2) According to this Sub-chapter will be proceeded, if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>44</sup>.

### **Section 293**

#### **Sending Decisions for Recognition and Execution**

(1) If it is necessary for securing appropriate execution of a decision, the court that decided the case in the first instance may send this decision to a competent authority of another Member State for the purpose of its recognition and execution, if it can be reasonably expected that the person, whose property is subject to the confiscation or forfeiture, has property concerned by the decision. If it is unknown, in which Member State the person concerned has his property, the decision may be sent to the Member State, in which he has his habitual residence or in case of a legal entity, its registered office.

(2) The court may send the decision to several Member States, if such decision imposes confiscation or forfeiture of

- a) items or other asset values, which can be reasonably assumed to be located several Member States,
- b) items or other asset values, concerning which there are proceedings being conducted in several states,
- c) items or other asset values, which can be reasonably assumed to be located one of several Member States, or
- d) finances, and the finances in the corresponding amount have not been seized for these purposes in another Member State.

(3) The court will send the decision to the competent authority of another Member State along with a certificate on the prescribed form<sup>45</sup> translated into the official language or one of the official languages of this Member State, or into a language in which is this Member State willing to accept the certificate according to its declaration<sup>46</sup>. At the same time the court will state, which organizational unit of the state, competent to administer the property of the Czech Republic according to the Act on the Property of the Czech Republic and its

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<sup>44</sup> Articles 2 and 3 of the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

<sup>45</sup>

<sup>46</sup>

Representation in Legal Relations, is to receive a portion of the shared property, in case the decision is recognized and executed in the other Member State. If the court sent the decision to several Member States for the purpose of recognition and execution, he will notify this fact to all the concerned states.

(4) Sending the decision to another Member State does not preclude execution of such decision in the Czech Republic.

(5) The Ministry will provide, upon a request of the court, its cooperation in ascertaining the necessary information, in particular in the course of identification of the competent authority of the other Member State, to which is the decision to be sent, or in the course of verification of conditions stipulated by the law of this other Member State for recognition and execution of such decision.

(6) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of decisions sent to other Member States for recognition and execution and their results, and on the results of proceedings on recognition and execution of these decisions in other Member States.

#### **Section 294**

##### **Information Duty**

(1) The court will provide the competent authority of another Member State upon its request additional information and supplementations necessary for the purposes of recognition and execution of decisions.

(2) If the court sent a decision into one or more Member States and on the basis of ascertained information it reasonably believes that such decision has already been or will shortly be fully or partially executed in the Czech Republic or in another state, it will immediately notify this matter of fact to the competent authorities of other Member States, including the expected extent of execution of the decision. The court will immediately inform these states also about the fact the expected execution of the decision in the Czech Republic or in the stated Member State was not realized, or was realized in a different extent.

(3) The court will immediately notify the competent authority of another Member State about the fact that the person, against whom is the decision directed, was granted amnesty or pardon in the Czech Republic, or about another decision, measure or matter of fact, as a result of which the decision became unenforceable or only partially enforceable.

#### **Section 295**

##### **Sharing Property Confiscated or Forfeited in another Member State**



(1) The Czech Republic will share the property, which was confiscated or forfeited in another Member State on the basis of a decision of court of the Czech Republic, with this state in a way stipulated by the law of this other Member State, unless agreed otherwise.

(2) The competence for entering an agreement with another Member State on sharing which was confiscated or forfeited in this state on the basis of a decision of court of the Czech Republic, will pertain to the Ministry of Finance; petition for entering such agreement may be filed by the court that decided the case in the first instance. The court will provide the Ministry upon its request the necessary cooperation for the purposes of entering the agreement.

(3) As soon as the competent authority of another Member State notifies the court that its decision has been recognized and executed, the court will immediately communicate this matter of fact to the organizational unit of the state, competent to administer the property of the Czech Republic. This organizational unit will then take over the property shared with the other Member State.

### **Sub-chapter 3** Claims of Recourse

#### **Section 296** Claims of recourse of another Member State

(1) Upon a request of another Member State, which has recognized and executed a decision of court of the Czech Republic, The Ministry will reimburse a financial sum paid by this state in compliance with its law as compensation of damage to a certain person in the extent, in which the damage was caused by unlawful decision of court of the Czech Republic.

(2) In case the request of the other Member State does not contain the necessary information, the Ministry will call the competent authority of this state to supplement it and set a reasonable time limit therefor. Therein the Ministry will always advise it on the consequences of failure to comply with tis call. If the competent authority fails to comply with this call within the set time limit without stating substantial reasons which prevented it from doing so, the request will be refused.

#### **Section 297** Claims of Recourse against another Member State

(1) The Ministry will be entitled to request another Member State to reimburse a financial sum paid by the Ministry as compensation of damage according to the Act on Liability for Damage Caused in Execution of Public Authority by a Decision or Incorrect Official Procedure in the extent in which the damage was caused by procedure this state.

(2) The claim for reimbursement of the paid compensation of damage will be applied in the form of a request to the competent authority of the other Member State in compliance with the law of this state.

## **Chapter VIII**

### **Recognition and Execution of Decisions Imposing Unsuspended Sentence of Imprisonment or Protective Measure Associated with Incarceration**

#### **Sub-chapter 1**

##### **Recognition and Execution of Decision of another Member State Imposing Unsuspended Sentence of Imprisonment or Protective Measure Associated with Incarceration**

#### **Section 298**

(1) According to this Sub-chapter will be proceeded in the course of recognition and execution of a final and effective decision issued by court of another Member State in criminal proceedings, which imposed an unsuspended sentence of imprisonment of protective measure associated with incarceration.

(2) According to this Chapter will be proceeded, if another Member State applies legal regulations for execution of the applicable regulation of the European Union<sup>47</sup>.

#### **Section 299**

##### **Conditions for Takeover of Decisions**

(1) Decision of another Member State will be taken over for the purposes of its recognition and execution under the conditions referred to in Section 300 (1), if the person, against whom such decision is directed, is located in this other Member State or in the Czech Republic, if he is a citizen of the Czech Republic, and

- a) if he has his habitual residence in the territory of the Czech Republic, or
- b) if he does not have his habitual residence in the territory of the Czech Republic, but after serving the sentence or protective measure he is to be expelled and deported to the Czech Republic on the basis of a final and effective decision issued in trial or other proceedings or as a result of a measure issued as a result of such decision.

(2) If the court does not consider the takeover of the decision in cases referred to in Sub-section (1) as appropriate and purposeful in view of securing successful integration of the person, against whom is the decision directed, into society, or in view of his successful treatment, it will notify the competent authority of the other Member State thereof and state

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<sup>47</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

reasons therefor; if the competent authority of the other Member State insists on taking over the decision, the decision will be taken over.

(3) Decision of another Member State may be taken over for the purpose of its recognition and execution even if the conditions referred to in Sub-section (1) are not met, if the person, against whom such decision is directed, stays in the territory of this Member State or in the territory of the Czech Republic and if he consents to with the takeover of the decision of court of this Member State for recognition and execution in the Czech Republic for the reason of appropriateness and purposefulness of such procedure, if securing a successful integration of this person into the society or securing his successful treatment is concerned. Before granting or refusing the consent the court will request an opinion of the Ministry. The presiding judge will notify the competent authority of the other Member State, whether the court consents to the takeover of its decision and state the reasons therefor.

(4) Upon a request of the person, against whom such decision is directed, or event without such request, the court may request the competent authority of the other Member State to send it the decision for recognition and execution, if this person is staying in the territory of the Czech Republic or if it can be reasonably expected that he intends to stay there, and if the court considers such procedure appropriate and purposeful in view of securing successful integration of the person into society or in view of securing his successful treatment. In cases not referred to in Sub-section (1) the court will request an opinion of the Ministry before filing the request.

### **Section 300**

(1) Decision of another Member State may be taken over into the Czech Republic for the purpose of its recognition and execution only if the person, against whom such decision is directed, granted his consent to its sending to the Czech Republic; such consent will not be required

- a) in case referred to in Section 299 (1) (a),
- b) in case of a person, who is to be expelled and deported to the Czech Republic on the basis of a final and effective judgment issued in trial or other proceedings or as a result of a measure issued as a result of such decision.
- c) in case of a person, who fled into the Czech Republic or returned, despite the fact that there was criminal proceeding being conducted against him in another Member State and in this proceeding was then issued a decision, which is to be recognized and executed in the Czech Republic,
- d) in case of a person, who fled into the Czech Republic or returned after being sentenced by a convicting decision in another Member State, which is to be recognized and executed in the Czech Republic

(2) In case the competent authority of the other Member State has sent into the Czech Republic on the prescribed form<sup>48</sup> a notification for the person, against whom the decision of the other Member State is directed, on transferring the decision for recognition and execution to the Czech Republic, and this person is in the territory of the Czech Republic, the court will serve him the notification without an undue delay. In case a decision on taking the person into recognition custody will be made, the notification will be served when deciding on the recognition custody, not before.

