

ACT
of (date) 2004

**amending Act No 140/1961, the Criminal Code, as subsequently amended,
and Act No 119/2002 on firearms and ammunition and amending Act No 156/2000 on
the certification of firearms, ammunition and pyrotechnic items and amending
Act No 288/1995 on firearms and ammunition (the Firearms Act),
as amended by Act No 13/1998, and Act No 368/1992 on administrative charges,
as subsequently amended, and Act No 455/1991 on trading
(the Trading Act), as subsequently amended, (the Firearms Act),
as subsequently amended**

Parliament has passed the following Act of the Czech Republic:

CHAPTER ONE
Amendment of the Criminal Code

Section 1

Act No 140/1961, the Criminal Code, as amended by Act No 120/1962, Act No 53/1963, Act No 56/1965, Act No 81/1966, Act No 148/1969, Act No 45/1973, Act No 43/1980, Act No 159/1989, Act No 47/1990, Act No 84/1990, Act No 175/1990, Act No 457/1990, Act No 545/1990, Act No 490/1991, Act No 557/1991, Decision of the Constitutional Court of the Czech and Slovak Federative Republic of 4 September 1992, issued in part 93/1992, Act No 290/1993, Act No 38/1994, Decision of the Constitutional Court of the Czech Republic issued under No 91/1994, Act No 152/1995, Act No 19/1997, Decision of the Constitutional Court of the Czech Republic issued under No 103/1997, Act No 253/1997, Act No 92/1998, Act No 112/1998, Act No 148/1998, Act No 167/1998, Act No 96/1999, Act No 191/1999, Act No 210/1999, Act No 223/1999, Act No 238/1999, Act No 305/1999, Act No 327/1999, Act No 360/1999, Act No 29/2000, Act No 101/2000, Act No 105/2000, Act No 121/2000, Act No 405/2000, Act No 120/2001, Act No 139/2001, Act No 144/2001, Act No 256/2001, Act No 265/2001, Act No 3/2002, Act No 134/2002, Act No 285/2002, Act No 482/2002, Act No 218/2003, Act No 276/2003, Act No 362/2003, Act No 52/2004 and Act No 91/2004, is amended as follows:

2. In Section 20(1)(b) the words “or surrendered” are added after the word “extradited”.

4. In Article 21, the following paragraph (2) is inserted after paragraph (1):

“(2) A national of the Czech Republic may be surrendered to another Member State of the European Union only on the basis of a European Arrest Warrant.”

CHAPTER THREE
ENTRY INTO FORCE

Section III

This Act shall enter into force on the date of its promulgation.

ACT

of (date) 2004

amending Act No 141/1961 on criminal proceedings in court (the Code of Criminal Procedure), as subsequently amended, and certain other acts

Parliament has passed the following Act of the Czech Republic:

CHAPTER ONE
Amendment of the Code of Criminal Procedure

Section 1

Act No 141/1961, on criminal proceedings in court (the Code of Criminal Procedure), as amended by Act No 57/1965, Act No 58/1969, Act No 149/1969, Act No. 48/1973, Act No. 29/1978, Act No. 43/1980, Act No. 159/1989, Act No. 178/1990, Act No. 303/1990, Act No. 558/1991, Act No. 25/1993, Act No. 115/1993, Act No. 292/1993, Act No. 154/1994, Decision of the Constitutional Court of the Czech Republic issued under No 214/1994, Decision of the Constitutional Court of the Czech Republic issued under No 8/1995, Act No. 152/1995, Act No. 150/1997, Act No. 209/1997, Act No. 148/1998, Act No. 166/1998, Act No. 191/1999, Act No. 29/2000, Act No. 30/2000, Act No. 227/2000, Decision of the Constitutional Court of the Czech Republic issued under No 77/2001, Act No. 144/2001, Act No. 265/2001, Decision of the Constitutional Court of the Czech Republic issued under No 424/2001, Act No. 200/2002, Act No. 226/2002, Act No. 320/2002, Act No. 218/2003, Act No. 279/2003, Act No. 237/2004, Act No. 257/2004 and Act No. 283/2004, is amended as follows:

7. Section 36(4) shall read:

- "(4) The accused must have a defence counsel also:
- a) at a trial conducted under the simplified procedure against a person in custody;
 - b) if he or she is to decide whether to renounce the right to apply the speciality rule in proceedings following extradition from a foreign State (Section 389(2), Section 406(3));
 - c) in proceedings on extradition to a foreign State (Section 394(3));
 - d) in proceedings on further surrender to another Member State of the European Union [Section 421(2)(a)];
 - e) in proceedings on recognition of a foreign judgment (Section 452(2)), and;
 - f) in proceedings in which a decision is to be taken on imposing preventive treatment, with the exception of preventive treatment for alcoholism."

19. Part Four, Chapter Twenty-Five, including the heading, shall read as follows:

“CHAPTER TWENTY-FIVE
LEGAL RELATIONS WITH FOREIGN COUNTRIES

Title One
General provisions
Section 375

(1) The provisions of this chapter shall apply only where not otherwise provided for by a promulgated international agreement binding on the Czech Republic.

(2) The provisions of this chapter shall also apply to proceedings on letters of request from an international criminal court set up on the basis of a promulgated international agreement binding on the Czech Republic or an international criminal tribunal set up by a decision of the Security Council of the United Nations Organisation issued in accordance with Chapter VII of the United Nations Charter binding on the Czech Republic ("tribunal"), except where otherwise stipulated by a special act. The provisions of Sections 367, 377 and 432(2) shall not apply.

(3) The procedure laid down in Title Two of this chapter regarding extradition shall apply *mutatis mutandis* to proceedings and decisions on surrendering persons to an international criminal court or tribunal, except where otherwise stipulated by a special act. The provisions of Sections 392, 393 (1)(b)-(j) and (2), and 399(2) shall not apply.

(4) The procedure laid down in Title Four of this chapter shall apply *mutatis mutandis* to proceedings and decisions on the transit of persons through the territory of the Czech Republic to appear before an international criminal court or tribunal or for the purpose of the enforcement of a penalty handed down by an international criminal court or tribunal, except where otherwise stipulated by a special act.

(5) The procedure laid down in Title Seven of this chapter regarding the recognition and enforcement of foreign judgments shall apply *mutatis mutandis* to the enforcement of judgments by an international criminal court or tribunal, except where otherwise stipulated by a special act. Such judgments shall include judgments by an international criminal court or tribunal regarding the restitution of property or compensation of victims. The deed need not be punishable under Czech law (Section 449). The provisions of Sections 450(1)(d)-(g) and 451(1) shall not apply.

Section 376
Reciprocity

(1) Where the legal relationship between the Czech Republic and the requesting State is not governed by an international agreement, the bodies handling criminal proceedings in the Czech Republic shall comply with the request if the requesting State guarantees that it will comply with similar requests from a Czech body.

(2) If the requesting State makes a guarantee of reciprocity a condition of compliance with a request from a Czech body handling criminal proceedings, this guarantee may be given

by the Ministry of Justice or, in the case of preliminary proceedings, by the Supreme Prosecutor's Office.

(3) The procedure referred to in paragraphs (1) and (2) is excluded, if the handling of the request is subject to the existence of an international agreement in accordance with the provisions of this chapter.

Section 377

Protection of State interests

A request from a body in a foreign State may not be complied with if handling it would violate the Constitution of the Czech Republic or any provision of Czech Law that applies unconditionally or if handling the request would damage some other significant protected interest of the Czech Republic.

Section 378

Protection and use of information

(1) The provisions of Section 8a shall apply *mutatis mutandis* to the provision of information by bodies of the Czech Republic regarding action taken by it in accordance with the provisions of this chapter.

(2) Bodies of the Czech Republic shall not make public or provide, without the explicit consent of the relevant body in the foreign State, information or evidence obtained from it on the basis of a request received or sent in accordance with the provisions of this chapter or in connection therewith, or use such information or evidence for purposes other than the purposes for which they were sent or requested, if this is stipulated by a promulgated international agreement binding on the Czech Republic or if the information or evidence were provided only on the condition that these restrictions are observed.

Section 379

Service of requests

(1) Bodies in the Czech Republic may initiate proceedings in accordance with this chapter on the basis of a request from a body in a foreign State delivered to them by telephone, fax or electronically in accordance with the relevant legal provisions, provided they have no doubts regarding its authenticity and the case does not allow for any delay. The original of the request must be submitted subsequently within the time limit stipulated by the requested body.

(2) Documents in criminal proceedings may be served on a person in the foreign State by post only where this is provided for by a promulgated international agreement binding on the Czech Republic.

