CODE OF CRIMINAL PROCEDURE
OF THE CZECH REPUBLIC

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141/1961 Coll.

ACT
of November 29, 1961 on Criminal Procedure

(Criminal Procedure Code)

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The National Assembly of the Czechoslovak Socialist Republic has passed the following Act:

PART ONE

Common Provisions

CHAPTER ONE

General Provisions

Section 1 Purpose of the Act

(1) The purpose of the Code of Criminal Procedure is to regulate the procedure of authorities involved in criminal proceedings so that criminal acts are properly ascertain criminal offences and to rightfully punish their offenders in accordance to law. Therein the effect of the procedure is to promote the rule of law, preclude and prevent criminal activity, educate citizens in the spirit of strict observance of laws and rules of civil coexistence and the honest performance of obligations towards the State and society.

(2) Assisting in achieving the objective of criminal procedure is the right and according to provisions of this Code also the duty of citizens.

Section 2 Basic Principles of Criminal Procedure

(1) No one shall be prosecuted for other than statutory reasons and in a manner stipulated by this Code.

(2) A person, against whom is conducted criminal procedure may not be considered guilty until the final convicting judgment of the court pronounces him guilty.

(3) The public prosecutor is obliged to prosecute all criminal offences which they gain knowledge of, unless the law or a promulgated international treaty binding the Czech Republic stipulates otherwise.

(4) Unless this Code stipulates otherwise, the authorities involved in criminal proceedings act ex officio. Criminal cases must be dealt with as soon as possible and without undue delay; with greatest speed shall be handled especially custodial matters and matters where property has been seized, if it is necessary due to the nature and value of the seized property. Criminal matters are handled with full consideration of rights and freedoms guaranteed by the Declaration of Fundamental Rights and Freedoms and by international treaties on human rights and fundamental freedoms binding the Czech Republic; when conducting acts of criminal procedure, these rights of persons concerned by such acts may be affected only in justified cases based on the law and in the extent necessary for securing the purpose of criminal proceedings. The authorities involved in criminal proceedings shall not consider the contents of petitions affecting the performance of such obligations.

(5) Authorities involved in criminal proceedings proceed in accordance with their rights and obligations pursuant to this Code and with the cooperation of the parties so to establish the merits of the case beyond reasonable doubt and to the extent necessary for their decisions. Confession of the accused person shall not relieve the authorities involved in criminal proceedings of the obligation to examine all the relevant circumstances of the case. During the pre-trial proceedings the authorities involved in criminal proceedings shall examine, even without petitions of the parties, all the circumstances for and against the person, against whom the proceeding is conducted, with equal care and in the manner provided by this Code. In trial

proceedings the public prosecutor and the accused may propose and produce evidence to support their positions. The public prosecutor is obliged prove the guilt of the defendant. However, this does not relieve the court of the obligation to provide additional evidence in the extent required for its decision.

(6) The authorities involved in criminal proceedings shall evaluate the evidence according to their inner beliefs based on careful consideration of all circumstances of the case individually and also in their summation.

(7) All authorities involved in criminal proceedings shall cooperate with public interest associations and utilise their educational activities.

(8) Criminal prosecution before courts is only possible on the basis of an indictment or a motion for punishment or a motion for the approval of a declaration of guilt and accepting a punishment (hereinafter referred to as "agreement on guilt and punishment") submitted by the public prosecutor. The public prosecution in trial proceedings is represented by the public prosecutor.

(9) Decisions in criminal trial proceedings are made by a senate or a single judge; the presiding judge or a single judge shall decide alone only if the law explicitly stipulates so. If the court decides in pre-trial proceedings in the first instance, the decision shall be made by a judge.

(10) Criminal cases are heard before the court in public in such a way that citizens may attend and observe the hearing. The public may be precluded from attending a trial and a public session only in cases explicitly provided for by this Code or by a special Act.

(11) Hearings before courts are held orally; evidence by testimonies of witnesses, experts and accused persons are generally produced through questioning.

(12) When deciding in a trial, as well as during public and closed sessions, the court may only take into account the evidence that was produced during such proceedings.

(13) The person against whom criminal proceedings is conducted must be instructed in every stage of the proceedings about his rights enabling him to fully exercise his defence, and about that he may choose a defence counsel; all authorities involved in criminal proceedings are obliged to enable full exercise of his rights.

(14) The authorities involved in criminal proceedings conduct the proceedings and issue decisions in the Czech language. Any person who declares that he does not speak Czech is entitled to use their mother tongue or a language he declares he understands before the authorities involved in criminal proceedings.

Cooperation with Public Interest Associations

Section 3

(1) Trade unions and organisations of employers and other civic associations with the exception of political parties and political movements, churches, religious societies and legal persons that pursue charity purposes as the objective their activity (hereinafter referred to as "Public Interest Associations") may participate in the prevention and preclusion of criminal activity in a way provided for in this Code.

(2) Public Interest Associations can co-operate in the education of persons, in cases of whom has the court decided on conditional waiver of punishment with supervision or whose criminal prosecution was conditionally discontinued, persons conditionally sentenced, persons with a suspended sentence of imprisonment with supervision and persons conditionally released; they can also help to create conditions to make the person live an upright life after serving the sentence.

Section 4
Repealed

Section 5
Repealed

Section 6

(1) Public Interest Associations can offer a guarantee for
   a) the conduct of an accused person, whose prosecution was conditionally discontinued,
   b) the re-education of a convicted person, whose punishment was conditionally waived with supervision, who was sentenced to imprisonment and the sentence has been suspended for a probation period, a person conditionally sentenced to imprisonment with supervision, or
   c) the completion of the correction of a convicted person serving a sentence of imprisonment, sentence of prohibition of activity or prohibition of stay; in such cases may the Public Interest Associations at the same time propose a conditional release of the convicted person from imprisonment or a conditional waiver of the remaining portion of the sentence of prohibition of stay or prohibition of activity. In order to collect groundwork for such an application, it may be informed, with the consent of the convicted person, about his conduct and previous course of serving the sentence.

(2) A Public Interest Association may also propose that the custody of an accused is substituted by their guarantee (Section 73), and submit a request for a pardon for the convicted person for and expungement of the conviction.

(3) A Public Interest Association that has assumed a guarantee is obliged to induce the accused or convicted person to live an upright life and to take the necessary measures therefor; the Public Interest Association shall also care that he compensates any damage or

immaterial harm caused, or surrenders any unjust enrichment obtained through the criminal offence.

Cooperation of Public Authorities, Natural Persons and Legal Entities

Section 7

Authorities involved in criminal proceedings are obliged to assist each other in execution of tasks arising from this Code.

Section 8

(1) Public authorities, legal entities and natural persons are obliged to comply without undue delay, and unless a special legal regulation provides otherwise, also without a consideration, with request of authorities involved in criminal proceedings in the performance of their tasks. Furthermore, public authorities are also obliged to immediately notify the public prosecutor or police authorities of facts indicating that a criminal offence has been committed.

(2) If the criminal proceedings require it for a proper investigation of the circumstances indicating that a criminal offence has been committed, or in trial proceedings also for assessing the circumstances of the accused person, or for execution of a decision, the public prosecutor and after lodging an indictment or a motion for punishment the presiding judge may request information subject to banking secrecy and data from the register of securities. In proceedings on a crime pursuant to Section 180 of the Criminal Code, the authorities involved in criminal proceedings may request individual data obtained under a special Act for statistical purposes. The conditions under which the authorities involved in criminal proceedings may require the data obtained in the administration of taxes are stipulated by a special Act. Data obtained according to this provision may not be used for a purpose other than for the criminal proceedings for which it was requested.

(3) For the reasons as stated in sub-section (2) may the presiding judge, in pre-trial proceedings the judge upon a motion of the public prosecutor, order monitoring of a bank account or an account of a person entitled to the records of investment instruments according to a special Act for a maximum period of six months. If the reason for which the monitoring of an account was ordered exceeds this time, it may be extended upon an order of a judge from a court of higher instance and in pre-trial proceedings by an order of a judge of a Regional Court upon a motion of the public prosecutor for additional six months, also repeatedly. Information obtained according to this provision may not be used for a purpose other than for the criminal proceedings, in the course of which it was obtained.

(4) The fulfilment of obligations according to sub-section (1) may be refused with a reference to the obligation to maintain the secrecy of classified information protected by a special Act or a duty of silence imposed or recognised by the State; this does not apply,

a) if the person having these obligations would otherwise be exposed to a threat of criminal prosecution for non-prevention or non-reporting of a criminal offense, or
b) in executing a request of an authority involved in criminal proceedings on a crime, where the requested person is at the same time the person reporting the crime.

The State recognised duty of silence under this Code shall not be considered as such an obligation, the extent of which is not defined by law but instead arises from a legal act taken according to the law.

(5) Unless a special Act stipulates the conditions, under which information, which are classified pursuant to such an Act or to which applies a duty of silence, may be disclosed for the purpose of criminal proceedings, such information may be requested for criminal proceedings after a previous consent of the judge. This does not affect the duty of silence of an attorney under the Act on Advocacy.

(6) The provisions of sub-sections (1) and (5) shall not affect the duty of silence imposed on the basis of a promulgated international treaty biding the Czech Republic.

Provision of Information on Criminal Proceedings and Parties Concerned

Section 8a

(1) When providing information about their activities, the authorities involved in criminal proceedings are mindful not to endanger clarification of matters significant for criminal proceedings, not to disclose information on parties concerned in criminal proceedings not directly related to criminal activities and not to breach the principle that until a person prosecuted in criminal proceedings is found guilty by a final condemning judgement, he may not be regarded as guilty (Section (2)). In pre-trial proceedings the authorities involved in criminal proceedings must not disclose information eligible for identification of a person, against whom is conducted criminal proceeding, an aggrieved person, parties concerned and a witness; such information may be disclosed in a necessary extend only for the purposes of search for persons or in order to reach the purpose of criminal proceedings.

(2) When providing information according to sub-section (1), the authorities involved in criminal proceedings are particularly mindful about protection of personal data and privacy of minors under 18 years of age.

(3) The authorities involved in criminal proceedings inform the public about their activities by providing information according to sub-section (1) to news media; they shall refuse to provide information in order to protect interests referred to in sub-sections (1) and (2). Should a public prosecutor reserve the right to provide information on a specific criminal matter in pre-trial proceedings, police authorities may provide such information only with his previous consent.

Section 8b

(1) Persons who were provided with information on persons referred to in Section 8a (1) for the purposes of criminal proceedings or for exercising rights or for fulfilling duties imposed by a special legal Act, shall not forward such information to any third parties, unless it is necessary for the stated purposes. These persons must be instructed thereof.

(2) Nobody shall, in connection to a criminal offence committed against an aggrieved person, in any way disclose information that enable identification of the aggrieved person who is under the age of 18, or against whom was committed an offence of trafficking in human beings or propagation of pornography, or an offence against life and health, freedom and human dignity or an offence against family and juveniles.

(3) Disclosing of photographs, audiovisual records or other information about the course of trial hearing or a public session, which would enable identification of the aggrieved person referred to in sub-section(2), shall be prohibited.

(4) Final judgement shall not be published in news media with stating name or names and address of the aggrieved person referred to in sub-section (2). The presiding judge may, with regard to character of the aggrieved person and the nature of the committed offence, decide on further restrictions related to publishing the final condemning judgement for the purpose of adequate protection of interests of such an aggrieved person.

(5) Prohibition of disclosing information referred to in sub-sections (2) to (4) shall not apply
- (a) if this law allows disclosing such information,
- (b) if their disclosure is necessary for the purposes of searching for persons or in order to reach the purpose of criminal proceedings, or
- (c) if the aggrieved person gives a previous written consent with disclosure of these information; if the aggrieved person is a minor under 18 years of age, or is declared legally incompetent or has his legal competence restricted, the consent must be given also by his legal guardian.

Section 8c

If this Code or a special legal Act does not provide otherwise, nobody shall, without a consent of the person concerned, disclose information on ordering or performing interception of telecommunication transmission according to Section 88 or information acquired thereby, data on the telecommunication transmission ascertained on the basis of an order according to Section 88a, or information acquired by surveillance of persons and items according to Section 158d (2) and (3), if they can facilitate identification of such a person and if they have not been used in trial proceedings.

Section 8d

(1) Information subject to prohibition of disclosure pursuant to Sections 8a through 8c may be disclosed to the necessary extent for the purposes of searching for missing persons, to reach the purpose of criminal proceedings or if it is allowed by this Act. The stated information may also be disclosed, if it is justified by the public interest, and if public interest takes outweighs the right to privacy of the person concerned; however, it is necessary to exercise due care for protection of the interests of a person under 18 years of age.

(2) Information subject to prohibition of disclosure pursuant to Sections 8a through 8c may also be disclosed if the person concerned by the prohibition of disclosure grants his explicit consent with the disclosure of such information. If such a person died or was pronounced dead, the consent may be granted by the spouse, partner or a child of the deceased person, and in their absence by his parents; in the case of a person under 18 years of age or an incapacitated person or a person with a restricted legal capacity, by their legal guardian. The consent with the disclosure of information may not be granted by a person who has committed a criminal offence against the person who died or was pronounced dead.

(3) Information subject to prohibition of disclosure pursuant to Sections 8a through 8c may also be disclosed if the person concerned by the prohibition of disclosure died or was pronounced dead and there is no person entitled to grant the consent to the disclosure of information according to sub-section (2).

Section 9 Assessment of Preliminary Questions

(1) Authorities involved in criminal proceedings assess preliminary questions that arise in criminal proceedings individually; however, if there is a final decision of a court or another public authority, the authorities involved in criminal proceedings are bound by such a decision in criminal proceedings, unless it concerns assessment of guilt of the accused person.

(2) Authorities involved in criminal proceedings are not entitled to individually deal with preliminary questions relating to personal status, which are decided in civil proceedings. If a decision on such question has not yet been issued, then these authorities must await the issue thereof.

Section 9a Preliminary Questions within the Competence of the Court of Justice

(1) The provisions of Section 9 shall not apply to preliminary questions that are to be decided exclusively by the Court of Justice established by European Community regulations (hereinafter referred to as "the Court of Justice").

(2) In the event that a court in proceedings under this Code shall submit an application for a decision on a preliminary question to the Court of Justice, it will issue a suspension decision.

(3) When submitting an application to the Court of Justice for a decision on a preliminary question, the court shall abide by the relevant regulations governing the proceedings before the Court of Justice.

(4) The decision of the Court of Justice on a preliminary question is binding for all authorities involved in criminal proceedings.

Section 10 Exceptions from Competence of Authorities Involved in Criminal Proceedings

(1) Pursuant to this Code, persons that enjoy privileges and immunities under the law or international law shall be exempt from the competence of the authorities involved in criminal proceedings.

(2) Should any doubt arise as to whether or to what extent is a person excluded from the competence of the authorities involved in criminal proceedings according to this Code, the Supreme Court shall decide on the matter upon a motion from the person concerned, the public prosecutor or the court.

Section 11 Inadmissibility of Criminal Prosecution

(1) Criminal prosecution cannot be initiated, an if it has been initiated, it cannot be proceeded with and shall be terminated, if

a) the President of the Republic orders so, thus exercising his right to grant pardon or amnesty,
b) the criminal prosecution is statute-barred,
c) it concerns a person who is exempt from the competence of the authorities involved in criminal proceedings (Section 10) or a person, for prosecution of which the law requires an official consent, if such consent was not granted by the competent authority,
d) it concerns a person who is not criminally liable for the lack of age,
e) it is conducted against a person who has died or has been declared dead,
f) it is conducted against a person whose previous prosecution for the identical act was concluded by a final court judgement or was effectively terminated by a decision of a court or another competent authority, if this decision has not been cancelled in prescribed proceedings,
g) it is conducted against a person whose previous prosecution for the identical act was concluded by a final decision on approving a settlement, if this decision has not been cancelled in prescribed proceedings,
h) it is against a person whose previous prosecution for the same act was concluded by a final decision on transferring the case with a suspicion that the act in question is in fact a transgression, other administrative offence or a disciplinary offence, if this decision has not been cancelled in the prescribed proceedings,

i) the criminal prosecution is subject to the consent of the victim and such consent has not been granted or was withdrawn, or
j) it is stipulated by an international treaty binding the Czech Republic.

(2) If the reason referred to in sub-section (1) relates only to one of the component attacks of a continuing criminal offence, it does not prevent conducting a criminal prosecution on the remaining portion of such an offense.

(3) A criminal proceeding terminated for reasons referred to in sub-section (1) a), b) or i) shall resume, if the accused person declares within three days from the day he was notified of the decision to terminate the criminal prosecution, that he insists on hearing the case. The accused person must be instructed thereof.

(4) Decisions according to sub-section (1) f), g) and h), are also considered decisions a of courts and other judicial authorities of the Member States of the European Union.

Section 11a

Criminal prosecutions against the same person for the same act may not be initiated unless the public prosecutor in the summary pre-trial proceedings
a) decided to sanction the settlement and adjourned the case, or
b) decided to conditionally suspend the submission of the motion for punishment and the suspect has approved or is considered as approved.

Section 12 Interpretation of Some Terms

(1) Authorities involved in criminal proceedings are understood as the court, the public prosecutor and the Police authority.

(2) Police authorities are understood as
a) units of the Police of the Czech Republic,
b) General Inspection of Security Forces in proceedings on criminal offences committed by members of the Police of the Czech Republic, members of the Prison Service of the Czech Republic, customs officers or employees of the Czech Republic placed to work in the Police of the Czech Republic, or on criminal offences committed by employees of the Czech Republic placed to work in the Prison Service of the Czech Republic or in the Customs Administration of the Czech Republic, which were committed in connection with fulfilment of their work tasks,
c) authorized bodies of the Prison Service of the Czech Republic in proceedings on criminal offences of persons in custody, prison sentence or security detention, which were committed in a custodial prison, prison or a facility for the execution of security detention,
d) authorized customs authorities in proceedings on criminal offences committed by breaching customs regulations or regulations on the import, export or transit of goods,

even in cases of criminal offences commited by members of the armed forces or security forces, and committed by breaching laws in the placement and purchase of goods in Member States of the European Communities, if such goods are transported across the state borders of the Czech Republic, and in cases of tax infringements, where the customs authorities administer the tax according to special legal regulations,

e) authorized bodies of the Military Police in proceedings on criminal offences of members of the armed forces and persons who commit a criminal activity against members of the armed forces in military facilities, against military facilities, military material or other property of the State, administration of which appertains to the Ministry of Defence,
f) authorized bodies of the Security Information Service in proceedings on criminal offences committed by members of the Security Information Service,
g) authorized bodies of the Office for Foreign Relations and Information in proceedings on criminal offences committed by members of the Office for Foreign Relations and Information,
h) authorized bodies of Military Intelligence in proceedings on criminal offences committed by members of Military Intelligence,
i) authorized bodies of the General Inspection of Security Forces in proceedings on criminal offences committed by members of the General Inspection of Security Forces or on the criminal offences of employees of the Czech Republic placed to work in the General Inspection of Security Forces.

This does not affect the right of the public prosecutor according to Section 157 (2) b). Unless stipulated otherwise, the listed authorities are entitled to all acts of criminal proceedings belonging to the competence of police authorities.

(3) Where the Code refers to the court, it shall be understood, according to the nature of the matter in question, as the District Court, Regional Court, High Court or the Supreme Court of the Czech Republic (hereinafter referred to as "the Supreme Court").

(4) Where this Code refers to the District Court, it shall be understood as the Circuit Court or another court with the same jurisdiction; where this Code refers to the Regional Court, it shall be also understood as the Metropolitan Court in Prague.

(5) Where this Code refers to the District Public Prosecutor, it shall also be understood as the Circuit Public Prosecutor or another public prosecutor with the same jurisdiction; where this Code refers to the Regional Public Prosecutor, it shall also be understood as the Metropolitan Public Prosecutor in Prague.

(6) The party shall be understood as the person against whom is the criminal proceedings conducted, participant and in trial proceedings also the public prosecutor and public representative; the same position as the party also belongs to another person, upon whose request or petition is the proceeding being conducted or who lodged an appeal.

(7) Unless the nature of the case indicates otherwise, the accused persons shall also be understood as the defendant and the convicted person.

(8) After ordering the trial, the accused shall be referred to as the defendant.

(9) The convicted person is a person against whom a convicting judgment has been issued, which has already come into full force and effect.

(10) The criminal proceedings shall be understood as a procedure pursuant to this Code, the criminal prosecution shall be understood as the stage of the proceedings from the initiation of criminal prosecution to the full force and effect of a judgment or another decision of authorities involved in criminal proceedings, and the preliminary hearing shall be understood as the section of proceedings pursuant to this Code from drawing up the record on the initiation of criminal proceedings or from taking urgent and unrepeatable steps, which immediately precede it, and unless these steps are taken, from the initiation of criminal prosecution to lodging an indictment, a motion for the approval of an agreement on guilt and punishment, to transferring the matter to another authority or to the termination of criminal prosecution, or until the decision or the occurrence of another matter of fact with the effect of termination of criminal prosecution prior to lodging an indictment, including the clarification and review of facts indicating that a criminal offence had been committed and the investigation thereof.

(11) If the accused person continues in the conduct he is being prosecuted for even after the indictment has been announced, such a conduct shall be considered a new act.

(12) An act according to this Code shall be understood also as a component attack of a continuing criminal offence, unless explicitly stipulated otherwise.

CHAPTER TWO

Court and Persons Participating in Proceedings

SUBDIVISION ONE
Competence and Jurisdiction of Courts

Section 13 Execution of Criminal Justice

Justice in criminal cases is executed by District Courts, Regional Courts, High Courts and the Supreme Court.

Section 14
Repealed

Section 15
Repealed

Subject Matter Jurisdiction

Section 16

Proceedings in the first instance shall be conducted by a District Court, unless this Code provides otherwise.

Section 17

(1) The Regional Court shall conduct first instance proceedings on criminal offences, if there is a penalty of incarceration with the bottom limit of at least 5 years prescribed by the law for them, or if they are punishable by an exceptional sentence of imprisonment. Proceedings on offences

a) of manslaughter, murder of a newborn child by its mother, illicit trade in human tissues and organs, illicit disposal with tissues and organs, extraction of tissue, organ and paid transplantation thereof, illicit disposal with human embryo and human genome, trafficking in human beings,
b) committed by the means of investment tools that are registered for trading in a controlled market or that have been requested for registration to trade in a controlled market, or forgeries or imitations thereof, if their legal attribute is causing considerable damage or gaining considerable profit,
c) of breach of regulations of rules of economic competition, manipulation with exchange rate of investment tools, abuse of information and position in business relations, harming financial interests of European Communities, breach of regulations on control of export of goods and technologies of double use, distortion of entries and non keeping records on export of goods and technologies of double use, unauthorised or unlicensed engaging in foreign trade with military material, breach of duty in relation to issuing authorisation and licence for foreign trade with military material, distortion of entries and non keeping records on foreign trade with military material, development, manufacture and possession of forbidden means of combat and
d) sabotage, abuse of representation of State and international organisation, espionage, exposure of confidential information, cooperation with enemy, relations imperilling peace, use of forbidden means of combat and illegal warfare, pillage in zones of military operations,

shall be conducted by the Regional Court in the first instance even if the bottom limit of incarceration is lower.

(2) The Regional Court shall conduct proceedings in the first instance also on the criminal offence of insobriety in case an act otherwise criminal committed by the offender in a state of insanity, which he culpably induced to him-/herself, fulfils the characteristics of merits of any

of the criminal offences, for which is stipulated competence of the Regional Court according to sub-section (1).

(3) The Regional Court shall conduct proceedings in the first instance also on component attacks of a continuing offence, if the procedure according to Section 45 of the Criminal Code in these proceedings may lead to a decision on guilt of one of crimes referred to in sub-section (1) or (2).

Territorial Jurisdiction

Section 18

(1) Proceedings shall be conducted by the court, in whose jurisdiction was the offence committed.

(2) If the crime scene cannot be determined or if the crime was committed abroad, the proceeding shall be conducted by the court, in whose jurisdiction the accused person lives, works or resides; if such places cannot be located or are outside the territory of the Czech Republic, the proceeding shall conducted by the court, in whose jurisdiction the offence took effect.

Section 19
Repealed

Joint Proceedings

Section 20
Joint Proceedings

(1) Against all accused persons, whose criminal offences are related to each other, on all individual attacks of a continuing or compound criminal offence and on all parts of a continuous criminal offence shall be conducted joint criminal proceedings, unless substantial reasons impede it. On all other criminal offences shall joint criminal proceedings be conducted only if such a procedure is suitable in view of speed and efficiency of the proceedings.

(2) Joint criminal proceeding on a criminal offence which was supposed to be conducted by a single judge and on a criminal offence which appertains to be conducted by a senate, shall be conducted by a senate.

Section 21

(1) Joint criminal proceeding shall be conducted by a Regional Court, if it is competent to conduct proceeding on at least one of the criminal offences.

(2) Joint criminal proceeding shall be conducted by a court that is competent for conducting proceedings against the perpetrator of the criminal offence or proceedings on the most serious criminal offence.

Section 22 Jurisdiction of Several Courts

If according to previous provisions is given jurisdiction of several courts, the proceeding shall be conducted by the court at which the public prosecutor has lodged an indictment, a motion for punishment or a motion for the approval of an agreement on guilt and punishment or to which was the case assigned by a superior court.

Section 23 Exclusion and Joining of Cases

(1) For acceleration of proceedings or for other important reasons may proceedings on some of criminal offences or against one of accused persons be excluded from the joint proceedings.

(2) Jurisdiction of the court that has excluded the case shall remain unchanged; however if a Regional Court excludes a case that would otherwise lay within the competence of a District Court, it may be submitted to this court.

(3) If conditions for joint proceedings exist, the court may join cases that were indicted separately to joint proceeding and decision making.

Section 24 Decision on Jurisdiction of Court

(1) If doubts on the jurisdiction of a court arise, the question which court is competent to hear a case shall be decided by the court that is the closest mutually superior to the court that received the indictment, the motion for punishment or motion for the approval of an agreement on guilt and punishment to which was the case submitted according to Section 39 of the Juvenile Justice Act or to which was the case assigned by a superior court, and the court that is supposed to be competent according to a decision on submitting the case for deciding on the jurisdiction (Section 188 (1) a), 222 (1), 257 (1) a), Section 314p (3) a)). Therein the court shall be bound by aspects decisive for determination of jurisdiction (Section 16 to 22). If the court, to which the case was submitted for deciding, is not superior to the court competent according to the law, it shall submit the case for deciding on jurisdiction to the court that is mutually superior to the submitting court and the court competent according to the law.

(2) The court that decides on competence of courts may at the same time decide on withdrawing and assigning the case for the reason referred to in Section 25.

Section 25 Withdrawing and Assigning a Case

For substantial reasons may a case be withdrawn from the competent court and assigned to another court of the same type and level; withdrawing and assigning a case shall be decided by the closest mutually superior court to both courts.

Section 26 Competence of a Court for Steps in Pre-trial Proceedings

(1) Jurisdiction for conducting steps in pre-trial proceedings shall belong to a District Court in whose district operates the public prosecutor that lodged the motion in question.

(2) The court that received the motion of the public prosecutor referred to in sub-section (1) shall become competent for conducting all steps of courts in the whole pre-trial proceedings, unless the case is transferred for the reason of jurisdiction of another public prosecutor operating outside the district of this court.

SUBDIVISION TWO
Complementary Personnel

Section 27 Court Reporter

The official record of the actions of authorities involved in criminal proceedings is usually drawn up by a sworn court reporter. If a court reporter is not co-opted, the record shall be made by the person performing the action. Where an audio record is made in trial proceedings and therefore the presiding judge does not dictate the record, the court reporter shall be, if necessary, a magistrate or a record officer of the court.

Section 27a Magistrates

Simple decisions, with the exception of decisions on guilt and punishment, are usually issued and performed, as well as administrative tasks associated with the proceedings, by a magistrate; a special Act shall set out their competence and determine what actions may the magistrates perform independently and when they proceed on the authority of the judge.

Section 27b Probation Officer

(1) An officer of the Probation and Mediation Services (hereinafter referred to as "probation officer") shall exercise supervision over the accused person in criminal proceedings consisting in both positive guidance and assistance to the accused person and also the control of their conduct, and in cases where supervision is not ordered, they perform actions leading to inducing the accused person to lead an upright life, if it was decided

a) on the release of the accused person from custody while ordering supervision,
b) on the conditional discontinuation of criminal prosecution,
c) on conditional waiver of punishment with supervision,
d) on a conditional sentence including conditional sentence with supervision,

e) on conditional release from serving a sentence of imprisonment, including conditional release from serving a sentence of imprisonment while ordering supervision, or
f) on imposing a sentence of community service or prohibition of stay while pronouncing adequate restrictions and duties.

(2) The probation officer may be encharged by a public prosecutor, and in trial proceedings by the presiding judge, to find out information on the accused person and his social circumstances and to create conditions for the decision approving a settlement and discontinuation of criminal prosecution. Under the conditions stipulated by a special Act, they may perform various tasks even without such an instruction. They may perform individual actions in execution of the decision, especially in cases where was imposed a punishment not associated with incarceration, or where the convict was conditionally released from serving a sentence of imprisonment, or in execution of individual types of protective measures.

(3) Further conditions under which the probation officers exercise their competence are stipulated by a special Act.

Section 27c Assistant Judge of the Supreme Court

The assistant judge of the Supreme Court performs individual acts of criminal proceedings on the authority of the judge of the Supreme Court.

Section 28 Interpreter

(1) If the need to translate the content of a document, testimony or other procedural act arises, or if the accused exercises the right referred to in Section 2 (14), a translator shall be co-opted; the same applies for appointing an interpreter to a person with whom it is impossible to communicate otherwise than though the communication systems for deaf and deaf-blind persons. The interpreter may also be the court reporter. Unless the accused states the language that they understand or states a language or dialect that is not the language of his nationality or the official language of the country he is a citizens of, and there is no person registered for such a language or dialect in the register of interpreters, the authority involved in criminal proceedings shall appoint an interpreter for the language of their nationality or the official language of the country he is a citizen of. In the case of a person without a citizenship, it shall be understood as the State where he has a permanent residence, or the State of his origin.

(2) Under to the conditions stipulated in sub-section (1) the accused person must be provided with a written resolution on the initiation of criminal prosecution, resolution on custody, an indictment, an agreement on guilt and punishment and a motion for the approval thereof, a motion for punishment, a judgment, a criminal order, a decision on appeal and on conditional discontinuation of criminal prosecution; this does not apply if the accused person declares, after being instructed, that the translation of such a decision is not required. If such a decision relates to several accused persons, every accused person shall be provided only with a translation of the section of the decision that directly concerns him, provided that it can be

separated from other statements of the decision and their justification. Translating decisions and the service thereof shall be secured by the authority involved in criminal proceedings, decision of which is concerned.

(3) If the service of the decision referred to in sub-section (2) is associated with the beginning of a time limit and it is necessary to make a written translation of such a decision, the decision is considered served upon the service of the written translation.

Section 29

(1) Special regulations apply to assigning of an interpreter, requirements for this function and exclusion therefrom, the right to refuse the performance of interpretation, to the oath and reminder of the obligations prior to performing the interpretation, as well as to compensation of cash expenses and remuneration for the interpreting.

(2) The amount of compensation and remuneration of an interpreter shall be determined by the authority that co-opted the interpreter and in trial proceedings, the presiding judge, without an undue delay, at the latest within two months from expensing the compensation and remuneration of an interpreter. If the authority that co-opted the interpreter disagrees with the amount of compensation and remuneration charged for the interpreter, it shall decide by a resolution. A complaint is admissible against this decision, which has a dilatory effect.

(3) Compensation and remuneration of an interpreter is to be paid without undue delay after being awarder, within 30 days at the latest.

SUBDIVISION THREE
Exclusion of Authorities Involved in Criminal Proceedings

Section 30

(1) The judge or associate judge, public prosecutor, Police authority or a person in active service in them, who raise doubts that for their relation to the case or persons who are directly concerned by it, to their attorneys, legal representatives and agents, or due to their relationship to other authorities involved in criminal proceedings they cannot decide impartially, they shall be excluded from performing acts of criminal proceedings. The acts performed by the excluded persons may not serve as grounds for decisions in criminal proceedings.

(2) The judge or associate judge is also excluded from performing acts in criminal proceedings, if they were active in the case as a public prosecutor, Police authority, community representative, defence counsel or as an agent of a participant of an aggrieved person. After lodging an indictment or a motion for the approval of an agreement on guilt and punishment, the judge who has issued a house search warrant, a warrant for search of other premises and parcels, an arrest warrant or has decided on custody of the person against whom

was subsequently lodged an indictment or with whom was concluded an agreement on the guilt and punishment, shall be excluded from performing acts of criminal proceedings.

(3) The judge or associate judge who participated in the decision making at an inferior court shall also be excluded from decision making at a superior court and vice versa. The public prosecutor who made the contested decision or gave a consent or an instruction thereto, shall be excluded from decision making on a complaint at a superior authority.

(4) The judge who took part in decision making in the previous proceedings shall be excluded from the proceedings on the review of an order for interception and recording of telecommunication traffic. The judge who participated in the decision-making process in proceedings on the review of the order for interception and recording of telecommunication traffic shall be excluded from the decision making in further proceedings.

Section 31

(1) The reasons for the exclusion referred to in Section 30 shall by decided on by the authority concerned by these reasons, even without a proposal. Exclusion of a judge or an associate judge, if they decide in a senate, shall be decided by this senate.

(2) A complaint is admissible against the decision according to sub-section (1).

(3) The complaint shall be decided on by the authority immediately superior to the authority that issued the contested decision.

Section 31a

The reasons, for which a magistrate or a probation officer shall be excluded from performing acts of criminal proceeding, and the procedure of the decision-making process on the exclusion are stipulated by a special Act.

SUBDIVISION FOUR
Accused Person

Section 32 Accused Person

The person suspected of having committed a criminal offence may be considered as the accused, and the means specified by this Code may be used against him, once a criminal prosecution is initiated against him (Section 160).

Section 33 Rights of Accused Person

(1) The accused person has the right to comment on all matters of facts he is being charged with and to all evidence thereof, however he is not obliged to testify. He may state

circumstances and evidence for his defence, make proposals, and submit petitions and appeals. He has the right to choose a defence counsel and to consult him even during acts performed by authorities involved in criminal proceedings. However, he may not consult the defence counsel on how to respond to a question that has already been asked. He may request to be questioned in the presence of his defence counsel, and that the defence counsel attended other acts of the pre-trial proceedings (Section 165). If he is in custody or serving a sentence of imprisonment, he may consult the defence counsel without the presence of a third party. The accused person has these rights even if he is legally incapacitated or if his legal capacity is restricted.

(2) If the accused person proves that he does not have enough funds to pay the costs of the defence, the presiding judge or a judge during pre-trial proceeding shall decide that he is entitled to the defence counsel free of charge or at a reduced fee. If the evidence gathered imply that the accused person lacks sufficient funds to pay the costs of the defence, the presiding judge and during pre-trial proceedings the judge upon a motion of the public prosecutor may decide that the accused person is entitled to the defence free of charge or at a reduced fee even withou a petition of the accused person, if it is necessary to protect his rights. In cases referred to in the first and second sentence, the whole or partial costs of the defence are covered by the state.

(3) In addition to the accused and his defence counsel, the persons referred to in Section 37 (1) are also entitled to submit a petition for a decision pursuant to sub-section (2). The petition for a decision pursuant to sub-section (2), including annexes, which should prove its merits, is to be submitted by the accused person during pre-trial proceedings through the public prosecutor and in trial proceedings to the court that conducts the proceeding in the first instance. A complaint is admissible against the decision under sub-section (2), which has a dilatory effect.

(4) If a final decision pursuant to sub-section (2) awarded the accused person a title to a free defence or defence at a reduced fee and the accused requests the appointment of the defence counsel, the defence counsel shall be appointed immediately. The defence counsel shall be appointed and, if the grounds for a decision according to sub-section (2) expire, the appointment shall be cancelled by the presiding judge, and in pre-trial proceedings by the judge. Provisions of Section 38 (2), Section 39 (2), Section 40 and 40a shall apply accordingly.

(5) All law enforcement authorities are obligated to always instruct the accused person of his rights and provide him with the full possibility to exercise these rights.

Section 34 Statutory Representative of the Accused Person

(1) The statutory representative of the accused person, who is legally incapacitated or whose legal capacity is restricted, is entitled to represent the accused person, especially to choose his defence counsel, to make proposals, submit petitions and lodge appeals on his behalf; the

statutory representative is also entitled to attend all procedural act, which can be attended by the accused person. The statutory representative can exercise these rights for the benefit of the accused person even against his will.

(2) In cases where the statutory representative of the accused person can not exercise the rights referred to in sub-section (1) and is in danger of delay, the presiding judge, and in pre-trial proceeding the public prosecutor, may appoint a guardian to the accused to exercise these rights. A complaint against the decision on the appointment of a guardian is admissible.

SUBDIVISION FIVE
Defence Counsel

Section 35 Defence Counsel

(1) The defence counsel in criminal proceedings can only be an attorney. The defence counsel may be represented by an articled clerk for the purpose of individual acts of criminal proceedings, except for proceedings before the Regional Court as the court of the first instance, the High Court, and the Supreme Court.

(2) The defence counsel cannot be an attorney against whom there was or is conducted a criminal prosecution, as a result of which he would be in the position of the accused, witness or participant in proceedings, where he should represent the defence of the accused person.

(3) The defence counsel in criminal proceedings cannot be an attorney who testifies as a witness, gives an expert opinion, or is acting as an interpreter.

Mandatory Counsel

Section 36

(1) The accused person must have a defence counsel as early as in the pre-trial proceedings,

a) if he is in custody, serving a sentence of imprisonment, in execution of a protective measure associated with incarceration or is on observation in a medical facility (Section 116 (2)),
b) if he is legally incapacitated or if his legal capacity is restricted,
c) if a proceeding against a fugitive is concerned, or
d) in negotiating of an agreement on the guilt and punishment.

(2) The accused must also have a defence counsel, if the court and in pre-trial proceedings the public prosecutor deems it necessary, especially with regard to any physical or mental defects of the accused person, which give rise to doubts about his capacity to defend himself appropriately.

(3) If there is a proceeding on a criminal offence for which the law stipulates a sentence of imprisonment with the upper limit exceeding five years, the accused must have a defence counsel as early as in the pre-trial proceedings.

(4) The accused must also have a defence counsel

a) during a trial in simplified proceeding against an apprehended person,
b) during proceedings, where it is decided on imposition or transformation of security detention or imposition or transformation of protective treatment, with the exception of anti-alcoholic protective treatment,
c) if he is to comment on whether he waives the right for the application of the principle of speciality in proceedings after extradition from a foreign State,
d) in proceedings on extradition to a foreign State or surrender to another Member State of the EU,
e) in proceedings for further surrender to another Member State of the EU, or
f) in proceedings on the recognition and enforcement of foreign decision imposing an unsuspended sentence of imprisonment, or transforming a suspended sentence or another another punishment into an unsuspended sentence of imprisonment, or imposing a protective measure associated with incarceration.

Section 36a

(1) In execution proceedings in which the court decides in a public session, the convicted person must have a defence counsel,

a) if he is legally incapacitated or if his legal capacity is restricted,
b) if he is in custody, or
c) if there is any doubt about his capacity to properly defend himself.

(2) In proceedings on a complaint for the violation of law, in extraordinary appeal proceedings and in proceedings on the petition for authorization of a new trial, the convicted person must have a defence counsel,

a) in cases referred to in Section 36 (1) a) or b),
b) if it concerns a criminal offence for which the law stipulates a sentence of imprisonment with the upper limit of more than five years,
c) if there are doubts about his capacity to properly defend himself,
d) if it concerns proceedings against a convicted person who has died.

Section 36b

(1) If there is a condition of a necessary counsel according to Section 36 (3) or Section 36a (2) b), the accused person may waive the defence counsel, unless a crime for which may be imposed an exceptional sentence of imprisonment is concerned. The accused person may waive the defence counsel also in case of necessary counsel according to Section 36 (4) a).

(2) The accused person may waive the defence counsel according to sub-section (1) only by an explicit written declaration or orally into the protocol before an authority involved in criminal proceedings that conducts the proceedings; the declaration must be made in the presence of the defence counsel and after a previous consultation with him.

(3) The declaration on waiving the defence counsel may the accused person revoke at any time. Along with revoking the declaration, the accused person must present a power of attorney of the selected defence counsel, or ask for his appointment; if he fails to do so, it shall be considered as if he did not chose a defence counsel and he shall be immediately appointed to him. Once the accused person has revoked his declaration on waiver of the defence counsel, he may not waive the defence counsel again.

(4) Actions performed from serving the declaration on waiver of the defence counsel to the authority involved in criminal proceedings until its retracting do not need to be repeated solely for the reason that the accused person was not represented by a defence counsel.

Section 37 Selected Defence Counsel

(1) If the accused person does not exercise the right to choose a defence counsel and neither does his statutory representative, then it may be chosen by his direct relative, sibling, adoptive parent, adoptive child, spouse, partner, or a participating person. If the accused person is legally incapacitated or if his legal capacity is restricted, this can be done even against their will.

(2) The accused person may choose a defence counsel other than the one appointed him or chosen by an entitled person entitled. If he announces the change of the defence counsel so that the defence counsel can be notified of a procedural action within the statutory period, the authority involved in criminal proceedings shall notify the newly elected defence counsel from the day of service of such a notification. Otherwise, the defence counsel previously appointed or selected is obliged to perform the defence until the time it is personally assumed by the newly selected defence counsel, unless he is excluded from the defence.

(3) If the accused person chooses two or more defence counsels and does not notify the authority involved in criminal proceedings which of these defence counsels was given the authority for admission of documents and for notification of the acts of criminal proceedings, the presiding judge and in pre-trial proceedings the public prosecutor shall determine choose him; their decision shall be notified to all selected defence counsels.

Section 37a

(1) The presiding judge and in pre-trial proceedings the judge may decide to exclude an attorney as the selected defence counsel from the defence even without a petition

a) for the reasons referred to in Section 35 (2) or (3), or

b) if the defence counsel repeatedly fails to participate in actions of criminal proceedings, in which his presence is necessary, nor does he ensure presence of his representative, despite being duly and timely informed about such actions.

(2) Excluding an attorney as the selected defence counsel shall be decided by the presiding judge and in pre-trial proceeding by the judge, also if the defence counsel performs the defence of two or more co-defendants, whose interests are contrary during the criminal proceedings. The defence counsel excluded on these grounds cannot perform the defence of any of the accused persons in the same case any further.

(3) Prior to making the decision pursuant to sub-section (1) or (2), the presiding judge and in pre-trial proceedings the judge shall allow the accused person and the defence counsel to comment on the matter, their comments shall be considered in making the decision. If he decides on exclusion of the defence counsel, the accused person shall be allowed to choose a different defence counsel within a reasonable time; if a case of a necessary counsel is concerned, it shall be proceeded according to Section 38 (1).

(4) A complaint is admissible against the resolution pursuant to sub-section (1) and (2), which has a dilatory effect.

Appointed Defence Counsel

Section 38

(1) If the accused does not have a defence counsel in cases where must have one (Section 36 and 36a), a time limit shall determined for him to choose the defence counsel. If the defence counsel is not selected within that time, he shall be immediately appointed for the time the grounds for necessary counsel still exist.

(2) If there are several accused persons, a common defence counsel shall generally be appointed to those, interests of which are not in conflict with the criminal proceedings.

Section 39

(1) A defence counsel shall be appointed and, once the grounds for the necessary counsel expire, his appointment shall be cancelled by the presiding judge and in pre-trial proceedings by the judge.

(2) For the purposes of appointing a defence counsel, the court maintains an alphabetically organised list of attorneys (hereinafter referred to as "list") who consent to the performance of the defence as appointed defence counsels of the court and have their office established in the district or seat of the court. In case of Circuit Courts in Prague the place of the office of attorneys shall be considered as the city of Prague. If it is not possible to appoint an attorney from the list, the court shall appoint an attorney from the list of a superior court.

(3) Attorneys listed on the list shall be appointed as defence counsels for individual accused persons successively, following the alphabetical order of the list. If an attorney is appointed in this way and there are reasons for his exclusion from the defence, or if the attorney could not be appointed for other reasons, the next attorney without such reasons for exclusion shall be appointed in his stead. If the accused person waived the appointed attorney by a declaration referred to in Section 36 and subsequently retracted this declaration, the same attorney shall be appointed, if it is possible.

(4) If a joinder of matters to a joint hearing and decision occurs and the accused was provided with a defence counsel in each of these cases, the presiding judge and in pre-trial proceeding the judge shall revoke the appointment of those defence counsels, who were appointed later. If a simultaneous appointment of defence counsels occurred, he shall revoke the appointment of the defence counsels, who were appointed in proceedings on a less serious criminal offence.

Section 40

The appointed defence counsel is obliged to assume the defence. However, for important reasons, at his request or at the request of the accused person, the defence counsel may be relieved of the obligation for defence and a different defence counsel shall be appointed in his stead. The defence counsel shall be relieved the obligation for defence by the presiding judge in trial proceedings and by the judge in pre-trial proceedings.

Section 40a

(1) For the reasons referred to in Section 37a (1) or (2), or in case the appointed defence counsel does not perform the defence for an extended period of time, the presiding judge and in pre-trial proceedings the judge shall decide to relieve him from the obligation of defence; the accused person and the defence counsel shall be allowed to comment on the matter prior to the decision.

(2) A complaint is admissible against the resolution pursuant to sub-section (1), which has a dilatory effect.

Section 41 Rights and Obligations of the Defence Counsel

(1) The defence counsel is obligated to provide the accused person with the necessary legal assistance, to efficiently exercise means and ways of defence stipulated by law in order to protect the interests of the accused person, in particular to ensure proper and timely clarification of the facts that disprove or mitigate the guilt of the accused person, and thereby contribute to appropriate clarification and decision in the matter.

(2) The defence counsel is entitled to make petitions for the defendant, to submit applications and appeals, to inspect documents (Section 65), and to participate in investigative acts in accordance with the provisions of this Code as early as during pre-trial proceedings. He is entitled to speak to the accused person, who is in custody, in the extent stipulated by Section 33 (1).

(3) The defence counsel is entitled to attend all actions in trial proceedings, which the accused may participate in.

(4) If the accused is legally incapacitated or if his legal capacity is restricted, the defence counsel may exercise the rights referred to in sub-section (2) and (3) also against the will of the accused person.

(5) Unless the authorisation of the defence counsel is defined otherwise during his appointment or selection, it shall expire at the conclusion of the criminal prosecution. Even if the authorisation has thereby expired, the defence counsel is entitled to lodge an extraordinary appeal on behalf of the defendant and take part in the proceedings on the extraordinary appeal at the Supreme Court, and furthermore apply for a pardon and suspension of execution of the sentence.

(6) The defence counsel has the right in all stages of criminal proceedings to request a copy or to copy the protocol (Section 55) of any act of criminal proceedings in advance. The authorities involved in criminal proceedings (Section 12 (1)) are obligated to comply with such a request; they may refuse only if it is not technically possible. The defence counsel is obligated to pay the related costs to the State.

SUBDIVISION SIX
Parties Concerned

Section 42

(1) The person whose thing or other asset value was forfeited or is due to be forfeited according to a proposal (party concerned) must be given an opportunity to comment on the matter; he may be present at the trial and public session, make proposals, inspect documents (Section 65), and submit appeals where admissible according to this Code.

(2) The authorities involved in criminal proceedings are obligated to instruct the party concerned of their rights and provide them with the full opportunity to exercise them.

(3) If the party concerned is legally incapacitated or if their legal capacity is restricted, their rights shall be exercised by their statutory representative in accordance with this Code.

SUBDIVISION SEVEN
Aggrieved Person

Rights of the Aggrieved Person and Exercising Claims for Compensation of Damage or Non-material Harm or Surrender of Unjust Enrichment

Section 43

(1) A person to whom was caused bodily harm, material damage or non-material harm by a criminal offence, or those at whose expense has the offender enriched himself by a criminal offence (aggrieved person), has the right to make proposals for additional evidence, to inspect files (Section 65), to attend negotiations of an agreement on the guilt and punishment, to attend the trial and public session held on an appeal or on the approval of an agreement on the guilt and punishment and to comment on the matter before the proceeding is concluded.

(2) A person who feels to be are morally or otherwise harmed by a criminal offence, yet the inflicted damage is not caused by the fault of the offender or its origin is not in causality with the criminal offence, is not considered an aggrieved person.

(3) The aggrieved person is also entitled to petition the court to impose an obligation on the defendant in the convicting judgment to compensate in monetary terms the damage or non-material harm caused to the victim by the commission of the criminal offence, or to surrender any unjust enrichment which the defendant obtained at the expense of the aggrieved person through the criminal offence. The petition must be filed at the trial before the commencement of evidentiary proceeding (Section 206 (2)) at the latest; in an agreement on the guilt and punishment is negotiated, the petition must be made at the first negotiation on such an agreement at the latest (Section 175 (2)). The petition must clearly show on what grounds and in what amount is the claim for damage or non-material harm being exercised or on what grounds and to what extent is being exercised the claim for the surrender of unjust enrichment.

(4) The aggrieved person may also waive his procedural rights granted in this Code by an explicit declaration addressed to the authority involved in criminal proceedings.

Section 44

(1) The rights of the aggrieved person can not be exercised by those who are prosecuted in criminal proceedings as co-defendants.

(2) If the number of aggrieved persons is extremely high and the individual exercise of their rights could threaten quick progression of the criminal prosecution, the presiding judge and in pre-trial proceedings the judge upon a motion of the public prosecutor shall decide that the aggrieved persons may exercise their rights in criminal proceedings only through a common representative, whom they select. The decision shall be announced to the aggrieved persons who have already asserted their claim for compensation of damage or non-material harm, or for surrender of unjust enrichment by the court in trial proceedings and by the public

prosecutor in pre-trial proceedings; the rest of aggrieved persons shall be informed at the first procedural step of criminal proceeding which they are summoned to or which they are notified of on. If the total number of representatives has increased to more than six and the aggrieved persons are unable to agree on their selection, the court shall make the choice with regard to the interests of the aggrieved persons. The common representative shall exercise the rights of the aggrieved persons he represents, including claims for compensation of damage or non-material harm or surrender of unjust enrichment in criminal proceedings.

(3) The application pursuant to Section 43 (3) can not be filed, if the claim has already been decided on in civil or other relevant proceedings.

Section 44a

(1) If the authority involved in criminal proceedings finds that an aggrieved person or witness is in danger in relation to the accused or convicted person being free, the court shall instruct the aggrieved person or witness of the possibility to request information about

a) the release of the accused person from custody or his escape,
b) the release of the convict from serving a prison sentence or his escape,
c) the release of the convict from protective treatment or his escape, or
d) the release of the convict from security detention or his escape.

(2) The aggrieved person or witness may submit the petition according to sub-section (1) to the court and in pre-trial proceedings to the public prosecutor. If the convicted person is serving a sentence of imprisonment, the application according to sub-section (1) is submitted to the court that decided in the first instance.

Section 45

(1) If the aggrieved person is legally incapacitated or if his legal capacity is restricted, his rights shall be exercised by their statutory representative in accordance with this Code.

(2) In cases where the statutory representative of the aggrieved person is not able to exercise his rights as referred to in sub-section (1) and is in danger of delay, the presiding judge and in pre-trial proceedings the public prosecutor shall appoint a guardian for exercising the rights of the aggrieved person. A complaint is admissible against the decision on appointment of the guardian.

(3) If a claim for compensation of damage or non-material harm is concerned (Section 43 (3)), the rights which this Code confers on the aggrieved persons are transferred also to their statutory representative.

Section 45a

All documents intended for the aggrieved person shall be served to the address stated by the aggrieved person. If he has a representative, it shall be served to him alone; this does not apply, if the aggrieved person is being summoned to do something personally.

Section 46

The authorities involved in criminal proceedings are obligated to instruct the aggrieved persons on their rights and provide them with the full opportunity to exercise them. If the criminal proceeding is conducted for a criminal offence, concerning which may be negotiated an agreement on the guilt and punishment, then the authorities involved in criminal proceedings, when giving instructions to the aggrieved person, shall caution him especially about that an agreement on the guilt and punishment may be negotiated and that in such a case he may apply his claim for monetary compensation of damage or non-material harm or for the surrender of unjust enrichment at the first negotiation on such an agreement at the latest.

Securing Claims of Aggrieved Persons

Section 47

(1) If there is a reasonable concern that satisfaction of the claim of the aggrieved person for compensation of the damage or non-material harm caused by a criminal offence, or for surrender of unjust enrichment obtained through a criminal offence, will be obstructed or impaired, the claim may be secured on the property of the defendant up to the probable amount of damage or non-material harm, or up to the probable extent of unjust enrichment.

(2) The securing referred to in sub-section (1) shall be decided on by the court upon a motion of the public prosecutor or the aggrieved person, and in the pre-trial proceedings by the public prosecutor upon a motion of the aggrieved person. In pre-trial proceedings may the public prosecutor decide to secure the claim even without the motion of the aggrieved person, if it is required to protect his interests, especially if there is a risk of delay.

(3) If the aggrieved person is aware that the accused owns real estate or any movable assets located outside their place of permanent or another residence, he shall state where such property is located, if possible as early as in the motion to secure the claim for compensation of the damage or non-material harm or surrender of unjust enrichment.

(4) The court and in pre-trial proceedings the public prosecutor shall prohibit the accused person from disposing with the property referred to in the resolution on securing or which will be listed in the course of execution of such a decision; it shall also prohibit the accused person from transferring the property to someone else or mortgaging it after the resolution is made, and order him to inform the court whether who has the right first buy or another right to the property within 15 days from the declaration of the resolution, with the instruction that otherwise the defendant is liable for any damage caused.

(5) A claim that can not be asserted in criminal proceedings can not be secured. Things that can not be affected by execution of a court decision under the civil law regulations cannot be used to secure a claim. Financial benefits of social welfare, material necessity benefits, and concerning social support benefits, the housing benefit and state social care benefit paid to the accused person according to a special Act as a lump-sum cannot be used for securing a claim, and neither are

a) claims of the accused person for remuneration arising from employment or a similar relationship,
b) claims of the accused for maintenance payments,
c) claims for the payment of sickness benefits and pension insurance, and
d) state social support benefits, which are not paid as a lump-sum

up to the amount of the sum of total monthly housing costs stipulated by special legal regulations proved by the accused and the subsistence minimum stipulated by special legal regulation for the accused person and the persons, whose education and maintenance is the accused person responsible for, unless they have own sources of income.

(6) As long as the seizure remains in effect, all legal acts of the accused concerning the seized property, with the exception of acts aimed at preventing imminent damage, shall be ineffective.

(7) The property of the accused person subject to the decision on the securing referred to in sub-section (1) and (2) may be disposed with within the frame of execution of a decision only with a prior consent of the court and in pre-trial proceedings the public prosecutor; this does not apply if the execution is carried out to satisfy claims of the State.

(8) Rights of third parties to the seized property may be applied under special legal regulation.

(9) The aggrieved person must always be notified about the securing of his claim along with the reasons, for which may the seizure according to Section 48 (1) be cancelled.

(10) Execution of the decision on securing a claim of the aggrieved person and the procedure in administration of the seized property is stipulated by a special legal regulation.

Section 47a

(1) The court and in pre-trial proceedings the public prosecutor shall waive the execution of acts of seizure or shall revoke the seizure, if the accused person or another person with his consent deposits a monetary guarantee on the account of the court at a banking institution in the amount corresponding to the probable claim of the aggrieved person for compensation of damage or non-material harm, or surrender of unjust enrichment; the other person must be aware of the merits of the indictment and of the facts that led or could lead to the seizure. If the monetary guarantee was lower, the court and in pre-trial proceedings the public prosecutor shall perform the acts of seizure on the property of the accused person in the extent, in which

the probable claim of the aggrieved person for compensation of damage or non-material harm or for surrender of unjust enrichment is not secured by the monetary guarantee.

(2) The court and in pre-trial proceedings the public prosecutor shall revoke or restrict the monetary guarantee pursuant to sub-section (1), if the grounds for securing the claim of the aggrieved person have ceased to exist or if it is clear that the claim for compensation of damage or non-material harm or for surrender of unjust enrichment cannot be awarder to the aggrieved person in criminal proceedings or if it is considerably lower.

(3) Unless the court decides otherwise, the monetary guarantee pursuant to sub-section (1) shall remain in effect until the full force and effect of the convicting judgment. If the claim of the aggrieved person for compensation of damage or non-material harm or surrender of unjust enrichment is awarded by such a judgment, the court shall pay it from the monetary guarantee.

(4) A complaint is admissible against the decision according to sub-section (1) and (2), which has a dilatory effect.

Section 48

(1) Seizure shall be revoked

a) if the reason for which it was ordered expired,
b) if the criminal prosecution is finally and effectively discontinued or terminated by a judgment of acquittal, or
c) if two months have passed since the judgment convicting the defendant came into full force and effect, or since the day the resolution, by which the case was transferred to another authority, came into full force and effect.

(2) The seizure must be restricted, if it becomes apparent that it not necessary in the extent in which it was ordered. If the seizure affected property belonging to someone else than the defendant, it shall be excluded from it.

Section 49

A complaint is admissible against the decision pursuant to Section 47 and 48 which has a dilatory effect, if it concerns revocation of the seizure, its restriction or exclusion therefrom.

SUBDIVISION EIGHT
Agent of the Party Concerned and the Aggrieved Person

Section 50

(1) The party concerned and the aggrieved person may be represented by an agent.

(2) The agent of the party concerned and the aggrieved person may only be a person, whose legal capacity is not restricted; in the course of a trial and public session the agent cannot be the person, who is summoned as a witness, expert or interpreter.

Section 51

An agent of the party concerned and the aggrieved person is entitled to make proposals and submit petitions and appeals on their behalf; he is also entitled to participate in all actions in which the party concerned and the aggrieved person could participate.

Section 51a

(1) If the aggrieved person, who has asserted his claim for compensation of damage or non-material harm or for surrender of unjust enrichment in compliance to the law, proves that he does not have sufficient funds to pay the costs incurred by retaining an agent, the presiding judge of the court conducting the proceedings in the first instance, and in pre-trial proceedings the judge, shall decide that the aggrieved person is entitled to legal assistance of an agent free of charge or at a reduced fee; this does not apply if with regard to the nature of the claimed compensation of damage or non-material harm or the amount thereof or with regard to the nature and extent of the unjust enrichment, the representation by an agent would be clearly superfluous.

(2) The petition for a decision according to sub-section (1) including annexes, which should prove its merits, shall be submitted by the aggrieved person in pre-trial proceedings through the public prosecutor, who shall attach his opinion thereto.

(3) Under the conditions referred to in sub-section (1), the presiding judge and in pre-trial proceedings the judge shall appoint an attorney as an agent of the aggrieved person. Costs incurred by retaining such an agent shall be covered by the State.

(4) If the reasons leading to the appointment of an agent for the aggrieved person expire or if the agent is unable to represent the aggrieved person any further due to important reasons, the presiding judge and in the pre-trial proceedings the judge shall decide to relieve him of the obligation to represent the aggrieved person.

(5) A complaint is admissible against the resolution according to sub-section (1), (3) and (4), which has a dilatory effect.

SUBDIVISION NINE
Access to Classified Information

Section 51b

(1) If there is classified information being discussed in criminal proceedings, the interpreter, accused person, statutory representative of the accused person, legal counsel, party concerned, aggrieved person, agent of the aggrieved person, agent of the party concerned, confidant of the accused person, expert, persons giving professional opinions, as well as other persons who are legally required to take part in criminal proceedings, shall be instructed in advance according to a special legal regulation[1].

(2) The instruction according to sub-section (1) shall be given in pre-trial proceeding by a Police authority or public prosecutor, and in trial proceedings by the presiding judge. Whoever gave the instruction shall draw up a written record of the instruction into the criminal file.

(3) The instruction according to sub-section (1) is not be necessary in case of persons who present a valid certificate of natural persons for the relevant level of security of classified information, and an instruction issued in accordance with a special legal regulation[1].

CHAPTER THREE

General Provisions on Acts in Criminal Proceedings

Section 52 Manner of Execution of Acts in Criminal Proceedings

In the course of performing acts in criminal proceedings, it is necessary to deal with the parties concerned in a way required by the significance and educational purpose of criminal proceedings; it is always necessary to favour their personalities and constitutional rights.

Section 52a

If it is necessary for the protection of rights of persons, especially with regard to their age or health condition, or if it is required by security or other serious reasons, technical devices for transferring picture and sound (hereinafter referred to as "video-conference device") may be used in the course of performing acts in criminal proceedings, if the nature of these acts allow it and if it is technically possible.

SUBDIVISION ONE
Letters of Requests

Section 53

(1) The court, public prosecutor and Police authority shall perform individual acts of criminal proceedings in their jurisdiction generally by themselves. Outside their jurisdiction shall individual acts of criminal proceedings be performed by requesting the District Court, public

[1]) Act no. 412/2005 Coll.

prosecutor, or Police authority, in whose jurisdiction is the action to be taken, or by the means of a video-conference device; in case the action is not performed by the means of a video-conference device, they shall perform it outside their jurisdiction by themselves only if the matter cannot be delayed or if it is necessary for proper assessment of the matter.

(2) The Supreme Court, High Court, and Regional Court may perform individual acts even in their own jurisdiction by requesting the District Court, in whose jurisdiction is the act to be performed; the Supreme Court and the High Court can also request the Regional Court.

Section 54

(1) The request must contain file details that need to be known in order to properly perform the action. In case of need the requesting authority shall attach the dossier files and point out parts thereof that contain the necessary data. The requested authority is, with regard to the nature of the case and to the matters that surfaced during performing the action, both entitled and obliged to perform further necessary actions, especially to question other persons and inquire about circumstances stated in the request, if it may contribute to quick and just resolution of the case.

(2) Actions of the requested court shall be conducted by a professional judge; thereat he has rights and obligations of the presiding judge.

SUBDIVISION TWO
Protocol

Section 55 General Provisions on Drawing up a Protocol

(1) Unless the law stipulates otherwise, any action of criminal proceedings shall be recorded into a protocol, usually during the action or immediately after, which must include

a) the name of the court, public prosecutor or another authority involved in criminal proceedings, which conducts the action,
b) the place, time and subject of the action,
c) the name and surname of public officials and their functions, names and surnames of the parties present, the name, surname and address of the statutory representatives, legal counsels and agents, who participated in the action, and in the case of the aggrieved person and the accused also the address they specified for the purpose of process service, and other data necessary to establish or verify their identity, including date of birth or birth certificate numbers,
d) a brief and concise statements of the course of the action, which would declare adhering to statutory provisions regulating execution of the action, essential contents of the decisions promulgated during the action, and if a transcript of the decision was served right away during the action, then also a confirmation of this service; if there is a literal transcript of the person’s statement being made, it is necessary to indicate it in

the transcript accordingly so that it is possible to certainly identify the beginning and the end of the literal transcript,

e) petitions of the parties, issued instructions, and/or statements of the instructed persons,
f) objections of the parties or the persons interviewed against the course of execution of the action or against the contents of the protocol.

(2) Should the ascertained circumstances indicate that the witness or persons close to them appear to be under a threat of bodily harm or any other serious risk of violation of their fundamental rights in relation to their testimony, and if a witness protection can not be reliably ensured in another way, the authorities involved in criminal proceedings shall adopt measures to conceal the identity of the witness; the name and surname and other personal information shall not be recorded in the protocol, but are kept separately from the criminal file and only authorities involved in criminal proceedings may become acquainted with such details in the given case. The witness shall be instructed about the right to request their identity to be concealed and shall sign the protocol under an assumed name and surname, under which they are further recorded. If the protection of such persons is required, the authorities involved in criminal proceedings shall immediately implement all necessary measures. Special means of protection of witnesses and persons close to them is stipulated by a special Act. If the reasons for the concealment of identity of a witness and for a separate recording of their personal data have expired, the authority conducting the proceedings at the time shall revoke the level of classification of this information, attach the information to the criminal file, and the identity and personal details of the witnesses shall no longer be concealed; this does not apply to the classified identity of persons listed in Section 102a.

(3) The protocol drawn up on a confrontation shall include literal transcription of testimonies of the confronted persons, as well as the wording of questions and answers; also all the circumstances that are important in the view of the purpose and performance of the confrontation. The protocol made about the recognition shall include detailed circumstances, under which recognition was performed, in particular the order in which the persons or items are presented to the suspect, accused or witness, the time and conditions of their viewing and their statements; the recognition conducted in pre-trial proceedings is usually video recorded. The protocol made about an investigative attempt, reconstruction and on-site examination must describe in detail all the circumstances, under which these actions were performed, including their contents and results; if the circumstances of the case do not prevent it, video recordings, sketches, and other appropriate tools shall be included in the transcript, if it is at all possible. Similarly it is necessary to proceed also in case of presentation of other evidence, which is not explicitly provided for by the law.

(4) A protocol on the statement of a person shall be drawn up in the Czech language, even if the questioned person gives the statement in another language; if the literal wording of the statement is of importance, the reporter or interpreter shall record the relevant part of the statement also in the language spoken by the person who gives the testimony.

(5) The person who performs the action shall be responsible for the correctness of the protocol.

Section 55a Special Means of Making Protocol

(1) To capture the course of an action a stenography record may be made, which is then along with a transcript of the ordinary writing attached to the protocol, or an audio or video record or other suitable means.

(2) If an audio or video record was made alongside the protocol, it shall be noted in the protocol made about an action, in which shall be indicated, in addition to the time, place and manner of its execution, also information about the used device. The technical recording medium shall be attached to the file, or there shall be indicated where the medium is stored.

Section 55b Certain Special Features of Protocol in Proceedings before Court

(1) During the course of the trial shall be made a sound record, unless the presiding judge decides otherwise for important reasons; Section 55a (1) shall not be affected thereby.

(2) If a magistrate or a protocol officer is participating as the court reporter, the protocol is not dictated, but is prepared according to the audio record by the magistrate or the protocol officer.

(3) Testimonies of persons who have already been heard are recorded in the protocol during the trial or public session only as long as such testimonies contain diversions or additions to earlier testimonies or explanations. The public prosecutor or the accused person may request that the testimony given before the court or a part thereof be literally recorded in the protocol; the presiding judge shall grant such a request, provided the subject of the testimony is not a repetition of what was already recorded in the protocol.

(4) The protocol of the trial or public session is not necessary to be made in writing, if the accused person and the prosecutor declare that they waive their right to appeal against the decision and that they do not insist on the elaboration of a written protocol of the trial or public session, or if none of the entitled persons file an appeal and the decision comes into full force and effect. In such a case, the magistrate or the protocol officer of the court make a brief record of the trial or public session, stating the time and place of the trial or public session, the persons present, the verdict of the decision and the statutory provisions used, and the opinion of entitled persons on the use of appeals.

(5) If an audio recording was made about the course of actions before the court and if there is no reason to proceed pursuant to sub-section (4), the substantial content thereof shall be recorded into the protocol in the course of the action or immediately after its conclusion.

(6) In proceedings before the court the magistrate or the protocol officer of the court person are responsible for the accuracy and completeness of the protocol, if they were appointed as the court reporters.

(7) Audio recordings are stored on a data carrier along with the file, and if its attachment to the file is not possible, the place of its storage shall be noted in the protocol or in a brief record. The audio recording may not be deleted prior to shredding of the file.

(8) If the action is conducted outside the court building and the audio recording can not be made, a court reporter is appointed and the presiding judge dictates the protocol.

Section 56 Signing of Protocol

(1) The protocol of the trial and public and closed session shall be signed by the presiding judge and the court reporter; other protocols shall be signed by the person who performed the action and the person concerned by the action, eventually the court reporter, interpreter, expert or other person summoned to the action. If the action is conducted by the means of a video-conference device, the person concerned does not sign the protocol. If the protocol of the hearing consists of more than one page, the interviewed person must sign each page of the protocol. Should the interviewed person or any other person invited to the action refuse to sign the transcript, it shall be noted in the protocol along with a reason for refusal.

(2) If the presiding judge is unable to sign the protocol of the trial or a public or closed session due to an obstacle of a longer duration, it shall be signed by another member of the court panel. If there is an obstacle on the part of another person or a single judge, the reason for the missing signature shall be noted in the protocol.

Section 57 Correction of Protocol

(1) Correction and amendment of the protocol of the trial and public and closed session, as well as objections to such transcript, shall be decided on by the court, whose protocol is concerned. A complaint is admissible against this decision.

(2) The person who conducted the hearing or who performed the action may, even after signing the protocol, order or make a correction of clerical errors or other obvious errors. The correction shall be made so that the original entry remains legible; the correction shall be signed by the person who ordered it.

Section 58 Voting Protocol

(1) The voting protocol shall contain in addition to the general requirements (Section 55 (1))
   a) the procedure for individual votes, their result and the decision statement,
   b) a different opinion from the majority in its entire text and with a brief reasoning.

(2) A record of all votes that occurred during the same hearing shall be included in the same voting protocol.

(3) The voting protocol shall be signed by all members of the court panel and by the court reporter.

(4) The voting protocol will be sealed and attached to the protocol of the trial. It may be opened only by the presiding judge of the superior court in deciding on an appeal and the presiding judge of the Supreme Court in deciding on a complaint for the violation of law as well as the judge in charge of making the judgment; once inspected, it shall be sealed again and its opening shall be confirmed by a signature.

(5) The voting record is not made in writing if it pertains to simple decisions which the court passed unanimously and which were preceded by a meeting in the court room only without a suspension; in such cases a note that the resolution was taken without a suspension of the meeting is made in the transcript.

SUBDIVISION THREE
Submissions

Section 59

(1) Submissions are always assessed by their content, even if they are labelled incorrectly. They can be made in writing, orally into the protocol, in electronic form signed electronically pursuant to special regulations, via telegram, fax or telex.

(2) A person who makes the submission in an electronic form in accordance with a special legal regulation will simultaneously indicate the certification service provider, who issued their certificate and keeps their records or will attach the certificate to the submission.

(3) The police authorities and the district public prosecutor shall write the oral statement into the protocol in pre-trial proceedings; in trial proceedings it shall be done by the District Court. If there are important reasons, the public prosecutor’s offices and the courts of a higher instance may exceptionally write them as well. Extraordinary appeal may not be lodged orally into the protocol.

(4) If the law does not stipulate additional requirements for a submission of a certain kind, the submission must be clear as to which authority involved in criminal proceedings it is addressed, who is making it, which matter does it concern and what does it pursue, and it must be signed and dated. Submissions must be lodged in the required number of copies and attachments so that one copy remains with the competent authority involved in criminal proceedings and one copy is for every person concerned by the submission, if necessary. If the submission does not meet these requirements, the authority involved in criminal proceedings shall return it to the originator, if he is known, to be completed, along with the

appropriate instructions on how to remove the defects. At the same time it shall set a time limit for removing such defects. If the originator is not known or if the defects are not removed within the prescribed time period, the submission will not be taken into account; this does not apply to criminal complaints or other submissions on the basis of which can be made a conclusion on a suspicion of commission of a crime, or for a submission, content of which is an appeal, even if does not contain all the requirements. The appeal must always be clear about which decision it challenges and who is making it.

(5) When an oral criminal complaint is made, it is necessary to hear the reporter on the circumstances under which the offence was committed, the personal circumstances of those against whom it is filed, on the evidence and on the amount of damage caused by the reported act; if the reporter is also the aggrieved person or his agent, he must also be heard about whether he applies for a court decision in criminal proceedings on their claim for compensation of damage or non-material harm or surrender of unjust enrichment. The questioning should be conducted in such a way that it provides a basis for further proceedings.

(6) If the protocol of the criminal complaint was made orally in court, the court shall immediately forward it to the public prosecutor.

SUBDIVISION FOUR
Time Limits

Section 60 Calculation of Time Limits

(1) The day on which the event determining the beginning of the time limit took place shall not be included into the time limit.

(2) A time limit specified by weeks, months or years shall expire on the day corresponding by its name or number to the day, on which occurred the event determining the beginning of the time limit. In case of the absence of such a day in the last month of the deadline, the time limit shall expire on the last day of this month.

(3) Where the end of a time limit falls on a holiday or weekend, the next business day is considered to be the last day of the time limit.

(4) The time limit is also maintained if the submission was within the time limit

a) submitted as a postal consignment addressed to the court, public prosecutor or Police authority, at which it should be lodged or which is to decide in the matter,
b) made at the court or public prosecutor, who is to decide in the matter,
c) made by a member of the armed forces or armed corps in the active service at their chief officer,
d) made at the director of the correctional facility where the originator of the submission is in custody or serving a prison sentence, or
e) made orally into the protocol at any District Court or district public prosecutor.

Section 61 Restoration of Time Limits

(1) If the accused person or his defence counsel misses the time limit for lodging an appeal for important reasons, the authority competent to decide on the appeal shall permit restoration of the time limit, unless the law stipulates otherwise. Restoration of a time limit must be requested within three days from the time the obstacle has passed. If the appeal has not been lodged by that time, it must be joined to the application. In case of an appeal against a judgment, the appeal may be reasoned within eight days from the service of the decision to allow restoration of the time limit.

(2) If an appeal has already been dismissed as overdue, the authority shall repeal the restoration of the time limit along with its decision to dismiss the appeal.

(3) The provisions of sub-section (1) and (2) shall be applied accordingly also if it turns out that the time limit for filing an appeal, which was dismissed as overdue, was not missed.

SUBDIVISION FIVE
Process Serving

Section 62 General Provisions

(1) If a document was not served during an action of criminal proceedings, it shall be served by the authority involved in criminal proceedings into a data box[1b]. If it is not possible to serve the document in this manner, the authority involved in criminal proceedings shall serve it via the postal service (hereinafter referred to as "post") and in case such a service is not successful, also through the municipal authorities. If the document is served directly by the court or public prosecutor’s office, they do so via their process servers or judicial guards. If a document can not be served in such a way, it shall be served via the competent Police authority. In the cases stipulated by special regulations, the authority involved in criminal proceedings performs the process service via the Ministry of Justice or another designated authority.

(2) If the accused has a defence counsel and the victim or the party concerned has an agent, documents shall be served only to the defence counsel or agent, unless the law stipulates otherwise. However, if the defendant, victim, or party concerned is to do something personally, the document shall be also served to them.

(3) If the authority involved in criminal proceedings performs the service by post, such a document may be made in cooperation therewith; the details of this procedure shall the Ministry of Justice stipulate by a regulation.