(3) In case consent of the person concerned is not required for takeover of the decision, the court will take his opinion into account, if it is known, when considering the takeover of such decision.

### **Section 301** Competence

(1) The competence to proceed according to this Sub-chapter will pertain to the Regional Court, in the jurisdiction of which the person, against whom the decision of another Member State is directed, stays, and if such place cannot be identified, the competence will pertain to the Regional Court, in the jurisdiction of which the person has or had his last permanent residence; otherwise the competence will pertain to the Regional Court in Prague. Change of circumstances decisive for determination of local competence that occurred after initiation of the proceedings, will not be taken into account.

(2) Provision of Sub-section (1) is without prejudice to special competence of court in execution proceedings according to Chapter twenty one of the Code of Criminal Procedure.

(3) If the decision of another Member State was served to an authority not competent to proceed according to this Sub-chapter, it will immediately forward it to the competent court and at the same time notify it the competent authority of the other Member State, which has sent it the decision. If the court, to which was the decision forwarded, has any doubts about its competence, it will proceed pursuant to Section 24 of the Code of Criminal Procedure accordingly. Accordingly to sentence one and two will be proceeded also in case of other documents received before sending the decision of another Member State.

(4) The Ministry will provide upon a request of authorities of another Member State cooperation with acquiring the necessary information, in particular in the course of identification of the competent court, to which is the decision of the other Member State to be sent, or in the course of verification of condition stipulated by the law of the Czech Republic for recognition and execution of such decision.

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<sup>48</sup> Annex II of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

(5) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of proceedings on recognition and execution of decisions of other Member States and their results.

### **Section 302**

#### Proceedings on Recognition and Execution

(1) Proceedings on recognition and execution of decisions of another Member State will be initiated at the moment the decision of another Member State is served to the competent court along with a certificate, eventually at least the certificate or a decision of another Member State with a request for proceeding according to this Sub-chapter, or a request of the competent authority of this Member State to take the person, against whom the decision of the other Member State is directed, into recognition custody.

(2) If the conditions for takeover of a decision of another Member State are not met, the court will terminate the proceedings on recognition and execution of such decision and notify the termination and the reasons therefor to the competent authority of the other Member State, the public prosecutor, if he was already involved in the case and the defense counsel, if he was selected or appointed.

(3) If the proceedings cannot be continued for a reason, which does not constitute grounds for non-recognition of the decision, the court will notify this matter of fact to the competent authority of the other Member State and request it to comment, whether it insists on recognition and execution of the decision, within a time limit set for this purpose. If the competent authority of the other Member State fails to send its comment within the set time limit or fails to state circumstances disproving the reason, for which the proceedings cannot be continued, the court will terminate the proceedings and immediately notify the termination and reasons therefor to competent authority of the other Member State, the public prosecutor, if he was already involved in the case and the defense counsel, if he was selected or appointed.

### **Section 303**

#### Recognition Custody

(1) Provisions of Section 122 (1) in recognition custody will apply accordingly in these proceedings.

(2) Upon a request of the competent authority of another Member State the presiding judge may take the person, against whom the decision of the other Member State is directed, into recognition custody even before the decision of the other Member State with a certificate is served to the Czech Republic for the purpose of its recognition and execution, if the conditions for taking the person into recognition custody are fulfilled and if it can be reasonably expected on the basis of information stated in the request, that the conditions for takeover of the decision of the other Member State are met. If the presiding judge does not

consider the information stated in the request to be sufficient grounds for deciding on taking the person into recognition custody or if the request is not translated into the Czech language, he will request the competent authority of the other Member State to supplement the request or to provide the translation

(3) The person taken into custody according to Sub-section (2) must be immediately released, if the decision of the other Member State with the certificate is not served to the court within 20 days from taking the person into recognition custody; the proceedings will be thereby terminated. Service of the decision of the other Member State with the certificate to the Ministry, the Supreme Public Prosecutor's Office or a diplomatic office of the Czech Republic on a foreign state or to the Ministry of Foreign Affairs, will also have the effects of service.

(4) The competent authority of the other Member State must be immediately notified of taking the person into custody, of his release from custody and of the time limit referred to in Sub-section (3).

### **Section 304**

#### **Decision on Recognition and Execution**

(1) The presiding judge may request the competent authority of another Member State to send him, within a time limit set therefor, a translation of the decision or its substantial parts, related to the person, against whom such decision is directed, into the Czech language, eventually also other necessary supplementary information. For reasons worth of special consideration, the court may secure the translation of such decision or its substantial parts may by itself. If the other Member State fails to send a translation of the decision or its substantial parts within the set time limit without stating substantial reasons therefor, the court will terminate the proceedings and notify the termination to the competent authority of the other Member State, the public prosecutor, if he was already involved in the case and the defense counsel, if he was selected or appointed. The competent authority of the other Member State must be advised on these consequences.

(2) The court will decide by a judgment in a public session in the presence of the public prosecutor, whether the decision of another Member State will be recognized and executed, or whether it will not be recognized; before holding such public session the court will request a written opinion of the public prosecutor. If the person, against whom such decision is directed, is in a foreign state in custody, serving an unsuspended sentence of imprisonment or a protective measure associated with incarceration, he will not be notified about the public session and the public session will be held in the presence of his defense counsel.

(3) If the decision on surrender and execution cannot be served to the person, against whom the decision of the other Member State is directed, because of his unknown place of stay, the court will terminate the proceedings and immediately notify its termination, including the

reason for such procedure, to the competent authority of the other Member State, the public prosecutor and the defense counsel.

(4) The presiding judge will immediately notify the competent authority of the other Member State about a decision on recognition and execution that has not yet become final and effective; in case of recognition and execution he will also inform this authority about the transformation of the type or extent of the sentence or protective measure and the reasons of such transformation, and in case of non-recognition also about the reasons for such procedure. The presiding judge will notify the competent authority of the other Member State also about the fact that the decision came to full force and effect.

(5) In proceedings on recognition and execution of a decision of another Member State will the court proceed with dispatch in such a way that it can decide the matter generally within 90 day from the day it received the decision of the other Member State with a certificate. The time the request is being translated or documents necessary for the decision are being obtained from the other Member State, will not be counted into this time limit. If this time limit cannot be complied with, the presiding judge will immediately notify the competent authority of the other Member State thereof and state the reasons for such delay, including its expected duration.

### **Section 305**

#### **Reasons for Non-recognition of Decisions**

- (1) The court will not recognize a decision of another Member State, if
- a) recognition and execution of such decision would be contrary to an impediment of res judicata,
  - b) the act does not fulfill the characteristics of a criminal offense according to the law of the Czech Republic; in case of criminal offenses related to taxes, fees, customs fees or currency, the decision not to recognize a decision of another Member State cannot be made solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, customs fees or do not contain the same provisions concerning taxes, customs fees or currency, as legal regulations of the Member State in question,
  - c) the person, against whom the decision of the other Member State is directed, enjoys privileges or immunities according to the law of the Czech Republic or international law, which make him exempt from jurisdiction of authorities involved in criminal proceeding,
  - d) the person, against whom the decision of another Member State is directed, would not be liable for the criminal offense according to the law of the Czech Republic due to his age,
  - e) execution of such decision is prevented by rights of third persons,
  - f) such decision was issued in proceedings conducted in the absence of the person, against whom it is directed, unless further stipulated otherwise,
  - g) the imposed sentence or protective measure include such a health care measure, which cannot be performed in the Czech Republic with regard to the law of the Czech Republic or its healthcare system,

- h) execution of the sentence or protective measure imposed by such decision has been statute barred according to the law of the Czech Republic, or
- i) the competent authority of the other member state, that was requested by the court to grant its consent with prosecution of the person, against whom such decision is directed, or with execution of a sentence or protective measure against such person in the Czech Republic for another criminal offense committed before his surrender into the Czech Republic, than for which the person was surrendered, has not granted such consent.

(2) In case of any doubts about whether or to what extent is the person concerned by the extradition exempted from jurisdiction of authorities involved in criminal proceedings, the Supreme Court will decide the matter upon a petition of this person, the public prosecutor or court.

(3) A decision of another Member State may be recognized even if there is a reason for non-recognition referred to in Sub-section (1) (f), if the person, against whom such decision is directed,

- a) was timely summoned in person and thus informed of the time and place of conducting the court hearing, which lead to issue of the decision, or received an official information about the time and place of conducting the hearing otherwise is such a way that it was unambiguously ascertained, that the person knew about the court hearing and was informed that the hearing may take place and the decision may be rendered in his absence,
- b) knew about the court hearing and he has assigned his defense counsel which he personally chose or which was appointed to him, to defend him in the court hearing, and the defense counsel has done so,
- c) has expressly waived such right or failed to apply it in the relevant time limit, or has withdrawn the appeal, after being personally served and expressly advised on his right for a new hearing of the case or to file an appeal, which would enable him to participate in a new or appeal proceedings, allow a repeated assessment or review of the case and production of new evidence and may have led to a change of the original decision.