(3) Requests within the meaning of this chapter may be sent to a foreign State or received from a foreign State also through the intermediary of the International Criminal Police Organisation ("Interpol"), in particular where the case does not allow for any delay.

(4) Data and information may likewise be exchanged through the intermediary of Interpol regarding the time and other details of the surrender, reception and transport of persons or items in accordance with Section 380.

Section 380

Reception and surrender of persons and items

(1) Any person being extradited or surrendered from a foreign State on the basis of a request within the meaning of this chapter shall be received by the Czech Police from the bodies in the foreign State. Any person delivered in this way shall be transferred by the Czech Police to the nearest remand prison or other prison, except where provisions of this chapter stipulate otherwise. The prison receiving the person shall, without delay, notify the competent court and the public prosecutor overseeing the prison that the person has been placed there.

(2) Any person being extradited or surrendered to a foreign State on the basis of a request submitted in accordance with the provisions of this chapter shall be taken by the Czech Police from the remand prison or prison and handed over to the bodies of the foreign State.

(3) The transit of a person through the territory of the Czech Republic in accordance with Sections 422-424 shall be conducted by the Czech Police.

(4) The Czech Police shall likewise handle the surrender or return of an item in accordance with Section 441 and the reception or return of an item surrendered from the foreign State on the basis of a request by bodies in the Czech Republic, where the item cannot be sent or is unsuitable to be sent by post, as well as the transit of an item through the territory of the Czech Republic at the request of bodies in a foreign State.

(5) Persons surrendered to bodies in the foreign State in accordance with the provisions of this chapter or received from bodies in the foreign State need not carry travel documents for the persons of crossing the state borders.

Section 381

Manner of court decision

In proceedings in accordance with this chapter the court shall take its decision in the form of a ruling (*usnesení*), except where provisions of this chapter stipulate otherwise.

Section 382

Costs

(1) Costs incurred by a body in the Czech Republic in handling a request from a body in a foreign State in accordance with this chapter shall be borne by the State.

(2) Where a promulgated international agreement that is binding on the Czech Republic allows for reimbursement for the costs referred to in paragraph (1) or part thereof

from the requesting State, or where, in the absence of such an agreement, this is usual practice in relations between the requesting and requested State, the body which incurred the costs shall submit to the Ministry of Justice an itemised statement of the costs, a justification of the costs and the banking details for the purposes of obtaining the reimbursement from the requesting State.

(3) The State shall bear costs incurred by a foreign State in connection with a request from a body in the Czech Republic and reclaimed by that requested State in accordance with a promulgated international agreement binding on the Czech Republic or, in the absence of such an agreement, where this is usual practice in relations between the requesting State and the requested State. The State shall bear the costs incurred by the foreign State and reclaimed by it in respect of the transit of a person or item through its territory from another State to the territory of the Czech Republic in connection with a request from a body in the Czech Republic. This shall not effect the entitlement to seek repayment of these costs from the convicted party as part of the damages for the costs of the criminal proceedings.

Title Two **Extradition**

Extradition from a foreign country Section 383

(1) The body entitled to seek extradition of a person from a foreign State is the Ministry of Justice. It shall so do on a request from a court that has issued an international arrest warrant within the meaning of Section 384.

(2) Where there are grounds for assuming that the person concerned will not be extradited from the foreign State, the Ministry of Justice shall promptly communicate this fact to the court that issued the international arrest warrant, stating the reasons why the person is unlikely to be extradited from the foreign State.

(3) On the basis of the information referred to in paragraph (2), the court may cancel the international arrest warrant after examining the reasons why it is unlikely that the person will be extradited from the foreign country. The decision shall be taken in closed session.

(4) Where the proceedings are not proceedings on extradition for the purposes of enforcing a custodial sentence, the public prosecutor may lodge an appeal against the decision taken in accordance with paragraph (3); the appeal shall have suspensory effect.

Section 384

(1) Where a person whose extradition is to be sought is located in a foreign State, an international arrest warrant ("arrest warrant") shall be issued by the presiding judge or the judge of the competent court. In the case of preliminary proceedings, this shall be done on a proposal from the public prosecutor.

(2) The arrest warrant shall state:

- a) the name, address, telephone and fax number and electronic address of the body that issued the arrest warrant;
- b) the first name and family name of the person sought, other identifying personal data, nationality, and, if possible, a description, photograph and fingerprints;
- c) a description of the circumstances in which the offence was committed, specifying the time, place and manner of its commission;
- d) the legal classification of the act using the exact wording of the legal provisions concerned, including the prescribed scale of penalties for the offence in question;
- e) the provisions on limitation together with a description of the acts affecting the expiration of the prescription period, if a period of more than three years has lapsed between the commission of the offence and the issuing of the arrest warrant.

(3) An arrest warrant issued for the purposes of the extradition from a foreign State of a convicted person must state, in addition to the particulars stipulated in paragraph (2)(a)-(d), by which court and to what penalty the person was sentenced, as well as information on how the person's defence rights were ensured during the proceedings, if the sentence was handed down against a fugitive or *in absentia*, with the wording of Section 306a attached. The arrest warrant must also contain the provisions on limitation together with a description of the acts affecting the expiration of the prescription period, if a period of more than five years has lapsed between the validity of the sentence and the issuing of the warrant. The original judgment or a legally validated copy of the judgment must be attached to the arrest warrant.

(4) The arrest warrant must bear the signature of the judge who issued it and an imprint of the court's round stamp. If a translation of the arrest warrant into a foreign language must also be sent to the requested State, the court shall attach to the warrant a translation produced by a translator. The same shall apply to the translation of the sentence in the case of extradition of a convicted person to serve a custodial sentence.

(5) The arrest warrant shall cease to be valid:

- a) if cancelled;
- b) once the extradited person is delivered to the court that issued the arrest warrant, or;
- c) if the extradited person is handed over to another body in the Czech Republic entitled to take delivery of him or her.

(6) The court that issued the arrest warrant shall cancel it where the grounds on which it issued it no longer obtain or where it discovers further grounds by virtue of which a warrant may not be issued (Section 385). The court shall promptly notify the Ministry of Justice that it has cancelled the arrest warrant and also send it the ruling cancelling the warrant. The Ministry of Justice shall ensure that any necessary measures are taken.

Section 385

The court shall not issue an arrest warrant, if:

- a) it envisages imposing a penalty other than an unconditional custodial sentence or an unconditional custodial sentence shorter than four months;
- b) the custodial sentence to be served or remaining part thereof is shorter than four months;

- c) issuing the warrant would entail costs or consequences for the Czech Republic that are manifestly disproportionate to the public interest in the person in question being criminally prosecuted or serving a custodial sentence;
- d) extradition from the foreign State would be disproportionately detrimental to the person concerned compared with the advantage to be gained by criminal proceedings or the repercussions of the criminal offence, particularly in view of the person's age or social or family circumstances.

Section 386

(1) If the case does not allow for any delay, the Ministry of Justice may, at the request of the presiding judge or the judge of the court competent to issue the arrest warrant, ask the bodies in the foreign State to take the person concerned into provisional custody. In the case of preliminary proceedings, the court shall do this on a proposal from the public prosecutor. The request must contain the particulars referred to in Section 384(2)(a)-(e), as well as a declaration to the effect that an arrest warrant has been or will be issued for the person in question and that his or her extradition will be subsequently requested.

(2) The court shall, in addition, send the arrest warrant, drawn up in accordance with Section 384(2)-(4) and accompanied by a translation into the relevant language, to the Ministry of Justice no later than 10 days from the day on which the Ministry of Justice was sent the court's request submitted in accordance with paragraph (1)

Section 387

(1) The person extradited by the foreign State shall be handed to the police authorities and delivered by them without delay to the court whose presiding judge issued the arrest warrant. If the person has been extradited on the basis of arrest warrants from more than one court, he or she shall be delivered to the court stipulated by the Ministry of Justice.

(2) If the extradition is not for the purpose of enforcing a penalty, the presiding judge must, within 24 hours of the handover, hear the person concerned and decide on custody. The provisions of Sections 67-74 shall apply *mutatis mutandis* to the custody proceedings.

(3) The time spent by the person concerned in transit to reach the Czech Republic shall not be counted for the purpose of the time limits referred to in Section 71; however, it shall count towards the length of the penalty served in the Czech Republic.

Section 388

(1) Where a person is extradited by a foreign State subject to a condition, the condition shall be complied with.

(2) If the person is requested or extradited to serve a custodial sentence only in respect of some of the offences for which a cumulative or aggregate penalty had previously been imposed, the court shall, in public session, determine an appropriate penalty for the criminal offences to which the extradition relates.