[1b]) The Act no. 30/2008 Coll., on electronic actions and certified conversion of documents.

Section 63

(1) Unless this Code stipulates otherwise, the regulations applicable for process serving in civil proceedings shall be used for process serving to natural persons, legal entities, state authorities, the State, attorneys, notaries, municipalities and higher local self-administration units.

(2) If the addressee is the accused person, he shall be served primarily to the address he stated for this purpose (Section 55 (1) (c)).

(3) If the defence counsel is served documents for the accused in the proceedings against a fugitive (Section 306 (1)), it shall be proceeded in the manner applicable to service to the accused person.

Section 64 Service into Own Hands

(1) Service into own hands shall be performed in case of

a) serving an indictment, a petition for approving an agreement on the guilt and punishment, a motion for punishment, and a writ of summons to the defendant,
b) serving a copy of a decision to persons entitled to file an appeal against the decision,
c) serving other documents, if the presiding judge, public prosecutor, or the Police authority orders it for important reasons.

(2) If the addressee of a document that is to be served into own hands is not found, the consignment shall be deposited and the addressee shall be adequately informed, where he may collect it.

(3) Document shall be deposited

a) at the District Court, in whose jurisdiction is the place of service, or at the court which is located at the place of service, if it is served by process servers or judicial guards,
b) with the public prosecution in whose jurisdiction is the place of service, or for the public prosecution, which has its office in the place of service when it is served by the server of the public prosecution or judicial guards,
c) at the post office, if it is served by post,
d) at the municipal authority, if it is served by a municipal authority,
e) at the competent Police authority, if they serves the document directly, or if it is served by the court or the public prosecutor's office via the Police authority.

(4) If the addressee fails to collect the consignment within ten days following its deposition, the last day of this period is considered the day of service, even if the addressee did not learn of its deposition, even though he is staying at the place of service or he stated this address for the purpose of process serving. After vain expiration of this time period shall the serving authority insert the consignment into the in-house or another mailbox used by the addressee, unless the sender proscribes putting it into a mailbox. If there is no such a mailbox, the

consignment shall be returned to the sender and information thereof shall be put on the official board.

(5) Sub-section (4) shall not apply in case of

a) a service of a resolution on initiation of criminal prosecution, an indictment, a motion for punishment, a petition for approving an agreement on the guilt and punishment, a judgment or a criminal order, summons to the trial or a public session to the accused person, or
b) another consignment, if the presiding judge, public prosecutor, or the Police authority who ordered the service orders it for important reasons.

(6) If service according to sub-section (4) is precluded, the sender must noticeably indicate so on the consignment. In such a case shall the serving authority return the consignment to the sender after vain expiration the period of ten days from its deposition.

Section 64a Refusal of Acceptance

(1) If the addressee or a person entitled accept documents in his stead refuses to accept the consignment, it shall be noted on the receipt along with the date and reason for the refusal, and the consignment shall be returned.

(2) If the presiding judge, public prosecutor, or the Police authority that sent the document admits that the acceptance of the document was unreasonably refused, the document shall be considered as delivered on the date the acceptance was refused; the addressee must be notified of such result by the process server.

SUBDIVISION SIX
Inspection of Documents

Section 65

(1) The accused person, aggrieved person and party concerned, their defence counsels and agents have the right to inspect files, with the exception of the voting protocol and the personal data of witnesses in accordance with Section 55 (2), to make extracts and notes from them, and make copies of files and their parts at own expense. The same right applies to statutory representatives of the accused person, aggrieved person or party concerned if they are legally incapacitated or if their legal capacity is restricted. Other persons may do so with the consent of the presiding judge and in pre-trial proceedings with the consent of the public prosecutor or the Police authority, and only if it is necessary to exercise their rights.

(2) In pre-trial proceedings, the public prosecutor or the Police authority may deny the right to inspect the files, along with the other rights referred to in sub-section (1) based on serious reasons. The public prosecutor is obliged to urgently review the seriousness of the reasons for which the Police authority denied these rights upon a request of the person concerned by the

refusal. These rights can not be denied to the accused person and the defence counsel once they have been advised of the possibility to inspect the files, and in the course of negotiating an agreement on the guilt and punishment.

(3) Those who had the right to be present at an action can not be denied access to the protocol of such an action. The accused person and his legal counsel cannot be denied access to the resolution to initiate criminal prosecution (Section 160 (1)).

(4) The rights of public authorities to inspect the files according to other legal regulations are not affected by the provisions of previous sub-sections.

(5) When authorising inspection to the files, it is necessary to take such measures to preserve the secrecy of classified information protected by a special Act, which are concerned by a duty of silence imposed or recognised by the State.

SUBDIVISION SEVEN
Disciplinary Fine

Section 66

(1) A person who despite previous warnings disturbs the proceedings or who behaves offensively to the court, public prosecutor or Police authority, or without a sufficient excuse disobeys an order or does not comply with a the request made under this Act, may be punished by the presiding judge and in pre-trial proceedings by the public prosecutor or the Police authority, with a fine of up to 50,000 CZK.

(2) Should a member of the armed forces or armed corps in active service commit the conduct described in sub-section (1), the competent commanding officer or chief may decide on his disciplinary punishment. Should a person who is in custody or serving a prison sentence commit such a conduct, the prison director may decide to impose a disciplinary measures or disciplinary punishment. The competent commanding officer, chief or director is obliged to inform the authorities involved in criminal proceedings about the result.

(3) Should the conduct described in sub-section (1) be committed by a defence counsel or by a public prosecutor in trial proceedings, they shall be transferred to the competent authority for disciplinary penalty. This authority is obliged to inform the authorities involved in criminal proceedings about the result.

(4) A complaint is admissible against the decision according to sub-section (1) to (3), which has a dilatory effect.

CHAPTER FOUR

Seizure of Persons, Items and Other Assets

SUBDIVISION ONE
Custody

Section 67 Reasons for Custody

The accused person may be taken to custody only if his actions or other specific circumstances lead to a reasonable belief that he shall

a) escape or hide to avoid criminal prosecution or penalty, especially if he cannot be identified at the moment, if he does not have a permanent residence or if he faces a high penalty,
b) influence witnesses or co-accused persons that have not yet been heard or in other ways thwart clarification of circumstances substantial for criminal prosecution, or
c) repeat criminal activity he is prosecuted for, perpetrate an attempted crime or commit a crime he has been preparing or threatened with,

and circumstances so far ascertained indicate that the act, which the criminal prosecution has been initiated for, was committed, has all attributes of a criminal offence, there are evident reasons to belief that the offence was committed by the accused person and with regard to the his character and to the nature and seriousness of the offence the purpose of custody cannot be reached by other means at the time of making the decision on custody.

Section 68

(1) Only the person against whom was initiated a criminal prosecution may be taken into custody. The decision on custody must be rationalized also by matters of fact.

(2) The accused person, who is prosecuted for an intentional criminal offence punishable according to law by incarceration for two years at maximum or for a negligent offence punishable according to law by incarceration for three years at maximum, cannot be taken into custody.

(3) Restrictions referred to in sub-section (2) shall not apply, if the accused person

a) escaped or hided,
b) repeatedly failed to appear upon a writ of summons and could not be compelled to appear or his presence in criminal proceedings could not be secured in other ways,
c) is of an unknown identity and he could not be identified by any available means,
d) has already been influencing or co-accused persons or has in other ways thwarted clarification of circumstances substantial for criminal prosecution, or
e) has repeated criminal activity he is prosecuted for, or has continued in such criminal activity, or was convicted or sentenced for such criminal activity in the past three years.

(4) Restrictions referred to in sub-section (2) for an intentional criminal offence shall not apply, if a reason for custody referred to in Section 67 (c) is given, and with regard to the nature of such a crime is imposing custody required for effective protection of the aggrieved person, especially protection of his life, health or another similar concern.

Section 69 Arrest Warrant

(1) If any of the reasons for custody is given (Section 67) and the accused person cannot be summoned, compelled to appear or apprehended and secured to appear at the hearing, in pre-trial proceedings the judge upon a motion of a public prosecutor and in trial proceedings the presiding judge shall issue an arrest warrant for the accused person.

(2) The arrest warrant shall, besides the data ensuring that the accused person shall not be confused with another person, contain a brief description of the act the accused person is prosecuted for, identification of the criminal offence seen in this act and an accurate description of reasons, which is the warrant issued for.

(3) The arrest shall be performed on the basis of the warrant by police authorities, which are also obliged, if it is necessary for executing the order, to locate the place of residence of the accused person.

(4) The Police authority that arrested the accused person on the basis of the arrest warrant is obliged to deliver him without delay, within 24 hours at the latest, to the court, a judge of which issued the order, or to a place enabling this court to conduct questioning by the means of a videoconference device; if it is impossible due to exceptional unforeseeable circumstances, the accused person must be delivered to the court with subject-matter competence within 24 hours from the arrest at the latest.

(5) The judge who has issued the arrest warrant must immediately question the accused person, decide on custody and announce this decision to the accused person within 24 hours from the time the accused person was delivered to the place of questioning. If the questioning is exceptionally conducted by another judge with subject matter competence, to which was the accused person delivered due to unforeseeable circumstances, he shall inform the judge of the court that issued the arrest warrant about the results of the questioning. After receiving the information this judge shall decide on custody and announce this decision to the accused person through the judge conducting the questioning. If the decision on custody is not announced within 24 hours from the time the accused person is delivered to the place of questioning, he must be released. The accused person has the right to have his defence counsel present at the questioning, if he is reachable within the stated time period.

(6) The accused person, who was taken to custody, shall be delivered to the place where the custody is executed by police authorities.

Section 70 Notification of Custody

Taking to custody shall be notified to a family member of the accused person without a delay and also to his employer; this does not apply if the accused person declares that he does not agree with such a notification, unless notification of a family member of a juvenile is concerned. Taking a member of armed forces or armed corps to custody shall be notified also to his commanding officer or chief. Unless a promulgated international treaty binding the Czech Republic provides otherwise, taking a foreigner into custody and his release from custody shall be notified also to a consular authority of the State the foreigner is a national of, if the foreigner requests it.

Section 70a

(1) The competent prison shall be notified without delay about

a) taking the accused person to custody,
b) change of reasons for custody,
c) decision on further continuation of custody,
d) decision on releasing the accused person from custody
e) legal definition of the criminal offences, which is the accused person prosecuted for, or about changes thereof,
f) name, surname and address of the defence counsel representing the accused person,
g) personal data of an co-accused person, if he is in custody,
h) transferring the case to another authority involved in criminal proceedings,
i) lodging an indictment, a petition for approving an agreement on the guilt and punishment or a final decision on remitting the case to a public prosecutor to be further investigated,
j) filing a request by the aggrieved person or witness according to Section 44a.

(2) The aggrieved person or witness, who filed a request according to Section 44a, shall be suitably notified about releasing the accused person from custody or about his escape on the same day the event occurred.

(3) Notification according to sub-sections (1) and (2) shall be done by the authority involved in criminal proceedings that conducted the proceedings at the time the matter that needs to be notified to the prison occurred; remitting the case to a public prosecutor for further investigation shall be announced by the court that issued such a decision in the first instance.

Duration of Custody

Section 71 Review of Reasons for Custody

(1) Authorities involved in criminal proceedings are obliged to continually inspect, whether reasons for custody of an accused person still persist or if they have changed and whether the custody can be replaced by any of the measures referred to in Section 73 and 73a. Therein they shall also consider, whether keeping the accused person in custody is required by

complexity of the matter or by other serious reasons, for which the criminal prosecution cannot be terminated, and whether releasing the accused person from custody would thwart or significantly obstruct reaching the purpose of criminal prosecution. The court shall do so in pre-trial proceedings only if deciding on

a) a request of the accused person for release from custody,
b) a motion of the public prosecutor for a decision on keeping the accused person in custody,
c) change of reason for custody, if a reason for custody has been found, or
d) a complaint of the public prosecutor against a decision on custody.

(2) The accused person must be immediately released from custody, if

a) the reason for custody ceases to exist, or
b) it is clear, that with regard to the personality of the accused person and the nature and seriousness of the matter the criminal prosecution will not lead to imposition of an unsuspended sentence of imprisonment, and if there are no circumstances referred to in Section 68 (3) and (4).

Section 71a Request for Release from Custody

The accused person has the right to request to be released from custody at any time after the legal force of the decision on taking into custody. A request for release from custody is also considered a motion of the accused person for adoption any of the measures substituting custody. Such a request must be decided on without undue delay. If the request has been denied, the accused person may repeat it no sooner than after thirty days following the legal force of the last decision, by which was denied his request for release from custody, or by which was decided on further duration of custody or on change of the reason for custody, unless he states different reasons.

Section 72 Decision on Further Duration of Custody

(1) Every three months from the legal force of a decision on taking into custody pro legal force of another decision on custody at the latest is the judge in pre-trial proceedings obliged to decide upon a motion of the public prosecutor on whether the accused person shall be kept in custody, or whether he shall be released from custody. Otherwise must the accused person be immediately released from custody.

(2) A motion of the public prosecutor for issuing a decision on further duration of custody according to sub-section (1) must be delivered to the court at the latest 15 days before the lapse of the 3 months time limit.

(3) The court is obliged to decide, at the latest within 30 days from the day the indictment has been lodged against the accused person who is in custody, or a petition for approving an agreement on the guilt and punishment negotiated with the accused person who is in custody, or the day the dossier file was delivered to him on the basis of a decision on transferring or

assignment of the case of the accused person, whether the accused person shall be further kept in custody or whether he shall be released from custody; otherwise must the accused person be immediately released from custody. If the court keeps the accused person in custody, or if the court decides to take the accused person to custody after the indictment or the petition for approving an agreement on the guilt and punishment has been lodged, it is obliged to proceed in accordance with sub-section (1).

(4) If the three-month period for a court decision on further duration of custody expires in the course of appeal proceedings before a superior court, this superior court shall be competent to decide on keeping the accused person in custody or on his release from custody; the court, whose decision is contested by the appeal shall inform the superior court about the end of this time period when presenting the file.

Section 72a Longest Permissible Duration of Custody

(1) The custody may last in pre-trial proceedings and in trial proceedings only for the necessary time. The total time of custody in criminal proceedings cannot exceed

a) one year, if the criminal proceedings concern a misdemeanour,
b) two years, if the criminal proceedings concern a felony,
c) three years, if the criminal proceedings concern an especially serious felony,
d) four years, if the criminal proceedings concern an especially serious felony, for which may be imposed an exceptional sentence of imprisonment according to the Criminal Code.

(2) One third of the time limit referred to in sub-section (1) applies to pre-trial proceedings and two thirds apply to trial proceedings. If the pre-trial or trial proceedings are not terminated before the lapse of this period, the accused person must be released from custody on the last day of this period at the latest. If the accused is being prosecuted for two or more criminal offences, decisive for determination of this period is the most severely punishable offence. If the act, for which was the criminal proceeding initiated, constitutes another offence and the duration of custody has already exceeded the time set for pre-trial or trial proceedings, the accused person must be immediately released from custody.

(3) Custody for the reason specified in Section 67 b) may last for three months at most. If the accused person, who is not in custody also for another reason, was not released from custody before the lapse of the time limit referred to in the first sentence, he must be released on the last day of this period at the latest. If it was found that the accused person has influenced witnesses or co-accused persons or otherwise thwarted clarification of matters substantial for criminal proceedings (Section 68 (3) d)), in pre-trial proceedings shall the judge decide upon a motion of the public prosecutor, and after lodging an indictment shall the court decide on keeping the accused person in custody for the designated time.

(4) The duration of custody shall be counted from the day the personal freedom of the accused person has been restricted. In the event of returning the matter to the public prosecutor for

further investigation the lapse of time limit that applies to pre-trial proceedings continues from the day the file was delivered to the public prosecutor.

(5) Duration of custody, which was decided in appeal proceedings (Section 265l (4) and Section 265o (2)), in proceedings of a complaint for breach of law (Section 275 (3)), proceedings on a motion for renewal of proceedings (Section 282 (2) and Section 287), after cancelling the verdict on punishment by a ruling of the Constitutional Court (Section 314k (1)), in proceedings on execution of a sentence of banishment (Section 350c (1)), as well as in proceedings according to Chapter Twenty Five, shall be assessed separately and independently on the custody in the original proceedings.

Section 72b

If the court pronounced a judgement, by which was the accused person sentenced for an especially serious felony to an unsuspended sentence of imprisonment, the time spent in custody from the pronouncement of such a judgement to ordering of execution of the imposed prison sentence or to repealing of such a judgement shall not be counted into the total duration of custody according to Section 72a (1).

Section 73 Substitution of Custody by Supervision or Assurance

(1) If there is a reason for custody referred to in Section 67 (a) or (c), the authority deciding on custody may leave the accused person at liberty or set him free, if

a) an interest citizens association referred to in Section 3 (1) or a trustworthy person capable to advantageously influence behaviour of the accused person, offers to assume a guarantee for further conduct of the accused person and for that he shall appear before a court, public prosecutor or Police authority when summoned and that he shall notify these authorities whenever he departs from his place of residence, and if the authority deciding on custody considers the guarantee sufficient in view of the accused person and the nature of the case concerned and accepts it,
b) the accused person offers a written assurance that he shall lead an upright life, especially that he shall not commit any offence, appear before a court, public prosecutor or Police authority when summoned, always announce departing from his place of residence in advance and comply with restrictions imposed to him, and the authority deciding on custody considers the assurance sufficient in view of the accused person and the nature of the case concerned and accepts it, or
c) with regard to character of the accused person and the nature of the case concerned may the purpose of custody be reached by supervision of an probation officer over the accused person.

(2) The court and in pre-trial proceedings the public prosecutor shall make the person, who offers to assume a guarantee according to sub-section (1) a) and who fulfils the conditions therefor, acquainted with the merits of the indictment and with matters that are found to constitute the reasons for custody.

(3) The accused person, over whom was ordered supervision of a probation officer substituting custody, is obliged to meet the probation officer in stated terms, to change his place of residence only with a consent of the probation officer and to submit to further restrictions stated in the verdict of the decision that are aimed at preventing the person from further criminal activity and thwarting the course of the criminal proceedings.

(4) In connection to substitution of custody by some of measures referred to in sub-section (1) may the authority deciding on custody also impose a restriction to the accused person, consisting in restriction of travelling abroad. In such a case the authority deciding on custody shall ask the accused or a person who has travel documents of the accused person in possession, to surrender the travel documents within a stated time to it, otherwise the travel documents shall be sequestered; procedure of sequestration of travel documents shall be governed by Section 79 accordingly. Transcription of the resolution imposing a restriction consisting in prohibition of travelling abroad, which concerns a national of the Czech Republic, shall the authority deciding on custody send to an authority competent for issuing travel documents; this authority shall also be notified about issuing or sequestration of travel documents.

(5) The accused person, to whom was imposed the restriction referred to in sub-section (4) in connection to substitution of custody, has the right to apply for its cancellation at any time. This application shall be reviewed by the authority deciding on custody without undue delay. If the application was rejected, the accused person may repeat it no sooner than three months from the day the decision came into force, unless he states different reasons.

(6) The authority that decided on cancellation of a restriction consisting in prohibition of travelling abroad concerning a national of the Czech Republic shall notify this without undue delay to the authority competent for issuing travel documents; this authority shall also be notified about returning the travel documents to the accused person.

(7) If the accused person does not comply with obligations imposed in connection to substitution of custody by some of the measures referred to in sub-section (1) and if the reasons for custody still exist, the court and in pre-trial proceedings the judge upon a motion of the public prosecutor shall decide on custody.

Section 73a Pecuniary Guarantee

(1) If there is a reason for custody referred to in Section 67 a) or c), the authority deciding on custody may let the accused person at liberty or set him free from custody also if this authority accepts a pecuniary guarantee in an amount it has determined. However, if the accused person is prosecuted for a criminal offence of murder (Section 140 of the Criminal Code), grievous bodily harm (Section 145 of the Criminal Code), torture and other inhumane treatment according to Section 149 (3), (4) of the Criminal Code, trafficking in human beings (Section 168 of the Criminal Code), robbery according to Section 173 (4) of the Criminal

Code, hostage taking according to Section 174 (3), (4) of the Criminal Code, rape according to Section 185 (3), (4) of the Criminal Code, sexual abuse according to Section 187 (3), (4) of the Criminal Code, general threat according to Section 272 (2), (3) of the Criminal Code, development, manufacture and possession of forbidden means of combat (Section 280 of the Criminal Code), unauthorized manufacture and other disposal with narcotic and psychotropic substances and poisons according to Section 283 (3), (4) of the Criminal Code, unlawful seizure of an aircraft, civil vessel and fixed platform (Section 290 of the Criminal Code), forcing an aircraft to abroad according to Section 292 (2), (3) of the Criminal Code, treason (Section 309 of the Criminal Code), subversion o republic (Section 310 of the Criminal Code), terrorist attack (Section 311 of the Criminal Code), terror (Section 312 of the Criminal Code), sabotage (Section 314 of the Criminal Code), espionage (Section 316 of the Criminal Code), cooperation with enemy (Section 319 of the Criminal Code), war treason (Section 320 of the Criminal Code), genocide (Section 400 of the Criminal Code), attack against humanity(Section 401 of the Criminal Code), apartheid and discrimination of group of people (Section 402 of the Criminal Code), preparation of offensive war (Section 406 of the Criminal Code), connections imperilling peace (Section 409 of the Criminal Code), use of forbidden means of combat and forbidden wage of combat (Section 411 of the Criminal Code), war cruelty (Section 412 of the Criminal Code), persecution of inhabitants (Section 413 of the Criminal Code), pillage in zones of military operations (Section 414 of the Criminal Code), abuse of internationally recognised State symbols (Section 415 of the Criminal Code), or abuse of flag and truce (Section 416 of the Criminal Code), and if there is a reason for custody referred to in Section 67 c), the pecuniary guarantee may not be accepted. With a consent of the accused person may the pecuniary guarantee be deposited also by another person; however, prior to accepting the guarantee this person must be acquainted with the merits of the indictment and with matters that are found to constitute the reasons for custody.

(2) The authority referred to in sub-section (1) shall decide, upon a motion of the accused person or the person offering to deposit a pecuniary guarantee, that

a) accepting the guarantee is admissible and at the same time, with regard to the character and property relations of the accused person or the person depositing the pecuniary guarantee in his stead, to the nature and seriousness of the criminal offence, for which is the accused person prosecuted and to seriousness of the reasons for custody, set the sum of the pecuniary guarantee in a corresponding amount from 10 000 CZK higher and also the means of its deposition,
b) with regard to circumstances of the case or to seriousness of the reasons for custody the offer of pecuniary guarantee shall be refused.

(3) If the authority referred to in sub-section (1) decides that accepting the pecuniary guarantee is admissible, it may also decide to impose a restriction consisting in prohibition of travelling abroad. Section 73 (4) to (6) shall apply mutatis mutandis to cases according to the first sentence.

(4) Court and in pre-trial proceedings a judge upon a motion a motion of a public prosecutor shall decide that the pecuniary guarantee shall be forfeited by the State, if the accused person

a) flees, hides or fails to announce change of his place of residence, and thus makes it impossible to serve summons or other documents of court, public prosecutor of Police authority,
b) culpably fails to appear when summoned for a procedural step in criminal proceedings that cannot be performed in his absence,
c) repeatedly engages in criminal activity or attempts to conclude the criminal offence he failed to conclude before of which he planned or threatened with, or
d) avoids execution of an imposed sentence of imprisonment or financial penalty or execution of a substitute sentence of imprisonment for a financial penalty.

(5) The court or public prosecutor conducting the proceedings at the time shall cancel the pecuniary guarantee or change its amount upon a motion of the accused person or the person who deposited it, or even without such a motion, if reasons which lead its deposition have disappeared, or if circumstances decisive for determination of its amount have changed. If this authority decides to cancel the pecuniary guarantee or its forfeiture by the State, it shall also review whether reasons for taking into custody are present, and eventually perform necessary steps.

(6) If the court does not decide otherwise, the pecuniary guarantee of the accused person, who was condemned to an unconditioned sentence of imprisonment or to a financial penalty, remains in effect to the day the accused person begins to serve the sentence of imprisonment, pays the financial penalty and the costs of proceedings. If the accused person fails to pay the financial penalty or costs of proceedings in the determined time limit, remuneration thereof shall be deducted from the amount of the pecuniary guarantee.

(7) Reasons for forfeiture of the pecuniary guarantee by the State or for using it for covering a financial penalty or costs of criminal proceedings shall be notified in advance to the accused person and the person who deposited the pecuniary guarantee.

Section 73b Authority Deciding on Custody

(1) Taking the accused person to custody may be decided only by a court and in pre-trial proceedings by a judge upon a motion of a public prosecutor. A decision on custody of an accused person arrested according to Section 69 in trial proceedings shall be made by a judge; in such a case the judge has the same rights and obligations as the senate and its presiding judge.

(2) A decision on a request of the accused person for release from custody shall be made by court and in pre-trial proceedings by public prosecutor. If the public prosecutor does not grant the request for release from custody, he is obliged to submit it for a decision to the judge within five days from its delivery at the latest; this procedure shall be notified to the accused person. If the public prosecutor consents with the release of the accused person from custody, in trial proceedings may the presiding judge decide on the release from custody.

(3) Further duration of custody of the accused person shall be decided by the court and in pre-trial proceedings by the judge upon a motion from the public prosecutor.

(4) A decision on change of the reason for custody shall be made by the court and in pre-trial proceedings by the judge upon a motion from the public prosecutor; if any of the reasons for custody has expired, the decision of expiration of a reason for custody may be made in pre-trial proceedings also by the public prosecutor.

(5) A decision on cancelling a restriction consisting in prohibition of travelling abroad, imposed to the accused person according to Section 73 (4) or Section 73a (3), shall be made by the court and in pre-trial proceedings by the public prosecutor.

(6) A decision on releasing the accused person from custody may be made in pre-trial proceedings also by the public prosecutor. In case of exceeding the time limit for a decision of further duration of custody according to Section 72 or exceeding the longest admissible duration of custody according to Section 72a shall be made by the court and in pre-trial proceedings the judge, the public prosecutor can only issue an order for releasing the accused person from custody.

Section 73c Special Requirements for a Decision on Custody

In the reasoning of the decision on taking the accused person into custody or another decision on custody, the result of which is keeping the accused person in custody, must contain, besides the general requirements (Section 134), also

a) matters justifying the suspicion from committing a crime, for which is the accused person being prosecuted,
b) specific circumstances, from which are derived the reasons for custody, eventually the circumstances referred to in Section 68 (3) and (4) and in Section 72a (3),
c) reasons, for which the purpose of custody cannot be reached by other measures.

Section 73d Custodial Hearing

(1) If a trial or a public session is conducted in the presence of the accused person, the court shall decide also on custody, if it is necessary with regard to the established time limits.

(2) If the court decides to take the accused person to custody outside the trial or public session, or if the judge does not decide on custody in pre-trial proceedings, it shall be always decided in a custodial hearing.

(3) In cases other than referred to in sub-section (1) and (2), it shall be decided in a custodial hearing, if the accused person explicitly requests it, or if the court and in pre-trial proceedings the judge deems a personal hearing of the accused person necessary for the purposes of deciding on custody. However, a custodial hearing is not necessary, even if the accused person explicitly requested it, in case

a) the accused person refused to participate in such a hearing,
b) the accused person has been heard to the matter of custody in past six weeks, he did not state any new circumstances substantial for a decision on custody or the stated circumstances cannot lead to a change of the decision on custody,
c) the health condition of the accused person does not allow his hearing, or
d) the accused person is released from custody.

Section 73e Preparation of Custodial Hearing

(1) The Presiding judge and in pre-trial proceedings the judge shall summon the accused person or compel him to appear before the court and shall notify it to the public prosecutor and defence counsel. If he decides on custody of an apprehended or arrested accused person, the defence counsel shall be notified, if he is reachable within a time limit of 24 hours, during which must be made the decision on custody.

(2) The time of the custody session shall be determined by the presiding judge and in pre-trial proceedings by the judge in such a way that the public prosecutor and the defence counsel had the opportunity to attend the hearing and that the time limits prescribed for the decision on custody are kept.

Section 73f Duties of Persons in Custodial Hearing

(1) Custodial hearing in trial proceedings shall be conducted in constant presence of all members of the court panel.

(2) The accused person shall always attend the custody hearing; his presence may be secured also by the means of a video-conference device. Presence of the defence counsel during custody hearing is not necessary.

(3) Custody hearing shall be conducted without the presence of the public.

Section 73g Course of Custody Hearing

(1) After initiation of the custody hearing shall the presiding judge or designated member of the senate and in pre-trial proceedings the judge present a report about the current state of the matter. Afterwards shall, according to the nature of the matter, the public prosecutor put forward his motion or the accused person or his defence counsel shall put forward a request for release from custody.

(2) The public prosecutor, the accused person or his defence counsel shall present their statements and eventual proposals for performing investigations necessary for the decision on custody. If any of these persons is not present and if their statement and proposals are contained in the file, or they request it, the contents thereof shall be presented by the presiding judge or a member of the court panel appointed by the presiding judge. Subsequently the

presiding judge and in pre-trial proceedings the judge shall question the accused person to all circumstances substantial for the decision on custody. The public prosecutor and the defence counsel may ask questions to the accused person, however not before the presiding judge and in pre-trial proceedings the judge bids them to do so.

(3) If there is evidence being presented in the custody hearing, the provisions regulating evidence in trial shall be applied accordingly; restrictions in presenting evidence by reading a protocol of a witness statement or expert opinion (Section 211 (1) and (5)) shall not apply.

(4) At the end of the custody hearing shall the presiding judge and in pre-trial proceedings the judge bid the public prosecutor, the accused person and his defence counsel to present their final statements.

(5) The decisions shall always be pronounced in custodial hearing.

(6) Provisions of Section 55b, 56 and 57 shall be applied accordingly also to custody hearing.

Section 74 Complaint against a Decision on Custody

(1) A complaint is admissible against the decision on custody (Section 68, 69, 71, 71a, 72, 72a, 73 and 73a). Provisions regulating custody hearing (Section 73d to 73g) shall be applied accordingly to complaints against the decision on custody.

(2) Only a complaint of the parties against a decision on forfeiture of a pecuniary guarantee and a complaint of a public prosecutor against a decision on releasing the accused person from custody, unless it concerns release from custody after enunciation of an acquitting judgement, have a dilatory effect. However, if the public prosecutor was present at enunciation of the judgement, his complaint has a dilatory effect only if lodged immediately after enunciation of the decision.

(3) If the court decides on the basis of a complaint to cancel a decision on taking the accused person to custody or on further duration of custody (Section 149 (1) b)), it may submit the matter to a new hearing and ruling only on the grounds of serious flaws of the decision. In such a case must the accused person be immediately released from custody.

Section 74a Restrictions of an Accused Person Serving a Sentence of Imprisonment

(1) If a criminal prosecution is conducted against an accused person serving a sentence of imprisonment, and if there is a reason for custody according to Section 67, the reasons, contents and duration of the necessary restrictions that will apply to him shall be decided on by the court and in pre-trial proceedings by the judge upon a motion of the public prosecutor.

(2) The imposed restrictions cannot be more severe than those the accused person would otherwise have been subject to in custody.

(3) Sections 68 (1), 71, 71a, 72, 72a and 74 shall apply accordingly to decision-making on restrictions, their duration and on cancellation thereof. A complaint is admissible against the decision pursuant to sub-section (1). Provisions on custody hearing shall not apply.

SUBDIVISION TWO
Apprehension

Section 75 Apprehension of the Accused Person by a Police Authority

If there is a reason for custody (Section 67) and due to the urgency of the case a decision cannot be obtained in advance, the Police authority may detain the accused themselves. It is, however, obligated to immediately notify the public prosecutor of the apprehension and give them a copy of the transcript that was written during the apprehension and other materials that are necessary for the public prosecutor to possibly file a petition for custody. The petition must be submitted so that the accused can be referred to the court within 48 hours of apprehension, otherwise they must be released.

Section 76 Apprehension of Suspects

(1) A person suspected of committing a criminal offence may, if there is a reason for custody (Section 67), be apprehended by the Police authority, even if no criminal prosecution has been commenced against him (Section 160 (1)). The apprehension requires a previous consent of the public prosecutor. Without such a consent may the apprehension be executed only if the matter is urgent and the consent cannot be obtained in advance, especially if the person was caught committing a criminal offence or apprehended on the run.

(2) Personal liberty of a person caught committing a criminal offence or immediately after may be restricted by anyone, if it is necessary to ascertain their identity, to prevent their escape, or to secure evidence. However, they are obligated to immediately hand this person to the police authorities; a member of the armed forces may also be handed to the closest unit of the armed forces or corps superintendant. If it is not possible to immediately hand over the person, the restriction of the personal liberty must be reported to one of the above mentioned authorities without undue delay.

(3) The Police authority that performed the apprehension shall question the person and write a protocol of the questioning, including the place, time and circumstances of the apprehension, and shall state the personal information of the detainee, as well as substantial reasons for the apprehension.

(4) The Police authority that carried out the apprehension, or to which was handed a person caught committing a criminal offence pursuant to sub-section (2), shall immediately release them if the suspicion is dismissed or if the grounds for apprehension expire. If the apprehended person is not released from custody, they shall hand the protocol of the

questioning along with a decision to initiate criminal prosecution and other material evidence to the public prosecutor so that he can eventually file a petition for imposing custody. The Police authority must submit the petition without undue delay so that the person apprehended under this Act could be handed to the court within 48 hours following the apprehension, otherwise he must be released.

(5) The provisions of Section 33 (1), Section 91, 92, 93 and 95 must be adequately observed also if the detainee is questioned at a time when the criminal prosecution has not yet been commenced (Section 160).

(6) The apprehended person has the right to choose a defence counsel, to speak to him without the presence of a third person and consult him during the apprehension; he also has the right to request the presence of the defence counsel at the questioning in accordance with sub-section (3), unless the defence counsel is unreachable in the time referred to in sub-section (4). The suspect must be instructed on these rights and provided with the full opportunity to exercise them.

Section 77 Decision on the Apprehended Person

(1) If the public prosecutor has not ordered releasing of the apprehended person on the basis of delivered documents or after repeated questioning of the person, he is obliged to hand him to the court within 48 hours from the apprehension along with a motion for taking the person into custody. The motion shall be accompanied by acquired evidence.

(2) The judge is obliged to question the apprehended person (sub-section (1)) and within 24 hours from receiving the motion of the public prosecutor decide to set the person free or to take him to custody. Time and place of conducting the questioning shall be immediately notified in an appropriate manner to a chosen or appointed defence counsel, if he is available and his presence was requested by the apprehended person, and to the public prosecutor. The defence counsel and public prosecutor may attend the questioning and ask the apprehended person questions, however not before called forth by the judge. Exceeding the time limit of 24 hours from receiving the motion of the public prosecutor for taking into custody is always considered a ground for releasing the accused person.

SUBDIVISION THREE
Prohibition of Travel Abroad

Section 77a

(1) If there is a criminal prosecution for an intentional criminal offence for which the law prescribes a sentence of imprisonment, upper limit of which exceeds two years, or for a criminal offence committed out of negligence for which the law prescribes a sentence of imprisonment, upper limit of which exceeds three years, the court and in pre-trial proceedings the judge upon a motion of the public prosecutor may impose restrictions involving the

prohibition of travel abroad, if it is necessary for reaching the purpose of criminal proceedings. A complaint is admissible against this decision.

(2) If the accused person was imposed a restriction according to sub-section (1), the presiding judge and in pre-trial proceedings the judge shall ask the accused person or the person who has the travel documents of the accused in his possession to submit the travel documents[2] within the stated period, otherwise they will be removed from their possession; the procedure for the removal of travel documents pursuant to Section 79 shall apply accordingly.

(3) The presiding judge and in pre-trial proceedings the judge shall send a copy of the decision referred to in sub-section (1), if it concerns a citizen of the Czech Republic, to the authority competent to issue the travel documents; this authority shall also be advised on issuing or removing of travel documents.

(4) The restriction consisting in prohibition of travel abroad under sub-section (1) shall be repealed by the presiding judge and in pre-trial proceedings by the public prosecutor even without a petition, if the reasons for their imposition have expired. The accused person, to whom were imposed the restrictions under sub-section (1), has the right to seek its repeal. Such a request must be decided without undue delay by the presiding judge and in pre-trial proceedings by the public prosecutor. A complaint is admissible against this decision. If the request is dismissed, the accused person may repeat it no sooner than after three months from the full force and effect of the decision, unless new reasons are presented.

(5) The presiding judge and in the pre-trial proceedings the public prosecutor shall without undue delay notify the authority competent to issue travel documents about repealing the restriction consisting in prohibition to travel abroad concerning a citizen of the Czech Republic; this authority shall also be notified about returning of the travel documents to the accused person.

SUBDIVISION FOUR
Surrender and Removal of Items, Seizure of Financial Resources, Booked Securities, Real Estate and other Asset Values

Section 78 Obligation to Surrender Items

(1) Anyone who has an item substantial for criminal proceedings in his possession is obliged to present it upon a request to the court, public prosecutor or Police authority; if it is necessary to secure the item for the purposes of criminal proceedings, the person is obliged to surrender the item upon a request to these authorities. Along with the request the person shall be instructed that if he fails to comply with the request, the item may be seized from him, as well as about other consequences of the non compliance (Section 66).

[2]) The Act no. 329/1999 Coll., on travel documents and on amendment of the Act no. 283/1991 Coll., on Police of the Czech Republic. as amended.

(2) The obligation referred to in sub-section (1) does not apply to documents, content of which is related to circumstances subject to prohibition of questioning, unless acquittal of the obligation to keep the matter confidential or acquittal of an obligation of silence (Section 99) occurred.

(3) Surrender of an item may be ordered by the presiding judge and in pre-trial proceedings by the public prosecutor or Police authority.

Section 79 Removal of Items

(1) If an item essential for criminal proceedings is not surrendered by the person who has it in his possession, such an item may be removed upon an order of the presiding judge an in pre-trial proceedings upon an order of the public prosecutor or Police authority. The Police authority must have a previous consent of the public prosecutor for issuing such an order.

(2) If the authority that issued the order does not perform the removal of the item by itself, it shall by performed by a Police authority on the basis of the order.

(3) Without the previous consent referred to in sub-section (1) may the Police authority issue the order only in if the previous consent could not be obtained and the matter cannot be delayed.

(4) Removal of the item shall be witnessed by a non-participating person.

(5) The protocol on surrender and removal of an item shall contain also a sufficiently specific description of the surrendered or removed item that enables identification thereof.

(6) The person who surrendered the item of from whom was the item removed shall be given a receipt of taking over the item or a transcript of the protocol.

Section 79a Seizure of Financial Resources in a Bank Account

(1) If the ascertained facts indicate that funds in a bank account are intended for committing a criminal offence, or that they were used to commit a criminal offence, or are the proceeds of a criminal activity, the presiding judge and in pre-trial proceedings the public prosecutor or Police authority may decide to seize the funds in the account and possibly the financial resources additionally received in the bank account, should the grounds apply to them, including their accessories. The Police authority needs to have a previous consent of the public prosecutor for issuing such an order. The previous consent of the public prosecutor is not necessary in urgent matters that cannot be delayed. In such a case, the Police authority is obligated to present its decision to the public prosecutor, who will within 48 hours either grant it or repeal it.

(2) A decision according to sub-section (1) must be served to the bank that manages the bank account, and also, after the bank performed the seizure, to the bank account holder. The decision shall include the bank account, which shall be understood as the account number and the bank code, and the amount of cash in the respective currency that the seizure applies to. The seizure applies to the financial resources that were in the bank account at the moment the decision is served to the bank, up to the amount specified in the decision on the seizure and its accessories. If the amount stated in the decision exceeds the available balance of finances in the bank account, the seizure also applies to funds in the account subsequently received up to the amount stated in the decision, including its accessories. Unless the authority involved in criminal proceedings referred to in sub-section (1) stipulates otherwise, any disposal with the funds present in the account up to the amount of the seizure shall be restricted at the moment the decision is served, with the exception of enforcement of a decision. The payment of receivables, which are subject to enforcement of a judicial or administrative decision, shall be primarily covered by funds not affected by the decision. Financial resources subject to the decision on seizure may be disposed with within the scope of enforcement of the decision only after a previous consent of the presiding judge and in the pre-trial proceedings the public prosecutor; this does not apply if the enforcement is carried out to satisfy claims of the State.

(3) If the seizure of funds in the bank account for the purposes of criminal proceedings is no longer necessary, or the seizure is not required in the stated amount, the authority involved in criminal proceedings referred to in sub-section (1) shall repeal the seizure or restrict it. The Police authority needs to have a previous consent of the public prosecutor for issuing such an order. The decision to repeal or restrict the seizure must be served to the bank and the bank account holder.

(4) The bank account holder, whose funds were seized in the bank account, has the right to apply for repeal or reduction of the seizure at any time. The public prosecutor and in trial proceedings the presiding judge must decide on the request immediately. If the application is dismissed, the account holder may repeat it no sooner than after fourteen days from the full force and effect of the decision, unless new reasons are presented.

(5) A complaint is admissible against the decision according to sub-section (1), (3) and (4).

Section 79b

The reasons for which may financial means in a bank account be seized, can also be grounds for deciding to seize the financial resources in an account at a savings and loan association or other entities that keep accounts for another, for blocking of funds from pension supplementary insurance with a State contribution, blocking of financial credit drawing, and blocking of financial lease. The provision of Section 79a shall apply accordingly to the procedure on deciding on seizure and repeal or restriction of the seizure.

Section 79c Seizure of Booked Securities

(1) If the presiding judge or in pre-trial proceedings the public prosecutor decide on seizure of booked securities, the person entitled to keep records of investment instruments in accordance with a special Act or the Czech National Bank shall establish a special account for their holder, where these securities are kept.

(2) In urgent cases that cannot be delayed, the decision on seizure of booked securities may be made also by the Police authority. In such a case, they are obligated to present the decision within 48 hours to the public prosecutor, who will either grant it or repeal it.

(3) From the moment of serving the decision on seizure, any disposing with the securities affected by the seizure is forbidden. The authority involved in criminal proceedings referred to in sub-section (1) and (2) may, depending on the nature and circumstances of the criminal offence, for which the criminal prosecution is conducted, stipulate that due to the seizure of booked securities, also other rights may not be exercised.

(4) The provisions of Section 79a shall apply accordingly to the grounds for the decision to seize the booked securities, to the procedure on deciding on the seizure, and to the repeal or restriction of the seizure.

(5) The procedure on administration of the seized booked securities shall be governed by a special legal regulation.

Section 79d Seizure of Real Estate

(1) If the ascertained facts indicate that a real estate is intended for committing a criminal offence, or that it was used for committing a criminal offence, or that it is proceeds of criminal activity, the presiding judge and in pre-trial proceedings the public prosecutor or Police authority may decide to seize the real estate. The Police authority needs to have a previous consent of the public prosecutor for issuing such a decision. The previous consent of the public prosecutor is not necessary in urgent cases that cannot be delayed. In such a case, the Police authority is obligated to present its decision within 48 hours to the public prosecutor, who will either grant it or repeal it. A complaint is admissible against the decision on seizure of a real estate.

(2) The decision on seizure shall prohibit the owner of the real estate from disposing with the real estate referred to in the resolution; in particular they shall be prohibited from transferring the real estate to another or mortgaging it after the resolution is announced, and he shall be obliged to inform the presiding judge and in the pre-trial proceedings the public prosecutor within 15 days of the announcement of the resolution, whether there is anyone with the right of first refusal or any other right to the real estate, with the instruction that otherwise the owner of the real estate shall be liable for the damage caused. The authority referred to in sub-section (1) shall send a copy of the resolution on the seizure to the competent Land registry office. The public prosecutor shall send the competent Land registry office a copy of the decision on repeal of the seizure in accordance with sub-section (1).

(3) The presiding judge and in the pre-trial proceedings the public prosecutor or with his consent the Police authority shall perform, if necessary, inspection of the real estate and its accessories; the owner of the real estate or the person who shares the same household with him and also the person known to have property rights to the real estate shall be notified about the time and place of the real estate inspection. The real estate owner or the person sharing the same household with him and also the person known to have property rights to the real estate are obligated to enable the inspection of the real estate and its accessories.

(4) The final and effective resolution on the seizure of real estate shall be served by the authority involved in criminal proceedings referred to in sub-section (1) to the persons known to have the right of first refusal to the real estate, right of lease or other rights; furthermore, it shall be served to the financial revenue office and the municipal office, in whose jurisdiction the real estate is located, and in which the real estate owner has a permanent or other residence. If the presiding judge decides to seize the real estate, the final end effective resolution on the seizure of the real estate shall be placed on the official bulletin board of the court; in pre-trial proceeding it shall be adequately published at the competent public prosecutor's office. The authority involved in criminal proceedings that decided on the seizure in accordance with sub-section (1) shall inform the competent Land registry Office about the full force and effect of this resolution.

(5) Deposition of the ownership or any other rights to the seized property according to a special legal regulation may, after notification of the competent Land registry office according to sub-section (2), be transferred only with a previous consent of the authority that decided on the seizure according to sub-section (1). The petition for deposition of the rights regarding the seized real estate submitted under a special legal regulation before issuing the resolution on the seizure, which has not yet been finally and effectively decided by the competent authority, shall lose its legal effects on the day of the full force and effect of the resolution to seize the real estate.

(6) Rights of third parties to the seized real estate may be exercised pursuant to a special legal regulation. The seized real estate can be disposed with only with a previous consent of the judge and in the pre-trial proceedings the public prosecutor; this does not apply if enforcement of a decision is performed in order to satisfy claims of the State.

(7) If the seizure of real estate for the purposes of criminal proceedings is no longer necessary or if the seizure of a real estate is not required in the stated extent, the authority involved in criminal proceedings referred to in sub-section (1) shall repeal the seizure or restrict it. The Police authority needs to have a previous consent of the public prosecutor for issuing such a decision. A complaint is admissible against the repeal or restriction of the seizure, which has a dilatory effect.

(8) The owner of the seized real estate has the right to apply for repeal or restriction of the seizure at any time. The public prosecutor and in trial proceedings the presiding judge must

decide on the request without undue delay. If the application is dismissed, the owner of the real estate may repeat it no sooner than after fourteen days following the full force and effect of the decision, unless new reasons are presented. A complaint is admissible against this decision.

(9) The procedure of management of the seized real estate shall be governed by a special legal regulation.

Section 79e Seizure of Other Asset Values

(1) If the ascertained facts indicate that assets values other than those referred to in Sections 78 to 79d are intended for committing a criminal offence, or that they were used for committing a criminal offence, or are the proceeds of a criminal activity, the presiding judge and in pre-trial proceedings the public prosecutor or the Police authority may decide to seize such other asset values. The Police authority needs to have a previous consent of the public prosecutor for issuing such a decision. The previous consent of the public prosecutor is not necessary in urgent matters that cannot be delayed. In such a case, the Police authority is obligated to present its decision within 48 hours to the public prosecutor, who will either grant it or repeal it. A complaint is admissible against the decision to seize other asset values.

(2) The resolution on seizure of other asset values prohibits their owner from disposing with the asset values referred to in the resolution, and from transferring the asset values to another or mortgaging them after the resolution is issued. The resolution on seizure of other asset values may also restrict further exercise of rights related to the seized asset values, if it is necessary for the purposes of the seizure. In addition, the owner of other asset values shall be obliged to advise the presiding judge and in pre-trial proceedings the public prosecutor, bout who has the right of first refusal or any other rights to the asset value within 15 days from the announcement of the resolution, with the instruction that otherwise the owner of the asset value shall be liable for any damage caused. The resolution on seizure of other asset values shall bid their owner to present all documents necessary to exercise certain rights to the seized asset values, with a caution about the consequences of failing to comply with such a bidding within the prescribed time limit (Section 66 and 79). These documents shall be listed and deposited in the custody of the court.

(3) The authority involved in criminal proceedings that decided on the seizure according to sub-section (1) shall also notify the debtors of the owner of the other asset value and instruct them to place the performance of the debt into the custody of the court or to a place designated by the authority involved in criminal proceedings referred to in sub-section (1), instead of performing to the owner of the other asset value. Upon deposition of the performance of the debt into the custody of the court or to a designated place, the debtor has fulfilled his obligation to the extent of the provided performance. The debtor shall be notified about the resolution to seize other asset value prior to its owner.

(4) The authority involved in criminal proceedings that decided on the seizure in accordance with sub-section (1) shall immediately inform the authority, which pursuant to a special legal regulation keeps records of owners or holders of the other asset values that were seized, and the local office of the Office for representation of the State in property affairs, in the district of which has the owner of the other asset value his permanent or other residence, about this decision without undue delay; if the owner of the other asset value has his residence abroad, they shall notify the local office of the Office for representation of the State in property affairs, in the district of which are the other asset values located. At the same time, the competent authority involved in criminal proceedings shall bid these authorities to immediately inform it if they find that the other asset values are being disposed with in a way that threatens to thwart or obstruct the purpose of the seizure.

(5) If transfer or establishing of rights to the seized other asset value require an entry in a register maintained pursuant to a special legal regulation, such entry may, after the notification according to sub-section (4), be performed only with a previous consent of the authority that decided on the seizure according to sub-section (1). The other asset value subject to the decision on seizure may be disposed with within the frame of enforcement of decision only after a previous consent of the presiding judge and in the pre-trial proceeding of the public prosecutor; this does not apply if the enforcement is performed in order to satisfy a claim of the State.

(6) Rights of third parties to seized other asset values may be exercised according to a special legal regulation.

(7) Repeal or restriction of seizure of other asset values shall be governed by Section 79d (7) and (8).

(8) The procedure on administration of seized other asset values shall be governed by a special legal regulation.

Section 79f Seizure of Equivalent Value

If it is not possible to achieve the surrender or removal of property (Section 78 and 79), or if it is not possible to seize financial means in an account (Section 79a and 79b), booked securities (Section 79c), real estate (Section 79d) or other asset values (Section 79e) that are intended for committing a criminal offence or that have been used to commit a criminal offence, or that are proceeds of a criminal activity, a equivalent value corresponding to their value, even partially, may be seized in their stead; therein shall be proceeded according to the relevant provisions regulating their surrender, removal or seizure (Section 78 through 79e).

Returning and Further Disposal with Items and Other Asset Values

Section 80

(1) If an item surrendered pursuant to Section 78 or removed pursuant to Section 79 is no longer necessary for further proceedings and if its forfeiture or confiscation does not come into consideration, it shall be reverted to the person who surrendered it or from whom it was removed. If another person claims the right to it, it shall be released to the person whose rights to the item are not doubted. In case of doubts it shall be placed into custody and the person who claims right to it shall be advised to assert their claim in civil proceedings. If a person who has the right to the item does not take it despite repeated bidding, the property shall be sold and the amount from the sale shall be stored in the custody of the court. The sale shall be governed accordingly by regulations on judicial sale of impounded movable assets.

(2) If there is a danger that the property, that could not be reverted or released pursuant to sub-section (1), should deteriorate, it shall be sold and the amount from its sale shall be placed into the custody of the court. The sale shall be governed accordingly by regulations on judicial sale of impounded movable assets.

(3) The decision according to sub-section (1) and (2) shall be made by the presiding judge and in pre-trial proceedings by the public prosecutor or the Police authority. A complaint, which has a dilatory effect, is admissible against the decision on release and return of an item, as well as on the deposition to custody.

Section 81

(1) If an item the accused person obtained or likely obtained through a criminal offence was surrendered pr removed from him and if it is either not known to whom the property belongs or the residence of the aggrieved person is not known, a public description of the item shall be publically announced. The announcement shall be done in the most efficient way possible for finding the aggrieved person, along with a bidding that the aggrieved person is to come forth within six months after the announcement.

(2) If someone else than the accused person asserts a claim to the item within the time limit prescribed in sub-section (1), it shall be proceeded in accordance with Section 80 (1). If no one else exercises their claim to the item, it shall be released, or if due to a danger of deterioration it has already been sold, the amount received for its sale shall be released to the accused person upon his request, unless the item was obtained by a criminal offence. If the accused person obtained the item through a criminal offence or if the accused person did not request the return of the item and no one else asserted their claim to the item within the time limit of six months, the item shall devolve to the State after the time limit referred to in second sentence of sub-section (1) lapses; this however does not affect the right of the owner to demand the release of such an item or the amount received for its sale.

(3) If the item has no value, it can be destroyed without the prior publication of its description.

(4) The measures and decisions referred to in sub-section (1) to (3) shall be made by the presiding judge and in the pre-trial proceedings by the public prosecutor or Police authority. A

complaint is admissible against the resolution on the release or the destruction of the property, which has a dilatory effect.

Section 81a

The provisions of Section 80 and 81 shall be applied accordingly to the procedure for returning financial means to a bank account, booked securities, real estate and other asset values, which were seized in accordance with Section 79a to 79e and to further disposal therewith, as well as to the procedure for returning of a equivalent value, which was seized in accordance with Section 79f and to further disposal therewith.

Section 81b

(1) If an item that threatens the safety of persons or property has been surrendered or removed, particularly narcotic and psychotropic substances, products containing narcotic or psychotropic substances, precursors, poisons or radioactive material, from which was taken an appropriate sample and such is no longer necessary for the purpose of evidence, particularly if there are no doubts about the identity of the sample of the item, its whole unit and the total quantity, the presiding judge and in the pre-trial proceedings the public prosecutor may decide to destroy such an item already in the course of the criminal proceedings, provided that the item is no longer necessary for further proceedings and it cannot be returned pursuant to Section 80, or if it is not known to whom such property belongs, or if the residence of the aggrieved person is unknown.

(2) A complaint is admissible against the resolution pursuant to sub-section (1), which has a dilatory effect.

SUBDIVISION FIVE
House and Personal Search, Search of Other Premises and Parcels, Entry to Residence, Other Premises and Parcels

Section 82 Reasons for House and Personal Search and Search of Other Premises and Parcels

(1) House search may be performed only if there is a reasonable suspicion that in an apartment or in other premises serving as a residence or in appertaining premises (house) is an item or a person essential for criminal proceedings.

(2) For reasons referred to in sub-section (1) may be performed a search of premises not serving as residence (other premises) and parcels, if they are not publicly accessible.

(3) Personal search may be performed, if there is a reasonable suspicion that somebody has an item essential for criminal proceedings on him.

(4) Personal search of an apprehended person or a person who is being taken to custody may be performed also if there is a suspicion that he has a weapon or another object that could endanger his life or health, or life or health of other persons.

Section 83 House Search Warrant

(1) The presiding judge and in pre-trial proceedings the judge upon a motion of the public prosecutor is entitled to order a house search. In urgent cases may a house search be ordered, in stead of the competent presiding judge or judge (Section 18), by the presiding judge or judge, in whose jurisdiction is the house search to be performed. The order for a house search shall be issued in writing and shall include a justification. The order shall be served to the person whose residence is to be searched when the search is commenced, or if that is not possible, within 24 hours from the time the obstacle impeding the service disappeared at the latest.

(2) Upon an order of the presiding judge or judge shall the house search be performed by the Police authority.

Section 83a Order for Search of Other Premises and Parcels

(1) Section 83 (1) and (2) shall apply accordingly to proceedings on performing a search of other premises and parcels.

(2) Without an order may the Police authority perform a search of other premises or parcels only if the order cannot be obtained in advance and in the matter cannot be delayed. However, the Police authority is obliged to immediately request a consent of the authority competent for issuing the order; in pre-trial proceedings it shall be done through the public prosecutor. If the competent authority does not grant the subsequent consent, the outcome of the search cannot be use in further proceedings as evidence.

(3) Without the order may the Police authority perform a search of other premises or parcels also if the user of the concerned premises or parcels declares in writing that he consents with the search and hands this declaration to the Police authority. This action must the Police authority immediately notify to the presiding judge entitled to issue the order, and in pre-trial proceedings to the public prosecutor.

Section 83b Order for Personal Search

(1) The presiding judge and in pre-trial proceedings the public prosecutor or with his consent the Police authority is entitled to order a personal search.

(2) If the personal search is not performed by the authority that ordered it, it shall be performed upon its order by the Police authority.

(3) Personal search shall always be performed by a person of the same sex.

(4) Without the order or consent referred to in sub-section (1) may the Police authority perform a personal search only if the order or consent could not be obtained in advance and the matter cannot be delayed, or if the search concerns a person caught in commission of a crime or a person for whom was issued an arrest warrant. Without an order or consent may a personal search be performed also in cases referred to in Section 82 (4).

Section 83c Entering Residences, other Premises and Parcels

(1) The Police authority may enter a residence, other premises or parcels only if the matter cannot be delayed and the entering these premises is necessary for protection of life or health of persons or for protection of other rights and liberties or for averting a serious threat to public security and order.

(2) Furthermore, the Police authority is authorized to enter premises referred to in sub-section (1) also if there is a person

a) for whom was issued an arrest warrant or an order to be delivered for execution of a sentence of imprisonment, or to execution of a protective measure associated with incarceration,
b) who needs to be compelled to appear before a court for the purposes of criminal prosecution, or
c) who is required to be apprehended.

(3) After entering the abovementioned premises, no other steps can be performed than steps facilitating disposal of an urgent threat or compelling a person to appear before a court.

Section 84 Previous Questioning

Performing a house search or a personal search is possible only after a previous questioning of the person, in whose premises or on whom is the search to be performed, and only in the event the questioning did not lead to a voluntary surrender of the searched item or elimination of another reason that has lead to this action.

Enforcement of Searches and Entries into Residences, Other Premises and Land

Section 85

(1) The authority performing a house search or a search of other premises is obliged to allow the person, whose premises are searched, or an adult member of his household, or in case of a search of other premises also his employee, to participate in the search. This authority is obliged to instruct these persons shall about the right to participate in the search.

(2) It is also necessary to include a person that is not involved in the matter. The authority performing the search shall prove its entitlement.

(3) The protocol on the search shall also state whether provisions on previous questioning were complied with, eventually it shall indicate reasons, for which they were not complied with. In case that during the search has occurred a surrender or removal of an item, it is necessary to include data referred in Section 79 (5) in the protocol.

(4) The person, whose premises were searched, shall immediately, and if it is not possible, then within next 24 hours, receive a written confirmation of the outcomes of the search from the authority conducting the search, as well as a receipt of taking over items that were surrendered or removed during the search, or a copy of the protocol.

(5) Sub-sections (1) to (4) shall be applied for entering residences, other premises and parcels accordingly. Participation of persons referred to in sub-section (1) in entering residences may be declined and the person referred to in sub-section (2) may not be included, if their life or health could be imperilled.

Section 85a

(1) A person who is to be subject to a house search, search of other premises and parcels, personal search or to an entry to residence, is obligated to tolerate such an action.

(2) If a person who is to be subject to an action referred to in sub-section (1) does not enable the performance of such an action, the authorities performing the action are entitled to overcome the resistance of such person or the obstacles they create after previous futile bidding. This fact shall be recorded in the protocol (Section 85 (3)).

Section 85b

(1) When conducting a house search or search of other premises in which an attorney practices law, if there may be documents that contain facts which are subject to the obligation of confidentiality of the attorney, the authority performing the action must seek the cooperation of the Czech Bar Association[3] (hereinafter referred to as the "Chamber"); the authority performing the action is entitled to peruse the contents of these documents only in the presence and with the consent of a representative Chamber, who is appointed by the President of the Chamber from its employees or from attorneys. The opinion of the Chamber representative is to be noted in the protocol pursuant to Section 85 (3).

(2) If the Chamber representative refuses to grant the approval according to sub-section (1), the documents must be secured in the presence of the authority performing the action, an attorney and a Chamber representative, so that their contents cannot be perused by anyone,

[3] Also called the Chamber of Advocates

destroyed or damaged; immediately after that the documents in question must be handed to the Chamber. The Chamber shall return those documents to the attorney immediately after the time limit pursuant to sub-section (5) for filing a request expires. The Chamber shall proceed similarly, if the petition is dismissed, even in relation to only some of the documents; in this case the Chamber shall return only such documents to the attorney, which the dismissal of the request concerns. The Chamber shall also return the documents to the attorney immediately after it was informed about the procedure pursuant sub-section (6).

(3) In the case referred to in sub-section (2), first sentence, the consent of the Chamber representative may be replaced upon the petition of the authority that ordered the house search or search of other premises based on the decision of the judge of the closest superior court, where operates the presiding judge or judge, who is entitled to order the house search or search of other premises pursuant to Section 83 (1) and Section 83a (1). In case of a house search or search of other premises performed by a Police authority according to Section 83a (2) or (3) shall the petition according to the first sentence be lodged by the presiding judge entitled to issue the order and in pre-trial proceedings the public prosecutor.

(4) The petition must include, in addition to general requirements (Section 59 (4)), also indication of the documents, in relation to which the petitioner seeks the replacement of the approval of the Chamber representative for the purpose of perusing their contents, and depicting the facts showing why the disapproval of the Chamber representative for the peruse of the contents of such documents should be replaced by the decision of a judge pursuant to sub-section (3). A protocol must be attached to the petition, where the disapproval of the Chamber representative is recorded, so that the authority performing the action may peruse the contents of the documents.

(5) The petition must be submitted within 15 days from the day the Chamber representative refused to grant the consent to peruse the documents, in respect of which the petitioner seeks the replacement of the consent of the Chamber representative to peruse the documents pursuant to sub-section (4).

(6) A petition that does not contain all the particulars, or which is incomprehensible or vague, shall be disregarded by the judge; the provisions of Section 59 (4), sentence three and four, shall not apply. The judge shall proceed similarly if the petition was filed late or if it was submitted by someone who is not entitled to it. The judge shall inform the petitioner and the Chamber on this procedure without undue delay.

(7) If the judge does not proceed in accordance with sub-section 6, he shall discuss the petition without undue delay in a public session and shall order the Chamber to present the documents, regarding which the petitioner seeks replacement of the consent of the Chamber representative to peruse their contents. Among other actions, the judge shall also verify, whether the security of the documents submitted by the Chamber has not been breached and shall peruse their contents; at the same time he shall take measures to ensure that the petitioner or anyone else is not able see the contents of the documents in the public session.

(8) If the public session is adjourned, the judge will secure the documents so that no one can peruse their contents, or destroy or damage them.

(9) The judge will grant the petition, if he comes to the conclusion that the documents do not contain facts which the attorney in question is obliged to keep confidential; otherwise they shall dismiss the petition.

(10) If the judge grants the petition at least in part, he shall pass the documents, in relation to which the approval of the Chamber representative to peruse their content was replaced, to the authority performing the action immediately after the full force and effect of the decision, and order it to return the document back to the Chamber as soon as it perused their contents; this does not apply if such documents are to be used as evidence in criminal proceedings. The judge shall return the documents, regarding which was the petition dismissed, to the Chamber immediately after the full force and effect of the decision.

(11) In the event the documents cannot be handed over to the authority performing the action, to the Chamber, or to their representatives personally, then they will be delivered to them on the next working day following the date on which the decision came into full force and effect, to the authority performing the action, or the Chamber through the judicial process server or a judicial guard.

(12) The document referred to in sub-section (1) through (11) shall be understood as a written document or its part, as well as other information media.

Section 85c Evidentiary Procedure in Apartment, Residence, Other Premises and Parcels

Provisions of Section 83, 83a, 84, 85, 85a and 85b are applicable even if it is necessary to perform reconstruction, recognition, on-site examination or an examination in places referred to in these provisions and the nature of such an action implies that it cannot be performed elsewhere and the person, at whose place is the act to be performed, did not give his consent.

SUBDIVISION SIX
Interception and Opening of Consignments, their Replacement and Monitoring

Section 86 Interception of Consignments

(1) If it is necessary to determine the contents of undelivered postal consignments, other shipments and telegrams for clarification of facts relevant to criminal proceedings in a specific case, the presiding judge and in the pre-trial proceedings the public prosecutor shall order the post office or the person responsible for their transportation to hand them over to him, or in the pre-trial proceedings either to the public prosecutor or the Police authority.

(2) Without the order referred to in sub-section (1) may transportation of a consignment be delayed upon an order of the Police authority, if the matter cannot be delayed and the order cannot be obtained in advance. The Police authority is obliged to notify the public prosecutor about delaying the consignment within 24 hours. If the post office or the person conducting transportation of consignments does not receive the order referred to in sub-section (1) within three days, they shall not delay the transportation of consignments any longer.

Section 87 Opening of Consignments

(1) A consignment surrendered according to Section 86 (1) may be opened only by the presiding judge and in pre-trial proceedings by the public prosecutor or Police authority with a consent of the judge.

(2) The opened consignment shall be given to the addressee and if his whereabouts are unknown and the consignment is not designated for personal delivery, it shall be given to a family member of the addressee; otherwise it shall be returned to the sender. If there is a suspicion that delivering the consignment may thwart or seriously obstruct the purpose of criminal prosecution, the consignment shall be attached to the file; if it is appropriate, the addressee shall be notified about the contents of the consignment or telegram. If his whereabouts are unknown and the consignment is not designated for persona delivery, the notification shall be made to a family member of the addressee.

(3) Consignments not found to be necessary to open shall be immediately given to the addressee or returned to the person that has surrendered it.

Section 87a Replacement of Consignment

(1) In order to identify persons participating in disposal with a consignment containing narcotic substances, psychotropic substances, precursors, poisons, radioactive material, forged money and forged securities, firearms or weapons of mass destruction, ammunition and explosives or another object, for possession of which is required a special permit, items designated for commission of a criminal offence, or items derived from a criminal offence, the presiding judge and in pre-trial proceedings the public prosecutor with a consent of the judge may order the contents of such a consignment to be replaced with another content and such a modified consignment shall be submitted for further transportation.

(2) The replacement shall be performed by a Police authority, which shall also write a record thereof and secure storage of the replaced items and materials. The replaced objects shall be disposed with as seized items.

Section 87b Monitored Consignment

(1) In pre-trial proceedings the public prosecutor may order to track a consignment that is reasonably believed to contain items referred to in Section 87a, if it is necessary for

clarification of a criminal offence or to reveal all its perpetrators, and ascertaining the necessary matters of fact in other ways would be ineffective or substantially more complicated. Surveillance of a consignment shall be conducted according to instructions of the public prosecutor by a Police authority; thereat the Police authority shall not conduct any steps aimed at surrender or removal of items against the persons who dispose with the tracked consignment. A protocol shall be drawn up about surveillance of the consignment and if needed, it shall be provided with visual or other records.

(2) Without the order referred to in sub-section (1) may a Police authority initiate surveillance of a consignment if the matter cannot be delayed and the order cannot be obtained in advance. The Police authority shall immediately notify the public prosecutor and proceed further according to his instructions.

(3) In the course of surveillance of a consignment the Police authority may implement measures necessary in order to get the consignment of items referred to in Section 87a (1) or replacement items out of the territory of the Czech Republic, or vice-versa, or from a foreign State through the territory of the Czech Republic to a third State, with the knowledge and under the control of customs authorities.

(4) Surveillance of the consignment shall be terminated by the Police authority upon an order of the public prosecutor, and also without such an order if it is evident that disposal with the consignment poses a serious threat to life or health, substantial damage to property or if there is a serious threat that surveillance of the consignment will not be possible any further. If needed, along with termination of surveillance of the consignment shall the Police authority also take steps aimed against further possession of the items contained in the consignment; this does not apply if the monitored consignment crosses the State border and the surveillance is taken over by a competent authority of the foreign State within the framework of international judicial cooperation.

Section 87c Common Provision

A consignment within the meaning of Sections 86 to 87c shall be understood as an object transported by any means, either by postal services or by another person, including transportation in a concealed way.

SUBDIVISION SEVEN
Interception and Recording of Telecommunications

Section 88

(1) If a criminal proceeding is conducted for a crime, for which the law prescribes a sentence of imprisonment with the upper limit of at least eight years, for a criminal offence of machinations in insolvency proceedings according to Section 226 of the Criminal Code, breach of regulations on rules of economic competition according to Section 248 (1) (e) and

(2) to (4) of the Criminal Code, arranging advantage in commission of public contract, public contest and public auction according to Section 256 of the Criminal Code, machinations in commission of public contract and public contest according to Section 257 of the Criminal Code, machinations in public auction according to Section 258 of the Criminal Code, abuse of competence of a public official according to Section 329 of the Criminal Code or for another intentional criminal offence, for prosecution of which is the Czech Republic bound by a promulgated international treaty, an order for intercepting and recording telecommunication traffic may be issued, if there is a reasonable belief that it shall transmit information essential for criminal proceedings and the pursued purpose cannot be achieved in other ways, or if reaching this purpose would otherwise be considerably more complicated. Intercepting and recording of telecommunication traffic for the needs of all authorities involved in criminal proceedings shall be performed by the Police of the Czech Republic. Intercepting and recording of telecommunication traffic between an accused person and his defense counsel is inadmissible. If the Police authority ascertains, in the course of intercepting and recording of telecommunication traffic, that the accused person communicates with his defense counsel, it is obliged to immediately destroy the record and not to use thus ascertained information in any way. Protocol on destroying the record shall be deposited in the file.

(2) Only the presiding judge and in pre-trial proceedings the judge upon a motion of the public prosecutor is entitled to order interception and recording of telecommunication traffic. The order to intercept and record telecommunication traffic must be issued in writing and must be justified, including a specific reference to a promulgated international treaty, if the criminal proceeding is conducted for a criminal offence, to prosecution of which is the Czech Republic bound by this international treaty. The order for interception and recording of telecommunication traffic shall indicate the user address or the device and the user himself, if his identity is known, and the time for which is the interception and recording to be conducted, which shall not exceed four months; the reasoning must state specific matters of fact that justify the issue of this order, including the time of its duration. The order for interception and recording of telecommunication traffic shall be immediately delivered to the Police authority. In pre-trial proceedings shall a transcript of the order for intercepting and recording of telecommunication traffic be immediately sent to the public prosecutor.

(3) The Police authority is obliged to continuously assess, whether the reasons that lead to issuing the order for interception and recording of telecommunication traffic still exist. If the reasons ceased to exist, the Police authority is obliged to terminate the interception and recording of telecommunication traffic at once, even before the expiration of the time referred to in sub-section (2). This matter shall be immediately notified in writing to the presiding judge that issued the order for intercepting and recording of telecommunication traffic, and in pre-trial proceedings also to the public prosecutor and judge.

(4) Based on evaluation of previous course of interception and recording of telecommunication traffic may the judge of a court of a higher instance and in pre-trial proceedings the judge of a Regional Court upon a motion of the public prosecutor extend the

duration of the interception and recording of telecommunication traffic; the extension may be ordered repeatedly, each time for four months at the longest.

(5) Without an order for interception and recording of telecommunication traffic may the authority involved in criminal proceedings order interception and recording of telecommunication traffic or perform it by itself, if the matter concerns criminal proceedings conducted for a criminal offence of trafficking in human beings (Section 168 of the Criminal Code), placing a child in custody of another person (Section 169 of the Criminal Code), illegal restraint (Section 171 of the Criminal Code), extortion (Section 175 of the Criminal Code), kidnapping of a child or a mentally challenged person (Section 200 of the Criminal Code), violence against a group of people and against an individual (Section 352 of the Criminal Code), dangerous threatening (Section 353 of the Criminal Code), or dangerous pursuit (Section 354 of the Criminal Code) provided that the user of the intercepted station consents with it.

(6) If a record of telecommunication traffic is to be used as evidence, it must be provided with a protocol stating data on the location, time, means and contents of the record, and also information on the authority that made the record. The Police authority is obliged to mark and reliably store other records, so that their protection from unauthorized use is secured, and to indicate in the protocol attached to the file where they are stored. In another criminal case than the case in which the interception and recording of telecommunication traffic was performed may the records be used as evidence only if in this case is the criminal prosecution conducted for a criminal offence referred to in sub-section (1), or if the user of the intercepted station consents with it.

(7) If no matters substantial for criminal proceedings are ascertained during the interception and recording of telecommunication traffic, the Police authority is obliged, upon receiving a consent of the court and in pre-trial proceedings of the public prosecutor, to immediately destroy the records after three years from the final and effective conclusion of the case. If the Police authority was notified about lodging an extraordinary appeal in the stated time limit, it shall destroy the records after the decision on the extraordinary appeal is made, eventually after the new final and effective conclusion of the case. Protocol on destroying the record of the interception shall the Police authority send to the public prosecutor, by whose decision was the case finally and effectively concluded, and in trial proceedings to the presiding judge of the senate of the first instance, in order to be stored in the file.

(8) The public prosecutor or Police authority, by whose decision was the case finally and effectively concluded, and in trial proceedings the presiding judge of the senate of the court of the first instance after final and effective conclusion of the case, shall inform the person referred to in sub-section (2) about the ordered interception and recording of telecommunication traffic, if this person is known. The information shall contain identification of the court that issued the order for interception and recording of telecommunication traffic, duration of the interception and the date of its termination. A part of the information is an instruction about the right to lodge a petition to the Supreme Court

to review the legality of the order for interception and recording of telecommunication traffic within six months from the day of delivering this information. The presiding judge of the court of first instance shall give the information immediately after concluding the case, the public prosecutor by whose decision was the case effectively concluded immediately after expiration of the time period for review of his decision by the Supreme Public Prosecutor according to Section 174a, and the Police authority, by whose decision was the case finally and effectively concluded, immediately after expiration of the time period for review of its decision by the public prosecutor according to Section 174 (2) e).

(9) The information according to sub-section (8) shall the presiding judge, public prosecutor or Police authority not give in proceedings on a crime, for which the law prescribes a sentence of imprisonment with the upper limit of at least eight years, committed by an organized group, in proceedings on a criminal offence committed for the benefit of an organized criminal group, in proceedings on a criminal offence of participation in an organized criminal group (Section 361 of the Criminal Code), or if more persons participated in commission of the criminal offence and in relation to at least one of them was the criminal proceedings not yet finally and effectively concluded, or if a criminal proceeding is conducted against the person, to whom is the information to be given, or if giving such information could thwart the purpose of the criminal proceedings, including the proceedings referred to in sub-section (6), or if it could imperil the security of State, life, health or rights and liberties of persons.