(4) The court does not have to recognize a decision of another Member State, if it was issued for an act committed fully or in part in the territory of the Czech Republic or outside the territory of the Czech Republic onboard a ship or another vessel or aircraft or other air transport vehicle registered in the Czech Republic; therein he will take into account especially the circumstances of commission of the act;

(5) Furthermore, the sole judge does not have to recognize a decision of another Member State, if he has not received the decision, the decision was not accompanied by a certificate on the prescribed form<sup>49</sup>, this certificate is clearly incomplete, it does not correspond to the

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<sup>49</sup> Annex I of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.



contents of the decision, to which it is attached, or if it is not translated into the Czech language or into another language, in which the certificate may be accepted according to the declaration of the Czech Republic<sup>50</sup>. Before making the decision on non-recognition, the sole judge will call the competent authority of the other Member State, to send it the certificate, its amended wording or translation into the relevant language within a time limit set therefor. At the same time he will advise the competent authority that if it fails to do so within the set time limit without stating substantial reasons which prevented it from doing so, the decision will not be recognized.

(6) If there are grounds for non-recognition of a decision of another Member State referred to in Sub-section (1) (a), (f) or (g) or in Sub-section (4), the presiding judge will always request an opinion of the competent authority of the other Member State before making the decision on non-recognition; he may request such opinion also if there is another reasons for non-recognition.

(7) If the court decides not to recognize a decision of another Member State and the person, against whom such decision is directed, is in recognition custody, the court will also decide on his release. A complaint of the public prosecutor is admissible against this decision, which has a dilatory effect only if filed immediately after the decision is declared and if the public prosecutor at the same time filed an appeal against the judgment, by which the court decided not to recognize the decision.

### **Section 306** Recognition

(1) In case other than referred to in Section 302 (2) or (3) or in Section 304 (1), or if there is no reason for non-recognition of a decision of another Member State, the court will recognize such decision in the territory of the Czech Republic and at the same time decide that the sentence or protective measure imposed by this decision will be executed; Section 124 (2) to (4) will apply accordingly.

(2) In case at least a partial recognition and execution of a decision of another Member State comes into consideration, the court will recognize this decision only in relation to some of the criminal offenses concerned by the decision. In such a case the court will stipulate in the decision on recognition and execution, which proportional part of the sentence or protective measure will be executed in the Czech Republic. This procedure must not result in increasing the extent of the imposed sentence or protective measure. Before deciding on partial recognition and execution of a decision of another Member State the presiding judge will request an opinion of the competent authority of the other Member State, whether it consents to such procedure, or whether it will withdraw the decision along with the certificate.

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<sup>50</sup> Article 23(1) of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

### **Section 307**

#### Taking Rights of other States into Consideration

The court may stipulate in its decision on recognition and execution of a decision of another Member State, that the time limits for conditional release from execution of an unsuspended sentence of imprisonment or for premature termination of such execution provided for by the law of the other Member State, will be complied with in the territory of the Czech Republic. If such time limits are stricter than the time limits stipulated by the law of the Czech Republic, then in case where a consent is required according to Section 300 (1), the decision on compliance therewith may be made only with a consent of the person, against whom the decision of the other Member State is directed.

### **Section 308**

#### Appeal and Proceedings thereon

(1) An appeal cannot contest the grounds, for which a decision of another Member State was issued.

(2) The appeal court will repeal the contested judgment, by which it was decided on

- a) recognition and execution of a decision of another Member State despite the fact that the conditions for its recognition and execution were not fulfilled, or
- b) non-recognition of a decision of another Member State, despite the fact that the conditions for its recognition and execution were fulfilled.

(3) The appeal court may repeal the contested judgment also if the reviewed part of the judgment breached other provisions of this Act, if the breach could affect its correctness and legality of the reviewed part of the judgment.

(4) The appeal court will repeal the contested judgment and terminate the proceedings, if it finds that the reason referred to in Section 302 (2) or (3) is present. If it finds the reason referred to in Section 302 (3), it will firstly notify this matter of fact to the competent authority of the other Member State and request it to comment, within a time limit set therefor, whether it insists on recognition and execution of such decision. The proceedings will be terminated in case the competent authority of the other Member State fails to submit its comment within the set time limit or fails to state circumstances disproving the reason, for which the proceedings cannot be continued, but no sooner.

(5) Provisions of Section 246 (1) (c) and (d), Section 257 (1) (a) to (c), Sub-section (2) and (3), Section 258 (1) (d) to (f), Section 259 (3) and (5), Section 260, 261, 263 and 265 of the Code of Criminal Procedure will not apply. If the appeal court decides by a judgment, it will do so in a public session. Provision of Section 304 (2) sentence two will apply accordingly.

(6) If the competent authority of the other Member State has withdrawn the decision along with the certificate in the course of proceedings held before the appeal court, the appeal court will proceed pursuant to Section 309 accordingly.

### **Section 309**

#### **Withdrawing Decisions and Certificates**

(1) If the competent authority of another Member State has withdrawn the decision along with the certificate before it was finally and effectively decided on recognition and execution of the decision of this other Member State the presiding judge will acknowledge the withdrawal of the certificate by a decision, and the proceedings will be thus terminated.

(2) If the competent authority of the other Member State has withdrawn the decision along with the certificate after this decision was finally and effectively recognized in the Czech Republic, the court will take measures towards waiving the execution of the recognized decision without an undue delay. However, if execution of the sentence or protective measure has already been initiated, the court will inform the competent authority of the other Member State thereof and notify it that in this case withdrawal of the decision and certificate cannot be taken into account.

(3) If the person, against whom the decision of the other Member State is directed, is in recognition custody, he must be released without undue delay in case referred to in Sub-section (1) and (2).

### **Section 310**

#### **Execution of Recognized Decision**

(1) Unless further stipulated otherwise, in the course of execution of a sentence or protective measure will be proceeded pursuant to provisions of Chapter twenty one of the Code of Criminal Procedure accordingly. As soon as a decision on recognition and execution of a decision of another Member State becomes enforceable, the presiding judge will order execution of the sentence or protective measure. Provision of Section 130 (2) will apply accordingly.

(2) The presiding judge will immediately take measures directed towards waiver of execution of a recognized decision of another Member State, if

- a) the competent authority of the other Member State has notified it about an amnesty, pardon or another decision of the same effect, as a result of which the recognized decision became unenforceable, or
- b) the person, against whom such decision is directed, cannot be delivered for execution of the sentence or protective measure because of his unknown place of stay.

(3) In case referred to in Sub-section (2) (a) the court will request the competent authority of the other Member State for information, whether the amnesty, pardon or another decision or

measure has such effects in the other Member State that the person, against whom is the recognized decision of the other Member State directed, will be considered as if he was never condemned. In case referred to in Sub-section (2) (b) the court will request the competent authority of the other Member State to inform it that the person, against whom is the recognized decision of the other Member State directed, has served the imposed sentence or protective measure, or that he is considered as if he was never condemned for other reasons. If the person, against whom is the recognized decision of the other Member State directed, is considered as if he was never condemned in this Member State, he will be regarded as such also in the Czech Republic. If the recognized decision was finally and effectively repealed in the other Member State, the court will repeal its decision on its recognition.

(4) The presiding judge will decide without an undue delay on what part of the recognized decision of the other Member State will not be executed, as soon as the competent authority of the other Member State notifies it on an amnesty, pardon or another decision or measure, as a result of which the recognized decision became partially unenforceable. A complaint is admissible against this decision, which has a dilatory effect.

(5) The presiding judge will notify the competent authority of the other member state without an undue delay on

- a) waiver or partial waiver of execution of the recognized decision,
- b) waiver of execution of a sentence or protective measure on the grounds that the person, against whom the decision of the other Member State is directed, has been granted a pardon or amnesty in the Czech Republic, including the reasons for granting it, if they are known,
- c) conditional release of the person, against whom the decision of the other Member State is directed, including the probation period, and on ordering execution of the rest of the sentence, if the certificate implies that the other Member State requires such information,
- d) escape of the person, against whom the decision of the other Member State is directed, from execution of the sentence or protective measure,
- e) the fact that the sentence or protective measure has been executed.

(6) At the moment of receiving the information referred to in Sub-section (5) (d) by the competent authority of the other Member State, the right to execute the sentence or protective measure, imposed by the recognized decision of the other Member State, against the person, against whom the decision of the other Member State is directed, will pass onto this Member State. In this case, execution of the rest of the sentence or protective measure in the territory of the Czech Republic becomes inadmissible.

(7) The presiding judge will notify the competent authority of the other Member State about other matters of fact, if he considers it necessary in view of securing appropriate execution of the recognized decision.

### **Section 311**

#### Takeover of Persons from another Member State

(1) The person transferred by another Member State for execution of a sentence or protective measure will be taken over by the authorities of the Prison Service in the territory of the Czech Republic and delivered to prison or facility for execution of protective measures. The court will be immediately notified thereof.