(3) If the requested State extradites for the purpose of serving a custodial sentence a person on whom the penalty was imposed by a final judgment subject to reservations as regards the proceedings prior to the extradition, the court shall, in public session, hear the extradited person and:

- a) if the extradited person agrees to the enforcement of the penalty imposed, decide to enforce the judgment, or;
- b) if the person does not agree to the enforcement of the penalty imposed, cancel the judgment in the necessary respect and, at the same time, decide on the custody; in the further proceedings the court shall act in accordance with Section 306a *mutatis mutandis*.

(4) The court competent for the proceedings referred to in paragraph (3) is the court which decided in the case in the first instance.

(5) An appeal may be lodged against the decision referred to in paragraph 3(b); the appeal shall have suspensory effect, unless it concerns the custody decision.

Section 389 **The speciality rule**

(1) The person concerned may be prosecuted only for the offences for which he or she was extradited, except where:

- a) following release from prison or from enforcement of a custodial sentence, the person remains on the territory of the Czech Republic for more than 45 days, even though he or she could have left;
- b) the person left the territory of the Czech Republic and voluntarily returned or was brought to the territory of the Czech Republic from a third State in a lawful way;
- c) the requested State renounced application of the speciality rule or gave additional agreement for criminal prosecution for further offences, or;
- d) in the extradition proceedings the person explicitly renounced the right to apply the speciality rule in general or in respect of specific offences committed prior to extradition.

(2) Where the extradited person has not renounced application of the speciality rule in accordance with paragraph (1)(d) and if allowed by a promulgated international agreement binding on the Czech Republic, the court that issued the arrest warrant shall hear the person in the presence of his or her defence counsel and inform him or her of the possibility of renouncing the right to apply the speciality rule and of the consequences of so doing. The court shall enter on the record the offences in respect of which the right has been renounced, using the correct statutory term and numerical identification, as well as a description of the deed, to ensure that the offences are not substituted by other offences.

(3) Additional agreement for the purposes of paragraph 1(c) shall also mean a request from the requested State to take over the criminal prosecution of the extradited person for offences committed on its territory prior to extradition. This shall apply also in respect of a criminal complaint submitted by the requested State.

(4) Sections 383 and 384 shall apply *mutatis mutandis* to the submission of a request for the requested State's additional agreement to criminal prosecution in respect of an offence other than the offence covered by the original extradition request.

(5) Until such time as the requested State gives additional agreement to prosecution for further offences, the proceedings in respect of these offences may take only urgent or non-recurring measures.

(6) Paragraphs (1)-(4) shall apply *mutatis mutandis* to the enforcement of a custodial sentence that was handed down on the extradited person by a court in the Czech Republic prior to his or her extradition and was not covered by the original extradition request.

Section 390

Temporary surrender of a person who is to be extradited

(1) If, following authorisation of extradition, the requested State does not surrender the person concerned to the Czech Republic on the grounds that he or she is being criminally prosecuted by bodies in that State or is to serve a custodial sentence handed down by bodies in that State in respect of an offence other than the offence covered by the original extradition request, the presiding judge or judge who issued the arrest warrant may ask the Ministry of Justice to secure the temporary surrender of the requested person to the Czech Republic for the purpose of conducting the procedural steps necessary for the completion of the criminal prosecution. In the case of preliminary proceedings, this shall be done on a proposal from the public prosecutor.

(2) In the request submitted to the Ministry of Justice, the court shall specify the proceedings at which the requested person's presence is required, as well as the date or period during which the person's presence needs to be ensured.

(3) The provisions of Section 440 shall apply *mutatis mutandis* to proceedings for the temporary surrender of a requested person.

Extradition to a foreign country

Section 391

(1) The ministry competent to take receipt of requests from bodies in a foreign State for the extradition of a person from the Czech Republic is the Ministry of Justice. Service may also be effected by sending a request to the Supreme Prosecutor's Office, who forwards it to the competent public prosecutor for the purpose of conducting the preliminary investigation in accordance with Section 394 and must also send a copy of the request to the Ministry of Justice without fail. It shall forward the request to the Ministry of Justice if the competent public prosecutor is not known.

- (2) The foreign State's extradition request must be accompanied by:
- a) the original or an authenticated copy of the guilty verdict, the arrest warrant or other decision with the same effect;
 - b) a description of the deed in respect of which the extradition is sought, including the date and place where it was committed and its legal denomination;
 - c) the text of the relevant legal provisions of the requesting State.

(3) Where the documents and information referred to in paragraph (2) are not attached to the request or the information provided by the requesting State is not adequate, additional information shall be sought by the Ministry of Justice, if direct contact between judicial bodies is not allowed under a promulgated international agreement binding on the Czech Republic. In such a case, the Ministry may stipulate a time limit within which the information must be provided.

Section 392

Extraditable offences

(1) A person may be extradited to a foreign State, if the deed in respect of which extradition is sought is a criminal offence under the Czech Criminal Code and the maximum custodial penalty that may be imposed for the offence under the Czech Criminal Code is at least a year.

(2) The extradition of a person to a foreign State for the enforcement of a custodial sentence or preventive measure involving deprivation of liberty (hereinafter “preventive measure”) that has already been handed down in respect of an offence within the meaning of paragraph (1) is permitted, if the penalty or the preventive measure to be enforced or the remaining portion thereof is at least four months. Where there are several penalties or preventive measure or unenforced parts thereof, these shall be added together, if this is possible in view of the nature of the penalty or preventive measure.

(3) Where a foreign State has requested the extradition of a person for more than one offence of which at least one satisfies the conditions stipulated in paragraph (1), extradition is permissible also for criminal prosecution in respect of the other offences or for the purpose of enforcement of the other penalties for which it would otherwise not be permissible in view of the extent of the punishment or remaining portion thereof.

Section 393

Unallowability of extradition

- (1) A person may not be extradited to a foreign State, if:
- a) he or she is a national of the Czech Republic;
 - b) the person is a person to whom asylum status has been granted in the Czech Republic, within the scope of the protection granted to the person by the relevant legal provisions or international treaty;
 - c) the criminal prosecution or enforcement of the custodial sentence are time-barred in accordance with Czech law;
 - d) the criminal prosecution may not proceed because of a pardon or amnesty;
 - e) the offence in respect of which extradition is sought is of an exclusively political or military nature;
 - f) the offence involves the violation of tax, customs or foreign currency regulations or other financial laws of the State;
 - g) the offence was committed on the territory of the Czech Republic, except for cases in which in view of the particular circumstances of the commission of the offence preference must be given to conducting the criminal prosecution in the requesting

- State in order for the facts of the case to be duly established and for reasons relating to the extent of the punishment or its enforcement;
- h) it is possible for the death penalty to be imposed in the requesting State for the offence in respect of which extradition is sought, unless the requesting State guarantees that the death penalty will not be handed down;
 - i) the requesting State is seeking extradition in order to enforce the death penalty, or;
 - j) under Czech law the requested person was not criminally liable for the offence at the time when it was committed or there are other grounds excluding him or her from criminal liability.

(2) If a person is to be extradited to a State that is a signatory to the Convention implementing the agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, the unallowability criteria referred to in paragraph 1(c) and (d) shall not be taken into account.

Section 394

Preliminary investigation

(1) The preliminary investigation shall be conducted by the public prosecutor at the regional prosecutor's office to which the Ministry of Justice or Supreme Prosecutor's Office forwarded the foreign State's extradition request or the public prosecutor who has been informed of a criminal offence in respect of which a foreign State could seek extradition. The purpose of the preliminary investigation is, in particular, to establish whether extradition of the person to the foreign State is ruled out by any of the circumstances referred to in Section 393(1).

(2) The preliminary investigation starts with the arrest of the person concerned in accordance with Section 395 or by requesting the requisite reports.

(3) The person whose extradition is sought must have a defence counsel at the extradition proceedings.

(4) The public prosecutor shall, if he or she has not already done so in connection with the arrest in accordance with Section 395(1), hear the person concerned and inform him or her of the contents of the extradition request. If the person states facts that refute the suspicions and provides evidence of these facts that can be addressed without undue delay, the preliminary investigation shall cover these facts too.

(5) The Ministry of Justice shall, at the instigation of the public prosecutor or without it, return the extradition request to the body in the State requesting extradition, if:

- a) the person whose extradition was sought has died;
- b) the person whose extradition was sought is not criminally liable under Czech law because of his or her age;
- c) it is not possible to arrest the person whose extradition was sought;
- d) the person whose extradition was sought is located outside the territory of the Czech Republic or his or her whereabouts are not known;
- e) the consent referred to in Section 389(1)(c) and (d) has not been given, or;

- f) the criminal prosecution or enforcement of the custodial sentence is statute-barred in the requesting State.