Section 88a

(1) If it is necessary for the purposes of criminal proceedings conducted for a criminal offence, for which the law prescribes a sentence of imprisonment with the upper limit of at least three years, for a criminal offences of Breach of secrecy of correspondence (Section 182 of the Criminal Code), Fraud (Section 209 of the Criminal Code), Unauthorised access to computer systems and information media (Section 230 of the Criminal Code), Obtaining and possession of access device and computer system passwords and other such data (Section 231 of the Criminal Code), Dangerous threatening (Section 353 of the Criminal Code), Dangerous pursuing (Section 354 of the Criminal Code), Spreading of alarming news (Section 357 of the Criminal Code), Incitement to criminal offence (Section 364 of the Criminal Code), Approval of criminal offence (Section 365 of the Criminal Code) or for an intentional criminal offence, prosecution of which is stipulated by an international treaty binding the Czech Republic, to ascertain data on telecommunication traffic that are subject to the telecommunication secrecy or to which applies protection of personal and mediated data and if the followed purpose cannot be achieved otherwise or it its achieving would be substantially more difficult, the presiding judge shall order submitting the data to the court in trial proceedings, and in pre-trial proceedings the judge shall order their submitting to the public prosecutor or to the Police authority upon a motion of the public prosecutor. The order for ascertaining data on telecommunication traffic must be issued in writing and must be reasoned, including a specific reference to a promulgated international treaty in case the criminal proceedings is being conducted for a criminal offence, prosecution of which is stipulated by this international

treaty. If the request concerns a specific user, the order must include his identity, if it is known.

(2) The public prosecutor or the Police authority, by whose decision was the case finally and effectively terminated and in trial proceedings the presiding judge of the panel of the court of the first instance shall inform the user referred to in sub-section (1), if he is known, after the final and effective termination of the case, about the ordered ascertaining of data on telecommunication traffic. The information contains identification of the court that issued the order for ascertaining of data on telecommunication traffic and data on the period concerned by this order. The information shall also contain an advice on the right to file a petition for a review of the legality of the order for ascertaining of data on telecommunication traffic to the Supreme Court within six months from the day of service of this information. The information shall be submitted by the presiding judge of the panel of the court of the first instance without an undue delay after the final and effective termination of the case. The public prosecutor, by whose decision was the case finally end effectively terminated shall submit the information without an undue delay after the expiration of the time limit for reviewing his decision by the Supreme Public Prosecutor according to Section 174a and the Police authority, by whose decision was the case finally and effectively terminated shall submit the information without an undue delay after the expiration of the time limit for reviewing his decision by the public prosecutor according to Section 174 (2) e).

(3) The information according to sub-section (2) shall the presiding judge, the public prosecutor or the Police authority not submit in proceedings on a felony, for which the law stipulates a sentence of imprisonment with the upper limit of at least eight years, committed by an organised criminal group, in proceedings on a criminal offence committed in favour of an organised criminal group, in proceedings on a criminal offence of Participation in organised criminal group (Section 361 of the Criminal Code), or if more persons took part in commission of the criminal offence and in relation to at least on of them the criminal proceedings was not finally and effectively terminated, or if criminal proceedings is being conducted against the person, to who is the information to be conveyed, or if giving such information could compromise the purpose of this or another criminal proceedings, or if it could lead to endangering of the security of State, or the life, health, rights or freedoms of persons.

(4) The order according to sub-section (1) is not necessary, if the user of the telecommunication device concerned by the data on the executed telecommunication traffic gives his consent to submitting the data.

CHAPTER FIVE

Evidence

Section 89 General Provisions

(1) In a criminal prosecution it is necessary to prove to the necessary extent especially:

a) whether the act seen as a criminal offence was committed,
b) whether this act was committed by the accused person, eventually what was the motive,
c) significant circumstances affecting the assessment of the nature and seriousness of the act,
d) the relevant circumstances to assess personal relations of the offender,
e) the significant circumstances allowing the determination of the consequences, the amount of damage caused by the criminal offence and amount of unjust enrichment,
f) the circumstances that led to the criminal activity or facilitated its commission.

(2) Evidence may be anything that can help to clarify the case, in particular testimonies of the accused and witnesses, expert opinions, items and documents relevant to the criminal proceedings, and examinations. Each party may find, present, or propose to produce evidence. The fact that the law enforcement authority did not find or request a piece of evidence is not grounds for rejecting such evidence.

(3) Evidence obtained by unlawful coercion or by threat of coercion may not be used in the proceedings except when used as evidence against the person that used coercion or threatened with coercion.

SUBDIVISION ONE
Testimony of the Accused

Section 90 Summons and Compelled Appearance

(1) If the accused person who was properly summoned fails to appear to questioning without a sufficient excuse, he may be compelled to appear; he must be instructed about this possibility and about other consequences of non appearance (Section 66) in the writ of summons.

(2) The accused person may be compelled to appear even without a prior summons, if it is necessary for successful execution of criminal proceedings, especially if he is hiding or has no permanent place of residence.

(3) The competent Police authority shall be asked to perform the compelling. Compelling a member of armed forces or armed corps in active service shall be requested at his commanding officer or chief.

Questioning of the Accused Person

Section 91

(1) Prior to the first questioning it is necessary to identify the accused person, to inquire about his family, property and income relations and previous punishments, to acquaint him with the merits of the charge and to instruct him about his rights. If the criminal proceeding is conducted for a criminal offence, concerning which may be negotiated an agreement on the guilt and punishment, then the authorities involved in criminal proceedings, when giving instructions to the aggrieved person, shall caution him also about the fact that he may enter an agreement on the guilt and punishment with the public prosecutor within the pre-trial proceedings, which is approved by the court. The aggrieved person must be instructed about the nature and consequences of entering an agreement on the guilt and punishment, about that he waives the right to have the matter heard in the trial and the right to lodge an appeal against the judgement, by which the court approved the agreement on the guilt and punishment, with the exception of cases where such a judgement is not in compliance with the agreement on the guilt and punishment, to which he gave his consent (Section 245 (1), second sentence), and on the conditions, under which the court may decide on a duly applied claim of the aggrieved person (Section 314r (4)). Contents of the instruction shall be indicated in a protocol. If the accused person cannot be identified immediately, it is necessary to attach such evidence to the protocol, so that the accused person could not be confused with any other person.

(2) If there are more accused persons, they shall be questioned individually.

Section 92

(1) Questioning of the accused person is conducted in such a way that he provided preferably a complete and clear picture of matters substantial for criminal proceedings. The accused person must not be in any way forced to give testimony or to confession. His personality must be taken into consideration during the questioning.

(2) The accused person must be given an opportunity to make a detailed statement to the charge, especially to describe matters that are the subject of the charge and to state circumstances that extenuate or disprove the charges and to offer evidence thereof.

(3) The accused person may be asked questions to supplement his deposition or to eliminate incompleteness, uncertainty and contradiction. The questions must be asked clearly and comprehensibly, without the pretence of deceptive and untrue circumstances; they must not imply how to be responded to.

Section 93

(1) The accused person may be allowed to consult his written notes, which if asked to do so, must be presented to the person conducting the questioning; this event shall be reflected in the protocol.

(2) If it is necessary for verification of authenticity of handwriting, the accused person may be asked to write a required amount of words; however he must not be in any way forced to do

so. Nevertheless the accused person is obliged to bear steps necessary for establishing his identity.

Section 94
Repealed

Section 95

(1) The statement of the accused person is usually recorded in the protocol according to the dictation of the interrogator, in direct speech and, if possible, literally.

(2) Unless a protocol of the trial or public session is concerned, the protocol must be presented to the accused person to read after the hearing, or if requested, to be read to him. The accused person has the right to request that the transcript is supplemented or that any errors are corrected in accordance with his statements. The accused person must be instructed about this right.

(3) The transcript of the questioning, which was carried out without a reporter, shall be read to or submitted for reading to the questioned person in the presence of an impartial person before signing. If the questioned person has any objections against the contents of the transcript, they must be discussed in the presence of an impartial person and the outcome of the discussion must be reflected in the transcript.

Section 96
Repealed

SUBDIVISION TWO
Witnesses

Section 97 Obligation to Testify

Everyone is obliged to appear and testify when summoned as a witness about matters know to him that are related to a criminal offence and its perpetrator or about circumstances essential for criminal proceedings

Section 98 Summons and Compelled Appearance

If a witness, despite being properly summoned, fails to appear to questioning without a sufficient excuse, he may be compelled to appear[4]. He must be instructed about this possibility and about other consequences of non appearance (Section 66) in the writ of summons. If a member of armed forces or armed corps in active duty fails to appear, it is

[4] Physically brought before the court.

necessary to request his commanding officer or chief to state reasons, for which the summoned person failed to appear, or eventually to have him be compelled to appear.

Section 99 Prohibition of Questioning

(1) A witness must not be questioned about circumstances related to classified information protected by a special legal enactment, that he is obliged to keep confidential, unless he was relieved of this obligation by a competent authority; relieving of this obligation may be refused only if the testimony would cause a serious harm to the State.

(2) A witness must not be questioned also if by giving the testimony he would breach a duty of silence imposed by the State, unless he was relieved of this duty by a competent authority or by the person for whose benefit was this duty imposed.

(3) Prohibition of questioning according to sub-section (2) does not apply to a testimony related to a criminal offence, regarding which has the witness a notification duty according to the Criminal Code. It also does not apply to a testimony about classified information rated in a special Act by a confidentiality level of Confidential or Restricted.

Section 100 Right to Refuse Testimony

(1) The right to refuse testimony as a witness has a person related of the accused person in direct lineage, his sibling, adoptive parent, adoptive child, spouse, partner and companion; if there are more accused persons and the witness is in the stated relationship to only some of them, he has the right to refuse testimony regarding the other accused persons only if it is impossible to separate the testimony concerning those persons from the testimony concerning the accused person to whom is the witness in the stated relationship.

(2) A witness is entitled to refuse testimony if it could cause danger of criminal prosecution to himself, his relative in direct lineage, sibling adoptive parent, adoptive child, spouse, partner and companion or to other persons in family or similar relationship to him, whose detriment would the witness perceive as his own.

(3) However, testimony cannot be refused by a witness who has a notification duty according to the Criminal Code, regarding the criminal offence to which is the testimony related.

Questioning of a Witness

Section 101

(1) Prior to questioning a witness it is always necessary to identify him, establish his relation to the accused person, instruct him about the right to refuse testimony and if necessary, also about prohibition of questioning or the possibility to proceed according to Section 55 (2), as well as about the fact that he is obliged to tell the complete truth and not withhold anything.

Furthermore, the witness must be instructed about the meaning of a testimony in the view of a public interest and about criminal consequences of a false testimony. If a person under fifteen years of age is questioned as a witness, he shall be instructed accordingly to his age.

(2) In the beginning of the questioning must the witness be asked about his relation to the case at issue and to the parties, and if needed, also about other circumstances substantial for assessing his credibility. The witness must be given an opportunity to coherently depose everything he knows about the matter and where he has learned the stated circumstances.

(3) The witness may be asked questions for supplementation of the deposition or for elimination of incompleteness, uncertainty and contradiction. The witness must not be asked questions containing circumstances that are yet to be learned from his deposition.

(4) If it is necessary for verification of authenticity of handwriting, the witness may be ordered to write a required amount of words.

Section 101a

If the Police authority finds no reason for drawing up a protocol about the questioning in the way referred to in Section 55 (2), even though the witness demands it and states specific circumstances that in his opinion justify such a way of drawing up the protocol, the Police authority shall submit the matter to the public prosecutor to review the correctness of its proceeding. If there is no danger of delay, they shall defer the interrogation of the witness until the time the public prosecutors takes the appropriate measures. Otherwise the witness is interrogated and until the adoption of the measures by the public prosecutor, the transcript is handled as to keep the identity of the witness confidential.

Section 102

(1) If a person under 15 years of age is questioned as a witness about circumstances, reviving of which in memory could, in respect of his age, adversely affect his intellectual and moral development, the questioning shall be conducted with especial care and concerning its contents in such a way that it generally should not be necessary to repeat the questioning in further proceedings; a pedagogue or another person having experience with education of juveniles, that would contribute to correct conduct of the questioning with regard to the subject of the questioning and to the degree of intellectual and moral development of the questioned person, shall be included to the questioning. If it can contribute to correct execution of the questioning, parents may also be included. Such included persons may propose to postpone a procedural step to a later time and during execution of such a step may propose its suspension or termination, if performing the step or its continuation would adversely affect mental condition of the questioned person. If there is no threat of delay, the authority involved in criminal proceedings shall comply with such a proposal.

(2) In further proceedings shall such a person be questioned again only in necessary cases. In trial proceedings is possible, on the basis of a court decision, to produce evidence by reading a protocol or by playing an audio or visual record of questioning conducted by a video-conference device, even without fulfilling conditions referred to in Section 211 (1) and (2). The person included to the questioning shall be, if necessary, questioned about correctness and completeness of the record, about the manner in which was the questioning conducted and also about the manner in which the questioned person gave his deposition.

Section 102a

(1) If a person in active service of a Police authority or a police officer of another State is to be questioned as a witness

a) who was used in criminal proceedings as an agent or who performed a fictive transfer, or
b) who was imminently participating in using an agent or performing a fictive transfer,
c) shall be questioned as a witness whose identity and appearance is concealed.

(2) In exceptional cases and under the condition that the questioning shall not endanger life, health or further service duties referred to in sub-section (1) or endanger life or health of a close person, the questioning may be conducted without concealing the identity or appearance, but only upon a motion of a public prosecutor and on the basis of the competent director of the security corps.

Section 103

Provisions of Sections 93 (1) and Section 95 on questioning an accused person shall apply to questioning of a witness accordingly.

Section 104 Witness Fee

(1) The witness is entitled to remuneration of necessary expenses according to a special legal enactment that regulates travel expenses and compensation for proven lost income (witness fees). The claim expires is not exercised by the witness within three days after his questioning or after he was notified that the questioning shall not take place; the witness must be cautioned thereof.

(2) The claim according to sub-section (1) belongs to a witness or to another person, with the exception of a suspect or accused person, if he appears for execution of another step of the evidentiary proceedings when summoned by an authority involved in criminal proceedings.

(3) The amount of the witness fees shall be in principle determined immediately after exercising the claim for witness fees by the authority that summoned the witness or another person referred to in sub-section (2), and in trial proceedings by the presiding judge.

SUBDIVISION THREE
Some Special Methods of Evidence

Section 104a Confrontation

(1) If the deposition of the accused person does not match in substantial circumstances deposition of a witness or a co-accused person, the accused person may be put face to face with the witness or co-accused person.

(2) If the deposition of the witness does not match in substantial circumstance deposition of the accused person or another witness, the witness may be put face to face with the accused person or the other witness.

(3) The confrontation may be executed only after previous questioning of each person to be confronted and after drawing up protocols of their depositions. During the confrontation shall the questioned person be asked to tell the other person in direct speech his allegation of the circumstances that mismatch depositions of the confronted persons, eventually to state further circumstances related to his allegations and that he has not yet deposed. The confronted persons may ask each other questions only with the consent of the person conducting the questioning.

(4) In other aspects shall confrontation be governed by provisions on deposition of the accuse person and witnesses.

(5) A person under fifteen years of age may be confronted with another person only in exceptional cases, if it is necessary for clarification of the matter; in such a case shall apply Section 102 accordingly. A witness, whose identity is being concealed for reasons referred to in sub-section 55 (2), may not be confronted with another person.

(6) If it is necessary to question the confronted persons again after the confrontation, they shall be questioned individually.

(7) Confrontation shall be executed in principle only in trial proceedings; prior to lodging an indictment or a petition for approving an agreement on the guilt and punishment may confrontation be executed only exceptionally, if it can be expected that it would fundamentally contribute to clarification of the matter and the purpose cannot be reached by other means.

Section 104b Identification by Recognition

(1) Identification by recognition shall be performed if it is substantial for criminal proceedings that a suspect, accused or witness recognized a person or an item and thus identified them. In recognition shall always be included at least one person that is not involved in the matter.

(2) The suspect, accused or witness who are to identify a person or item shall be questioned before the recognition about circumstances at which they perceived the person or item and about characteristics or particularities that would facilitate identification of the person or item. The person or object that is to be identified must not be shown to them prior to the recognition.

(3) If a person is to be identified, he shall be presented to the suspect, accused or witness among at least three other persons that do not significantly differ from each other. The person that is to be identified shall be asked to take an arbitrary place among the presented persons. If the person is supposed to be identified not by his appearance, but by his voice, he shall be enabled to speak in an arbitrary order among the other persons with similar voice characteristics.

(4) If it is not possible to present the person to be identified, the recognition shall be performed according to a photograph that shall be shown to the suspect, accused or witness with similar photographs of at least three other persons. This procedure cannot imminently precede recognition by presentation of a person.

(5) If an item is to be identified, it shall be presented to the suspect, accused or witness in a group of items preferably of the same kind.

(6) Otherwise to recognition apply the same provisions as to deposition of the accused person or witness.

(7) According to the nature of the case the recognition may be performed in such a way that the identifying person does not imminently contact the person to be recognized. If a person under fifteen years of age is involved in the recognition process, Section 102 shall apply accordingly. Recognition in the presence of a witness whose, identity is being concealed for the reasons referred to in Section 55 (2), may by performed under the condition of concealing his appearance and personal data, if the witness is the identifying person.

(8) After performing the recognition the suspect, accused or witness shall be questioned again, if it is necessary for eliminating contradiction between their deposition and results of the recognition.

Section 104c Investigative Experiment

(1) An investigative experiment shall be performed, if matters of fact ascertained in criminal proceedings are to be verified or specified in artificially created or altered environment, eventually if new matters of fact essential for criminal proceedings are to be established.

(2) An investigative experiment shall not be performed if it is inappropriate in respect of circumstances of the case or to the suspect, accused, co-accused or aggrieved person or witness, or if the purpose of the investigative experiment can be reached otherwise.

(3) In an investigative experiment performed in pre-trial proceedings must be included at least one person who is not involved in the case, unless the impossibility of securing his presence in the investigative experiment would thwart its execution. If it is necessary in respect of the nature of the case and matters so far ascertained during the criminal proceedings, an expert or eventually the suspect, accused and witness shall be included in the investigative experiment. Their presence in the investigative experiment shall be governed by provisions applicable to their questioning. If a person under fifteen years of age participates in the experiment, Section 102 shall be applied accordingly.

(4) The suspect, accused or aggrieved person or witness, who has the right to refuse his deposition, shall not be in any way forced to take the steps related to the investigative experiment.

Section 104d Reconstruction

(1) Reconstruction shall be performed if recreation of the situation and circumstances, under which was the criminal offence committed of which have substantial connection to it, should verify deposition of a suspect, accused, co-accused or aggrieved person or witness, if evidence produced in criminal proceedings are not sufficient for clarification of the matter.

(2) Procedure of reconstruction shall be governed accordingly by provisions on investigative experiment.

Section 104e On-site Examination

(1) On-site examination shall be performed if it is necessary to specify, in the presence of the suspect, accused or witness, data substantial for criminal proceedings that are related to a certain location.

(2) Procedure of the on-site examination shall be governed accordingly by provisions on investigative experiment.

SUBDIVISION FOUR
Experts

Inclusion of Experts

Section 105

(1) If clarification of the facts relevant to the criminal proceedings requires expert knowledge, the authority involved in criminal proceedings will request a professional opinion. If such a procedure is not sufficient due to the complexity of the assessed issue, an expert shall be invited by the authority involved in criminal proceedings. In pre-trial proceedings shall the

expert be invited by the authority involved in criminal proceedings that considers the expert opinion to be necessary for the decision, which is the public prosecutor, if the matter was referred back for further investigation, and the presiding judge in trial proceedings. The accused person and in trial proceedings the public prosecutor shall be notified about the invitation of an expert. Other persons shall be notified about the invitation of an expert, if it is necessary for such a person to do or tolerate something for the purpose of the expert opinion.

(2) In selecting a person who is to be invited as an expert, it is important to take the reasons for which the expert is excluded from the presentation of an expert opinion under the special Act into account. In seeking a professional opinion, the law enforcement authority shall consider whether the person from whom the professional opinion is requested is not biased in regard to their relationship to the accused, other persons involved in the criminal proceedings, or their relationship to the case.

(3) Objections may be raised against the expert on the grounds set out by a special Act. In addition, objections may be raised against the professional specialization of the expert or against the wording of the questions asked to the expert. In pre-trial proceedings, the merits of such objections shall be judged by the public prosecutor and in trial proceedings by the presiding judge, before whom is the proceeding being conducted during the time of the objections are raised; if the objections are raised within an appeal, they shall be reviewed by the authority competent to decide on the appeal. If the authority grants the objections and the reasons for requesting the expert opinion still exist, they will take steps to either request the expert opinion be done by another expert or according to re-phrased questions; conversely, they shall instruct the person who raised the objection that no reasons for such procedure were found. The opinion to the objections raised within an appeal generally forms a part of the rationalization of the decision on the appeal.

(4) If it is particularly important to clarify the facts, it is necessary to invite two experts. Two experts must always be invited, when an examination or autopsy of a corpse (Section 115) is concerned. The physician who treated the deceased for the disease, which immediately preceded the death, may not be invited as an expert.

(5) A professional opinion pursuant to sub-section (1) may be also asked of a person listed in a registry of experts, and a natural or legal person, who has the necessary professional qualification. The state authority shall always present its professional opinion to the authorities involved in criminal proceedings free of charge.

Section 106

An expert must be cautioned about the consequences of not appearing on summons (Section 66) and about the obligation to report the facts for which he could be excluded or which otherwise prevent him from being involved as an expert in the matter without undue delay. The expert must also be instructed about the importance of the expert opinion in the view of the general interest and the criminal consequences of perjury and of knowingly giving a false

expert opinion; this also applies to an expert who submitted an opinion on the basis of a request of a party pursuant to Section 89 (2).

Section 107 Preparation of Expert Opinion

(1) An expert who is commissioned to an act shall be provided with the necessary explanations from the files, and his tasks shall be defined. Therein it is important to take heed that it does not appertain to the expert to evaluate evidence or to resolve any legal issues. If it is necessary for submitting the opinion, the expert shall be allowed to view the files or the files are lend to him. He may also be allowed to attend questioning of the accused person and witnesses and to ask them questions related to the subject matter of the expert investigation. In justified cases, the expert shall be allowed to participate also in other acts of criminal proceedings, provided that such an act is important for the expert opinion. The expert may also propose that circumstances necessary for submitting the opinion are first clarified by other evidence.

(2) An expert invited to submit an expert opinion on the cause of death or the medical condition of the deceased person is entitled to request medical documentation concerning such a person; in other cases he may require medical documentation under the conditions provided by a special Act.

(3) Experts are usually requested to elaborate the expert opinion in writing. The expert opinion shall also be served to the defence counsel at the expense of the defence.

Section 108 Questioning of an Expert

(1) If an expert has elaborated a written expert opinion, it will suffice to refer to it and confirm it during his questioning. If the opinion was not elaborated in writing, the expert shall dictate it to the protocol during the questioning.

(2) If several experts were invited, who have reached coincident conclusions after mutual consultation, the expert opinion shall be presented by one expert appointed by them; if their opinions are different, each expert must be heard separately.

(3) In the pre-trial proceedings, questioning of the expert may be omitted, if the Police authority and the public prosecutor have no doubts about the reliability and completeness of the submitted written expert opinion.

Section 109 Flaws of Expert Opinion

If there are doubts about the correctness of the opinion, or if the opinion is unclear or incomplete, it is necessary to ask the expert for an explanation. If that does not bring any results, another expert shall be invited.

Section 110 Opinions from an Institute

(1) In exceptional and particularly difficult cases requiring special scientific assessments, the Police authority or the public prosecutor and, in trial proceedings, the presiding judge may invite a public authority, scientific institute, university or a specialised institution to provide expert services to submit an expert opinion or to review an opinion submitted by an expert.

(2) A person who was invited to provide an expert opinion or to examine an opinion filed by an expert according to sub-section (1) shall provide his opinion in writing. It will include identification of the person or persons who elaborated the opinion and if necessary, they may be heard as experts; if it was necessary to invite two experts (Section 105 (4)), they it shall list at least two such persons.

(3) In selection of persons referred to in sub-section (2) it is important to consider the reasons for which an expert is excluded from giving an expert opinion under a special Act.

(4) The provision of Section 105 (3) shall be applied accordingly when requesting an expert opinion from an institute.

Section 110a

If the expert opinion submitted by a party has all the elements required by the law and includes an expert clause that they are aware of the consequences of giving a knowingly false expert opinion, then the procedure of production of such evidence shall be the same as if it was an expert opinion requested by an authority involved in criminal proceedings. The authority involved in criminal proceedings shall allow the expert requested for an expert opinion by one of the parties, to inspect the file or otherwise allow him to become acquainted with the information necessary for elaboration of the expert opinion.

Section 111 Use of Special Regulations on Experts

(1) Special regulations shall apply to appointment of an expert, his competence for this function and his exclusion therefrom, to the right to deny performance of an expert act, and to the oath and reminder of his responsibilities prior to the performance of the expert act, as well as to reimbursement of cash expenses and remuneration (expert fees) for the expert act.

(2) The amount of expert fees shall be determined by those who invited the expert and in trial proceedings by the presiding judge without undue delay or within two months from accounting the expert fees. If those who invited the expert disagree with the amount of expert fees, it shall be decided by a resolution. A complaint is admissible against the resolution, which has a dilatory effect.

(3) The expert fees must be paid without undue delay after it is granted, within 30 days at the latest.

SUBDIVISION FIVE
Questioning by the Means of a Video-conference Device

Section 111a

(1) In case the accused person is questioned by the means of a video-conference device, his defence counsel shall be notified about the time and place the accused person was summoned to. In the event of questioning the co-accused person, witness or expert in this manner, the defence counsel of the accused person shall be notified about the time and place, from which will the competent authority involved in criminal proceedings be conducting the questioning.

(2) In case the questioning of a person is conducted by the means of a video-conference device, his identity shall be verified by an employee of the court, the public prosecutor's office or the Police authority, who authorized to do so by the person conducting the questioning. The person verifying the identity at the place where the questioned person is situated during the questioning may also be, with the consent of the person conducting the questioning, an employee of the court, the public prosecutor's office, the prison or the Police authority if he was authorized to do so by the presiding judge of the court, the chief public prosecutor, the director of the prison or the chief officer of the Police authority. Such an employee shall be present throughout the whole questioning at the place where the questioned person is situated.

(3) The identity of a witness, whose identity is concealed, and whose interrogation is conducted by the means of a video-conference device, shall be verified in trial proceedings by the presiding judge or a court employee authorized to secure the protection of classified information, appointed for such an activity by the presiding judge, and in the pre-trial proceedings by an employee of the public prosecutor's office or the Police authority, authorized to secure the protection of classified information, appointed for such an activity by the chief public prosecutor or the chief officer of the Police authority. Such an employee shall be present throughout the whole interrogation at the place where the witness whose identity is concealed, is situated.

(4) The authority involved in criminal proceedings that conducts the questioning shall instruct the questioned person before initiation of the questioning conducted by the means of a video-conference device about the manner of the questioning.

(5) At any time during an interrogation conducted by the means of a video-conference device may the interrogated person raise objections against the quality of the audio or video transmission.

SUBDIVISION SIX
Material and Documentary Evidence

Section 112

(1) Material evidence are considered items by which or against which was committed a criminal offence, other items that prove or disprove matters of fact to be proven and that may serve as means for revealing and discovering a criminal offence and its perpetrator, as well as leads to a criminal offence.

(2) As documentary evidence are considered documents, contents of which prove or disprove the matters of fact to be proven that is related to the criminal offence or to the accused person.

SUBDIVISION SEVEN
Examination

Section 113 Purpose of Examination and its Protocol

(1) Examination is performed if there are matters of fact substantial for criminal proceedings to be clarified by a direct observation. An expert is generally included in an examination.

(2) A protocol of examination must provide a complete and accurate picture of the object of examination; therefore it should be provided with photographs, schemes and other utilities.

Section 114 Corporal Examination and other Similar Acts

(1) Any person is obliged to undergo a corporal examination, if it is necessary to establish, whether his body bears marks or after effects of a criminal offence. If a body check is not performed by a doctor, it may be performed only by a person of the same sex.

(2) If it is necessary for evidentiary purposes to perform a blood test or another similar act, the person concerned is obliged to tolerate blood withdrawal or other necessary act to be performed by a doctor or a specialized medical worker, if it is not associated with endangering his health. Withdrawal of biological material not associated with interference with physical integrity of the person concerned by such an act may be performed also by this person or with his consent by an authority involved in criminal proceedings. Upon a request of an authority involved in criminal proceedings may this withdrawal be performed even without the consent of the suspect or accused person by a doctor or specialized medical worker.

(3) If it is necessary for evidentiary purposes to identify a person that was present at the crime scene, the person concerned is obliged to bear the acts necessary for this identification.

(4) If the acts referred to in sub-section (1) to (3) cannot be performed due to resistance of the suspect or accused person and if blood withdrawal of other similar act associated with interference with physical integrity is not concerned, the authority involved in criminal proceedings is entitled, after a prior futile bidding, to overcome this resistance; a Police

authority needs a prior consent of the public prosecutor to overcome the resistance of a suspect. The manner of overcoming the resistance must be proportional to the intensity of resistance.

(5) The person concerned shall be instructed about obligations according to previous sub-sections and about the consequences on non compliance (Section 66), a suspect and accused person shall also be instructed about the procedure according to sub-section (4).

Section 115 Examination and Autopsy of a Corpse and its Exhumation

(1) If there is suspicion that death of a person was caused by a criminal offence, the corpse must be examined and an autopsy must be performed. In such event, the corpse may be buried only with the consent of the public prosecutor. The public prosecutor shall decide on the matter with utmost urgency.

(2) Exhumation of a corpse may be ordered by the presiding judge and in pre-trial proceedings, by the public prosecutor.

Examination of Mental Condition

Section 116

(1) If the mental state of the accused person requires examination, an expert in the field of psychiatry is always invited thereto.

(2) If the mental state cannot be examined otherwise, the court and in pre-trial proceedings the judge upon a motion of the public prosecutor may order that the accused is subject to observation in a medical facility or, if he is in custody, in a special department of a correctional facility. A complaint is admissible against this resolution, which has a dilatory effect.

(3) If the expert finds symptoms suggesting insanity or diminished sanity of the accused person, he shall also pronounce whether the accused person poses a threat to the public, should he remain free.

Section 117

Observation of the mental state should not last more than two months; by this time an opinion must be submitted. Upon a justified request of experts may the court and in pre-trial proceedings the judge upon a motion of the public prosecutor extend this period, but no more than by a month. A complaint is admissible against the extension of this period.

Section 118

If there are serious doubts as to whether the capacity of a witness, whose testimony is especially important for the decision, to correctly perceive or testify is substantially reduced, it is possible to have their competency and mental state examined by an expert. However, observation of the mental state of a witness according to Section 116 (2) is not permissible.

CHAPTER SIX

Decision

Section 119 Decision Making Process

(1) The court decides by a judgment where the law expressly provides so; in other cases it decides by a resolution, unless the law provides otherwise.

(2) The public prosecutor and the Police authority decide by a resolution, unless the law provides otherwise.

SUBDIVISION ONE
Judgment

Contents of a Judgment

Section 120

(1) After the introductory words "In the name of the Republic", the judgment must include
- a) indication of the court whose judgment is concerned and the full names of the judges who participated on the decision,
- b) date and place of the judgment,
- c) verdict of the judgment with the declaration of the applied statutory provisions,
- d) justification, unless the law provides otherwise, and
- e) instructions on an appeal.

(2) The defendant must be indicated in the judgment by his name and surname, date and place of birth, his occupation and residence, and other information necessary to prevent his confusion with another person. If a member of the armed forces or armed corps is concerned, the rank of the defendant and the unit, he is a member of, shall also be indicated.

(3) A verdict, by which the defendant is found guilty or which acquits him of the indictment, must indicate the exact criminal offence the verdict relates to, not just by a legal designation and stating the appropriate statutory provision, but also by an indication of whether it is a felony or a misdemeanour, and the time, place and manner of its commission, eventually also by stating other matters necessary to avoid confusion of the act with another, as well as by stating all the legal characteristics, including the ones justifying a specific term of sentence.

(4) If the court approves an agreement on the guilt and punishment, a part of the judgement is also a verdict on approving an agreement on the guilt and punishment.

Section 121

The judgement of the court, which decides on the question of guilt, shall also contain a verdict

a) on monetary compensation of damage or non-material harm or on surrender of unjust enrichment, provided the claim for monetary compensation of damage or non-material harm or for surrender of unjust enrichment was duly applied (Section 43 (3)),
b) on a protective measure, if it was decided in the trial or public session held on an appeal.

Section 122

(1) The convicting judgment must include a verdict on the punishment stating the statutory provisions, under which the punishment was imposed or under which the punishment was waived and in the case of a conditional waiver of punishment with supervision, also the verdict on the probation period and its duration. If supervision over the offender was declared, the verdict of the judgment must be clear as to whether the supervision should be exercised in the extent covered by the Criminal Code, or whether it also imposes other adequate restrictions or duties to the offender. If a punishment, performance of which can be conditionally suspended, was imposed, the judgment must also include a verdict on whether the conditional suspension was granted and under what conditions. In case an unconditional sentence of imprisonment was imposed, the judgment must include a verdict on the manner of the execution of this sentence. If the convicted person is an offender of a criminal offence committed for the benefit of an organised criminal group, the verdict thereon must also be contained in the judgment.

(2) The verdict of a judgement of acquittal must state, which of the grounds referred to in Section 226 is the acquittal based on.

Section 123

The court that repeatedly decides in a case, where an earlier judgment was partially repealed upon an appeal, complaint for the violation of law, or the petition for a new trial, shall include only those verdicts in the new judgment, concerning which it decides again. Therein it shall point out the connection of these verdicts with the verdicts, concerning which the former judgement remained unchanged.

Section 124

In a judgment which imposes an aggregate sentence, the court must indicate those earlier judgments, whose verdicts on punishment the new judgment repeals and replaces with an aggregate sentence. If the judgment imposes a joint punishment for continuing in a criminal

offence, the court must indicate the earlier judgments, whose verdicts on guilt, on continued criminal offence and on criminal offences committed in a single-acting concurrence therewith it repeals, the whole verdict on punishment, as well as other verdicts that have their basis in the concerned verdict, and replace them with new verdicts, including a verdict on a joint penalty for continuing in a criminal offence.

Section 125

(1) If the judgment contains a justification, the court shall briefly explain, which facts were deemed proven and what evidence substantiated its factual findings and which considerations it followed in the assessment of the presented evidence, especially if it was in mutual contradiction. The justification must clearly show how the court dealt with the defence, why it did not grant petitions for producing further evidence, and what legal considerations were followed when it assessed the proven facts in accordance with the relevant statutory provisions on the question of guilt and punishment. When justifying the imposed sentence, it shall state the considerations it followed when imposing the sentence; how it assessed the nature and seriousness of the criminal offence in the view of importance of the specific protected interest that was affected by the act, the manner in which the act was performed and its consequences, the circumstances under which the act was committed, personality of the offender, the extent of his culpability and motives, his intentions or objectives, as well as the mitigating and aggravating circumstances, the time elapsed since the commission of the criminal offence, eventual changes in the circumstances and length of criminal proceedings, if it lasted an excessively long time, considering the complexity of the case, the procedure of the authorities involved in criminal proceedings, the importance of the proceedings for the offender and his behaviour, which contributed to delays in the proceedings; it shall also indicate how it took into account the personal, family, property and other circumstances of the offender, his previous way of life, conduct of the offender after the committing of the act, particularly his effort to compensate the damage or other detrimental consequences of his actions, and if he was deemed a cooperating accused, also how he substantially contributed to the clarification of a crime committed by members of an organised group, in connection to an organised group or for the benefit of an organised criminal group. If other statements were contained in the judgment, they must also be justified.

(2) The instructions on an appeal, which must be contained in every judgment of a court of the first instance, shall indicate the time limit, within which it must be filed (Section 248 (1)), identification of the court, to which the appeal should be submitted (Section 251), identification of the court that will decide on the submitted appeal (Section 252), the extent, to which an entitled person can challenge the judgment (Section 246), and specification of the necessary contents of the appeal (Section 249).

(3) In the instructions on an extraordinary appeal, which must be included in every court decision on the merits made in the second instance, shall indicate the entitled person, including the need to submit the appeal of the accused person through the defence counsel (Section 265d), time limit for filing the appeal, identification of the court, to which the appeal

must be submitted (Section 265e), identification of the court that will decide on the submitted appeal, and specification of the necessary contents of the appeal (Section 265f).

Deliberation and Vote on a Judgment

Section 126

During the deliberation on a judgment, which decides on the guilt and punishment, the court shall assess in particular,

a) whether the act, for which the defendant is prosecuted, occurred,
b) whether the act has all the characteristics of a criminal offence,
c) whether the defendant committed the act,
d) whether the defendant is criminally responsible for the act,
e) whether the criminality of the act did not expire,
f) whether and what sentence should be imposed on the defendant,
g) whether and to what extent should the defendant be imposed an obligation to compensate the aggrieved person for damage or non-material harm or to surrender any unjust enrichment,
h) whether and what protective measures should be imposed.

Section 127

(1) In addition to the judges and associate judges who were present at the hearing that immediately preceded the judgment, and the court reporter, no one else may be present at the deliberation and vote. The content of the deliberations must remain confidential.

(2) A majority vote decides the vote. If a majority vote cannot be achieved, the least favourable votes for the defendant are added to the votes more favourable, until a majority vote is achieved. If it is disputable, which opinion is more favourable to the defendant, it shall be decided by a vote.

(3) Each member of the court must vote, even if they were outvoted on the previous question. However, those who voted for the acquittal may abstain from voting during the vote on punishment; their votes will be added to the vote that is the most favourable for the defendant.

(4) Associate judges vote before the judges. Associate judges and junior judges vote before senior judges. The presiding judge shall vote last.

(5) A special protocol (Section 58) shall be drawn up on the vote.

Section 128 Pronouncement of Judgment

(1) The judgment must always be pronounced; it is pronounced by the presiding judge.

(2) The opening words "In the name of the Republic", the full text of the verdict, at least a substantial part of the justification and the instructions on appeal are announced. The announcement must be in complete conformity with the contents of the judgment, as it was voted.

(3) The judgment is usually pronounced immediately after the proceeding that preceded the judgment; if that is not possible, the proceeding may be adjourned by no more than three days for the purpose of announcement of the judgment.

Section 129 Making of a Judgment

(1) Each judgment must be made in writing. Copies of the judgment must be in accordance with the contents of the judgment as it was pronounced.

(2) If the public prosecutor and the defendant waived the right for an appeal after the announcement of the judgement in within a time limit after the announcement prescribed by the court, and if they declared that they do not insist on written making of the justification, and at the same time the defendant declared that he does not wish other entitled persons to lodge an appeal on his behalf, the court may elaborate a simplified judgement, which does not contain a justification. If the entitled persons may lodge an appeal on behalf of the defendant even against his will, the simplified judgement may be made only in case they waive the appeal. If the judgement concerns several defendants, it is necessary to give reasons for its verdicts in the parts concerning a defendant, in whose case the conditions for making a simplified judgement were not met. If also the aggrieved person and parties concerned have the right to lodge an appeal and if they do not waive this right, it is also necessary to give reasons for the verdicts, against which they may appeal.

(3) If the judgment was not made in writing during the deliberation, the presiding judge or a judge appointed by him, who was a member of the court panel, shall elaborate it and submit it for process serving

a) in proceedings before District Courts and Regional Courts as courts of the second instance in matters of custody within five business days, and in other matters within ten business days,
b) in proceedings before Regional Courts as courts of the first instance, High Courts and the Supreme Court in matters of custody within ten business days, and in other matters within twenty working days.

Exceptions from these time limits are permitted in individual cases by the presiding judge of the court upon a request of the presiding judge of the senate or the judge elaborating the judgement, particularly with regard to extensiveness and complexity of the matter. If he extends the time limit by more than twenty additional business days, he shall justify in writing, why it was not possible to prescribe a shorter period. Otherwise he shall proceed according to sub-section (4).

(4) If the presiding judge or any other member of the senate is not able to make the announced judgement in writing due to an obstacle of longer duration, a different judge shall make it upon the order of the presiding judge. In the case of a single judge, the judge designated by the presiding judge of the court shall prepare the judgment.

(4) Copies of the judgment shall be signed by the presiding judge and the judge who made it. If the presiding judge is not able to sign copies of the judgment due to an obstacle of a longer duration, a different member of the court will sign it in his stead; the reason therefor shall be noted in the copy of judgment.

Section 130 Service of Judgment

(1) Copies of the judgment shall be served to the defendant, the public prosecutor, the parties concerned and the aggrieved person, who filed a claim for monetary compensation of damage or non-material harm or for the surrender of unjust enrichment, even if they were present during the announcement of the judgment.

(2) If the accused has a defence counsel or a statutory representative, a copy of the judgment shall also be served to them.

(3) If the party concerned or the aggrieved person have a statutory representative, a copy of the judgment shall be served only to the statutory representative; if they have an agent, it shall be served only to the agent.

Section 131 Correction of the Copies and Transcript of Judgment

(1) The presiding judge may issue a special resolution to correct any clerical errors and other obvious mistakes that occurred in the original copy of the judgment and its transcripts at any time, so that they are in absolute conformity with the contents of the pronounced judgment. The correction may also be ordered by a court of a higher instance.

(2) A copy of the resolution on correction shall be served to all persons who have previously received a copy of the judgment.

(3) A complaint is admissible against the resolution according to sub-section (1), which has a dilatory.

(4) After the full force and effect of the resolution on correction, corrections are performed on the original copy of the judgment as well as on the transcripts, which shall be requested back for this purpose from the persons, to whom they were served.

Section 132
Repealed

Section 133 Effects of Correction

If the correction of the original copy of the judgment or the correction of the transcripts of the judgment significantly affected the contents of any of the verdicts of the judgment, then a time limit for lodging an appeal for the public prosecutor and the person directly affected by the corrected verdict stats to run, from receipt of the copy of the resolution on correction, and if a complaint against the resolution on correction was lodged, from the receipt of the decision on the complaint. The person directly affected by the verdict must be instructed thereof.

SUBDIVISION TWO
Resolution

Section 134 Contents of Resolution

(1) The resolution must contain

a) designation of the authority, whose decision it concerns,
b) date and place of the decision,
c) verdict of the resolution with quotation of the statutory provisions applied,
d) justification, unless the law provides otherwise, and
e) instructions on an appeal.

(2) The justification must include, if it comes into consideration with regard to the nature of the matter, in particular the facts that were deemed proven, the evidence which the factual findings are based on, considerations that the decision making authority followed in when assessing the produced evidence, as well as legal considerations, on the basis of which it assessed the proven facts according to the relevant statutory provisions.

Section 135 Announcement of Resolution

Only the resolutions that were made during an action performed in the presence of a person affected by the resolution must be pronounced, as well as resolutions made during the trial, public session or closed session.

Section 136 Elaboration of Resolution

(1) A resolution that only regulates the course of proceedings or the manner in which evidence is produced or that orders or prepares hearing of the court does not have to be elaborated.

(2) It is also not necessary to elaborate resolutions that are included in full wording in a protocol of an action, unless a copy of such a resolution must be served to someone. If it is to be served in such case to the public prosecutor, he may be served a copy of the protocol.

Section 137 Notification of Resolution

(1) Notification of a resolution must be served to persons directly affected by it, as well as to the person who instigated the resolution by his petition; a court resolution shall also be announced to the public prosecutor. Notification is executed either by the announcement of the resolution in the presence of the person who is to be notified, or by serving a copy of the resolution to him.

(2) If the person, who must be notified of the resolution, already has a defence counsel or an agent, it is sufficient to pronounce the resolution to such a person, his defence counsel or agent; if the resolution is notified by serving its copy, it is only served to the defence counsel or agent. In case of a legally incapacitated person or a person whose legal capacity was restricted and who does not have a defence counsel or an agent, the resolution is notified to their statutory representative.

(3) However, if it is announced to the accused person, who legally incapacitated or whose legal capacity is restricted, the contested resolution must be notified to both the accused and their defence counsel and their statutory representative. If the accused is in custody, serving a sentence of imprisonment or under observation in a medical facility, then such a resolution shall be announced to the accused person as well as to their defence counsel, even if the legal capacity of the accused person is not restricted.

(4) The resolution, by which was decided on an appeal, shall always be served in a transcript to the public prosecutor, the person who is directly affected by the decision, and to the person who instigated the resolution by his petition.

Section 138 Application of Provisions on Judgment

If this Subdivision does not contain special provisions, then provisions of Subdivision One of this Chapter on judgment shall be applied accordingly to resolutions.

SUBDIVISION THREE
Full Force and Effect and Enforceability of a Decision

Section 139 Full Force and Effect and Enforceability of a Judgment

(1) The judgment is in full force and effect, and unless the law provides otherwise it is also enforceable, if

a) the law does not allow an appeal against it,
b) the law allows an appeal against it, but
   aa) the appeal was not filed within the time limit,
   bb) the entitled persons have explicitly waived or explicitly revoked their appeal, or
   cc) the filed appeal was dismissed.

(2) An appeal lodged only by the aggrieved person and an appeal lodged only by a party concerned do not prevent other sections of the judgment from coming into full force and effect and from being enforced. Similarly, an appeal concerning only one of several defendants does not prevent the judgment from coming into full force and effect and being enforced in the case of the other defendants.

(3) If the time limit for lodging an appeal was missed, but a request for restoration of the time limit was filed by an entitled person, the judgment cannot be enforced until the final decision on such a request is made.

Section 140 Full Force and Effect and Enforceability of a Resolution

(1) A resolution is final and enforceable,

a) if the law does not permit a complaint against it,
b) if the law permits a complaint against it, but
   aa) the complaint was not filed within the time limit,
   bb) the entitled person has explicitly waived or explicitly revoked their complaint, or
   cc) the filed complaint was dismissed.

(2) A resolution is enforceable, even though it has not entered into full force and effect, if the law against does allow a complaint against it, but it does not grant it a dilatory effect.

(3) A complaint that concerns just one of several persons or just one of several matters, which have been decided on by the same resolution, does not prevent, the resolution from coming into full force and effect and being enforced in other sections if it can be separated, even if the complaint has a dilatory effect.

(4) If the time limit for lodging a complaint with a dilatory effect was missed, but a request for restoration of the time limit was filed by an entitled person, the judgment cannot be enforced until the final decision on such a request is made.

CHAPTER SEVEN

Complaints and Proceedings Thereon

Section 141 Admissibility and Effect

(1) A corrective measure against a resolution is a complaint.

(2) A complaint may be used to challenge any resolution of the Police authority. A resolution of the court and the public prosecutor may be challenged by a complaint only in those cases, where the law explicitly permits it and if they decide the matter in the first instance.

(3) A complaint against a resolution by the Supreme Public Prosecutor may be filed only if the complaint pertains to be decided by court according to the law. In these cases, the Supreme Court decides on the complaint. The Supreme Public Prosecutor decides on complaints against a resolution of public prosecutors of the Supreme Public Prosecutor's Office.

(4) The complaint has a dilatory effect only if the law explicitly provides stipulates so.

Section 142 Entitled Persons

(1) Unless the law provides otherwise, a complaint may be filed by a person, who is directly affected by the resolution or who instigated the resolution by his petition, for which he is authorized by the law; a complaint against a court resolution may also be submitted by the public prosecutor, also for the benefit of the accused.

(2) A complaint against a resolution on custody, protective treatment, and security detention may also be filed for the benefit of the accused by persons who were permitted to file an appeal for his benefit.

Section 143 Time Limit and Place to File

(1) A complaint shall be filed at the authority, against the resolution of which is the complaint made, within three days of announcement of the resolution (Section 137); if the resolution is announced to both the accused person and his statutory representative or defence counsel, the time limit starts from the announcement that was performed last.

(2) The time limit to file a complaint for persons, who may file a complaint according to Section 142 (2) in favour of the accused person, shall end on the same date as for the accused person; however, the time limit for the public prosecutor always runs separately.

Section 144 Waiving and Withdrawing a Complaint

(1) An entitled person may explicitly waive the complaint.

(2) An entitled person may explicitly withdraw a submitted complaint, if it was not decided on yet. A complaint of the public prosecutor may also be withdrawn by a superior public prosecutor.

(3) A complaint filed in favour of the accused person by another entitled person or on behalf of the accused person by his defence counsel or statutory representative may be withdrawn only with an explicit consent of the accused person. However, the public prosecutor may withdraw such a complaint even without the consent of the accused person. In such a case, a new time limit for filing a complaint starts running from the notice of withdrawing the complaint.

(4) An authority competent to make a decision on the complaint shall accept the withdrawal of the complaint by a resolution, unless there are obstacles, and if the matter was not submitted to this authority yet, the authority against whose decision the complaint is filed; in trial proceeding, this decision is made by the presiding judge.

Section 145 Grounds for Complaint

(1) A resolution may be challenged

a) for any incorrectness in its verdict, or
b) for the violation of provisions relating to the proceedings that preceded the resolution, if such a violation could result in incorrectness of any verdict of the resolution.

(2) A complaint may be based on new facts and evidence.

Section 146 Proceedings before the Authority, against whose Resolution a Complaint is Filed

(1) An authority, against whose resolution a complaint is filed, may grant it itself, provided that changing the original resolution does not affect the rights of another party to the criminal proceedings. In the case a resolution of the Police authority issued with a prior consent of the public prosecutor or on his order is concerned, the Police authority may grant the complaint itself only with a prior consent of the public prosecutor.

(2) If the time limit for filing a complaint has already expired for all entitled persons and the complaint was not granted pursuant to sub-section (1), the matter shall be submitted

a) by the Police authority to the public prosecutor, who exercises supervision over the pre-trial proceedings and if it concerns a complaint against a resolution, to which the public prosecutor gave his consent or instruction, they submit it via th public prosecutor to the superior public prosecutor,
b) by the public prosecutor to the superior public prosecutor or the court,
c) by the presiding judge of the District Court to the superior Regional Court, by the presiding judge of the Regional Court to the superior High Court, and by the presiding judge of the High Court to the Supreme Court; at the same time, they shall serve, if necessary, a copy of the complaint to the public prosecutor and the person that could be directly affected by the decision on the complaint,
d) by the public prosecutor of the Supreme Public Prosecutor's Office to the Supreme Public Prosecutor.

Section 146a Decision on a Complaint against Decisions on Seizure of Persons, Property and on Imposition of Disciplinary Fines

(1) A complaint against a decision, by which the public prosecutor

a) decided on custody, unless it concerns releasing the accused person from custody without adopting any measures substituting custody,
b) decided on a request for repealing a restriction consisting in prohibition of travel abroad,
c) seized funds in a bank account or at a savings and loan association or other institution that manages accounts for other persons, decided on blocking of funds from pension supplementary insurance with a State contribution, blocking of financial credit drawing, and blocking of financial lease, decided to restrict such seizure or blocking or did not grant a request for a repeal or restriction of such seizure or blocking (Section 79a (1), (3), (4) and Section 79b),
d) seized booked securities, decided on restriction of such seizure, or did not grant a request for repeal or restriction of seizure of booked securities (Section 79c (4)),
e) impounded real estate, decided to restrict the impoundage of the real estate, or did not grant the request for the revocation or reduction of such impoundage (Section 79d (1), (7) and (8)),
f) seized other asset values, decided to restrict seizure of other asset values, or did not grant a request for repeal or restriction of such seizure (Section 79e (1) and (7)),
g) seized an equivalent value, decided to restrict seizure of an equivalent value, or did not grant a request for repeal or restriction of such seizure (Section 79f),
h) issued an order for seizure of assets in another Member State of the European Union, decided on the recognition of an order for seizure of assets located in the Czech Republic, or decided to restrict such seizure (Section 460b, 460f and Section 460 (2)),
i) seized assets of the accused person to secure a claim of the aggrieved person or decided to restrict the seizure (Section 47 and Section 48 (2)),
j) seized assets of the accused person (Section 347),
k) decided to impose a disciplinary fine (Section 66 (1)) or
l) decided on destruction of a thing threatening the safety of people or property (Section 81b (1)),

shall be generally decided within five days from expiration of the time limit for filing a complaint for all entitled persons by the court, in jurisdiction of which is operating the public prosecutor, who issued the challenged decision.

(2) A complaint against a decision of the Police authority under Section 66 (1), Section 79a (1) and (3), Section 79b, Section 79c (4), Section 79d (1) and (7), Section 79e (1) and (7) or Section 79f shall be decided within the time limit referred to in sub-section (1) by the court, in whose jurisdiction operates the public prosecutor, who supervises over legality in pre-trial proceedings. The public prosecutor presents the matter for the decision to the court.

Decision of the Superior Authority

Section 147

(1) When deciding on a complaint, the superior authority shall review

a) accuracy of all verdicts of the contested resolution, against which the complainant may lodge a complaint, and
b) proceedings that preceded the contested resolution.

(2) If the complaint concerns just one of several persons or just one of several items that have been decided on by the same resolution, the superior authority shall only examine accuracy of the verdicts regarding such a person or such an item and the proceedings that preceded the reviewed sections of the resolution.

Section 148

(1) The superior authority shall dismiss the complaint if
a) it is not admissible,
b) it was filed late, by an ineligible person, by a person who had explicitly waived it, or by a person who re-submitted a complaint that he had previously explicitly revoked, or
c) it is not justified.

(2) A complaint which an eligible person filed late only because he followed wrong instructions, which were served to him along with announcement of the resolution, cannot be dismissed as delayed.

Section 149

(1) If the superior authority does not dismiss the complaint, it shall repeal the contested resolution, and if a new decision is necessary according to the nature of the matter, it shall
a) decide the matter itself, or
b) order the authority, against whose decision the complaint is filed, to hold new proceedings in the matter and make a new decision.

(2) The court deciding on a complaint against a resolution on termination of criminal prosecution may also, if it is necessary for an appropriate clarification of the matter, return the case to the public prosecutor for further investigation, when repealing the contested decision, even if the criminal prosecution was terminated after the trial has been ordered (Section 223 and 231). The provision of Section 191 also applies here.

(3) If the contested resolution is defective only in part and can be separated from the rest, or if the complaint concerns only a section of the resolution (Section 147 (2)), the superior authority shall limit its decision in accordance with sub-section (1) only to that section.

(4) If the fault consists in the fact that the contested resolution is missing a verdict or is incomplete, then the superior authority may, without pronouncing repeal of the contested resolution, either complete it itself or order the authority, against whose decision the complaint is lodged, to decide on the missing verdict or to complement the incomplete verdict.

(5) The court deciding on a complaint may, if it deems it necessary, order that the matter is heard in the first instance again and that it is decided on in a different composition of the court panel or by another court of the same type and degree in its jurisdiction.

(6) The authority to which a case was returned for a new consideration and decision is, during the new decision-making, bound by the legal opinion pronounced in the matter by the superior authority, and is obliged to take steps ordered by this authority.

Section 150

(1) The authority deciding on a complaint can not change the resolution from its incentive to the detriment of the person, who filed the complaint, or in whose favour the complaint was filed.

(2) If the superior authority changes the resolution in favour of the accused on the grounds that also benefit another co-defendant, it shall also change the resolution in favour of the co-defendant.

(3) The provisions of sub-section (1) shall apply accordingly also to the authority, to which was the matter ordered for new consideration and decision.

CHAPTER EIGHT

Costs of Criminal Proceedings

Section 151 Costs of Criminal Proceedings Borne by the State

(1) The costs necessary to conduct criminal proceedings, including enforcement proceedings, shall be borne by the State; however, it does not cover the costs of the accused, aggrieved person, and the parties concerned, or costs incurred choosing a defence counsel or agent. However, the State bears the costs of necessary defence that incurred to the accused person due to lodging a complaint for the breach of law.

(2) The defence counsel that was appointed to the accused person is entitled to remuneration and reimbursement of cash expenses from the State under a special regulation[5]. The claim must be filed within one year from the day the defence counsel learned that the duty to defend ended, otherwise the claim expires; the claim of the defence counsel, if he is a payer of value added tax, shall be increased by an amount equal to this tax that the defence counsel is required to pay from the remuneration for representation and from the reimbursement of cash expenses under a special legal regulation[6]. The provisions of the second sentence shall apply

[5]) Regulation of the Ministry of Justice of the Czech Republic no. 270/1990 Coll., on remuneration of advocates and commercial lawyers for providing legal assistance, as amended.
[6]) Act no. 235/2004 Coll., on value added tax.

even if the defence counsel is a partner in a legal entity established under special legal regulations regulating the practice of advocacy [7] and the tax payer is this legal entity.

(3) The amount of remuneration and reimbursement of cash expenses shall be decided upon a motion of the defence counsel by the authority involved in criminal proceedings that led the proceedings at the time when the obligation of the defence counsel to defend ended, without undue delay, at the latest within two months from lodging the motion. In trial proceedings, the presiding judge of the senate of the court of the first instance shall make the decision. Upon a petition of the defence counsel the authority involved in criminal proceedings may take measures to ensure that the defence counsel is given a reasonable advance payment for remuneration and reimbursement of cash expenses before the end of the criminal prosecution, if it is justified by the duration of the criminal prosecution or by other serious reasons.

(4) A complaint is admissible against the decision under sub-section (3), which has a dilatory effect.

(5) The remuneration and reimbursement of the cash expenses must be paid without undue delay after they were granted. at the latest within 30 days.

(6) Provisions of sub-section (2) through (5) shall be applied accordingly in decision-making on the amount of remuneration and reimbursement of the cash expenses of a defence counsel chosen by the accused, who has the right to a defence counsel free of charge or a defence counsel at reduced fee and to the appointed agent of the aggrieved person.

Section 151a

(1) The accused person, who is entitled to a defence counsel free of charge or at a reduced fee, and the aggrieved person, who is entitled to appointment of an agent, may request that the presiding judge and in pre-trial proceedings the public prosecutor decide that the State shall bear the cost of an expert opinion, which the accused or aggrieved person requested. The request cannot be granted, if such evidence is obviously not necessary to clarify the matter or the same action to establish the same fact has already been requested by an authority involved in criminal proceedings.

(2) A complaint is admissible against the decision according to sub-section (1).

Obligation to Reimburse the Costs of Criminal Proceedings

Section 152

(1) If the defendant was finally and effectively found guilty, he is obliged to reimburse the State for

[7]) Section 11 (1) and 15 of the Act no. 85/1996 Coll., on advocacy, as amended.

a) the costs associated with execution of custody,
b) remuneration and cash expenses of the appointed defence counsel paid by the State, provided that he is not entitled to the defence counsel free of charge,
c) the costs associated with use of an electronic control system in the event of conditional release from serving a sentence of imprisonment,
d) the costs associated with serving a sentence of imprisonment and execution of a sentence of house confinement, and
e) a flat amount of other expenses borne by the State.

(2) The daily rate appertaining to the costs associated with execution of custody, costs associated with the use of an electronic control system in the event of conditional release from serving a prison sentence and the costs associated with execution of a sentence of house confinement and the manner of payment of such costs shall be determined by the Ministry of Justice by a generally binding legal regulation.

(3) The flat rate referred to in sub-section (1) e) shall be determined by the Ministry of Justice by generally binding legal regulation.

(4) Payment of costs associated with serving a prison sentence shall be governed by the Act on execution of a sentence of imprisonment.

Section 152a

The procedure of administration of receivables referred to in sub-section (1) e) shall be governed by the Tax Procedure Code.

Section 153

(1) Whoever submitted an entirely futile extraordinary appeal or a petition for a new trial shall be obligated to reimburse the State for all costs incurred by proceedings on such a petition by a flat rate determined by the Ministry of Justice by a generally binding legal regulation. Furthermore, he shall be obligated to compensate the State for remuneration and cash expenses of a defence counsel, if one was appointed in connection to the petition, unless the accused person is entitled to defence free of charge or to defence at a reduced fee.

(2) The obligation for reimbursement according to sub-section (1) does not apply to the public prosecutor and to the authority responsible for the care of juveniles.

Section 154 Obligation to Reimburse Costs of the Aggrieved Person

(1) If the victim was granted their claim for damages or non-material damages in monetary terms or for the surrender of unjust enrichment at least in part, the convict upon whom was imposed the obligation to pay the damages or non-material damages in monetary terms or the surrender of any unjust enrichment is also obligated to reimburse the victim those costs

necessary for the purposeful enforcement of such claim in the criminal proceedings, including costs incurred by taking on an agent.

(2) The court may, depending on the nature and circumstances of the case, decide upon a motion of the aggrieved person that the convicted person is ordered to pay the costs of the aggrieved person, either in whole or in part, related to his participation in the criminal proceedings, even if the claim of the aggrieved person for monetary compensation of damage or non-material harm or for surrender of any unjust enrichment was not granted even in part.

Deciding on the Obligation to Reimburse the Costs of Criminal Proceedings and Amount Thereof

Section 155

(1) The obligation of the convicted person to reimburse the costs associated with execution of the custody and the obligation to reimburse the remuneration and cash expenses paid by the State to the appointed defence counsel (Section 152 (1) a), b)) shall be decided on by the presiding judge of the senate of the court of the first instance after the full force and effect of the judgment.

(2) The obligation of the convicted person to reimburse the costs associated with execution of a sentence of house confinement shall be decided after execution of the punishment or its part by the presiding judge of the senate of the court of the first instance.

(3) The obligation of a convicted person conditionally released from serving a sentence of imprisonment to reimburse the costs associated with use of an electronic control system shall be decided by the presiding judge of the senate of the court, which released the convicted person from serving the sentence of imprisonment. Therein, special legal regulations governing the reimbursement of costs associated with execution of a sentence of house confinement and the manner of reimbursement shall apply accordingly.

(4) The obligation of the convicted person to reimburse the costs of the aggrieved person needed for asserting his claim for compensation of damage or non-material harm or for surrender of any unjust enrichment in criminal proceedings or other costs associated with participation of the aggrieved person in criminal proceedings and the amount thereof shall be decided by the presiding judge of the senate of the court of the first instance after the full force and effect of the judgment upon a petition of the aggrieved person; the claim must be asserted within one year after the full force and effect of the condemning judgment, otherwise it expires.

(5) The obligation of the convicted person to reimburse the costs incurred to the State by appointing an agent for the aggrieved person and the amount thereof shall be decided by the presiding judge of the senate of the court of the first instance after the full force and effect of the final judgment even without a petition.

(6) A complaint is admissible against the decision according to sub-sections (1) through (5), which has a dilatory effect.

Section 156

If the costs determined by a flat amount (Section 152 (1) e), Section 153 (1)) have not been paid by government duty stamps, the presiding judge of the senate of the court of the first instance shall decide on the obligation for their reimbursement after the full force and effect of the judgment.

PART TWO

Pre-trial Proceedings

Section 157 General Provisions

(1) The public prosecutor and the Police authority are obliged to manage their activities so as to effectively contribute to the timeliness and reasonability of the criminal prosecution.

(2) The public prosecutor may order the Police authority to perform such actions that this authority is authorised to perform and that are necessary to clarify the matter or to identify the offender. In order to examine the facts indicating that a criminal offence has been committed, the public prosecutor is also entitled to:

a) request files from the Police authority, including files, in the matter of which no criminal proceedings were initiated, documents, materials and reports on the procedure on examination of criminal complaints,
b) remove any case from the Police authority and take measures to ensure that the case is assigned to another Police authority,
c) temporarily adjourn initiation of criminal prosecution.

(3) In serious and factually complex matters, the public prosecutor or the Police authority may use the professional assistance of a consultant, who has knowledge in a special field. The nomination for selection of a certain person as a consultant may also be requested from an administrative office, another authority, or a scientific or research institution. The public prosecutor or the Police authority shall write an official record on the admission of a consultant. The consultant may, with the consent of the public prosecutor or the Police authority and within the extent necessary for performance of his duties, examine the files and be present during execution of actions in criminal proceedings. However, he may not interfere with execution of the actions. The consultant is required to keep all the facts they learned during the criminal proceedings confidential. Exclusion of the consultant shall be governed by special regulations on experts and interpreters. Participation of a consultant does not relieve the public prosecutor and Police authority of the responsibility for the lawful conduct of criminal proceedings.

Section 157a Request for Review of Procedure of Police Authority and Public Prosecutor

(1) The person, against whom are conducted criminal proceedings, and the aggrieved person have the right to ask the public prosecutor to eliminate delays in the proceedings or any defects in the procedure of the Police authority at any time during the pre-trial proceedings. This request is not bound by a time limit. The request must be submitted to the public prosecutor immediately and the public prosecutor must handle it immediately. The applicant must be notified of the outcome of the review.

(2) The request for eliminating delays in the proceedings or any defects in procedure of the public prosecutor shall be handled by a public prosecutor of the immediately superior public prosecutor's office.

CHAPTER NINE

Procedure Prior to Initiation of Criminal Prosecution

Section 158

(1) The Police authority is obliged, based on their own findings, criminal reports, and incentives from other persons and authorities, which may lead to conclusions on a suspicion that a criminal offence has been committed, to make all necessary investigations and take measures to reveal the facts indicating that a criminal offence has been committed and aimed towards identifying the offender; they are obligated to take the necessary measures for prevention of criminal activity. The appointed authorities of the Prison Service of the Czech Republic shall inform the General Inspection of Security Forces without undue delay after they initiate such investigation.

(2) The public prosecutor and the Police authority are obliged to accept reports of facts suggesting that a criminal offence has been committed. At the same time, they are obligated to instruct the reporting person about the liability for knowingly false statements, and if the reporting person requests it, to inform him within one month from the notification about the measures taken.

(3) The Police authority shall draw up a record about initiation of acts of criminal proceedings for clarification and verification of the facts reasonably implying that a criminal offence has been committed, which shall state the matters of facts, for which the proceedings is being initiated, and the manner of their discovery. They shall send a copy of the record to the public prosecutor within 48 hours after the initiation of criminal proceedings. If there is a danger of delay, the Police authority shall make the record after making the necessary urgent and unrepeatable actions. The Police authority shall gather the necessary evidence and necessary explanations, and secure traces of the criminal offence to clarify and verify the matters of

facts reasonably implying that a criminal offence has been committed. Within this scope, they are entitled, besides the actions referred to in this Chapter, to

a) require an explanation from natural persons and legal entities and public authorities,
b) require professional statements from the competent authorities and, if it is necessary for the assessment of the matter, also expert opinions,
c) secure the necessary documents, in particular files and other written materials,
d) conduct examinations of items and the crime scene,
e) require, under the conditions provided for in Section 114, undertaking a blood test or other similar actions, including collection of the required biological material,
f) make audio and video records of persons, under the conditions provided in Section 114 take fingerprints, perform corporal examinations and take external measurements by a physician or a member of the same sex, if it is necessary to identify a person or to identify and capture traces or consequences of an act,
g) detain the suspect under the conditions provided for in Section 76,
h) make decisions and take actions outlined in these provisions under the conditions provided for in Section 78 through 81,
i) perform urgent or non-repeatable actions in the manner referred to in Chapter IV, if its performance does not lie within the exclusive competence of another authority involved in criminal proceedings according to this Code.

(4) Individual acts of criminal proceedings aimed at clarifying and verifying matters of facts that reasonably indicate that a criminal offence has been committed may also be carried out by other police authorities upon a request.

(5) Everyone has the right to legal assistance of an attorney when providing an explanation. If an explanation is required from a minor, it is necessary to notify their statutory representative thereof in advance; this does not apply, if performance of the act cannot be deferred and notification of a statutory representative cannot be secured.

(6) An official record shall be made of the contents of the explanations that are not of urgent or non-repeatable nature. The official record serves the public prosecutor and the accused person for consideration of a petition, that the person who filed the explanation should be heard as a witness, and it serves the court for deliberation whether such a piece of evidence will be produced. The official record may be used in trial proceedings as evidence only under the conditions prescribed by this Code. If the person who submitted an explanation is subsequently heard as a witness or the accused, the record cannot be read or its contents revealed to them in any way.

(7) The Police authority is entitled to summon a person to appear to give an explanation within the stated time and at the designated place; in proceedings on a felony, the person is obliged to comply with the summons immediately. If a person, who was duly summoned to give an explanation, does not appear without a sufficient excuse, they may be compelled to appear. Such a person must be instructed thereof and other of consequences of failing to appear (Section 66).

(8) An explanation pursuant to sub-section (3) cannot be requested from persons, who would violate an obligation of silence, explicitly imposed or recognised by the State, unless they were relieved of this obligation by the competent authority or the person, for whose benefit was this obligation imposed. A person giving an explanation, with the exception of a suspect, is obliged to tell the truth and not withhold anything; an explanation may be refused if it would cause a danger of criminal prosecution to the person himself or to persons referred to in Section 100 (2); the person, from whom is the explanation required, must be instructed thereof in advance. If the ascertained circumstances imply that the person giving the explanation will require witness protection, it is necessary to proceed according to Section 55 (2) when making the official record.

(9) If a testimony of a person is of urgent or non-repeatable nature, the Police authority shall question him as a witness under the conditions provided in Section 158a. They shall also question a person under fifteen years of age as a witness, whose ability to properly and fully perceive, remember or reproduce is in doubt with regard to his psychological state. If it can be expected that further examination of a criminal report or another incentive for criminal prosecution will take a longer time, especially because the person, concerning who it has been sufficiently established that he committed the criminal offence, has not been identified and therefore the criminal prosecution cannot be initiated and there is a danger of loss of probative value of the testimony, it is possible to question as a witness even a person, whose testimony is reasonably assumed to be crucial for initiation of the criminal prosecution, if the ascertained matters of facts indicate that such a person could be subject to coercion due to his testimony, or if there is a risk that his testimony could be affected for other reasons. If the interrogation of such persons was not conducted again pursuant to Section 164 (4) after the initiation of criminal prosecution, the protocols of their interrogation may be read and the audio or visual records made on their questioning conducted by the means of a video-conference device may be played in the trial only in accordance with Section 211 (1), (2) a), (3) b) and c); otherwise only protocols of their questionings may be presented according to Section 212.

(10) Those who appear upon the summons to give an explanation are entitled to reimbursement of the necessary costs under a special legal regulation regulating the reimbursement of travel costs and proven loss of income under the same conditions as a witness. Those who were summoned for their illegal conduct do not have such rights.

(11) If the measures or actions under the previous sub-sections are performed by a Police authority other than the department of the Police of the Czech Republic, they shall immediately notify the department of the Police of the Czech Republic that would otherwise be competent in the matter about the subject of the investigation. If a dispute for jurisdiction arises between the department of the Police of the Czech Republic and another Police authority, the matter shall be submitted to the public prosecutor for assessment. The opinion of the public prosecutor is binding.

(12) If the verification of facts indicating that a criminal offence has been committed reveals that the authority competent to conduct the proceedings is the General Inspection of Security Forces, the Police authority shall notify it of the subject of the investigation and submit the matter to it without undue delay. Until the time when the General Inspection of Security Forces takes over the matter, the Police authority is entitled to carry out only urgent and non-repeatable acts. In the event of a dispute over competence between the Police authority and the General Inspection of Security Forces, the Police authority shall submit the matter to the competent public prosecutor for assessment. The opinion of the public prosecutor is binding. Sub-section (1)1 shall not apply.

Section 158a

If it is necessary to perform an urgent or non-repeatable action that involves questioning a witness or identification by recognition in the course of verification of the facts indicating that a criminal offence has been committed and identification of the offender, such an action shall be performed upon a motion of the public prosecutor in the presence of a judge; in such a case, the judge is responsible for the legality of execution of the action and for that purpose they may interfere with the action. However, the judge does not have the right to review the conclusion of the public prosecutor that the action is urgent or non-repeatable according to the law.

Operative-Search Means and Conditions of their Use

Section 158b

(1) Unless further stipulated otherwise, the Police authority, provided they were authorised by a competent Minister, or in the case of a department of the Police of the Czech Republic, the Police President, or in the case of the General Inspection of Security Forces, its director, or in the case of a department of Military Intelligence, its director, or in the case of a department of the Security Information Service, its director, or in the case of a department of the Office of Foreign Relations and Information, its director, shall be entitled to use operative-search means in proceedings on an intentional criminal offence, which shall be understood as

a) simulated transfer,
b) surveillance of persons and items,
c) use of an agent.

(2) Operative-search means shall not be used for any other purpose than for acquiring matters substantial for criminal proceedings. These means may be used only when the purpose in view may not be reached in other ways or if its reaching would otherwise be considerably more complicated. Rights and liberties of persons may be restricted only in an absolutely necessary extent.

(3) Audio, visual and other records acquired by using operative search means pursuant to provisions o this Code may be used as evidence.

Section 158c Simulated Transfer

(1) A simulated transfer shall be understood as simulation of purchase or other means of transferring the object of consideration, including transfer of an item

a) for possession of which is required a special permit,
b) possession of which is inadmissible,
c) derived from a criminal activity, or
d) intended for commission of a criminal offence.

(2) A simulated transfer may be performed only on the basis of a written authorization of the public prosecutor.

(3) If the matter is urgent, the simulated transfer may be performed even without an authorization. However, the Police authority is obliged to immediately request a post facto authorization, and if not granted within 48 hours, the Police authority is obliged to terminate execution of the simulated transfer and not to use information so acquired in any way.

(4) The Police authority shall draw up a record on the simulated transfer and deliver it to the public prosecutor within 48 hours.

Section 158d Surveillance of Persons and Items

(1) Surveillance of persons and items (hereinafter referred to as "surveillance") shall be understood as acquiring knowledge on persons and items conducted in a classified manner by technical or other means. If a Police authority ascertains that the accused person is communicating with his defence counsel, it is obliged to destroy the record containing this communication and not to use facts learned in this connection in any way.

(2) Surveillance, during which shall any audio, visual or other records be made, may be performed solely on the basis of a written authorization of a public prosecutor.

(3) If the surveillance should interfere with inviolability of residence, inviolability of letters or if it should investigate the contents of other documents and records kept in privacy by use of technical means, it can be performed solely on the basis of a prior authorization of a judge. When entering residences, only steps related to placement of technical devices may be made.

(4) Authorization according sub-sections (2) and (3) may be issued only upon a written request. The request must be reasoned by a suspicion of a specific criminal activity and if known, also by data on persons or items that are to be monitored. The authorization shall state a time limit, for which shall the surveillance be conducted and that cannot exceed six months. The authority that authorized the surveillance may prolong the time limit by a written order issued on the basis of a new written request, always for a time limit not exceeding six months.

(5) If the matter cannot be delayed and if cases referred to in sub-section (3) are not concerned, the surveillance may be initiated even without an authorization. However, the Police authority is obliged to immediately request the authorization, and if it is not granted within 48 hours, it is obliged to terminate the surveillance, destroy any eventual records and not to use information so ascertained in any way.

(6) Without fulfilling the conditions according to sub-sections (2) and (3) may the surveillance be conducted if the person, whose rights and liberties are to be interfered with, grants his explicit consent therewith. If this consent is post facto withdrawn, the surveillance shall be immediately terminated.

