

## **Chapter 66a. Co-operation with the International Criminal Court**

**Art. 611g.** § 1. A request for co-operation of the International Criminal Court, hereinafter referred to as “the Court”, depending on the stage of the proceedings, is executed by a competent court or prosecutor through the Minister of Justice.

§ 2. The provision of § 1 shall apply, respectively, to a request for judicial assistance addressed to the Court by a court or a prosecutor.

**Art. 611h.** § 1. In the event of a request of the Court for surrender of a person to the Court, as defined in the provisions of the Statute, prior to the first examination, the person whom the request concerns should be advised of his/her rights, as specified in the Statute, and of the possibility of raising an objection that a penal proceedings against him/her with regard to the conduct referred to in the request for surrender has been validly completed.

§ 2. Whenever circumstances occur which justify the objection referred to in § 1, a court shall notify the Minister of Justice thereof, and the latter may postpone the execution of a request for surrender.

§ 3. When adjudicating in a matter concerning the admissibility of surrender, the provisions of Art. 604 shall not apply.

§ 4. If, after a court’s positive decision on admissibility of surrender of a person to the Court, the Minister of Justice postpones the execution of the request for the surrender due to the penal proceedings pending in the Republic of Poland or due to the fact that such person is serving a sentence of imprisonment for another offence, the person whom the request concerns may be temporarily surrendered to the Court subject to the terms and conditions established in consultation with the Court.

§ 5. The consultation with the Court, as referred to in § 4, shall be carried out by the Minister of Justice.

**Art. 611i.** § 1. In the event of unscheduled landing in the territory of the Republic of Poland of a person who is being transported to the Court by air, the Minister of Justice may demand that the Court submits a request for transit.

§ 2. If, within 96 hours from unscheduled landing, the request referred to in § 1 is not received, the transported person shall be released.

**Art. 611j.** § 1. At the request of the Court for provisional arrest or arrest and surrender, a court shall order pre-trial detention.

§ 2. The pre-trial detention referred to in § 1 may be reversed or replaced with a more lenient preventive measure in the cases specified in the Statute. The provisions of Arts. 257-259 shall not apply.

§ 3. In the proceedings regarding the reversal or replacement of the preventive measure, a court or a prosecutor shall take into account the standpoint expressed by the Court.

**Art. 611k.** The Minister of Justice, prior to the consideration of the Court’s request for a consent to proceed against, punish or detain the surrendered person for an offence committed prior to the surrender, other than the offence for which the person has been surrendered to the Court, may request that the Court provides additional information as well as a report containing the statement of the surrendered person regarding the offence specified in the Court’s request.

**Art. 611l.** The Minister of Justice may grant his/her consent to the surrender to the Court of a person who has been extradited or surrendered to another state.

**Art. 611m.** If granting of judicial assistance provided for in the Statute, to the extent or in a manner specified in the Court's request, is in contradiction with the principles of legal order in the Republic of Poland, a court or a prosecutor shall not take a decision regarding the request, but shall submit the files of the case to the Minister of Justice who consults with the Court in order to resolve the matter.

**Art. 611n.** If a request of the Court for judicial assistance concerns measures other than those listed in the Statute, and its execution despite consultations with the Court is still prohibited by law, and such judicial assistance may not be granted subject to specified conditions, at a later date or in any other manner, a court or a prosecutor shall deny the Court's request.

**Art. 611o.** § 1. If a request of the Court concerns access to documents or other evidence containing information the disclosure of which could threaten the security of the Republic of Poland, a court or a prosecutor shall not take a decision regarding such request, but shall submit the files of the case to the Minister of Justice who, in co-operation with the competent body, consults with the Court in order to resolve the matter.

§ 2. If, despite the consultation with the Court, the granting of judicial assistance still threatens the security of the Republic of Poland, a court or a prosecutor shall deny the Court's request.