(2) If the handover of the person, who serves an unsuspended sentence of imprisonment or protective measure associated with incarceration in another Member State and concerning whom a decision of the other Member State was recognized, into the Czech Republic for execution of such sentence or protective measure did not take place, execution of the recognized decision of the other Member State concerning such sentence or protective measure in the territory of the Czech Republic is inadmissible.

### **Section 312**

#### Costs of Proceedings

(1) Costs of proceedings on recognition and execution of a decision of another Member State, with the exception of costs of transport of the person, against whom such decision is directed, into the Czech Republic, will be borne by the Czech Republic.

(2) In case a final and effective decision on recognition and execution of a decision of another Member State was made, the person, against whom such decision is directed, will be obliged to reimburse the state for the costs referred to in Section 152 (1) (a), (b) and (d) of the Code of Criminal Procedure; this does not apply in case referred to in Section 311 (2).

### **Section 313**

#### Specialty Principle

Provisions of Section 198 will apply accordingly in these proceedings; in case of the reason referred to in Section 198 (1) (e) will suffice, if the person concerned gave his consent with his surrender into the Czech Republic, his waiver if application of the specialty principle will not be required, neither will the waiver of application of this right be required to be included in the consent of the person with his surrender into the Czech Republic.

### **Sub-chapter 2**

#### Securing Execution of Decisions Imposing Unsuspended Sentence of Imprisonment of Protective Measure Associated With Incarceration in another Member State

### **Section 314**

(1) According to this Sub-chapter another Member State may be sent a final and effective decision of court for the purpose of recognition and execution,

- a) by which was imposed an unsuspended sentence of imprisonment or by which was decided on execution of its remaining part, including cases, where it was decided on execution of a conditionally suspended sentence of imprisonment, on execution of a substitute sentence of imprisonment for unexecuted sentence of house confinement or financial penalty, or by which was a sentence of community service transformed to an unsuspended sentence of imprisonment, or
- b) by which was imposed a protective measure associated with incarceration.

(2) According to this Sub-chapter will be proceeded, if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>51</sup>.

### **Section 315**

#### Conditions for Sending Decisions for Recognition and Execution

(1) If it is appropriate and purposeful in view of securing successful integration of the person, against whom is the decision directed, into the society, or in view of his successful treatment, the court that decided the case in the first instance may, upon a request of this person, or even without such a request, send this decision to the competent authority of another Member State for the purpose of recognition and execution, if this person is in the territory of this Member State or in the territory of the Czech Republic, and

- a) the person is a citizen of this Member State and has his habitual residence in its territory,
- b) the person is a citizen of this Member State, does not have his habitual residence in its territory, but after serving the sentence or protective measure, he will be expelled and deported into this Member State on the basis of a final and effective decision issued in trial or administrative proceedings, or
- c) in other cases than referred to in paragraph (a) and (b), if this Member State consents thereto.

(2) If it is appropriate and purposeful in view of securing successful integration of the person, against whom is the decision directed, into the society, or in view of his successful treatment, the court that decided the case in the first instance may send this decision to the competent authority of the other Member State for recognition and execution, if this Member State requested it.

(3) A decision may be sent into another Member State only with a previous consent of the person, against whom it is directed; this consent will not be required

- a) in the case referred to in Sub-section 1 (a),
- b) in case of a person, who is to be expelled from the Czech Republic into this Member State after execution of the sentence or protective measure,

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<sup>51</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

- c) in case of a person, who has fled into this Member State or returned thereto because there was criminal proceeding being conducted against him and in this proceeding was subsequently issued a decision that is to be recognized and executed in this Member State,
- d) in case of a person, who has fled into this Member State or returned thereto because of a decision issued against him in the Czech Republic, which is to be recognized and executed in this Member State.

(4) Before granting the consent, the person, against whom is the decision directed, must be instructed about the meaning of the consent and its consequences. Once granted consent cannot be withdrawn. If the consent of the person, against whom such decision is directed, is not required for sending a decision into another Member State and this person is located in the territory of the Czech Republic, the court will ascertain his opinion.

(5) In cases referred to in Sub-section (1) (a) and (b) the court will generally request the competent authority of the other Member State, before sending a decision for recognition and execution, to comment, whether it consents with the takeover of the decision for recognition and execution, and whether it considers such procedure appropriate and purposeful in view of securing successful integration of the person, against whom is the decision directed, into the society, or in view of his successful treatment.

(6) When considering in which state the execution of the sentence or protective measure appears to be most appropriate, the court will take into account the opinion of the person, against whom such decision is directed, and the opinion of the other Member State, if it is known.

(7) In case the decision may be sent to several Member States, it will be sent to the state, in which it can be most probably expected that execution of the sentence or protective measure in this state will secure successful integration of this person into the society or his successful treatment.

(8) The Ministry will provide the court its cooperation in the course of ascertaining the necessary information, in particular concerning identification of the competent authority of the other Member State, to which is the decision to be sent, or in the course of verification of the conditions stipulated by the law of this Member State for recognition and execution of such decision.

(9) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of decisions sent to other Member States for recognition and execution and on the results of proceedings on recognition and execution of these decisions in other Member States.

### **Section 316**

#### **Request for Imposing Recognition Custody**

(1) In case the person, against whom is the decision directed, is in another Member State, the court may request the competent authority to take this person into recognition custody even before sending the decision for recognition and execution.

(2) The request for imposing recognition custody must be translated into the official language or one of the official languages of this Member State, or into a language, in which is this state willing to accept it.

### **Section 317**

#### **Sending Decisions for Recognition and Execution**

(1) The court will send the decision to the competent authority of another Member State along with the certificate on the prescribed form<sup>52</sup>, translated into the official language or one of the official languages of this Member State, or into a language, in which is this state willing to accept the certificate according to its declaration<sup>53</sup>. The court will attach also a written consent of the person, against whom is the decision directed, to the decision and certificate, if it is required for transferring the decision; if the consent is not required, opinion of this person will be attached, if it is known.

(2) Upon a request of the competent authority of the other Member State will the court provide additional information and supplementations necessary for the purposes of recognition and execution of the decision. If the other Member State requests translation of the decision or its substantial part into the official language of this or another Member State, the translation of this decision or its substantial part will also be sent to it.

(3) The court will serve the person, against whom is the decision directed, a notification on the prescribed form<sup>54</sup>, informing him of the fact that the decision was sent for recognition and execution into another Member State; in case this person is in this other Member State, the court will send the notification to the competent authority of the other Member State in order to be handed over to this person.

(4) If the other Member State does not consent to take over the decision for recognition and execution after being sent such decision, the court may withdraw the decision along with the certificate.

### **Section 318**

(1) Until the time the execution of the sentence or protective measure is initiated in another Member State on the basis of a recognized decision, the court may withdraw the decision

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<sup>52</sup> Annex I of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

<sup>53</sup> Article 23 (1) of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

<sup>54</sup>



along with the certificate, in particular if it does not consider the legal regulations of the other Member State, governing the mitigation or premature termination of execution of the sentence or protective measure, as sufficient in view of achieving the purpose of the sentence or protective measure.

(2) The court may agree with the competent authority of the Member State upon its request on partial recognition and execution of the decision and on the conditions of such recognition and execution; this procedure must not result in increasing the extent of the imposed sentence or protective measure. If the agreement is not reached, the court will withdraw its decision along with the certificate.

(3) The court will immediately notify the competent authority of the other Member State about the fact that the person, against whom is the decision directed, was granted a pardon or amnesty in the Czech Republic, or about another decision, measure of matter of fact, as a result of which the decision became unenforceable or only partially enforceable.

(4) After the execution of the sentence or protective measure in another Member State on the basis of a recognized decision is initiated, execution of the sentence or protective measure cannot be initiated or continued in the Czech Republic, with the exception of cases, where the court was notified by the competent authority of the other Member State, that the person has escaped from execution of the sentence or protective measure and this state will not continue the execution. In this case the time spent in custody or in execution of the sentence in the other Member State will be counted into the sentence imposed by the court of the Czech Republic.

### **Section 319**

#### **Surrender of Persons into other Member States**

(1) In case the person, against whom is the decision directed, is in the Czech Republic, he must be surrendered to the other Member State within 30 days following the full force and effect of the decision of this Member State on recognition and execution. The authorities of the Prison Service will surrender this person to the competent authorities of this Member State in its territory.

(2) In case the surrender of the person, against whom is the decision directed, could not be realized within the set time limit due to unforeseen circumstances, a new term of surrender of the person will be agreed without an undue delay after these circumstances have passed. In this case it will be necessary to surrender the person to the other Member State within 10 days following such newly agreed day of handover.

(3) Costs associated with surrender of the person, against whom is the decision directed, into another Member State, will be borne by the Czech Republic.

### **Section 320**

#### **Specialty Principle**

In case the competent authority of another Member State requests a consent with prosecution of the person, against whom the decision directed, or with execution of a sentence or protective measure on this person in this Member State for another act committed prior to his handover for execution of the sentence or protective measure, than for which he was surrendered, the court will proceed pursuant to Section 216 accordingly.