(7) If a record made in the course of surveillance should be used as evidence, it shall be accompanied by a protocol with requirements referred to in Sections 55 and 55a.

(8) If no matters of fact substantial for criminal proceedings are ascertained during the surveillance, it is necessary to destroy records thereof in a prescribed way.

(9) Telecommunication operators, whose employees and other persons participant in operating telecommunication services, as well as postal service or a person conducting transportation of consignments are obliged to cooperate in a necessary extent with the Police authority conducting the surveillance, according to its instructions and free of charge. Therein they cannot invoke their obligation of silence provided for by special laws.

(10) In another criminal case than the case in which a surveillance was authorized under conditions referred to in sub-section (2), may the records made in course of the surveillance and attached protocol be used as evidence only if a proceeding for intentional criminal activity is conducted in this case or if the person, whose rights and liberties were interfered with, consents with it.

Section 158e Use of Agent

(1) If criminal proceedings are conducted for a crime, for which the law prescribes a sentence of imprisonment with the upper limit of at least eight years, for a criminal offence committed for the benefit of an organized criminal group, for a criminal offence of Machinations in insolvency proceedings according to Section 226 of the Criminal Code, Breach of regulations on rules of economic competition according to Section 248 (1) e) and (2) to (4) of the Criminal Code, Arranging advantage in commission of public contract, public contest and public auction according to Section 256 of the Criminal Code, Machinations in commission of public contract and public contest according to Section 257 of the Criminal Code, Machinations in public auction according to Section 258 of the Criminal Code, Abuse of competence of a public official according to Section 329 of the Criminal Code, Corruption (Section 331 of the Criminal Code), Bribery (Section 332 of the Criminal Code), Indirect bribery (Section 333 of the Criminal Code) or for another intentional criminal offence, to prosecution of which is the Czech Republic bound by a promulgated international treaty

binding the Czech Republic, the Police authority is entitled, provided that it is a unit of the Police of the Czech Republic, to use an agent.

(2) An agent is a member of the Police of the Czech Republic fulfilling tasks assigned to him by a directive police body, who is in principle presenting himself with concealing the true purpose of his activity. If it is necessary for using an agent, for his preparation or protection, in respect of concealing his identity, it is possible to

a) create a legend of a personal existence of another person and implement personal data deriving from this legend to information systems operated according to special laws,
b) conduct economical activities for which is required a special permit, license or registration,
c) conceal his membership in the Police of the Czech Republic.

(3) Authorities of the public administration are obliged to immediately provide the Police of the Czech Republic with their full cooperation in performing tasks referred to in sub-section (2).

(4) Use of an agent is authorized, upon a motion of the High Public Prosecutor's Office, by the High Court, in whose jurisdiction is operating the public prosecutor, who submitted the motion. The authorization shall state the purpose and time of using the agent and data enabling identification of the agent. The time limit of the authorization may be prolonged, even repeatedly, on the basis of a new motion that contains evaluation of previous activities of the agent.

(5) An agent shall not require additional authorization for surveillance of persons and items within the scope of Section 158c and for performing a simulated transfer according to Section 158c.

(6) An agent is obliged to use such means in the scope of his activities that are capable of fulfilling his service task and that do not harm other persons in their rights more than absolutely necessary. The agent is free of other duties according to a special law regulating the position of members of the Police of the Czech Republic.

(7) The public prosecutor is obliged to request the competent Police authority for data necessary for establishing whether the reasons for using the agent still persist and whether is his activity in conformity with the law. He is obliged to periodically, at least once in every three months, review these data and if the reasons for using the agent cease to exist, he shall order the Police authority to immediately terminate activities of the agent. The Police authority is obliged to submit a record of the outcomes of using the agent to the public prosecutor.

(8) An agent may fulfil his tasks also in the territory of another State. His sending to abroad shall be decided by the Police president after a prior consent of the competent authorities of the State, in territory of which shall the agent be active, and on the basis of an authorization of

the judge referred to in sub-section (4), unless a promulgated international treaty binding the Czech Republic provides otherwise; in other cases, provisions of sub-sections (1) to (7) shall apply.

Section 158f

Should any reason for using the operative search measures arise after initiation of criminal proceedings, Sections 158b to 158e shall apply; after lodging an indictment shall their implementation be decided by a presiding judge of the court of first instance even without a motion of a public prosecutor.

Termination of Verification

Section 159

(1) The Police authority is required to review the facts suggesting that a criminal offence has been committed,

a) within two months after accepting it, if it is a matter belonging within the jurisdiction of a single judge, in which shall not be conducted a summary pre-trial proceedings,
b) within three months, if it is a different matter belonging within the jurisdiction of the District Court, and
c) within six months, if it is a matter belonging within the jurisdiction of a Regional Court in the first instance.

(2) If no reports or other instigations were verified within the time limits referred to in sub-section (1), the Police authority shall explain to the public prosecutor in writing the reasons, why it was not possible to complete the verification within the statutory time limits, what actions are still needed to be performed, and how long the verification will continue. The public prosecutor can instruct the Police authority to either change the list of actions yet to be performed, or to set a different time limit, during which the verification may continue.

(3) If the Police authority does not complete the verification within the extended time limit referred to in sub-section (2), they shall submit a file with a justified petition for its extension to the public prosecutor. The public prosecutor shall act accordingly as in the case referred to in sub-section (2).

Section 159a Adjournment or Different Execution of Matters

(1) Unless the matter concerns suspicion from a criminal offence, the public prosecutor or the Police authority shall adjourn the matter by a resolution, provided that it is not appropriate to deal with the matter otherwise. Such an execution may be especially

a) to submit the matter to the competent authority to hear it as a transgression case or another administrative offence, or
b) to submit the matter to another authority for a disciplinary hearing.

(2) The public prosecutor or the Police authority may adjourn the matter by a resolution before the initiation of criminal prosecution, if the criminal prosecution is inadmissible according to Section 11 (1).

(3) The public prosecutor or the Police authority may adjourn the matter by a resolution before the initiation of criminal prosecution, if the criminal prosecution would be inefficient with regard to circumstances referred to in Section 172 (2) a) or b).

(4) The public prosecutor may adjourn the matter, if the results of the verification show that the circumstances referred to in Section 172 (2) c) occurred.

(5) The public prosecutor or the Police authority shall also adjourn the matter, if they failed to establish the facts justifying the initiation of criminal prosecution (Section 160). If the grounds for the adjournment vanish, the criminal prosecution will be initiated.

(6) The resolution to adjourn the matter must be served to the aggrieved person, if he is known. The resolution to adjourn the matter referred to in sub-section (1) through (5) must be served to the public prosecutor within 48 hours. The reporting person must be notified about adjourning the matter according to Section 158 (2), if he has requested it.

(7) The aggrieved person referred to in sub-section (6) may lodge a complaint against the resolution to adjourn the matter, which has a dilatory effect.

Section 159b Temporary Adjournment of Criminal Prosecution

(1) If it is necessary to clarify criminal activity committed for the benefit of an organised criminal group, or other intentional criminal offence, or to identify the offenders, the Police authority may, with the consent of the public prosecutor, temporarily adjourn the initiation of criminal prosecution for the necessary time, but not longer than for two months.

(2) If the reasons for which criminal prosecution was temporarily adjourned remain, the public prosecutor may, upon a petition of the Police authority, give his consent to extend the period referred to in sub-section (1) for up to two months, even repeatedly.

(3) The Police authority shall write a record of the temporary adjournment of criminal prosecution, a copy of which shall be sent to the public prosecutor within 48 hours.

(4) If the reasons for the temporary adjournment of criminal prosecution expire, the Police authority shall initiate the criminal prosecution immediately.

CHAPTER TEN

Initiation of Criminal Prosecution, Further Procedure and Summary Pre-trial Proceedings

SUBDIVISION ONE
Initiation of Criminal Prosecution

Section 160

(1) If the matters of facts ascertained and justified in the course of verification according to Section 158 indicate that a criminal offence was committed, and if the conclusion that it was committed by a certain person is sufficiently substantiated, then the Police authority shall immediately decide to initiate the criminal prosecution of this person as the accused, unless there is reason to proceed pursuant to Section 159a (2) and (3), or Section 159b (1). The verdict of the resolution on the initiation of criminal prosecution must contain a description of the act, which the person is accused of, so it could not be confused with another, and the statutory designation of the criminal offence seen in this act; in the resolution on initiation of criminal prosecution, the accused person must be identified by the same information, which must be contained in a judgment about an accused person (Section 120 (2)). In the justification of the resolution, it is important to precisely indicate the matters of fact that give reasons for the conclusion on reasonability of the criminal prosecution.

(2) A copy of the resolution on initiation of criminal prosecution shall be served to the accused person no later than at the beginning of the first questioning, and within 48 hours to the public prosecutor and the defence counsel; in case of the defence counsel, the time limit for serving shall begin on the day of their election or appointment. A copy of the resolution on initiation of criminal prosecution of an attorney must be served to the Minister of Justice and President of the Chamber without undue delay. A copy of the resolution on initiation of criminal prosecution of a member of the Police of the Czech Republic, a member of the Prison Service of the Czech Republic or a customs officer or an employee of the Czech Republic assigned to work in the Police of the Czech Republic, in the Prison Service of the Czech Republic or in the Customs Administration of the Czech Republic shall also be served by the General Inspection of Security Forces to the director of the respective security force.

(3) The Police authority shall perform the necessary urgent or non-repeatable actions and initiate the criminal prosecution, if it cannot be achieved that these actions were conducted by the competent authority, and no later than within three days from execution of these actions shall submit this matter to such an authority, which shall continue in the proceedings.

(4) An urgent action is an act, which cannot be delayed to a time when the criminal prosecution is initiated, due to a danger of obstructions or destruction or loss of evidence, in respect of the purpose of criminal proceedings. A non-repeatable action is an act that cannot be repeated before the court. The protocol on execution of urgent or non-repeatable actions must always state on the basis of what matters of facts was the action considered urgent or non-repeatable.

(5) If it is revealed during an investigation that the accused person has committed another act that is not listed in the resolution on initiation of criminal prosecution, in respect of such an act shall proceed in a manner referred to in sub-section (1) and (2).

(6) If it is revealed during an investigation that the act, for which the criminal prosecution was initiated, constitutes a criminal offence other than it was at first assessed in the resolution on initiation of criminal prosecution, the Police authority shall notify the accused person thereof and make a record into the protocol.

(7) A complaint against is admissible a resolution to initiate a criminal prosecution.

SUBDIVISION TWO
Investigation

Section 161 Investigative Authorities

(1) The investigation indicates a stage of the criminal prosecution prior to lodging an indictment, a petition for approving an agreement on the guilt and punishment, transferring the case to another authority, or termination of the criminal prosecution, including the approval of settlement and conditional suspension of the criminal prosecution prior to lodging an indictment, a petition for approving an agreement on the guilt and punishment.

(2) Unless the law provides otherwise, the investigation shall be performed by departments of the Police of the Czech Republic.

(3) Investigation regarding criminal offences committed by members of the Police of the Czech Republic, members of the Prison Service of the Czech Republic, customs officers or employees of the Czech Republic assigned to work in the Police of the Czech Republic, or regarding criminal offences committed by employees of the Czech Republic assigned to work in the Prison Service of the Czech Republic or in the Customs Administration of the Czech Republic, which were committed in connection to fulfilment of their duties, shall be carried out by the General Inspection of Security Forces.

(4) Investigation regarding criminal offences committed by members of the General Inspection of Security Forces, members of the Security Information Service, members of the Office for Foreign Relations and Information, members of Military Intelligence or members of the Military Police, and investigation regarding the criminal offences of employees of the Czech Republic assigned to work in the General Inspection of Security Forces, shall be carried out by the public prosecutor; therein the public prosecutor shall proceed accordingly pursuant to the provisions regulating the procedure of a Police authority carrying out an investigation. The provisions on consent of the public prosecutor required for the Police authority to in order to carry out an act shall not apply. In the course of an investigation regarding criminal offences committed by members of the General Inspection of Security

Forces, members of the Security Information Service, members of the Office for Foreign Relations and Information, members of Military Intelligence or members of the Military Police, or an investigation regarding the criminal offences of employees of the Czech Republic assigned to work in the General Inspection of Security Forces, the public prosecutor may request the authorities referred to in Section 12 (2), to provide individual pieces of evidence or to perform individual tasks of the investigation, to assist in obtaining evidence or in the performance of the investigation, to present a person or, under the conditions under Section 62 (1), or to serve documentation, within the scope of their activities. Such an authority is required to promptly comply with the request of the public prosecutor.

(5) While complying with the conditions of Section 20 (1)

a) the General Inspection of Security Forces shall conduct an investigation under sub-section (3) also against those co-defendants, who are not members of the Police of the Czech Republic, members of the Prison Service of the Czech Republic or customs officers or employees of the Czech Republic assigned to work in the Police of the Czech Republic, in the Prison Service of the Czech Republic or in the Customs Administration of the Czech Republic,
b) the public prosecutor shall conduct an investigation pursuant to sub-section 4 also against those co-defendants, who are not members of the General Inspection of Security Forces, members of the Security Information Service, members of the Office for Foreign Relations and Information or members of Military Intelligence or members of the Military Police or employees of the Czech Republic assigned to work in the General Inspection of Security Forces.

This does not affect the provision of Section 23.

(6) The investigation may also be conducted by a captain of a ship on long-distance voyages on criminal offences committed onboard the ship; they proceed accordingly pursuant to the provisions governing the procedure of the Police authority conducting an investigation.

(7) The investigation of criminal offences committed by members of the armed forces while carrying out tasks in foreign countries may also be conducted by a delegated body of the Military Police.

(8) Individual investigation tasks may also be conducted by other police authorities on the basis of a request.

Section 162 Referring a Matter to the Police Authority Competent to Conduct Investigation

(1) If a criminal complaint or another instigation of the criminal prosecution was verified by a Police authority other than referred to in Section 161 (2), and the ascertained matters of fact justify the initiation of criminal prosecution, this Police authority shall submit the case to the authority competent to conduct an investigation without undue delay. This does not affect

their obligation based on the request of the investigative authority to obtain individual pieces of evidence or to produce it upon such an instruction.

(2) If the Police authority referred to in Section 161 (2), to which the matter was referred by another authority, does not consider itself competent, it shall immediately submit the files along with their opinion to the public prosecutor; otherwise it shall proceed with the proceedings.

Section 163 Criminal Prosecution with the Consent of the Aggrieved Person

(1) Criminal prosecution for criminal offences of Bodily harm (Section 146 of the Criminal Code), Grievous bodily harm out of negligence (Section 147 of the Criminal Code), Bodily harm through negligence (Section 148 of the Criminal Code), Failure to provide assistance (Section 150 of the Criminal Code), Failure to provide assistance by drivers of motor vehicles (Section 151 of the Criminal Code), Threat of venereal disease (Section 155 of the Criminal Code), Illegal restraint under Section 171 (1) and (2) of the Criminal Code, Extortion under Section 175 (1) of the Criminal Code, Breaking and entering (Section 178 of the Criminal Code), Infringement of rights of another (Section 181 of the Criminal Code), Breach of confidentiality of files and other private documents (Section 183 of the Criminal Code), Sexual duress under Section 186 (1) and (2) of the Criminal Code, Theft (Section 205 of the Criminal Code), Embezzlement (Section 206 of the Criminal Code), Unauthorized use of a thing of another (Section 207 of the Criminal Code), Unauthorised interfering with a right to a house, apartment or non-residential premises (Section 208 of the Criminal Code), Fraud (Section 209 of the Criminal Code), Participation (Section 214 of the Criminal Code), Negligent participation (Section 215 of the Criminal Code), Usury (Section 218 of the Criminal Code), Concealment of things (Section 219 of the Criminal Code), Breach of duty in administration of property of another (Section 220 of the Criminal Code), Negligent breach of duty in administration of property of another (Section 221 of the Criminal Code), Damnification of creditors (Section 222 of the Criminal Code), Damage to a thing of another (Section 228 of the Criminal Code), Dangerous threatening (Section 353 of the Criminal Code) and Dangerous pursuing (Section 354 of the Criminal Code) against a person, who is in such a relation to the aggrieved person, that the aggrieved person has the right to refuse testimony as a witness concerning this person (Section 100 (2)), and the criminal prosecution for the criminal offence of Rape according to Section 185 (1) and (2) of the Criminal Code against any person who is or at the time of the criminal offence was related to the victim as their spouse, unmarried spouse or a partner, as well as for the criminal offence of Insobriety (Section 360 of the Criminal Code), if it otherwise shows the characteristic the merits of any of these criminal offences, criminal prosecution may be initiated or continued only with the consent of the aggrieved person. If there are several aggrieved persons harmed by a single act, the consent of one of them is sufficient.

(2) If the aggrieved person fails to submit their statement to the public prosecutor or the Police authority in writing, it shall be recorded in the protocol. The aggrieved person may withdraw his consent to the criminal prosecution by an explicit statement at any time, until the

appeal court retires for the final deliberation. However, an explicitly denied consent cannot be granted again.

Section 163a

(1) The consent of the aggrieved person to the criminal prosecution for any of the criminal offences referred to in Section 163 (1) is not required, if

a) such an act caused death,
b) the aggrieved person is unable to give his consent due to a mental illness or disorder, for he was mentally incapacitated or due to which was his legal capacity restricted,
c) the aggrieved person is a person under 15 years of age,
d) the circumstances clearly show that the consent was not given or was withdrawn in distress caused by threats, coercion, dependence or subordination.

(2) If the aggrieved person does not immediately respond to a call of the authority involved in criminal proceedings, whether they consent to the criminal prosecution pursuant to Section 163, such an authority shall provide him with a reasonable time limit according to the nature of the matter, but not exceeding 30 days. After vain expiration of this period the consent with the criminal prosecution may not be given. The aggrieved person must be instructed thereof in writing.

Section 164 Investigation Procedure

(1) The Police authority shall proceed with an investigation on its own initiative so that they obtain evidence as soon as possible and to the required extent in order to explain the basic matters of fact relevant to the assessment of the case, including the offender and the consequences of the criminal offence (Section 89 (1)). Therein they shall proceed pursuant to Section 158 (3) and (5); the also perform other tasks pursuant to Chapter Four, with the exception of those that only the public prosecutor or a judge are authorised to perform. They conduct questioning of the witnesses, if it is an urgent or non-repeatable task, or if it concerns ae testimony of a person under fifteen years of age, persons whose ability to properly and fully perceive, remember or reproduce are in doubt with regard to their psychological state, or if the established matters of fact indicate that the witness could have been coerced in connection to his testimony. Otherwise, the aggrieved person and other witnesses are questioned only if there is a danger that their testimony or their ability to remember important facts or the ability to reproduce such facts could be affected due to other reasons, especially when due to the complexity of the case there is a reasonable assumption of a longer duration of the investigation. However, without these conditions there is a possibility to interrogate an expert if necessary.

(2) The Police authority need not repeat actions that were performed before the initiation of the criminal prosecution, if they were conducted in compliance with the provisions of this Act.

(3) The Police authority shall search and, under the specified conditions, also produce evidence notwithstanding whether it testifies for or against the accused person. The accused person must not be compelled to testify or confess in any way. The defence of the accused person and the evidence proposed by him must be carefully examined, unless it is completely meaningless.

(4) In case witnesses were questioned prior to initiation of the criminal prosecution according to Section 158 (9) and such an action can be repeated, the Police authority shall conduct it again upon a petition of the accused person, and the accused person or the defence counsel shall be allowed to take part in such an action, or they shall be instructed on the right to claim a personal interview of such witness in the proceedings before the court.

(5) Except for cases, where pursuant to this Act the consent of the public prosecutor is required, the Police authority shall make all decisions on the investigation procedure and on performing investigative actions independently, and they are fully responsible for their legitimate and due performance.

Section 165 Participation of the Accused and the Defence Counsel in the Investigation

(1) The Police authority may permit the presence of the accused person in investigative actions and allow him to ask questions to the interviewed witnesses. They proceed in such a manner especially if the accused person does not have a defence counsel and if the action consists in questioning a witness, who has the right to refuse to testify.

(2) The defence counsel is entitled to be present during investigative actions from the initiation of the criminal prosecution, the results of which can be used as evidence in trial proceedings, unless the performance of the action cannot be delayed and notification of it provided. The defence counsel may ask questions to the accused person and to other questioned persons, however not before the competent authority concludes the questioning and gives him a permission. He may lodge objections against the manner of performance of the actions at any time during their course. If the defence counsel is present during the questioning of a witness whose identity is kept confidential on the grounds provided for in Section 55 (2), the Police authority is obligated to take measures to prevent the defence counsel from discovering the real identity of the witness.

(3) If the defence counsel notifies the Police authority that he wants to participate in an act of investigation referred to in sub-section (2), or if the action involves questioning a witness who has the right to refuse to testify, the Police authority is obliged to notify the defence counsel about the kind of the action, time, and place of its performance without undue delay, except where the performance of the action cannot be delayed and the notification of the defence counsel cannot be secured. If the action consists in questioning a person, the Police authority shall also convey such information to the defence counsel, according to which the person can be identified. If such information cannot be established in advance, then the notification must clearly indicate the object of the testimony of this person. The notification of questioning a

witness, whose identity is to be kept confidential on to the grounds provided for in Section 55 (2), cannot contain any information allowing to establish the true identity of the witness.

(4) If the Police authority allows the presence of the accused person during an investigative action according to sub-section (1), they shall proceed with his notification pursuant to sub-section (3).

Section 166 Conclusion of Investigation

(1) If the Police authority deems the investigation concluded and its results sufficient for lodging an indictment, they shall allow the accused person and his defence counsel to examine the files and submit petitions for the supplementation of the investigation within a reasonable time. They shall instruct the accused person and his defence counsel about this possibility at least three days in advance. This period may be reduced with the consent of the accused person and the defence counsel. If the Police authority does not consider the petitioned supplementation necessary, they shall reject it. The Police authority shall make a record of these actions into the file and notify the accused person or his defence counsel about the refusal of the petitions for supplementation of the investigation.

(2) If the accused person or his defence counsel do not use the opportunity to examine the files, even though they were duly notified, the Police authority shall make a record thereof into the file and proceed as if the action occurred.

(3) After the conclusion of the investigation, the Police authority shall submit the file to the public prosecutor with a motion for an indictment, along with a list of proposed evidence and a justification, why they did not grant the petitions for the producing additional evidence, or they shall make a motion for a decision according to Section 171 through 173, and under Section 307 or Section 309.

Section 167

(1) The Police authority is obliged to conclude the investigation no later than

a) within two months after the initiation of the criminal prosecution, if it is a matter falling within the jurisdiction of a single judge,
b) within three months after the initiation of the criminal prosecution, if it is another matter falling within the jurisdiction of a District Court.

(2) If the investigation is not concluded within the periods referred to in sub-section (1), the Police authority shall submit a written justification to the public prosecutor on why it was not possible to conclude the investigation within the statutory time limit, what further actions are necessary to be performed, and how much longer will the investigation continue. The public prosecutor may change the list of actions that are yet to be performed or set out a different time limit, for which the investigation shall continue.

(3) In cases in which the investigation was not concluded within the time limit established pursuant to sub-section (1), the public prosecutor is obliged, within his duty of supervision, to review the case at least once a month and if necessary, order the Police authority to perform specific tasks. The public prosecutor shall write a record of the review.

SUBDIVISION THREE
Special Provisions Concerning the Investigation of Certain Criminal Offences

Section 168

(1) The provisions of this Subdivision shall be applied on investigations of criminal offences, where the District Court conducts the criminal proceeding in the first instance.

(2) If this Subdivision does not contain special provisions, the investigation shall proceed in accordance with Subdivision One and Two of this Chapter.

Section 169

(1) The police shall produce evidence to the extent necessary for lodging an indictment or for rendering another decision of the public prosecutor; therein they are not bound by the conditions of Section 164 (1), under which may be conducted questioning of witnesses.

(2) For determination of the extent of the produced evidence is decisive the legal classification of the act, for which the accused person is prosecuted at the time of producing the evidence. If the accused is notified during the investigation that the act, for which the criminal prosecution is being conducted, shall be henceforth assessed as another criminal offence other than is referred to in Section 168 (1), then the investigation shall continue pursuant to Subdivision Two of this Chapter. Evidence previously produced pursuant to sub-section (1) shall remain a part of the evidence obtained during the course of the investigation; in assessment of whether it was performed in accordance with the law, the conditions under which witnesses may be interrogated pursuant to Section 164 (1) shall be disregarded.

Section 170

(1) The Police authority is obliged to conclude the investigation no later than six months after the initiation of criminal prosecution.

(2) If the investigation is not concluded within the period set out in sub-section (1), the Police authority and the public prosecutor shall proceed pursuant to Section 167 (2) and (3).

SUBDIVISION FOUR
Decision in Pre-trial Proceedings

Section 171 Transferring a Case to another Authority

(1) The public prosecutor shall transfer a case to another authority, if the results of the pre-trial proceedings show that there is no criminal offence, but that it is an act which might be considered by another competent authority as a transgression, another administrative offence, or a disciplinary offence.

(2) The accused person and, the aggrieved person, if he is known, may file a complaint against the resolution according to sub-section (1), which has a dilatory effect.

Section 172 Discontinuation of Criminal Prosecution

(1) The public prosecutor shall discontinue the criminal prosecution, if

a) it is doubtless that the act for which the criminal prosecution is being conducted has never occurred,
b) the act is not a criminal offence and there is no reason to transfer the case,
c) it is not proven that the act was committed by the accused person,
d) the criminal prosecution is inadmissible (Section 11 (1)),
e) the accused was not criminally liable due to insanity at the time of the act, or
f) the criminality of the act has expired.

(2) The public prosecutor may terminate the criminal prosecution, if

a) the punishment, which may come as a result of the criminal prosecution, is completely insignificant next to the punishment, which was already imposed to the accused person for another act, or that is expected to be them as expected,
b) the act of the accused person has already been decided on by another authority, by disciplinary decision, or by a foreign court or authority, and this decision can be regarded as sufficient, or
c) given the importance and extent of the breach or threat to a protected interest that was affected, the manner in which the act was performed and its consequences or the circumstances under which the act was committed, and given the conduct of the accused person after committing the act, particularly his effort to compensate the damage caused or to eliminate other harmful consequences of his act, it is clear that the purpose of criminal proceedings has been reached.

(3) The accused person and the aggrieved person, if he is known, may file a complaint against the resolution under sub-section (1) and (2), which has a dilatory effect.

(4) A criminal prosecution that was discontinued for any of the reasons referred to in sub-section (2) shall continue, if the accused person declares within three days from the date when he was notified of the resolution to discontinue the criminal prosecution that he insists on hearing the case. The accused person must be instructed thereof.

Section 173 Suspension of Criminal Prosecution

(1) The public prosecutor shall suspend the criminal prosecution, if

a) the matter cannot be appropriately clarified due to the absence of the accused person,
b) the accused person cannot stand trial due to a severe illness,
c) the accused person is unable to understand the purpose of the criminal prosecution due to a mental illness that occurred after the criminal offence was committed,
d) a transfer of the criminal prosecution to abroad is requested, or the accused person was extradited or banished.

(2) Before making a decision to suspend the criminal prosecution, it is necessary to do all that is necessary to secure a successful course of the criminal prosecution. If the reason for the suspension expires, the public prosecutor shall decide that the criminal prosecution continues.

(3) The aggrieved person must be notified about suspension of the criminal prosecution.

Section 173a Serving of Resolutions to the Supreme Public Prosecutor's Office

The public prosecutor shall serve a resolution on termination of criminal prosecution and on transferring the matter to the Supreme Public Prosecutor's Office without undue delay after it comes into full force and effect.

SUBDIVISION FIVE
Supervision of the Public Prosecutor

Section 174

(1) Supervision over compliance with the legality in pre-trial proceedings shall be conducted by the public prosecutor.

(2) Besides the entitlements referred to in Section 157 (2), the public prosecutor is also entitled in the course of performing the supervision

a) to give binding instructions for the investigation of the criminal offences,
b) to request files, documents, materials and reports on committed criminal offences from the Police authority in order to review, whether the Police authority timely initiates criminal prosecution and proceeds accordingly,
c) to participate in the performance of the actions taken by the Police authority, to personally make individual actions or even an entire investigation and issue a decision in any matter; therein he proceeds in accordance with the provisions of this Code applicable for the Police authority, and a complaint against his decision is admissible to the same extent as against a decision of the Police authority,
d) to return the matter to the Police authority with his instructions for supplementation,
e) to repeal unlawful or unjustified decisions and actions of the Police authority, which he may replace with his own; in the case of a resolution to adjourn the matter, he may do so within 30 days of receipt; if the public prosecutor replaced a decision of the Police authority by his own decision otherwise than upon a complaint of an entitled

person against the resolution of the Police authority, then a complaint is admissible against his decision in the same extent as against the decision of the Police authority,

f) to order that the actions in the matter are carried out by another person in active service of the Police authority.

Section 174a Competence of the Supreme Public Prosecutor

(1) The Supreme Public Prosecutor may repeal unlawful decisions of inferior public prosecutors on discontinuation of criminal prosecution or on transferring the matter within three months from their full force and effect.

(2) For this purpose, the public prosecutor of the Supreme Public Prosecutor's Office may request files, documents, materials and reports from the inferior public prosecutor´s offices and perform reviews on them.

(3) If the Supreme Public Prosecutor repeals a resolution pursuant to sub-section (1), the public prosecutor, who made decisions in the case in the first instance, shall continue in the proceeding. Therein he shall be bound by the legal opinion stipulated by the Supreme Public Prosecutor in his decision and is obliged to take steps and supplementations ordered by the Supreme Public Prosecutor.

Section 175

(1) Only the public prosecutor is entitled

a) to decide on the discontinuation, conditional discontinuation, or on suspension of criminal prosecution and on transferring a case to another authority,
b) to lodge an indictment,
c) to negotiate an agreement on the guilt and punishment with the accused person and to file a petition for its approval to the court,
d) to decide to release the accused person from custody, to release the accused from custody with substitution of custody by one of the measures substituting custody or to change the reasons for custody, if any of the reasons for custody ceased to exist,
e) to order seizure of assets of the accused person and to determine which resources and items are not affected by the seizure, or to revoke such seizure,
f) to secure a claim of the aggrieved person for compensation of damage or non-material harm, or for surrender of any unjust enrichment, and to reduce or revoke such securing or to remove an item from it,
g) to decide to destroy a seized thing pursuant to Section 81b,
h) to order the exhumation of a corpse,
i) to petition a request for the accused person from abroad, or for issuing the European Arrest Warrant
j) to make a preliminary inquiry in the proceedings on extradition to abroad or in surrender proceedings on the basis of a European Arrest Warrant.

(2) In cases investigated by a public prosecutor, supervision over maintaining legality during the pre-trial proceedings shall be conducted by the public prosecutor of the immediately superior public prosecutor´s office; this does not affect the right of the public prosecutor conducting the investigation to make a decision pursuant to Section 171 through 173, pursuant to Section 307 or Section 309 under the conditions specified therein, unless this right is reserved by the public prosecutor conducting the supervision.

SUBDIVISION SIX
Agreement on the Guilt and Punishment

Section 175a

(1) If the outcomes of the investigation sufficiently substantiate a conclusion that the act has occurred, that this act is a criminal offence and that it was committed by the accused person, the public prosecutor may initiate negotiations on an agreement on the guilt and punishment upon a motion of the accused person, or even without such a motion. If the public prosecutor does not find the motion of the accused person justified, he shall notify the accused person about his opinion, and if the accused person has a defence counsel, then also him.

(2) The public prosecutor shall summon the accused person to the negotiation of the agreement on the guilt and punishment; the time and place of the negotiation shall be notified to the defence counsel of the accused and aggrieved person, who has not explicitly declared that he waives the procedural rights granted to him as the aggrieved person by the law. At the same time he shall caution the aggrieved person to assert the claim for monetary compensation of damage or non-material harm caused to him by the criminal offence or for the surrender of unjust enrichment gained to his detriment at the latest during the first negotiation of the agreement on the guilt and punishment.

(3) A condition of negotiating the agreement on the guilt and punishment is a declaration of the accused person that he has committed the act he is being prosecuted for, if there are no reasonable doubts about the truthfulness of his declaration in the view of so far obtained evidence and other outcomes of the pre-trial proceedings. The agreement on the guilt and punishment is negotiated by the public prosecutor with the accused person in the presence of the defence counsel.

(4) If the public prosecutor believes that the statutory conditions for imposing a protective measure are fulfilled, he shall caution the accused person about the possibility to proceed according to Section 178 (2) even in case of negotiating the agreement on the guilt and punishment, in which the protective measure is not stipulated. Without this instruction he may proceed pursuant to Section 178 (2) only if the reasons for issuing the protective measure arose after filing the petition for approving the agreement on the guilt and punishment to the court.

(5) When negotiating the agreement on the guilt and punishment, the public prosecutor shall also heed the interests of the aggrieved person. If the aggrieved person is present at the negotiations of the agreement on the guilt and punishment, he shall comment particularly on the extent and manner of compensation for damage or non-material harm or the surrender of unjust enrichment. The agreement on the guilt and punishment may be negotiated also without the presence of the aggrieved person, if he fails to appear at the negotiation despite being duly summoned, or if he fails to appear at the negotiation and he has already applied the claim for compensation of damage or non-material harm or for the surrender of unjust enrichment, or has declared that he shall not assert this claim. If the aggrieved person, who is not present at the negotiation, asserted the claim for compensation of damage or non-material harm or for the surrender of unjust enrichment, the public prosecutor may negotiate the extent and manner of compensation of damage or non-material harm or for the surrender of unjust enrichment with the accused person for the aggrieved person up to the limit of the applied claim.

(6) The agreement on the guilt and punishment shall contain

a) identification of the public prosecutor, the accused and aggrieved person, if he was present at the negotiation of the agreement on the guilt and punishment and if he consents with the extent and manner of compensation of damage or non-material harm or the surrender of unjust enrichment.
b) date and time of its drawing,
c) description of the act the accused person is being prosecuted for, with stating the time, place and manner of its commission and eventually also other circumstances of its commission so that it could not be confused with any other act,
d) identification of the criminal offence seen in this act by its statutory name, by stating the relevant statutory provision and all legal attributes, including those that substantiate a specific term of imprisonment,
e) declaration of the accused person that he has committed the act he is being prosecuted for and that is the subject of the negotiated agreement on the guilt and punishment,
f) in compliance with the Criminal Code the stipulated type, extent and manner of execution of punishment, including the term of the probation period and in cases provided for by the Criminal Code a substitute penalty, eventually waiver of punishment, and the extent of adequate restrictions and obligations in case the Criminal Code allows it and they were stipulated; when negotiating the agreement on the guilt and punishment, it shall be considered whether the accused person gained or tried to gain material profit (Section 39 (7) of the Criminal Code).
g) the extent and manner of compensation of damage or non-material harm or the surrender of unjust enrichment, if it was stipulated,
h) protective measure, if its imposition comes into consideration and if it was stipulated,
i) signature of the public prosecutor, the accused person and defence counsel and signature of the aggrieved person, if he was present at the negotiation of the agreement on the guilt and punishment and whether he consents to the extent and manner of compensation of damage or non-material harm or the surrender of unjust enrichment.

(7) If the agreement on the guilt and punishment is concluded, the public prosecutor shall serve its copy to the accused person, his defence counsel and the aggrieved person, who duly and timely applied his claims (Section 43 (3)). If the agreement on the guilt and punishment is not concluded, the public prosecutor shall make a record thereof into the protocol; in such a case the declaration of guilt of the aggrieved person shall be disregarded in further proceedings.

(8) The agreement on the guilt and punishment cannot be negotiated in proceedings on an especially serious felony and in proceedings against a fugitive.

Section 175b

(1) If an agreement on the guilt and punishment is concluded, the public prosecutor shall submit a petition for approving the agreement on the guilt and punishment within the extent of the agreement to the court. If an agreement on the compensation of damage or non-material harm or on the surrender of unjust enrichment has not been reached, the public prosecutor shall notify the court thereof in the petition for approving the agreement.

(2) The public prosecutor shall attach the agreement on the guilt and punishment and other documents important for the trial proceedings and decision to the petition.

SUBDIVISION SEVEN
Indictment

Section 176

(1) If the investigation results sufficiently justify the position of the accused person before the court, the public prosecutor shall lodge an indictment and attach the file and its annexes. The accused person, defence counsel, and aggrieved person shall be notified of lodging an indictment, if their residence or office is known, and if the accused person is an attorney, the notification shall be sent also to the Minister of Justice and President of the Chamber.

(2) An indictment may be lodged only for the act, for which was initiated the criminal prosecution (Section 160). If the public prosecutor intends to assess such an act as a different criminal offence other than did the Police authority, he shall notify the accused person and his defence counsel thereof before lodging the indictment and shall find out, whether they request supplementation of the investigation due to the intended change.

Section 177

The indictment must contain

a) the designation of the public prosecutor and the date the indictment was made,
b) the name and surname of the accused person, date, and place of his birth, his occupation and residence, or other information necessary so he could not be confused

with any other person; if he is a member of the armed forces or armed corps, also the rank of the accused person and the unit that he are a member of shall be indicated,

c) the writ, which must clearly indicate the act, for which is the accused person prosecuted, stating the place, time and manner of its commission, and eventually other facts necessary to ensure that the act is not confused with another and to justify the use of a specific rate of criminal punishment. Furthermore, it must include the type of criminal offence that the indictment sees in this act by its statutory designation, stating the relevant provisions of the laws and all the legal features, including those that justify a certain rate of criminal punishment,

d) the justification of the indicted act, stating the evidence on which this indictment is based and a list of the evidence, production of which is proposed in the trial, as well as legal considerations that the public prosecutor followed in assessment of the facts under the relevant statutory provisions.

Section 178

(1) The public prosecutor shall propose in the indictment that the court orders a protective treatment or security detention or protective care, or forfeiture of items, if he beliefs that the legal conditions therefor are met.

(2) The public prosecutor may also lodge the petition referred to in sub-section (1) separately.

Section 178a Co-operating Accused Person

(1) In proceedings on a felony, the public prosecutor may indicate in the indictment that the accused person is co-operating, if the accused

a) reports to the public prosecutor facts that are eligible to significantly contribute to the clarification of a felony committed by members of organised groups, in connection to an organised group, or in favour of an organised criminal group, and undertakes to submit a full and truthful testimony about these facts in pre-trial proceedings, as well as in trial proceedings,

b) confesses to the crime, for which they are being prosecuted, and there is no reasonable doubt that his confession was made freely, seriously and definitely, and

c) declares that he agrees to be designated as a co-operating accused, and if the public prosecutor finds such designation necessary, given the nature of the criminal offence, clarification of which has the accused person undertaken, also with regard to the criminal offence stated in the confession of the accused, to the personality of the accused person, and to the circumstances of the case, especially whether and how the accused took part in commission of the criminal offence, which he has undertaken to clarify, and what consequences were caused by his actions.

(2) If the co-operating accused did not commit a criminal offense that is more serious than the felony, to the clarification of which he has contributed, if he has not participated as an organiser or instigator on commission of the felony, to the clarification of which he has

contributed, if he did not cause intentionally a grievous bodily harm or death and if there are no reasons for extraordinary increase of a sentence of imprisonment (Section 59 of the Criminal Code), the public prosecutor may petition a waiver of punishment in the indictment, if he deems it necessary with regard to all circumstances, especially with regard to the nature of the criminal offence referred to in the confession of the accused person in comparison to the criminal offence, clarification of which has the accused person undertaken, to the extent, to which the accused person may contribute to the clarification of a felony committed by members of an organised criminal group, in connection to an organised criminal group or in favour of an organised criminal group, to the significance of his testimony for the given criminal proceedings with regard to the evidence gathered, to the personality of the accused person and to the circumstances of the case, particularly whether and in what way did the accused person participate on commission of the crime, clarification of which has he undertaken, and what consequences did he cause by his actions.

(3) Before the public prosecutor designates the accused person as co-operating, he shall question him especially on the contents of the report and his confession. He shall also question the accused person as to whether he is aware of the consequences of his actions. Before the questioning the public prosecutor shall instruct the accused person on his rights, on the merits of the designation as the co-operating accused, on the obligation to maintain his confession and to comply with his obligations under sub-section (1), and also that once the accused person violates his commitments in pre-trial or in trial proceedings, he will no longer be considered a co-operating accused.

Section 179

(1) For lodging an indictment is competent the public prosecutor of a public prosecutor´s office superior to the public prosecutor´s office operating at the court, if he conducted supervision over maintaining of legality in pre-trial proceedings and if he did not submit the matter to an inferior public prosecutor´s office.

(2) Even after lodging an indictment, the public prosecutor may request the Police authority referred to in Section 12 (2) to obtain evidence needed for representing the prosecution in trial proceedings.

SUBDIVISION EIGHT
Summary Pre-trial Proceedings

Section 179a

(1) The summary pre-trial proceedings is held for criminal offences, proceedings on which pertains to a District Court in the first instance, and for which the law imposes a sentence of imprisonment, upper limit of which not exceeding five years, if

a) the suspect was caught in the act or immediately after, or

b) in the course of verification of a criminal report or another instigation for the criminal prosecution were found matters of facts otherwise justifying the initiation of the criminal prosecution and it is expected that it will be possible to put the suspect before the court within the time limit prescribed in Section 179b (4).

(2) The summary pre-trial proceedings shall be conducted by the police authorities referred to in Section 12 (2).

(3) In respect of criminal offences of members of the General Inspection of Security Forces, members of the Security Information Service, members of the Office for Foreign Relations and Information and members of Military Intelligence or the Military Police or criminal offences of employees of the Czech Republic assigned to work in the General Inspection of Security Forces, shall the summary pre-trial proceedings be conducted by the public prosecutor; the provisions of Section 161 (4) and (5) shall apply here accordingly.

Section 179b

(1) The authority conducting the summary pre-trial proceedings shall perform all actions pursuant to Chapter Nine. Only urgent or non-repeatable tasks shall be conducted in the manner referred to in Chapter Four.

(2) In summary pre-trial proceedings has the suspect the same rights as the accused person (Section 33 (1), (2). An apprehended suspect has the right to select a defence counsel and to consult him without the presence of a third party. The suspect must be instructed thereof before the questioning and must be provided with the full possibility of exercising his rights.

(3) The person suspected of committing a criminal offence must be questioned and notified no later than at the beginning of the questioning what act is he suspected of committing and what criminal offence is seen in such an act. The authority conducting the summary pre-trial proceedings shall make a record thereof in the protocol. A copy of the record shall be served to the suspect and his defence counsel; the Police authority shall also send a copy of the record to the public prosecutor within 48 hours. The provisions on questioning of the accused person shall be applied accordingly to questioning of the suspect.

(4) The summary pre-trial proceedings must be concluded within two weeks from the day the Police authority notified the suspect, what act is he suspected of committing and what criminal offence is seen in this act (Section 179b (3)).

(5) The public prosecutor may negotiate an agreement on the guilt and punishment with the accused person in the pre-trial proceedings; Section 175a shall be applied accordingly to the conditions and procedure of its negotiation. Service of the petition for approving the agreement on the guilt and punishment initiates criminal prosecution.

Section 179c

(1) If the Police authority does not decide to adjourn the matter on the grounds referred to in Section 159a (1) through (4) after the conclusion of summary pre-trial proceedings, they shall submit a brief report on its outcome to the public prosecutor, stating the criminal offence seen in the act, for which the suspicion was declared, and what evidence that can be produced before a court justifies the suspicion. The Police authority shall attach all documents and items collected during the summary pre-trial proceedings to the report.

(2) The public prosecutor, to whom was served the petition of the Police authority pursuant to sub-section (1), or who performed the summary pre-trial proceeding himself, shall

a) submit a motion for punishment to the court, if he finds that the results of the summary pre-trial proceedings justify putting the suspect before a court,
b) submits a petition for approving an agreement on the guilt and punishment to the court, whereas he shall apply Section 175b accordingly,
c) adjourn the matter, if the case does not concern a suspected criminal offence,
d) submit the matter to the competent authority to hear it as a transgression case,
e) submit the matter to another authority to hold a disciplinary proceeding,
f) adjourn the matter, if the criminal prosecution is inadmissible pursuant to Section 11 (1),
g) adjourn the matter, if he decided to approve a settlement, while applying the provisions of Section 309 and following accordingly,
h) conditionally adjourn the matter pursuant to Section 179g,
i) adjourn the matter also if the criminal prosecution is ineffective, given the circumstances referred to in Section 172 (2), or
j) return the matter to the Police authority by an injunction, if it is necessary to perform further actions within the summary pre-trial proceedings.

(3) If the public prosecutor does not make any decision or adopt any measure pursuant to sub-section (1), he shall submit the matter to the Police authority referred to in Section 161 (2) for initiation of a criminal prosecution with reference to the fact that the act, for which was the summary pre-trial proceeding being held, should be properly assessed according to a different provision of the law, than it was by the Police authority and, given the diverging legal assessment, the summary pre-trial proceeding cannot be performed.

(4) The authority that made the decision to adjourn the matter pursuant to sub-section (1) or a decision according to sub-section (2) shall notify the aggrieved person, if he is known, and the reporting person, if he has requested it pursuant to Section 158 (2).

Section 179d

(1) The motion for punishment shall contain the same essentials as the indictment, except for the justification.

(2) The public prosecutor shall attach all documents and other annexes to the petition that are relevant for the trial proceedings and for a decision in the matter.

(3) The public prosecutor shall notify the Minister of Justice and President of the Chamber about submitting a motion for punishment of an attorney without undue delay.

Section 179e

If an apprehended suspect is handed to the public prosecutor and the public prosecutor does not release him, he shall hand him to the court within 48 hours after being apprehended, along with a motion for punishment or with a petition for approving an agreement on the guilt and punishment; otherwise he shall decide to initiate criminal prosecution and submit a petition for a decision on custody of the accused person to the court.

Section 179f

(1) A summary pre-trial proceeding cannot be performed or continued, if

a) there is a reason for custody and the conditions for the handing the apprehended suspect to the court along with a motion for punishment are not met, or in case of negotiating an agreement on the guilt and punishment (Section 179b (5)) by thirty day at most
b) there are grounds for holding a joint proceeding of two or more criminal offences and on at least one of them must be conducted an investigation.

(2) If the summary pre-trial proceeding is not concluded within the time limit prescribed in Section 179b (4), the public prosecutor shall, with regard to the circumstances of the case

a) extend the time limit for concluding the summary pre-trial proceeding, however not more than by ten days,
b) order the Police authority, which has conducted the summary pre-trial proceedings, to initiate criminal prosecution and further proceed pursuant to the provisions of Chapter Ten, or
c) order that the case is submitted to the Police authority referred to in Section 161 (2) for initiation of criminal prosecution; the public prosecutor shall always proceed in this way, if there is given any of the reasons referred to in sub-section (1).

Conditional Suspension of Submission of a Motion for Punishment

Section 179g

(1) Instead of submitting a motion for punishment, the public prosecutor may decide that submission of a motion for punishment shall be conditionally suspended, if the suspect

a) confessed to the act,

b) compensated any damage, if it was caused by the act, or entered an agreement with the aggrieved person about the compensation, or took other necessary measures for its compensation,
c) surrendered any unjust enrichment obtained by the act, or entered an agreement with the aggrieved person about the surrender, or took other necessary measures for its surrender,
d) gave a consented to the conditional suspension of submission of the motion for punishment,

and with regard to the character of the suspect and to their previous life and the circumstances of the case, such a decision can be reasonably regarded as sufficient.

(2) If it is substantiated by the nature and seriousness of the committed criminal offence, by the circumstances of commission of the criminal offence or by the situation of the suspect, the public prosecutor shall decide on a conditional suspension of lodging a motion for punishment only in case the suspect fulfils the conditions stipulated in sub-section (1) and

a) undertakes to refrain from a certain activity during the probation period, in connection to which he committed a criminal offence, or
b) deposits a financial sum on the account of the public prosecutor's office, designated for the assistance of victims of criminal activity according to a special legal regulation, and this amount is not evidently inadequate to the seriousness of the crime,

and with regard to the personality of the suspect, considering his previous life and the circumstances of the case such a decision may be deemed sufficient.

(3) A probation period for six months to two years, and in case of a decision pursuant to sub-section (2) a period of up to five years shall be set in the decision on the conditional suspension of submission of a motion for punishment. The probation period starts on the day of full force and effect of this decision.

(4) The suspect, who has entered an agreement with the aggrieved person on the manner of compensation of damage or on surrender of any unjust enrichment, may also be ordered in the decision on the conditional suspension of submission of a motion for punishment to compensate the damage or to surrender the unjust enrichment within this probation period.

(5) The decision on a conditional suspension of submitting a motion of punishment according to sub-section (2) must also contain the amount of financial sum designated to the State for assistance to victims of criminal activity or designation of an activity, the suspect undertakes to refrain from during the probation period. If the suspect undertakes to refrain from driving motor vehicles during the probation period for the time of the conditional suspension of submitting a motion for punishment, he must be instructed about the obligation to surrender his driving licence pursuant to a special legal regulation and about that the driving licence shall be forfeit upon the full force and effect of the decision on the conditional suspension of submitting a motion for punishment.

(6) The suspect may also be ordered to comply with reasonable restrictions and obligations aimed to make him lead an upright life.

(7) The suspect and the aggrieved person may file a complaint against the decision on the conditional suspension of submission of a motion for punishment, which has a dilatory effect.

Section 179h

(1) If the suspect leads an upright life during the probation period, fulfils the duty to compensate the damage caused or to surrender any unjust enrichment or another duty he has undertaken to fulfil, and complies with other restrictions imposed on him, the public prosecutor, who has conditionally suspended the submission of the motion for punishment in the first instance, may decide that he has approved himself. Otherwise the public prosecutor shall decide that he has not approved himself, eventually even during the probation period, and proceed according to Section 179c to 179f. In exceptional cases and with regard to the circumstances of the case and the personality of the suspect, the public prosecutor may leave the conditional suspension of submitting a motion for punishment in effect and extend the probation period by up to one year; however the probation period cannot exceed five years. The obligation to compensate the damage caused, to surrender unjust enrichment and other obligations the suspect has undertaken to fulfil, as well as other imposed restrictions shall remain in effect also during the extended probation period.

(2) If the decision pursuant to sub-section (1) was not made within one year after expiration of the probation period without any fault of the suspect, he shall be considered as approved.

(3) Upon the full force and effect of the decision that the suspect has approved himself, or expiration of the period referred to in sub-section (2) shall apply the effects referred to in Section 11a (1) b).

(4) The suspect and the aggrieved person may lodge a complaint against the decision according to sub-section (1), which has a dilatory effect.

PART THREE

Trial Proceedings

CHAPTER ELEVEN

Basic Provisions

Section 180

(1) The criminal prosecution before a court is conducted only upon an indictment or a motion for punishment lodged and represented before the court by the public prosecutor, or upon a petition for approving an agreement on the guilt and punishment submitted by the public prosecutor. In trial proceedings before a District Court, the public prosecutor may be represented by a trainee, unless proceedings on approving an agreement on the guilt and punishment are concerned..

(2) When lodging and representing the indictment, the public prosecutor shall follow the law and his internal beliefs based on the consideration of all circumstances of the case. In the trial proceedings he shall act in such a way that all the relevant matters of facts decisive in the view of the lodged indictment are clarified. For this purpose he shall obtain, on his own initiative or upon a request of the presiding judge, other evidence that has not yet been gathered or produced.

(3) During evidentiary procedure in the trial and the public session, the public prosecutor shall propose producing of evidence that has not been previously proposed in the indictment and the need to produce it occurred during the trial proceedings; he generally produces evidence that supports the indictment with the consent or upon the request of the presiding judge (Section 203, Section 215 (2)). The defence counsel or the accused person, who does not have a defence counsel, are entitled to produce evidence (Section 215 (2)) that support the defence in the same extent with the consent of the presiding judge. If the production of evidence by either party consists in questioning of a witness or expert, the presiding judge or another designated member of the court shall perform their statutory instructions prior to initiation of the questioning.

(4) In the trial, public session, or during another action taken in the presence of the parties, each party may raise an objection to the manner of performance of the action at any time.

Section 181

(1) The lodged indictment must be first examined by the court in terms of whether it provides a reliable basis for further proceedings, in particular it must be verified whether the court has the jurisdiction to hear the case (Section 16 through 22), whether any serious procedural errors occurred during the pre-trial proceedings that cannot be rectified in trial proceedings, and whether the basic matters of facts, without which it is impossible to conduct the trial and make a decision, were clarified during the pre-trial proceedings. For this purpose is held a preliminary hearing of the indictment.

(2) After lodging an indictment shall the court, without waiting for further petitions, proceed so that the proceeding is brought towards a decision in the case including enforcement of the decision without undue delay.

(3) The presiding judge is obliged, within three weeks in proceedings before a District Court and within three months in proceedings before a Regional Court as a court of the first

instance, to order a trial, preliminary hearing of an indictment or to perform another action aimed towards making a decision in the matter, including an authorization of a probation officer for acts aimed towards a decision on conditional discontinuation of criminal proceedings or on approving a settlement or another decision in the matter out of the trial. If he cannot do so for serious reasons, he shall submit the file to the presiding judge of the court, who shall either extend the time limit to a necessary time based on the nature of the matter, or take other appropriate measures to ensure the continuity of the proceedings in accordance with the schedule of work of the court.

Section 182

The public prosecutor may withdraw the indictment until the time the court in the first instance retires for the final deliberation; after the initiation of the trial he may do so only if the defendant does not insist on its continuation. Withdrawal of the indictment shall return the case back to the pre-trial proceedings.

Section 183

(1) The presiding judge may at any time during the course of the proceeding before the court request the Police authority to obtain individual piece of evidence, to compel a person to appear before the court, or under the conditions stipulated in Section 62 (1) to the serve documents. The Police authority is obliged to comply without undue delay.

(2) In serious and factually complex cases requiring special knowledge in the field, the presiding judge may acquire a consultant. Therein he shall proceed pursuant to Section 157 (3).

Section 183a

(1) In trial proceedings, the presiding judge or another designated member of the court panel may exceptionally and for important reasons question the accused person, witness, expert, or produce other evidence outside the trial and public session. The public prosecutor and the defence counsel of the accused person concerned by such an act, are entitled to participate in such an action and be notified of it in advance, unless the performance of the action cannot be postponed and the notification cannot be secured. Participation of the accused person in such a questioning may be permitted especially in cases where he does not have a defence counsel, and if it concerns questioning of a witness, who has the right to refuse to testify. The notification of the questioning of a witness or of another action concerning such a witness, whose identity is to be concealed for the reasons referred to in Section 55 (2), cannot include any information according to which the true identity of the witness may be established.

(2) Participation of persons referred to in sub-section (1) in an action may be secured also by the means of an video-conference device, especially when it concerns a person under fifteen

years or a witness, whose identity is to be concealed due to the reasons referred to in Section 55 (2).

(3) If such evidence is to be used later for decision-making at the trial, public session or closed session, it must be produced in compliance with the law. Reading of the protocol on questioning of a witness or playing the audio visual record made of his questioning at the trial or a public session on an appeal is possible only under the conditions prescribed in Section 211, and in case of a witness under fifteen years of age testifying on circumstances, recovery of which from the memory of the said person could, due to his age, adversely affect his mental and moral development, under the conditions prescribed in Section 102 (2).

(4) The presiding judge shall heed the protection of witnesses and persons close to them who may be in danger of bodily harm, death or other serious menace in connection to their testimony, and where necessary, also the concealment of their identity or appearance. If it is necessary to secure the protection of such persons after they testify, the presiding judge shall make all the necessary measures after the conclusion of the questioning without undue delay. If necessary, he shall request protection of the said persons by the Police of the Czech Republic. The manner of special protection of witnesses and persons close to them is provided for by a special Act.

Section 184

(1) The court is obliged to focus also on clarifying the causes that led to the criminal activity or allowed the commission of a criminal offence during the hearing on the matter.

(2) To clarify the causes of a criminal offence and to settle a dispute between the accused person and the aggrieved person, the probation and mediation service performed by the probation officers shall provide their assistance in the stage of trial proceedings.

(3) If the nature of the matter and the character of the accused person permits it, the probation and mediation service shall create the conditions for a decision of court outside the trial, to hear matters in one of the special types of proceedings and for imposition of punishments not involving a prison sentence; for this purpose, the probation officer shall request and obtain the necessary materials, especially on the accused person, according to the instructions of the presiding judge.

CHAPTER TWELVE

Preliminary Hearing of the Indictment

Section 185 General Provisions

(1) The indictment filed to the court shall be examined by the presiding judge and, based on its contents and the contents of the file, he shall assess whether it a preliminary hearing of the indictment by the senate is necessary, or whether he may order a trial on the matter.

(2) To facilitate the decision he may hear the accused person and acquire the necessary explanations.

Section 186 Reasons for Preliminary Hearing of the Indictment

The presiding judge shall order a preliminary hearing of the indictment, if he believes that

a) the matter belongs to the jurisdiction of another court,
b) the matter should be forwarded according to Section 171 (1),
c) there are circumstances justifying discontinuation of the criminal prosecution pursuant Section 172 (1) or its suspension pursuant to Section 173 (1) (a) through (d), or circumstances justifying conditional suspension of the criminal prosecution pursuant to Section 307,
d) the act, which is the subject of the indictment, needs to be assessed according to a different provision of the Criminal Code, than under which it was assessed by the prosecution,
e) the preliminary hearing was not conducted in compliance with the law, because the procedural rules therefor were seriously violated, in particular the provisions securing the right to a defence, and such a violation of procedural rules cannot be rectified in the trial proceedings,
f) the fundamental matters of facts, without which the case cannot be decided, are not sufficiently clarified, or
g) given the circumstances of the case it would be appropriate to negotiate an agreement on the guilt and punishment, especially if such a procedure was petitioned by the public prosecutor or the accused person.

Section 187 Manner of Preliminary Hearing of the Indictment

(1) Preliminary hearing of the indictment is held in a closed session, unless there are reasons for holding a custody session. If the presiding judge deems it necessary for the court decision, he shall order a public session for the preliminary hearing of the indictment.

(2) The court shall always examine the entire indictment during the preliminary hearing; in this regard, the presiding judge shall make a report while focusing on the issues that need to be addressed.

(3) The court shall examine the completeness of the evidence and the justification of the indictment on the basis of the file.

(4) If a preliminary hearing of the indictment is conducted for the reason referred to in Section 186 (g), the court shall ascertain the opinion of the accused person and the public prosecutor

towards negotiating an agreement on the guilt and punishment. If the public prosecutor and the accused person declare that they are interested in negotiating an agreement on the guilt and punishment, the court shall set an reasonable time limit to the public prosecutor to submit a petition for approving such an agreement. It the public prosecutor submits a petition for approving an agreement on the guilt and punishment within the stated time limit, the court shall proceed according to Section 314o to 314s; in cases where the matter is returned to the pre-trial proceedings according to Section 314o to 314s, the court shall act on the basis of the original indictment. If the public prosecutor fails to submit a petition for approving an agreement on the guilt and punishment within the stated time limit, the court shall order a trial, unless it issues any of the decisions referred to in Section 188.

Decision

Section 188

(1) After the preliminary hearing of the indictment, the court shall

a) decide to submit the matter for a decision on the jurisdiction to the court, which is the closest mutually superior to it and to the court, which is competent in its opinion, if it believes that it is not competent to hear the matter,
b) transfer the matter to another authority, if there are circumstances referred to in Section 171 (1),
c) discontinue the criminal prosecution, if there are circumstances referred to in Section 172 (1),
d) suspend the criminal prosecution if there are circumstances referred to in Section 173 (1) a) through d),
e) return the matter to the public prosecutor for an additional investigation, if it is necessary to redress serious procedural errors of the pre-trial proceedings that cannot be rectified in trial proceedings, or to clarify the fundamental matters of facts of the case, without which it is not possible to decide in the matter during the trial, and such additional investigation in the trial proceedings would be associated with major difficulties in comparison to the possibility to obtain such evidence in the pre-trial proceedings, or it would most likely be detrimental to the speed of the proceedings, or
f) conditionally suspend the criminal prosecution pursuant to Section 307 or decide to approve a settlement pursuant to Section 309 (1).

(2) After the preliminary hearing of the indictment the court may also discontinue the criminal prosecution, if there are circumstances referred to in Section 172 (2).

(3) The public prosecutor and the accused person may file a complaint against the decision pursuant to sub-section (1) (b) through (f) and pursuant to sub-section (2), which has a dilatory effect, unless it concerns suspension of the criminal prosecution. The aggrieved person may also file a complaint against the decision on the conditional suspension of the criminal prosecution and on the approval of a settlement, which has a dilatory effect.

Section 189

The court, to which the matter was assigned pursuant to Section 24 or Section 25 by a superior court, may not decide to submit the matter for a decision on the jurisdiction or a court according to Section 188 (1) a), unless the factual basis for the assessment of jurisdiction has been meanwhile substantially changed.

Section 190

(1) If the court believes that for the proper application of law it is necessary to assess the act, which is the subject of the indictment, under a different provision of the law, than under which it was assessed by the prosecution, it shall return the matter to the public prosecutor for an additional investigation (Section 188 (1) e)(, if it is necessary to further clarify the matter due to the dissenting legal assessment.

(2) If no additional investigation is required, the presiding judge shall advise the persons, to whom is served a copy of the indictment (Section 196 (1)) about the possibility of a dissenting legal assessment of the act.

Section 191

(1) If the court returns the matter to the public prosecutor for an additional investigation, it shall indicate in the resolution, in which directions should the pre-trial proceedings be completed and which facts should be clarified, or which actions need to be performed.

(2) As soon as the resolution on returning the matter to the public prosecutor for an additional investigation comes into full force and effect, the matter is returned to the state of pre-trial proceedings.

Section 192

If the accused person is in custody, the court shall also always decide on further duration of custody during the preliminary hearing of the indictment.

Section 193
Repealed

Section 194
Repealed

Section 195 New Preliminary Hearing of the Indictment

(1) If the public prosecutor makes a decision in the matter that was returned to him for an additional investigation to submit the indictment again, he shall also take the results of the

additional investigation into account. The indictment shall be preliminarily heard by the court under the conditions referred to in Section 186.

(2) Under the conditions referred to in Section 186, the indictment shall be preliminarily heard again also at the court, to which the matter was assigned by the superior court after the matter is submitted pursuant to Section 188 (1) a).

CHAPTER THIRTEEN

Trial

SUBDIVISION ONE
Preparation of Trial

Section 196 Service of the Indictment

(1) If the court does not make any of the decisions referred to in Section 188 (1) and (2), the presiding judge shall order process service of a copy of the indictment to the defendant and his defence counsel and, if the defendant legally incapacitated or if his legal capacity is restricted, also to his legal representative; the court shall have a copy of the indictment served to the victim, provided that his residence or office is known. If the indictment included a petition to forfeit items belonging to a person other than the defendant, the presiding judge shall have a copy of the indictment served to this person as well.

(2) Persons to whom is served a copy of the indictment must also be asked to timely present the court with petitions for further evidence at the trial, and to state the circumstances that are to be clarified by such evidence.

(3) A copy of the indictment must be served no later than along with the summons to the trial or with the notification thereof.

Section 197 Substitute Judge

(1) If the trial is expected to last a longer time, the presiding judge shall arrange that one or two substitute judges or associate judges take part as well.

(2) During the trial, the substitute judge or associate judge is in the position of a member of the court. However, they shall take part in deliberations and voting only if they are invited in to the position of an associate judge or a judge, who was prevented from further participation in the trial by some kind of an obstacle. The judge or associate judge, in whose stead the substitute judge or associate judge, will not attend the trial any further.

Section 198 Ordering the Trial

(1) The presiding judge shall set the day of the trial so that there is at least five working days for preparation from the service of the summons to the defendant, and from the service of the notice to the public prosecutor and the defence counsel. This time limit may be shortened only with their consent, and in the case of the defendant only if he appears at the trial specifically requests its performance. In the case of other persons summoned to the trial or notified about it, it is usually necessary to maintain at least a three-day period.

(2) The public prosecutor, the statutory representative and the defence counsel of the defendant, as well as the aggrieved person and the party concerned shall be notified of the trial. If the aggrieved person or the party concerned have an agent, only their agents shall be notified of the trial. The aggrieved person must be cautioned in the notification that should he fail to appear at the trial, his claim to compensation of damage or non-material harm, or to surrender of any unjust enrichment will be decided on the basis of his own petitions, if they are already included in the file or if the court receives them before proceeding to the evidentiary hearing evidence.

(3) When ordering the trial, the presiding judge shall also make all the measures necessary to secure proper proceeding and to enable hearing and deciding in the matter without an adjournment.

Section 198a
Repealed

SUBDIVISION TWO
Publicity of the Trial

Section 199

(1) The court holds the trial in principle publically.

(2) Therein, it shall heed that citizens are provided with the widest opportunity to observe hearing of the case by the court, and that the educational effect of the criminal proceeding to the public is as effective as possible in terms of active involvement of the public in efforts to prevent and avoid criminal activity. Therefore, in appropriate cases, the trial is directly at the place where the criminal offence was committed, or in the workplace or residence of the defendant. In this case, it shall notify citizen interest groups that can secure participation of citizens and effectively contribute to achieving the purpose pursued by holding a trial.

Section 200

(1) The public may be excluded from the trial, if public session of the case would endanger confidential information protected by a special Act, morality, or undisturbed course of the proceedings, or the safety or other important interests of the witnesses; the presiding judge may also take other appropriate measures for such purposes. The public may also be excluded

only for a part of the trial. If a person referred to in Section 102a (1) stands before the court without concealment of his identity or appearance, then the public shall always be excluded.

(2) The judgment must always be pronounced declared publicly.

(3) The court shall decide to exclude the public after hearing all parties by a resolution which it shall pronounce publicly.

Section 201

(1) Even if the public was not excluded pursuant to Section 200, the court may deny access to the trial to minors and to those, who raise a concern that they may disturb the dignified course of the trial. It may also take necessary measures against overcrowding of the courtroom.

(2) Even if the public was excluded under Section 200, the court may allow individual persons to access the trial for important reasons. Upon a request of the defendant, access must be allowed to his two confidents. If there are multiple defendants, each has the right to select the confidents. If the total number of confidents thus increased to more than six and the defendants were not able to agree on the selection, the court shall make the selection. If the public was excluded due to a risk posed to classified information protected by a special Act, or the safety or other important interests of witnesses, only persons against whom the court has no objections may be selected as confidents.

(3) If the public was excluded due to a risk posed to classified information protected by a special Act, the presiding judge shall notify the persons present about the consequences, should they disclose the information learn during the proceedings to unauthorised persons; it may also prohibit the persons present from taking written notes.

SUBDIVISION THREE
Opening of the Trial

Section 202 Presence at the Trial

(1) The trial always takes place in the permanent presence of all members of the court panel, court reporter, and the public prosecutor. Presence of the defendant or other persons may also be secured by the means of a video-conference device; Section 111a shall be applied accordingly.

(2) In the absence of the defendant, the trial may be conducted only if the court believes that the matter can be reliably decided and that the purpose of criminal proceedings may be reached even without the presence of the defendant, while

a) the indictment was properly served to the defendant and the defendant was properly and duly summoned to the trial, and

b) the defendant has already been questioned by an authority involved in criminal proceedings about the act, which is the subject of the indictment, and the provision on initiation of criminal prosecution has been fulfilled (Section 160) and the accused person was notified about the possibility to study the file and make proposals for supplementation of th investigation (Section 166 (1)).

(3) If the defendant fails to appear at the trial without a proper excuse and the court decides that the trial shall be held in the absence of the defendant, the transcript of questioning of witnesses, experts, and co-defendants may be read and audio and visual records of their questioning made by the means of a video-conference device may be played in the trial under the conditions provided for in Section 211.

(4) The trial cannot be held in the absence of the defendant, if the defendant is in custody or serving a prison sentence, or if it concerns a criminal offence, for which the law prescribes a sentence of imprisonment with the upper limit exceeding five years. In cases of necessary defence (Section 36), the trial may not be conducted in the absence of the defence counsel.

(5) The provisions of the first sentence of sub-section (4) shall not be applied, if the defendant requests that the trial is conducted in his absence. The provisions of sub-section (3) shall apply accordingly.

Conduct of Trial

Section 203

(1) The trial is managed and, unless the law provides otherwise, the evidentiary proceeding is conducted by the presiding judge. Performance of individual piece of evidence or action may be entrusted to a member of the court panel, or it may be ordered to the public prosecutor under the conditions prescribed in Section 180 (3). This does not affect the right of the public prosecutor, the defendant and his defence counsel to request production of evidence pursuant to Section 215 (2).

(2) Therein he shall heed to ensure that the dignity and seriousness of the court hearing is maintained, that the trial is not delayed by commentaries unrelated to the matter in question, and that it is focused on effective clarification of the matter.

(3) Those who feel aggrieved by measures adopted by the presiding judge in the course of the trial, may request that the matter is decided by the court panel. Such a request and the following decision must be recorded in the protocol.

Section 204

(1) The presiding judge may expel any persons disturbing order from the courtroom.

(2) The defendant may be expelled only by a resolution of the court panel after a prior warning and only for the period that is absolutely necessary. Once he is allowed back to the courtroom, the presiding judge shall update him on the main content of the proceedings conducted in his absence so that they can comment on it.

Beginning of the Trial

Section 205

(1) The presiding judge shall initiate the trial by announcing the matters to be tried; then he shall verify the presence of persons summoned to the trial or notified thereof and determine their identity. In the case of persons, concerning whom it is necessary to maintain a time limit for preparation, he shall establish, whether such period was maintained.

(2) If any of the persons summoned failed to appear, the court shall decide, after hearing the parties present, whether it is possible to continue the trial or whether it is necessary to adjourn the matter.

Section 206

(1) After making the actions referred to in Section 205, the presiding judge shall bid the public prosecutor to present the indictment.

(2) After presentation of the indictment, the presiding judge shall ask the aggrieved person, whether he petitions that the defendant be imposed an obligation for monetary compensation of damage or non-material harm caused by commission of the criminal offence, or for surrender of unjust enrichment obtained through the criminal offence and to what extent. Should the aggrieved person fail to appear at the trial and his petition is already contained in the file, the presiding judge shall read the petition from the file.

(3) If a person claims the rights of the aggrieved person, though he is clearly not entitled, the court shall issue by a resolution that it does not admit such person to the trial as an aggrieved person. Such a decision does not prevent the person from asserting the claim for compensation of damage or non-material harm, or for the surrender of unjust enrichment before a competent authority.

(4) The court shall proceed pursuant to sub-section (3), even if the circumstances referred to in Section 44 (2) and (3) prevent the aggrieved person from participation in the trial.

SUBDIVISION FOUR
Evidence

Questioning of the Defendant

Section 207

(1) After the hearing of the indictment and the statement of the aggrieved person, the presiding judge shall question the defendant about the content of the indictment and, if a claim for compensation of damage or non-material harm for or the surrender of unjust enrichment was asserted, also about this claim.

(2) The protocol on a previous testimony of the defendant shall be read only if the hearing is held in the absence of the defendant, if the defendant refuses to testify, or in case substantial discrepancies are revealed between his earlier testimony and information provided during the trial, and if the questioning was performed after notification of the allegations in a way corresponding to the provisions of this Code. The defendant must be notified of such discrepancies and asked about their cause.

Section 208

If there are several defendants, the presiding judge may take measures to question the defendant in the absence of the co-defendants. However, the defendant must always be advised in the course of the evidentiary procedure on the content of the testimonies of the co-defendants, who were questioned in his absence.

Production of Further Evidence

Section 209

(1) The presiding judge shall heed that a witness who has not yet been questioned is not present during the questioning of the defendant and other witnesses. If there is a concern that a witness shall not testify truthfully in the presence of the defendant, or if it is a witness or a person close to him is in danger of bodily harm, death or other serious threat, the presiding judge shall take appropriate measures to secure the safety and anonymity of the witness, or shall expel the defendant from the courtroom during the interrogation of such a witness. However, upon his return to the courtroom, the defendant must be informed about the content of the witness testimony, he may make comments on it, and he may ask the witness questions via the presiding judge without having met with the witness. In the case of a witness, whose identity is to be kept confidential (Section 55 (2)), the presiding judge shall take measures to make it impossible to determine the true identity of the witness.

(2) If a witness, whose identity is kept confidential (Section 55 (2)), is questioned during the trial, the court shall take all the necessary steps to verify his credibility, even without a petition.

Section 210

If an expert has not yet submitted a written opinion on the matter, or if he deviates from it or supplements it, the presiding judge may order him to dictate the opinion into the protocol, or to write it on his own.

Section 211

(1) In the trial, a protocol on a witness testimony may be read instead of questioning a witness, if the court does not consider a personal interview of the witness necessary and the public prosecutor and the defendant give their consent. If a defendant, who was duly summoned to the trial, fails to appear without an excuse, or if he leaves the courtroom without a serious reason, the consent of the defendant to reading of such a protocol on a witness testimony is not necessary, and the consent of the public prosecutor shall be sufficient. The accused person must be notified thereof in the writ of summons.

(2) The protocol on the testimony of a co-defendant or witness shall also be read, if the questioning was performed in a manner corresponding to the provisions of this Code, and

a) such a person has died or gone missing, cannot be reached due to a long term stay abroad, or suffers from a permanent illness, which makes his questioning impossible either permanently or for the foreseeable future, or
b) in case an urgent or non-repeatable action performed pursuant to Section 158a is concerned.

(3) The protocol on an earlier testimony of a witness shall also be read if the questioning was conducted in a manner corresponding to the provisions of this Code and the witness has refused to testify without an authorisation, or if he diverts from his previous testimony in substantial items, and

a) the defence counsel or the accused had the opportunity to take part in the earlier questioning and to ask the questioned person questions,
b) if it was found that such a person was subject to violence, intimidation, bribery, or promises of other benefits and thus compelled not to testify or to testify falsely, or
c) if the content of the testimony was affected during the course of the questioning in the trial, especially due to the conduct of the defendant or due to the presence of the public.

(4) The protocol on the testimony of a witness who exercised his right to refuse to testify pursuant to Section 100, during the trial, may be read only if the witness was duly instructed on their right to refuse to testify before the questioning and he explicitly stated that he waives this right, provided that the questioning was conducted in a manner corresponding to the provisions of this Code, and the accused or the defence counsel had the opportunity to attend this questioning.