(6) The preliminary investigation ends with the submission of the proposal referred to in Section 397(1) or with the return of the request in accordance with paragraph 5.

Section 395

Arrest

(1) If there are grounds for custody, the public prosecutor or, on his or her order, the police may arrest the person whose extradition is sought. A police body is authorised to arrest such a person even without a prior order from a public prosecutor, if the case is urgent and the public prosecutor's order cannot be obtained in advance. The police must, however, promptly notify the public prosecutor of the arrest and submit to him or her a copy of the report drawn up at the time of arrest and any further material the public prosecutor may need in order to be able to submit a provisional custody proposal (Section 396(1)). The proposal must be submitted in such a way that the arrested person could be delivered to the court no later than 48 hours from arrest; otherwise, he or she must be set free.

(2) The police body that carried out the arrest shall question the arrested person and draw up a report accordingly indicating the place, time and detailed circumstances of the arrest and the personal particulars of the person arrested, as well as the material grounds for the arrest. In the course of the arrest, the person arrested must also be informed of the possibility of summary extradition proceedings and the conditions governing them. The person arrested shall have the right to choose a defence counsel, to talk with him or her without the presence of any third party and to consult him or her in the course of the arrest; the person shall also be entitled to ask that the defence counsel be present at the questioning at the time of arrest, unless the defence counsel is unreachable within the time limit stated in the report. The person concerned must be informed of these rights and provided with the full opportunity to avail himself or herself of them.

(3) If on the basis of further investigation the public prosecutor does not order the release of the person arrested, he or she must hand over the person to the regional court no later than 48 hours after the arrest together with a provisional custody proposal (Section 396(1)).

Section 396

Provisional custody

(1) If the facts established give rise to fear that the person to be extradited may flee, the presiding judge of the regional court may, on a proposal from the public prosecutor conducting the preliminary investigation, decide to take the person into custody (hereinafter "provisional custody").

(2) The court competent to take the decision referred to in paragraph (1) is the regional court in whose district the person to be extradited resides or was arrested.

(3) Before taking the custody decision, the presiding judge of the regional court must hear the person to be extradited. The person shall be entitled to have a defence counsel present at the hearing. The time limits referred to in Chapter Four within which a decision to take an arrested person into custody must be taken and within which a custody decision must be communicated to the person concerned shall also apply likewise to proceedings concerning provisional custody and extradition custody.

(4) If a person to be extradited has been taken into provisional custody or extradition custody (Section 397(3)), the custody enforcement provisions shall apply *mutatis mutandis* to relations with the defence counsel, lawyer and correspondence.

(5) The public prosecutor of the competent regional prosecutor's office, shall on a proposal from the person to be extradited or without such a proposal, decide to release the person from custody, if the reasons for which the person was taken into custody in accordance with paragraph (1) no longer obtain, where the decision on the allowability of the extradition to the foreign State in accordance with Section 397 has not yet been taken. The public prosecutor shall decide to release the person concerned from custody also where the preliminary investigation was initiated without an extradition request from a foreign State or where such a request was not received by the Czech Republic within 40 days of the date on which the person was taken into provisional custody. Release from custody in such circumstances shall not preclude the person being taken into custody anew if an extradition request is subsequently sent.

(6) The provisions of Sections 72(2), 73, 73a and Section 73b(3) shall apply *mutatis mutandis* to proceedings dealing with a person's request to be released from provisional custody or extradition custody (Section 397(3)).

(7) An appeal may be lodged against a decision on taking into custody in accordance with paragraph (1), a decision on the release of the person to be extradited in accordance with paragraph (5) or a decision rejecting the person's request to be released; the appeal shall have suspensory effect, except in the case of a decision on taking into custody.

Section 397

Decision by the court and extradition custody

(1) On completion of the preliminary investigation, the regional judge in whose district the person to be extradited resides or was arrested shall, on a proposal from the public prosecutor in public session, decide whether the extradition is allowable. The provisions of Section 188(1)(e) regarding referral back to the public prosecutor for further investigation shall not apply.

(2) If the court decides that the extradition is not allowable and the person concerned is in custody, it shall at the same time decide that the person is to be released, unless he or she is deprived of liberty on some other legal grounds.

(3) If the court decides that the extradition is allowable, it shall take the person concerned into extradition custody, unless this has already been done by the presiding judge in accordance with Section 396(1). In so doing, the court shall not be bound by the grounds for custody set out in Section 67. If at the time of the decision referred to in paragraph (1) the

person concerned was already in provisional custody in accordance with Section 396(1), the court shall decide to convert this custody into extradition custody. If the person had been extradited to the Czech Republic from a foreign State, the court may decide that the extradition is allowable only if the extraditing State consents to the extradition to a further country. If the person had been surrendered to the Czech Republic on the basis of a European Arrest Warrant, the court may decide that the extradition is allowable only if the surrendering State consents to the extradition to a further country.

(4) Appeals may be lodged against the decisions referred to in paragraphs (2) and (3); such appeals have suspensory effect. In the case of a decision to release the person concerned from custody, an appeal by the public prosecutor shall have suspensory effect only if lodged immediately after the decision is given.

(5) Once the decision referred to in paragraph (3) has the force of law, the presiding judge of the district court shall refer the case to the Ministry of Justice. If the Minister of Justice has doubts regarding the correctness of the court's decision, he or she may submit the matter to the Supreme Court for review.

(6) Referral of the case to the Supreme Court converts the extradition custody into provisional custody. After reviewing the case, the Supreme Court shall proceed *mutatis mutandis* in accordance with paragraphs (2), (3) and (5).

Section 398

Summary extradition proceedings

(1) If the person to be extradited states before the court that he or she agrees to be extradited to a foreign State for criminal prosecution or to serve the penalty stated in the arrest warrant and extradition request, the public prosecutor shall refer the case to the Ministry of Justice with a proposal that the Minister allow the extradition without the court having to first decide on its allowability.

(2) If the person to be extradited gives his or her consent to being extradited in the course of the public session on the allowability of the extradition, the public prosecutor shall retract the proposal made in accordance with Section 397(1) and proceed in accordance with paragraph (1). The proposal may be retracted no later than by the time when the court retires for final deliberation.

(3) The person to be extradited must be informed in advance of the significance of consenting to extradition and of the consequences that flow from making such a declaration. Consent to extradition may not be retracted.

(4) If the Minister of Justice has doubts regarding the allowability of the extradition, even though the person to be extradited has expressed consent, he or she may refer the matter back to the public prosecutor stipulating that the court must first decide on the allowability of the extradition in accordance with Section 397.

(5) If the person to be extradited consents to extradition to the foreign State, the public prosecutor shall, on completion of the preliminary investigation, submit a proposal to the

regional court in whose district the person to be extradited resides or was arrested to take the person into extradition custody (Section 397(3)).

(6) The provisions of Section 72(2) and 73b(3) shall apply *mutatis mutandis* to proceedings on the person's request to be released from custody. The court competent to decide on the person's request for release from custody is the court that took the extradition custody decision in accordance with paragraph (5).

Section 399

Authorisation and implementation of the extradition

(1) Extradition to a foreign State shall be authorised by the Minister of Justice. The Minister may so do, only if the regional court or the Supreme Court has decided in accordance with Section 397 that the extradition is allowable, unless it is a case of summary extradition proceedings in accordance with Section 398.

(2) Even where the court finds that the extradition of the person concerned to the foreign State is allowable, the Minister of Justice may decide not to allow the person's extradition, in particular where:

- a) there is a well-founded fear that the criminal proceedings in the requesting State would not comply with the principles of Articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms or that the custodial sentence handed down or likely to be handed down by the requesting State would not be enforced in accordance with the requirements of Article 3 of this Convention;
- b) there is a well-founded fear that in the requesting State the requested person would be exposed to persecution because of his or her origin, race, religion, membership of a certain ethnic or other group, nationality or political views or that he or she would be disadvantaged during the criminal proceedings or in the enforcement of the custodial penalty, or;
- c) by being extradited, the person would, in view of his or her age and personal circumstances, be disadvantaged to a manifestly disproportionate degree compared with the seriousness of the offence with which he or she has been charged.

(3) Even where the court finds that the extradition to the foreign State is allowable, the Minister of Justice shall decide not to allow the extradition, where he or she has decided in accordance with Section 420(3) that the enforcement of a European Arrest Warrant is to take precedence.

(4) The extradition of the person concerned following the authorisation and consequent release of the person from custody shall be organised by the presiding judge of the regional court which took the decision on extradition custody.

(5) The Minister of Justice shall order the release of the person concerned from extradition custody after the matter has been referred to him or her in accordance with Section 397(5) or Section 398(1) and after taking the decision that the person is not to be extradited. The release shall be ensured by the presiding judge of the regional court ruling in the case.