### **Sub-chapter 3**

Transit in Relation to Securing Execution of Decisions Imposing Unsuspended Sentence of Imprisonment or Protective Measure Associated with Incarceration in other Member States

#### **Section 321**

Request for Authorizing Transit through the Territory of another Member State

(1) The Ministry will be competent for submitting requests for transit through the territory of another Member State in relation to securing execution of a decision of the court of the Czech Republic, referred to in Section 314 in another Member State. The request will be accompanied by the certificate. If the state of transit requests it, a copy of the certificate must be provided with a translation into the language specified by this state in the request; Section 141 (3) will apply accordingly to providing the translation.

(2) Requesting authorization of transit through the territory of another Member State is not necessary in case of flight transit without landing in the territory of this state. If in such case an unscheduled landing occurs in the territory of another Member State, the Ministry will send this state a request for authorization of transit along with a copy of the certificate within 72 hours after this unscheduled landing.

#### **Section 322**

Transit through the Territory of the Czech Republic

(1) The Ministry will decide on a request of another Member State for authorization of transit through the territory of the Czech Republic within 7 days following the day such request was served to it in the Czech language or in another language, which it accepts.

(2) If the request for authorization of transit was not served to the Ministry in the Czech language or in another language, which it accepts, the Ministry may request the competent authority of the other Member State to translate it into such language.

(3) In other respects, transit of persons through the territory of the Czech Republic will be governed by provisions Part three Chapter V Sub-chapter 2 accordingly, with the exception of Section 142 (2) (a), (e) and (i).

### **Chapter IX**

Recognition and Execution of Decision imposing Sentences not Associated with Incarceration, Supervision or Adequate Restrictions or Obligations

## **Sub-chapter 1**

### **Recognition and Execution of Decision of another Member State Imposing Sentence not Associated with Incarceration, Supervision Adequate Restrictions or Obligations**

#### **Section 323**

(1) According to this Sub-chapter will be proceeded in the course of recognition and execution of a final and effective decision of court of another Member State issued in criminal proceedings, by which was decided on

- a) conditional release from execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, while at the same time ordering supervision or imposing adequate restrictions or obligations referred to in Section 324 (1),
- b) conditional imposition of a sentence of imprisonment or protective measure associated with incarceration, while at the same time ordering supervision or imposing adequate restrictions or obligations referred to in Section 324 (1),
- c) conditional waiver of punishment, while at the same time ordering supervision or imposing adequate restrictions or obligations referred to in Section 324 (1), or
- d) imposing a sentence or protective measure not associated with incarceration, if it consists in any of the restrictions or obligations referred to in Section 324 (1).

(2) In case a decision of court of another Member State referred to in Sub-section (1) (a) was sent into the Czech Republic for recognition and execution, according to this Sub-chapter will be proceeded also in the course of recognition of a decision of court of this Member State, which imposed an unsuspended sentence of imprisonment or protective measure associated with incarceration, from execution of which was the person, against whom such decision is directed, released.

(3) According to this Sub-chapter will be proceeded also in the course of recognition and execution of a final and effective decision of an authority of another Member state other than court, by which was decided on conditional release from execution of an unsuspended sentence of imprisonment or a protective measure associated with incarceration, while at the same time ordering supervision or imposing adequate restrictions or obligations, or by which was ordered supervision or imposed adequate restrictions or obligations on the basis of a decision of court issued in criminal proceedings, by which was decided on conditional release from execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, conditional imposition of such sentence or protective measure or conditional waiver of punishment.

(4) If the Czech Republic was sent a decision of another Member State referred to in Sub-section (3) for recognition and execution, issued by an authority other than court, pursuant to

this Sub-chapter will be proceeded also in the course of recognition of a decision of court of another Member State, by which

- a) was imposed an unsuspended sentence of imprisonment or protective measure associated with incarceration, from execution of which was the person, against whom such decision is directed, released,
- b) was decided on conditional release from execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration,
- c) was decided on conditional imposition of a sentence of imprisonment or protective measure associated with incarceration, or
- d) was decided on conditional waiver of punishment.

(5) According to this Sub-chapter will be proceeded also if another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>55</sup>.

### **Section 324**

#### Conditions for Takeover of Decisions

(1) Decision of another Member state may be taken over for the purpose of its recognition and execution, if it imposes any of the following restrictions or obligations:

- a) to inform the competent authority of any change of place of stay or occupation,
- b) to refrain from visiting certain places,
- c) prohibition to travel abroad,
- d) prohibition to perform certain activity,
- e) restrictions and obligations related to behavior, place of residence, education, free time activities or performing certain occupation, employment or position,
- f) to report to the competent authority at certain times,
- g) to refrain from contact with certain persons,
- h) to refrain from contact with certain objects that were or could be used to commit a criminal offense,
- i) to compensate the aggrieved person for the damage caused by the criminal offense,
- j) to perform community service,
- k) to cooperate with a probation officer or employee of the social services involved in the area of work with convicts,
- l) to undertake treatment of addiction on addictive substances.

(2) A decision of another Member State complying with the condition referred to in Sub-section (1) will be taken over for the purpose of recognition and execution, if the person,

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<sup>55</sup> Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

against whom it is directed, has his habitual residence in the Czech Republic and stays in its territory, or if it can be reasonably expected that he intends to return to the Czech Republic.

(3) A decision of another Member State complying with the condition referred to in Sub-section (1) may be taken over for the purpose of its recognition and execution even without complying with the conditions referred to in Sub-section (2), if

- a) the person, against whom such decision is directed, requests its sending into the Czech Republic for the purpose of recognition and execution,
- b) the person, against whom such decision is directed, stays in the territory of the Czech Republic or if it can be reasonably expected that he intends to stay there, and
- c) the sole judge consents with the takeover of such decision for recognition and execution in the Czech Republic for the reason of suitability and purposefulness of such procedure, as far as successful integration of this person into society is concerned.

(4) Prior to granting the consent or refusing to take over a decision of another Member State the sole judge will request an opinion of the Ministry. The sole judge will notify the competent authority of the other Member State about the fact, whether he consents with the takeover of such decision.

### **Section 325** Competence

(1) The competence to proceed according to this Sub-chapter will pertain to the District Court, in the jurisdiction of which stays the person, against whom is the decision of another Member State directed. If this person does not stay in the Czech Republic, the competence will pertain to the District Court, in jurisdiction of which this person has or had his last place of permanent residence. If the competence of court cannot be determined according to sentence one and two, the competence will pertain to the District Court for Prague 6. Change of circumstances decisive for determination of local competence that occurred after the initiation of proceedings will not be taken into account.

(2) Provisions of Sub-section (1) will be without prejudice to special competence of court in execution proceedings pursuant to Chapter twenty one of the Code of Criminal Procedure.

(3) If the decision of another Member State was sent to an authority not competent to proceed pursuant to this Sub-chapter, it will immediately forward it to the competent authority and at the same time notify the forwarding to the competent authority of the other Member State, which has sent the decision. If the court, to which was the decision forwarded, has any doubts about its competence, it will be proceeded pursuant to Section 24 of the Code of Criminal Procedure accordingly.

(4) The Ministry will provide the authority of the other Member State upon its request cooperation in the course of acquiring necessary information, in particular concerning determination of the competent court, to which is the decision of the other Member State to

be sent, or in the course of verification of conditions stipulated by the law of the Czech Republic for recognition and execution of such decision.

(5) For the purposes of submitting reports to the authorities of the European Union and for facilitation of cooperation with other Member States the court will provide the Ministry upon its petition the necessary information, in particular on the number of proceedings on recognition and execution of decisions of other Member States and results thereof.

### **Section 326**

#### Proceedings on Recognition and Execution

(1) Proceedings on recognition and execution of a decision of another Member State will be initiated at the moment the decision of another Member State is served to the competent court along with a certificate, eventually at least the certificate or a decision of another Member State with a request for proceeding according to this Sub-chapter.

(2) If the conditions takeover of a decision of another Member State are not met, the sole judge will terminate the proceedings on recognition and execution of such decision and immediately notify the termination and reasons therefor to the competent authority of the other Member State, the public prosecutor, if he was already involved in the case, and the defense counsel, if he was selected or appointed.

(3) If the proceedings cannot be continued for a reason, which does not constitute grounds for non-recognition of the decision, the sole judge will notify this matter of fact to the competent authority of the other Member State and request it to comment, whether it insists on recognition and execution of the decision, within a time limit set for this purpose. If the competent authority of the other Member State fails to send its comment within the set time limit or fails to state circumstances disproving the reason, for which the proceedings cannot be continued, the sole judge will terminate the proceedings and immediately notify the termination and reasons therefor to competent authority of the other Member State, the public prosecutor, if he was already involved in the case and the defense counsel, if he was selected or appointed.