**Art. 611p.** If a request of the Court concerns provision of a document or other evidence made available to a relevant body or institution of the Republic of Poland by another state or international organization subject to an obligation of maintaining information contained therein as confidential, the provision shall take place only upon the consent of the originator of such document or evidence.

**Art. 611r.** § 1. At the request of the Court, in the course of the execution of a request for co-operation, the Prosecutor of the Court and other persons authorized by the Court shall be present during the performance of actions covered by the request.

§ 2. The persons referred to in § 1 may request that certain questions are asked and may record the course of the procedural actions for the needs of the proceedings pending before the Court.

§ 3. The Prosecutor of the Court shall be entitled to carry out procedural activities in the territory of the Republic of Poland subject to the terms and conditions specified in the Statute.

**Art. 611s.** The consultation with the Court, as referred to in the Statute, other than those specified herein, shall be carried out by the Minister of Justice.

(...)

Chapter 67

Closing provisions

**Art. 615** § 1. In relations with international criminal courts and their bodies operating subject to international agreements to which the Republic of Poland is a party, or appointed by international organizations established by means of an agreement ratified by the Republic of Poland, the provisions of this Part shall apply respectively.

§ 2. The provisions of this Part shall not apply if an international agreement to which the Republic of Poland is a party or a legal act regulating the operation of an international criminal tribunal provides otherwise.

§ 3. The provisions of this Part need not be applied to a foreign state with which the Republic of Poland has no relevant agreement in this respect, and which does not guarantee reciprocity.

§ 4. If an international agreement or a legal act regulating the operation of an international criminal court so requires, the Minister of Justice shall notify the international criminal court of the institution of proceedings against a person for the commitment of an offence which is subject to prosecution by the said court.

§ 5. If, with regard to the same conduct of the same person, penal proceedings are instituted in the Republic of Poland and before an international criminal court, the Minister of Justice shall transfer the prosecution to the said court if this is required by legal acts regulating the operation of the court.

(...)

Article 257. § 1. Pre-trial detention shall not be applied if another preventive measure is sufficient.

§ 2. In applying pre-trial detention, the court may reserve that the measure will be amended when an agreed bail is posted with the court within the prescribed time-limit.

Article 258. § 1. Pre-trial detention may occur if:

1) there is good reason to fear that the accused may take flight or go into hiding, particularly if he has no permanent residence in this country or when his identity cannot be established or

2) there is good reason to fear that the accused would induce other persons to give false testimony or attempt to obstruct the criminal proceedings in some other manner.

§ 2. If the accused has been charged with a crime or with a misdemeanour carrying the statutory maximum penalty of deprivation of liberty of a minimum of 8 years, or if the court of the first instance sentenced him to a penalty of deprivation of liberty of no less than 3 years, the need to apply the preventive detention in order to secure the proper conduct of proceedings may be justified by the severe penalty threatening the accused.

§ 3. Pre-trial detention may also occur, in exceptional cases when there is good reason to fear that the accused charged with a crime or an intentional misdemeanour would commit an offence against life, health or public safety, particularly if he threatened to commit such an offence.

§ 4. Provisions of § 1 through 3 shall apply accordingly to the remaining preventive measures.

Article 259. If there are no special reasons to the contrary, pre-trial detention should be waived, particularly if depriving the accused of his liberty:

(1) might seriously jeopardise the life or health of the accused, or

(2) would entail an excessive burden on the accused or his next of kin.

§ 2. Pre-trial detention shall not be applied, when the facts of the case permit presumption that the court will sentence the accused to the penalty of deprivation of liberty with conditional suspension of its execution, or to a milder penalty, or that the term of preventive detention would exceed the expected sentence of deprivation of liberty without a conditional suspension.

§ 3. Pre-trial detention cannot be imposed, if the offence carries the penalty of deprivation of liberty not exceeding one year.

§ 4. The restrictions referred to in § 2 and 3 shall not apply if the accused has remained in hiding, persistently failed to appear when summoned or obstructs the proceedings by other unlawful action or when his identity cannot not be established.