(5) A protocol on the testimony of an expert or his written opinion may be read instead of his questioning, if the expert was instructed pursuant to Section 106 before submitting his opinion, provided that there are no doubts about the correctness and completeness of the

expert opinion, and the public prosecutor and the defendant give their consent. The provisions of sub-section (1), second and third sentence, shall apply accordingly.

(6) Official records on explanations of persons and on conducting other actions (Section 158 (3) and (5)) may be read in the trial with a consent of the public prosecutor and the defendant.

(7) Provisions of sub-sections (1) to (5) on reading protocols shall be applied accordingly also to playing audio and visual records made on a questioning performed by the means of a video-conference device.

Section 212

(1) If a witness or co-defendant diverts significantly from his earlier testimony and unless a case referred to in Section 211 (3) or a testimony made as an urgent or non-repeatable task under Section 158a is concerned, the protocol on his questioning in the pre-trial proceedings, at which the defence counsel was not given the opportunity to be present, or its relevant parts, may only be presented by either party or by the presiding judge to explain inconsistencies in their testimonies, so that the court could assess the credibility and truthfulness of their testimonies made at the trial, within the free evaluation of evidence.

(2) The presentation of an earlier testimony pursuant to sub-section (1) consists in the reproduction of those parts of the transcript on the previous questioning, to which the questioned person is to comment on and explain discrepancies between his testimonies. The presented protocol on the testimony cannot be the basis for the verdict of guilt of the accused, not event in conjunction with other evidence produced in this case.

Section 213

(1) The opinions, reports of the State and other authorities and other documents and other material evidence shall provided to the parties for inspection in the course of the trial and, if necessary, to the witnesses and experts as well.

(2) If any party proposes reading of the documents referred to in sub-section (1), the court is obliged to read such a document during the trial.

Section 214

The defendant must be asked after production of each piece of evidence, whether he wishes to make a comment, and his opinions shall be recorded in the protocol.

Section 215 Participation of Parties in Evidentiary Procedure

(1) The public prosecutor, the defendant, his defence counsel and statutory representative, the party concerned, the aggrieved person and their agents may, with the consent of the presiding

judge, ask the interviewed persons questions, in general when the presiding judge has finished his questions and if the members of the court panel have no more questions.

(2) The public prosecutor, the defendant and his defence counsel may request to be allowed to produce a piece of evidence, particularly by questioning of a witness or an expert. The presiding judge shall grant their requests, especially if it concerns evidence produced to their petition or evidence obtained and presented by them; he is not obliged to meet their requests if it concerns questioning of the accused person, questioning of a witness under fifteen years of age, an ill or injured witness, or if the production of the piece of evidence by one of the abovementioned persons would be inappropriate due to other important reasons. If the questioning of the same witness or expert is proposed by the public prosecutor as well as by the defendant or his defence counsel, and both parties request the questioning, the presiding judge shall decide, after hearing both parties, which one of them shall perform the questioning. The presiding judge may interrupt the questioning conducted by any of the stated parties, only if the questioning is not conducted in accordance with the law, the questioned person is being put under pressure by the interrogator or the questioning is conducted in another improper way, or if the presiding judge or a member of the court panel deems it necessary to ask the questioned person a question which cannot be delayed until after the questioning or its part is concluded.

(3) After conclusion of the questioning or its part pursuant to sub-section (2), the other party has the right to ask the questioned person questions. The last sentence of sub-section (2) shall apply accordingly.

(4) After the production of all evidence, the presiding judge shall ascertain whether the parties have any requests for supplementation of evidence.

SUBDIVISION FIVE
Conclusion of the Trial

Final Speech

Section 216

(1) If there are no other petitions for additional evidence or if it was decided that no further evidence shall be produced, the presiding judge will declare the evidentiary procedure concluded and shall give the floor for the closing speeches.

(2) After the final speech of the public prosecutor shall speak the aggrieved person, followed by the party concerned and the defence counsel of the defendant or the defendant. If the party concerned or the aggrieved have an agent, the agent shall speak. If necessary, the presiding judge shall determine the order in which the entitled persons speak after the closing speech of the public prosecutor. However, the defence counsel of the defendant or the defendant shall always speak last.

(3) If the public prosecutor had the floor after the speech of the defence counsel or the defendant, the defence counsel or the defendant have the right to respond.

(4) The presiding judge may interrupt the closing speeches only if they clearly stray from the scope of the case at hand.

Section 217

After the end of the final speeches and before the departure for the final deliberation, the presiding judge shall grant the defendant the last word. During this speech, the defendant may not be asked questions by the court or anybody else.

Section 218 Supplementation of Evidence

(1) If the court finds, considering the final speeches or during the final deliberation, that certain circumstances of the case require further clarification, it shall resolve that the evidence will be supplemented and the hearing shall continue.

(2) After the supplementation of further evidence, it is always necessary to give the floor for the final speeches again.

SUBDIVISION SIX
Adjourning the Trial

Section 219

(1) The court shall adjourn the trial if an obstacle arises, for which the trial cannot be held or continued, and in such a case they shall set the date of the next trial; adjournment of the trial for an indefinite period is possible only if the nature of the action due to which the trial cannot be held or continued requires it. If the obstacle due to which the trial had to be adjourned indefinitely expires, it is necessary to order the trial or to perform another action for the conclusion of the matter without undue delay, but within the time limits referred to in Section 181 (3). If the presiding judge cannot do so due to serious reasons, Section 181 (3), last sentence, shall be applied accordingly.

(2) Before the court adjourns the main haring, the presiding judge shall determine whether the parties have petitions for additional evidence that need to be obtained for the next trial.

(3) If the trial is not required to be conducted again due to a substantial procedural error or due another important reason, the presiding judge shall state the main content of the previous trial in the continuation of the adjourned trial. If the composition of the court panel changed or if a longer period passed since the adjournment of the trial, the presiding judge shall read, with the consent of the public prosecutor and the accused, the main content of the protocol of

the trial, including the evidence produced; if consent was not given, the trial must be conducted again.

SUBDIVISION SEVEN
Decision of the Court in the Trial

Section 220 Grounds for Decision

(1) The court may decide only about the act which is stipulated in the writ of indictment.

(2) In the decision-making they may only consider the facts that were heard in the course of the trial and rely on the evidence presented and produced by the parties, or on those the court supplemented on its own.

(3) The court is not bound by the legal assessment of the act stated in the indictment.

Section 221 Returning the Matter to the Public Prosecutor

(1) If the results of the trial point towards a significant change in the circumstances of the case, and if further investigation is necessary to clarify the matter, the court may return the matter to the public prosecutor for further investigation.

(2) The court shall also return the matter to the public prosecutor for further investigation if the results of the trial show that the defendant committed yet another act which is a criminal offence, and the public prosecutor requested the return of the matter due to the need for a common discussion.

(3) The provisions of Section 191 also apply to the return of the matter pursuant to sub-section (1) and (2).

(4) A complaint is admissible against the decision pursuant to sub-section (1), which has a dilatory effect.

Section 222 Reference of Matters

(1) If the court finds that the prosecuted act is a criminal offence which it is not competent to try, it shall decide to submit the matter for a decision on jurisdiction of the court that is the closest mutually superior to it and to the court that is competent in its opinion. However, it is obliged to decide the matter, if it is only a local lack of territorial jurisdiction and the defendant did not complain against it; it is also obligated to decide the matter, if the matter was supposed to be ordered by the closest mutually superior court to a court of the same type but of a lower level. A court to which the matter was transferred to by another superior court cannot decide on to submit of the matter for a decision on the court jurisdiction, unless the factual basis for the assessment of jurisdiction has significantly changed in the meantime.

(2) The court shall refer the matter to another authority, if it finds that it is not a criminal offence, but the act could be heard by another authority as a transgression or disciplinary offence, which this authority is competent to decide.

(3) The public prosecutor may file a complaint against the resolution on the reference under sub-section (2), which has a dilatory effect.

Section 223 Discontinuation of Criminal Prosecution

(1) The court shall discontinue the criminal prosecution if it finds any of the circumstances referred to in Section 11 (1) during the trial.

(2) The court may also discontinue the criminal prosecution if it finds that there are any grounds referred to in Section 172 (2) during the trial.

(3) The decision referred to in sub-section (1) and (2) may also relate only to some of the acts, which an indictment was lodged for.

(4) The public prosecutor may file a complaint against the decision pursuant to sub-section (1) and (2), which has a dilatory effect..

Section 223a Conditional Discontinuation of Criminal Prosecution and Approval of Settlement

(1) The court shall conditionally discontinue the criminal prosecution or decide to approve a settlement during the trial, if it finds circumstances referred to in Section 307 (1) or (2) or Section 309 (1).

(2) A complaint against the decision pursuant to sub-section (1), which has a dilatory effect, may be filed by the public prosecutor, the defendant and the aggrieved person.

Section 224 Suspension of Criminal Prosecution

(1) The court shall suspend the criminal prosecution, if it finds any circumstances referred to in Section 173 (1) b) to d) during the trial, or on the grounds referred to in Section 9a (2).

(2) The court shall suspend the criminal prosecution also if a writ summons to the trial cannot be served to the defendant.

(3) If the reason for the suspension expires, the court shall continue in the criminal prosecution.

(4) The public prosecutor may file a complaint against the decision, by which the court suspended the criminal prosecution or by which it dismissed a petition to continue it.

(5) The court shall suspend the criminal prosecution, if it believes that the law, application of which is decisive for a decision on the guilt and punishment in the given criminal matter, is inconsistent with the constitutional order, and shall submit the matter to the Constitutional Court.

Judgment

Section 225

(1) If a case is not returned back to the public prosecutor pursuant to Section 221, submitted for a decision on jurisdiction under Section 222 (1), or referred to another authority under Section 222 (2), and if the criminal prosecution is not discontinued under Section 223, or conditionally suspended or if a settlement is not approved pursuant to Section 223a, or if it is not suspended under Section 224, then the court shall decide by a judgment, whether the defendant is guilty or whether he is acquitted from the indictment.

(2) The court may find the defendant guilty of a criminal offence under a stricter provision of the law, than under which it was assessed by the prosecution, only if the defendant is notified of the possibility of a stricter assessment of the act under Section 190 (2). If it did not occur, the defendant must be notified on the given possibility before the final judgment is declared, and if he requests it, he shall be provided with a new time limit for the preparation of the defence and the trial shall be adjourned for this purpose.

Section 226

The court shall acquit the defendant of charges, if based on the evidence presented in the trial by the public prosecutor and eventually supplemented by the court and also upon the petitions of other parties

a) it was not proved that the act, for which the defendant is being prosecuted, has occurred,
b) the act indicated in the writ of indictment is not a criminal offence,
c) it was not proved that the defendant committed the act,
d) the defendant is not criminally liable due to insanity, or
e) the criminality of the act has expired.

Section 227

If the criminal prosecution was discontinued as a result of a pardon, amnesty, expiration of the limitation period, or because the consent of the aggrieved to the criminal prosecution was not given or was withdrawn, or due to one of the reasons referred to in Section 172 (2) and the proceedings continued only because the defendant insisted on the hearing the case (Section 11

(3), Section 172 (4)), then the court shall pronounce them guilty but shall not impose any punishment., if it does not find any other reason to acquit the defendant of the charges.

Section 228

(1) If the court sentences the defendant for a criminal offence, by which he caused another person material damage or other non-material harm, or who was unjustifiably enriched himself at the expense of the aggrieved person, it shall impose upon them an obligation in the judgement to compensate in monetary terms the damage or non-material harm to the victim or to surrender any unjust enrichment, provided that the claim was asserted on time (Section 43 (3)), unless this Code stipulates otherwise; unless a legal obstacle prevents it, the court shall always impose the obligation on the defendant to pay damages or to surrender unjust enrichment, if the amount of the damage caused or the extent of the unjust enrichment forms a part of the description of the act referred to in the verdict of the judgment, by which the defendant was found guilty and provided that the damages in such amount have not yet been paid or the unjust enrichment has not yet been surrendered to this extent.

(2) The verdict on the obligation of the defendant to compensate for damages or non-material damages in money or for the surrender of any unjust enrichment, must accurately indicate the person entitled to the claim that they were awarded. In justified cases, the court may declare that an obligation must be fulfilled in instalments; the amount and terms of repayment shall also be determined by them.

(3) The verdict of the judgment on monetary performance may be expressed in a foreign currency upon a petition of the aggrieved person, if it is not contrary to the circumstances of the case, and

a) the damage was caused on financial resources in a foreign currency or to property purchased for such financial resources, or
b) the defendant or the victim is a foreign person.

(4) If the court sentences the defendant to an unconditional prison sentence and grants the aggrieved person, at least in part, his claim for monetary compensation of damage or non-material harm or the surrender of unjust enrichment, it shall instruct the aggrieved person on the possibility to request a notification about holding of a public session on the conditional release from a prison sentence. The aggrieved person shall file the request at the court that has decided in the first instance.

Section 229

(1) If, there are no grounds for imposing an obligation to pay monetary compensation of damage or non-material harm, or for the surrender of unjust enrichment on the basis of the results of evidentiary procedure, or if further evidence would be necessary for any decision on the obligation to pay monetary compensation of damage or non-material harm, or for the surrender of unjust enrichment, which would significantly delay the criminal proceedings, the

court shall refer the aggrieved person to proceedings in civil matters or to proceedings before another competent authority.

(2) The court shall also refer the aggrieved person to proceedings in civil matters or to proceedings before another competent authority with the rest of their claim, if for any reason it grants his claim only in part.

(3) If the court acquits the defendant of the charges, they shall always refer the aggrieved person with his claim for monetary compensation of damage or non-material harm or for the surrender of unjust enrichment to proceedings in civil matters or to proceedings before another competent authority.

Section 230

(1) If the court finds a reason for imposing a protective measure to the defendant, it may impose it even without a petition of the public prosecutor.

(2) If the court requires production of further evidence that cannot be performed immediately, in order to decide on the protective measure, it shall reserve the decision on the protective measure to a public session.

(3) Even if the public prosecutor made a petition to forfeit items not belonging to the defendant, the court shall proceed pursuant to sub-section (2).

SUBDIVISION EIGHT
Decision of Court outside the Trial

Section 231

(1) If any of the circumstances referred to in Section 223 (1) and (2), Section 223a (1) or Section 224 (1) and (2) arise outside the trial, the court shall decide to discontinue or suspend the criminal prosecution, to conditionally discontinue the criminal prosecution, or to approve a settlement.

(2) Outside the trial the court shall decide in a closed session. If the presiding judge deems it necessary, he may order a public session for the decision on the approval of settlement.

(3) The public prosecutor may file a complaint against the decision according to sub-section (1), which has a dilatory effect, unless it concerns suspension of criminal prosecution. A complaint against the decision on the conditional discontinuation of criminal prosecution may also by lodged by the defendant and the aggrieved person.

CHAPTER FOURTEEN

Public Session

Section 232 General Provisions

The court shall decide in a public session where the law explicitly stipulates it.

Section 233 Preparation of a Public Session

(1) The presiding judge shall summon to the public session persons, whose personal participation therein is necessary. The public session shall be notified to the public prosecutor and to the person who instigated the public session by his petition and persons who may be directly affected by the decision, if such persons were not summoned to the public session; the presiding judge shall also notify the defence counsel or agent or statutory representative of such persons. He shall attach a copy of the petition that instigated the public session to the notification or summons.

(2) The presiding judge shall set the date of the public session so that the person who instigated the public session by his petition, persons who may be directly affected by the decision, the defence counsel and agents of such persons, as well as the public prosecutor have at least a five day period for preparation from the service of the summons to the public session or the notice thereof. This period may be reduced only with a consent of the person, in whose favour it was given. In the case of other persons summoned or notified of the public session it is necessary to observe at least a three day period.

Section 234 Presence at the Public Session

(1) The public session shall take place in the presence of all members of the court panel and the court reporter. Presence of other persons may be secured also by the means of a video-conference device; Section 111a shall be applied accordingly.

(2) Unless the law provides otherwise, participation of the public prosecutor and the defence counsel at the public session is not necessary.

Course of the Public Session

Section 235

(1) After the initiation of the public session, the presiding judge or another appointed member of the court panel shall make a report on the basis of the file focused on the issues to be addressed in the public session. Then the person who instigated the public session by his petition shall present the petition. Persons who may be directly affected by the decision as well as the public prosecutor shall comment on the petition, unless they are also petitioners themselves.

(2) If there is evidence being produced during the public session, the provisions on evidentiary procedure at the trial shall be applied. Restrictions in production of evidence by reading a protocol on the witness or expert testimonies (Section 211 (1) and (5)) shall apply only to a public session held on an appeal.

(3) After the production of evidence, the presiding judge shall give floor for the final motions. If the person who may be directly affected by the decision is the accused, then he shall have the right to speak last.

Section 236

The decision of the court shall always be declared publicly.

Section 237 Grounds for a Decision

In its decision, the court may take into account only the facts that were shown in the public session, and rely on evidence that was produced during the public session.

Section 238 Application of the Provisions on the Trial

Provisions the trial shall be applied accordingly to the publicity, initiation and adjourning of the public session.

Protective Treatment, Security Detention and Forfeiture of Items or Other Assets

Section 239

(1) Unless the court has reserved the decision on protective treatment, security detention, or forfeiture of items or other assets pursuant to Section 230 (2), it may impose it in a public session only if it is petitioned by the public prosecutor.

(2) A complaint is admissible against the decision on protective treatment, security detention, forfeiture of items or other assets, which has a dilatory effect.

Section 239a

(1) If it is impossible to reliably identify the owner of a thing that is to be forfeited, or if his place of residence is not known, the presiding judge shall appoint him a guardian. The guardian has the same rights as the owner of the property in the proceedings on forfeiture of items.

(2) All documents intended for the owner of the property shall be served only to the guardian. The summons of the owner of the property to the public session shall be published in an

appropriate manner. The public session will then be held even in the absence of the owner of the property, regardless of whether the owner of the property was aware of it.

(3) A complaint is admissible against the decision on the appointment of a guardian.

CHAPTER FIFTEEN

Closed Session

Section 240

The court decides in a closed session in cases, where the law does not stipulate that a decision is to made in the trial or public session.

Section 241
Repealed

Section 242

(1) The closed session shall take place in the presence of all members of the court and the court reporter.

(2) Other persons are excluded from participation in the closed session.

Section 243

If it is necessary to produce evidence in the closed session, it shall be done by reading protocols and other documents.

Section 244

The decision shall always be declared.

CHAPTER SIXTEEN

Appeals and Appeal Proceedings

Section 245 Admissibility and Effect

(1) A remedial measure against a judgment of the court in the first instance is an appeal. An appeal against a judgement, by which the court approved an agreement on the guilt and punishment, may be lodged only in case such a judgement is not in compliance with the agreement on the guilt and punishment, approval of which has the public prosecutor petitioned to the court. The aggrieved person, who has applied a claim for compensation of

damage or non-material harm or for the surrender of unjust enrichment, may lodge an appeal for incorrectness of the verdict on the monetary compensation of damage or non-material harm or for the surrender of unjust enrichment, unless he consented in the agreement on the guilt and punishment with the extent and manner of compensation of damage or non-material harm or for the surrender of unjust enrichment and this agreement has been approved by the court in a form he agreed with.

(2) The appeal has a dilatory effect.

Entitled Persons

Section 246

(1) A judgment may be contested by an appeal

a) by the public prosecutor for the inaccuracy of any verdict,
b) by the defendant for the inaccuracy of any verdict which directly affects him,
c) by the party concerned for the inaccuracy of verdicts on forfeiture of items,
d) the aggrieved person who applied his claim for compensation of damage or non-material harm or for the surrender of unjust enrichment, for the inaccuracy of the verdict on the compensation of damage or non-material harm or for the surrender of unjust enrichment.

(2) A person entitled to challenge the judgment for the inaccuracy of any of its verdicts may also challenge it because such a verdict has not been made, as well as for the violation of provisions on the proceedings preceding the judgment, if this breach could have caused that a verdict is incorrect or missing.

Section 247

(1) Only the public prosecutor may challenge the judgment by an appeal to the detriment of the defendant; the aggrieved person, who filed a claim for monetary compensation of damage or non-material harm or for the surrender of unjust enrichment, has the same right, but only concerning the obligation to pay the compensation of damage or non-material harm or for the surrender of unjust enrichment.

(2) In addition to the defendant and the public prosecutor, the direct relatives of the defendant, his siblings, adoptive children, adoptive parents, spouse, and partner may also challenge the judgment by an appeal for the benefit of the defendant. The public prosecutor may do so even against the will of the defendant. If the defendant is legally incapacitated or if his legal capacity is restricted, his statutory representative and defence counsel may also submit an appeal for the benefit and against the will of the defendant.

Section 248 Time Limit and Place of Submission

(1) An appeal shall be filed at the court, the judgment of which it contests, within eight days from the service of the copy of the judgment.

(2) If the judgment is served to the defendant as well as to his defence counsel and statutory representative, then the time starts on the day of the service that was performed last.

(3) For other persons referred to in Section 247 (2), except for the public prosecutor, the time limit ends on the same day as the for the defendant.

Section 249 Contents of Appeal

(1) An appeal must be justified within the time limit referred to in Section 248 or in an additional period set by the presiding judge of the court of the first instance according to Section 251in such a way that it is clear in which verdicts is the judgement contested and what errors of the judgement or the proceedings preceding the judgement are challenged. The entitled persons must be instructed thereof.

(2) The public prosecutor is obliged to indicate in an appeal whether he file it, even in part, in favour of or to the detriment of the accused person.

(3) An appeal may be based on new facts and evidence.

Section 250 Waiving and Withdrawing an Appeal

(1) After the announcement of the judgment, the entitled person may expressly waive the appeal.

(2) The person who filed the appeal may withdraw it by an explicit declaration at any time until the appeal court retires for the final deliberation. An appeal of the public prosecutor may also be withdrawn by a senior public prosecutor.

(3) An appeal filed in favour of the defendant by another entitled person or by his defence counsel or statutory representative may be withdrawn only with the explicit consent of the defendant. However, the public prosecutor may withdraw such an appeal even without the consent of the defendant. In such a case, a new deadline for filing an appeal for the defendant starts running from the notice of the withdrawal of the appeal.

(4) The presiding judge of the appeal court shall acknowledge the withdrawal of the appeal by a resolution, unless there are obstacles, and if the case has not yet been submitted to this court, it shall be acknowledged by the presiding judge of the court of the first instance.

Section 251 Proceedings before the Court of the First Instance

(1) If the appeal of the public prosecutor, the appeal filed by the defence counsel for the defendant, or the appeal filed by an agent filed for the aggrieved person or for the party concerned, does not meet the requirements for the content of an appeal according to Section 249 (1), the presiding judge shall bid them to correct the errors within a five-day set for this purpose, and shall advise them that the appeal will otherwise be dismissed under Section 253 (3). The presiding judge shall proceed in a similar manner if such an appeal is filed by the defendant who has a defence counsel, the aggrieved person, or the party concerned, who has an agent.

(2) If the defendant, who filed an appeal that does not meet the requirements for the content of an appeal pursuant to Section 249 (1), does not have a defence counsel, the presiding judge shall bid him to remove any errors within an eight-day period and shall provide him with the necessary instructions on how to correct them. If it did not lead to a correction or if the nature of the case requires it and the defendant did not choose a defence counsel, the presiding judge shall appoint one to him only for the purpose of justified appeal, or also for the purpose of defence in the appeal proceedings, and shall further proceed in accordance with sub-section (1). In the case of the aggrieved person and the party concerned, who do not have agents, the presiding judge shall proceed accordingly.

(3) Once the time limits for filing an appeal and the time limits for correcting the appeal errors have expired for all entitled persons, the presiding judge shall serve a copy of the appeal and its justifications to other parties and submit the files to the appeal court without awaiting their comments.

Section 252 Court of Appeal

An appeal against a judgment of the District Court is decided by a superior Regional Court, and an appeal against the judgment of a Military Circuit Court is initially decided by a superior military court. The appeal against a judgment of the Regional or a higher military court as the court in the first instance is decided by the superior High Court.

Decision of Appeal Court

Section 253

(1) The court of appeal shall dismiss the appeal if it was filed late, by an unauthorised person, or by a person who has explicitly waived the right to an appeal or re-appealed on the same case in which he has previously expressly withdrawn the appeal.

(2) A late appeal cannot be dismissed if the person filed it late only because they followed incorrect instructions of the court.

(3) The court of appeal shall reject an appeal that does not meet the requirements for the contents of an appeal.

(4) An appeal may not be rejected in accordance with sub-section (3), if the entitled person was not duly instructed pursuant to Section 249 (1), or the entitled person who does not have a defence counsel or an agent was not provided with assistance in correcting the errors in the appeal (Section 251 (2)).

Section 254

(1) If the court of appeal does not dismiss or reject an appeal under Section 253, it shall review the legality and justification of only those separable verdicts of the judgment against which an appeal was filed, including the correctness of the procedure of the proceedings that preceded it in the view of the alleged errors. Any errors that are not contested by the appeal shall the court of appeal consider only if they affect the accuracy of the verdicts against which the appeal was filed.

(2) However, if the alleged errors originate in a verdict other than the one against which the appeal was filed, the court of appeal shall also examine the correctness of such a verdict, which the contested verdict follows, if the entitled person could have filed an appeal against it.

(3) If the entitled person files an appeal against a verdict of guilt, the court of appeal shall always examine, in relation to the alleged errors, the verdict on the punishment, as well as other verdicts that have their basis in the verdict of guilt, regardless of whether the appeal was also filed against these verdicts.

(4) If an appeal contests a part of the judgment related only to some of several persons concerning whom it was decided by this judgment, the court of appeal shall examine only the part of the judgment and the preceding proceedings related to such person in the manner mentioned above.

Section 255

(1) The court of appeal shall suspend the criminal prosecution if the appeal proceedings reveal that some of the circumstances referred to in Section 173 (1) b) through d) occurred after the declaration of the contested judgment, if the writ of summons to the public session of the court of appeal cannot be served to the defendant, or on the grounds referred to in Section 9a.

(2) The court of appeal shall suspend the criminal prosecution if it believes that the law which was applied in the given criminal case by the court of the first instance in the course of making a decision on guilt and punishment is inconsistent with the constitutional law, or an international treaty that takes precedence over the law; in such a case it shall refer the matter to the Constitutional Court.

Section 256

The court of appeal shall dismiss the appeal should they find it unjustified.

Section 257

(1) The court of appeal shall repeal the contested judgment or its part and within the scope of the repeal it shall

a) decide to submit the matter to a decision on jurisdiction of the court that is commonly superior to the court of the first instance and the court that is according to them competent, and if the court in the first instance should have acted in this way (Section 222 (1); if the commonly superior court is the court of appeal, it shall promptly decide to assign the matter to the competent court,
b) refer the matter to another authority, if the court of the first instance should have done so (Section 222 (2)),
c) discontinue the criminal prosecution, if it finds that there is any of the circumstances, which would justify the discontinuation of the criminal prosecution by the court of the first instance (Section 223 (1), (2)),
d) suspend the criminal prosecution, if the court of the first instance should have done so (Section 224 (1), (2) and (5)).

(2) If the court of appeal finds that there is any of the circumstances referred to in Section 11 (1) a), b) and i), which occurred after the declaration of the contested judgment, it shall decide to discontinue the criminal prosecution without repealing the contested judgement.

(3) The appeal proceedings, during which the criminal prosecution was discontinued for any of the reasons referred to in sub-section (2), will be continued if the accused person declares within three days from the day they were notified of the resolution to discontinue the criminal prosecution he wishes to continue in the proceedings on the matter. The accused person must be instructed thereof.

Section 258

(1) The court of appeal shall also repeal the contested judgment

a) for substantial errors of proceedings that preceded the judgment, particularly due to a violation of provisions in such proceedings, which are supposed to secure clarification of the matter or the right of defence, if they could have affected the correctness and legality of the reviewed part of the judgement,
b) for judgment errors, especially for ambiguity or incompleteness of the factual findings related to the reviewed part of the judgment, or due to the fact that the court did not deal with all the relevant circumstances of such part important for the decision,
c) in case of occurrence of doubts about the correctness of the factual findings regarding the reviewed part of the judgment, the clarification of the matters requires repeated evidence or the presentation of further evidence and their presentation before the court of appeal would mean to substitute the work of the court in the first instance,

d) in case of violation of provisions of the Penal Code in the reviewed part of the judgment,
e) if the imposed punishment within the reviewed part of the judgment is inadequate,
f) if the decision on the asserted claim of the aggrieved person in the reviewed part of the judgment is incorrect.

(2) If only part of the contested judgment is faulty and can be separated from the rest, the court of appeal shall repeal the judgment in that part; however, if it repeals, even only in part, the statement of guilt, the entire statement of punishment will always be repealed, as well as other statements that have their basis in the statement of guilt.

Section 259

(1) If it is necessary, after repealing the contested judgment or any of its part, to make a new decision in the matter, the court of appeal may return the case to the court of the first instance only if the error cannot be rectified during the public session, especially if the factual findings are insufficient, so it is necessary to repeat the trial or to conduct extensive and difficult to supplementation of evidence.

(2) If the error lies only in the fact that some verdicts of the contested judgement are missing or are incomplete, the court of appeal may return the case to the court of the first instance with an order to decide on the missing verdict again or to supplement the incomplete verdict without repealing the judgment.

(3) The court of appeal may decide in the matter itself by a judgment only if it is possible to make a new decision based on the facts which were correctly found in the contested judgment and eventually supplemented or changed on the basis of the evidence produced before the court of appeal. The court of appeal may divert from the factual findings of the court of the first instance only if during the appeal proceedings,
a) it produced some evidence important for the factual findings, which were already produced in the trial, or
b) it produced evidence that was not produced in the trial.

(4) The court of appeal may change the contested judgment to the detriment of the defendant only on the basis of an appeal of the public prosecutor that was filed to the detriment of the defendant; it may do the same in the verdict on the monetary compensation of damage or non-material harm or the surrender of unjust enrichment, based on the appeal of the aggrieved person who applied a claim for compensation of damage or non-material harm or the surrender of unjust enrichment.

(5) The court of appeal itself cannot
a) find the defendant guilty of an act, which he was acquitted of by the contested judgment,

b) find the defendant guilty of a criminal offence more serious, than which the court of the first instance could have found him guilty of in the contested judgment (Section 225 (2)).

Section 260

If it is impossible to continue the trial proceedings after repealing the judgement due to an unrecoverable procedural error and there is no reason for another decision, the court of appeal shall return the case to the public prosecutor for further investigation. The provisions of Section 191 and Section 264 (2) shall apply accordingly.

Section 261

If the reason, based on which the court of appeal decided in favour of a defendant, also benefits another co-defendant or party concerned, the court of appeal shall decide also in their favour. Similarly they shall decide in favour of the defendant, to whom benefits the reason, based on which it decided in favour of a party concerned.

Section 262

If the court of appeal decides that the case shall be returned for further proceeding and a new decision to the court in the first instance, it may also order that the whole matter be tried and decided on in a different composition of the court panel. Based on important grounds, it may also order the matter to be tried and decided on by another court of the same type and instance under its jurisdiction.

Section 263 Proceedings before the Court of Appeal

(1) The court of appeal shall decide on an appeal in a public session. It may also make decisions in a closed session

a) pursuant to Section 253, 255 and 257,
b) pursuant to Section 258 (1), if it is clear that the error cannot be rectified in a public session.

(2) Participation of the public prosecutor in a public session is mandatory.

(3) The defendant must have a defence counsel in all cases of the public session held on an appeal, where he must have one in the trial.

(4) In the absence of the defendant, who is in custody or serving a prison sentence, the public session of the court of appeal may be held only if the defendant explicitly declares that he waives the right to be present at the public session.

(5) After the initiation of the public session, the presiding judge or another designated member of the court shall read the contested judgment and give a report on the state of the matter. Then the appellant shall read his appeal and its justification; if the appellant is not present, the presiding judge or a designated member of the court panel shall read the appeal and the justification. The public prosecutor and the persons who may be directly affected by a decision of the court of appeal will present their comments and petitions on the production of evidence, unless they are appellants; if any of those persons are not present and if the comments are contained in the file, or if they request it, the contents of their submissions shall be read by the presiding judge or a designated member of the court panel.

(6) After the presentation of the petitions in the public session, the court of appeal shall produce the evidence necessary for a decision on the appeal, unless it concerns an extensive and difficult supplementation of evidence that would necessitate substituting the work of the court of first instance. Production of evidence shall be governed by the provisions on the production of evidence in the trial. If the accused person is not present, even though he was duly summoned, it is assumed that he agrees to reading of protocols of questioning of witnesses and experts.

(7) In terms of changes or additions to the factual findings, the court of appeal may take into account only the evidence that was produced in the public session before the appeal court; this evidence shall be evaluated in relation to the evidence presented by the court of the first instance in the course of the trial. The court of appeal is bound by the evaluation of evidence by the court of the first instance with the exception of evidence that the court of appeal produced again itself in the public session.

Section 264 Proceedings before the Court of the First Instance after Repealing the Judgment

(1) The court to which was returned a case for new proceedings and decision is bound by the legal opinion pronounced by the court of appeal in its decision, and it is obligated to perform actions and supplementation ordered by the court of appeal.

(2) If the contested judgment was repealed only due to an appeal filed for the benefit of the defendant, a change in the decision to their detriment cannot occur during the new proceedings.

Section 265 Consequences of Repeal of the Verdict on Monetary Compensation of damage or Non-material Harm or for Surrender of Unjust Enrichment

If the court of appeal repeals the contested judgment only in the verdict on monetary compensation of damage or non-material harm or for the surrender of unjust enrichment and it does not decide in the matter by itself, it shall refer the victim to proceedings in civil matters or to proceedings before another competent authority.

CHAPTER SEVENTEEN

Extraordinary Appeals

Section 265a Admissibility of Extraordinary Appeal

(1) A final and effective decision of the court may be contested by an extraordinary appeal on the merits, if the court decided in the second instance and the law allows it.

(2) A decision on the merits means

a) a judgment by which the accused person was found guilty and imposed a punishment or a protective measure or by which was the punishment waived,
b) a judgment by which the accused person was acquitted of charges,
c) a resolution on the discontinuation of the criminal prosecution,
d) a resolution to refer the matter to another authority,
e) a resolution by which imposed a protective measure,
f) a resolution on the conditional suspension of the criminal prosecution,
g) a resolution on the approval of a settlement, or
h) a decision by which was dismissed or rejected a regular corrective measure against a judgment or resolution referred to under paragraphs a) through g).

(3) An extraordinary appeal may not be filed to the detriment of the accused person only on the grounds that the court proceeded in accordance with Section 259 (4), Section 264 (2), Section 273 or Section 289 b).

(4) Extraordinary appeals only against the grounds of the decision are not admissible.

Section 265b Grounds for Extraordinary Appeal

(1) An extraordinary appeal may be submitted only if there is one of the following reasons:

a) the decision in the matter was made by a court lacking competence or a court that was not properly staffed, except for cases where a court panel decided in stead of a single judge or where decided a superior court,
b) the decision in the matter was made by an excluded authority; this reason cannot be applied if this matter of fact was known to the person lodging the extraordinary appeal in the preceding proceedings and was not objected to before the decision of the authority of the second instance,
c) the accused person did not have a defence counsel during the proceedings, though he should have had one according to the law,
d) the provisions on the presence of the accused person at the trial or public session were breached,
e) criminal prosecution was conducted against the accused person, even though it was not admissible according to the law,

f) it was decided to refer the matter to another authority, to discontinue the criminal prosecution, conditionally suspend the criminal prosecution or to approve a settlement without meeting the conditions for such a decision,
g) the decision is based on an incorrect legal assessment of the act or on another incorrect substantive-law assessment,
h) the accused was imposed a type of punishment which the law does not permit, or he has been imposed a punishment outside the criminal penalty rate stipulated in the Criminal Code for the criminal offence, he has been found guilty of,
i) it was decided on waiver of punishment or on waiver of punishment with supervision without meeting the conditions provided by the law for such a procedure,
j) it was decided to impose a protective measure without meeting the conditions provided by the law for its imposition,
k) certain verdict of the decision is missing or is incomplete,
l) it was decided to dismiss or reject an appeal against the decision or resolution referred to in Section 265a (2) (a) through (g) without fulfilling the procedural requirements stipulated by the law for such a decision, or despite a reason for the extraordinary appeal referred to in Paragraphs a) through k) was given in the preceding proceedings.

(2) An extraordinary appeal can also be filed in case a life sentence of imprisonment was imposed.

Section 265c Court of Appeal

The Supreme Court shall decide on extraordinary appeals.

Section 265d Entitled Persons

(1) An extraordinary appeal may be filed by
a) the Supreme Public Prosecutor, upon the petition of the Regional or High public prosecutor or even without such a petition for the incorrectness of any verdict of the court decision, in favour and to the detriment of the accused person,
b) the accused person for the incorrectness of a verdict of the court decision that directly affects him.

(2) The accused person may file an extraordinary appeal only through his defence counsel. The submission of the accused, which was not made through his defence counsel, is not considered an extraordinary appeal even if it was so denoted; the accused person must be instructed thereof (Section 125 (3)). The Supreme Court shall not decide on such a submission, but shall send it, based on its content, either to the competent court as a petition to permit a new trial or to the Minister of Justice as an motion for a complaint for the violation of law, or shall return it to the accused person along with instructions that the extraordinary appeal may be submitted only via a defence counsel. It shall proceed similarly in case of submissions of persons who can submit an appeal on his behalf. If the accused person is

incapacitated or if his legal capacity is restricted, his defence counsel or statutory representative may submit an extraordinary appeal for his benefit even against his will.

Section 265e Time Limit and Place of Submission

(1) An extraordinary appeal is filed at the court that decided on the matter in the first instance, within two months of the service of the decision against which the extraordinary appeal is aimed.

(2) If the decision is served to the accused person and to his defence counsel and statutory representative, the time limit starts from the service that was performed the latest.

(3) The time limit for filing an extraordinary appeal is also maintained if the extraordinary appeal is filed within the deadline at the Supreme Court or the court that decided on the matter in the second instance, or if the submission, the content of which is an extraordinary appeal, was made within the time limit at a post office and addressed to the court to which it is to be submitted or which is to decide on the matter.

(4) Restoration of the time limit for submitting an extraordinary appeal is not admissible.

Section 265f Contents of Extraordinary Appeal

(1) The extraordinary appeal must indicate, in addition to the general requirements of submissions (Section 59 (3)), against which decision it is aimed, which statement, in what extent and on what grounds it is contested, and what does the appellant claim, including a specific petition for a decision of the court of appeal with a reference to the statutory provisions of Section 265b (1) a) through l), or Section 265b (2), on which the extraordinary appeal is based. The Supreme Public Prosecutor is obliged to state in the extraordinary appeal whether it is made it in favour or to the detriment of the accused person.

(2) The extent to which the extraordinary appeal contests the decision and the reasons for the extraordinary appeal can be changed only within the time limit for the submission of the extraordinary appeal.

Section 265g Withdrawal of Extraordinary Appeal

(1) A person submitting the extraordinary appeal may withdraw it by an explicit declaration at any time until the Supreme Court retires for the final deliberation. However, the proceedings on the extraordinary appeal shall continue, if the Supreme Public Prosecutor withdraws the extraordinary appeal submitted only in favour of the accused person and if the accused insists on the continuation of the appeal proceedings; in that case, the Supreme Court shall decide in such an extent, as if the extraordinary appeal submitted by the Supreme Public Prosecutor was submitted by the accused person. The withdrawal of an extraordinary appeal lodged by the Supreme Public Prosecutor only in favour of an accused person who has died is ineffective.

(2) The presiding judge of the Supreme Court shall take the withdrawal of the extraordinary appeal into consideration by a resolution, unless there are obstacles, and if the matter was not yet presented to this court, the presiding judge of the court in the first instance. If the Supreme Public Prosecutor withdrew the extraordinary appeal filed only in favour of the accused, and the accused person insists on continuing the proceedings on the extraordinary appeal, the presiding judge of the Supreme Court senate shall state it in a resolution by which he decides on the withdrawal of the extraordinary appeal.

Section 265h Proceedings before the Court of the First Instance

(1) If the extraordinary appeal of the Supreme Public Prosecutor or the extraordinary appeal of the accused person filed by his defence counsel does not meet the content requirements pursuant to Section 265f (1), the presiding judge shall bid them to remove all flaws within a two-week period, which he shall also set and shall inform them that the extraordinary appeal will otherwise be rejected under Section 265i (1) d).

(2) The presiding judge of the senate of the court in the first instance shall serve a copy of the extraordinary appeal of the accused person to the public prosecutor and a copy of the extraordinary appeal of the public prosecutor to the defence counsel of the accused person and to the accused person along with the notice that they may comment on it in writing and agree with proceedings on the extraordinary appeal in a closed session (Section 265r (1) c)). Once the time limit for filing an extraordinary appeal expires for all entitled persons, he shall submit the files to the Supreme Court.

(3) If the presiding judge reaches a conclusion on the basis of the extraordinary appeal and the contents of the file that the enforcement of the decision should be suspended or postponed, he shall submit the files with the relevant petition for such procedure to the Supreme Court without undue delay, which shall decide on such petition by a resolution within fourteen days after receipt of the files, and unless the proceeding at the court in the first instance was concluded in the meantime, the files will be returned to it for conclusion of the proceedings.

Decision of Court of Appeal

Section 265i

(1) The Supreme Court shall reject the extraordinary appeal,

a) if it is not admissible,
b) if it was filed on grounds other than those referred to in Section 265b,
c) if it was filed late, by an incompetent person, or by a person who re-submitted it again after a previous explicit withdrawal,
d) if it does not meet the requirements of the contents of an extraordinary appeal,
e) if the extraordinary appeal is clearly unsubstantiated,

f) if it is obvious that the proceedings on the extraordinary appeal could not significantly affect the status of the accused person and the issue which is to be addressed by the extraordinary appeal is not essential from the legal point of view.

(2) In the justification of the resolution to refuse the extraordinary appeal, the Supreme Court shall only briefly state the reasons for the rejection by reference to the circumstances relating to the statutory grounds for the rejection.

(3) If the Supreme Court does not refuse the extraordinary appeal in accordance with sub-section (1), it shall examine the legality and justification of the verdicts of the decision, against which was the extraordinary appeal lodged, in the extent and for reasons referred to in the extraordinary appeal, as well as the proceedings preceding the contested part of the decision. The Supreme Court shall take into consideration the flaws of the verdicts that were not contested by the extraordinary appeal only if they could affect the correctness of the verdicts against which was the extraordinary appeal filed.

(4) If an entitled person filed a justified extraordinary appeal against the verdict on guilt, the Supreme Court shall also review, in relation to the contested flaws, the verdict on punishment, as well as other verdicts that have their basis in the verdict on guilt, regardless of whether the extraordinary appeal was filed against these verdicts as well.

(5) If the extraordinary appeal contested only a part of the decision related to just one of several persons concerning who was decided on by the same decision, the Supreme Court will examine only the part of the decision and the preceding proceedings related to such person in the manner mentioned above.

Section 265j

The court of appeal shall dismiss the extraordinary appeal if it finds it unsubstantiated.

Section 265k

(1) If the Supreme Court finds that the submitted extraordinary appeal is justified, it shall repeal the contested decision or its part or even the flawed proceedings that preceded it.

(2) If only a part of the contested decision is flawed and it can be separated from the rest, the Supreme Court shall repeal the decision only in this part; however, if it repeals, even in part, the verdict on guilt, the entire verdict on punishment will also be repealed, as well as other verdicts that have their basis in the verdict on guilt. At the same time, it shall also repeal further decisions, which in their contents follow the repealed decision or its repealed part, if given the change that occurred due to the repeal it lost its basis. Section 261 shall be applied accordingly.

Section 265l

(1) If it is necessary, after the repeal of the contested decision or any its verdict, to make a new decision, the Supreme Court shall generally order the court, whose decision is concerned, to hear the matter again to the extent necessary for a new decision.

(2) If the error is based only in the fact that a certain verdict is missing in the contested decision or is incomplete, the Supreme Court may, without repealing the decision, order the court whose decision is concerned to decide on the missing verdict or to complete the incomplete verdict.

(3) If the Supreme Court orders the matter referred to in sub-section (1) or (2) for new proceedings and decision, it may also order that the court shall hear and decide it in a different composition of the court panel. For important reasons the Supreme Court may also order the matter to be heard and decided on by another court or public prosecutor.

(4) If the defendant serves a prison sentence imposed to him by the original decision, and the Supreme Court repeals the verdict of such a sentence upon the extraordinary appeal, it shall also make a decision on custody. Provision on custody hearing (Section 73d to through Section 73g) shall not be applied in this case.

Section 265m

(1) The Supreme Court itself may also decide on the matter by a judgment when repealing the contested decision. However, the Supreme Court itself cannot

a) find the accused person guilty of an act, concerning which he was acquitted of charges or concerning which was the criminal prosecution discontinued,
b) find the accused person guilty of a more serious criminal offence than for which he was found guilty by the contested judgment,
c) impose a prison sentence to the accused person for over twenty years up to thirty years or prison sentence for life, if it was not imposed by the examined decision or in connection with the judgment of the court in the first instance.

(2) If the Supreme Court repeals the judgment only in the verdict on monetary compensation of damage or non-material harm or the surrender of unjust enrichment, Section 265 shall apply accordingly.

Section 265n

With the exception of a new trial, no appeal is admissible against the decision on the extraordinary appeal.

Proceedings before the Court of Appeal

Section 265o

(1) Before making a decision on an extraordinary appeal, the presiding judge of the Supreme Court may postpone or suspend enforcement of the decision, against which the extraordinary appeal was submitted.

(2) If a decision on the extraordinary appeal requires clarification of any circumstances, the presiding judge of the Supreme Court shall carry out the necessary investigation, or it shall be carried out upon his request by another authority involved in criminal proceedings, which shall be obliged to comply with this request without undue delay. The provisions of Chapter Five shall apply to such investigation. In particularly urgent cases, the measures referred to in Chapter Four may be used to secure evidence. However, seizure of the accused person by issuing an arrest warrant and taking into custody may be performed only upon a petition of the Supreme Public Prosecutor lodged in the extraordinary appeal to the detriment of the accused person, and in case the Supreme Court deems it necessary given the seriousness of the criminal offence and the urgency of the grounds for custody.

Section 265p

(1) The Supreme Court may change the contested decision to the detriment of the accused person only on the basis of an extraordinary appeal of the Supreme Public Prosecutor filed to the detriment of the accused person.

(2) An extraordinary appeal to the detriment of the accused is precluded, if
a) the accused person has died,
b) the act is subject to the decision of the President of the Republic, who ordered a discontinuation of the criminal prosecution.

(3) If an extraordinary appeal was filed only in favour of the accused person, his death does not interfere with the performance of the proceedings based on an extraordinary appeal; in such a case the criminal prosecution cannot be discontinued solely because the accused died.

Section 265r

(1) The Supreme Court decides on the extraordinary appeal in a public session. In a closed session it may render
a) a decision to reject the extraordinary appeal (Section 265i),
b) a decision to repeal the contested decision (Section 265k) and to order the matter for a new hearing and decision (Section 265l (1) and (2), if it is clear that the error cannot be resolved in a public session, or
c) any other decision, if the Supreme Public Prosecutor and the accused person agree with the proceedings in a closed session.

(2) Participation of the public prosecutor active at the Supreme Public Prosecutor's Office is mandatory in the public session.

(3) In a public session held on an extraordinary appeal, the accused person must have a defence counsel in the cases referred to in Section 36a (2) a) through c).

(4) In the absence of the accused person, who is in custody or serving a prison sentence, the public session may be held only if the defendant expressly declares that he waives the right to be present at the public session.

(5) If the notice of the public session cannot be served to the person who may be directly affected by the decision on the extraordinary appeal, it is sufficient to serve the notice of the public session to his defence counsel or agent. If such person does not have a defence counsel or agent, it must be appointed for that purpose. The provisions of Section 39 shall apply accordingly.

(6) After the commencement of the public session, the presiding judge or a designated member of the court panel shall read the contested decision and give a report on the state of the matter. Then the person filing the extraordinary appeal shall read it and justify it. The public prosecutor and the persons who may be directly affected by the decision of the court of appeal will present their statements, unless they are the persons filing the extraordinary appeal; if any of these persons are not present and if the statement is contained in the file, or if they requested it, the contents of their extraordinary appeal shall be read by the presiding judge or a designated member of the court panel.

(7) Evidence is generally not produced in the public session before the Supreme Court. Only in exceptional cases may the Supreme Court supplement the proceeding with the evidence necessary for the decision on the extraordinary appeal.

Section 265s Proceedings after Assigning the Matter

(1) The authority involved in criminal proceedings, to which the matter is assigned for a new proceeding and decision, is bound by the legal opinion pronounced by the Supreme Court in its decision and is obliged to perform actions and supplementation ordered by the Supreme Court.

(2) If the contested decision was repealed only due to an extraordinary appeal filed in favour of the accused person, a change of the decision to his detriment cannot occur during the new proceedings.

CHAPTER EIGHTEEN

Complaints for Violation of Law and Proceedings Thereon

Section 266

(1) The Minister of Justice may file a complaint for the violation of law against a final decision of the court or the public prosecutor that violated the law or that was made on the basis of a flawed procedure in the proceedings. Unless the law provides otherwise, a complaint for the violation of law against the decision of the Supreme Court is not permissible.

(2) A complaint for the violation of the law may be filed against the verdict on punishment only if the punishment is obviously disproportionate to the nature and seriousness of the criminal offence or the circumstances of the offender, or if the type of punishment imposed is obviously contrary to the purpose of the punishment.

(3) If the decision referred to in sub-section (1) concerns several persons, the complaint against the violation of law may also be filed only against the part of the decision which concerns one of those persons.

(4) A complaint for the violation of law to the detriment of the accused against a final decision of the court cannot be filed solely on the grounds that the court proceeded in accordance with Section 259 (4), Section 264 (2), Section 273 or Section 289 b).

(5) The provisions of sub-section 4 shall be applied accordingly also to the decisions of the court or public prosecutor or the searching authority made in accordance with Section 150 (1) or (3).

(6) The Minister of Justice may withdraw the complaint for the violation of law he has filed until the time the court deciding on the complaint fort the violation of law retires for final deliberation. The presiding judge of this court shall acknowledge the withdrawal of the complaint by a resolution.

(7) If the Minister of Justice reaches a conclusion on the basis of the contents of the file that execution of the decision should be suspended or postponed, he shall petition such procedure to the Supreme Court along with lodging the complaint for the violation of law.

Section 266a

(1) The Minister of Justice is obliged to justify the submitted complaint against the violation of law, which was not justified, within 14 days from its submitting.

(2) The Supreme Court shall try the complaint for the violation of law and an extraordinary appeal submitted on the same matter in a joint proceedings. This does not preclude the procedure under Section 23.

Section 267

(1) The complaint for the violation of law must include, in addition to the general requirements (Section 59 (3)) for submission, which decision it is filed against, which verdict, to what extent and on what grounds is contested, and what the Minister of Justice claims, including a specific petition for the decision of the Supreme Court. The Minister of Justice is required to state in the complaint for the violation of law, whether he submits it in favour or to the detriment of the accused person.

(2) A complaint for the violation of law that is filed within the time limit referred to in Section 266a (1) justified and can no longer be changed in the course of proceedings before the Supreme Court.

(3) The Supreme Court shall examine the legality and justification of the verdicts of the decision, against which was the complaint for the violation of law filed, to the extent and on the grounds stated therein, as well as the proceedings preceding the contested part of the decision. The Supreme Court shall take into consideration the flaws of the verdicts that were not contested by the complaint for the violation of the law only if they could affect the accuracy of statements against which was the complaint against the violation of the law filed.

(4) If the Minister of Justice files a justified complaint for the violation of law against the verdict on guilt, the Supreme Court shall also examine, in relation to the contested flaws, the verdict on punishment as well as other verdicts that have a basis in the verdict on guilt, regardless of whether the complaint for the violation of law was filed against these verdicts as well.

(5) If the complaint for the violation of law contested a part of the decision related only to some of several persons, who were decided on by the same decision, Supreme Court shall examine only the part of the decision and the preceding proceedings which concerns such a person in the manner mentioned above.

Section 268

(1) The Supreme Court shall dismiss the complaint for the violation of law if,
a) it is not admissible,
b) it was filed late, or
c) it is not justified.

(2) If the Supreme Court finds that the law was violated, it shall pronounce the judgment that the contested decision or its part (Section 266 (3)) or the proceedings that preceded this decision violated the law.

Section 269

(1) A verdict pursuant to Section 268 (2) shall not affect the full force and effect of the decision in question.

(2) However, if the law was violated to the detriment of the accused, the Supreme Court shall repeal the contested or its part or the defective proceedings preceding it decision along with the verdict referred to in Section 268 (2). If only a certain verdict of the contested decision is unlawful and can be separated from others, the Supreme Court shall repeal only this verdict. However, if it repeals, even in part, the verdict on guilt the entire verdict punishment shall also be repealed, as well as other verdicts that have their basis in the verdict on guilt. It shall also repeal further decisions following the repealed decision, if considering the change that occurred due to the repeal, it lost its basis. The provisions of Section 261 shall apply accordingly.

Section 270

(1) If it is necessary to make a new decision after the repeal of the contested decision or any of its verdict, the Supreme Court usually orders the authority whose decision is concerned to hear the matter again in the extent necessary and make a new decision.

(2) If the violation of law consists only on the fact that some verdicts of the contested decision are missing or incomplete, the Supreme Court, may order the authority whose decision is concerned to decide on the missing verdict again or to supplement the incomplete verdict, without repealing the decision.

(3) If the Supreme Court orders the matter for a new hearing and decision pursuant to sub-section (1) or (2), it may also order the court to hear and decide on it in a different composition of the court. For important reasons it may also order the matter to be heard and decided by another court or public prosecutor.

(4) The authority, to which the matter was assigned, is bound by the legal opinion pronounced in the matter by the Supreme Court and is obliged to perform actions ordered by the Supreme Court.

Section 271

(1) The Supreme Court may also immediately decide in the matter when repealing the contested decision, if it is possible to make a decision based on the matters of facts duly found in the contested decision. However, the Supreme Court itself cannot

a) find the accused person guilty of an act, concerning which he was acquitted of charges or concerning which was the criminal prosecution discontinued,
b) find the accused person guilty of a more serious criminal offence than for which he was found guilty by the contested judgment,
c) impose a prison sentence to the accused person for over twenty years up to thirty years or prison sentence for life.

(2) If the Supreme Court repeals the judgment only in the verdict on monetary compensation of damage or non-material harm or the surrender of unjust enrichment, Section 265 shall apply accordingly.

Section 272
Repealed

Section 273

If the Supreme Court pronounced that the law was violated to the detriment of the accused, the decision cannot be changed to his detriment in the new proceedings. In the case of other decisions, the Section 150 shall apply accordingly.

Section 274

The Supreme Court shall decide on the complaint for the violation of law in a public session in the presence of the public prosecutor active in the Supreme Public Prosecutor's Office. If the Minister of Justice or the presiding judge deems it necessary, a designated representative of the Minister of Justice shall attend the public session. The decision according to Section 268 (1) may also be made by the Supreme Court in a closed session.

Section 275

(1) If the law was violated to the detriment of the accused person, his death is not an obstruction to conducting the proceedings on the basis of the complaint; therefore the criminal prosecution cannot be discontinued only because the accused person died. If the law was violated to the detriment of the accused person, the time from the full force and effect of the contested decision until the decision on the complaint for the violation of law is not included in the period of limitation.

(2) If the notification of the public session cannot be served to the person who may be directly affected by the decision on the complaint for the violation of law, it is sufficient to serve the notice of the public session to their defence counsel or agent. If such person does not have a defence counsel or agent, one must be appointed for that purpose. The provision of Section 39 shall be applied accordingly.

(3) If the accused person is serving a prison sentence imposed to him by the original judgment, and the Supreme Court repeals the verdict on such punishment on the basis of the complaint for the violation of law, it shall also decide on custody.

(4) Before deciding on the complaint for the violation of law, the Supreme Court may postpone or suspend the enforcement of the decision against which was the complaint for the violation of law filed. The Supreme Court shall decide on such a petition within fourteen days after receiving the file.

Section 276

If a decision on the complaint for the violation of law requires clarification of any circumstances, the presiding judge of the Supreme Court senate shall carry out the necessary investigation, or upon his request another authority involved in criminal proceedings or eventually a Police authority, which is obliged to comply with this request without undue delay. The provisions of Chapter Five shall apply on such investigation. In particularly urgent cases, the measures referred to in Chapter Four may also be used to secure evidence based on a resolution of the court.

CHAPTER NINETEEN

New Trial

Section 277 General Provisions

If a criminal prosecution conducted against a certain person was concluded by a final and effective judgment, final and effective criminal order, final and effective resolution on discontinuation of criminal prosecution, final and effective resolution on conditional suspension of criminal prosecution, final and effective resolution on approval of settlement, or a final resolution on referring the matter to another authority, then the criminal prosecution of the same person for the same act may be continued, if such a decision was not revoked in other prescribed proceedings, only in case a new trial was permitted. Before the permission of a new trial, investigative actions may be conducted to secure evidence and to detain the accused only within limits of the provisions of this Chapter.

Conditions for New Trial

Section 278

(1) A new trial in proceedings that ended by a final end effective judgment or a criminal order shall be permitted, if facts or evidence previously unknown to the court emerge, which could itself or in conjunction with previously known facts and evidence justify a different decision on guilt or on the awarded claim of the aggrieved person for monetary compensation of damage or non-material harm or for surrender of unjust enrichment, or with regard to which the original punishment was obviously disproportionate to the nature and seriousness of the criminal offence or the circumstances of the offender, or the type of punishment imposed would obviously be contrary to the purpose of the punishment. A new trial in proceedings, which ended by a final end effective judgment, by which was decided on a conditional suspension of punishment with supervision, shall be permitted even before the events referred to in Section 48 (6) and (7) of the Penal Code occurred, also if the facts or evidence previously unknown to the court are revealed, which could itself or in conjunction with the previously known facts and evidence justify a decision on punishment.

(2) A new trial in proceedings that ended by a final and effective resolution of the court on the discontinuation of criminal prosecution, including the approval of settlement, on referring the matter to another authority or on the conditional discontinuation of criminal prosecution, shall be permitted even if the circumstances referred to in Section 308 (3) have not occurred yet, if the facts or evidence previously unknown to the court are revealed, which could itself or in conjunction with the previously known facts and evidence lead to a conclusion that the grounds for such a decision did not exist and that it is outright to continue in the proceedings.

(3) A new trial in proceedings that ended by a final and effective resolution of the public prosecutor on the discontinuation of criminal prosecution, including the approval of a settlement, on referring the matter to another authority, or on the conditional suspension of criminal prosecution, shall be admissible even if the facts referred to in Section 308 (3) have not occurred yet, if the facts or evidence previously unknown to the public prosecutor are revealed, which could itself or in conjunction with the previously known facts and evidence lead to a conclusion that the grounds for such decision did not exist and that it is outright to file an indictment against the accused person.

(4) A new trial in proceedings that ended in any of the ways referred to in the preceding sub-sections shall also be admissible if it is found by the final end effective judgment that the Police authority, public prosecutor, or judge violated their obligations by a conduct constituting a criminal offence in the original proceedings.

Section 279

A new trial to the detriment of the accused is not permissible, if

a) the criminality of the act has expired,
b) half of the limitation period for the criminal offence, which was subject to the criminal prosecution, has expired,
c) the act is subject to a decision of the President of the Republic, who ordered the discontinuation of the criminal prosecution, or
d) the accused has die.

Section 280 Persons Entitled to Petition for Permission of a New Trial

(1) A new trial may be permitted only upon a petition of an entitled person.

(2) A petition for the permission of a new trial to the detriment of the accused person may only be filed by the public prosecutor.

(3) In addition to the accused person, a petition for a new trial in favour of the accused person may be filed by persons who can file an appeal in his favour. If they can do so even against the will of the accused person, they can also file a petition for the permission of a new trial against his will. They may file such a petition even after the accused person has died.

(4) The person who filed the petition for the permission of a new trial may withdraw it by an explicit declaration at any time, until the court of the first instance retires for the final deliberation. The petition for the permission of a new trial filed in favour of the accused person by another person or by his defence counsel or statutory representative may be withdrawn only with the explicit consent of the accused person; this does not apply if the petition was filed by the public prosecutor or if it was filed by an entitled person after the accused person has died. The presiding judge of the senate of the court of the first instance shall acknowledge the withdrawal of the petition for the permission of a new trial by a resolution. Such a decision does not preclude subsequent repeated submission of the petition for the permission of a new trial.

(5) If the court or another public authority ascertains circumstances that might justify a petition for the permission of a new trial, they are obligated to notify the public prosecutor. If it is a circumstance that could justify a petition for the permission of a new trial in favour of the accused person, the public prosecutor is obliged to immediately notify the accused person thereof, or if it is not possible, another person entitled to file the petition, unless he files this petition himself.

Section 281 Competence of the Court to Permit a New Trial

(1) The court with competent to decide on the indictment shall decide on the petition for the permission of a new trial in proceedings that ended by a final and effective resolution of the public prosecutor to discontinue the criminal prosecution, including the approval of settlement, referral of the matter to another authority, or conditional suspension of criminal prosecution.

(2) The court which decided in the matter in the first instance shall decide on the petition for the permission of a new trial in proceedings that ended by a final and effective judgment or a criminal order, and proceedings that ended by a final end effective resolution of the court to discontinue the criminal prosecution, including the approval of settlement, referral of the matter to another authority, or conditional suspension of criminal prosecution.

(3) The petition for the permission of a new trial shall be decided by a Regional Court even though the matter was decided by a District Court in the first instance, if the public prosecutor proposes it on the grounds that given the facts and evidence that were recently revealed the matter concerns a criminal offence falling within the jurisdiction of the Regional Court.

Proceedings on the Petition for the Permission of a New Trial

Section 282

(1) If it is necessary to clarify any circumstances in advance for the decision on the petition for the permission of a new trial and for verification of its justification, the presiding judge or

upon his request any other authority involved in criminal proceedings or the Police authority shall perform the necessary investigation. The provisions of Chapter Five shall apply for such investigation.

(2) In particularly urgent cases, the measures referred to in Chapter Four may be used to secure evidence based on the resolution of the court panel. However, the accused person may be seized by issuing a warrant for his arrest and put into custody prior to the permission of a new trial only upon a motion of the public prosecutor contained in the petition for the permission of a new trial filed to the detriment of the accused person and only if the court deems it necessary given the nature of the facts and evidence that were recently revealed, the seriousness of the criminal offence, and the urgency of the grounds for custody.

(3) If a petition for the permission of a new trial was filed in favour of the accused, the court may, given the nature of the facts and evidence that were recently revealed, postpone or suspend execution of the punishment finally and effectively imposed in the original proceedings.

Section 283

The court shall dismiss the petition for the permission of a new trial, if

a) it was filed by an unauthorised person,
b) it is directed only against the decision or verdict, concerning which is the new trial not permissible,
c) the new trial is precluded pursuant to Section 279, or
d) it does not find grounds for the new trial according to Section 278.

Section 284

(1) If the court grants the petition for the permission of a new trial, it shall repeal the contested decision, as a whole or in the part, concerning which the petition is justified. If it repeals the verdict on guilt, even in part, it shall always repeal the entire verdict of punishment, as well as other verdicts that have their basis in the verdict on guilt. At the same time, it will also repeal further decisions following the repealed decision, if considering the change which occurred due to the repeal it lost its basis.

(2) If the court permits a new trial in proceedings, which ended by a final court resolution on the discontinuation of criminal prosecution, including approval of a settlement, referring the matter to another authority, or conditional suspension of criminal prosecution, or if it permits a new trial on the question of guilt in proceedings, which ended by a final end effective judgment, it may also return the matter to the public prosecutor for completion of the investigation along with repealing the decision, if it deems it necessary in order to clarify the matter. The Regional Court, which according to Section 281 (3) permitted a new trial in proceedings, in which decided a District Court in the first instance, shall always return the matter to the public prosecutor. The provisions of Section 191 shall also apply here.

(3) If the court permits a new trial only on the verdict of the claim of the aggrieved person for monetary compensation of damage or non-material harm or for surrender of unjust enrichment, it shall refer the aggrieved person to proceedings in civil matters or to proceedings before another competent authority.

Section 285

If the court permits a new trial in favour of the accused person on the grounds that also benefit another co-defendant or party concerned, it shall also permit the new trial in their favour.

Section 286

(1) The court decides on the permission of a new trial in a public session.

(2) It may dismiss the petition on the grounds referred to in Section 283 a) through c) in a closed session. Due to the grounds referred to in Section 283 d), it may dismiss the petition in a closed session only if the petition is based on the same facts and evidence, for which it was previously finally and effectively dismissed and the newly filed petition is only its repetition.

(3) A complaint is admissible against the decision on the permission of a new trial, which has a dilatory effect.

Proceedings after the Permission of a New Trial

Section 287

If the accused person serves a prison sentence imposed to him by the original judgment, the court shall decide on custody without an undue delay after the full force and effect of the resolution, by which it repealed the verdict on this punishment along with the permission of the new trial.

Section 288

(1) If a new trial was permitted in proceedings, which ended by a final and effective resolution of the public prosecutor on discontinuation of criminal prosecution, including the approval of a settlement, on referring the matter to another authority or on the conditional discontinuation of criminal prosecution, the pre-trial proceedings shall be resumed.

(2) In other cases, the court shall continue in the proceedings on the basis of the original indictment after it finally and effectively permits a new trial, if it did not declare that the matter is to be returned to the public prosecutor for further investigation (Section 284 (2)).

(3) If the new trial was permitted only in respect to some of the criminal offences, for which was finally and effectively imposed a cumulative or aggregate sentence, and the court returned the matter to the public prosecutor for further investigation, it shall impose an adequate sentence for the remaining criminal offences in a public session after the full force and effect of the resolution permitting the new trial.

Section 289

If the new trial was permitted only in favour of the accused person,

a) the time since the full force and effect of the original judgment until the full force and effect of the resolution permitting the new trial shall not be included into the limitation period,
b) the judgement must not impose a more severe punishment upon him, than which was imposed by the original judgment,
c) his death does not preclude conducting further proceedings, and the criminal prosecution may not be discontinued on the grounds that the accused person has died.

CHAPTER TWENTY

Special Types of Proceedings

Section 290 General Provisions

If this Chapter does not contain special provisions, the general provisions shall be applied to the proceedings of this Chapter.

SUBDIVISION ONE
Proceedings in Juvenile Matters

Section 291 Legal Regulation of the Proceedings

Proceedings in juvenile criminal matters shall be governed by a special Act. Unless the special Act provides otherwise, it shall be proceeded pursuant to this Act.

Section 292
Repealed

Section 293
Repealed

Section 294
Repealed

Section 295

Repealed

Section 296
Repealed

Section 297
Repealed

Section 298
Repealed

Section 299
Repealed

Section 300
Repealed

Section 301
Repealed

SUBDIVISION TWO
Proceedings against a Fugitive

Section 302

Proceedings under the provisions of this Subdivision can be performed against those who evade criminal proceedings by staying abroad or by hiding.

Section 303

(1) The criminal prosecution in proceedings against a fugitive is initiated by serving the resolution to initiate criminal prosecution of the accused person to the defence counsel. If a defence counsel has not been appointed to him (Section 37 (1)), one must be appointed.

(2) If the grounds for conducting proceedings against a fugitive arose after the service of the resolution on the initiation of criminal prosecution of the accused person until the indictment is filed, the public prosecutor shall make a record thereof, stating the date from which the proceedings against a fugitive are conducted against the accused person; the record shall be served to the defence counsel.

Section 304

The accused person must always have a defence counsel in these proceedings; he has the same rights as the accused person.

Section 305

The court shall, upon a petition of the public prosecutor or even without such a petition, decide to conduct proceedings against a fugitive after the indictment is filed. The public prosecutor may make the petition as soon as in the indictment.

Section 306

(1) Any documents designated for the accused person shall be served only to the defence counsel.

(2) The summons to the trial and the public session shall also be published in an appropriate manner. The trial or the public session shall then be conducted even in the absence of the accused person, regardless of whether the accused knew about it.

Section 306a

(1) If the grounds for the proceedings against a fugitive have expired, the criminal proceedings shall continue pursuant to the general provisions. If the accused person requests it, the evidence produced in the previous trial proceedings shall be produced before the court again, if the nature of the evidence allows it and if the re-production is not prevented by another significant matter of fact; otherwise the protocol on production of such evidence shall be read to the accused person, or the audio and visual records made of the acts performed by the means of a video-conference device shall be played to him, and he shall be allowed to comment on them.

(2) If the proceedings against a fugitive ended by a final and effective convicting judgment and then the grounds on which the proceedings against a fugitive were conducted expired, the court of the first instance shall repeal such judgment upon a petition of the convict filed within eight days from the service of the judgment, and the trial shall be conducted again in the extent provided by sub-section (1). The convict must be instructed of the right to petition the repeal of the final end effective judgement upon the service of the judgement. The court shall proceed accordingly, if it is required by an international treaty binding the Czech Republic.

(3) The time from the full force and effect of the convicting judgment to its repeal pursuant to sub-section (2) shall not be included into the limitation period.

(4) The decision cannot be changed to the detriment of the accused person in the new proceedings.

SUBDIVISION THREE
Conditional Discontinuation of Criminal Prosecution

Section 307
Heading Omitted

(1) In proceedings on a misdemeanour, the court and in pre-trial proceedings the public prosecutor may, with a consent of the accused person, conditionally discontinue the criminal prosecution, if

a) the accused person has confessed to the act,
b) he compensated any damage, if it was caused by the act or if he entered an agreement with the aggrieved person on its compensation, or took other measures necessary for its compensation,
c) he surrendered any unjust enrichment obtained through the offence, or entered an agreement on its surrender with the aggrieved person, or took other measures necessary for its surrender,

and given the character of the accused person, with regard to his previous life and the circumstances of the case, such a decision can be reasonably considered as sufficient.

(2) The decision on the conditional discontinuation of the criminal prosecution shall stipulate a probation period from six months to two years. The probation period begins upon the full force and effect of the decision on the conditional discontinuation of the criminal prosecution.

(3) The accused person, who has entered an agreement with the aggrieved person on the manner of compensation of damage or surrender of unjust enrichment, shall have an obligation imposed to him in the decision on the conditional discontinuation of criminal prosecution to compensate the damage or to surrender the unjust enrichment during the probation period.

(4) The accused person may also be made obliged to comply with reasonable restrictions and obligations during the probation period, designed to make him lead an upright life.

(5) The accused person and the aggrieved person may file a complaint against the decision on the conditional discontinuation of criminal prosecution, which has a dilatory effect. If the court decides on the conditional suspension of the criminal prosecution, the public prosecutor also has this right.

Section 308

(1) If the accused led an upright life during the probation period, fulfilled the obligation to compensate the damage caused or to surrender unjust enrichment, and complied with other imposed restrictions, the authority that has conditionally discontinued the criminal prosecution in the first instance shall decide that he has approved himself. Otherwise, it shall decide that the criminal prosecution will continue, eventually also in the course of the probation period.

(2) If the decision pursuant to sub-section (1) is not made within one year after the probation period lapsed without the fault of the accused person, he shall be considered as approved.

(3) The full force and effect of the decision that the accused has approved himself, or the lapse of the period referred to in sub-section (2) have the effect of discontinuation of criminal prosecution (Section 11 (1) f)).

(4) The accused person and the aggrieved person may file a complaint against the decision pursuant to sub-section (1), which has a dilatory effect. If the court makes such a decision, also the public prosecutor has this right.

SUBDIVISION FOUR
Settlement

Section 309

(1) In proceedings on a misdemeanour, the court and in pre-trial proceedings the public prosecutor may, with a consent of the aggrieved person, decide on the approval of settlement and terminate the criminal prosecution, if

a) the accused person confesses that he has committed the act he is being prosecuted for, and there is no reasonable doubt that his statement was made freely, seriously, and definitely,
b) he compensates the aggrieved person for the damage caused by the offence or makes the necessary measures for its compensation, or otherwise redeems the harm caused by the criminal offence,
c) he surrenders any unjust enrichment gained by the misdemeanour or makes other appropriate measures for its surrender, and
d) deposits a financial amount to an account of the court or in pre-trial proceedings to an account of the public prosecutor's office, designated for a specific recipient for publically beneficial purposes, and this amount is not clearly disproportionate to the seriousness of the misdemeanour,

and if they deem such manner of dealing with the matter as sufficient, given the nature and seriousness of the act committed, to the degree to which the offence affected public interest and to the accused person and his property relations.

(2) The accused person, the victim and in trial proceedings the public prosecutor may file a complaint against the decision pursuant to sub-section (1), which has a dilatory effect.

Section 310

(1) The court and in pre-trial proceedings the public prosecutor shall question the accused person and the aggrieved person before making a decision on the approval of a settlement, in

particular on the manner and circumstances of the conclusion of the agreement on the settlement, whether the settlement agreement was concluded between them voluntarily and whether they agree with the approval of the settlement. They shall question the accused person as to whether he understands the accusations and whether he is aware of the consequences of the approval of the settlement. Part of the questioning of the accused person must be a declaration that he has committed the act he is being prosecuted for.

(2) The accused person and the aggrieved person must be instructed on their rights and the nature of the settlement prior to the questioning.

(3) If the aggrieved person is a legal entity, a written declaration on the circumstances referred to in sub-section (1) may be provided instead of questioning the statutory representative or another person authorised to act on its behalf.

Section 310a

The rights of the aggrieved person pursuant to Section 309 and 311 do not belong to persons, to who was the claim for the compensation of damage or for surrender the unjust enrichment only transferred.

Section 311

(1) A decision on the approval of settlement and on the discontinuation of criminal prosecution must include a description of the act that the settlement relates to, its legal qualification, the content of the settlement including the amount paid as compensation of damage or damage, for the compensation of which were made necessary steps, the extent of unjust enrichment, which was surrendered or for the surrender of which were made necessary steps, or other manner of compensation of damages caused by the misdemeanour, the amount of money designated for generally beneficial purposes, indicating the recipient, including the amount deposited to the State for financial assistance to the victims of criminal activity, and the verdict on the discontinuation of criminal prosecution for the act in which is seen the misdemeanour concerned by the settlement..

(2) In determination of the recipient of the financial amount for generally beneficial purposes, the court is bound by the contents of the agreement on settlement concluded between the accused person and the aggrieved person.