### **Section 327**

#### Decision on Recognition and Execution

(1) If the sole judge does not consider a certificate and decision sent by another Member State to be sufficient grounds for a decision on recognition and execution, he will request the competent authority of this Member State to send necessary supplementary information within a time limit set by him. If the other member state does not send the supplementary information within the set time limit without stating substantial reasons therefor, the sole judge will terminate the proceedings and notify the termination to the competent authority of the other Member State, the public prosecutor, if he was already involved in the case, and

the defense counsel, if he was selected or appointed. The competent authority of the other Member State must be advised of these consequences.

(2) The sole judge will decide, whether the decision of the other Member State will be recognized and executed, or whether it will not be recognized, without an undue delay, generally within 60 days following the day the decision of the other Member State was received along with the certificate; before making the decision he will request a written opinion of the public prosecutor. The time, for which is this decision being translated, or for which documents necessary for making the decision are being obtained from the other Member State, will not be counted into this time limit. If this time limit cannot be complied with, the sole judge will immediately notify this fact to the competent authority of the other Member State and state the reasons for the delay, including the time of expected duration of such delay.

(3) If the sole judge considers it necessary for the purposes of making the decision, he will order a public session; the sole judge decides on recognition and execution of a decision of another Member State on conditional release according to Section 323 (1) (a) or Sub-section (3), he will always order a public session. If the person, against whom such decision is directed, is in a foreign state in custody serving an unsuspended sentence of imprisonment or protective measure associated with incarceration, he will not be notified about the public session and the public session will be held in the presence of his defense counsel.

(4) The sole judge will serve the decision on recognition and execution to the person, against whom the decision of the other Member State is directed, to the public prosecutor and the defense counsel, if he was selected or appointed. If the decision cannot be served to the person, against whom the decision of the other Member State is directed, because of his unknown place of stay, the sole judge will terminate the proceedings and notify the termination, including the reasons for such procedure, to the competent authority of the other Member State, the public prosecutor and the defense counsel, if he was selected or appointed.

(5) The sole judge will immediately notify the competent authority of the other Member State about a decision on recognition and execution that has not yet become final and effective; in case of recognition and execution he will also inform this authority about the adaptation of the imposed measure, including the limitation of its duration to the longest permissible duration stipulated by the Code of Criminal Procedure, and the reasons for such adaptation and in case of non-recognition also about the reasons of such procedure. The sole judge will also notify the competent authority of the other Member State about the fact that a complaint has been filed against its decision, as well as about the fact that the decision has become final and effective.

### **Section 328**

#### **Reasons for Non-recognition of Decisions**

(1) The sole judge will not recognize a decision of another Member State, if

- a) recognition and execution of such decision would be contrary to an impediment of res judicata,
- b) the act does not fulfill the characteristics of a criminal offense according to the law of the Czech Republic; in case of criminal offenses related to taxes, fees, customs fees or currency, the decision not to recognize a decision of another Member State cannot be made solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, customs fees or do not contain the same provisions concerning taxes, customs fees or currency, as legal regulations of the Member State in question,
- c) the person, against whom the decision of the other Member State is directed, enjoys privileges or immunities according to the law of the Czech Republic or international law, which make him exempt from jurisdiction of authorities involved in criminal proceeding,
- d) the person, against whom the decision of another Member State is directed, would not be liable for the criminal offense according to the law of the Czech Republic due to his age,
- e) the time, for which the sentence, protective measure, supervision, adequate restriction or adequate obligations are to be executed, was less than 6 months in the time of service of the decision to the court; if the execution cannot be achieved otherwise, the decision may be recognized and executed even in this case,
- f) such decision was issued in proceedings conducted in the absence of the person, against whom it is directed, unless further stipulated otherwise,
- g) the imposed sentence or protective measure include such a health care measure, which cannot be performed in the Czech Republic with regard to the law of the Czech Republic or its healthcare system, or
- h) execution of the sentence or protective measure imposed by such decision has been statute barred according to the law of the Czech Republic, and such decision was issued for an act, prosecution of which lies within the competence of the authorities of the Czech Republic according to the law of the Czech Republic.

(2) In case of any doubts about whether or to what extent is the person concerned by the extradition exempted from jurisdiction of authorities involved in criminal proceedings, the Supreme Court will decide the matter upon a petition of this person, the public prosecutor or the sole judge.

(3) A decision of another Member State may be recognized even if there is a reason for non-recognition referred to in Sub-section (1) (f), if the person, against whom such decision is directed,

- a) was timely summoned in person and thus informed of the time and place of conducting the court hearing, which lead to issue of the decision, or received an official information about the time and place of conducting the hearing otherwise is such a way that it was unambiguously ascertained, that the person knew about the court hearing and was informed that the hearing may take place and the decision may be rendered in his absence,



- b) knew about the court hearing and he has assigned his defense counsel which he personally chose or which was appointed to him, to defend him in the court hearing, and the defense counsel has done so,
- c) has expressly waived such right or failed to apply it in the relevant time limit, or has withdrawn the appeal, after being personally served and expressly advised on his right for a new hearing of the case or to file an appeal, which would enable him to participate in a new or appeal proceedings, allow a repeated assessment or review of the case and production of new evidence and may have led to a change of the original decision.

(4) The sole judge does not have to recognize a decision of another Member State, if it was issued for an act committed fully or in part in the territory of the Czech Republic or outside the territory of the Czech Republic onboard a ship or another vessel or aircraft or other air transport vehicle registered in the Czech Republic; therein he will take into account especially the circumstances of commission of the act;

(5) Furthermore, the sole judge does not have to recognize a decision of another Member State, if he has not received the decision, the decision was not accompanied by a certificate on the prescribed form<sup>56</sup>, this certificate is clearly incomplete, it does not correspond to the contents of the decision, to which it is attached, or if it is not translated into the Czech language or into another language, in which the certificate may be accepted according to the declaration of the Czech Republic<sup>57</sup>. Before making the decision on non-recognition, the sole judge will call the competent authority of the other Member State, to send it the certificate, its amended wording or translation into the relevant language within a time limit set therefor. At the same time he will advise the competent authority that if it fails to do so within the set time limit without stating substantial reasons which prevented it from doing so, the decision will not be recognized.

(6) If there are grounds for non-recognition of a decision of another Member State referred to in Sub-section (1) (a), (f) or (g) or in Sub-section (4), the sole judge will always request an opinion of the competent authority of the other Member State before making the decision on non-recognition; he may request such opinion also if there is another reasons for non-recognition.

## **Section 329**

### Recognition

(1) Unless a case referred to in Section 326 (2) or (3) or in Section 327 (1) is concerned, or unless there is a reason for non-recognition of a decision of another Member State referred

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<sup>56</sup> Annex I of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

<sup>57</sup> Article 21 of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

to in Section 323 (1) or (3), the sole judge will recognize such decision in the territory of the Czech Republic.

(2) Along with a decision of another Member State referred to in Section 323 (1) (a) or a decision of another authority than court on conditional release referred to in Section 323 (3), the recognition will also comprise a decision of court of another Member State, by which an unsuspended sentence of imprisonment or protective measure associated with incarceration was imposed, from execution of which was the person, against whom such decision is directed, released

(3) Along with the decision of another authority than court referred to in Section 323 (3), by which supervision was ordered or adequate restrictions or obligations were imposed on the basis of a decision of court on conditional release from execution a sentence of imprisonment or protective measure associated with incarceration, this decision of court on conditional release will also be recognized, and at the same time will be recognized also its previous decision, by which was imposed an unsuspended sentence of imprisonment or protective measure associated with incarceration, from execution of which was the person, against whom such decision is directed, released.

(4) Along with a decision of another authority than court referred to in Section 323 (3), by which supervision was ordered or adequate restrictions or obligations were imposed on the basis of a decision of court on conditional imposition of a sentence of imprisonment or protective measure associated with incarceration, or conditional waiver of punishment, also this decision of court will be recognized.

### **Section 330**

(1) Along with the decision on recognition the sole judge will decide that the sentence, protective measure, supervision, adequate restriction or adequate obligation imposed by a decision of another Member State will be executed, whereas

- a) if the type of such sentence, protective measure, supervision, adequate restriction or adequate obligation, including those that are to be executed in case of non-compliance, does not compatible with the law of the Czech Republic, the sole judge will adapt it to the best corresponding type of sentence, protective measure, supervision, adequate restriction or adequate obligation according to the Criminal code, or
- b) if the extent of such sentence, including the probation period, for which supervision is to be performed or adequate restrictions and obligations fulfilled, or the extent of an unsuspended sentence of imprisonment , which is to be executed in case of non-fulfillment of the sentence, protective measure, supervision, adequate restriction or adequate obligation imposed by the decision of another Member State, exceeds the upper limit of the criminal rate for the corresponding criminal offense or the longest permissible duration of probation period according to the Criminal Code, he will reduce it to the

upper limit of the criminal rate for the corresponding criminal offense or the longest permissible duration of probation period according to the Criminal Code.

(2) In the decision on recognition and execution of a decision of another Member State on conditional release, the sole judge will decide also on placement of the person, against whom such decision is directed, into a certain type of prison, in case it will be subsequently decided that the rest of the unsuspended sentence of imprisonment is to be executed.