Section 400

Postponement of extradition and temporary surrender

(1) If the presence of the person concerned is necessary in the Czech Republic for the purposes of completing a criminal prosecution or enforcing a custodial penalty in respect of an offence other than the offence covered by the extradition request, the Minister of Justice may, having decided to authorise the person's extradition, postpone it.

(2) The Minister of Justice may decide to authorise the temporary surrender of the person concerned to the requesting State for the performance of the procedural steps necessary for the criminal trial. The decision shall stipulate an appropriate period - which may not be longer than six months - within which the person temporarily surrendered must be returned to the territory of the Czech Republic.

(3) Following agreement with the competent body of the requesting State, the period referred to in paragraph (2) may be extended. The extension of this period may not be used for a purpose other than the purpose for which the temporary surrender was originally authorised. Temporary surrender may be repeated.

(4) The provisions of Section 438 and 439 shall apply *mutatis mutandis* to the temporary surrender of the person concerned.

(5) If during the period of the temporary surrender the person concerned is finally sentenced on the territory of the requesting State for the offence for which the extradition was authorised, the Minister of Justice may, on a proposal from the requesting State, decide to postpone the person's return to the territory of the Czech Republic until such time as the custodial sentence on the territory of the requesting State has been served. This procedure may not be used, if the criminal prosecution of the person concerned had not been made final in the Czech Republic.

(6) The period for which the person was in custody in the foreign State during the period of temporary surrender shall count towards the period of enforcement of the penalty enforced in the Czech Republic only to the extent that it was not counted towards the enforcement of the penalty imposed on the territory of the requesting State. The period served in respect of the penalty imposed on the territory of the requesting State shall not count towards the period of enforcement of the penalty enforced in the Czech Republic.

Section 401

Handling of extradition requests from more than one foreign State

(1) If bodies in the Czech Republic are sent extradition requests from more than one foreign State for one and the same person, the extradition allowability conditions shall be examined for each request individually.

(2) If the court decides that extradition is allowable to more than one of the foreign States or if the person whose extradition is sought agrees to extradition to more than one of the foreign States, the Minister of Justice shall, together with the extradition authorisation, decide to which State the requested person will be extradited. At the same time he or she shall

communicate his or her approval for the person to be extradited to any further State that sought the person's extradition.

Section 402

Extension of extradition to cover another offence

(1) The provisions of this Title shall apply *mutatis mutandis* to proceedings on a request from a foreign State to which a person has been extradited seeking agreement for:

- a) prosecution for an offence committed prior to extradition other than the offence for which the extradition was authorised;
- b) enforcement of a penalty imposed for an offence other than the offence for which the extradition was authorised, or;
- c) extradition to a third country for the purpose of criminal prosecution or enforcement of a custodial sentence.

(2) The bodies competent for the proceedings are the bodies that dealt with the original request for the extradition of the person in question.

Special provisions for the surrender of persons between the Member States of the European Union on the basis of a European Arrest Warrant

Section 403

General provisions

(1) The provisions of this Chapter shall apply in the established cases to the surrender of persons between Member States of the European Union (hereinafter “Member States”) on the basis of a European Arrest Warrant and to action in connection therewith.

(2) The Czech Republic may surrender a national of its own to another Member State of the European Union only on the condition of reciprocity.

(3) The provisions of Part 2 shall apply to the surrender of persons between Member States, only where provisions of Part 3 do not stipulate otherwise.

Section 404

European Arrest Warrant

(1) European Arrest Warrant shall mean an arrest warrant issued on the basis of European Union provisions.

(2) A European Arrest Warrant may be issued by a judicial body in one Member State (the “requesting State”) in respect of a person located in another Member State (the “surrendering State”) where the surrender of the person needs to be requested for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order,

- a) if the person has been prosecuted for a criminal act punishable by the law of the requesting State by a custodial sentence for a maximum period of at least 12 months or may be subject to a detention order for a period of at least 12 months, or
- b) if the person has been sentenced to a custodial sentence of at least four months or made subject to a detention order for a period of at least four months.

Surrender from another Member State to the Czech Republic

Section 405

(1) Where a person whose arrest is sought is located in the surrendering State, a European Arrest Warrant shall be issued in accordance with Section 40 by the judge on a proposal from the public prosecutor in the case of preliminary proceedings or by the presiding judge in the case of court proceedings.

(2) The European Arrest Warrant shall state:

- a) the first name and family name of the person sought, other identifying personal data, nationality, a description, and, if possible, a photograph and fingerprints;
- b) name, address, telephone and fax number and electronic address of the body that issued the European Arrest Warrant;

- c) evidence of an enforceable judgment, an arrest order within the meaning of Section 69, an international arrest warrant within the meaning of Section 384 or any other enforceable decision with the same effect in respect of the act for which the European Arrest Warrant was issued;
- d) the legal classification of the act using the exact wording of the legal provisions concerned, including the prescribed scale of penalties for the offence under the law of the requesting Member State;
- e) a description of the circumstances in which the offence was committed, specifying the time, place, manner and degree of participation in the offence by the person sought, as well as the consequences of the offence, if these can be stated, and;
- f) the provisions on limitation together with a description of the acts affecting the expiration of the prescription period, if a period of more than three years has lapsed between the commission of the offence and the issuing of the European Arrest Warrant.

(3) A European Arrest Warrant issued for the purposes of the surrender of a person on whom a custodial sentence has been passed must state, in addition to the particulars stipulated in paragraph (2)(a)-(d), by which court and to what penalty the person was sentenced, as well as information on how the sentenced person's defence rights were ensured during the proceedings, if the sentence was handed down against a fugitive or in absentia, with the wording of Section 306a attached. The European Arrest Warrant must also contain the provisions on limitation together with a description of the acts affecting the expiration of the prescription period, if a period of more than five years has lapsed between the validity of the sentence and the issuing of the Warrant.

(4) Where any of the offences in respect of which surrender is sought is an offence within the meaning of Section 412, the court shall state this fact in the European Arrest Warrant.

(5) The European Arrest Warrant shall be sent by the court that issued it to the relevant body in the surrendering State in accordance with the legal system of that State in the official language or one of the official languages of that State or in another language in which that State is willing to receive a European Arrest Warrant. A copy of the European Arrest Warrant shall at the same time be sent to the Ministry of Justice. The Ministry of Justice shall specify by Decree the model for the European Arrest Warrant, the language other than the official language(s) in which the Member States will accept a European Arrest Warrant and the arrangements for the service of the Warrant.

(6) The provisions of Section 384(4) and (5), Section 387 and Section 388 shall apply in these proceedings likewise. If the person concerned is handed over to the Czech Republic from a Member State of which he or she is a national or where he or she is habitually resident on the proviso that if he or she does not consent to the enforcement of the penalty or preventive measure in the Czech Republic, he or she will be returned to the Member State in question for the enforcement of any penalty or preventive measure handed down in the Czech Republic, the presiding judge shall, if the person is sentenced, forward the sentence to the Member State in question within 30 days of its validity together with a translation into the official language of the surrendering State.

(7) If the person handed over to the Czech Republic from another Member State is given a custodial sentence or detention order, the court shall, for the purposes of calculating

the total period of deprivation of liberty, take into consideration the time spent in custody in connection with the enforcement of the European Arrest Warrant.

Section 406 **The speciality rule**

A person surrendered by another Member State may not be convicted or have his or her liberty restricted or be deprived of his or her liberty in respect of an offence committed prior to surrender other than the offence for which he or she was surrendered; this does not apply if:

- a) following release from prison, from enforcement of a custodial sentence or from a detention order, the person surrendered fails to leave the territory of the Czech Republic within 45 days, despite being able to, or returns to the territory of the Czech Republic having once left;
- b) the other offence is not punishable with a custodial sentence or detention order, or is not arrestable;
- c) the person surrendered is liable only for a financial penalty or community service penalty, even though this may be converted into a custodial sentence on the terms laid down by law;
- d) the surrendered person consented to being surrendered to the Czech Republic and renounced the right to apply the speciality rule within the meaning of paragraph 1;
- e) having been surrendered, the person explicitly renounced the right to apply the speciality rule within the meaning of paragraph 1 in respect of specific offences committed prior to the surrender;
- f) the competent body of the State that surrendered the person has communicated its consent to the prosecution of the person for a further offence committed before he or she was surrendered.

(2) The statement referred to in paragraph 2(e) shall be made by the person concerned in a court and duly recorded in the presence of defence counsel. The statement may not be retracted. The court shall be required to inform the surrendered person of the consequences of renouncing the right to apply the speciality rule within the meaning of paragraph 1. The court competent for the proceedings referred to in paragraph 2(e) is the court that issued the European Arrest Warrant, in preliminary proceedings on a proposal from the public prosecutor. The court shall notify the competent body in the surrendering State of the content of the statement.