Section 312

(1) The financial amount designated for generally beneficial purposes shall be considered as financial amounts for municipalities and other legal entities with a registered office in the Czech Republic designated to finance science and education, culture, schools, fire protection, for the promotion and protection of minors, protection of animals, for social, health and environmental, humanitarian, charity, religious for the registered churches and religious

societies, physical education and sports purposes, and the amounts deposited to the State for financial assistance to the victims of criminal activity.

(2) The accused must designate at least 50% of the financial amount for generally beneficial purposes to the State for providing financial assistance to the victims of criminal activity according to a special Act.

Section 313

Decision on the approval of settlement shall be recorded as a matter of fact significant for the criminal proceedings under a special Act.

Section 314
Heading Omitted

If the settlement was not approved by the court or in the pre-trial proceedings by the public prosecutor after the accused made a declaration pursuant to Section 309 (1) that he committed the act he is being prosecuted for, such declaration cannot be taken into account in the subsequent proceedings as evidence.

SUBDIVISION FIVE
Proceedings before a Single Judge

Section 314a

(1) A single judge shall conduct proceedings on criminal offences, for which the law stipulates a prison sentence, the upper limit of which does not exceed five years.

(2) However, sub-section (1) shall not apply, if an aggregate sentence or joint sentence is to be imposed, and the earlier punishment was imposed in proceedings held before a court panel.

Section 314b

(1) Matters, on which was conducted a summary pre-trial proceedings, will be tried by a single judge in simplified proceedings. The criminal prosecution shall be initiated by serving the motion of the public prosecutor for punishment to the court.

(2) If an apprehended suspect was delivered to the court along with the service of the motion, the judge shall question him as the accused person within 24 hours, in particular about the circumstances of the apprehension and the grounds for custody, as well as about the facts that are considered as undisputed and whether he agrees that such facts will not be produced in evidence in the trial. According to the nature of the matter, he shall either issue a decision that may be issued outside the trial, or shall serve a writ of summons to the trial to the accused person, which may be held immediately after the questioning with a consent of the accused

person. At the same time he shall decide on custody, and if he takes the accused person into custody, who has not yet chosen a defence counsel, nor had one appointed (Section 179b (2)), he shall be allowed to choose a defence counsel within a determined time limit (Section 38), and should he fail to do so, a defence counsel shall be appointed to him (Section 39 (1)).

(3) If the suspect was not apprehended, the single judge shall assess based on the protocol on the questioning of the suspect, whether it is necessary to summon the accused person for questioning or whether it is possible to immediately order the trial.

(4) The single judge has the same rights and obligations as a court panel and its presiding judge.

(5) A single judge shall not hold closed sessions.

Section 314c

(1) A single judge shall not hold a preliminary hearing on the indictment and the motion for punishment. However, he will however review it in terms of the aspects referred to in Section 181 (1) and Section 186. According to the results of the examination, the single judge

a) will make one of the decisions referred to in Section 188 (1) a) through f),
b) may discontinue the criminal prosecution if there are circumstances referred to in Section 172 (2), or
c) if the conditions referred to in Section 179a (1) conducting simplified proceedings are not met, the motion for punishment shall be dismissed.

(2) The provisions of Section 189 through 195 shall apply also to proceedings before a single judge. The single judge may decide on the approval of the settlement in a public session.

(3) If the accused person is in custody, the single judge shall always decide, after reviewing the indictment, on the further duration of custody, unless he orders the trial.

(4) The accused person and the public prosecutor may file a complaint against the decision according to sub-section (1), which has a dilatory effect, unless it concerns suspension of criminal prosecution. The accused person and the aggrieved person may also file a complaint against the decision on the conditional suspension of the criminal prosecution or on the approval of the settlement.

(5) Upon the full force and effect of the decision to dismiss the motion for the punishment pursuant to sub-section (1) c), the matter is returned back to the pre-trial proceedings, and the public prosecutor will order an investigation.

Section 314d

(1) If the single judge does not make any of the decisions referred to in Section 314c (1), he shall order the trial.

(2) The single judge shall question the accused person at the trial in summary proceedings; Section 207 (2) shall be applied accordingly to reading the protocol of the questioning of the suspect (Section 179b (3)). Then he may decide to abandon proving the facts, which the public prosecutor and the accused person declared as proven and, with regard to other found facts, there is no significant reason to doubt these declarations. With the consent of the public prosecutor and the accused person, he may also read the official records of the explanation of persons and of performing other actions (Section 158 (3) and (6)).

SUBDIVISION FIVE
Criminal Order

Section 314e

(1) A single judge can issue a criminal order without trying the matter in a trial, if the matters of facts are reliably substantiated by the obtained evidence, also in simplified proceeding held after summary pre-trial proceedings.

(2) The criminal order may impose

a) a prison sentence for a term of up to one year with a conditional suspension of its execution,
b) house arrest for a term of up to one year,
c) a sentence of community service,
d) a sentence of prohibition of activity for up to five years,
e) financial penalty,
f) a sentence of confiscation of property or other asset values,
g) banishment for up to five years,
h) prohibition of stay for up to five years,
i) a sentence of prohibition to enter sport, cultural, and other social events for up to five years.

(3) A sentence of community service may be imposed by a criminal order only after a prior request of a report of a probation officer containing the findings about the possibilities of execution of this punishment and on the medical capacity of the accused person, including the opinion of the accused person on this type of punishment. The sentence of community service shall be imposed with regard to this report.

(4) The substitute sentence of imprisonment for the monetary penalty cannot exceed one year, event together with the imposed prison sentence. If a sentence of house arrest is imposed in addition to the monetary penalty, the sum of substitute sentences imposed in relation to these punishments may not exceed one year.

(5) A criminal order cannot be issued

a) in proceedings against an incapacitated person or a person with a restricted legal capacity,
b) in case a decision on a protective measure is to be made,
c) if an aggregate sentence or a joint sentence is to be imposed and the previous sentence was imposed by a judgment.

(6) A criminal order has the nature of a convicting judgment. The effects associated with the declaration of the judgment arise upon the service of the criminal order upon the accused person.

Section 314f

(1) The criminal order shall contain

a) designation of the court that issued the criminal order,
b) the date and place where the criminal order was issued,
c) designation of the accused person (Section 120 (2)),
d) the statement on the guilt (Section 120 (3)) and the imposed sentence (Section 122 (1)),
e) the statement on monetary compensation of damage or non-material harm or on the surrender of unjust enrichment (Section 228 and Section 229 (1) and (2)), provided the claim for the monetary compensation of damage or non-material harm or on the surrender of unjust enrichment was properly applied (Section 43 (3)),
f) the advice on the right to appeal, including the advice that if the accused person does not appeal, he waives the right to try the matter in the trial.

(2) The criminal order is served to the accused, the public prosecutor, and the aggrieved person, who filed a claim for the compensation of damage or non-material harm or for the surrender of unjust enrichment. The accused person shall be served with the process into own hands. If the accused has a defence counsel, the criminal order shall also be served to them.

Section 314g

(1) The accused person, the persons who are entitled to file an appeal in his favour, and the public prosecutor may appeal against the criminal warrant. The appeal is filed at the court that issued the criminal order, within eight days from its service. The time for persons who are entitled to file an appeal in favour of the accused person, with the exception of the public prosecutor, shall end on the same date as for the accused person. If the criminal order is served to both the accused person and his defence counsel, the time limit starts from the service that was performed last. Section 61 shall apply accordingly to the return of this time limit. The entitled person may explicitly waive the right to appeal after being served with the criminal order.

(2) If an appeal was filed against the criminal order by an entitled person within the time limit, the criminal order is repealed and the single judge shall order a trial in the matter; when hearing the matter in the trial, the single judge shall not be bound by the legal qualifications or the type and term of punishment contained in the criminal order. Otherwise the criminal warrant becomes final and enforceable.

(3) If the accused person is being prosecuted for a criminal offence referred to in Section 163a, the aggrieved person may withdraw the consent to the criminal prosecution until the time the criminal order is served upon any of the persons referred to in sub-section (1). Withdrawal of the consent shall repeal the criminal order and the single judge shall discontinue the criminal prosecution.

(4) If the criminal order was issued, the public prosecutor may withdraw the indictment until the time the criminal order is served to any of the persons referred to in sub-section (1). Withdrawal of the indictment shall repeal the criminal order and return the matter to the pre-trial proceedings.

SUBDIVISION SIX
Proceedings after Repealing a Decision by a Decision of the Constitutional Court

Section 314h

(1) Upon the service of a decision of the Constitutional Court that repealed a decision of the authority involved in criminal proceedings or a part thereof, such authority shall continue in the stage of the proceedings that immediately preceded issuing of the repealed decision, unless the law or the decision of the Constitutional Court provide otherwise. Therein it shall be bound by the legal opinion pronounced on the matter by the Constitutional Court and shall be obliged to take actions and supplementation as ordered by the Constitutional Court.

(2) Sub-section (1) shall be applied accordingly if the decision of the Constitutional Court prohibited the authority involved in criminal proceedings to continue in the violation of constitutionally guaranteed fundamental rights and freedoms and ordered it to restore the state prior to the violation, if possible.

Section 314i

If the decision of the Constitutional Court repealed the decision of the authority involved in criminal proceedings solely in favour of the accused person,

a) the period from the legal force of the original decision on the merits of the case until the time of service of the decision of the Constitutional Court shall not be included into the period of limitation,
b) the decision cannot be changed to the detriment of the accused person in the new proceedings; in case of another decision is concerned, Section 150 shall be applied accordingly,

c) his death does not preclude conducting further proceedings and the criminal prosecution cannot be discontinued solely because the accused person has died.

Section 314j

If the decision of the Constitutional Court repealed the judgment only in respect of certain criminal offences for which an aggregate or a cumulative sentence was finally an effectively imposed, the competent court shall, immediately after the service of the decision, determine an appropriate sentence for the remaining criminal offences by a judgment in a public session.

Section 314k

(1) If the accused person is serving a prison sentence imposed to him by a judgment, the competent court shall decide on custody immediately after the service of the decision of the Constitutional Court, by which a statement on punishment was repealed. Therein it shall proceed pursuant to Section 67 and 68.

(2) If another decision repealed by the decision of the Constitutional Court is being enforced, the competent authority involved in criminal proceedings shall, after the service of the decision, decide to terminate or suspend its execution or take other appropriate measures, unless the law or the decision of the Constitutional Court provide otherwise.

SUBDIVISION SEVEN
Proceedings on the Review of an Order for Interception and Recording of Telecommunication Traffic

Section 314l

(1) Upon a petition of the person referred to in Section 88 (8), the Supreme Court shall examine the legality of the order for the interception and recording of telecommunication traffic in a closed session.

(2) The Supreme Court shall review the legality of the order for ascertaining data on telecommunication traffic upon a petition of a person referred to in Section 88a.

Section 314m

(1) If the Supreme Court finds that the order for the interception and recording of telecommunication traffic or an order for ascertaining data on telecommunication traffic was issued or executed contrary to the law, it shall declare the violation of law by a resolution.

(2) An appeal against such decision is inadmissible.

Section 314n

(1) If the Supreme Court finds that the order for the interception and recording of telecommunication traffic was issued and executed in compliance with the conditions set out in Section 88 (1) or an order for ascertaining data on telecommunication traffic was issued or carried out in compliance with the conditions referred to in Section 88a, it shall declare by a resolution that the law was not violated.

(2) An appeal against such a decision is inadmissible.

SUBDIVISION EIGHT
Proceedings on the Approval of the Agreement on the Guilt and Punishment

Section 314o

(1) A petition for approving an agreement on the guilt and punishment shall be reviewed by the presiding judge and according to its content and contents of the file he shall

a) order a public session for a decision on the petition for approving the agreement on the guilt and punishment,
b) decide to dismiss the petition for approving the agreement on the guilt and punishment for serious procedural errors, especially if the accused person did not have a defence counsel in the course of negotiating the agreement on the guilt and punishment, or for reasons referred to in Section 314r (2), or
c) order a preliminary hearing on the petition for approving the agreement on the guilt and punishment.

(2) In the resolution pursuant to sub-section (1) b) it is necessary to indicate specific errors or factual findings, which were the reasons for dismissing the petition for approving the agreement on the guilt and punishment. A complaint is admissible against this decision, which has a dilatory effect.

(3) If the resolution on dismissing the petition for approving the agreement on the guilt and punishment came into full force and effect, the matter is returned to pre-trial proceedings.

(4) If the accused person is in custody, the court shall always decide on further continuation of custody.

(5) The public prosecutor may revoke the petition for approving the agreement on the guilt and punishment until the time the court retires for the final deliberation. By revoking the petition for approving the agreement on the guilt and punishment is the case returned to pre-trial proceedings.

Section 314p

(1) The presiding judge shall order a preliminary hearing of the petition for approving the agreement on the guilt and punishment, if he believes that

a) the case belongs to the jurisdiction of a different court,
b) the case should be transferred pursuant to Section 171 (1),
c) the are circumstances justifying discontinuation of criminal prosecution according to Section 172 (1) or its suspension according to Section 173 (1), or circumstances justifying conditional suspension of criminal prosecution according to Section 307 or approval of a settlement according to Section 309.

(2) A preliminary hearing of the petition for approving an agreement on the guilt and punishment is held in a closed session. If the presiding judge deems it necessary for a decision of the court, he shall order a public session on the preliminary hearing of the petition.

(3) After the preliminary hearing of the petition for approving the agreement on the guilt and punishment the court shall

a) decide to submit the case for a decision on the jurisdiction to the court, which is the closest superior to it and to the court, that is believed to be competent, if the court believes that it is not competent for hearing the case,
b) transfer the case to another authority, if there are circumstances referred to in Section 171 (1),
c) discontinue the criminal prosecution, if there are circumstances referred to in Section 172 (1),
d) suspend the criminal prosecution, if there are circumstances referred to in Section 173 (1),
e) conditionally discontinue the criminal prosecution pursuant to Section 307 or decide on the approval of a settlement according to Section 309 (1),
f) decide to dismiss the petition for approving the agreement on the guilt and punishment for serious procedural errors, especially if the accused person did not have a defence counsel in the course of negotiating the agreement on the guilt and punishment, or for the reasons referred to in Section 314r (2).

(4) After the preliminary hearing of the petition for approving the agreement on the guilt and punishment the court may also discontinue the criminal prosecution, if there are circumstances referred to in Section 172 (2).

(5) The public prosecutor and the accused person may file a complaint against the decision pursuant to sub-section (3) b) through f), which has a dilatory effect, unless it concerns suspension of criminal prosecution. A complaint against the decision on the conditional discontinuation of criminal prosecution and on approving the settlement may also be filed by the aggrieved person, this complaint has a dilatory effect.

(6) If the resolution on dismissing the petition for approving the agreement on the guilt and punishment came to full force and effect, the case is returned to pre-trial proceedings.

Section 314q

(1) The court shall decide on the petition for approving the agreement on the guilt and punishment in a public session. The presiding judge shall summon the accused person to the public session; he shall notify the public prosecutor and the defence counsel of the accused person, as well as the aggrieved person, of the time and place of the proceedings. If the aggrieved person has an agent, only this agent shall be notified of the public session. The public session is held in the constant presence of the accused person and the public prosecutor.

(2) After the initiation of the public session the public prosecutor shall present the petition for approving the agreement on the guilt and punishment.

(3) After presenting the petition for approving the agreement on the guilt and punishment the presiding judge shall call the accused person to comment on the petition and ask him, whether

a) he understands the negotiated agreement on the guilt and punishment, especially whether it is clear to him what constitutes the merits of the act he is charged with, what is the legal qualification and what criminal rates the law stipulates for the crime seen in this act,
b) the declaration that he has committed the act he is being prosecuted for was made freely and without any pressure and whether he was advised on his rights to defence,
c) he is aware of all consequences of entering the agreement on the guilt and punishment, especially that he waives the right for hearing the case in trial and the right to lodge an appeal against the judgement, by which would the court approve the agreement on the guilt and punishment, with the exception of the reason referred to in Section 245 (1), second sentence.

(4) After the comment of the accused person the court shall allow the aggrieved person co make a comment, if he is present.

(5) The court shall not perform evidence. If it deems it necessary, it may question the accused person and obtain necessary explanations.

Section 314r Decision on the Petition for Approving the Agreement on Guilt and Punishment

(1) The court may decide on the act, on its legal qualification, on the punishment and protective measure only in the extent referred to in the agreement on the guilt and punishment. The court shall decide on the claim for monetary compensation of damage or non-material harm or for the surrender of unjust enrichment in the extent referred to in the agreement on the guilt and punishment, if the aggrieved person agrees to it, or if the negotiated extent and manner of compensation of damage or non-material harm or surrender of unjust enrichment corresponds to the duly applied claim of the aggrieved person (Section 42 (3)).

(2) The court shall not approve the agreement on the guilt and punishment, if it is incorrect or inadequate in the view of compliance with the ascertained facts or in the view of the type and term of the proposed punishment or protective measure, or incorrect in the view of the extent and manner of compensation of damage or non-material harm or the surrender of unjust enrichment, or if it finds that the rights of the accused person were seriously breached in the course of negotiating the agreement on the guilt and punishment. In such a case the court shall return the case to pre-trial proceedings. A complaint is admissible against this decision, which has a dilatory effect.

(3) In cases referred to in sub-section (2) the court may, instead of returning the case to pre-trial proceedings, notify the public prosecutor and the accused person of its reservations , and they may present a new wording of the agreement on the guilt and punishment. For this purpose the court shall adjourn the public session. If the new wording of the agreement on the guilt and punishment is not presented to the court within the stipulated time limit, the court shall proceed according to sub-section (2).

(4) The court shall approve the agreement on the guilt and punishment by a convicting judgement, in which it shall state the statement on approving the agreement on the guilt and punishment, eventually a protective measure, in compliance with the agreement on the guilt and punishment. The statement on the monetary compensation of damage or non-material harm or on the surrender of unjust enrichment shall the court stipulate in compliance with the agreement on the guilt and punishment agreed upon by the aggrieved person, or with the agreement on the guilt and punishment, in which the negotiated extent and manner of compensation of damage or non-material harm corresponds to the duly applied claim of the aggrieved person (Section 43 (3)); otherwise the court shall proceed according to Section 228, if the merits of the case were reliably proven by the obtained evidence, or eventually in accordance with Section 229.

(5) If any of the circumstances referred to in Section 171 (1), Section 172 (1) and (2), Section 173 (1) b) through d), or Section 223a (1) arise, the court shall decide to transfer the case, to discontinue the criminal prosecution, to suspend the criminal prosecution or to conditionally discontinue the criminal prosecution pursuant to Section 307 or decide to approve a settlement pursuant to Section 309 (1). The court shall suspend the criminal prosecution also if it is impossible to serve the accused person with summons to the public session.

(6) The public prosecutor may file a complaint against the decision pursuant to sub-section (5), which has a dilatory effect, unless it concerns suspension of criminal prosecution. A complaint against the decision on discontinuation of the criminal prosecution or on the approval of settlement may be filed also by the accused and aggrieved person.

Section 314s

If the case was returned to pre-trial proceedings pursuant to Section 314o (3) or (5), Section 314p (6) or Section 314r (2), the negotiated agreement on the guilt and punishment, including the declaration of guilt made by the accused person, shall be disregarded in further proceedings. Returning the case to pre-trial proceedings does not preclude negotiating a new agreement on the guilt and punishment. I the accused person is in custody and the court has not decided on releasing him at the same time, the custody remains in effect in the pre-trial proceedings, however it may not exceed, along with the time already served in custody, the time limits referred to in Section 72a (1) through (3).

CHAPTER TWENTY-ONE

Execution Proceedings

Section 315 Jurisdiction in Execution Proceedings

(1) A decision shall be executed, or its execution shall be arranged by the authority that made the decision; in trial proceedings it shall be executed or the execution shall be arranged by the presiding judge.

(2) Decisions related to execution of punishments and protective measures shall be performed, unless further provided otherwise, by the court that decided on the matter in the first instance.

(3) The measures necessary for the execution of punishments and protective measures and for recovering the costs of the criminal proceedings, particularly notification of other authorities and persons competent to co-act in execution of the mentioned decisions, shall, unless provided otherwise, be performed by the presiding judge of the court which decided on the matter in the first instance.

SUBDIVISION ONE

Section 316
Repealed

Section 317
Repealed

Section 318
Repealed

Section 319
Repealed

SUBDIVISION TWO
Execution of a Sentence of Imprisonment

Section 320 General Provisions

(1) The manner of serving a sentence of imprisonment shall be governed by the Act on Serving a Sentence of Imprisonment.

(2) For those who are serving a prison sentence, the court, in whose jurisdiction such prison sentence is being served, shall make decisions associated with the execution of such sentence.

(3) If a different manner of execution of a prison sentence is stipulated concerning subsequently imposed sentences of imprisonment, the common manner of execution of the subsequently imposed sentences shall be determined by the court, in whose jurisdiction is the prison sentence being executed.

Section 321 Ordering the Execution of Punishment

(1) As soon as the decision, based on which an unconditional prison sentence is to be served, becomes enforceable, the presiding judge shall send an order for the execution of the sentence to the relevant prison and bid the convict, if he is free, to start serving the prison sentence within the determined time limit. If the statement on the imposition of the prison sentence becomes enforceable upon a decision of the court of appeal, the presiding judge of the court of appeal shall order the execution of such a sentence to the convict, who is in custody, immediately after the decision is declared; the presiding judge of the court of appeal may do so also in the case of a convict, who is not in custody, if based on the specific facts it is found that his remaining at liberty is dangerous or if there is a reasonable concern due to his actions or other specific matters of fact that the convict will flee or hide.

(2) Unless it was found based on the specific facts that the remaining of the convict at liberty is dangerous, or unless there is a reasonable concern based on his actions or other specific matters of fact that they will flee or hide, and thus there is no reason for ordering the immediate execution of the prison sentence, the presiding judge may provide the convict with a reasonable time before the start of the execution of the sentence so that he may take care of his personal affairs. This time may not be longer than one month, starting from the date of the full force and effect of the decision referred to in sub-section (1).

(3) If the convict does not start serving the sentence within the time that was provided for him, or if it was found from specific facts that his remaining at liberty is dangerous, or if there is a reasonable concern based on his actions or other specific matters of fact that he will flee or hide, the presiding judge shall order that he is delivered for the execution of the sentence. If the place of residence of the convict is not known, Section 69 (3) shall be applied accordingly to the order for his delivery for execution of the sentence. If the place of residence of the convict is known, Section 83c (2) may be applied to deliver him for execution of the sentence. In the order the presiding judge shall always request the Police authority to immediately

provide information about whether the convict was delivered for serving the sentence, or eventually what circumstances prevented his delivery for serving the sentence.

(4) The order under sub-section (3) shall be issued also in case the convict fails to comply with his obligations referred to in Section 322 (1), last sentence, or under the conditions set out in Section 322 (3), second sentence.

(5) If the aggrieved person filed a request pursuant to Section 44a, the presiding judge shall send information on the aggrieved persons, who must be notified of the release or escape of the convict along with the order for execution of the sentence to the relevant prison. In the event that the aggrieved person filed a request at a time when the convict was serving a prison sentence, the court shall send the prison, where the convict is serving the prison sentence, all the relevant information additionally. The prison is required to notify the aggrieved person without undue delay, however no later than on the following day, about the facts referred to in Section 44a (1) b).

Deferral of Execution of a Sentence

Section 322

(1) The presiding judge shall defer the execution of a sentence of imprisonment for the necessary time, if a medical report on the hospitalisation of the convict at an in-patient medical facility or other factors imply that serving a sentence could endanger his life or health.

(2) If the convict requests the deferral of the execution of a sentence of imprisonment on the grounds referred to in sub-section (1), but the presiding judge believes that such grounds do not exist, he shall bid the convict to submit the report on his health conditions to the competent prison when starting to serve the prison sentence at the latest. If the prison finds that the convict's health does not enable them to serve the prison sentence, they shall suggest its deferral or suspension based on the nature of his condition to the court.

(3) The presiding judge shall defer the execution of a sentence of imprisonment in the case of a pregnant woman and the mother of a newborn child for a period of one year after childbirth.

(4) A complaint is admissible against the decision pursuant to sub-section (1) and (3), which has a dilatory effect.

Section 323

(1) The presiding judge may defer the execution of a sentence of imprisonment not exceeding the term of one year on the basis of important reasons to a period not exceeding three months from the date of full force and effect of the decision referred to in Section 321 (1).

(2) A further deferral of execution of such a sentence or its deferral for a period longer than three months may be authorised by the presiding judge only in exceptional cases on particularly important grounds, especially if the execution of a sentence could have extremely grave consequences for the convict or his family. However, the deferral shall only be admissible for a maximum period of six months from the date of full force and effect of the decision referred to in Section 321 (1).

(3) If there is a concern that the convict will flee or misuse the granted deferral, the presiding judge shall revoke the deferral of execution of the sentence of imprisonment.

(4) The public prosecutor may file a complaint against the decision by which the deferral of the serving of sentence was granted pursuant to sub-section (2).

Section 324 Decision on the Change of the Manner of Execution of a Sentence

(1) The District Court, in whose jurisdiction is a prison sentence is being served, shall decide on the changes in the manner of execution of a sentence of imprisonment in a public session upon a petition of the public prosecutor or a director of the prison in question and, unless a decision on transferring a juvenile to a prison for other convicts is concerned, upon a petition of the convict or even without any such petition.

(2) Before deciding on the change in the manner of execution of a sentence of imprisonment, the convict must be interviewed.

(3) A complaint is admissible against the decision under sub-section (1), which has a dilatory effect.

Suspension of Execution of a Sentence

Section 325

(1) If a convict, who is serving a prison sentence, has a serious illness, the presiding judge may suspend the execution of the sentence for the necessary time; the presiding judge shall always suspend the execution of a sentence in the case of a pregnant woman or a mother of a child under one year of age.

(2) If there is a concern that the convict will flee or misuse the granted suspension, the presiding judge shall revoke the suspension of the sentence.

(3) A complaint is admissible against the decision pursuant to sub-section (1).

Section 326
Repealed

Section 327

(1) The Minister of Justice may waive the execution of a sentence of imprisonment or its remaining portion, if the convict was extradited or is to be extradited to a foreign State or surrendered to another Member State of the European Union according to a European Arrest Warrant.

(2) The court may waive execution of a sentence of imprisonment or its remaining portion, if the convict was expelled or is to be expelled.

(3) If the extradition of the convict to a foreign State, his surrender pursuant to sub-section (1), or expulsion in accordance with sub-section (2) does not occur, or if the extradited, surrendered or expelled convict returns, the court shall decide that he shall serve the sentence of imprisonment or its remaining portion.

(4) The court may waive execution of a sentence of imprisonment or its remaining portion, also if it finds that the convict became ill with an incurable and life-threatening disease or an incurable mental illness.

(5) A complaint is admissible against the decision pursuant to sub-section (4), which has a dilatory effect.

Section 328 Deferral and Suspension of Execution of a Sentence and Waiving its Execution in Case of Soldiers

(1) The presiding judge will defer or suspend the execution of a sentence of imprisonment not exceeding six months, if the convict is called up for basic military service.

(2) If the convict performing such military service did not commit any criminal offence and performed the military service duly and properly, the court shall waive execution of the sentence of imprisonment or its remaining portion; otherwise it shall decide that the sentence or its remaining portion shall be executed. If the execution of a sentence of imprisonment or its remaining portion was waived, the sentence is considered to be served on the date of its deferral or suspension.

(3) A complaint is admissible against the decision pursuant to sub-section (2), which has a dilatory effect.

Conditional Sentence of Imprisonment

Section 329

(1) In cases where it is necessary, with regard to the nature of restrictions imposed and the means of control of behaviour of the conditionally convicted person, the presiding judge shall

send a copy of the judgment imposing a prison sentence, execution of which was conditionally suspended, to the probation officer immediately after the full force and effect of the judgement in order to control the behaviour of the convict and the compliance with the imposed restrictions. He shall also request the probation officer to periodically inform him about the manner of life of the convict at times he shall determine, and in case the probation officer finds grounds for the execution of the sentence, he shall immediately notify the court. The probation officer operation outside the jurisdiction of the court, which decided in the first instance, may control the behaviour of the convict and his compliance with the imposed restrictions on the basis of a request addressed to the District Court, in whose jurisdiction the convict resides, works, or stays.

(2) If the presiding judge does not authorise a probation officer to carry out the supervision, he shall periodically, but at least once in every six months, verify whether the conditionally convicted person leads an upright life and observes the restrictions imposed to him by the judgment.

(3) The presiding judge may request educational cooperation from public interest groups operating at the workplace or the place of residence of the convict, if they offered a guarantee for the re-education of the convict.

Section 330

(1) The court shall decide in a public session, whether the conditionally convicted person has approved himself or whether the conditionally suspended sentence shall be executed. The court shall also decide in a public session on keeping the conditional sentence in force pursuant to Section 83 (1) of the Criminal Code.

(2) When on the approval of the conditionally convicted person, the court shall also consider the opinion of the public interest group.

(3) A complaint is admissible against the decision pursuant to sub-section (1), which has a dilatory effect,

(4) A decision that the conditionally convicted person has approved himself may also be made by the presiding judge with a consent of the public prosecutor.

Section 330a

(1) If it was decided on a conditional sentence of imprisonment with supervision, the court shall, after the full force and effect of the judgment, authorize a probation officer, in whose jurisdiction the convict resides or works, to monitor his behaviour and ensure the compliance with the imposed restrictions and obligations in the manner provided by a special Act. Based on the nature of the matter, it shall request the public authorities, public interest groups, and other authorities, institutions and individuals for cooperation. In the course of execution of the

supervision, the conditionally convicted person cannot be imposed with other obligations than those stipulated by the law or the convicting judgment.

(2) When making a decision on whether the conditionally convicted person, who had supervision imposed on him, has approved himself or whether the conditionally suspended sentence of imprisonment shall be executed, Section 330 shall be applied accordingly.

Conditional Release

Section 331

(1) The conditional release from serving a prison sentence shall be decided on by the court in a public session upon a petition of the public prosecutor or the director of the prison in which the sentence is served, or upon the request of the convict, or even without such a request. The court shall also notify the aggrieved person, who has requested such information about holding the public session (Section 228 (4)). The accused person may file a request for a conditional release from serving a prison sentence pursuant to Section 88 (2) of the Criminal Code, only if it is accompanied by a favourable opinion of the director of the prison stating that the convict has shown by his good behaviour and performing his duties that the continued serving of the sentence is not necessary; otherwise the court shall not decide on such a request and return it to the accused person with an advice on the need to enclose the above stated opinion of the prison director. If the request of the convict for conditional release was dismissed, the convict may repeat it no sooner than after a year from the decision on the dismissal, unless the request was dismissed only because the statutory time limit for the conditional release has not expired yet.

(2) The conditional release may also be petitioned by a public interest group, if they offer to guarantee the completion of the rehabilitation of the convict. If the convict agrees, the public interest group may request the director of the prison in which the sentence is being served to inform it on the state of the rehabilitation of the convict before submitting the petition for the conditional release.

(3) If the director of the prison in which the convicted person serves his sentence petitions the conditional release, or if he joins such a petition, the decision that the person shall be conditionally released may also be made by the presiding judge with the consent of the public prosecutor.

(4) Section 329 shall be applied accordingly to the petition of the public interest group for co-operation in rehabilitation of the conditionally released person.

(5) If a decision on the conditional release with supervision of the convict was made or if the court decided on the conditional release and at the same time imposed reasonable restrictions or reasonable obligations aimed at making the convict lead an upright life, then the procedure of supervision and control of the behaviour of convict shall be governed accordingly by

Section 330a (1). If it was decided that the conditionally released person shall remain at his place of residence during the probation period, Section 334b through 334e shall be applied accordingly for the procedure of execution of such an obligation. If it was decided that the conditionally released person shall perform community service for the benefit of municipalities, the State or other generally beneficial institutions during the probation period, Section 336 through 339 shall be applied accordingly for the procedure of performing such obligations. If it was decided that the conditionally released person is to make a deposit to the account of the court in the amount designated for financial assistance to victims of crime, the presiding judge may, upon the request of the convict and for important reasons,

a) postpone the deposit of such an amount for a period not exceeding six months from the date the decision came to full force and effect, or
b) allow the payment of such an amount in monthly instalments, so that it is paid in full by the end of the probation period.

Section 332

(1) The question whether the conditionally released person has approved himself or whether the remaining term of the sentence shall be served, as well as whether the conditional release shall be kept in effect while revoking the guarantee of the public interest group, shall be decided on by the court in a public session. The decision whether the conditionally released person has approved himself may also be made by the presiding judge, with the consent of the public prosecutor.

(2) When making the decision on whether the conditionally released person has approved himself, the court shall also consider on the opinion of the public interest group.

Section 333

(1) The decision under Section 331 shall be made by the District Court, in the jurisdiction of which is served the prison sentence. Unless important reasons prevent it, the petition or the request shall be decided on within 30 days of its receipt by the court. Decisions under Section 332 shall be made by the court that conditionally released the convict from serving the sentence.

(2) The convict must be interviewed before making the decision on the conditional release or on the execution of the remaining term of the sentence; this does not apply if the court proceeds pursuant to Section 331 (3).

(3) A complaint is admissible against the decision according to Section 331 (3) on the determination of the length of the probation period. A complaint is admissible against other decisions pursuant to Section 331 and 332, which has a dilatory effect.

Section 333a

If the accused person was finally and effectively sentenced to imprisonment, the presiding judge may impose restrictions consisting in a prohibition to travel abroad to the convict, which shall last until the convict serves the sentence or until the occurrence of another matter of fact associated with termination of serving a sentence. A complaint is admissible against such a decision. Section 77a (2) through (5) shall apply accordingly to cases according to the first sentence.

Section 334 Calculation of Custody and Punishment

(1) The presiding judge shall decide on calculation of the custody and punishment by a resolution, usually at the same time as on the execution of a sentence of imprisonment. Custody shall be counted according to the state on the day of the execution of the sentence is ordered from the time the personal liberty of the accused was restricted.

(2) A complaint is admissible against the resolution according to sub-section (1).

(3) The court shall decide in a public session on a petition of the public prosecutor that the time, for which the execution of a prison sentence of the convict was suspended for the purpose of medical care in a medical centre outside the prison, is not to be counted into the time of serving the prison sentence, if it occurred a result of the fact that the convict caused intentional harm to himself. A complaint is admissible against such a decision, which has a dilatory effect.

SUBDIVISION THREE
Execution of a Sentence of House Confinement

Section 334a Ordering the Execution of a Sentence of House Confinement

(1) Once the decision according to which the sentence of house confinement to be executed becomes enforceable, the presiding judge shall send an order for execution of such a sentence to the convict and to the competent Centre of Probation and Mediation Service, in which they shall determine

a) the beginning of the execution of such a sentence, and
b) the place of its execution.

(2) The beginning of the execution of the sentence of house confinement shall be determined by the presiding judge so that the convict can settle his affairs.

(3) The presiding judge shall determine the place of the execution of the sentence in the dwelling of the convict in the place of his permanent residence or at the place where the convict resides, with regard to his personal and family circumstances; if the convict is employed, the decision shall be made with regard to the place of his employment and options of travel to work.

Section 334b Control of the Execution of a Sentence of House Confinement

The control of the execution a sentence of house confinement shall be performed by the Centre of Probation and Mediation Service in cooperation with the operator of the electronic control system that allows the detection of movement of the convict, or by a random control performed by a probation officer; for this purpose, the convict is required to allow the probation officer to enter the place of the execution of the sentence.

Section 334c Failure to Comply with the Terms of the Execution of a Sentence of House Confinement

If the convict fails to comply with the determined terms of the house confinement and the imposed reasonable restrictions and reasonable obligations, then the operator of the electronic control system or the probation officer shall report it to the court that ordered the execution of the sentence without undue delay.

Section 334d Deferral and Suspension of the Execution of a Sentence of House Confinement

(1) The presiding judge may, due to important grounds, defer or suspend the execution of a sentence of house confinement for the necessary time.

(2) If the grounds for the deferral or the suspension expire, the presiding judge shall revoke the deferral or suspension.

(3) The period for which the execution of the sentence of house confinement was deferred or suspended shall not be counted into the period of the execution of the sentence.

(4) A complaint is admissible against the decision pursuant to sub-section (1) and (2), which has a dilatory effect,

Section 334e Change of the Sentence of House Confinement

(1) The presiding judge shall decide upon a petition of the convict, the public prosecutor or the probation office, or even without such a petition, on the basis of important reasons on the change of place of the execution of the sentence of house confinement, the time during which the convict is to stay there, and the reasonable restrictions and obligations imposed on the convict; therein he may not change the weekly number of hours during which the convict is to stay at the dwelling, as well as the extent of the reasonable restrictions and obligations, to the detriment of the convict. The presiding judge shall decide on the change of the sentence of house confinement without undue delay also after the eviction of the convict from a common dwelling pursuant to another legal regulation.

(2) A complaint is admissible against the decision according to sub-section (1), which has a dilatory effect.

Section 334f Waiving the Execution of a Sentence of House Confinement

(1) The Minister of Justice may waive the execution of a sentence of house confinement or its remaining portion, if the convict was or is to be extradited to a foreign State or surrendered to another Member State of the European Union on the basis of a European Arrest Warrant.

(2) The court may waive the execution of a sentence of house confinement or its remaining portion, if the convict is or will be expelled.

(3) If the extradition of the convict to a foreign State, his surrender pursuant to sub-section (1), or the expulsion in accordance with sub-section (2) does not occur, or if the extradited, transferred or expelled convict returns, the court shall decide that he will complete the execution of the sentence of house confinement or its remaining portion.

(4) The court may waive the execution of a sentence of house confinement or its remaining portion also if it finds that the convict became ill with an incurable and life-threatening disease or an incurable mental illness, or for any other similarly serious reasons.

(5) A complaint is admissible against the decision pursuant to sub-section (4), which has a dilatory effect.

Section 334g Transformation of a Sentence of House Confinement into a Prison Sentence

(1) The presiding judge shall decide, upon the petition of the probation officer, or even without such a petition, to transform the sentence of house confinement into a prison sentence in a public session.

(2) A complaint is admissible against the decision pursuant to sub-section (1), which has a dilatory effect.

Section 334h

The Ministry of Justice may issue a regulation to establish the details of controlling the execution of a sentence of house confinement.

SUBDIVISION FOUR
Execution of a Sentence of Community Service

Section 335 General Provisions

A punishment by community service shall be executed by the convict under the jurisdiction of the District Court in which he stays. The punishment may be executed outside its jurisdiction with the consent of the convict.

Ordering Execution of the Sentence

Section 336

(1) Once the decision according to which the execution of a sentence of community service becomes enforceable, the presiding judge shall send its copy to a probation officer.

(2) The type and place of community service shall be decided upon a petition of the probation officer by the District Court that imposed the sentence by community service. The probation officer shall base the petition on the need of the execution of such work in the jurisdiction of the District Court where the convict stays, and shall take into account that the convict would execute the sentence as close to the location where he stays as possible; when determining the type and place of community service, he shall proceed in cooperation with the Centre of Probation and Mediation Service in the jurisdiction of the court where the sentence of community service is to be executed. If the sentence of community service is to be executed outside the jurisdiction of the District Court in which the convict stays, a written consent of the convict with such execution shall be enclosed in the petition of the probation officer.

(3) In the decision pursuant to sub-section (2) the court shall also advice the convict about his obligation to appear within 14 days from notification of this decision at the Centre of Probation and Mediation Service in the jurisdiction of the District Court, where the sentence of community service is to be executed, in order to discuss the terms of execution of the sentence of community service and his obligation to appear at the City Council or the institution through which is the community service to be executed, on a date determined by the probation officer responsible for the control of the execution of this punishment in order to start the execution of the sentence. At the same time, he shall caution the convict about the consequences of failure to comply with these obligations.

(4) The court shall notify the Centre of Probation and Mediation Service in the jurisdiction of the District Court, where the sentence of community service is to be executed, on the decision under sub-section (2) after it comes into full force and effect, and also authorise the probation officer operating in the jurisdiction of this court to control the execution of the sentence of community service.

(5) Any change in the type and place of community service shall be decided upon a petition of the convict or the probation officer conducting the control over the execution of the sentence of community service by the District Court that imposed the sentence of community service. The court shall notify the Centre of Probation and Mediation Service in the jurisdiction of the District Court, where the sentence of community service or its remaining portion is to be executed about the decision after it comes into full force and effect, and also authorise the

probation officer operating in the jurisdiction of such court to control the execution of the sentence of community service.

(6) The probation officer appointed to control the execution of the sentence of community service shall proceed with the negotiations on the conditions of the execution of the sentence of community service, the determination of the start of its execution, and the performance of the control of the execution of the sentence in cooperation with the competent City Council or an institution through which the community service is executed.

Section 337

Should the convict fail to comply with the obligations referred to in Section 336 (3), or without a serious reason violate the agreed terms of execution of the sentence of community service, fail to execute the imposed sentence within the stipulated period, or otherwise obstruct the execution of the sentence, the probation officer responsible for controlling the execution of the sentence, or the City Council or an institution through which the community service is performed, shall notify the court that ordered the execution of the sentence without undue delay. They shall also notify the court of the date when the convict executed the imposed sentence of community service without undue delay.

Section 338

(1) If the court considers the educational co-operation of the public interest group beneficial, it shall proceed pursuant to Section 329 accordingly.

(2) The City Councils and general charitable institutions communicate their requirements for the performance of community service to the Centre of Probation and Mediation Service in the jurisdiction of the District Court, where the community service is to be performed. They are also obliged to notify them of any substantial changes relating to these requirements so that the Centre can have an ongoing overview of the need for such work. The probation officer shall inform the court at its request on the need for community service in the desired area.

(3) In obtaining the requirements for the performance of community service suitable for the convict, and during the execution of the sentence of community service, the probation officer responsible for controlling the execution of the sentence of community service shall co-operate with municipalities and general charitable institutions and perform actions aimed at making the accused lead an upright life.

Section 339 Deferral and Suspension of Execution of the Sentence

(1) The presiding judge shall defer or suspend the execution a sentence of community service for the necessary time, if the medical reports submitted by the convict, or requested with his

consent, imply that due to a temporary worsening of health conditions the convict is not able to execute the punishment.

(2) The presiding judge shall defer or suspend the execution of a sentence of community service in case of a pregnant woman or a mother of a newborn child for a period of one year after the childbirth.

(3) The presiding judge may defer the execution of punishment a sentence of community service for other important reasons for a period not exceeding three months from the date the decision, by which this sentence was imposed, came into full force and effect. If the reason for the deferral or suspension of execution of the sentence of community service is providing special protection and assistance under a special legal regulation, the presiding judge shall defer or suspend the execution of the sentence of community service until the time when the special protection and assistance is terminated. The competent authority providing the special protection and assistance shall notify the presiding judge of the termination of its providing without undue delay.

(4) If the grounds for the deferral or the suspension expire, the presiding judge shall revoke the deferral or suspension.

(5) The period during which the sentence of community service was deferred or suspended shall not be counted into the one year period, in which the punishment is to be executed.

(6) A complaint is admissible against the decision pursuant to sub-section (1) through (4), which has a dilatory effect.

Section 340 Deferral and Suspension of Execution of Punishment of Soldiers

(1) The presiding judge shall defer or suspend the execution of a sentence of community service if the convict is drafted for military service.

(2) The provisions of Section 339 (4) and (5) shall be applied accordingly also in the case of convicts, whose execution of a sentence was deferred or suspended according to sub-section (1).

(3) A complaint is admissible against the decision pursuant to sub-section (1) and (2), which has a dilatory effect.

Section 340a Waiving the Execution of the Sentence

(1) The presiding judge shall waive the execution of the sentence of community service or its remaining portion, if the convict is unable to execute the sentence for a long term due ti a change of his health condition.

(2) A complaint is admissible against the decision pursuant to sub-section (1), which has a dilatory effect.

Section 340b Conversion of a Sentence of Community Service into a Sentence of House Confinement or a Prison Sentence

(1) The presiding judge shall decide without an undue delay in a public session on the conversion of a sentence of community service or its remaining portion into a sentence of house confinement or a prison sentence upon a petition of a probation officer appointed to control the execution of such a sentence or upon a petition of the City Council or an institution through which the community service is executed, submitted through such probation officer, or even without such a petition, as well as on leaving the sentence of community service in force, if he orders supervision or other not yet imposed reasonable restrictions and obligations or correctional restrictions. The presiding judge shall notify the Centre of Probation and Mediation Service in the jurisdiction of the court, where the sentence of community service is executed, about such decisions.

(2) A complaint is admissible against the decision under sub-section (1), which has a dilatory effect.

SUBDIVISION FIVE
Execution of some Other Punishments

Execution of a Financial Penalty

Section 341

Once a judgment becomes enforceable, according to which the convict is obliged to pay a financial penalty, the presiding judge shall bid the convict to pay it within fifteen days, and shall warn him that otherwise the payment will be enforced.

Section 342

(1) The presiding judge may, upon a request of the convict and for serious reasons,

a) postpone the execution of the financial penalty for a period not exceeding three months from the date the judgment came into full force and effect, or
b) allow the payment of the financial penalty in instalments so that it is paid entirely within one year from the date when the judgment came into full force and effect.

(2) If the grounds for which the execution of a financial penalty was postponed expire, or if the convict fails to comply with the payments without a serious reason, the presiding judge shall revoke the postponement or the payment instalments.

Section 343

(1) The presiding judge will order the enforcement of a financial penalty, if the convict fails to pay it

a) within fifteen days after being called to pay,
b) within fifteen days after he was notified of the decision, by which the allowed postponement or instalments were waived, or
c) before the expiration of the period, for which the execution of the sentence was postponed.

(2) A financial penalty may be enforced only if it does not obstruct the satisfaction of a granted claim of the aggrieved person for the monetary compensation of damage or non-material harm or for the surrender of unjust enrichment. If the aggrieved person does not enforce his claim within three months from the date when the judgment, by which the monetary penalty was imposed, came into full force and effect, the financial penalty may be enforced, disregarding the claim of the aggrieved person.

Section 344

(1) The court shall waive the execution of a financial penalty or its remaining portion, if the convict became unable to pay the monetary penalty on a long-term basis as a result of circumstances beyond their control, or if the execution of the financial penalty could seriously compromise the maintenance and support or education of a person for whose maintenance and support or education is the convict responsible according to the law.

(2) If the financial penalty was not paid, the procedure referred to in sub-section (1) or Section 342 (1) does not come into consideration, and if it is clear that the execution of such a sentence would be obstructed, then the court shall order the execution of a substitute prison sentence or its proportional part; at the same time it shall decide on the manner of execution of the substitute sentence.

(3) The convict may avert the execution of the substitute sentence or its proportional part at any time by paying the financial penalty or its proportional part. The presiding judge shall decide which part of the substitute sentence is to be executed.

(4) A complaint is admissible against the decision pursuant to sub-section (1) through (3), which has a dilatory effect.

Execution of a Sentence of Confiscation of Property

Section 345

If a judgment imposing a sentence of confiscation of the whole property of or its part becomes enforceable, the presiding judge shall send a copy of the judgment without reasoning to the

government department entitled to manage the property of the State under a special Act for execution of the sentence.

Section 346

(1) If any doubts arise during the execution of sentence of confiscation of property as to whether the sentence affects any funds or items that are necessary to satisfy the vital needs of the convict or persons for whose maintenance and support or education is the convict responsible according to the law, the presiding judge shall decide on it upon a petition of the government department entitled to manage the property of the State under a special Act, or upon a request of the convict or the person, whose maintenance and support or education could be affected. Such a request may be filed only within three months from the date when the judgment came into full force and effect and, if it concerns funds or items that were affected later in the process of execution of the sentence of confiscation of property, within one month from the time it occurred.

(2) A complaint is admissible against the decision pursuant to sub-section (1), which has a dilatory effect.

(3) The presiding judge shall send a copy of the final and effective resolution referred to in sub-section (1) to the government department entitled to manage the property of the State under special Act.

(4) Property rights of third parties to funds and items affected by the execution of the sentence of confiscation of property cannot be applied in accordance with sub-section (1), but only under civil law regulations.

Execution of a Sentence of Confiscation of Property

Section 347

(1) If an accused person is being prosecuted for a criminal offence, for which given the nature and seriousness of the act and the circumstances of the accused may be expected an imposition of sentence of confiscation of property and there is a concern that the execution of such a sentence will be obstructed or thwarted, the court and, in pre-trial proceedings the public prosecutor may seize the property of the accused. The court shall seize the property of the accused, if it imposed a sentence of confiscation of property by a judgment that has not yet come into full force and effect.

(2) A complaint is admissible against the decision on the seizure.

Section 348

(1) Seizure affects the whole property of the accused person, gains and yields that arise from the seized property, as well as property that the accused gained after the seizure. However, it does not affect funds and items that are not subject to confiscation of property according to the law.

(2) Section 47 (4) through (10) shall apply to the procedure and decision on the seizure of property pursuant to sub-section (1).

Section 349

The presiding judge and in pre-trial proceedings the public prosecutor shall revoke the seizure, if the grounds for which the property was seized have expired. A complaint is admissible against such a decision, which has a dilatory effect.

Section 349a
Repealed

Section 349b Execution of a Sentence of Confiscation of Items or Other Asset Values or Execution of Confiscation of a Equivalent Value

The presiding judge shall send a copy of the judgment, by which was imposed sentence of confiscation of items or other asset values or confiscation of a equivalent value, to the government department entitled to manage the property of the State under special Act. If the item or other asset value, which is subject to the sentence of confiscation of items or other asset values or confiscation of a equivalent value, was seized, the presiding judge shall take measures to authorise this government department for its administration, if such government department does not already administer the seized items or other asset values equivalent values.

Section 350 Execution of a Sentence of Prohibition of an Activity

(1) The presiding judge shall decide immediately after the full force and effect of the judgment, by which was imposed a sentence of prohibition of an activity, to count the period, during which the convict was not disallowed to perform such activity subject to the prohibition in connection to the criminal offence under special regulations before the judgment came into full force and effect, or on the basis of a measure of a public authority, into the time of execution of the sentence of prohibition of an activity. A complaint is admissible against this decision.

(2) Section 331 through 333 shall be applied to the proceedings on the conditional waiver of the remaining portion of the sentence of prohibition of an activity, as well as to the proceedings on ordering the execution of the remaining portion of such punishment. However, all decisions shall be made by the court that decided on the matter in the first instance (Section 315 (2)).

Section 350a Execution of a Sentence of Prohibition to Stay at a Certain Place

(1) The presiding judge shall inform the City Council and the Police authority to the jurisdiction of which the prohibition to stay applies, as well as the City Council and Police authority, in whose jurisdiction the convict has his permanent residence, on the imposition of the prohibition to stay.

(2) If the convict works in the jurisdiction to which the prohibition to stay applies, the presiding judge shall also inform the organisation that employs the accused.

(3) The Police authority in the place of residence or the place of stay of the convict may, based on important reasons, allow the convict a visit to place or jurisdiction that is subject to the prohibition to stay.

(4) The sentence of prohibition to stay is not executed during the period that the convict performs active military service. If the convict did not commit any criminal offence during the performance of such service and duly performed the military service, the court shall waive the execution of the sentence of prohibition to stay or its remaining portion. A complaint is admissible against such a decision, which has a dilatory effect.

(5) Section 331 through 333 shall be applied to the proceedings on the conditional waiver of the remaining portion of the sentence of prohibition to stay, as well as to the proceedings on ordering the execution of the remaining portion of such punishment.

(6) The decision to impose reasonable restrictions to the person who was imposed a sentence of prohibition of stay in parallel to an unconditional prison sentence shall be made in a public session by the court in the jurisdiction of which was the prison sentence served last. A complaint is admissible against such a decision, which has a dilatory effect.

Execution of a Sentence of Expulsion

Section 350b

(1) Once the judgment, by which was imposed a sentence of expulsion, comes into full force and effect, the presiding judge shall send the order of the execution of the sentence to the Police of the Czech Republic and also bid the convict to immediately leave the Czech Republic.

(2) If there is no risk that the convict, who is at liberty, will hide or otherwise obstruct the execution of the sentence of expulsion, the presiding judge may grant him a reasonable time limit to settle his affairs. This time limit may not be longer than one month, starting from the date when the judgment came into full force and effect.

(3) The presiding judge may repeatedly extend the period referred to in sub-section (2) upon a petition of the convict, however not more than to 180 days from the date when the judgment came into full force and effect, provided that the convict proves that he has taken all the necessary steps to obtain travel documents and other requirements needed to travel abroad, but he cannot travel out of the Czech Republic yet.

(4) If the convict requests an international protection under special legal regulation[8] in addition to the sentence of expulsion, and unless the request is clearly unsubstantiated, the presiding judge shall postpone the execution of the sentence of expulsion upon the request of the convict or even without such a request. The presiding judge shall notify the authority involved in criminal proceedings competent to conduct proceedings on awarding international protection under special legal regulation[7] about postponing the execution of the sentence of expulsion, while requesting it to be notified of the decision on the request immediately after the proceedings are concluded.

(5) If the convict was awarded additional protection according to a special legal regulation[7] in addition to the sentence of expulsion or special protection and assistance under a special legal regulation, the presiding judge shall postpone the execution of the sentence of expulsion until the time after it is awarded. The presiding judge shall notify the authority competent to award additional protection under a special legal regulation[7] or the authority competent to provide special protection and assistance under a special legal regulation, about the postponement of the execution the sentence of expulsion, while requesting them to immediately notify the presiding judge about the fact that the expiration or revocation of the additional protection or about the termination of the special protection and assistance.

(6) A complaint is admissible against the decision according to sub-section (4).

Section 350c Expulsion Custody

(1) If there is a concern that the convict will hide or otherwise obstruct the execution of the sentence of expulsion, the presiding judge may decide to remand the convict in expulsion custody, unless he decide on its substitution by a guarantee, promise, or bail.

(2) Unless sub-section (1) implies otherwise, the provisions of Chapter Four, Sub-division One shall apply to the proceedings on expulsion custody and its replacement by a guarantee, promise, or bail.

(3) If the convict was remanded in expulsion custody pursuant to sub-section (1), the presiding judge shall request the Police of the Czech Republic to secure the travel documents necessary to execute the sentence of expulsion, if it is necessary.

[8] Act no 325/1999 Coll., on Asylum and on amending the Act no. 383/1991 Coll., on the Police of the Czech Republic, as amended.

Section 350d

If the convict, to whom was finally and effectively imposed a sentence of expulsion, serves a sentence of imprisonment, the presiding judge shall inform the relevant prison about ordering the execution of the sentence of expulsion. In the order of execution of the sentence according to Section 350 (1), he shall also request the Police of the Czech Republic, if necessary, to secure travel documents required for executing the sentence of expulsion so that this sentence immediately followed execution of a sentence of imprisonment.

Section 350e

If the court decides on the waiver of execution of a prison sentence or its remaining portion, on the conditional release from serving a prison sentence or on an amnesty that pardons the remaining term of the prison sentence of the convict, who was imposed a sentence of expulsion, it shall immediately and notwithstanding the full force and effect of such decision, notify the court competent for the execution of the sentence of expulsion and the Police of the Czech Republic; the Ministry of Justice shall proceed similarly in cases where the Minister of Justice decides on the waiver of serving a prison sentence or its remaining portion.

Section 350f

(1) If the convict was taken into expulsion custody or if he serves a prison sentence, the Police of the Czech Republic shall also secure his departure from the Czech Republic and shall take the convict from the prison upon an agreement with the presiding judge.

(2) The costs associated with the execution of expulsion, if not paid by the convict, with the exception of the costs of custody, shall be borne by the Police of the Czech Republic.

Section 350g

(1) If the convict is not present in the territory of the Czech Republic at the time of the court approaches to the execution of the sentence of expulsion, the presiding judge shall send the order of the execution of the sentence to the Police of the Czech Republic and shall not perform any further actions.

(2) If a citizen of the European Union, or his family member [9] notwithstanding their nationality was not expelled within two years from the final and effective imposition of the sentence of expulsion, the presiding judge shall verify, whether the matters of facts, for which the sentence of expulsion cannot be imposed, have occurred.

Section 350h Waiving the Execution of Expulsion

[9] Section 15a of the Act no. 326/1999 Coll., on the Staing of Foreigners in the territory of the Czech Republic and on Amending some other Acts, as amended by the Act no. 217/2002 Coll., Act no. 161/2006 Coll. and the Act no. 428/2005 Coll.

(1) The court shall waive the execution of a sentence of expulsion or its remaining portion, if after delivering the judgement, by which was this sentence imposed, occurred matters of fact, for which the sentence of expulsion cannot be imposed. If the convict is in expulsion custody or serving a sentence of imprisonment, the presiding judge shall notify the relevant prison about the final and effective waiver of execution of the sentence of expulsion.

(2) A complaint is admissible against the decision pursuant to sub-section (1), which has a dilatory effect.

Execution of a Sentence of Ban from Sport, Cultural and other Social Events

Section 350i

(1) Once the decision, according to which the sentence of ban from sporting, cultural, or other social events is to be executed, comes into full force and effect, the presiding judge shall send its copy to the Centre of Probation and Mediation Service under the jurisdiction of the District Court, where the convict resides, and if he does not have a permanent residence, the jurisdiction where he stays or work, and also authorise a probation officer operating in the jurisdiction of such court to control the execution of the sentence of ban from sporting, cultural, or other social events.

(2) The probation officer responsible for control over the execution of the sentence of ban from sporting, cultural, or other social events shall also call the convict to appear at the Centre of Probation and Mediation Service on a date he determines in order to discuss the terms of the execution of the sentence of ban from sporting, cultural, or other social events. In the call, he shall warn him of the consequences of a failure to comply with these obligations without important reasons.

(3) The probation officer responsible for the control the execution of the sentence of ban from sporting, cultural, or other social events shall discuss the terms of the execution of the sentence of ban from sporting, cultural, or other social events with the convict. If he deems it necessary to set an obligation of the convict to appear at the designated department of the Police of the Czech Republic in accordance with his instructions, he shall determine specific conditions after an agreement with the Police of the Czech Republic. The probation officer shall proceed in the determination and control of the terms of the execution of such a sentence in co-operation with the competent department of the Police of the Czech Republic, where the convict is to appear at the determined times.

Section 350j

The provisions of Section 331 through 333 shall apply accordingly to the proceedings on the conditional waiver of execution of the remaining portion of the sentence of ban from sporting,

cultural, or other social events, as well as to the proceedings on ordering the execution of the remaining portion of the sentence.

SUBDIVISION SIX
Statute Bar of Execution of a Sentence

Section 350k

The court shall decide in the statute-bar of execution of a sentence by a resolution. The public prosecutor may file a complaint against this resolution, which has a dilatory effect.

SUBDIVISION SEVEN
Execution of Protective Treatment and Security Detention

Section 351 Ordering the Execution of Protective Treatment

(1) The presiding judge shall order the execution of protective treatment to a medical facility, in which is the protective treatment to be performed. However, if the protective treatment was imposed in addition to an unconditional prison sentence and the prison can provide conditions for execution of such treatment, the presiding judge may order that the protective treatment is performed in the course of execution of the prison sentence.

(2) If the person, to whom was imposed protective treatment, is dangerous to himself or to his surroundings while he is at liberty, the presiding judge shall order his immediate placement to a medical facility; otherwise, he may be provided with a reasonable to settle his affairs.

(3) If a member of the armed forces or armed corps in active duty is concerned, the presiding judge shall request the competent commander or chief to arrange their transportation to a medical facility.

(4) The presiding judge shall request that the medical facility notifies the court that imposed the protective treatment when the execution of the protective treatment started. At the same time, he shall request that the medical facility immediately sent a report to the District Court, in whose jurisdiction is the protective treatment executed, should the grounds for the protective treatment expire.

(5) The presiding judge shall enclose an expert opinion, a copy of a protocol of interview of an expert, or a copy of a medical report on the health condition of the convict to the order of execution of the protective treatment for the use of the medical facility, if they were obtained during the criminal proceedings.

Section 351a Change of Protective Treatment

(1) The District Court, in whose jurisdiction is situated the medical facility, where is executed the security detention, shall decide in a public session to change the way of execution of the protective treatment upon a petition of the medical facility, the public prosecutor, or the person subject to the protective treatment, or even without such a petition; this court shall also decide, upon a petition of the medical facility or the public prosecutor, to change the institutional protective treatment into a security detention. The court may change the institutional protective treatment into security detention under the conditions provided for by the Criminal Code, if based on a petition or a report of the medical facility describing the course and results of the current treatment, the executed protective treatment has not resulted in the fulfilment of its purpose towards the behaviour of the person, on whom is the protective treatment being executed, and such a change is required for the efficient protection of the society and by the necessity to use the means of security detention on the person, on whom is the protective treatment being executed.

(2) A complaint is admissible against the decision pursuant to sub-section (1), which has a dilatory effect.

Section 352 Waiver of Execution of Protective Treatment

The court that imposed the protective treatment decides in a public session on the waiver of the execution of the protective treatment before its start and upon the petition of the public prosecutor or the person subject to the protective treatment, or even without such a petition. A complaint is admissible against such a decision, which has a dilatory effect.

Section 353 Release from Protective Treatment and its Termination

(1) Once the purpose of the protective treatment is reached, the medical facility performing the protective treatment shall file a petition for release from the protective treatment to the District Court, in whose jurisdiction is the protective treatment being executed; a petition for the termination of the protective treatment under Section 99 (6) of the Criminal Code shall be submitted by the medical facility as soon as it ascertains that its purpose cannot be reached. If the protective treatment is not be performed in such a way that within two years from its start will be made a decision on the release from the protective treatment or on its termination, the medical facility shall file a petition for its extension at least two months before the lapse of the period of two years from the start of the protective treatment. The medical facility shall report on the course and results of the protective treatment in the petition for the release from protective treatment, for its termination, or in the petition to extend the protective treatment, and it shall also state reasons for the petitioned procedure, including a petition for the possible imposition of supervision over the behaviour of the person subject to the execution of the protective treatment. The medical facility must be instructed thereof.

(2) The District Court, in whose jurisdiction is the protective treatment being executed, shall decide in a public session on the release from the protective treatment, on its termination, including the possible imposition of supervision or the extension of the protective treatment

upon a petition of the medical facility, the public prosecutor or the person subject to the execution of the protective treatment, or even without such a petition.

(3) A complaint is admissible against the decision pursuant to sub-section (2), which has a dilatory effect.

(4) If the aggrieved person or witness filed a request pursuant to Section 44a, the presiding judge shall send the information on the aggrieved person or witness, who must be notified of the release or escape of the convict from the protective treatment, along with the order for execution of the protective treatment to the relevant medical facility. In the event that the aggrieved person or the witness filed their request at a time when the convict was serving the protective treatment, the court shall send the relevant information to the medical facility, where the convict serves the protective treatment, additionally. The medical facility is required to notify the aggrieved person or the witness in writing without undue delay, however no later than on the day following the occurrence of the facts referred to in Section 44a (1) c).

Section 354 Order of Execution of Security Detention and its Execution

(1) After the decision, according to which is the security detention to be executed, becomes enforceable, the presiding judge shall send the facility competent for the execution of the security detention, in which is the security detention to be executed, an order for the execution of the security detention and at the same time shall bid the person, to whom was imposed the security detention, if is free, to start the execution of the security detention. The presiding judge of the court of appeal shall order the enforcement of the security detention of the accused, who is in custody, immediately after delivering the decision if the statement on the imposition of the security detention that was not imposed in addition to an unconditional prison sentence became enforceable upon the decision of the court of appeal. The District Court, in whose jurisdiction is the facility for the execution of the security detention situated, shall always be notified about the ordering the execution of the security detention in which the security detention will be executed.

(2) If a person, to whom was imposed the security detention, poses a danger to his surroundings while being at liberty or if there is a concern that such a person at liberty may escape or if there is another important reason, the presiding judge shall arrange his transfer into the facility for the execution of the security detention without undue delay; otherwise, the presiding judge may provide him with a reasonable time to settle his affairs, which may not be longer than one month from the date when the decision referred to in sub-section (1) came into full force and effect. If the place of stay of this person is not known, Section 69 (3) shall apply accordingly to the order for his delivering for the execution of the security detention. If his place of stay is known, Section 83c (2) may be applied to his delivering for the execution of the security detention. The presiding judge shall always request the Police authority in the order to immediately inform him, whether the person was delivered for the execution of the security detention, eventually about the circumstances which prevent his delivery.

(3) If a member of the armed forces or armed corps in active duty is concerned, the presiding judge shall request the competent commander or chief to arrange his transfer to the facility for the execution of the security detention.

(4) The presiding judge shall request that the facility for security detention notified the court that imposed the security detention about when the execution of the security detention started. At the same time, he shall request that the facility for the execution of security detention immediately notified the District Court, in whose jurisdiction the security detention is performed, if the grounds for further continuation of the security detention expire.

(5) The presiding judge shall enclose an expert opinion, a copy of the protocol of the questioning of an expert, or a copy of a medical report on the health condition of the person, to whom was imposed the security detention, if they were obtained during the criminal proceedings, to the order of execution of the security detention for the needs of the facility for the execution of the security detention, and a request that a report on the course and results of the execution of the security detention, focusing on the aspects referred to in Section 100 (4) of the Criminal Code is filed to the District Court, in whose jurisdiction is the security detention being executed, within a time limit determined by the presiding judge.

Section 355 Change of Execution of Security Detention to a Protective Treatment

The District Court, in whose jurisdiction is the facility for the execution of the security detention situated, shall decide on the change of execution of the security detention to a protective treatment in a public session; a complaint is admissible against such a decision, which has a dilatory effect.

Section 356 Waiver of Execution of Security Detention

(1) The court that imposed the security detention shall decide in a public session on the waiver of execution of the security detention before it starts upon a petition of the public prosecutor or the person subject to the security detention, or even without such a petition. A complaint is admissible against such decision, which has a dilatory effect.

(2) The Minister of Justice may waive the execution of security detention, if the convict was or is to be extradited to a foreign State or surrendered to another Member State of the European Union on the basis of the European Arrest Warrant.

(3) The court may waive the execution of security detention if the person was or is to be expelled.

(4) If the extradition of the convict to a foreign State, his surrender under sub-section (2), or expulsion in accordance with sub-section (3) does not occur, or if the extradited, surrendered or expelled convict returns, the court shall decide that the security detention shall be executed.

Section 356a
Repealed

Section 357 Duration of Security Detention and Release from the Security Detention

(1) The District Court in whose jurisdiction is the facility for the execution of the security detention situated, shall monitor the execution of the security detention on the basis of the requested reports and examine whether the grounds for its continuation remain, at least once every twelve months, and in case of juveniles at least once every six months, counted from the start of the execution of the security detention or from the previous decision on its duration.

(2) The District Court in whose jurisdiction is the security detention executed, shall decide in a public session on further duration of the security detention or on the release from the security detention upon a petition of the facility for the execution of the security detention, the public prosecutor or the person subject to the security detention, or even without such a petition. If the request of a person subject to the security detention is dismissed, such person may, repeat it no sooner than after six months after the full force and effect of the decision, unless he presents other reasons.

(3) A complaint is admissible against the decision under sub-section (2), which has a dilatory effect.

(4) If the aggrieved person or a witness filed a request pursuant to Section 44a, the presiding judge shall send the information on the aggrieved person or the witness, who must be notified of the release or escape of the convict from the security detention, along with the order for execution of the security detention, to the relevant facility for the execution of the security detention. If the aggrieved person filed his request at a time when the convict was under the execution of the security detention, the court shall also send the relevant information to the facility for the execution of the security detention, in which the convict serves the security detention. The facility for the execution of security detention is required to notify the aggrieved person or the witness in writing about the matters of fact referred to in Section 44a (1) d) without undue delay, however no later than on the day following their occurrence.

Section 358
Heading Omitted

Section 349b shall be applied accordingly to the execution of confiscation of items or confiscation of an equivalent value.

SUBDIVISION EIGHT
Execution of Certain Other Decisions

Section 359
Repealed

Section 359a Conditional Waiver of Punishment with Supervision

Unless further provided otherwise, the provisions of Section 330a shall apply accordingly to the procedure of execution of supervision over a convict, whose punishment was conditionally waived with supervision, and to the decision on whether the conditionally convicted person has approved himself or whether the sentence shall be imposed to him. The court shall decide on the imposition of the punishment to the convict, whose punishment was conditionally waived with supervision, by a judgment in a public session.

Section 360 Execution of Custody

Terms of execution of custody shall be governed by a special Act.

Section 361 Enforcement of Disciplinary Fine

(1) Once the resolution by which the disciplinary fine was imposed becomes enforceable, the Police authority, the public prosecutor, or the presiding judge who imposed the fine shall bid the person upon whom the fine was imposed to pay it within fifteen days, and they shall caution him that otherwise its payment will be enforced. The paid disciplinary fine devolves to the State. Administration of payments of disciplinary fines shall be governed by the Tax Procedure Code.

Section 362 Measures in Relation to Decision-making on Conditional Suspension of Submitting a Motion for Punishment, Conditional Discontinuation of Criminal Prosecution or Approval of Settlement

(1) If the accused person deposited a financial sum designated to the State for financial assistance to the victims of criminal activity and the court and in pre-trial proceedings the public prosecutor does not decide on the conditional discontinuation of criminal prosecution or on the approval of settlement, the presiding judge and in pre-trial proceedings the public prosecutor shall ensure that the deposited financial amount is returned to the accused person.

(2) If the accused person undertakes to refrain from driving motor vehicles during the probation period of the conditional discontinuation of criminal prosecution or if the criminal proceedings is conditionally discontinued for criminal offences of Grievous bodily harm out of negligence (Section 147 of the Criminal Code), Bodily harm out of negligence (Section 148 of the Criminal Code), Failure to provide assistance by drivers of motor vehicles Section 151 of the Criminal Code) or for a criminal offence of Menace under influence of addictive substance (Section 274 of the Criminal Code), if they were committed in relation to driving a motor vehicle, the presiding judge and in pre-trial proceedings the public prosecutor shall send a copy of the decision on the conditional discontinuation of criminal prosecution to the

municipal office of a municipality with extended jurisdiction competent according to the place of permanent residence of the accused person; if the accused person does not have a permanent residence in the Czech Republic, the copy of this decision shall be sent to the municipal office of a municipality with extended jurisdiction in the place of the court of the public prosecutor's office. The presiding judge and in pre-trial proceedings the public prosecutor shall send the municipal office of the municipality with extended jurisdiction referred to in the first sentence also a copy of the decision with a marked clause of legal force, by which it was decided that the conditional discontinuation of criminal prosecution of the accused person remains in effect and the probation period is extended, and a copy of the decision with a marked clause of legal force, by which it was decided that the accused person has approved himself in the probation period, or it shall be notified of the day, to which he is considered to have approved himself.

(3) If suspect deposits a financial sum designated to the State for financial assistance to the victims of criminal activity for the purpose of conditional suspension of submitting a motion for punishment or if he undertakes to refrain from driving motor vehicles during the probation period, it shall be proceeded mutatis mutandis according to sub-sections (1) and (2).

CHAPTER TWENTY-TWO

Expungement of Conviction

Section 363

The court decides on the expungement of a conviction upon a request of the convict or upon the petition of the public interest group referred to in Section 3 (1), and unless a case referred to in Section 69 (3) of the Criminal Code is concerned, and also upon a request of the persons who could file an appeal in favour of the convict.

Section 364

(1) The presiding judge of the District Court, in whose jurisdiction the convict has or had his last place of residence at the time of filing the petition, shall decide on the expungement of the conviction.

(2) A complaint is admissible against a decision on the expungement of the conviction, which has a dilatory effect.

Section 364a

The presiding judge of the District Court referred to in Section 364 (1) shall also decide on the expungement of a foreign court conviction, which is recorded in the Criminal Register; such a decision may have effects abroad only if it is provided for by an international treaty.

Section 365

(1) Once the decision on the expungement of the conviction came into full force and effect, the presiding judge shall notify the convict, the petitioner, and the authority that administers the Criminal Register; an expunged conviction cannot be recorded in the extract from the Criminal Register.

(2) If the request for expungement of a conviction was dismissed, it may be filed again no sooner than after one year, unless it was dismissed only because the statutory period for expungement has not yet lapsed. A request filed despite that shall be dismissed by the court without any investigation.

PART FOUR

Some of the Actions Associated with Criminal Proceedings

CHAPTER TWENTY-THREE

Pardon and Amnesty

Section 366 Pardon

(1) The President of the Republic shall grant a pardon under the right given to him by the Constitution.

(2) The President of the Republic shall determine in which cases the Minister of Justice may conduct the proceedings on a request for a pardon and dismiss an unfounded request.

(3) If the President of the Republic orders it in the pardon proceedings, the criminal proceedings shall not be commenced yet or the commenced criminal proceedings will not continue and the accused shall be released from custody or the execution of punishment shall be deferred or suspended.

Section 367 Pardon Proceedings

In the cases referred to in Section 366 (2) the Minister of Justice shall conduct the proceedings and dismiss unfounded requests. He may also order that

a) criminal prosecution is not initiated, the commenced criminal prosecution is not continued, and that the accused is released from custody, or
b) execution of a sentence is deferred or suspended until such time the request for pardon is processed.

Section 368 Decision on Amnesty

A decision on whether and to what extent will an amnesty apply to a person, to whom was finally and effectively imposed a sentence, shall be performed by the court that decided in the first instance. If such person serves a prison sentence at the time of the making the decision, the court in whose jurisdiction is the punishment being executed, shall make the decision. A complaint is admissible against such a decision, which has a dilatory effect.

Section 369 Conditional Pardon

If the punishment or its remaining portion was exempted by a granted pardon only under determined conditions, compliance with the conditions and the social rehabilitation of the convict shall be supervised by the court that decided on the matter in the first instance. The provisions of Section 329 on cooperation with public interest groups shall apply accordingly.

Section 370 Change of the Term of a Sentence

(1) If the entire sentence or its portion was waived by granting an amnesty penalty only in case of one of the criminal offences, for which was imposed an aggregate or cumulative sentence, which has not yet been entirely executed, the court shall determine an appropriate punishment for the criminal offence not affected by the amnesty according to the relative proportion of the seriousness. A complaint is admissible against such a decision, which has a dilatory effect.

(2) The decision under sub-section (1) shall be made in a public session by the court that imposed the sentence in the first instance.