(3) A sentence not associated with incarceration, for which a substitute unsuspended sentence of imprisonment may be imposed according to the law of another Member State in case of breaching the conditions of its execution, and which does not correspond to any sentence not associated with incarceration according to the Criminal Code, will be transformed into a conditional suspension of execution of a sentence of imprisonment with supervision.

(4) A sentence or protective measure not associated with incarceration, for which a substitute sentence of imprisonment may not be issued in case of breaching the conditions of their execution according to the law of the other Member State, and which do not correspond to any type of sentence or protective measure not associated with incarceration according to the Criminal Code, will be transformed to supervision.

(5) Adaptation of the sentence, protective measure, supervision, adequate restriction or adequate obligation must not aggravate the position of the person, against whom the decision of the Foreign State is directed.

### **Section 331**

#### **Complaint Proceedings**

(1) A complaint is admissible against the decision according to Section 328 (1) and (3) to (5), Section 329 or 330, which has a dilatory effect. The complaint cannot contest the grounds, for which the decision of the other Member State was issued.

(2) The court deciding on the complaint will repeal the contested decision, if the finds reasons referred to in Section 326 (2) (3). If he finds a reason referred to in Section 326 (3), he will at first notify the competent authority of the other Member State and request it to comment, whether it insists on recognition and execution of such decision, within a time limit set therefor. The proceedings will be terminated in case the competent authority of the other Member State fails to submit it comment within the set time limit or fails to state circumstances disproving the reason, for which the proceedings cannot be continued.

### **Section 332**

#### **Withdrawing Decisions and Certificates**

(1) If the competent authority of another Member State has withdrawn the decision along with the certificate before it was finally and effectively decided on recognition and

execution of the decision of this other Member State, the presiding judge will acknowledge the withdrawal of the certificate by a decision, and the proceedings will be thus terminated.

(2) If the competent authority of the other Member State has withdrawn the decision along with the certificate after this decision was finally and effectively recognized in the Czech Republic, the court will take measures towards waiving the execution of the recognized decision without an undue delay. However, if execution of the sentence, protective measure, supervision, adequate restriction or adequate obligation has already been initiated, the court will inform the competent authority of the other Member State thereof and notify it that in this case withdrawal of the decision and certificate cannot be taken into account.

### **Section 333**

#### **Execution of Recognized Decision**

(1) Unless further stipulated otherwise, in the course of execution of a sentence, protective measure, supervision, adequate restriction or adequate obligation, including the transformation of the imposed restrictions or obligations, imposition of additional restrictions or obligations or ordering execution of an unsuspended sentence of imprisonment or its remaining part, will be proceeded pursuant to provisions of Chapter twenty one of the Code of Criminal Procedure accordingly.

(2) If the person, over whom is being conducted supervision in case referred to in Section 330 (4) grossly or repeatedly breaches the conditions of supervision, the sole judge will notify it to the competent authority of the other Member State without an undue delay for the purpose of takeover of execution of the recognized decision. The notification will be sent on the prescribed form<sup>58</sup>. Accordingly to sentence one and two will be proceeded also in case of a gross or repeated breach of conditions of supervision performed over a person on the basis of a decision of another Member State referred to in Section 323 (1) (c).

(3) The sole judge may transfer execution of a recognized decision back to the other Member State also in case the competent authority of the other Member State requests takeover of its execution for a reason that there is a criminal proceeding being conducted in this Member State against the person, against whom the decision of the other Member State is directed.

(4) The sole judge will immediately take measures aimed toward waiving execution of a recognized decision of another Member State, if

- a) the competent authority of the other Member State notifies him about an amnesty, pardon or another decision or measure, as a result of which the decision became unenforceable,
- b) the person, against whom such decision is directed, cannot be located in the territory of the Czech Republic,

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58

- c) the person, against whom such decision is directed, no longer has his habitual residence in the Czech Republic, and this matter of fact prevents due execution of the decision,
- d) he notified the other Member State about matters of fact referred to in Sub-section (2), or
- e) he has complied with a request of the competent authority of the other Member State for transfer of execution of the recognized decision.

(5) In case referred to in Sub-section (4 (a) the sole judge will request the competent authority of the other Member State to inform him, whether the amnesty, pardon or other decision or measure has such effects in the other Member State, that the person, against whom the recognized decision of the other Member State is directed, is considered as if he was never convicted. In case referred to in Section 4 (b) to (e) the court will request the competent authority of the other Member State to inform it, that the person, against whom the recognized decision of the other Member State is directed, has served the imposed sentence, protective measure, supervision, adequate restriction or adequate obligation, or that he is considered as if he was never sentenced for other reasons. If the person, against whom the recognized decision of the other Member State is directed, is considered as if he was never convicted in this Member State, he will be considered as such also in the Czech Republic. If the recognized decision has been finally and effectively repealed in the other Member State, the court will repeal its decision on its recognition.

(6) The sole judge will decide without an undue delay in which part the recognized decision of the other Member State will not be executed, as soon as the competent authority of the other Member State informs it about an amnesty, pardon or another decision or measure, as a result of which the recognized decision became partially unenforceable. A complaint is admissible against this decision, which has a dilatory effect.

(7) In cases referred to in Sub-section (4) (b) to (e), the right to execute the recognized decision of the other Member State will pass back to this Member State in the remaining extent. The sole judge will cooperate with the authority of the other Member State in order to secure preferably continuous execution of the recognized decision, they will in particular exchange all necessary information.

### **Section 334** Information Duty

(1) The sole judge will notify the competent authority of the other Member State without an undue delay about

- a) waiver or partial waiver of execution of the recognized decision,
- b) waiver of execution of a sentence or protective measure for the reason that the person, against whom the decision of the other Member State is directed, was granted pardon or amnesty in the Czech Republic, including the reasons for its granting, if they are known,

- c) change of the imposed restrictions or obligations, imposition of additional restrictions or obligations or ordering execution of an unsuspended sentence of imprisonment or its remaining part,
- d) the fact that the sentence, protective measure, supervision, adequate restriction or adequate obligation was executed.

(2) The sole judge will notify the competent authority of the other Member State upon its request on the highest permissible extent of unsuspended sentence of imprisonment, which may be imposed according to the Criminal Code in case of not serving the sentence, protective measure, supervision, adequate restriction or adequate obligation imposed by the decision of the other Member State.

(3) The sole judge will notify the competent authority of the other Member State about other matters of fact, if he considers it necessary in view of securing due execution of the recognized decision. The form referred to in Section 333 (2) may be used for the notification.

### **Section 335**

#### Costs of Proceedings

Costs of recognition and execution of a decision of another Member State will be borne by the Czech Republic.

### **Sub-chapter 2**

#### Securing Execution of Decisions Imposing Sentence Not Associated with Incarceration, Supervision or Adequate Restrictions or Obligations in another Member State

### **Section 336**

(1) According to this Sub-chapter may another Member State be served final and effective decisions of court for recognition and execution, by which was decided on

- a) conditional release from execution of a sentence of imprisonment, while at the same time ordering supervision or imposing adequate restrictions or adequate obligations,
- b) ordered supervision or imposing adequate restrictions or adequate obligations to the conditionally convicted person,
- c) conditional waiver of punishment while at the same time ordering supervision,
- d) in imposing a sentence of house confinement,
- e) imposing a sentence of community service,
- f) imposing a sentence of prohibition of certain activity,
- g) imposing a sentence of prohibition to enter sport, cultural and other social events, or
- h) imposing ambulant protective treatment.

(2) Decisions referred to in sub-section (1) (a) to (c) may be sent to another Member State for recognition and execution only in case they impose restrictions or obligations referred to

in Section 324 (1), or restrictions or obligations, concerning which the other Member State declares<sup>59</sup> that supervision may be conducted over such restrictions or obligations in its territory, or that it is possible to secure their control otherwise.

(3) The other Member State will always be served also the decision of court imposing an unsuspended sentence of imprisonment, from execution of which was the person, against whom such decision is directed, released, along with the decision referred to in Sub-section (1 (a)).

(4) According to this Sub-chapter will be proceeded, if another Member State applies legal regulations for the implementation of legal regulations of the European union<sup>60</sup>.

### **Section 337** Sending Decisions

(1) If it is necessary for securing due execution of a decision, the court that decided the matter in the first instance may send this decision to the competent authority of another Member State for the purpose of its recognition and execution, if the person, against whom such decision is directed, has his habitual residence in this state and stay in its territory or if the circumstances imply that he intends to return to this state. The decision may be sent for the purpose of its recognition and execution also to a Member State not complying with the conditions referred to in sentence one, if the person, against whom such decision is directed, requests it and this Member State consents to take over the decision. The decision may not be sent simultaneously to several Member States for the purpose of recognition and execution.

(2) The court will send the decision to the competent authority of another Member State along with the certificate on the prescribed form<sup>61</sup>, translated into the official language of the other Member State or into one of the official languages of the other Member State or into a language, in which this state will accept the certificate according to its declaration<sup>62</sup>.