(3) If a person is to be prosecuted for an offence committed prior to surrender other than the offence for which he or she was surrendered and the circumstances referred to in paragraph 2 do not obtain, a request for consent to prosecution for the other offence shall be submitted by the judge on a proposal from the public prosecutor in the case of preliminary proceedings or by the presiding judge in the case of court proceedings. Section 405 shall apply to the request likewise.

Section 407 **Temporary surrender from another Member State**

(1) The presiding judge or, in preliminary proceedings on a proposal from the public prosecutor, the judge who issued the European Arrest Warrant may request the body in the surrendering State for the person in respect of whom the European Arrest Warrant was issued to be heard or temporarily surrendered for the purpose of criminal prosecution in the Czech Republic.

(2) The request referred to in paragraph 1 shall specify the proceedings at which the requested person's presence is required, as well as the date or period during which the person's presence needs to be ensured.

(3) The provisions of Section 440 shall apply mutatis mutandis to proceedings for the temporary surrender of a requested person.

Surrender from the Czech Republic to another Member State

Section 408

(1) The European Arrest Warrant shall be sent to the regional public prosecutor in whose region the person whose surrender is sought (the "requested person") resides or was arrested (for the purposes of this Part the "competent public prosecutor").

(2) If a European Arrest Warrant is sent to a public prosecutor who is not the competent prosecutor as stated in paragraph 1, this public prosecutor shall forward it to the competent public prosecutor and notify the body in the requesting State accordingly. The same procedure shall be followed in the event of a European Arrest Warrant being sent to the Ministry of Justice or the Supreme Prosecutor's Office.

(3) The competent court to decide on the surrender to the requesting State is the regional court that is the place of work of the regional public prosecutor referred to in paragraph 1 (the "competent court").

Section 409

Preliminary investigation

(1) The purpose of preliminary investigation is to establish whether the conditions are met for surrender on the basis of the European Arrest Warrant.

(2) The public prosecutor shall hear the requested person, if he or she has not already done so in connection with the arrest in accordance with Section 410, and inform the person of the content of the European Arrest Warrant, the possibility of consenting to surrender and the consequences of so consenting, as well as the possibility of renouncing the right to apply the speciality rule in accordance with Section 406(1) and the consequences of renouncing application of this rule.

(3) The public prosecutor shall return the European Arrest Warrant to the body in the requesting State, if:

a) the requested person has died;

- b) in accordance with the legal system of the Czech Republic, owing to his or her age the requested person is not liable for the conduct for which the European Arrest Warrant was issued;
- c) it is not possible to arrest the requested person;
- d) the requested person is located outside the territory of the Czech Republic or his or her whereabouts are not known;
- e) the European Arrest Warrant was served after the legal validity of the decision on the surrender of the requested person or the decision on his or her extradition;
- f) the Member State has not given the consent referred to in Section 421(1);
- g) the non-Member State ("third State") has not given the consent referred to in Section 421(3), or;
- h) the criminal prosecution, custodial sentence or detention order is statute-barred in the requesting State.

Section 410 **Arrest and provisional custody**

The provisions of Section 395 and 396 shall apply likewise to the arrest and provisional custody of the requested person.

Section 411 **Decision by the court and transfer custody**

(1) The decision on the surrender shall be taken by the competent court on completion of the preliminary investigation on a proposal from the public prosecutor in public session. At the request of the body in the requesting State that issued the European Arrest Warrant, the court shall hear the requested person in public session, taking account of the conditions laid down by agreement with the body in the requesting State. The court shall notify the competent Czech police department, so that the surrender of the person concerned can be organised within the prescribed time.

(2) At the request of the body in the foreign State that issued the European Arrest Warrant, the court shall allow representatives from that foreign body to attend the public session. The possibility for a representative from this body in the foreign State to put additional questions to the person being heard shall be governed by the provisions of Section 432(4) likewise.

(3) If the competent court decides that the requested person is not to be surrendered and the person is in custody, it shall at the same time decide that the person is to be released, unless he or she is deprived of liberty on some other legal grounds.

(4) If the competent court decides that the requested person is to be surrendered, it shall take the person into transfer custody, if it has not already done so in accordance with Section 410. In so doing, the court shall not be bound by the grounds for custody set out in Section 67. If at the time of the decision referred to in paragraph 1 the person concerned was already in provisional custody in accordance with Section 410, the court shall decide to convert this custody into transfer custody. The provisions of Section 397 shall apply to transfer custody likewise.

(5) Appeals may be lodged against the decisions referred to in paragraphs 1, 3 and 4; such appeals have suspensory effect. An appeal by the public prosecutor against a decision to release the requested person from custody shall have suspensory effect only if lodged immediately after the decision is given.

- (6) The court shall refuse to surrender the requested person only if:
- a) the act is not punishable by law in both States, unless the conduct is conduct listed in Section 412; this shall not apply in the case of taxes, customs duties or foreign exchange where the enforcement of a European Arrest Warrant may not be refused on the grounds that Czech law does not levy the same type of taxes or customs duties or does not contain the same tax, customs and foreign exchange provisions as the law of the requesting State;
 - b) the offence in respect of which the European Arrest Warrant was issued is covered by an amnesty granted in the Czech Republic, or the criminal prosecution or enforcement of the penalty are statute-barred in the Czech Republic if prosecution in respect of this offence falls within the scope of the laws of the Czech Republic;
 - c) the requested person has been finally sentenced in the Czech Republic or the foreign State for the same act and the penalty has already been enforced or is being enforced or is no longer enforceable, or the criminal proceedings have been discontinued in the Czech Republic or other Member State by means of a final judgment, unless such decisions have been overturned in the prescribed proceedings;
 - d) the requested person has been criminally prosecuted in the Czech Republic for the same act in respect of which the European Arrest Warrant was issued;
 - e) the person is a national of the Czech Republic or habitually resident in the Czech Republic, his or her surrender is sought for the enforcement of a custodial sentence or preventive treatment or a correctional penalty and the person has stated on the record in the competent court that he or she refuses to submit to the enforcement of this penalty or preventive measure in the requesting State; this declaration may not be retracted.

(7) If a national of the Czech Republic or person who is habitually resident in the Czech Republic is surrendered to the requesting State for criminal prosecution, the court shall make the surrender subject to the proviso that the person will be returned to the Czech Republic for enforcement of the custodial sentence or preventive treatment or correctional penalty, if this type of penalty or preventive measure is imposed on him or her and, when the verdict is handed down in the requesting State, he or she does not consent to the enforcement of the penalty or preventive measure in that State. The court shall proceed in this way only if the requesting State has given a guarantee that it will hand over the person to the Czech Republic for the enforcement of the penalty or preventive measure. If the requesting State does not provide such a guarantee, the court shall refuse to surrender the requested person.

(8) If a person is surrendered to the requesting State for enforcement of a custodial sentence or a preventive measure handed down in a verdict delivered in absentia without the person having been properly notified of the date and place of the proceedings, the court shall make the surrender subject to the proviso that the requesting State will provide the person with the opportunity to request a new trial and will facilitate the person's presence at the trial.

(9) If necessary for the purposes of the criminal prosecution or enforcement of the custodial sentence imposed on the person to be surrendered in respect of a criminal act other

than the act stated in the European Arrest Warrant, the court may allow the surrender of the person to be postponed until a time of its stipulation. In so doing, it shall examine the requesting State's reasoned request for the surrender of the person within the time limit within which the proceedings for which the person is to be surrendered must be conducted in respect of that person.

(10) If a person who has been sentenced to a custodial sentence in criminal proceedings on the territory of the Czech Republic is surrendered, the court shall make the surrender subject to the proviso that the person will be returned for the enforcement of the custodial sentence or the remaining portion thereof and shall stipulate an appropriate period for this. This period may not be longer than the length of the custodial sentence not yet served or portion thereof. The period spent in custody in the requesting State by the surrendered person on the basis of the European Arrest Warrant shall, on the person's return to the territory of the Czech Republic, be counted towards the custodial sentence not yet served or portion thereof.

(11) The court shall decide on the European Arrest Warrant within 60 days of the arrest of the requested person. The court shall, without delay, send notification of the decision to the competent body in the requesting State and to the competent Czech Police department that classified the person as wanted. If surrender takes place, the court shall provide the competent body in the requesting State with information on the length of time spent in custody in the course of the transfer proceedings on the territory of the Czech Republic. If the court refuses the surrender in accordance with paragraph 3, it shall notify the competent body of the requesting State of the reasons for its refusal.