Section 370a
Repealed

CHAPTER TWENTY-FOUR

Repealed

Section 371
Repealed

Section 372
Repealed

Section 373
Repealed

Section 374
Repealed

CHAPTER TWENTY-FIVE

Legal Co-operation with Foreign States

SUBDIVISION ONE
General Provisions

Section 375

(1) Provisions of this Chapter shall apply only where not otherwise provided for by a promulgated international treaty binding the Czech Republic.

(2) Provisions of this Chapter shall also apply to proceedings regarding requests of an international criminal court instituted on the basis of a promulgated international treaty binding the Czech Republic, or requests of an international criminal tribunal instituted by a decision of the United Nations Security Council, issued in accordance with Chapter VII of the United Nations Charter binding the Czech Republic (hereinafter referred to as "tribunal"), except where otherwise provided for by a special legal enactment. Sections 376, 377 and 432(1) shall not apply.

(3) Procedure according to the Second Subdivision of this Chapter on extradition shall apply mutatis mutandis to proceedings and decision making on surrender of persons to an international criminal court or tribunal, except where otherwise provided for by a special legal enactment. Sections 392, 393 and 399(2) shall not apply.

(4) Procedure according to the Fourth Subdivision of this Chapter shall apply mutatis mutandis to proceedings and decision making on transit of persons through the territory of the Czech Republic in order to appear before an international criminal court or tribunal or for the purpose of execution of a sentence imposed by an international criminal court or tribunal, except where otherwise provided for by a special legal enactment.

(5) Procedure according to the Seventh Subdivision of this Chapter on recognition and enforcement of foreign judgements shall apply mutatis mutandis to enforcement of decisions of an international criminal court or tribunal, except where otherwise provided for by a special legal enactment. Such decisions shall also include decisions of an international criminal court or tribunal on restitution of property or compensation of victims. Criminality of the deed according to the legal order of the Czech Republic (Section 449) is not required. Provisions of Sections 450(1)(d) to (g) and 451(1) shall not apply.

Section 376 Reciprocity

(1) If legal cooperation between the Czech Republic and the requesting State is not governed by an international treaty, authorities of the Czech Republic involved in criminal proceedings

shall comply with such requests if the requesting State provides a guarantee that it will grant similar requests of authorities of the Czech Republic.

(2) If the requested State, in the course of legal co-operation referred to in sub-section (1), subjects granting the request of authorities of the Czech Republic involved in criminal proceedings to receiving a guarantee of reciprocity, such a guarantee may be provided by the Ministry of Justice and, in pre-trial proceedings, by the Supreme Public Prosecutor's Office.

(3) Procedure referred to in sub-sections (1) and (2) shall be precluded if the execution of such a request is, according to provisions of this Chapter, subject to existence of an international treaty.

Section 377 Protection of State Interests

Requests of foreign State authorities shall not be executed if the execution would result into a breach of Constitution of the Czech Republic or into a breach of any provision of the Czech legislation that must be maintained without exceptions, or if the execution could cause harm to another significant protected interest of the Czech Republic.

Section 378 Protection and Use of Information

(1) Administration of information by authorities of the Czech Republic on procedural steps taken according to provisions of this Chapter shall be governed mutatis mutandis by Sections 8a to 8c.

(2) The authorities of the Czech Republic shall not publish or provide, without an explicit consent of a competent authority of a foreign State, information or evidence obtained from that State on the basis of a request received or sent according to provisions of this Chapter or in connection therewith, if they are so obliged according to a promulgated international treaty binding the Czech Republic, or if the information or evidence was provided solely under the condition of observing these restrictions.

Section 378a The Schengen Information System

(1) The authorities involved in criminal proceedings may, for the purposes of criminal proceedings, acquire data through the police of the Czech Republic from the information system set up by States bound by international agreements on abolition of checks at the common borders and by related regulations of the European Union (hereinafter referred to as "Schengen information system").

(2) The national member of the Czech Republic in the European Union's Judicial Cooperation Unit (hereinafter referred to as "national member in Eurojust") and his assistant shall have, through the European Union's Judicial Cooperation Unit (hereinafter referred to as "Eurojust"), access to records registered in the Schengen information system on

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

(3) If the information investigated by the national member in Eurojust or by his assistant is recorded in the Schengen Information System, the national member in Eurojust shall notify this fact to the State that registered the record.

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

Personal Data Protection

Section 378b

(1) If the nature of personal data transferred to another Member State of the EU or a State associated through an international treaty to implement the Schengen regulations (hereinafter referred to as "associated State") requires it and where it is possible, the available information enabling such a State to assess their accuracy must be enclosed thereto.

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

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

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

data is informed about the transfer or other processing only with the prior consent of the authority of the Czech Republic.

(5) The request of a competent authority of another Member State of the EU or an associated State on the use of personal data, which was transferred to it from the Czech Republic, for a purpose other than that for which it was transferred, shall be assessed by the authority of the Czech Republic that transferred such personal data into this State. It shall grant its consent, if such use is admissible according to the law of the Czech Republic; this shall without prejudice to the provisions of Section 430 (2) and Section 434.

Section 378c

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

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

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

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

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

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

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

Section 378d

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

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

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

(4) In the request for the consent of another State with further forwarding of personal data pursuant to sub-section (1) or in the request for its opinion pursuant to sub-section (3), the competent authority of another State shall be given a reasonable time limit, during which it

must submit its opinion and be advised that unless it sends its opinion within the set time limit, it shall be deemed that it gave its consent to such forwarding of the personal data.

Section 378e

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

(2) In case that the request of another Member State of the EU or an associated State does not contain the required information, the Ministry of Justice shall ask the competent authority of such State for its completion and it shall determine a reasonable time limit therefor. At the same time, it shall advise it that unless the competent authority of such State complies with the request within the set time limit, without giving significant reasons for which it could not have done so, the Ministry of Justice shall dismiss the request.

(3) The Ministry of Justice may request another Member State of the EU or an associated State that transferred the inaccurate personal data or that transferred personal data contrary to its national law to the Czech Republic for the reimbursement of the amount that it paid in damages under a special legal regulation to the extent, to which the damage was incurred by the procedures of such State.

(4) The claim for the reimbursement of the paid damages pursuant to sub-section (3) shall be applied in the form of a request to the competent authority of another Member State of the EU or an associated State in accordance with the law and requirements of such State.

Section 378f

(1) The provisions of Section 378b through 378e shall not apply to transfers of personal data to the European Police Authority, Eurojust, or through the Schengen Information System. The provisions of Section 378b, 378c, Section 378d (1) and (2) and Section 378e shall not apply to transfers of personal data under promulgated international treaties binding the Czech Republic.

(2) The transfer of personal data to a foreign State under this Chapter does not require the approval of the Office for Personal Data Protection under a special legal regulation.

Section 379 Service of Requests and Interchange of Information

(1) The authorities of the Czech Republic may initiate proceedings according to this Chapter on the basis of a request from a foreign authority delivered to them by telephone, fax or electronically in accordance with special legal regulations, provided there is no doubt of its

authenticity and if it concerns an urgent case that cannot be delayed. The original of the request shall be submitted subsequently within a time limit stipulated by the requested authority.

(2) Requests according to this Chapter may be sent to a foreign State or received from a foreign State also through the International Criminal police Organization (hereinafter referred to as "Interpol") or the police Presidium of the Czech Republic, particularly in urgent cases that cannot be delayed.

(3) Data and information on time and other details of surrender, reception and transport of persons according to Section 380 may also be exchanged via Interpol or the police Presidium of the Czech Republic.

Section 380 Receiving and Transfer of Persons and Items

(1) Any person being extradited or surrendered from a foreign State on the basis of a request according to this Chapter or any person for whom was issued an arrest warrant by a court of the Czech Republic (Section 384), an European Arrest Warrant (Section 405), an order to arrest (Section 69) or an order to deliver to execution of a sentence (Section 321(3)), and a person who is being expatriated or otherwise transferred in accordance with laws of this foreign State shall be received by the police of the Czech Republic. For these purposes may the authorities involved in criminal proceedings and the Ministry of Justice provide necessary information, including personal data and translations of documents, to the competent authorities of foreign states. The police shall transfer this person to the nearest detention prison or to another prison or to a court, provided that a decision of the person´s detention has not yet been issued (Section 69(4), Section 387(1)). The prison that received such a person shall immediately notify the competent court and public prosecutor supervising the prison about placement of that person into this facility.

(2) Any person being extradited or surrendered into a foreign State on the basis of a request submitted according to provisions of this Chapter shall be taken over by the police of the Czech Republic from the detention prison or other prison and transferred to authorities of the foreign State.

(3) Transit of a person through the territory of the Czech Republic according to Sections 422 to 424 shall be conducted by the police of the Czech Republic.

(4) police of the Czech Republic shall also carry out surrender or restitution of items according to Section 441 and reception or restitution of items surrendered from a foreign State upon a request of authorities of the Czech Republic in cases where it is not possible or suitable to send the item by post; police of the Czech Republic shall also manage transit of items through the territory of the Czech Republic upon a request of authorities of a foreign State.

(5) Persons surrendered to authorities of a foreign State in accordance to this Chapter or received from them need not be provided with travel documents for the purposes of crossing State borders.

Section 381 Manner of Court Decision

In proceedings according to this Chapter shall the court decide by resolution (usnesení), unless provisions of this Chapter provide otherwise.

Section 382 Costs

(1) Costs incurred by an authority of the Czech Republic in the course of executing a request from an authority of a foreign State in accordance with this Chapter shall be borne by the State (i.e. the Czech Republic).

(2) Where a promulgated international treaty binding the Czech Republic enables for the costs referred to in sub-section (1) or a part thereof to be reimbursed by the requesting State, or even in absence of such an international treaty, provided it is usual practise in mutual legal co-operation of the requesting and requested State, the authority that incurred the costs shall submit an itemised statement of these costs, their justification and specification of banking connection to the Ministry of Justice, for the purposes of claiming their remuneration from the requesting State.

(3) Costs incurred by a foreign State in connection to a request of an authority of the Czech Republic and reclaimed by the requested State in accordance with a promulgated international treaty binding the Czech Republic, or even without such an international treaty, provided it is usual practise in mutual legal co-operation of the requesting and requested State, shall be borne by the State. The costs incurred by the foreign State and reclaimed by it in connection with transit of a person or an item through the territory of that State from the territory of another State to the territory of the Czech Republic, in connection with a request of an authority of the Czech Republic, shall be borne by the State. Entitlement to seek reimbursement from the convicted person within the framework of reimbursement of costs of criminal proceedings shall not be affected thereby.

Section 382a
Repealed

SUBDIVISION TWO
Extradition

Request from Abroad

Section 383
Heading Omitted

(1) The authority competent to request extradition of the accused from a foreign State shall be the Ministry of Justice. It shall act upon a request of a court that has issued an International arrest warrant according to Section 384. Actions of courts pursuant to Sections 383 to 390 shall be carried out by the court that conducts criminal proceeding at the time the action takes place, and in pre-trial proceedings by the court competent according to Section 26.

(2) If there is a reasonable belief that the accused person shall not be extradited from the foreign State, the Ministry of Justice shall so inform the court, stating the reasons for which can be expected that the accused person shall not be extradited from the foreign State.

(3) The court may cancel the International arrest warrant on the basis of information referred to in sub-section (2), after reviewing the reasons for which can be expected that the accused shall not be extradited from the foreign State. This decision shall be made in a closed court hearing.

(4) In proceedings other than extradition for the purposes of execution of a sentence of imprisonment, the public prosecutor may lodge a complaint against the decision made in accordance to sub-section (3); the complaint shall have a dilatory effect.

Section 383a
Repealed

Section 383b
Repealed

Section 383c
Repealed

Section 384

(1) If the accused person is located in a foreign State or if there is a reasonable belief he stays there and if it is necessary to request extradition, the presiding judge or a judge of a competent court shall issue an International arrest warrant (hereinafter referred to as "arrest warrant"). In pre-trial proceedings shall the judge act upon a motion of a public prosecutor.

(2) The arrest warrant shall contain:

a) the name, address, telephone number, fax, email address of the authority that issued the arrest warrant,
b) the name and surname of the accused, other personal data enabling identification, information about citizenship, and eventually description, photograph and fingerprints,
c) the description of the circumstances including time, location and way in which the alleged offence was committed,

d) the legal classification of the offence with the exact wording of the legal provisions applicable to the offence, including the penalty imposable for such an offence,
e) the provision on statute of limitations and description of acts affecting the lapse of the limitation period, if a period longer than 3 years has lapsed from the time the offence was committed to the time the arrest warrant was issued.

(3) The arrest warrant for the purposes of requesting a convicted person from a foreign State for execution of a sentence of imprisonment shall also contain, in addition to information referred to in sub-section 2(a) to (e), information about the court that has imposed the sentence, specification of the sentence and information about the way in which defence rights of the accused were ensured, if the judgement was issued in proceedings against a fugitive or in absentia, annexing the wording of Section 306a. The arrest warrant shall also include provisions on the statute of limitations and description of acts affecting the lapse of limitation period, if a period longer than 5 years has lapsed from the time the judgement came into force to the time the arrest warrant was issued. The original or transcript of the judgement indicating its date of effect shall be attached to the arrest warrant.

(4) The arrest warrant shall be provided with a signature of the issuing judge and with an official round stamp of the court. If it is also necessary to deliver a translation of the arrest warrant into a foreign language to the requested State, the court shall enclose a translation made by an interpreter. The same shall apply to a translation of a court decision, if a request for execution of imprisonment is concerned.

(5) The arrest warrant shall cease to be valid:
a) by its nullification,
b) by delivering the extradited person to the court, or
c) by transferring the extradited person to another authority in the Czech Republic, entitled to accept him.

(6) The court shall cancel the arrest warrant if the reasons which it was issued for have expired, or if the court discovers reasons, for which it could not have been issued at all (Section 385). The court shall immediately inform the Ministry of Justice about nullification of the arrest warrant and also send it the decision on nullification of the arrest warrant. The Ministry of Justice shall secure implementation of necessary measures.

Section 384a
Repealed

Section 384b
Repealed

Section 384c
Repealed

Section 384d
Repealed

Section 384e
Repealed

Section 384f
Repealed

Section 384g
Repealed

Section 385

The court shall not issue the arrest warrant, if

a) the court supposes a punishment other than an unconditional sentence of imprisonment shall be imposed or if the length of the unconditional imprisonment does not exceed four months,
b) sentence of imprisonment, which shall be executed, or a remaining part thereof, does not exceed four months,
c) requesting extradition of the person to the Czech Republic would induce costs or consequences evidently disproportional to public interest in criminal prosecution or execution of imprisonment of the person in concerned
d) it would cause the person, whose extradition is concerned, a detriment evidently disproportional to importance of criminal procedure or to repercussions of the offence, particularly in relation to his social status or family relations.

Section 386

(1) In urgent cases the Ministry of Justice may, upon a request of the presiding judge or the judge of the court competent for issuing the arrest warrant, requisition the authorities of the foreign State to take the accused person into preliminary custody. In pre-trial proceedings shall the court act upon a motion of the public prosecutor. The request shall contain data referred to in Section 384(2) paragraphs (a) to (e), as well as an declaration that the arrest warrant has already been issued or is going to be issued for the accused person and his extradition is going to be requested consequently.

(2) Sending a request for taking the accused person into a preliminary custody shall be replaced by a record in the Schengen information system, for the purpose of arrest and extradition or surrender of the accused person.

(3) The court shall send the arrest warrant, issued according to Section 384(2) to (4) and enclosed with a translation into the relevant language, to the Ministry of Justice post facto,

within the limit of 10 days from the day the Ministry of Justice received the request of the court according to sub-section (1).

Section 387

(1) The person extradited shall be taken over by police authorities of the Czech Republic and immediately delivered to the court. If the accused person is being extradited on the basis of arrest warrants issued in several criminal cases, he shall be delivered to a court specified by the Ministry of Justice. If it is necessary to request a State other than the extraditing State for transit of the accused person through its territory for the purpose of delivering the accused person to the competent court, the request for granting the transit shall be sent to a competent authority of such a State by the Ministry of Justice.

(2) If procedure of extradition for the purposes of execution of a sentence is not concerned, the presiding judge shall be obliged to question the accused person and decide on his custody within the limit of 24 hours from the time of the handover. Sections 67 to 74 shall apply accordingly to the custody proceedings.

(3) The time spent by the accused person in transit to the Czech Republic shall not be counted into the time limit referred to in Section 72 and 72a. However, such a time period shall be counted into the term of imprisonment served in the Czech Republic.

Section 388

(1) If the accused was extradited with a reservation, the reservation shall be complied with.

(2) If the accused person was requested or extradited for the purpose of execution of a sentence of imprisonment only for some of offences, for which an aggregate sentence or a cumulative sentence was imposed, the court shall decide in a public session on a proportional penalty for offences, which the extradition applies to.

(3) If the requested State extradites a person for the purpose of execution of a penalty imposed upon such a person by a final court decision and if the requested State made a reservation to proceedings that preceded the extradition, the court shall question the extradited person in a public session and

a) if the person extradited agreed with execution of the penalty imposed, the court shall decide that the decision shall be executed, or
b) if the person extradited disagreed with execution of the penalty imposed, the court shall nullify the decision within the necessary extent and decide on custody; in consequent proceedings shall the court proceed mutatis mutandis according to Section 306a.

(4) The court that decided the case in the first instance shall be competent to proceedings referred to in sub-sections (2) and (3).

(5) A complaint may be lodged against decisions made pursuant to sub-sections (2) and (3)(b); such a complaint shall have a dilatory effect, except for a custodial decision.

Section 389 Speciality Principle

(1) The accused person shall be prosecuted only for criminal acts, which he has been extradited for, unless

a) he stays in the territory of the Czech Republic for a period exceeding 45 days after his release from custody or execution of imprisonment, although he could leave,
b) he left the territory of the Czech Republic and returned back voluntarily or was transported from the territory of a third State to the territory of the Czech Republic in a legal way,
c) the requested State waived application of the speciality rule or granted a subsequent consent to prosecution for other criminal acts, or
d) the accused person waived the application of the speciality rule during extradition proceedings, either in general or towards particular crimes committed prior to his extradition.

(2) If the extradited person has not waived application of the speciality rule referred to in sub-section (1) d) and if a promulgated international treaty binding the Czech Republic or the law of the requested State allows it, the court that conducts proceedings on other criminal offences committed prior to extradition of the person, and in pre-trial proceedings the court competent pursuant to Section 26 upon a motion of the public prosecutor, shall question such a person in the presence of his defence counsel and instruct him about the possibility to waive the right to exercise the speciality rule, as well as about the consequences of such a statement. The court shall state crimes covered by the statement into protocol, namely by their legal definitions, numeric indication and description of the deed, so the deeds could not be confused with any other offences.

(3) Request of the requested State to take over a criminal prosecution of the extradited person for offences committed on its territory prior to the extradition is also considered a subsequent consent according to sub-section (1) (c). The same shall apply also to a criminal complaint filed by the requested State.

(4) Sections 383 and 384 shall apply mutatis mutandis to submitting a request for a subsequent consent of the requested State to prosecution for offence other than which was the object of the original request for extradition.

(5) Until the time the requested State gives a subsequent consent to criminal prosecution for other offences, only urgent and unrepeatable procedural steps may be taken in proceedings on these criminal offences.

(6) Sub-sections (1) to (4) shall apply accordingly to execution of a sentence of imprisonment that was imposed upon the extradited person by a court of the Czech Republic prior to his extradition and that was not covered by the original request for extradition.

Section 389a
Repealed

Section 390 Temporary Surrender of Persons Extradited

(1) If the requested State, after granting the extradition, did not surrender the person extradited to the territory of the Czech Republic on the grounds of his criminal prosecution conducted by authorities of this State or because he shall serve a sentence of imprisonment imposed by authorities of that State in connection to an offence other than the one covered by the request for extradition, the presiding judge or judge may ask the Ministry of Justice to arrange a temporary surrender of the requested person to the territory of the Czech Republic for the purpose of taking procedural steps necessary for conclusion of the criminal prosecution. In the pre-trial proceedings shall the judge do so upon a motion of the public prosecutor.

(2) The court shall specify, in its request submitted to the Ministry of Justice, the procedural steps at which shall the presence of the requested person be required, including a date or a time period which the presence of the requested person is required to be provided for.

(3) Section 440 shall apply accordingly to proceedings on securing the temporary surrender of the requested person.

Extradition to Abroad

Section 391

(1) The Ministry of Justice shall be competent for receipt of requests of foreign authorities for extradition from the Czech Republic to a foreign State. Delivering the request to the Supreme Public Prosecutor's Office shall also have the effect of service, the Supreme Public Prosecutor's Office shall forward the request to a competent public prosecutor for the purpose of conducting preliminary investigation according to Section 394; a transcript of the request shall be delivered to the Ministry of Justice. If the competent public prosecutor is not known, the request shall be submitted to the Ministry of Justice.

(2) To a request of a foreign State for extradition shall be annexed
a) original or a verified copy of the convicting court decision, arrest warrant or another decision of the same effect,
b) description of the deed, which the extradition is requested for, including specification of time and place of its commission and its legal qualification,
c) text of the relevant legal regulations of the requesting State.

(3) If the documents and specifications referred to in sub-section (2) are not annexed to the request or if the information provided by the requesting State are not sufficient, the Ministry of Justice shall request supplementary information, if a promulgated international treaty binding the Czech Republic does not enable a direct legal co-operation between judicial authorities. In such a case the Ministry of Justice shall stipulate a time limit for submitting thereof.

Section 391a
Repealed

Section 391b
Repealed

Section 392 Criminal Offences Subject to Extradition

(1) Extradition of a person to a foreign State shall be admissible if the deed, for which the extradition is requested, is a criminal offence according to the Criminal Code of the Czech Republic and the maximum term of imprisonment imposable for such a deed according to the Criminal Code of the Czech Republic is one year at minimum.

(2) Extradition of a person to a foreign State for the purpose of execution of a previously imposed sentence of imprisonment or a protective measure associated with incarceration (hereinafter referred to as "protective measure") for an offence referred to in sub-section (1) shall be admissible, if the imposed sentence or protective measure or a remaining portion thereof to be executed is at least four months. Multiple sentences of imprisonment or protective measures or the remaining portions thereof, which have not been served, shall be added together, provided it is possible concerning the nature of the sentences or protective measures.

(3) If a foreign State requested extradition of a person for multiple offences of which at least one fulfils the conditions referred to in sub-section (1), the extradition shall also be admissible for criminal prosecution conducted for other offences or for the purpose of execution of other sentences, for which the extradition would not otherwise be admissible in view of insufficient length of the sentence or remaining portion thereof.

Section 393 Inadmissibility of Extradition

(1) Extradition of a person to a foreign State shall be inadmissible if:
a) It concerns a citizen of the Czech Republic,
b) It concerns a person that has been granted an asylum status the Czech Republic within the scope of protection provided by special legal regulations or by an international treaty,

c) criminal prosecution or execution of the sentence of imprisonment have become statute-barred according to the legal regulations of the Czech Republic,
d) the criminal prosecution is inadmissible as a result of granting a pardon or by an act of amnesty,
e) the offence, which the extradition is requested for, is of an exclusively political or military nature,
f) the offence consists in the violation of tax, customs, currency regulations or in violation of other financial rights of the State, unless the principle of reciprocity is granted,
g) the offence was committed in the territory of the Czech Republic or a criminal proceeding is being conducted against the requested person in the Czech Republic for the same deed, except for cases where with regard to specific circumstances of commission of the offence it is necessary to give priority to conducting the criminal prosecution in the requesting State in order to properly establish matters of fact and for reasons regarding the length of imprisonment or its execution,
h) the offence, which the person is requested for, is punishable by death penalty in the requesting State, except for cases where the requesting State guarantees that the death penalty shall not be imposed,
i) the requesting State requests the extradition for the purpose of executing death penalty,
j) the requested person was not criminally liable at the time of commission of the offence according to legal regulations of the Czech Republic, or there are other reasons precluding his criminal liability.
k) there is a reasonable belief that criminal proceeding in the requesting State would not comply with principles of Articles 3 and 6 of the Convention for Protection of Human Rights and Fundamental Freedoms, or that the punishment presumably imposed in the requesting State would not be executed in compliance with requirements of Article 3 of the aforementioned convention,
l) there is a reasonable belief that in the requesting State the requested person would be subject to persecution for his origin, race, religion, membership to a certain national or other group, citizenship or political beliefs, or that his position in the criminal proceeding or in serving a sentence of imprisonment would be impaired by these circumstances,
m) extradition to the requesting State would cause the requested person an unconscionable detriment, with regard to his age and personal circumstances and to seriousness of the alleged crime,
n) the offence which, the extradition is requested for, is not an offence subject to extradition under Section 392,
o) criminal prosecution for the same offence conducted against the requested person in another State was concluded by a final court decision or was dismissed by a final decision of a court or other competent authority or was concluded by another decision of the same effect, provided that such a decision has not been nullified in an official proceeding and that any sentence imposed has been served, or

p) criminal prosecution against the requested person in the Czech Republic for the same deed was concluded by a final court decision or was dismissed by a final decision of a court or public prosecutor or was concluded by another decision of the same effect, provided that such a decision has not been nullified in an official proceeding.

Section 394 Preliminary Investigation

(1) The preliminary investigation shall be conducted by the public prosecutor of the regional public prosecutor's office, to which the Ministry of Justice or the Supreme Public Prosecutor's Office forwarded the extradition request of a foreign State, or the regional public prosecutor who has learned about a criminal offence, for which a Foreign State could seek extradition. The preliminary investigation is commenced by apprehending the person concerned according to Section 395 or by requesting necessary information. The purpose of preliminary investigation is particularly to establish whether there are any circumstances referred to in Section 393 that would preclude the extradition to the foreign State.

(2) Procedure according to sub-section (1) shall not apply if sufficient information are not known about:

a) the person who is or may be requested for extradition,
b) existence of a condemning court decision, arrest warrant or another decision of the same effect issued in the foreign State, which concerns the person who is or may be requested for extradition,
c) the deed, which the extradition is or may be requested for, including the specification of time and place of its commission and its legal qualification, including the upper limit of punishment that may be imposed for such an offence in the foreign state.

(3) The public prosecutor shall question the person concerned and acquaint him with grounds for the extradition, if he has not done so during apprehension according to Section 395 (1). If the person alleges circumstances disproving the suspicion and offers supporting evidence that can be produced without substantial delay, they shall also be covered by preliminary investigation.

(4) The public prosecutor shall terminate the preliminary investigation if:

a) the foreign State in position to ask for extradition has not delivered the extradition request despite repeated urgencies,
b) the requested person has died,
c) the requested person is not criminally liable according to the legal order of the Czech Republic in respect of his age,
d) the requested person cannot be apprehended due to immunity or privilege arising from domestic or international law,
e) the requested person resides outside the territory of the Czech Republic or his residence is unknown,
f) the consent under Section 389 (1) c) or d) has not been given,

g) the criminal prosecution or execution of a sentence of imprisonment has become statute-barred in the requesting State,
h) the requesting State has withdrawn the request for extradition or has otherwise informed that the extradition of the person is no longer required.

(5) The preliminary investigation shall also be terminated by submitting a motion according to Section 397 (1) or a request according to Section 398 (1).

(6) The public prosecutor shall immediately inform the Ministry of Justice about termination of the preliminary investigation under sub-section (4).

Section 395 Apprehension

(1) If the grounds for preliminary custody according to Section 396 (1) are given, the public prosecutor, or upon his consent the Police authority, may apprehend the person whose extradition is concerned. The Police authority is authorised to carry out the apprehension even without the prior consent of the public prosecutor, if the case cannot be delayed and the consent of the public prosecutor cannot be obtained in advance. However, the Police authority is obliged to notify the public prosecutor of the apprehension immediately and forward him a transcript of protocol drawn up at the time of the apprehension and any other materials that may be necessary for the public prosecutor to eventually file a motion for imposing a preliminary custody. The motion must be filed in such a way that the apprehended person can be transferred to a court within 48 hours from his apprehension at the latest, otherwise he must be released.

(2) The public prosecutor or the Police authority that carried out the apprehension shall question the apprehended person and draw up a protocol thereof indicating the time, place and other circumstances regarding the apprehension, personal data of the apprehended person and substantial reasons for the apprehension. The apprehended person shall be instructed about the possibility to give consent with his extradition to a foreign State as early as during the apprehension, and about conditions and consequences of such a consent, including that granting the consent implicates waiving application of the speciality rule. The apprehended person shall have the right to choose a defence counsel and to consult him without the presence of third persons as early as during the apprehension; the person shall also have the right to demand his counsel to be present at his questioning at the time of the apprehension, unless the defence counsel is unreachable within the time specified in the protocol. The person concerned must be instructed about these rights and provided with the full possibility of their exercising.

(3) If the public prosecutor does not order the release of such a person from apprehension based on further investigation, he shall be obliged to transfer the person to a Regional Court within 48 hours from his apprehension, along with a motion for taking him into preliminary custody (Section 396 (1)).

Section 396 Preliminary Custody

(1) If the ascertained matters of fact give reason to belief that the person whose extradition is concerned flees, the presiding judge of the Regional Court, in whose jurisdiction has this person his residence or was apprehended, shall decide on taking such a person into preliminary custody upon a motion of the public prosecutor conducting the preliminary investigation and after submitting a motion for a decision referred to in Section 397 (1) even without such a motion. A complaint is admissible against the decision on taking the person into preliminary custody. Section 77 (2) shall be applied to decision-making on the apprehended person mutatis mutandis.

(2) Decision-making on releasing from preliminary custody and its substitution by a guarantee, supervision, assurance or bail shall be governed mutatis mutandis by Section 71 (1) first sentence, 71 (2) a), 71a, 73, 73a (1) to (6), 73a (9), 73b (2) and (6) and Section 74. Where these provisions refer to pre-trial proceedings, it shall be understood as preliminary investigation.

(3) The person whose extradition is concerned must be released from the preliminary custody immediately if the preliminary investigation was commenced without an extradition request of a foreign State and this request was not delivered to the Czech Republic within 40 days from taking the person into preliminary custody. Releasing from the preliminary custody in this case shall not preclude remanding him into preliminary custody, if the request is delivered subsequently.

(4) The authorities, decisions of which affect the duration of preliminary custody, are obliged to handle such matters with priority and with the highest speed.

Section 397 Decisions on Admissibility of Extradition

(1) After conclusion of the preliminary investigation, the Regional Court in whose district the person whose extradition is concerned has his place of residence or was detained, shall decide upon a motion of the public prosecutor whether the extradition is admissible. Section 188 (1) e) regarding remitting the case back to the public prosecutor for completion of investigation shall not apply. A complaint is admissible against this decision, which has a dilatory effect. If the person is extradited to the Czech Republic from a foreign State, the court may decide that the extradition is admissible only if the extraditing State consents with extradition to another state. If this person was surrendered to the Czech Republic on the basis of a European Arrest Warrant, the court may decide that the extradition is admissible only if the surrendering State consents with extradition to another State.

(2) If the court decides that the extradition is not admissible and if the person whose extradition is concerned is in preliminary custody, the court shall also decide on his release from the preliminary custody. A complaint is admissible against this decision, which has a

dilatory effect; a complaint of the public prosecutor shall have dilatory effect only if lodged immediately after the court decision is promulgated.

(3) Once the decision referred to in sub-section (1) or (2) comes into effect, the presiding judge of the Regional Court shall submit the case to the Ministry of Justice. If the Minister of Justice has doubts regarding the correctness of the court decision, he may submit the case to the Supreme Court for review within the time limit of 3 months from the day the case was submitted to the Ministry of Justice.

(4) The Supreme Court shall proceed with the revision of the case mutatis mutandis pursuant to sub-sections (1) to (3).

Section 398 Simplified Extradition

(1) If the person whose extradition is concerned states, in the presence of his defence counsel before the presiding judge, that he agrees with his extradition to a foreign State, Sections 393 (c) to (f) and (n) to (p), 397 and 399 shall not apply and after conclusion of the preliminary investigation shall the public prosecutor submit a motion to the Regional Court specified in Section 397 (1) for taking the person to extradition custody or for converting the preliminary custody into extradition custody, or for postponement of the extradition. If the public prosecutor finds any grounds for inadmissibility of extradition according to Section 393 (a) or (b) or (g) to (m), he shall proceed as if the person has not given consent with the extradition.

(2) If the person whose extradition is concerned grants consent to his extradition during a public session on admissibility of the extradition, the public prosecutor shall withdraw his motion made in accordance with Section 397 (1) and proceed according to sub-section (1). The motion may be withdrawn until the time the court retires for final deliberation at the latest.

(3) The person whose extradition is concerned shall be instructed by the presiding judge and in the presence of his defence counsel about the meaning of the consent with extradition and about consequences implicated by such a statement, especially that the extradition shall be executed without deciding on admissibility and authorisation of the extradition and about consequences thereof, including waiving the speciality rule. The consent with extradition cannot be withdrawn.

(4) The public prosecutor shall, via the Ministry of Justice, immediately inform the foreign State that requests or could request the extradition about the consent of the person whose extradition is concerned with his extradition.

Section 399 Authorisation of Extradition

(1) Extradition into a foreign State shall be authorised by the Minister of Justice. The Minister may do so only if the court referred to in Section 397 decided the extradition is admissible.

(2) Even if the court finds the extradition admissible, the Minister of Justice may decide not to authorise the extradition. The Minister shall refuse the extradition in all cases where he decided that enforcement of the European Arrest Warrant according to Section 420 (3) shall take precedence.

(3) If the court finds the extradition inadmissible pursuant to Section 397, the Ministry of Justice shall inform the foreign State requesting the extradition that it cannot be authorised.

(4) The Minister of Justice shall terminate the proceedings on extradition if, after the matter was submitted to him according to Section 397(3), a ground for termination of preliminary investigation according to Section 394 (4) (b), (d), (e), (g) or (h) arises.

(5) The presiding judge of the Regional Court deciding the case shall order to release the person, whose extradition was refused by the Minister of Justice according to sub-section (2) first sentence, or the person who was a subject of proceedings on extradition terminated by the Minister of Justice according to sub-section (4), from the preliminary custody.

Section 400 Suspension of Extradition

(1) If the presence of the person whose extradition is concerned is necessary in the Czech Republic in relation to an offence other than which is covered by the extradition request of a foreign State for the purpose of criminal proceedings conducted in the Czech Republic or for the purpose of executing a sentence imposed by a court of the Czech Republic, the presiding judge of the Regional Court referred to in Section 397 (1) may decide that extradition of such a person shall be suspended. The decision on suspension of the extradition may the presiding judge issue after a consent of the Minister of Justice or after a consent of the person whose extradition is concerned and in the course of a simplified extradition (Section 398 (1)) until the moment the person is surrendered to authorities of the foreign State (Section 400b (3)). When deciding on suspension of extradition, the presiding judge shall especially consider seriousness of the offence, which the extradition is requested for, seriousness of the offence, which the suspension of extradition is proposed for, the possibility of extradition or transferring this person from the foreign State back to the Czech Republic, as well as the possibility to temporarily surrender the person to the requesting State.

(2) The suspension may be decided by the presiding judge upon a motion of:

a) the Minister of Justice,
b) the public prosecutor referred to in Section 394 (1),
c) the court and in preliminary proceedings the public prosecutor competent for conducting criminal proceedings in the Czech Republic,
d) the court that sentenced the person concerned to imprisonment, or
e) the person, whose extradition is concerned.

(3) If the person is in preliminary custody or in extradition custody, the presiding judge shall, along with suspending his extradition, decide on his releasing from this custody.

(4) If the reason for suspension of the extradition passes, the presiding judge of the Regional Court that decided on the extradition shall decide on remanding the person in extradition custody according to Section 400b.

(5) The presiding judge of the Regional Court that decided on suspension of the extradition shall terminate the proceedings on extradition if a reason for termination of the preliminary investigation under Section 394 (4) b), d), e), g) or h) arises. The presiding judge shall proceed in the same way if the Minister of Justice changes his decision on extradition and decides not to authorise the extradition with regard to change of circumstances.

Section 400a Temporary Surrender

(1) The presiding judge of the Regional Court referred to in Section 397 may decide to temporarily surrender the person whose extradition is concerned into the requesting State in order to take necessary steps in criminal proceedings. The decision shall contain a reasonable time limit not exceeding 6 months, within which shall the transferred person be returned into the territory of the Czech Republic.

(2) The time limit referred to in sub-section (1) may be, after consulting with a competent authority of the requesting State, extended solely for the same purpose which was the surrender allowed for. The temporary surrender may be executed repeatedly.

(3) Execution of the temporary surrender shall be in the discretion of the court referred to in sub-section (1).

(4) If the person whose extradition is concerned is sentenced in the territory of the requesting State for the offence, which the extradition was authorised for, meanwhile being temporarily surrendered to the requesting State, the presiding judge of the Regional Court that granted the temporary surrender may, upon a request of the requesting State, decide on suspension of the person´s transfer back to the territory of the Czech Republic until the time his sentence of imprisonment in the territory of the requesting State is served. This procedure is inadmissible if criminal prosecution of the person concerned was not brought to a final conclusion in the Czech Republic.

(5) The time the temporarily surrendered person spends in custody in the foreign State is counted into the term of imprisonment served in the Czech Republic only to the extent that was not counted into his sentence of imprisonment imposed in the territory of the requesting State. The time spent in imprisonment in the territory of the foreign State is not counted into the term of imprisonment served in the Czech Republic.

Section 400b Extradition Custody and Execution of Extradition

(1) The presiding judge of the Regional Court referred to in Section 397 (1) shall, after a decision of the Minister of Justice authorising the extradition and in case of simplified extradition upon a motion of the public prosecutor according to Section 398 (1), or even without such a motion, decide on taking the person into extradition custody, if the presiding judge has not decided to suspend the extradition. In ruling on the extradition custody is the presiding judge not bound by grounds for custody according to Section 67. If it is not possible to secure the presence of the person whose extradition is concerned in the course of decision-making on the extradition custody by other means, it shall be done according to Section 69. If the person whose extradition is concerned is in preliminary custody, the presiding judge shall decide on transforming the preliminary custody to extradition custody. The presiding judge shall immediately inform the Ministry of Justice about his decision.

(2) Provisions of Section 71 (2) (a), Section 71a, Section 73b (2) and Section 74 shall apply accordingly to extradition custody.

(3) After receiving information from the court according to sub-section (1), the Ministry of Justice shall stipulate date of the extradition with competent authorities of the requesting State. Extradition of the person to competent authorities of the requesting State and therewith related release of the person from the extradition custody shall be arranged by presiding judge of the court that has decided on the extradition custody.

(4) The extradition custody may last 3 months at the longest. The person whose extradition is concerned shall be released from custody immediately after expiration of this period. If the extradition could not have been carried out due to unforeseeable circumstances, the presiding judge that has decided on the extradition custody may, before the lapse of this period, decide upon a motion of the Ministry of Justice to extend this period by up to 3 months. The total duration of the extradition custody shall not exceed 6 months. This does not preclude remanding the person concerned in extradition custody upon a new request of a foreign State for the same criminal offence.

(5) The time, for which is the person concerned by the extradition considered as an applicant for international protection according to another legal regulation, shall not be counted into the time limit referred to in sub-section (4).

(6) If a reason for terminating preliminary investigation referred to in Section 394 (1) b), d), g) or h) occurs, the presiding judge that has decided on the extradition custody shall immediately release the person from the extradition custody and terminate the extradition proceedings. The presiding judge shall proceed accordingly, if due to change of circumstances the Minister of Justice changed his decision on authorisation of extradition and decided not to authorise it. The presiding judge shall terminate the extradition proceedings also if a reason for terminating preliminary investigation referred to in Section 394 (4) e) occurs.

Section 401 Execution of Extradition Requests of Multiple States

(1) If extradition requests of two or more foreign States concerning the same person are delivered to authorities of the Czech Republic, conditions of admissibility of extradition shall be reviewed in respect of each of the requests individually.

(2) If the court decides that the extradition is admissible to two or more foreign States, or if the requested person agrees with extradition to two or more foreign States, the Minister of Justice shall decide along with authorisation of the extradition also on the fact which State shall the requested person be extradited to. At the same time he can grant consent with extradition of the person to any other state, which requested the extradition of the person.

Section 402 Extension of Extradition to another Criminal Offence

(1) Provisions of this Subdivision shall apply mutatis mutandis to proceedings regarding a request of a foreign State, which the person has been extradited to, for granting a consent to:

a) prosecute an offence committed prior to the extradition other than which the extradition was authorised for,
b) execute a punishment imposed for an offence other than which the extradition was authorised for, or
c) extradite the person into a third State for the purpose of criminal prosecution or for execution of a sentence of imprisonment.

(2) Authorities competent for proceedings regarding the original request for extradition of a person into a foreign State shall also be competent in these proceedings.

(3) Consent according to sub-section (1) is not required in case of simplified extradition or if the extradited person waived application of the principle of speciality in front of a court of the Czech Republic or a court of the foreign State after his extradition.

SUBDIVISION THREE
Special Provisions for the Transfer of Persons between Member States of the European Union under the European Arrest Warrant

Section 403 General Provisions

(1) Provisions of this Subdivision shall apply in the specified cases to surrender of persons between the European Union Member States (hereinafter referred to as “Member States”) on the basis of the European Arrest Warrant and to actions in connection therewith.

(2) The Czech Republic is entitled to surrender its national to another Member State only under the condition of reciprocity.

(3) Provisions of Subdivision Two shall apply to surrender of persons between Member States, unless provisions of Subdivision Three stipulate otherwise.

Section 404 European Arrest Warrant

(1) The European Arrest Warrant shall be understood as an arrest warrant issued in compliance with regulations of the European Union.

(2) The European Arrest Warrant may be issued by a judicial authority of a Member State (hereinafter referred to as "requesting State") on a person located in another Member State (hereinafter referred to as "surrendering State"), in cases where requesting the surrender of the person is necessary for the purposes of conducting criminal prosecution or executing a sentence of imprisonment or a detention order,

a) if the person is prosecuted for a criminal offence punishable according to laws of the requesting State by a sentence imprisonment with the upper limit 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 is to serve a sentence of imprisonment or a remaining portion thereof of in duration of at least four months or a detention order associated with incarceration or a remaining portion thereof in duration of at least four months.

Section 404a Entering a Record in the Schengen Information System

A record registered in the Schengen Information System upon a request of a competent judicial authority of a Member State for the purpose of arresting and surrender of a person, containing information referred to in Section 405, shall have, for the purpose of surrender proceedings, the same effect as the European Arrest Warrant; registering such a record shall also replace the act of sending the European Arrest Warrant to the State where the person to be surrendered is located.

Surrender from another Member State to the Czech Republic

Section 405

(1) If the accused person be located in the surrendering State or if there is a reasonable belief that he is located there and if it is necessary to request such a person, European Arrest Warrant shall be issued in accordance with Section 404, in pre-trial proceedings by a judge upon a motion of a public prosecutor and in trial proceedings by the presiding judge.

(2) The European Arrest Warrant shall contain:

a) first name and surname of the accused person, other identifying personal data, nationality, his description, and if possible, a photograph and fingerprints,
b) name, address, telephone and fax number and electronic address of the authority that issued the European Arrest Warrant,

c) information about enforceable court decision, order to arrest according to Section 69, International arrest warrant according to Section 384 or any other enforceable decision with the same effect regarding the deed, which the European Arrest Warrant was issued for,
d) the legal classification of the deed 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) description of the circumstances under which the offence was committed, specifying the time, place, manner and degree of participation of the accused person in the offence, as well as the consequences of the offence, if these can be stated, and
f) provisions on the statute of limitations together with a description of actions affecting the lapse of the limitation period, if a period of more than three years has lapsed between commission of the offence and issuing the European Arrest Warrant.

(3) European Arrest Warrant issued in order to request surrender of a person for executing a sentence of imprisonment shall indicate, in addition to information referred to in sub-section (2) (a) to (d), by which court and to what penalty was the person sentenced, as well as information on how the defence rights of the person were ensured during the proceedings if the sentence was issued against a fugitive or in absentia, with the wording of Section 306a attached. The European Arrest Warrant must also contain provisions on the statute of limitations along with a description of acts affecting the lapse of the limitation period, if a period of more than five years has lapsed between the time the sentence came into effect to the time the European Arrest Warrant was issued.

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

(5) The European Arrest Warrant shall be sent by the issuing court to the police Presidium of the Czech Republic to register a record in the Schengen information system in order to arrest and surrender the person concerned, a transcript of the European Arrest Warrant shall be simultaneously sent to the Ministry of Justice. If the location of the person concerned is known, the European Arrest Warrant shall be sent to a competent authority of the surrendering State in accordance with legal regulations of this state, in the official language or one of the official languages of this State or in another language in which is the surrendering State willing to accept the European Arrest Warrant. The Ministry of Justice shall issue a Proclamation prescribing a sample of the European Arrest Warrant.

(6) Provisions of Section 384 (4) to (5), Section 387 and Section 388 shall apply to these proceedings accordingly. If the European Arrest Warrant is nullified, the court shall immediately inform the police Presidium thereof in order to implement necessary measures. If the person concerned is surrendered to the Czech Republic from a Member State that he is a national member of, or where he has a permanent residence, with a reservation that in case the person concerned does not consent with execution of a sentence or a protective measure eventually imposed in the Czech Republic, such a person shall be returned to the surrendering

State. The presiding judge shall, in the event a condemning decision is made, forward the sentence to the Member State concerned within 30 days from the day the sentence comes into effect along with a translation into the official language of the surrendering State.

(7) If the accused person, surrendered to the Czech Republic from another Member State, is sentenced to imprisonment or awarded a protective measure associated with incarceration, the court shall count the time the person spent in custody in connection with execution of the European Arrest Warrant into the final period of imprisonment or incarceration.

Section 406 Speciality Principle

(1) Person surrendered by another Member State may not be prosecuted or have his personal freedom restricted or be incarcerated in connection to another offence committed prior to commission of the offence, which he was surrendered for; this does not apply if:

a) following his release from custody, prison, or from protective detention associated with restriction or deprivation of personal freedom, the person concerned did not leave the territory of the Czech Republic within 45 days, despite being able to, or returned to the territory of the Czech Republic after leaving,
b) the other offence is not punishable by imprisonment or a protective detention order, or is not arrestable,
c) the surrendered person is liable only for a financial penalty or community service, notwithstanding that they may be converted into a sentence of imprisonment under terms laid down by law,
d) the person concerned gave consent to be surrendered to the Czech Republic and waived application of the speciality rule,
e) after his surrender the person concerned has explicitly waived application of the speciality rule in respect of specific offences committed prior to the surrender;
f) the competent authority of the surrendering State granted consent to prosecution of the person concerned for another offence committed prior to the surrender.

(2) The person concerned shall make the statement referred to in sub-section (1) e) before a court into a protocol in the presence of his defence counsel. This statement may not be withdrawn. The court is obliged to instruct the person concerned about the consequences of waiving application of the speciality rule within the meaning of sub-section (1). Court competent for proceedings referred to in sub-section (1) e) is the court that conducts criminal proceedings on other criminal offences committed prior to extradition of the person, and in pre-trial proceedings a court competent pursuant to Section 26 upon a motion of the public prosecutor. The court shall notify the competent authority of the surrendering State of the contents of the statement.

(3) If the person is prosecuted for another offence committed prior to the offence, which he was surrendered for, and if there are no circumstances referred to in sub-section (1), request for consent to prosecution for the other offence shall be submitted by a judge upon a motion

of the public prosecutor in pre-trial proceedings, or by the presiding judge in trial proceedings. Section 405 shall apply to the request accordingly.

Section 407 Temporary Surrender from another Member State

(1) The presiding judge and in preliminary proceedings, upon a motion from the public prosecutor, the judge may request an authority in the surrendering State to question the person for whom the European Arrest Warrant was issued or to temporarily surrender the person to the of territory the Czech Republic for the purposes of criminal prosecution.

(2) The request referred to in sub-section (1) shall specify procedural steps for which the presence of the requested person is required, as well as the date or period during which the presence of the person needs to be provided.

(3) The provisions of Section 440 shall apply mutatis mutandis to proceedings of 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´s office in whose jurisdiction the person whose surrender is concerned (hereinafter referred to as the "requested person") resides or was arrested (for the purposes of this Subdivision referred to as the “competent public prosecutor”).

(2) If the European Arrest Warrant is sent to a public prosecutor´s office that is not the competent authority according to sub-section (1), it shall forward the European Arrest Warrant to the competent public prosecutor and notify the authorities of the requesting State thereof. The same procedure shall apply if the European Arrest Warrant is sent to the Ministry of Justice or the Supreme Public Prosecutor's Office.

(3) The court competent to decide on surrendering to requesting State is the Regional Court in whose district is located the Regional Public Prosecutor’s Office, competent according to sub-section (1) (hereinafter referred to as the “competent court”).

Section 408a

The Supreme Prosecutor´s office may, in order to assign a record forbidding the apprehension of a person to a record registered by the requesting State in the Schengen Information System for the purpose of apprehension and surrender of the person, issue an instruction for the police Presidium of the Czech Republic defining analogical cases, where surrender of persons on the basis of a European Arrest Warrant is precluded by legal obstacles.

Section 409 Preliminary Investigation

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

(2) The public prosecutor shall question the requested person, if he has not already done so in the course of apprehension pursuant to Section 410, and inform the person about the content of the European Arrest Warrant, the possibility to give consent to the surrender and about consequences thereof, as well as that granting the consent is bound with waiving the application of the speciality rule.

(3) The public prosecutor shall terminate the preliminary investigation if:

a) the Member State in position to request the surrender has not delivered the request for surrender despite repeated urgencies,
b) the requested person has died,
c) the requested person is not criminally liable for the conduct specified in the European Arrest Warrant due to age restrictions according to the legal order of the Czech Republic,
d) the requested person cannot be apprehended due to immunity or privilege arising from domestic or international law,
e) the requested person is located outside the territory of the Czech Republic or his or her whereabouts are unknown,
f) the European Arrest Warrant was delivered after the decision on the surrender of the requested person or the decision on his or her extradition came to force,
g) the Member State has not given consent referred to in Section 421 (1),
h) the non-Member State ("third State") has not given consent referred to in Section 421 (3), or
i) the criminal prosecution, custodial sentence or detention order became statute-barred in the requesting State, or
j) the requesting State has withdrawn the European Arrest Warrant or has otherwise informed that surrender of the requested person is no longer required.

(4) The preliminary investigation is also concluded by lodging a motion according to Section 411.

(5) The public prosecutor shall immediately inform the competent authority of the requesting State, the police Presidium and the Ministry of Justice about termination of the preliminary investigation according to sub-section (3).

Section 410 Apprehension and Preliminary Custody

Sections 395 and 396 shall apply to apprehension and preliminary custody of the requested person accordingly.

Section 411 Court Decision and Surrender Custody

(1) The decision on surrender shall be made by a competent court after conclusion of preliminary investigation upon a motion of the public prosecutor in a public session. Upon a request of the authority of the requesting State that issued the European Arrest Warrant shall the court question the requested person in a public session, while considering the conditions laid down by agreement with the competent authority of the requesting State. The court shall notify the competent Czech police department about the surrender, so that it can be executed within the stated time.

(2) Upon a request of the authority of the foreign State that issued the European Arrest Warrant shall the court allow representatives of this foreign authority to attend the public court hearing. Section 432 (4) shall apply mutatis mutandis to the possibility of the foreign State´s representative to ask the person concerned supplementary questions.

(3) If the competent court decides that the requested person shall not be surrendered and the person concerned is in custody, the court shall at the same time decide on releasing the person, unless the case referred to in sub-section (6) e) is concerned, or if the restriction of personal freedom derives from another legal ground.

(4) If the competent court decides that the requested person shall be surrendered, it shall take the person into a surrender custody, if it has not already been done so in accordance with Section 410. In ruling on the surrender custody the court shall not be bound by grounds for custody according to Section 67. If the person concerned already is in preliminary custody in accordance with Section 410 at the time the decision referred to in sub-section (1) is being made, the court shall decide on transforming the preliminary custody into surrender custody. Section 397 shall apply to transfer custody accordingly.

(5) A complaint is admissible against the decisions referred to in sub-sections (1), (3) and (4); such complaints shall have a dilatory effect. Complaint of the public prosecutor against the decision on releasing the person concerned from custody shall have a dilatory effect only when lodged immediately after promulgation of the decision.

(6) The court shall refuse to surrender the requested person only if:

a) the deed is not criminal according to law of both States, unless conduct listed in Section 412 is concerned; this shall not apply in the case of taxes, customs duties or foreign exchange where enforcement of the European Arrest Warrant may not be refused on the grounds that Czech law does not impose 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 for which the European Arrest Warrant was issued is subject to amnesty or pardon granted in the Czech Republic, or the criminal prosecution or execution of the sentence have become statute-barred in the Czech Republic, provided that

prosecution of this offence falls within the scope of the criminal laws of the Czech Republic,

c) the requested person has been sentenced by a final court decision in the Czech Republic or the foreign State for the same deed and the sentence has already been executed or is being executed or is no longer enforceable, or the criminal proceedings have been terminated in the Czech Republic or other Member State by means of a final court decision, provided that such decisions have not been dissolved in according proceedings,

d) the requested person is criminally prosecuted in the Czech Republic for the same deed for which the European Arrest Warrant was issued, with the exception of cases, where with regard to special circumstances of commission of the criminal act is necessary to give priority to execution of criminal prosecution in the requesting State for the reason of appropriate establishment of matters of fact and for reasons related to the extent of punishment or its execution;

e) the person concerned is a national of the Czech Republic or has a permanent residence in the Czech Republic, his surrender is sought for executing a sentence of imprisonment or protective treatment or a protective rehabilitation and the person has stated on the record before the competent court that he refuses to be submitted to execution of such a penalty or protective measure in the requesting State; this statement may not be withdrawn.

(7) If a national of the Czech Republic or a person who has a permanent residence in the Czech Republic is surrendered to a requesting State for the purposes of criminal prosecution, the court shall condition the surrender by a proviso that the person in question shall be returned to the Czech Republic for enforcement of a sentence of imprisonment or protective treatment or protective rehabilitation, if such a sentence or a protective measure is imposed and in the event that after the judgement is made, the person concerned does not grant consent with execution of the imposed sentence or protective measure in the requesting State. The court shall proceed in this way only if the requesting State has given a guarantee that it will transfer the person to the Czech Republic for the enforcement of the sentence or protective 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 the purposes of executing a sentence of imprisonment or a protective measure imposed by a decision made in absentia, without the person having been properly notified of the date and place of the proceedings, the court shall condition the surrender by a proviso that the requesting State shall provide the person with the opportunity to request a new trial and facilitate the person's presence at the trial.

(9) If a person who has been sentenced to imprisonment in criminal proceedings in the territory of the Czech Republic is surrendered, the court shall condition the surrender by a proviso that the person shall be returned for the purpose of execution of the sentence or a remaining portion thereof and shall stipulate an appropriate time limit therefor. This time limit may not be longer than the length of the sentence not yet served or a portion thereof. The

period the surrendered person spent in custody in the requesting State on the basis of the European Arrest Warrant shall, after the person returns to the territory of the Czech Republic, be counted into the length of the sentence of imprisonment not yet served, a or portion thereof.

(10) The court shall decide on the European Arrest Warrant within 60 days from apprehension of the requested person. The court shall immediately inform the competent authority in the requesting State and the police Presidium, and consequently also the Ministry of Justice about the decision. If the surrender takes place, the court shall provide the competent authority of the requesting State with information on the time the person spent in custody in the course of the transfer proceedings in the territory of the Czech Republic. If the court refuses the surrender in accordance with sub-section (3), it shall notify the competent authority of the requesting State of the reasons thereof.

(11) If exceptional circumstances make it impossible to make the decision within the time limit referred to in sub-section (10), the court shall decide on the European Arrest Warrant in a time limit extended by another 30 days. It shall notify authorities of the requesting State thereof and specify reasons therefor.

(12) If the court is unable to decide on the surrender of the requested person even within the extended time limit referred to in sub-section (11), it shall notify the competent authority of the requesting State and Eurojust thereof. Eurojust shall be informed via the national member of the Czech Republic. The court shall decide on the surrender without delay as soon as the obstacle preventing the decision is overcome.

Section 412 Exceptions from the Double Criminality Rule

(1) If the surrender be requested for offences punishable in the requesting State by imprisonment with the upper limit of at least 3 years or by imposing a protective measure associated with incarceration in duration of at least three years and which consist in conduct indicated by the authority of the requesting State in the European Arrest Warrant as one or more deeds referred to in sub-section (2), the court shall not investigate whether the deed is a criminal offence according to the legal order of the Czech Republic.

(2) These offences shall be considered as the deeds according to sub-section (1):

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 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 Protection of the European Communities' financial interests,
i) legalization of proceeds of crime,
j) counterfeiting currency,
k) computer criminality,
l) environmental crime, including illicit trafficking in endangered animal and plant species and their breeds and varieties,
m) facilitation of unauthorized crossing of State borders and residency,
n) murder, grievous bodily injury,
o) illicit trade in human organs and tissues,
p) kidnapping, illegal restraint and hostage-taking,
q) racism and xenophobia,
r) organized or armed robbery,
s) illicit trafficking in cultural goods, including antiquities and works of art,
t) false pretense,
u) racketeering and extortion,
v) counterfeiting and piracy of products,
w) forgery of public documents and trafficking therein,
x) forgery of means of payment,
y) illicit trafficking in hormones 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) kidnapping of aircraft or ship,
ff) sabotage.

Section 413 Abbreviated Surrender Proceedings

(1) The requested person may declare into protocol before the presiding judge of the competent court and in the presence of the defence counsel that he consents with the surrender to the requesting State.

(2) Prior to granting consent with his surrender the requested person must be instructed by the presiding judge and in the presence of the defence counsel, about the meaning of such a consent and consequences thereof, including waiving application of the speciality rule. The consent cannot be withdrawn.

(3) If the requested person makes a statement according to sub-section (1), Section 411 shall apply accordingly. The court shall refuse the surrender of the requested person only in cases referred to in Section 411 (6) c), d) and e).

(4) The decision on the surrender according to sub-section (1) shall be made by the court within 10 days from the consenting statement of the requested person according to sub-section (1). Extension of the time limit shall be governed by Section 411 (11).

Section 413a Postponement of Surrender

(1) The Court may decide to postpone the surrender of the requested person for a period of time, for which is his presence in the Czech Republic necessary in connection to another criminal act, than for which was issued the European Arrest Warrant, for the purpose of criminal proceedings conducted in the Czech Republic or for execution of a sentence finally and effectively imposed by a court of the Czech Republic. The decision on postponing the surrender may the court make along with authorization of the surrender, exceptionally also after authorizing the surrender, if a reason for the postponement was found later or if a new reason for the postponement arises, until the time of execution of the surrender. In deciding on the postponement shall the court take into consideration especially seriousness of the criminal offence, for which is the person to be surrendered, seriousness of the criminal act, for which is conducted criminal proceedings in the Czech Republic, the possibility of transferring the person from the requesting State back to the Czech Republic, as well as the possibility to temporarily transfer the person to the requesting state.

(2) The court may decide on postponement upon a motion from

a) the public prosecutor referred to in Section 408 (1),
b) the court and in pre-trial proceedings the public prosecutor competent to conduct criminal proceedings in the Czech Republic,
c) the court that finally and effectively imposed a sentence of imprisonment to the requested person, or
d) the requested person.

(3) If the motion to postpone the surrender was not lodged by the public prosecutor or court referred to in sub-section (2) a) to c), the court shall request their opinions before making the decision.

(4) If the person is in preliminary or surrender custody, the court shall decide, along with the decision on postponement of his surrender, on his release from such a custody; Section 411 (4) shall not apply in such a case.

(5) A complaint is admissible against the decision according to sub-section (1). Against a decision on release from custody according to sub-section (4) is a complaint admissible only in case a complaint against the decision on postponement of the surrender was lodged at the same time.

(6) In case the reason for postponement of surrender expires, the presiding judge shall decide on taking the person into a surrender custody.

(7) The presiding judge shall terminate the surrender proceedings, if a reason for termination of preliminary investigation according to Section 409 (3) b), d), e), i) or j) arises.

Section 414 Temporary Surrender to a Member State

(1) If the European Arrest Warrant is issued for the purpose of criminal prosecution, the competent court shall decide, on the basis of a request of an authority of the requesting State and upon a motion lodged by the public prosecutor, that the requested person shall be temporarily surrendered to the requesting State for the purpose of conducting procedural steps necessary in the criminal proceedings. The court shall determine a reasonable time limit not exceeding three months, within which the temporarily surrendered person must be returned to the territory of the Czech Republic.

(2) The time limit referred to in sub-section (1) may be extended after consultation with a competent authority of the requesting State. Such extension must not be applied apply to any other purpose than which the original temporary surrender was authorised for. Temporary surrender may be executed repeatedly.

(3) The temporary surrender shall be arranged by the court referred to in sub-section (1).

(4) The request according to sub-section (1) shall be delivered to the competent public prosecutor's office. Section 408 (2) and (3) shall apply mutatis mutandis.

(5) The time the requested person spend in custody in the foreign State during the time of the temporary surrender shall not be counted into the time limit referred to in Sections 411 (10) and (11), and 413 (4).

Section 415 Time Limits

(1) If a person enjoys privileges or immunities according to domestic law or to international law, the time limits referred to in Sections 411 (10) and 413 (4) shall start from the day the competent authority received the information that the requested person was deprived of such a privilege or immunity.

(2) If an authority of the Czech Republic is competent for revoking the privilege or immunity, the competent public prosecutor shall request the competent authority for revocation of the privilege or immunity. If the authority of another State, international organisation or the European Union is competent for revoking the privilege or immunity, the competent public prosecutor shall notify the authority of the requesting State that issued the European Arrest Warrant thereof.

(3) If the person files a complaint against the procedure of the competent authorities of the Czech Republic within the frame of the surrender proceedings to the Constitutional court, the

time limits referred to in Sections 411 (10), 413 (4) and 416 (2) shall start from the day the competent authority received a decision of the Constitutional court in this matter.

Section 416 Surrender

(1) Surrender of a person after authorisation and related release of the person from custody shall be arranged by the presiding judge of the Regional Court.

(2) If the court decides on surrender of the requested person, the requested person shall be surrendered without delay, within 10 days after the decision on surrender becomes final at the latest, unless a motion for postponement of surrender has been lodged according to Section 413a.

(3) If any circumstances which are unaffectable by the requesting State and the surrendering State impede the surrender of the requested person in the time limit determined in sub-section (2), the competent authorities shall stipulate a new term of the surrender. The surrender shall be realized within 10 days after the stipulation of the new term of surrender at the latest.

(4) Under exceptional circumstances the surrender may be temporarily postponed for humanitarian reasons, especially if due realization of the surrender would jeopardise the life or health of the requested person. The surrender shall be realized within 10 days from the moment such circumstances disappear.

(5) If the time limits according to sub-sections (2) to (4) are not complied with, the court shall decide on release of the requested person from custody.

Section 417 Execution of a Sentence of Imprisonment or a Protective Measure Imposed in a Member State

(1) If the surrender of the requested person is not authorised for reasons referred to in Section 411 (6) e), the competent court shall requisition the competent authority of the requesting State to deliver a verified copy of the enforceable decision, upon which the European Arrest Warrant was issued, within 30 days from delivering the requisition, along with its official translation into the Czech language.

(2) If the verified copy of the enforceable decision, upon which the European Arrest Warrant was issued, including its official translation into the Czech language, is not delivered within the time limit and if the requested person is in custody, the competent court shall decide on his release from custody.

(3) Prior to returning the requested person to the Czech Republic for the purpose of execution of a sentence of imprisonment or a protective treatment or a protective rehabilitation according to Section 411 (7), the competent court shall ask authorities of the requesting State

to deliver a verified copy of the respective enforceable decision and its official translation into the Czech language.

(4) After the authority of the requesting State delivers the enforceable decision according to sub-section (1) or (3) to the Competent court, the Competent court shall recognize the decision of the authority of the requesting State in a way that the punishment imposed by the decision shall be transformed into a punishment that may have been imposed if the decision was made by this court in the criminal proceedings. The court shall proceed in this manner also in the event of imposing a protective treatment or a protective rehabilitation accordingly. In proceedings regarding recognition of a decision of an authority of the requesting State shall the court proceed according to Subdivision Seven.

Section 418 Extension of Surrender to another Offence and Consent with Surrender or Extradition to another State

(1) The provisions of this Subdivision shall apply to proceedings on a request of another Member State, to which a person was surrendered, seeking consent in order to:

a) prosecute the person for another offence committed prior to his surrender, to execute a sentence of imprisonment or a protective measure associated with incarceration imposed for another offence, than which the surrender was granted for, on the basis of the European Arrest Warrant,
b) surrender the person to another Member State for the purpose of criminal prosecution, the execution of a sentence of imprisonment or a protective measure, or
c) surrender the person to a third State for the purpose of criminal prosecution or execution of a sentence of imprisonment.

(2) The competent court shall decide on the request referred to in sub-section (1) within 30 days after receiving such a request.

(3) Section 413 shall not apply to proceeding according to sub-sections (1) and (2).

(4) Consent referred to in sub-section (1) is not necessary, if the person concerned waived application of the speciality rule before a court prior to his surrender or after it, or if the person was surrendered in abbreviated surrender proceedings.

Section 419 Concurrence of Several European Arrest Warrants

(1) If several European Arrest Warrants are delivered before the decision on surrender of the same person becomes final, the competent court shall decide, upon a motion of the public prosecutor, which of the European Arrest Warrants shall be executed. Thereat shall the court consider circumstances, seriousness and location where the offences were committed, dates of issuing the European Arrest Warrants, and whether these were issued for the purpose of criminal prosecution, execution of a sentence of imprisonment or a protective measure

associated with incarceration. The court shall send the decision to authorities of other requesting states for their information.

(2) The time limits referred to in Sections 411 (10) and 413 (4) shall from the date of delivery of the last European Arrest Warrant.

Section 420 Concurrence of a European Arrest Warrant with Extradition Requests

(1) If the European Arrest Warrant along with a request for extradition be delivered before the decision on surrender of the same person becomes final, the competent court shall firstly decide, upon a motion from the public prosecutor, on surrender according to Section 411 and on the fact whether the extradition is admissible according to Section 397. If the court decides on surrender according to Section 411 (1) and at the same time on admissibility of extradition according to Section 397 (1), the presiding judge of the Regional Court shall submit the case to the Ministry of Justice to decide, whether the European Arrest Warrant or the request for extradition should be executed. The presiding judge of the Regional Court shall notify the competent authority of the requesting State about the concourse of the European Arrest Warrant and the request for extradition, about the decision according to Section 397 and about submitting the case to the Ministry of Justice.

(2) The Minister of Justice shall, in the course of making decision on whether the European Arrest Warrant or the request for extradition shall be executed, consider circumstances, seriousness and the location where the offences were committed, dates of issuing the European Arrest Warrant and the request for extradition, and whether these were issued for the purpose of criminal prosecution, execution of a sentence of imprisonment or a protective measure associated with incarceration.

(3) If the Minister of Justice decides on priority of executing the European Arrest Warrant, he shall immediately notify the competent Regional Court thereof; the court shall further proceed according to Section 416. The time limit referred to in Section 416 (2) starts from the date of delivering the decision of the Minister of Justice on priority of executing the European Arrest Warrant.

(4) If the Minister of Justice decides on priority of compliance with the request for extradition, he shall immediately notify the Regional Court that decided on the surrender according to Section 411 (1) and the competent authority of the requesting State. Following procedure shall be governed by Subdivision two.

(5) The decision of the Minister of Justice according to sub-section (4) shall be a ground for nullification of the decision according to Section 411 (1). The Regional Court shall decide on such a fact immediately after receiving the notification of the Minister of Justice referred to in sub-section (4) in a closed session by a resolution; a complaint is inadmissible against this resolution. The resolution shall be delivered to the public prosecutor and the competent authority of the requesting State that issued the European Arrest Warrant.

Section 421 Subsequent Surrender from the Czech Republic to another Member State

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

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

a) the requested person agrees with his surrender to another Member State; this declaration must be made voluntarily into protocol in the presence of a defence counsel and the competent court shall instruct the person about the consequences resulting from this declaration,
b) Sections 406 (1) a), d) and e) and sub-section (2) shall apply to the requested person.

(3) If the requested person is extradited to the Czech Republic from a third State and if it is impossible to surrender him further without the consent of this third State, the competent public prosecutor's office shall thereof notify the Ministry of Justice, which shall take necessary steps to secure the consent of the third State with the surrender. Time limits referred to in Sections 411 (10) and 413 (4) shall start from the day the competent public prosecutor received the information from the Ministry of Justice that the third State has granted the consent to the surrender.

Transit for the Purpose of Surrender

Section 422

(1) If transit of a person for the purpose of a criminal proceeding is authorised upon a request of another Member State, the Supreme Court shall decide on surrender and custodial measures, provided that the request of another Member State for transit contains information on:

a) identity and nationality of the person concerned,
b) issuing the European Arrest Warrant,
c) nature and qualification of the criminal offence and
d) circumstances of commission of the offence, including location and time.

(2) Authorisation for transit of a person for the purposes referred to in sub-section (1) that necessitate a return transit through the territory of the Czech Republic after conducting necessary steps in a foreign State, shall also be considered an authorisation for this return transit.

(3) Transit authorisation is not required for transport by air without a scheduled landing on the territory of the Czech Republic. If an unscheduled landing on the territory of the Czech

Republic occurs, and if the Czech Republic does not receive a transit authorisation request from a Member State containing the information referred to in sub-section (1), the person may be held in custody for up to 96 hours. The Supreme Court shall decide on taking the person into custody upon a motion of a public prosecutor of the Supreme Public Prosecutor's Office.

(4) The Supreme Court shall decide to decline a transit authorisation request, if the transit concerns a national of the Czech Republic or a person with a permanent residence in the territory of the Czech Republic for the purposes of executing a sentence of imprisonment or a protective measure.

(5) If transit of a national of the Czech Republic or a person with permanent residence in the territory of the Czech Republic is requested for the purpose of criminal prosecution, the Supreme Court shall decide to authorize the transit with a reservation in accordance with Section 411 (7).

SUBDIVISION FOUR
Transit for Proceedings Abroad

Section 423

(1) The Supreme Court shall decide, upon a request of authorities of the foreign State, on authorisation of transit of a person through the territory of the Czech Republic for the purpose of criminal prosecution in the foreign State or execution of a sentence of imprisonment. Provisions of Subdivision Two shall apply mutatis mutandis to decision-making on admissibility of the transit and custodial measures.

(2) Transit authorisation of a person for the purposes referred to in sub-section (1), which presume a return transit through the territory of the Czech Republic after conducting necessary steps in the foreign State, shall also be considered an authorisation for this return transit.

(3) Transit authorisation is not required for transport by air without a scheduled landing on the territory of the Czech Republic. If an unscheduled landing on the territory of the Czech Republic occurs, and if the Czech Republic does not receive a transit authorisation request from the foreign State, the person may be taken into custody for up to 96 hours. The Supreme Court shall decide on taking the person into custody upon a motion from a public prosecutor of the Supreme Public Prosecutor’s Office.

Section 424 Transit for the Purpose of Extradition to a Member State

Section 423 shall apply mutatis mutandis to transit of a person to be extradited to another Member State from a third State or to be extradited into a third State from another Member State.

SUBDIVISION FIVE
Requests

Section 425

Request shall be understood as procedural steps conducted in a foreign State, after initiating criminal proceedings in the Czech Republic, upon a request of authorities of the Czech Republic, or procedural steps in criminal proceedings conducted in the territory of the Czech Republic upon a request of authorities of foreign States.

Request to a Foreign State

Section 426

Unless an international treaty binding the Czech Republic provides otherwise, requests of public prosecutor shall be sent to a foreign State via the Supreme Public Prosecutor's Office and requests of presiding judge shall be sent via the Ministry of Justice.

Section 427 Contents and Form of Request

(1) A request shall contain:

a) identification of the requesting authority and date of formulation of the request,
b) an exact description of the requested procedural step in criminal proceedings,
c) description of the deed which the request concerns, including qualification of the offence with the exact wording of relevant legal provisions,
d) data regarding the accused person and eventually the aggrieved person or witness, if their hearing is required,
e) other data necessary for proper execution of the request.

(2) The request shall be provided with a signature of the competent issuing authority and with an official round stamp of that authority.

(3) Unless an international treaty binding the Czech Republic provides otherwise, the requesting authority shall provide the request and attached documents with a translation to a foreign language made by a certified interpreter.

Section 427a
Service of Documents Abroad

(1) Service of documents to persons in foreign states by mail is possible, if it is stipulated so by a promulgated international treaty binding the Czech Republic, or if regulations of the state, to the territory of which is to be served, do not prevent it.

(2) The Supreme Public Prosecutor's Office shall verify upon a request of a public prosecutor, whether service according to sub-section (1) is not precluded by regulations of the foreign state, to the territory of which is to be served, and the manner, in which is such service carried out in the foreign state. The Ministry of Justice shall verify these matters upon a request of a court.

Section 428 Validity of Actions

Service of documents or producing of evidence by an authority of a foreign State on the basis of a request of an authority of the Czech Republic shall be valid if carried out in compliance with the legal order of the requested State or with the legal order of the Czech Republic.

Section 428a Use of Evidence Acquired by Requests to Abroad

The authorities involved in criminal proceedings shall not use, without an expressive consent of a competent authority of a foreign State, any evidence acquired by a request to abroad for purposes other than which they were provided for, if they are so obliged by an international treaty binding the Czech Republic or if the evidence was provided under the condition of compliance with these restrictions.

Section 429 Summoning Persons from Abroad

(1) If producing evidence in the Czech Republic requires the presence of a person staying in a foreign State, the summons shall be served by the means of a request. The presence of this person is not enforceable by coercive measures, nor by a threat of penalties.

(2) The person who has entered the territory of the Czech Republic on the basis summons shall not be criminally prosecuted, sentenced or incarcerated for any crime he committed prior to his entry to the territory of the Czech Republic.

(3) However, criminal prosecution or incarceration of the summoned person shall be admissible:

a) in respect of the crime for which the person has been summoned as the accused person,
b) if the summoned person stayed in the territory of the Czech Republic for a period longer than 45 days after execution of the requested action, although he could leave, or
c) if the summoned person, after leaving the territory of the Czech Republic, returns voluntarily or is transported to the territory of the Czech Republic in a legal way.

Section 429a

The competent authority may issue a decision on procedural steps referred to in Chapter Four, Subdivision Four to Seven also if the action is to be conducted outside of the territory of the Czech Republic and execution thereof cannot be conducted without such a decision.