(3) Upon a request of the competent authority of the other Member State the court will provide additional information and supplementations necessary for the purpose of recognition and execution of this decision.

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<sup>59</sup> Article 4 (2) of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

<sup>60</sup> Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

<sup>61</sup> Annex I of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

<sup>62</sup> Article 21 of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

(4) The Ministry will provide, upon a request of the court, its cooperation in ascertaining the necessary information, in particular in the course of identification of the competent authority of the other Member State, to which is the decision to be sent, or in the course of verification of conditions stipulated by the law of this other Member State for recognition and execution of such decision.

(5) For the purpose of submitting reports to authorities of the European Union and facilitation of cooperation with other Member States, the court will provide the Ministry upon its request the necessary information, especially on the number of decisions sent to other Member States for the purpose of recognition and execution and on the results of proceedings on recognition and execution of these decisions in other Member States.

### **Section 338**

#### **Withdrawing Decisions and Certificates**

(1) The Court may request the competent authority of the other Member State for information, in which highest permissible extent may an unsuspended sentence of imprisonment be imposed according to the law of this Member State in case of failure to serve the imposed sentence, protective treatment, supervision, adequate restriction or adequate obligation by the person, to whom it was imposed. If the court believes that such extent of the sentence would result in substantial aggravation of the position of the person, against whom such decision is directed, or if the court does not consider such extent to be sufficient in view of fulfillment of the purpose of the sentence, protective measure, supervision, adequate restriction or adequate obligation, it may withdraw the decision along with the certificate.

(2) The court may also withdraw the decision along with the certificate, if it notified the competent authority of the other Member State on adaptation of the imposed sentence, protective treatment, conditions of supervision, adequate restrictions or adequate obligations in compliance with its law, if it believes that such adaptation of the decision results in substantial aggravation of the position of the person, against whom such decision is directed, or if it does not fulfill the purpose of the sentence, protective measure, supervision, adequate restriction or adequate obligation.

(3) The court must notify the withdrawal of the decision and certificate to the competent authority of the other Member State within 10 days after receiving the information referred to in Sub-section (1) or (2) at the latest. The withdrawal is not possible, if execution of the recognized decision has already been initiated in the other Member State.

### **Section 339**

#### **Consequences of Sending Decisions for Recognition and Execution**

(1) The court may request the competent authority of another Member State to transfer execution of a recognized decision back to the Czech Republic, if there are criminal



proceedings being conducted against the person, against whom such decision is directed, in the Czech Republic.

(2) After the initiation of the recognized decision in another Member State, execution of such decision in the Czech republic may be initiated or continued only

- a) if the court has withdrawn the decision along with the certificate under the stipulated conditions and within the stipulated time,
- b) in case a declaration of the other Member State<sup>63</sup>, according to which this state will not secure execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, is applicable,
- c) if the person, against whom such decision is directed, cannot be located in the territory of this Member State,
- d) if the person, against whom such decision is directed, no longer has his habitual residence in this Member State, or
- e) if the other Member State has already transferred the execution of the recognized decision back to the Czech Republic on the basis of a request of court according to Sub-section (1).

(3) The court will immediately notify the competent authority of the other Member State about

- a) all matters of fact that could lead to change of the imposed sentence, ambulant protective treatment, conditions of supervision, adequate restrictions or adequate obligations or to ordering an unsuspended sentence of imprisonment,
- b) granting a pardon or amnesty to the person, against whom the decision is directed, in the Czech republic, or about another decision, measure or matter of fact, as a result of which the decision became unenforceable or only partially enforceable.

(4) If the other Member State made a declaration<sup>64</sup> that it will not secure execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration in case of failure to comply with the imposed sentence, protective treatment, conditions of supervision, adequate restrictions or adequate obligations, the court will notify this state that according to the Code of Criminal Procedure, execution of an unsuspended sentence of imprisonment or was ordered or that ambulant protective treatment was changed to institutional protective treatment, instead of informing this state on the matters of fact that could result in ordering execution of an unsuspended sentence of imprisonment associated with incarceration.

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<sup>63</sup> Article 14 (3) of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

<sup>64</sup> Article 14 (3) of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

(5) The imposed sentence, protective measure, supervision, adequate restriction or adequate obligation will be executed in the Czech Republic in the extent, in which they were not executed.

## **PART SIX**

### Transitional and Final Provisions

#### **Section 340**

#### Transitional and Repealing Provisions

(1) Reassurances of reciprocity or guarantees of reciprocity provided and accepted according to previous legal regulations before the day this Act comes into full force and effect will be considered as guarantees according to Section 4 of this Act.

(2) Terms of office of persons appointed to the office of the National Member in Eurojust before the day this Act comes into full force and effect will end upon expiration of the time, for which these persons were appointed in their offices. Assistant of the National Member in Eurojust, who was appointed before the day this Act comes into full force and effect, will be appointed for a time of office, which will end in accordance with the term of office of this National Member.

(3) Duration of the term of office according to Section 26 of this Act in case of a judge appointed to the list of judges, who may sit the common control body of Eurojust as members or ad hoc judges, before the day this Act comes into full force and effect, will start on the day this Act comes into full force and effect.

(4) Until the time the Schengen Information System allows transfer of all data corresponding to the requisites of the European Arrest Warrant referred to in the prescribed form<sup>65</sup>, the record entered in the Schengen Information System for the purpose of arrest and extradition or surrender of a person will have the same effects as the European Arrest Warrant only until the time a written original of the European Arrest Warrant is served to the state, in which the person concerned by the surrender is located. This applies accordingly also to surrender pursuant to Part five Chapter II Sub-chapter 4 of this Act.

(5) A request of the foreign authority for legal assistance served to the competent judicial or central authority before the day this Act comes into full force and effect will be executed according to the Act no. 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(6) Provisions of Section 73 (1) of this Act will not apply to the leader of a Joint Investigation Team appointed by an agreement on Joint Investigation Team concluded before the day this Act comes into full force and effect.

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<sup>65</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

(7) An International Arrest Warrant issued by a court according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect, will be considered as a request for taking necessary measures in order to request a person from a foreign state according to Section 79 (1) of this Act.

(8) Proceedings on extradition into a foreign state and proceedings on extension of extradition initiated before the day this Act comes into full force and effect will be concluded according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(9) Concerning requests of the public prosecutor or court on takeover of criminal proceedings by a foreign state issued before the day this Act comes into full force and effect will be proceeded according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect. A request of a foreign authority for takeover of criminal proceedings served to the competent public prosecutor's office or the Supreme Public Prosecutor's Office before the day this Act comes into full force and effect will be executed according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(10) Proceedings on recognition and execution of a foreign decision initiated before the day this Act comes into full force and effect will be concluded according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect, if the decision on the petition of the Ministry of Justice for recognition of the foreign decision has already been declared. If the decision has not yet been declared, the Ministry of Justice will withdraw its petition and will proceed further according to this Act.

(11) Proceedings on a request of a foreign state for authorization of transit of a person through the territory of the Czech Republic initiated before the day this Act comes into full force and effect will be concluded according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(12) A request or order of an international court, served to the authorities of the Czech Republic before the day this Act comes into full force and effect, will be executed according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(13) Proceedings on surrender of a person into another Member State on the basis of a European Arrest Warrant, initiated before the day this Act comes into full force and effect, will be concluded according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(14) Provisions of this Act will also apply in proceedings referred to in Sub-section (13), if the decision surrender was not declared before the day this Act comes into full force and effect and the public prosecutor filed a petition to court for refusing the surrender for the reason referred to in Section 411 (6) € of the Act no 141/1961 Coll., as amended before the

day this Act comes into full force and effect; in this case the public prosecutor will withdraw his petition and proceed further according to this Act. Declaration of the person concerned by the surrender, who refuses to submit to execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration or protective measure in the foreign state, made before withdrawing the petition, will not be taken into account.

(15) Provisions of this Act will also apply in proceedings referred to in Sub-section 13, if the decision on the surrender was not declared in shortened surrender proceedings before the day this Act comes into full force and effect; in this case the public prosecutor will withdraw his petition for a decision on surrender and proceed further according to this Act. Declaration of the person that he consents to his surrender into the requesting state, made before the petition is withdrawn, will not be taken into account.

(16) Concerning an order for freezing property or evidence issued by a judicial authority of another Member State, which was served to the competent judicial authority before the day this Act comes into full force and effect, will be proceeded according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(17) Proceedings on recognition and execution of a decision of another Member State on financial penalties and obligations and proceedings on recognition and execution of a decision of another Member State on confiscation or forfeiture of property, items or other asset values, initiated before the day this Act comes into full force and effect, will be concluded according to the Act no 141/1961 Coll., as amended before the day this Act comes into full force and effect.

(18) Regulation no. 258/2006 Coll., which stipulates the sample European Arrest Warrant and sample certificate of issuing order for freezing property or evidence, is hereby repealed.

## **PART SEVEN**

### **Full Force and Effect**

#### **Section 341**

This Act comes into full force and effect on January 1, 2014.