(12) If in exceptional circumstances it is not possible for the decision to be taken within the time limit stated in paragraph 11, the court shall extend the period for taking the decision on the European Arrest Warrant by a further 30 days. It shall notify the body in the requesting State accordingly and give its reasons.

(13) If the court is unable to deliver a decision on the surrender of the requested person even within the extended time limit referred to in paragraph 12, it shall notify the competent body in the requesting State and the European judicial cooperation entity, Eurojust, accordingly. It shall inform Eurojust through the intermediary of the Czech Republic's national member of Eurojust. It shall take the decision on the surrender without delay as soon as the obstacle preventing the decision is overcome.

Section 412

Exceptions to the double criminality rule

(1) Where surrender is requested for offences for which in the requesting State a custodial sentence for a maximum period of at least three years or a detention order for at least three years may be handed down and which involve conduct stated in the European Arrest Warrant by the body in the requesting State as one or more of the types of conduct listed in paragraph 2, the court shall not check whether the conduct in question is a criminal offence under Czech law.

(2) The conduct referred to in paragraph 1 means:

- a) participation in a criminal organisation;

- b) terrorism;
- c) trafficking in human beings;
- d) sexual exploitation of children and child pornography;
- e) illicit trafficking in narcotic drugs and psychotropic substances;
- f) illicit trafficking in weapons, munitions and explosives;
- g) corruption;
- h) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- i) laundering of the proceeds of crime;
- j) counterfeiting currency;
- k) computer-related crime;
- l) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- m) facilitation of unauthorised entry and residence;
- n) murder, grievous bodily injury;
- o) illicit trade in human organs and tissue;
- p) kidnapping, illegal restraint and hostage-taking;
- q) racism and xenophobia;
- r) organised or armed robbery;
- s) illicit trafficking in cultural goods, including antiques and works of art;
- t) swindling;
- u) racketeering and extortion;
- v) counterfeiting and piracy of products;
- w) forgery of administrative documents and trafficking therein;
- x) forgery of means of payment;
- y) illicit trafficking in hormonal substances and other growth promoters;
- z) illicit trafficking in nuclear or radioactive materials;
- aa) trafficking in stolen vehicles;
- bb) rape;
- cc) arson,
- dd) crimes within the jurisdiction of the International Criminal Court;
- ee) unlawful seizure of aircraft/ships;
- ff) sabotage.

Section 413

Summary transfer proceedings

(1) The requested person may state on the record to the competent court that he or she consents to being surrendered to the requesting State; at the same time he or she shall declare on the record that he or she renounces the right to apply the speciality rule in accordance with Section 406(1). The requested person must be explicitly informed of the consequences of taking this step.

(2) Consent given in accordance with paragraph 1 may not be retracted.

(3) If the requested person makes a declaration in accordance with paragraph 1, the provisions of Section 411 shall apply mutatis mutandis. The court shall refuse the surrender of the requested person only in the cases listed in Section 411(6)(c),(d) and (e).

(4) The decision on surrender in accordance with paragraph 1 shall be issued by the court within 10 days of the declaration of consent made by the requested person in accordance with paragraph 1. The provisions of Section 411(12) shall apply to the extension of the time limit.

Section 414

Temporary surrender to a Member State

(1) Where a European Arrest Warrant has been issued for the purpose of criminal prosecution, on the basis of a request from the body in the requesting State the competent judge shall, on the basis of a proposal from the public prosecutor, decide on the temporary surrender of the requested person to the requesting State for the performance of the procedural steps necessary for the criminal trial. The decision shall stipulate an appropriate period - which may not be longer than three months - within which the person temporarily surrendered must be returned to the territory of the Czech Republic.

(2) Following agreement with the competent body of the requesting State, the period referred to in paragraph 1 may be extended. The extension of this period may not be used for a purpose other than the purpose for which the temporary surrender was originally authorised. Temporary surrender may be repeated.

(3) The provisions of Section 438 and 439 shall apply mutatis mutandis to Sections 438 and 439.

(4) The request referred to in paragraph 1 shall be sent to the competent public prosecutor's office. Article 408(2) and (3) shall apply here likewise.

(5) The time spent by the requested person in custody in the foreign State during the temporary surrender period shall not count towards the time limits referred to in Section 411(11) and (12) and Section 413(4).

Section 415

Time limits

(1) If the person enjoys a privilege or immunity in accordance with the law or international legislation, the time limits referred to in Section 411(11) and Section 413(4) shall start to run from the day on which the competent body is informed that the requested person has been divested of the privilege or immunity.

(2) If the removal of the privilege or immunity is the responsibility of a competent body of the Czech Republic, the competent public prosecutor shall ask the body in question to remove the person's privilege or immunity. If the removal of the privilege or immunity is the responsibility of a competent body of another State, international organisation or the European Union, the competent public prosecutor shall report this fact without delay to the body of the requesting State that issued the European Arrest Warrant.

(3) Where the person concerned has filed a complaint with the Constitutional Court against the conduct of the competent bodies of the Czech Republic in the course of the transfer proceedings, the time limits referred to in Sections 411(11), 413(4) and 416(2) shall start to run from the day on which the competent body is sent the Constitutional Court's decision on the complaint.

Section 416 **Surrender**

1) The surrender of the person following the authorisation and consequent release of the person from custody shall be organised by the presiding judge of the regional court.

(2) Where the court decides to surrender the requested person, the person shall be surrendered without delay no later than 10 days following the day on which the surrender decision takes effect, unless the decision is a surrender decision in accordance with Section 411(9).

(3) If the surrender of the requested person within the time limit laid down in paragraph 2 is prevented by circumstances beyond the control of the requesting and surrendering States, the competent bodies shall agree on a new surrender time. The surrender must take place no later than 10 days from this new surrender time.

(4) In exceptional circumstances, surrender may be temporarily postponed on humanitarian grounds, in particular if surrender would threaten the life or health of the requested person. The surrender shall take place within 10 days of the point at which these reasons no longer obtain.

(5) If the time limits referred to in paragraphs 2 to 4 cannot be complied with, the court shall decide to release the requested person from custody.

Section 417 **Enforcement of a custodial sentence or preventive measure handed down in a Member State**

(1) If the surrender of the requested person is refused for the reasons stated in Section 411(6)(e), the competent court shall invite the body in the requesting State to send it, within 30 days of the service of the invitation, an authenticated copy of the enforceable judgment on the basis of which the European Arrest Warrant was issued and an official translation of it into Czech.

(2) If the authenticated copy of the enforceable judgment on the basis of which the European Arrest Warrant was issued and the official translation of it into Czech are not sent within the time limit and the person concerned is in custody, the competent court shall decide to release him or her.

(3) Before a surrendered person is returned to the Czech Republic for the enforcement of a custodial sentence, preventive treatment or a correctional penalty within the meaning of

Section 411(7), the competent court shall invite the body in the requesting State to send an authenticated copy of the enforceable judgment and an official translation of it into Czech.

(4) Once the body in the requesting State sends the court the enforceable judgment in accordance with paragraph 1 or paragraph 3, the competent court shall recognise the judgment of the body in the requesting State by converting the sentence handed down by that body into the sentence it could have handed down, had it delivered the judgment in the trial on the criminal act committed. The court shall, *mutatis mutandis*, proceed likewise in the case of preventive treatment sentences or correctional sentences. Proceedings for the recognition of the judgment of the body in the requesting State shall be conducted likewise in accordance with Part Seven.

Section 418

Extension of surrender to cover another offence and consent to surrender or extradition to another State

(1) The provisions of this Part shall apply *mutatis mutandis* to proceedings on a request from another Member State to which a person has been surrendered seeking agreement for that State to:

- a) prosecute the person for another offence committed prior to surrender or enforce a custodial sentence or detention order that was passed on the person for an offence other than the offence for which the surrender on the basis of the European Arrest warrant was authorised;
- b) surrender the person to a further Member State for the purpose of criminal prosecution or enforcement of a custodial sentence or detention order; or
- c) extradite the person to a third country for the purpose of criminal prosecution or enforcement of a custodial sentence.

(2) The competent court shall decide on the request referred to in paragraph 1 within 30 days of the service of the request.

(3) The provisions of Section 413 may not be applied to the proceedings referred to in paragraphs 1 and 2.

Section 419

Concurrent European Arrest Warrants

(1) If during the period of validity of a surrender decision more than one European Arrest Warrant is delivered for one and the same requested person, the competent court shall decide on the basis of a proposal from the public prosecutor which European Arrest Warrant to enforce. In so doing, it shall take account of the circumstances, the seriousness and location of the offences committed, the dates on which the European Arrest Warrants were issued and whether they were issued for the purpose of criminal prosecution or for the enforcement of a custodial sentence or detention order. It shall send its decision to the bodies in the other requesting States for their information.

(2) The time limits referred to in Section 411(11) and Section 413(4) shall start to run from the date on which the last European Arrest Warrant is served.

Section 420

Concurrent European Arrest Warrant and extradition request

(1) If during the period of validity of a surrender decision an extradition request is delivered for one and the same requested person, the competent court shall, on a proposal from the public prosecutor, first decide on the surrender in accordance with Section 411 and on whether extradition is permissible in accordance with Section 397. In the event of a decision on surrender in accordance with Section 411(4) and at the same time on the permissibility of extradition in accordance with Section 397(1), the presiding judge of the regional court shall forward the case to the Ministry of Justice to decide whether to enforce the European Arrest Warrant or comply with the extradition request. The presiding judge of the regional court shall inform the competent body in the requesting State without delay of the concurrent European Arrest Warrant and extradition request, of the Section 397 decision and of the referral to the Ministry of Justice.

(2) In deciding whether to enforce the European Arrest Warrant or comply with the extradition request, the Minister of Justice shall take account of the circumstances, the seriousness and location of the offences committed, the dates on which the European Arrest Warrant and the extradition request were issued and whether they were issued for the purpose of criminal prosecution or for the enforcement of a custodial sentence or detention order.

(3) If the Minister of Justice decides that the enforcement of the European Arrest Warrant shall take precedence, he or she shall immediately notify the competent regional court accordingly; the court shall then proceed in accordance with Section 416. The time limit referred to in Section 416(2) shall start to run from the date on which the Minister of Justice sends the notification that the enforcement of the European Arrest Warrant shall take precedence.

(4) If the Minister of Justice decides that compliance with the extradition request shall take precedence, he or she shall immediately notify the regional court that decided on the surrender in accordance with Section 411(4) and the competent body in the requesting State. It shall then proceed in accordance with the provisions of Part Two.

(5) A decision by the Ministry of Justice in accordance with paragraph 4 shall be grounds for cancelling the decision in accordance with Section 411(4). The decision on this shall be taken without delay by the regional court as soon as it receives the notification from the Minister of Justice in accordance with paragraph 4, in closed session by means of a non-appealable ruling. It shall send the ruling to the public prosecutor and the body in the requesting State that issued the European Arrest Warrant.

Section 421

Further surrender from the Czech Republic to another Member State

(1) A person who has been surrendered to the Czech Republic may be further surrendered to another Member State only with the consent of the surrendering State, save where otherwise stipulated.

(2) Without the consent of the surrendering State a requested person may be further surrendered to another Member State for an offence committed prior to the surrender, if:

- a) the requested person consents to be surrendered to the other Member State; this consent must be given voluntarily and entered on the record in the presence of defence counsel and the competent court must inform the person in advance of the consequences of giving this consent;
- b) the provisions of Section 406(1)(a), (d) and (e) and (2) apply to the requested person;

(3) If a requested person has been extradited to the Czech Republic from a third country and may not be further surrendered without the consent of that third country, the competent public prosecutor's office shall inform the Ministry of Justice of this without delay and the Ministry shall take the necessary steps to obtain the third country's consent for the surrender. The time limits referred to in Section 411(11) and 413(4) shall start to run from the day on which the competent public prosecutor receives the notification from the Ministry of Justice that the third country has communicated its consent to the surrender.

Transit for the purposes of surrender

Section 422

(1) If transit of a person for the purposes of criminal proceedings is to be authorised at the request of another Member State, the Supreme Court shall decide on the surrender and the safeguard measures, provided that the transit request from the other Member State contains information on:

- a) the identity and nationality of the surrendered person;
- b) the issuing of a European arrest warrant;
- c) the nature and type of the offence, and
- d) the circumstances of the commission of the offence, including the date and place.

(2) Authorisation for the transit of a person for the purposes stated in paragraph 1 that necessitate transit back through the territory of the Czech Republic after the conduct of the proceedings in the foreign State shall also constitute authorisation for that return transit.

(3) Transit authorisation is not required for transport by air without a scheduled stop on the territory of the Czech Republic. Where there is an unscheduled stop on the territory of the Czech Republic and the Czech Republic has not been sent a transit authorisation request from a Member State containing the information referred to in paragraph 1, the person may be held in custody for up to 96 hours. The Supreme Court shall take the decision to take the person into custody on a proposal from the public prosecutor at the Supreme Prosecutor's Office.

(4) The Supreme Court shall decide to reject a transit authorisation request, if the transit requested is for a national of the Czech Republic or person habitually resident on the territory of the Czech Republic for the purpose of the enforcement of a custodial sentence or detention order.

(5) If transit is requested in respect of a national of the Czech Republic or person habitually resident on the territory of the Czech Republic for the purpose of criminal

prosecution, the Supreme Court shall decide to authorise the transit subject to the proviso referred to in Section 411(7).

20. The previous Sections 385 to 392 shall be renumbered as Sections 461 to 471.

Article II
Transitional provisions in respect of Part One

1. Proceedings on extradition abroad initiated before the day on which this Act enters forces shall be completed in accordance with Part Two of Chapter Twenty-Five as amended by this Act.
2. The provisions of Title Three of Chapter Twenty-Five shall not apply to offences committed before the date on which this Act comes into force. In such cases the procedure shall be in accordance with the provisions of Title Two of Chapter Twenty-Five as worded in this Act.
3. The provisions of Sections 403-422 shall not apply to the surrender of persons from the French Republic for offences committed before 1 November 1993 or for the surrender of persons from the Republic of Italy or the Republic of Austria for offences committed before 7 August 2002. In such cases the procedure shall be in accordance with the provisions of Sections 383-390.

PART TWO
Amendment of the Asylum Act

Section III

In Section 16 (1)(k) of Act No 325/1999 on asylum and amending Act No 283/1991 on the Police of the Czech Republic, as subsequently amended (the Asylum Act) as amended by Act No 2/2002, the word “or” shall be replaced with a comma and the words “or surrender” placed after the word “extradition.”

PART THREE
Amendment of the Custody Enforcement Act

Article IV

In Section 14 of Act No 293/1993, on the enforcement of custody, as amended by Act No 208/2000 and Act No 52/2004, a new paragraph (3) shall be inserted after paragraph (2) to read as follows:

“(3) For persons in temporary custody, extradition custody or transfer custody, the conditions governing visits, such as visiting times, the people who may visit and the presence of a judicial agent, shall be determined by the public prosecutor in the case of temporary custody and by the competent judge in the case of extradition custody or transfer custody.

What were paragraphs 3 to 8 shall be renumbered paragraphs 4 to 9.

PART FOUR
Amendment of the Custodial Sentence Enforcement Act

Section V

In Section 35(3) of Act No 169/1999 on the enforcement of custodial sentences and amending certain related acts, as amended by Act No 52/2004, the words “extradited to a foreign country or surrendered to a foreign country to serve a sentence” shall be replaced by the words “extradited or surrendered to a foreign country.”

PART FIVE

Amendment of the Liability for Damages (Exercise of Authority) Act

Section VI

In Section 9(2) of Act No 82/1998 on liability for damage caused in the exercise of authority by means of a decision or improper official act, and amending Czech Parliament Act No 358/1992 on notaries and their activities (the Notary Code), the words “or surrender” shall be inserted after the word “extradited”.

PART SIX

Amendment of the Travel Documents Act

Section VII

In the first sentence of Section 3(1) of Act No 329/1999 on travel documents and amending Act No 283/1991 on the Police of the Czech Republic, as subsequently amended (the Travel Documents Act), as amended by Act No 217/2002., the phrase “, save where otherwise stipulated by special legal provision^{1b)}” shall be inserted after the word “crossing”.

Footnote 1b shall read:

“1b Section 380(5) of the Criminal Code.”

What were footnotes 1b and 1c shall be renumbered 1c and 1d, including the references to them in the text.

PART SEVEN

Amendment of the Aliens Residence Act

Section VIII

In Section 6(1) of Act No 326/1999 on aliens' residence on the territory of the Czech Republic and amending certain acts, the phrase "to a foreigner transferred from a body in a

foreign State in accordance with the relevant legal provision^{5b)}“ shall be inserted after the phrase “does not concern”.

Footnote 5b shall read:

“5b Chapter Twenty-Five of the Criminal Code.”

PART EIGHT ENTRY INTO FORCE

Section IX

This Act shall enter into force on the first day of the month following the date of its promulgation, with the exception of the provisions of Section I, 3, 8, 9, 10, 11 and 12, which shall enter into force on 1 January 2005.