Requests from Abroad

Section 430

(1) Authorities involved in criminal proceedings execute acts of legal cooperation requested by authorities of a foreign State in a way provided for in this Code, unless an international treaty binding the Czech Republic provides otherwise.

(2) An expressive consent of a public prosecutor or a court that handled a request of the foreign State is required for using the evidence provided to the foreign State on the basis of the request for purposes other than which it was provided for, unless an international treaty binding the Czech Republic provides otherwise. This shall be notified to the foreign State in the course of providing the evidence.

(3) Upon a request of a foreign State is possible to conduct proceedings in accordance with legal regulations of another State, provided that the requested procedure is not contrary to interests of the Czech Republic referred to in Section 377.

(4) If an authority of a foreign State requires so, witnesses and experts may be heard under oath.

(5) The oath for witnesses reads: "I swear on my honour to tell the truth, the whole truth and nothing but the truth and to withhold nothing".

(6) The oath for experts reads: "I swear on my honour to give my expert opinion according to my best knowledge and conscience."

Section 431 Competence to Execute a Request

(1) Sections 16 - 26 shall apply mutatis mutandis to assessing competence for executing requests of authorities of foreign States.

(2) If more courts are competent for executing a request, the next closest court jointly superior to courts that would otherwise be competent for taking the procedural steps, may, on the basis of a motion of the Ministry of Justice, assess competence of one of these courts to take some or all of the steps of the legal cooperation. Provisions of Sections 24 and 25 shall apply accordingly.

(3) If more public prosecutor's offices are competent to execute a request, the Supreme Public Prosecutor's Office may assess competence of one of these prosecutor's offices to take some or all of steps of legal cooperation. The Supreme Public Prosecutor's Office shall be, within the proceedings on requests for legal cooperation, also competent to decide on withdrawal and reassignment of a case.

(4) If a court or a public prosecutor's office, in the course of executing actions of legal cooperation on the basis of a request of a foreign authority, conducts procedural steps in criminal proceedings outside of their district, they shall proceed in accordance with Sections 53 and 54.

(5) Authority competent for execution of requests for legal cooperation according to sub-section (1) can postpone execution of a request, if it could jeopardise criminal proceedings conducted in the Czech Republic. Execution of a request for legal cooperation may be refused only if the request does not fulfil the requirements determined by an international treaty or if the execution would be in contradiction to Section 377. In the event of postponement or refusal (even partial) of execution of a request, the authority competent according to sub-section (1) is obliged to state reasons for such a procedure to authorities of the foreign State.

Section 432 Actions of Authorities of a Foreign State

(1) Authorities of a foreign State may not independently conduct steps of legal cooperation in the territory of the Czech Republic.

(2) If a case other than cases referred to in Sections 411 (2), 442 and 443 (1) is concerned, presence of authorities of a foreign State in the course of conducting steps of legal cooperation in the territory of the Czech Republic in pre-trial proceedings is admissible only with a consent of the Supreme Public Prosecutor's Office, and in proceedings before a court with the consent of the Ministry of Justice.

(3) If a promulgated international treaty binding the Czech Republic enables a direct legal cooperation of judicial authorities, the authority competent to grant the consent under sub-section (2) shall be the court, in pre-trial proceedings the public prosecutor.

(4) If an authority of a foreign State, on the basis of its request, participates in a hearing in the Czech Republic, it may ask for the possibility to ask the examined person additional questions via the authorities involved in criminal proceedings bodies that conduct the questioning. The authority conducting the questioning is obliged to comply with such a request, unless asking such a question or its formulation was contrary to the legal order of the Czech Republic.

Section 433 Service of Documents from Abroad

(1) If documents to be served to a recipient in the Czech Republic are drawn up in Czech language or in a language that is assumed, with regard to all circumstances, to be understood by the recipient, or are provided with a translation into such a language and authority of the foreign State does not require serving the documents in person, the documents shall be served to the recipient according to provisions of this Code regulating personal service (Section 64). Service of a consignment by the means of deposition is possible only after a repeated futile attempt to serve the consignment.

(2) If the document is not drawn up in language according to conditions referred to in sub-section (1), or be provided with a translation into such a language, whilst the requesting authority not being obliged to provide the translation according to a promulgated international treaty binding the Czech Republic, then the translation shall be provided by authority conducting the legal cooperation and subsequently delivered by this authority in compliance with the procedure referred to in sub-section (1). Translation is not necessary if the recipient declares, after being instructed about the possibility to refuse acceptance of the document, that he is willing to accept it.

(3) If the requesting authority requests personal service of documents, the documents shall be served to the recipient in person. Receiving of the documents shall be confirmed by the recipient's signature on the affidavit of service of the requesting authority or in a protocol of the delivering authority. If the recipient refuses to accept the consignment, the delivering authority shall reflect this fact, including the reasons for which the recipient refused to accept the consignment, in a protocol or in an attached letter, by which shall the request be returned to the requesting state. In such a case is delivering the consignment in accordance with sub-section (1) not possible. If the personal service fails repeatedly, the delivering authority shall return the request to the requesting authority with stating reasons for which the service was not accomplished.

(4) Service of documents by a foreign State to a person in the Czech Republic is possible only if provided so by a promulgated international treaty binding the Czech Republic, or in compliance with a declaration of reciprocity according to a special legal regulation; the served documents cannot contain any threat of repression, and if it is not written in a language the foreign State knows or reasonably supposes to be known by the person, it must be sent along with a translation to such a language.

Section 434 Consent with Use of Information

(1) Information obtained within the framework of police cooperation from another Member State of the European Union or a State participating in the Schengen cooperation may be used as evidence in criminal proceedings exclusively on the basis of a consent of a competent authority of this State. Requesting such a consent is in the competence of public prosecutor and after lodging an indictment, the court; in requesting the consent is proceeded mutatis mutandis in accordance with provisions of this Subdivision on requesting to abroad. Requesting the consent is not necessary if the competent authority of the foreign State granted the consent in the course of providing the information or if the national law of the foreign State does not require such a consent.

(2) For using the information provided within the framework of police cooperation to another Member State of the European Union or a State participating in the Schengen cooperation as evidence in criminal proceedings is necessary to have a consent of a public prosecutor or a court. The territorially competent authority for granting the consent is the public prosecutor´s

office or, if an indictment has been lodged in the requesting State, the court in whose jurisdiction is the Police authority that handled the request for police cooperation stationed; Sections 16 and 17 shall be applied mutatis mutandis to determining the subject-matter competence.

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

a) using such information as evidence would be inadmissible for the purposes of criminal prosecution in the Czech Republic, or
b) there is a threat that using such information as evidence would thwart criminal proceedings conducted in the Czech Republic or seriously imperil another significant interest.

Special Types of Requests

Section 435 Cross-border Pursuit

(1) Pursuant to conditions laid down by a promulgated international treaty binding the Czech Republic are members of police authorities in pursuit of an individual authorized to enter the territory of a foreign State and proceed with the pursuit there, and authorities of a foreign State in pursuit of an individual are authorized to enter the territory of the Czech Republic and proceed with the pursuit there. In doing so, the authorities of a foreign State shall be bound by the legal order of the Czech Republic and by instructions of police authorities of the Czech Republic.

(2) Unless a promulgated international treaty binding the Czech Republic provides otherwise, authorities of a foreign State pursuing an individual are not authorized to perform a house search (Section 82), a search of other premises and parcels (Section 83a), nor to are they authorized to enter residences, other premises and parcels, or to apprehend and question the pursued person.

(3) If the pursued person, who is not a national of a foreign State, is apprehended in the territory of this State on the basis of pursuit according to sub-section (1), the public prosecutor shall ask for a preliminary arrest of the individual for the purpose of his extradition or surrender within 6 hours after the apprehension in the territory of the foreign State took place. The hours between midnight and 9.00 a.m. shall not be included.

(4) The pursued person, apprehended by the police authorities of a foreign State in the course of pursuit according to sub-section (1), if he is not a national of the Czech Republic or a stateless person who has a permanent residence in the Czech Republic, shall be released within 6 hours after the apprehension took place, unless a competent authority of the foreign State delivered a request for a preliminary arrest of the person for the purposes of extradition or surrender. Hours between midnight and 9.00 a.m. shall not be included.

Section 436 Cross-border Surveillance

(1) Pursuant to conditions laid down by a promulgated international treaty binding the Czech Republic are members of police authorities, in the course of the surveillance, authorised to enter the territory of a foreign State and proceed with surveillance of a person or an item there and authorities of a foreign State are authorised to enter the territory of the Czech Republic and proceed with surveillance of a person or an item there. In doing so, authorities of the foreign State shall be bound by the legal order of the Czech Republic and by instructions of police authorities of the Czech Republic.

(2) Unless a promulgated international treaty binding the Czech Republic provides otherwise, authorities of a foreign State conducting surveillance are not authorised to perform a house search (Section 82), a search of other premises and parcels (Section 83a), nor to are they authorized to enter residences, other premises and parcels, or to apprehend and question the person under surveillance.

(3) Authorisation of surveillance and steps in direct connection to surveillance of individuals and items in the territory of the Czech Republic according to sub-section (1) is in the competence of the Regional Public Prosecutor's Office in Prague. The authorisation applies also to authorities of the Czech Republic if they take over the surveillance in the same matter in the territory of the Czech Republic.

(4) If the case cannot be delayed, the authorities of a foreign State may conduct surveillance in the territory of the Czech Republic even without a prior authorisation referred to in sub-section (3). However, authorities of a foreign State are obliged to request the authorisation immediately, at the latest when crossing the State border. If the authorisation is not granted within 5 hours, the surveillance must be terminated.

(5) The competent public prosecutor shall be entitled to request execution of surveillance in the territory of a foreign State.

Section 437 Covert Investigations

(1) In compliance with conditions of a promulgated international treaty binding the Czech Republic, upon a request of competent authorities of a foreign State or upon a request of authorities involved in criminal proceedings, a police officer of a foreign State may operate as an agent within the meaning of Section 158e or execute a fictive transfer according to Section 158c.

(2) The High Public Prosecutor's Office in Prague shall be competent to lodge a motion to the High court in Prague for authorisation of a police officer of a foreign State to operate as an agent according to Section 158e and for authorisation of a fictive transfer according to Section 158c.

Section 437a Cross-border Interception

(1) If a promulgated international treaty binding the Czech Republic enables to intercept telecommunication traffic in the territory of the Czech Republic from a foreign State without technical assistance of the Czech Republic, the competent authority to grant consent with execution of interception or continuation thereof and with related actions is the Regional Court in Prague; If the criminal proceedings in the State conducting the interception are in the stage before lodging an indictment, the court shall decide upon a motion of a public prosecutor of the Regional Public Prosecutor´s Office in Prague. Consent with executing the monitoring or continuation thereof may be granted only if conditions referred to in Section 88 are met.

(2) If a promulgated international treaty enables to intercept telecommunication traffic in a foreign State from the Czech Republic without technical assistance of this State, the public prosecutor and after lodging an indictment the court shall inform the foreign State about the expected or conducted interception.

Temporary Surrender Abroad for the Purpose of Executing Procedural Steps

Section 438

(1) Upon a request of a foreign State is possible to temporary surrender a person in custody or a person serving a sentence of imprisonment into a foreign State for evidentiary purposes.

(2) The person referred to in sub-section (1) shall be temporarily surrendered only in if:
a) he consents to the temporary surrender,
b) does not have a status of the accused in the foreign State,
c) his presence in the territory of the Czech Republic is not necessary for evidentiary purposes in criminal proceedings,
d) his absence shall not change the purpose of custody or sentence of imprisonment served in the territory of the Czech Republic,
e) the temporary transfer shall not unreasonably extend duration of custody administered in the territory of the Czech republic, and
f) the temporary transfer shall not unreasonably extend duration of a sentence of imprisonment served in the territory of the Czech Republic.

(3) The temporary surrender shall be authorised and its execution shall be arranged by:
a) the court competent according to Section 26 upon a motion of a public prosecutor, if custody in pre-trial proceedings is concerned,
b) court if custody in proceedings after lodging an indictment is concerned,
c) the District Court in whose jurisdiction is served the sentence of imprisonment, if a sentence of imprisonment is concerned.

The court competent for authorisation of the temporary surrender of a person shall determine a time limit within which shall the surrendered person be returned to the Czech

Republic. This time limit may be, after consultation with a competent authority of the foreign State, extended only for the same purpose, for which was the temporary surrender originally authorised. The temporary surrender may be executed repeatedly.

(4) The time the person concerned spent in custody in the requesting State shall not be counted into the time limits referred to in Section 72 and 72a, however it is counted into the time of the sentence served in the territory of the Czech Republic.

Section 439

Section 438 shall apply mutatis mutandis to temporary surrender of a person into a foreign State for the purpose of participating in legal cooperation conducted in the territory of a foreign State upon a request of authorities of the Czech Republic.

Section 440 Temporary Takeover of a Person from a Foreign State for the Purpose of Execution of Procedural Steps

(1) If the presence of a person other than the accused is necessary in criminal proceedings in the territory of the Czech Republic for evidentiary purposes and if this person is in custody or serving a sentence of imprisonment in a foreign State, presiding judge shall request the Ministry of Justice in trial proceedings or public prosecutor shall request the Supreme Public Prosecutor´s Office in pre-trial proceedings, to arrange temporary takeover of the person in the territory of the Czech Republic. The request shall state which acts in which criminal matter require the presence of the person and designate a date or a period of time for which the presence of the person shall be secured.

(2) If the requested State permits the temporary surrender of a person into the territory of the Czech Republic, the presiding judge in the trial proceedings or judge upon a motion of a public prosecutor in pre-trial proceedings shall decide that the person shall be in custody for the time of the temporary takeover; in doing so he shall not be bound by grounds for custody according to Section 67. The decision shall always state that the custody starts on the day of takeover of the person in the territory of the Czech Republic.

(3) Returning the person to the State which temporarily surrendered him to the territory of the Czech Republic and therewith related release from custody shall be arranged, in trial proceedings, by the presiding judge and in pre-trial proceedings by the public prosecutor, who requested the temporary surrender.

(4) Provisions of sub-sections (1) to (3) shall apply mutatis mutandis to surrender of persons from a foreign State in order to participate in legal assistance conducted in the territory of the Czech Republic upon a request of authorities of the foreign State.

(5) If the temporarily surrendered person lodges a request for release from custody in the territory of the Czech Republic, the judge or, in pre-trial proceedings, the public prosecutor shall transmit the request to a competent authority of the foreign State.

(6) If the competent authority of the foreign State orders releasing the temporarily surrendered person from custody during the time he is still present in the territory of the Czech Republic, the release from custody shall be arranged in trial proceedings by the presiding judge and in pre-trial proceedings by the public prosecutor, upon whose request was the person concerned temporarily surrendered to the Czech Republic, within five business days from the day the decision of the competent foreign authority on releasing the person from custody was delivered. The foreign authority that ordered the release shall be informed about releasing the person from custody.

Section 441 Seizure of Items, Asset values and Property

(1) Seizure of items, other asset values or property on the basis of a request of a foreign State authority shall be governed by provisions of Chapter Two Part VII, Chapter Four Part IV and Chapter Twenty One Part V accordingly. In execution of seizure of property shall be proceeded according to a special legal regulation.

(2) An item surrendered or removed on the basis of a request of a foreign State for legal assistance may the court and in pre-trial proceedings the public prosecutor transfer for evidentiary purposes for the time necessary to a competent authority of the foreign State and at the same time ask it for its return. Unless rights of third persons prevent it, it may waive its return to the Czech Republic. If the item was already surrendered or removed in criminal proceedings conducted in the Czech Republic, such an item may be temporarily transferred to the foreign State authority for evidentiary purposes for a specified time with a previous consent of the public prosecutor or judge conducting the criminal proceedings.

(3) Transfer of he item to the foreign State authority according to sub-section (2) first sentence may be temporarily postponed or the item may be transferred for a time determined by the court and in pre-trial proceedings by the public prosecutor, if such an item is necessary for criminal proceedings conducted in the Czech Republic.

(4) The court and in pre-trial proceedings the public prosecutor that seized an item, other asset value or property upon a request of a foreign State authority, shall after a reasonable time verify at this authority, whether the reason for seizure still exists. If this authority fails to respond to repeated inquiries within a reasonable time, the reason for seizure shall be considered as expired.

(5) Provisions of sub-sections (1) to (3) shall be applied also to seizure and transfer of an item, which the extradited or surrendered person has in his possession. If it is possible, this item shall be transferred to the foreign State authorities along with the extradited or

surrendered person. Such a thing may be transferred also in case the extradited or surrendered person cannot be transferred due to his death or if it concerns a fugitive.

Section 441a Preliminary Seizure of Items

(1) If ascertained circumstances lead to a reasonable belief that a foreign State shall ask for freezing and transfer of a certain item located in the territory of the Czech Republic according to Section 441, or shall issue an order to freeze the item as evidence or for the purpose of its forfeiture or confiscation under Sections 460e or 460i, and with regard to its nature there is a threat that future freezing of the item will be thwarted or endangered, the Police authority may issue an order to preliminary freeze such an item. Section 79 shall apply mutatis mutandis to preliminary freezing of items.

(2) The Police authority shall notify without an undue delay the public prosecutor or court competent for executing requests on freezing and transfer of items under Section 441 or for recognition of freezing orders according to Sections 460e and 460i, about issuing an order for preliminary freezing of an item.

(3) Preliminary freezing shall last for a necessary time, however not longer than 10 days from issuing the order for preliminary freezing of an item. This fact shall be immediately notified to the foreign State, on whose behalf was the item frozen, in order to immediately send a request for freezing and transfer of the item or for freezing the item.

(4) If the foreign State fails to send the request for freezing and transfer of an item according to Section 441 or an order to freeze an item according to Sections 460e or 460i within the given time limit, the Police authority shall return the item to the person whom it was taken from, unless it seizes the item for purposes of other criminal proceedings. The Police authority shall without undue delay inform the competent public prosecutor or court about returning the item or seizing the item for the purposes of other criminal proceedings.

Joint Investigation Team

Section 442

(1) If an international treaty binding the Czech Republic provides so, competent authorities of two or more foreign States may agree to establish a joint investigation team for fulfilling tasks in criminal prosecution.

(2) The request for making an agreement referred to in sub-section (1) shall be lodged by the competent public prosecutor to a competent authority of the foreign State via the Supreme Public Prosecutor's Office. The request shall include:

a) specification of the criminal matter, including description of the deed and its legal qualification,

b) the aim of the joint investigation team and time for which it shall be established, with the possibility of prolong the period,
c) specification of police or other units which shall participate in activities of the joint investigation team for the Czech Republic,
d) specification of powers of the Czech police units involved and other participants of the team,
e) instruction on eventual criminal and civil liability of the team members,
f) provisions on protection of personal data,
g) working language of the joint investigation team,
h) provisions of procedural law of the Czech Republic which shall be applied to work of the joint investigation team, and
i) means of command and communication.

(3) The agreement referred to in sub-section (1) shall be made, on behalf of the Czech Republic, by the Supreme Public Prosecutor's Office, based either on a request of a competent public prosecutor or a competent authority of a foreign State. Sub-section (2) shall apply mutatis mutandis to terms of the agreement.

(4) If the joint investigation team is operating in the territory of the Czech Republic, the leader of the team shall always be a person active in service of a Czech Police authority.

(5) Evidence produced by any member of the joint investigation team in the territory of the States where the team operates, if they were produced in compliance with the legal order of that State or in compliance with the legal order of the Czech Republic, shall be effective in criminal proceedings conducted in the Czech Republic.

(6) Actions that are to be conducted in a State whose police authorities were not delegated to the joint investigation team are always required to be requested (Section 425).

(7) Section 431 (3) shall be applied mutatis mutandis to determining the competence of one of more public prosecutor´s offices otherwise competent for procedural steps in criminal proceedings conducted by members of the Czech police delegated to a joint investigation team, if it is necessary for accelerating the proceedings or for any other significant matter.

(8) If a procedural step in criminal proceedings be made outside the district of the competent public prosecutor's office, Sections 53 and 54 shall apply.

Section 443

(1) If an agreement on joint investigation team is concluded according to Section 442, members of competent authorities of a foreign State who are delegated to the team may participate, within the framework of the joint investigation team in the territory of the Czech Republic, under the command of a person active in service of a Police authority of the Czech Republic, in:

a) surrender and seizure of items (Section 78 and 79),
b) house search and search of other premises and parcels according to Chapter IV, Subdivision Five,
c) examination (Sections 113 and 114),
d) investigative experiments (Section 104c),
e) reconstruction (Section 104d),
f) on-site verification (Section 104e).

(2) In the course of executing procedural steps according to sub-section (1) in the territory of the Czech Republic, members of the competent authority of the foreign State shall be bound by the legal order of the Czech Republic and by instructions of the designated Police authority of the Czech Republic.

(3) Members of the competent authority of the foreign State delegated to the joint investigation team may be present at questioning of the accused persons (Sections 90 - 94), witnesses (Sections 97 - 104), confrontation (Section 104a), identification (Section 104b), or giving explanation according to Section 158. They can ask additional questions only with the consent of the authorities of the Czech Republic involved in criminal proceedings, which conduct the questioning. The authorities involved in criminal proceedings conducting the questioning shall ask the question only if it is in compliance with the legal order of the Czech Republic.

(4) The leader of the joint investigation team shall be entitled, in compliance with the legal order of the Czech Republic, to authorise members of the joint investigation team, delegated by the foreign State, to execute particular procedural steps in the foreign State.

Section 444 Interview via a Video-conference Device and Telephone

(1) If an international treaty binding the Czech Republic provides so, the presiding judge and in pre-trial proceedings the public prosecutor shall allow, upon request of a foreign State authority, to conduct hearing of a suspect, accused, witness or expert by the means of a video-conference device. Questioning the suspect or accused person by the means of a video-conference device may be conducted only if the suspect or accused agrees with conducting such a hearing. He must be enquired so explicitly. Expression of the consent of the suspect or accused shall be noted into protocol by the person conducting the hearing and the protocol shall be sent to the foreign State authority.

(2) If an international treaty binding the Czech Republic provides so, the presiding judge and in pre-trail proceedings the public prosecutor shall allow, upon a request of the foreign State authority, to conduct hearing of a witness or expert by the means of a telephone. Hearing of the witness or expert by the means of a telephone may be conducted only with the consent of the witness or expert. They must be enquired so explicitly. Expression of the consent of the witness or expert shall be noted into a protocol by the person conducting the hearing and the protocol shall be sent to the foreign State authority.

(3) Provisions of this Code shall apply mutatis mutandis to summoning witnesses and experts. If it is necessary, the presiding judge and in pre-trial proceedings the public prosecutor shall invite an interpreter to the hearing. A protocol shall be drawn up about the hearing. Provisions of this Code shall apply to the procedure of drawing up the protocol. The protocol shall also reflect, in addition to information referred to in Section 55, technical circumstances under which was the hearing conducted.

(4) Prior to initiation of the hearing the presiding judge and in pre-trial proceedings the public prosecutor shall verify the identity of the questioned person and instruct him according to provisions of this Code. Then he shall allow the foreign authority to conduct the hearing by the means of a video-conference device or a telephone.

(5) The presiding judge and in pre-trial proceedings the public prosecutor shall make sure the basic principles of criminal procedure according to this Code and interests of the Czech Republic referred to in Section 377 are not breached. In the event of their breach the presiding judge and in pre-trial proceedings the public prosecutor shall interrupt the hearing and caution the foreign authority about the violation.

(6) If the interrogated person refuses to testify although he is obliged to do so according to this Code, measures under provisions of this Code shall be applied on him accordingly.

(7) Protection of the questioned persons shall be provided if necessary, under conditions and in the manner determined by this Code (Section 55 (2)) and a special legal enactment.

(8) Provisions of Chapter Three and Chapter Five that govern questioning by the means of a video-conference device shall not be applied.

Section 445

(1) If it is impossible to summon the suspect, accused, witness or expert to the Czech Republic or if it is not convenient for considerable reasons, the presiding judge and in pre-trial proceedings the public prosecutor may, if an international treaty binding the Czech Republic provides so, request the competent authority of the foreign State to secure hearing of the suspect, accused, witness or expert by means of a videophone. Questioning the suspect or the accused by the means of a videophone may be conducted only if the suspect or the accused consents with such a hearing.

(2) If it is impossible to summon a witness or an expert to the Czech Republic or if it is not convenient for considerable reasons, the presiding judge and in pre-trial proceedings the public prosecutor may, if an international treaty binding the Czech Republic provide so, request the competent authority of the foreign State to secure hearing of the witness or expert by the means of a telephone. Hearing the witness or expert may be conducted only if the witness of expert consents with such a hearing.

(3) Request for conducting the hearing under sub-sections (1) and (2) shall contain, in addition to information referred to in Section 427, also the name of the person to conduct the hearing in the territory of the Czech Republic and the reason which precludes the person concerned to appear at the hearing in the Czech Republic.

(4) After verifying the identity of the questioned person by the foreign State authority shall the presiding judge and in preliminary proceedings the public prosecutor conduct the questioning; thereat he shall proceed in accordance with Chapter Five. Objections raised by the foreign State authority, regarding the process of conducting the questioning in respect of basic principles of criminal procedure in this state, shall be complied with.

(5) Provisions of Chapter Three and Chapter Five that govern questioning by the means of a video-conference device shall not be applied.

Section 446 Information from the Criminal Register

Executing a request of an authority of a foreign non-member State of the European Union for providing information from the Criminal Register is within the competence of the Supreme Public Prosecutor´s Office in pre-trial proceedings and the Ministry of Justice in proceedings after lodging an indictment or a motion for punishment, unless an international treaty binding the Czech republic provides for a direct cooperation of judicial bodies.

SUBDIVISION SIX
Take-over and Transfer of Criminal Matters

Section 447 Taking over Criminal Matters from Abroad

(1) The Supreme Public Prosecutor's Office shall decide on a request of a foreign State authority asking competent authorities of the Czech Republic to take over criminal proceedings conducted against a national of the Czech Republic that committed a criminal offence in the territory of that State. If the Supreme Public Prosecutor's Office decides to take over the criminal proceedings, it shall immediately engage the territorially and materially competent authority to initiate criminal proceedings according to this Code.

(2) If a promulgated international treaty binding the Czech Republic enables a direct cooperation of judicial bodies in the course of taking over criminal proceedings, the decision on taking over the criminal proceedings shall be made by the public prosecutor that would otherwise have been competent in this matter to exercise supervision over observing the rule of law in pre-trial proceedings.

(3) Procedural steps taken by authorities of the requesting State in accordance with legal order of this State may be used in criminal proceedings conducted in the Czech Republic in the

same way, as if taken by authorities of the Czech Republic, provided that they shall not have greater probative value than they would have in the requesting State.

Section 448 Transfer of Criminal Proceedings Abroad

(1) Criminal proceedings conducted for a criminal offence committed in the Czech Republic, for which is suspected a foreign national, or criminal proceedings conducted for a criminal offence committed by such a person in the territory of a foreign State, may be transferred to the foreign State, which is the suspect a national of, or in the territory of which was the offence committed.

(2) Transferring criminal proceeding to a foreign State is possible only upon a request of a public prosecutor and after lodging an indictment upon a request of a court.

(3) The Supreme Public Prosecutor´s Office shall review request of the public prosecutor and the Ministry of Justice shall review request of the court to transfer criminal proceedings. The request shall be reviewed especially in respect of conditions and requirements arising from this Code or from an international treaty and requirements arising from previous mutual cooperation. After that it shall be sent to the foreign State, unless it is remitted along with stating reasons for which it could not have been sent to the foreign State. In relation to reviewing the request for transfer of criminal proceedings the Supreme Public Prosecutor's Office may petition the public prosecutor, and the Ministry of Justice may petition the court, to make necessary corrections and completions.

(4) If a promulgated international treaty binding the Czech Republic provides for a direct cooperation of judicial bodies in the course of transferring criminal proceedings, the request for transfer of criminal proceedings may be sent to the foreign State authority directly by the public prosecutor or, after lodging an indictment, by the court.

(5) If an authority of the requested State decides to take over the criminal proceedings, it is impossible to further proceed with criminal proceedings in the Czech Republic for the identical criminal offence, for which was the criminal proceedings transferred, or to order execution of a sentence imposed for the offence, for which was the criminal proceedings transferred.

(6) Authorities of the Czech Republic may proceed with criminal proceedings or order execution of a sentence if the requested State:

a) announces that criminal proceedings shall not be conducted,
b) post facto renounces its decision on taking over the criminal proceedings,
c) announces that it shall not proceed with the criminal proceedings or that it shall terminate the criminal proceedings, or
d) fails to announce its decision whether it takes over the criminal prosecution despite repeated inquiries and despite caution that authorities of the Czech Republic shall proceed with the criminal prosecution or order execution of a sentence.

SUBDIVISION SEVEN
Execution of Decisions in Relation to Foreign States

Recognition and Execution of Foreign Decisions

Section 449 Foreign Decisions

A foreign decision shall be considered, for the purposes of this Title, a decision issued by a court of another State for a criminal offence punishable according to the legal order of the Czech Republic, by which

a) guilt was declared, but imposing a punishment was conditionally suspended,
b) a sentence of imprisonment or a suspended sentence of imprisonment was imposed,
c) a financial penalty or prohibition of a certain activity was imposed,
d) a protective measure was imposed,
e) a conditional sentence or a financial penalty was transformed into a sentence of imprisonment, or
f) forfeiture of property or a portion thereof was declared or forfeiture of an item or its seizure was declared (hereinafter referred to as "foreign decision on property").

Section 450 Conditions of Recognition

(1) Foreign decisions may be recognized in the territory of the Czech Republic, if

a) an international treaty binding the Czech Republic provides so,
b) the decision was issued in proceedings corresponding to principles referred to in Article 6 of the Convention on Protection of Human Rights and Fundamental Freedoms,
c) the person was not sentenced for a criminal offence which is of exclusively political or military character,
d) execution of punishment has not become statute-barred,
e) the person has not already been sentenced for the same deed by a Czech court,
f) a foreign decision of another State against the person for the same offence was not recognized in the territory of the Czech Republic, and
g) the recognition is not contrary to significant protected interests according to Section 377.

(2) In exceptional cases, a foreign decision may be recognized in the territory of the Czech Republic even without complying with the condition referred to in sub-section (1) a), provided that reciprocity is guaranteed. Conditions of reciprocity shall be verified by the competent court at the Ministry of justice.

Section 451 Conversion of Punishment

(1) Foreign decision shall be recognized in a way that the penalty imposed by it shall be transformed by a court into a penalty that would have been imposed if the criminal proceeding on the criminal offence was adjudicated by the court in question.

(2) If a promulgated international treaty binding the Czech Republic provides so, it shall be possible to execute the sentence in the Czech Republic in a greater extent than that is provided for by Czech legislation.

(3) If the type of the sentence of imprisonment imposed by the recognized foreign decision and its extent is compatible with the legal order of the Czech Republic, the court shall, in the decision on recognition, also decide that the execution of the sentence imposed by the foreign decision shall continue without transformation referred to in sub-section (1). This procedure is precluded if the court recognizes the foreign decision in respect of only some of criminal offences covered by the decision.

Section 452 Proceedings on Recognition of Foreign Decisions

(1) The motion for recognition of a foreign decision in the territory of the Czech Republic shall be lodged, upon a request of a foreign State authority, by the Ministry of Justice to the competent Regional Court, in whose jurisdiction has the accused person his permanent residence. If the accused person does not have a permanent residence in the Czech Republic, the Regional Court in Prague shall be competent. If a foreign decision on property is concerned, the Regional Court, in whose jurisdiction is the property or item in question located, shall be competent.

(2) The Regional Court shall decide, after a written statement of a public prosecutor, in a public session by a judgement that shall be delivered to the convicted person, public prosecutor and the Ministry of Justice. If the convict is serving a sentence of imprisonment in a foreign State at the time the proceeding on recognition takes place, the court shall always deliver the judgement to him by the means of the Ministry of Justice.

(3) An appeal shall be admissible against the judgement. The court of appeal shall decide in a closed session whether to recognize the foreign decision or not.

Section 453 Effects of the Recognised Foreign Decision

(1) Recognized foreign decision shall have the same legal effects as a decision of a court of the Czech Republic.

(2) If the foreign decision concerns multiple convicts, the effects of recognition shall apply only to the convict referred to in the motion for recognition.

Section 454 Custody

(1) Prior to the decision on recognition of a foreign decision may the court referred to in Section 452 (1) decide, upon a request of the foreign State forwarded by the Ministry of Justice or even without such a request, on taking the person convicted by the foreign decision in question into custody, if the person is located in the territory of the Czech Republic. The court shall not be bound by the grounds for custody referred to in Section 67.

(2) The convict surrendered by a foreign State on the basis of a decision on recognition of a foreign decision for the purpose of executing a sentence of imprisonment shall be taken over by authorities of the Prison Service. Within 24 hours from the surrender shall a judge of the court referred to in Section 452 (1) decide on taking the person into custody; in doing so the judge shall not be bound by grounds for custody referred to in Section 67.

(3) A complaint is admissible against the decision on taking into custody; the complaint shall not have a dilatory effect.

Section 455 Enforcement Proceedings

(1) If a foreign decision has been recognized according to Section 452, the Ministry of Justice may grant consent with taking over the convicted person for the purpose of execution of punishment, or it may ask the State, whose court has issued the decision, to transfer the convicted person.

(2) The competent court (Sections 16 and 18) shall decide on execution of the recognized foreign decision (Section 452) in a public session by a judgement.

(3) Execution of the recognized foreign decision regarding property shall be ordered by the District Court, in whose jurisdiction is the property or item concerned by the decision located.

(4) The court competent according to sub-sections (2) to (3) shall also decide on all incidental questions of the execution proceedings, including a motion for erasing the conviction.

(5) If the convict is serving a sentence of imprisonment in a foreign State on the basis of a recognised foreign decision, the court shall order execution of such a decision before the determined time of surrendering the convicted person for the purpose of executing a sentence of imprisonment in the Czech Republic. If the surrender of the convicted person to the Czech Republic does not eventuate and if the convict serves the whole sentence of imprisonment or is conditionally released, execution of the recognised foreign decision in the Czech Republic shall be inadmissible.

(6) Along with ordering execution of a sentence of imprisonment, or in case referred to in sub-section (5), after surrendering the convict to the territory of the Czech Republic, shall the court decide on inclusion of custody according to Section 454, as well as custody already included and term of imprisonment already served in a foreign State and time of transport of the convict, into the sentence to be executed.

(7) The court shall take procedural steps aimed towards waiving execution of a punishment deriving from a recognised foreign decision as soon as the issuing State notifies the court of a pardon, amnesty or any other decision or measure resulting into rendering the recognised foreign decision unenforceable. If the pardon, amnesty or another decision or measure mitigates or remits the punishment only partially, the court shall decide what punishment remains to be served. A complaint is admissible against this decision.

(8) Provisions Chapter XXI shall apply mutatis mutandis to execution of recognized foreign decisions, unless this Section provides otherwise.

Section 455a Sharing of Forfeited or Confiscated Property

(1) If a promulgated international treaty binding the Czech Republic enables it, the Czech Republic may enter an agreement with a foreign State on sharing property that was forfeited or confiscated on the basis of a recognised foreign decision on property. The Ministry of Finance is authorised to stipulate the agreement on behalf of the Czech Republic. Motion for stipulating such an agreement may be lodged to the Ministry of Finance also by the court that recognised the foreign decision on property.

(2) According to sub-section (1) is proceeded in the event of sharing property forfeited or confiscated in a foreign State upon a request of the Czech Republic.

(3) The shared property shall be received from and transferred to a foreign State by administrative State body that is entitled to manage State property according to another legal enactment.

Section 456 Costs of Proceedings

(1) The convict, who was surrendered into the Czech Republic with his consent by a foreign State for the purpose of execution of a foreign decision, shall be obliged to compensate the State by a flat sum for costs expended by the State in connection to his surrender.

(2) The flat sum referred to in sub-section (1) shall be determined by a public notice issued by the Ministry of Justice.

(3) The presiding judge of the competent court (Section 455(2)) shall decide on the obligation to compensate for costs according to sub-section (1), after the judgement, by which the execution of a foreign decision was decided, came into effect.

(4) A complaint is admissible against the decision referred to in sub-section (3); the complaint shall have a dilatory effect.

Section 457

(1) If the convicted person, who shall serve a sentence or a remaining portion thereof according to a final judgement of a Czech court, is located in the territory of a foreign State and if he has not been extradited, the court competent for securing execution of such a judgement may, through the Ministry of Justice, ask a competent authority of such a State to secure execution of the judgement in its territory, under terms stipulated by an international treaty binding the Czech Republic and also the State, in whose territory is the convict located, and if there is no such an international treaty, under terms determined by the legal order of the State, in whose territory is the convict located.

(2) Upon a request of a court the Ministry of Justice shall verify the conditions under which the foreign State may take over execution of a judgement of a Czech court.

Takeover and Transfer of Execution of a Conditional Prison Sentence

Section 458 Takeover of Execution of Conditional Prison Sentence

(1) If the execution of a foreign decision, according to a promulgated international treaty binding the Czech Republic, consists solely in taking over of supervision and monitoring of an unapprehended convict without assuming the obligation to secure execution of the imposed sentence or a remaining portion thereof by the Czech Republic, the decision on recognising the foreign decision to this extent shall be made by the District Court, in whose district is the convict located. The court in whose district is the convict located is also competent for securing monitoring and supervision over the convict.

(2) A complaint is admissible against the decision referred to in sub-section (1); the complaint shall have a dilatory effect.

Section 459 Request for Transfer of Execution of Conditional Prison Sentence Abroad

If an international treaty binding the Czech Republic provides so, the court that imposed the suspended sentence of imprisonment on a person residing in a foreign State or the court that conditionally released the person may ask the competent authority of the State of residence of the convict, through the Ministry of Justice, to decide that its authorities shall observe the behaviour of the convict during the probation period.

Section 460 Consequences of Transfer of Execution of Conditional Prison Sentence

If the authority of the requested State has complied with the request according to Section 459, the court shall henceforth remain competent for deciding whether the convict approved himself/herself in the probationary period or whether the sentence shall be executed. If

necessary, the final decision on executing the sentence shall be submitted to the Ministry of Justice along with a request according to Section 457 (1).

SUBDIVISION EIGHT
Special Provisions on Recognition and Execution of Decisions on Freezing of Property or Evidence between Member States of the European Union

Section 460a

(1) Provisions of this Subdivision shall apply to freezing of

a) property or a portion thereof, items or other asset values, which are suspected to have been intended to commit a crime, were used for committing a crime, or are proceeds of a crime or their value corresponds, even partially, to such proceeds (hereinafter referred to as "property"), or
b) evidence referred to in Section 112 (hereinafter referred to as "evidence"), if it is located in the territory of a Member State of the European Union (hereinafter referred to as "executing State") by virtue of an order for freezing property or evidence issued in another Member State of the European Union (hereinafter referred to as "issuing State").

(2) Freezing order shall be understood as an order of a competent judicial authority of the issuing State, issued in compliance with legal enactments of the European Union, which shall prevent destruction, modification, transfer or sale of evidence or property that may be subject to forfeiture or seizure.

(3) Unless provisions of this Subdivision provide otherwise, provisions of Subdivision Four of Chapter Four and provisions of Subdivision One and Five of this Chapter shall apply to freezing of property or evidence.

Freezing of Property or Evidence in another Member State

Section 460b

(1) If it is necessary to freeze property or evidence located in the executing State, the presiding judge and in pre-trial proceedings the public prosecutor shall issue a freezing order. The order for freezing property or evidence shall contain

a) name, address, telephone, fax number and e-mail address of the authority which issued the order,
b) date and place of issuing the order,
c) description of circumstances with exact specification of time, place and manner of commission of the crime,
d) legal description of the crime including the exact wording of relevant legal provisions,
e) indication and description of property or evidence its and location in the foreign State,
f) instructions about legal remedy according to sub-section (6).

(2) The order shall be accompanied by a certificate of issuing the order for freezing property or evidence with a translation into the official language or one of official languages of the executing State or into a language, in which is the executing State willing to accept the order. A sample of the certificate of issuing an order for freezing property or evidence shall be determined by a public notice of the Ministry of Justice.

(3) In the event of freezing evidence shall the order referred to in sub-section (1) be accompanied by a request for transferring the evidence into the Czech Republic. In the event of freezing property shall the order be accompanied by a request for forfeiture or seizure of item or other asset value immediately after issuing this decision.

(4) Request for freezing evidence may be accompanied by a request for a judicial authority of the executing State to take into consideration provisions of the Code of Criminal Procedure annexed to the request in the process of its execution, unless it is contrary to basic legal principles of the executing State.

(5) If it is impossible to annex a request referred to in sub-section (3), the certificate referred to sub-section (2) shall contain an instruction that the freezing shall remain in effect until this request is submitted, including a presumed date of its submitting.

(6) A complaint is admissible against the order for freezing property according to sub-section (1).

Section 460c

The presiding judge and in pre-trial proceedings the public prosecutor shall send the order for freezing property or evidence including the certificate referred to in Section 460b (2) without undue delay after its issue directly to the competent judicial authority of the executing State. Transmission through the Ministry of Justice in case of an order issued by the presiding judge, or through the Supreme Public Prosecutor's Office in case of an order issued by the public prosecutor, shall not be precluded. The order shall be delivered to the person directly affected by the order for freezing property or evidence as late as the competent judicial authority of the executing State secures execution of this order in the executing State.

Section 460d

The presiding judge and in pre-trial proceedings the public prosecutor, who issued the order for freezing property or evidence, is obliged to immediately notify the competent judicial authority of the executing State about cancelling the order.

Recognition of Order for Freezing Property Issued by a Judicial authority of another Member State and Securing Execution of Decision on Recognition of the Order

Section 460e

(1) Decision-making on recognition of an order for freezing property issued by a judicial authority of the executing State and securing execution of decision on recognition of this order shall be within the competence of a public prosecutor of the Regional Public Prosecutor´s Office in whose district is the property concerned by the decision located; if more public prosecutors are competent, procedure under Section 431 (3) shall apply.

(2) If the order for freezing property issued by a judicial authority of the issuing State has been delivered to the public prosecutor who is not competent for decision-making on recognition of such an order, this public prosecutor shall immediately forward it to the competent public prosecutor; he shall notify the judicial authority of the issuing State, which has sent the order, about the forwarding.

(3) The District Court referred to in Section 26 shall be competent for conducting procedural steps according to Chapter Four that lay within the competence of courts.

Section 460f

(1) The public prosecutor shall decide on recognition of an order for freezing property issued by a judicial authority of the issuing State, with the exception of cases referred to in sub-sections (2) and (3), and immediately secure execution of this decision by freezing property according to Subdivision Three of Chapter Four, with the exception of cases referred to in sub-section (4), second sentence and in Section 460g (1). The public prosecutor shall decide on recognition of the order for freezing property issued by a judicial authority of the issuing State within 24 hours at the latest, provided that enough documentation is available for making this decision within the given time limit. If the public prosecutor does not decide on recognition of the order for freezing property issued by a judicial authority of the issuing State in the given time limit, he shall decide on this recognition immediately after acquiring sufficient data for the decision. In reasoning of the resolution he shall state reasons for which the decision could not have been made within the given time limit.

(2) The public prosecutor shall decide not to recognize the order for freezing property issued by the judicial authority of the issuing State if:

a) the order for freezing property is not provided with a certificate referred to in Section 460b (2), or this certificate is incomplete or evidently not corresponding to the content of the order, unless information provided in the order or another document from a judicial authority of the executing State is sufficient for decision-making on recognition of the order for freezing property, or this authority has supplemented, corrected or additionally submitted the certificate upon a requisition and within a time limit according to sub-section (3).
b) the deed is not criminal according to the law of both states, unless conduct referred to in Section 412 is concerned; in case of offences regarding taxes, fees, duties or

currency the recognition of the order for freezing property of a judicial authority of the issuing State shall not be refused solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, fees or duties or do not contain the same provisions regarding taxes, fees, duties or currency as legal regulations of the issuing State,

c) the criminal prosecution is inadmissible on the grounds of Section 11 (1) f), g), h) and sub-section (4),
d) the property referred to in the order cannot be subject to freezing according to a special legal enactment,
e) the order was not issued within the framework of criminal procedure in the issuing State, or
f) the order is contrary to interests of the Czech Republic protected according to Section 377.

(3) If the information referred to in the order for freezing property issued by a judicial authority of the issuing State, or the certificate according to Section 460b (2) is insufficient for decision-making of the public prosecutor on recognition of the order, or if it is evidently not corresponding to the content of the order or certificate, or if the certificate is not attached, the public prosecutor shall requisition the judicial authority of the issuing State to send the certificate or to supplement the order or certificate with necessary information or to correct it, and shall set a time limit for doing so.

(4) The public prosecutor shall immediately notify the judicial authority of the issuing State about recognition or partial recognition of the order for freezing property and about securing execution of the decision on recognition of the order. He shall also immediately notify this authority about not recognising its order for freezing property, as well as about the fact that the freezing cannot be executed, because the property to be frozen went missing, was destroyed or cannot be located in the area referred to in the certificate according to Section 460b (2).

(5) A complaint is admissible against the resolution on recognition of the order for freezing property issued by a judicial authority of the issuing State according to sub-section (1). The complaint may not challenge the grounds for which the order for freezing property was issued. The public prosecutor shall notify the judicial authority of the issuing State about lodging a complaint and about the result of processing the complaint.

Section 460g Postponement of Execution of Decision on Recognition of Order for Freezing Property

(1) If the public prosecutor recognizes the order for freezing property issued by a judicial authority of the issuing State, he may decide to postpone execution of the decision on recognition of the order, if

a) execution of the order could affect an ongoing criminal proceeding in the Czech Republic, or

b) property mentioned in the order for freezing property issued by a judicial authority of the issuing State has already been frozen within the framework of another ongoing criminal proceeding conducted in the Czech Republic or in another State.

(2) The public prosecutor shall immediately notify the judicial authority of the issuing State about postponing execution of decision on recognition of the order according to sub-section (1), including reasons for such a postponement and its presumed duration, if it is possible to estimate. He shall also notify the judicial authority of the issuing State about additional limitations related to the property referred to in the order for freezing property issued by a judicial authority of the issuing State, if they are known to him.

(3) As soon as the reason for postponing the decision on recognition of the order according to sub-section (1) disappears, the public prosecutor shall secure execution of the decision on recognition of the order for freezing property according to Section 460f and immediately inform judicial authorities of the issuing State thereof.

Section 460h Duration, Limitation and Cancellation of Freezing of Property

(1) Freezing of property according to Section 460f shall last until the time of execution of the decision on recognition of the order of a judicial authority of the issuing State, which prescribed forfeiture or seizure of property referred to in the order for freezing property or a portion thereof, or until the time of cancellation of the freezing of property by the public prosecutor according to sub-section (3).

(2) The public prosecutor, who has decided on recognition of the order for freezing property issued by a judicial authority of the issuing State and who has secured execution of such a decision, shall decide on limitation of freezing of property, if he has been informed by the judicial authority of the issuing State that the scope of freezing of property referred to in the freezing order has been limited in the issuing State.

(3) The public prosecutor who has decided on recognition of the order for freezing property issued by a judicial authority of the issuing State and who has secured execution of this decision, shall immediately decide on cancellation of freezing of property, as soon as he is informed by the judicial authority of the issuing State that the order for freezing property has been cancelled in the issuing State. A complaint shall be admissible against the decisions according to sub-sections (2) and (3); the complaint shall have dilatory effect. The complaint may not challenge the grounds for which was the extent of freezing property limited or cancelled in the issuing State.

Freezing and transferring Evidence Referred to in Order for Freezing Evidence Issued by a Judicial authority of another Member State

Section 460i

(1) The presiding judge and in pre-trial proceedings the public prosecutor shall immediately freeze evidence referred to in a freezing order issued by a competent judicial authority of the issuing State, with the exception of reasons referred to in sub-sections (4) and (5), second sentence, and in Section 460k (1). Thereat he shall proceed according to Subdivision Three of Chapter Four accordingly.

(2) If it is necessary to use measures according to Sections 82 to 85, 86 to 87c, 88, 88a or 158b to 158f in order to freeze evidence, the presiding judge and in pre-trial proceedings the public prosecutor shall freeze the evidence under terms referred to in these provisions and, with the exception of conduct referred to in Section 412, also under the condition of double criminality.

(3) The presiding judge and in pre-trial proceedings the public prosecutor shall, upon a request of the judicial authority of the issuing State, consider procedural requirements of this authority regarding freezing of evidence, provided that they are not contrary to basic principles of the criminal proceedings under this law and to interests of the Czech Republic referred to in Section 377.

(4) If the information referred to in the order for freezing evidence, issued by a judicial authority of the issuing State or in the certificate according to Section 460b (2), is not sufficient for freezing of evidence or if it is evidently not corresponding to content of the order or certificate, or if the certificate is not attached, the presiding judge or in pre-trial proceedings the public prosecutor shall requisition the judicial authority of the issuing State to send the certificate or to supplement the order or certificate with necessary information or to make corrections, and set an adequate time limit therefor.

(5) The presiding judge and in pre-trial proceedings the public prosecutor shall immediately inform the judicial authority of the issuing State about freezing of evidence referred to in the order issued by this authority. He shall also immediately inform this authority about not freezing the evidence for reasons referred to in Section 460f (2), as well as about the fact that freezing cannot be executed, because the evidence subject to freezing went missing, was destroyed or cannot be located in the area referred to in the certificate according to Section 460b (2).

Section 460j

(1) Upon a request of a judicial authority of the issuing State shall the presiding judge and in pre-trial proceedings the public prosecutor transfer evidence to the issuing State. In the course of transferring the evidence to the issuing State shall the presiding judge, and in pre-trial proceedings the public prosecutor, ask the competent judicial authority of the State for returning the evidence; however he may explicitly waive this right.

(2) If the required evidence has already been frozen in another criminal proceeding conducted in the Czech Republic, the presiding judge and in pre-trial proceedings the public prosecutor

may temporarily transfer the evidence to the issuing State under condition of its returning within a time limit determined by him, provided that the evidence is necessary for criminal proceedings conducted in the Czech Republic or if a special legal enactment stipulates so.

(3) The presiding judge and in pre-trial proceedings the public prosecutor shall transfer evidence to a judicial authority of the issuing State with a notice that it may be used in criminal cases other than for which is was requested only with his previous consent.

Section 460k Postponement of Freezing of Evidence

(1) The presiding judge and in pre-trial proceedings the public prosecutor may postpone freezing of evidence referred to in a freezing order issued by a judicial authority of the issuing State if

a) the freezing could affect an ongoing criminal proceeding in the Czech Republic, or
b) the evidence referred to in the order issued by a judicial authority of the issuing State has already been frozen within the framework of another ongoing criminal proceeding conducted in the Czech Republic or in another State.

(2) The presiding judge and in pre-trial proceedings the public prosecutor shall immediately inform the judicial authority of the issuing State about postponing execution of freezing of evidence according to sub-section (1), including reasons for such a postponement and its presumed duration, if it is possible to estimate.

(3) As soon as the reason for postponement disappears, the presiding judge and in pre-trial proceedings the public prosecutor shall secure execution of freezing of evidence according to Section 460i and immediately notify judicial authorities of the issuing State thereof.

Section 460l Duration, Limitation and Cancellation of Freezing of Evidence

(1) Freezing of evidence according to Section 460i shall last until the time of its transfer according to Section 460j to judicial authorities of the issuing State, or until the time freezing of the evidence is cancelled by the presiding judge and in pre-trial proceedings by the public prosecutor according to sub-section (3).

(2) The presiding judge and in pre-trial proceedings the public prosecutor, who has frozen the evidence referred to in the freezing order issued by a judicial authority of the issuing State, shall limit freezing of the evidence, if he has been informed by a judicial authority of the issuing State that the extent of freezing of evidence referred to in the freezing order has been limited in the issuing State.

(3) The presiding judge and in pre-trial proceedings the public prosecutor, who has frozen the evidence referred to in the freezing order issued by a judicial authority of the issuing State, shall cancel freezing of the evidence, if he has been notified by a judicial authority of the issuing State that the freezing order has been cancelled in the issuing State.

Regressive Claim in relation to Member States of the European Union

Section 460m

(1) The Ministry of Justice shall reimburse a required sum, paid as compensation for damages by the executing State that recognised and executed the freezing order according to Section 460b, under the condition of reciprocity and upon a request of the executing State, under the conditions that:

a) the order for freezing property or evidence issued in accordance with Section 460b has been cancelled by a final decision of the presiding judge or in pre-trial proceedings by a final decision of the public prosecutor,
b) damage compensated to a person by the executing State according to its national legislation was caused by the cancelled order issued according to Section 460b,
c) the request from the executing State for reimbursement of damage compensated by this State or attached documents contain the amount of settled damages required for reimbursement, its rationalization and information about the authority competent for accepting the reimbursement, including banking connection for the purpose of transferring the required amount or a request for another method of payment, and
d) a final decision on damages made by a competent authority of the executing State is attached to the request according to paragraph (c).

(2) If the request from the executing Member State does not contain necessary information, the Ministry of Justice shall requisition the competent authority of the executing State to complete the request and shall determine an adequate time limit therefor. Thereat the Ministry of Justice shall notify the authority of consequences of non-compliance with this requisition. If the competent authority of the executing State does not comply with the requisition in the determined limit and not state reasons for this non-compliance, the Ministry of Justice shall not comply with such a request.

(3) The Ministry of Justice would not refund the damages to the executing State if the damage was caused by wrongful procedure of authorities of the foreign State.

Section 460n

(1) The Ministry of Justice shall be entitled to request the issuing State, under conditions determined by this State, for remuneration of a financial amount paid as compensation of damages in the event that:

a) the public prosecutor has recognized the order for freezing property issued by a judicial authority of the issuing State according to Provision 460f and secured execution of the decision on recognition,
b) the judicial authority of the issuing State that has issued such an order notified the public prosecutor of the fact that the order has been cancelled by a final decision in the issuing State, and

c) the Ministry of Justice has already paid damages according to a special legal enactment to a person, whose property was frozen on the basis of a cancelled order and the damage was caused by the order for freezing property issued by a judicial authority of the issuing State.

(2) The claim for compensation of damages already paid according to sub-section (1) shall be exercised by means of a request to a competent authority of the issuing State according to legal regulations of this State. The request or attached documents shall state the amount paid as compensation of damages, including banking connection for transferring the required amount or a request for another means of payment and other details according to requirements of the issuing State.

(3) The Ministry of Justice shall not be entitled to request remuneration of compensation of damages if the damage was caused solely by wrongful procedure of authorities of the Czech Republic.

(4) Provisions of sub-sections (1) to (3) shall apply mutatis mutandis to compensation damages caused by freezing of evidence according to Section 460i carried out on the basis of an order for freezing evidence issued by the issuing State.

SUBDIVISION NINE
Special Procedure for Recognition and Execution of Financial Penalties and other Financial Payments with Member States of the European Union

Section 460o

(1) Provisions of this Subdivision shall apply to procedure on recognition and execution of a final decision condemning a person for a criminal or other offence or a decision issued on its basis, if the decision was issued in compliance with legal regulations of the European Union , and

a) imposed a financial penalty or a fine,
b) awarded compensation of damages to the victim of criminal offence,
c) laid an obligation for the convict to reimburse cost of the proceedings that lead to condemning decision for a criminal or other offence, or
d) laid an obligation for the convict to pay a financial sum to a public foundation or for the benefit of an organisation supporting victims,

provided that it was issued by a court of the Czech Republic in criminal proceedings (hereinafter referred to as “decision on financial penalties and settlements”), or by a court of another Member State of the European Union in criminal proceedings or in cases referred to in paragraphs a), c) and d) also if it has been issued by another authority of such a State in criminal or other proceedings, on the condition that it may be claimed to hear the case before a court in criminal proceedings (hereinafter referred to as “decision of another Member State of the European Union on financial penalties and settlements).

(2) Provisions of this Subdivision shall not apply to recognition and execution of decisions that awarded compensation of damages to an aggrieved person in civil proceedings, neither to decisions imposing confiscation of property or a portion thereof, confiscation of items or other asset values or forfeiture thereof.

(3) If this Subdivision does not provide otherwise, provisions of Subdivision Seven shall apply mutatis mutandis to procedure of recognition and execution of decisions of other Member States of the European Union on financial penalties and settlements and to procedure of transferring decisions on financial penalties and settlements from the Czech Republic to other Member States of the European Union for the purposes of recognition and execution thereof.

Recognition and Execution of decisions of another Member State of the European Union on Financial Penalties and Settlements

Section 460p

(1) Decisions of another Member State of the European Union on financial penalties and settlements may be adopted for the purpose of recognition and execution, provided that the convicted person has a permanent residence or property in the territory of Czech Republic. Verification of competence of the courts of the Czech Republic shall be based on information stated in a the certificate of issue of a decision referred to in Section 460o (1) and eventually also on additional information provided by the member State of the European Union that has sent the decision to be recognised and executed, or from own investigation.

(2) Proceedings on recognition and execution of a decision of another State of the European Union on financial penalties and settlements shall lay within the competence of a District Court, in whose jurisdiction the convict stays or has or had the last permanent residence, otherwise shall be competent a District Court, in whose jurisdiction is located property of the convict. If jurisdiction of multiple courts is given according to the first sentence, the proceedings shall be conducted by the court that has first received or was first forwarded the decision concerned for recognition and execution. Change of circumstances decisive for establishing the competence of a District Court that arise after commencement of proceedings shall not be taken into account.

(3) The court competent according to sub-section (2) shall also decide all incidental questions of the execution proceedings. If a decision of another Member State of the European Union on financial penalties and settlements was sent to a court or another authority, which is not competent for proceedings on its recognition and execution, it shall immediately forward it to the competent court and at the same time inform the competent authority of the other Member State that has sent the decision about the forwarding.

(4) If conditions for adopting a decision of another Member State of the European Union on financial penalties and settlements according to sub-section (1) are not met, the single judge shall terminate the proceedings on recognition and execution of the decision and immediately inform the competent authority of the other Member State, the public prosecutor, if he was already involved in the matter and the defence counsel, if he has already been chosen or appointed, about the termination and reasons therefor.

(5) If the proceedings cannot be continued for a reason, which does not constitute grounds for refusing recognition of a decision of another Member State of the European Union on financial penalties and settlements, the single judge shall communicate this reason to the competent authority of the other Member State and ask it for its opinion, whether it insists on execution of the decision, within a time limit determined for this purpose. If the competent authority of the other Member State fails to respond in the determined time limit or if it fails to state reasons disproving the reason for which the proceedings cannot be continued, the single judge shall terminate the proceedings and inform the competent authority of the other Member State, the public prosecutor, if he was already involved in the matter and the defence counsel, if he has already been chosen or appointed, about the termination and reasons therefor.

Section 460q Exceptions from Double Criminality Rule

The single judge shall recognise and execute a decision of another Member State of the European Union on financial penalties and settlements also if the conduct, for which the decision was issued, is not considered a criminal offence according to law of the Czech Republic, if it concerns:

a) conduct referred to in Section 412 (2),
b) breach of traffic regulations, including breach of regulations on time of driving, safety rests and time of rests and regulations on transportation of dangerous materials,
c) smuggling of goods,
d) infringement of rights of intellectual property,
e) racketeering or violence against individuals, including violence at sport events,
f) property damage,
g) theft,
h) conduct labelled as criminal offence or other offence according to legal regulations of the State that requests recognition and execution of its decision, to prosecution of which are Member States of the European Union bound by legal regulations of the European Community or European Union.

Section 460r Conditions for Recognition and Execution

(1) The single judge shall decide without undue delay, whether a decision of another Member State of the European Union will be recognised and executed, or whether its recognition and execution will be refused. If he deems it necessary for the purposes of this decision, he shall order a public session. If the convict is located in another Member State of the European

Union in custody, serving a sentence of imprisonment or protective measure associated with incarceration, he shall not be informed about the public session, the public session will be conducted in the presence of his defence counsel.

(2) The single judge shall serve the resolution to the convict, public prosecutor and defence counsel, if he has been chosen or appointed. The resolution on recognition and execution of a decision of another Member State of the European Union referred to in Section 460o (1) b) or on refusing recognition and execution shall also be delivered to the victim of the criminal act. A complaint is admissible against the resolution according to sub-section (1), which has a dilatory effect. The complaint cannot contest the reasons, for which was the decision of a court of another Member State of the European Union on financial penalties and settlements issued.

(3) The single judge shall refuse recognition and execution of a decision of another Member State of the European Union on financial penalties and settlements referred to in sub-section (1), if

a) the same case against the identical person in the same matter has already been resolved by a final decision, or such a decision was issued and executed in another State,
b) the deed does not constitute a criminal offence according to the law of the Czech Republic, unless conduct referred to in Section 460q is concerned; in case of offences related to taxes, fees, duties or currency, the recognition and execution of such a decision may not be refused solely on the ground that legal regulations of the Czech Republic do not impose the same type of taxes, fees and duties or not contain the same provisions on taxes, fees, duties and currency as legal regulations of the State requesting recognition and execution of the decision,
c) the claim for settlement or execution of a penalty imposed by the decision is statute-barred according to the law of the Czech Republic and it was issued for a criminal or other offence whose prosecution lies within the competence of Czech authorities,
d) the decision was issued for a criminal or other offence committed in the territory of the Czech Republic or outside the territory of the Czech Republic on board of a ship or a plane registered in the Czech Republic, or in Antarctica,
e) the decision was issued for a criminal or other offence committed outside the territory of the Czech Republic and outside the territory of the State requesting recognition and execution of the decision, and according to the law of the Czech Republic Czech authorities are not competent to prosecute such a criminal or other offence,
f) the decision was issued for a criminal or other offence committed by a person, who enjoys privileges or immunities according to the law of the Czech Republic or to international law,
g) the decision was issued for a criminal or other offence committed by a person, who is not liable for commission thereof due to lack of age,
h) financial penalty or settlement imposed is lower than 70 Euros; financial sum stated in another currency shall be recalculated to Euro according to exchange rate of the exchange market published by the Czech Central Bank on the day the decision was issued,

i) recognition and execution of the decision is contrary to interest of the Czech Republic protected under Section 377, or
j) the State requesting recognition and execution does not guarantee reciprocity.

(4) If there are grounds for refusing recognition and execution of a decision of another Member State of the European Union on financial penalties and settlements referred to in sub-section (3) c) or i), the single judge shall, prior to refusing recognition and execution of such a decision, requisition an opinion of a competent authority of the issuing State, particularly in order to acquire all necessary information for making the decision; in acute cases may the Regional Court requisition the competent authority to immediately send necessary supplementary documents and information.

Section 460s

(1) The single judge shall also refuse recognition and execution of a decision of another Member State of the European Union on financial penalties and settlements, sent to the court in accordance with Section 460r (1), if this decision is not provided with a certificate[10] of issuing the decision referred to in Section 460r (1), if the certificate is incomplete or evidently not corresponding to content of the decision, or if the attached certificate implies that:

a) the person convicted for a criminal or other offence, which the decision was issued for, was not instructed about his right to lodge an appeal against the decision or about time limits for lodging the appeal,
b) proceeding that preceded issuing the decision was held in absentia of the person who committed the offence, which was the decision issued for, and this person either was not properly informed about the proceeding, or has not waived the right to appeal against the decision, has not withdrawn it or has in other ways not expressed he shall not lodge an appeal.

(2) If the decision of another Member State of the European Union on financial penalties and settlements is not provided with a certificate[3] of issuing the decision, this certificate is incomplete or evidently not corresponding to content of the decision to which it is attached, or if there are grounds for refusing recognition and execution of the decision referred to in sub-section (1), the single judge shall, prior to refusing recognition and execution of such a decision, requisition an opinion of a competent authority of the issuing State, particularly in order to acquire all necessary information for making the decision; the single judge may requisition the competent authority to immediately send the certificate[3] of issuing the decision referred to in Section 460o (1), its corrected version, or other necessary supplementary documents and information.

(3) If the provided certificate is not translated to Czech language or other language acceptable for sending certificates according to declaration of the Czech Republic[11], the single judge

[10] Appendix of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.
[11] Article 16(1) of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

shall requisition the competent authority of the issuing State to send a translation of the certificate to the appropriate language within a determined time limit, and also caution the competent authority that if the translation of the certificate is not sent within the determined time limit without a proper reason, the single judge shall refuse recognition and execution of the decision of another Member State of the European Union on financial penalties and settlements.

Section 460t Recognition and Execution

(1) If the case referred to in Section 460p (4) and (5) is not concerned, or if there are no grounds for refusing recognition and execution of a decision of another Member State of the European Union on financial penalties and settlements referred to in Section 460r (3) or 460s, the single judge shall decide to recognise this decision and also that the recognised decision shall be executed.

(2) If a financial penalty has been imposed by a decision of another Member State of the European Union on financial penalties and settlements referred to in Section 460o (1) a), the single judge shall recognise and execute the imposed penalty only if the penalty was imposed by a court of another Member State of the European Union for conduct that is criminal also according to the law of the Czech Republic. If the financial penalty was imposed for conduct referred to in Section 460q, which is not criminal according to the law of the Czech Republic, or if the penalty was imposed by an authority other than a court, the single judge shall recognise the decision and transform the financial penalty imposed to a fine.

(3) If the decision of another Member State of the European Union on financial penalties and settlements referred to in Section 460o (1) a) imposes a fine, the single judge shall not transfer it to a financial penalty.

(4) In the course of recognition of a decision of another Member State of the European Union on financial penalties and settlements shall the single judge keep the financial penalty or other financial settlement in unchanged amount. However, if the recognised decision was issued for a criminal or other offence that was not committed in the territory of the State whose decision is concerned and authorities of the Czech Republic are competent to prosecute such a criminal or other offence, the decisions referred to in Section 460o (1) a) shall be recognised in a way that the single judge shall lower the amount of financial penalty or fine imposed to the highest amount that could have been imposed if the matter was decided according to the law of the Czech Republic, if this amount is lower than the amount stated in the recognised decision.

(5) Financial penalty, fine, compensation victims of criminal offences, remuneration of costs of proceedings or a financial sum for a public fund or in favour of an organisation supporting victims, imposed by a decision of another Member State of the European Union on financial penalties and settlements shall the single judge recalculate from the foreign currency to the

Czech currency according to exchange rate of the exchange market published by the Czech Central Bank on the day the decisions were issued.

(6) If the decision of another Member State of the European Union on financial penalties and settlements referred to in Section 460o (1) a) imposes an obligation to pay a financial sum to a public fund or in favour of an organisation supporting victims, the single judge shall oblige the convict to deposit the recognised financial sum to an account of the court within a determined time limit.

(7) Substitute sentence of imprisonment for avoided financial penalty may the court impose only if the State that requested recognition and execution of the decision allows such an option in the certificate[12] of issuing the decision referred to in Section 460o (1) a). The length of imprisonment imposed by the substitute sentence shall not exceed length determined by the issuing State in the certificate of issuing the decision referred to in Section 460o (1), neither shall it exceed the maximum length of imprisonment imposable by a substitute sentence of imprisonment referred to in the Criminal Code.

Section 460u

(1) Unless this Subdivision provides otherwise, the single judge shall proceed in

a) executing a financial penalty imposed by a recognised decision of another State of the European Union on financial penalties and settlements referred to in Section 460o (1) a) mutatis mutandis in accordance with provisions of Chapter Twenty One, regulating execution of financial punishments,
b) collecting fines imposed by a recognised decision of another State of the European Union on financial penalties and settlements referred to in Section 460o (1) a) accordingly pursuant to provisions of Chapter Twenty One, regulating enforcement of financial penalties,
c) collecting costs of proceedings determined by a recognised decision of another State of the European Union on financial penalties and settlements referred to in Section 460o (1) c) mutatis mutandis in accordance with provisions of Chapter Twenty One, regulating collection of costs of criminal proceedings determined by a flat sum.

(2) If the convict fails to comply with the obligation to pay a financial sum to a public fund or in favour of an organisation supporting victims, imposed on him by a recognised decision of another Member State of the European Union on financial penalties and settlements referred to in Section 460o (1) d), within a time limit determined by the Regional Court, the single judge shall proceed with enforcement of the decision accordingly pursuant to provisions of Chapter Twenty One, regulating enforcement of financial penalties.

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

(3) A claim for compensation of a victim of a crime awarded by a decision of another Member State of the European Union on financial penalties and settlements referred to in Section 460o (1) b) and c), shall the victim pursue in civil proceedings.

(4) If the convict proves that he has settled the financial penalty or settlement, imposed by a decision of another Member State of the European Union on financial penalties and settlements, completely or partially in any State, the single judge shall decide, in the event of settling the whole amount, to waive execution of such a decision, or in the event of settling a portion of the amount, to execute the decision in the remaining amount of the financial penalty, fine or remaining obligation to compensate the victim of a criminal offence, remunerate costs of proceedings or obligation to pay a financial sum to a public fund or in favour of an organisation supporting victims. Prior to making the decision the single judge shall requisition an opinion of the competent authority of the issuing State that requested recognition and execution of its decision; in case of need the single judge may requisition the competent authority to immediately send necessary supplementary documents and information. A complaint is admissible against the decision of the Regional Court.

(5) The single judge shall take steps towards waiving execution of a recognised decision of another Member State of the European Union on financial penalties and settlements, if the convict was granted pardon or amnesty, or as soon as a competent authority of the State whose decision is concerned notifies the court of granting amnesty, pardon or of another decision, measure or another matter of fact that has rendered the decision unenforceable. If the amnesty, pardon, other decision or measure or another matter of fact mitigates or remits the financial penalty, fine, obligation to compensate the victim of the criminal offence or to remunerate costs of proceedings or obligation to pay a financial sum to a public fund or in favour of an organisation supporting victims only partially, the single judge shall decide on executing the decision only in the remaining portion. A complaint is admissible against the decision of the Regional Court.

Section 460v Information Duty

(1) The single judge shall inform without undue delay the competent authority of another Member State of the European Union that issued the decision requested for recognition and execution, about

a) refusing recognition and execution of the decision for reasons referred to in Section 460r and 460s with stating reasons for the refusal,
b) lowering the amount of financial penalty or fine according to Section 460t (4),
c) terminating or waiving execution of the recognised decision according to legal regulations of the Czech Republic regulating execution of decisions, including reasons for such a procedure,
d) complete or partial waiving of execution of a recognised decision according to Section 460u (4) or (5),
e) realization of execution of a recognised decision,

f) ordering execution of a substitute sentence of imprisonment imposed pursuant to Section 460t (7).

(2) If it is found necessary, the single judge may notify the competent authority of another Member State of the European Union that issued the decision requested for recognition and execution about further significant matters not stated in sub-section (1) that have or may have effect on proceedings on recognition and execution of the decision.

Procedures for the Transfer of Decisions on Financial Penalties and Settlement to another Member State of the European Union for the Purpose of its Recognition and Execution

Section 460w

(1) If it is necessary for securing proper execution of a decision of financial penalties and settlements, the court that issued such a decision may transfer this decision to a competent authority of another Member State of the European Union for the purpose of recognition and execution, provided that the convict has property or his habitual residence in this State.

(2) If more Member States are competent to take over execution of a decision on financial penalties and settlements, the court shall transfer such a decision to a State, where successful execution of the decision can be mostly expected with regard to property of the convict in this State and eventually also with regard to conditions of recognition laid down by laws of this State.

(3) The decision to be recognised and executed shall be sent to the other State of the European Union that is requested to recognise and execute the decision on financial penalties and settlements, along with a certificate of issuing the decision referred to in Section 460o (1), translated to official language or one of official languages of the other Member State that is requested to recognise and execute this decision, or into a language in which is this State willing to accept decisions on financial penalties and settlements.

(4) The court shall provide additional information and supplementations necessary for the purposes of recognition and execution of a decision on financial penalties and settlements, if they are required by the competent authority of the other Member State of the European Union that is requested to recognise and execute the decision.

(5) The court shall immediately inform the competent authority of the other Member State of the European Union that is requested to recognise and execute a decision on financial penalties and settlements, of granting a pardon or amnesty to the convict in the Czech Republic, or of another decision, measure or matter of fact that rendered the decision unenforceable or only partially enforceable, including the fact that the convict has settled the whole financial sum imposed by the decision on financial penalty and settlements, or a portion thereof.

Section 460x

(1) If the decision on financial penalties and settlements has been transferred from the Czech Republic to another Member State of the European Union in accordance with Section 460w in order to be recognized and executed, such a decision cannot be executed in the Czech Republic, with the exception of a case, where the court that transferred the decision to another State of the European Union was informed by a competent authority of this State that:

a) the decision was not recognised and executed in this other Member State; however, the right to execute the decision on financial penalties and settlements is not conveyed to the Czech Republic in the event that the decision was not recognised because another decision against the same person for the identical deed has already been issued in this Member State, or it was issued and executed in another State, or
b) the decision was not executed in this other Member State or was executed only partially because of granting a pardon, amnesty or another decision, measure or matter of fact that rendered the decision or a portion thereof unenforceable in this Member State.

(2) The right to execute a decision on financial penalties and settlements is conveyed to the Czech Republic for reasons referred to in sub-section (1) in the extent, in which it was not executed by the other Member State of the European Union that was requested for its recognition and execution.

Section 460y Common Provisions

(1) In proceedings on recognition and execution of a decision of another Member State of the European Union on financial penalties and settlements and in the course of transferring a decision on financial penalties and settlements to another Member State in order to be recognised and executed, the Regional Court may ask the Ministry of Justice for cooperation in gathering necessary information, especially for identifying competent authority of another Member State, to which the decision on financial penalty and settlements should be sent, or for verifying conditions for recognition and execution of decisions on financial penalties and settlements laid down by laws of the other Member State.

(2) Financial resources collected by execution of the decision referred to in Section 460o (1) that belong to State shall pertain to the State that executed the decision referred to in Section 460o (1), unless the concerned States stipulate otherwise. Financial resources collected by executing a recognised decision of another Member State of the European Union on financial penalties and settlements referred to in Section 460o (1) b) shall belong to the victim of a criminal offence.

(3) The Ministry of Justice shall be competent to stipulate the agreement referred to in sub-section (2). The court competent according to Section 460p and 460w may lodge a motion for stipulating such an agreement to the Ministry of Justice.

(4) Costs of execution proceedings shall be borne the State that recognised and executed the decision referred to in Section 460o (1).

Subdivision Ten

Recognition and Execution of Decisions Imposing Confiscation or Forfeiture of Property, Items or Other Asset Values by Other Member States of the European Union

Section 460z

(1) According to this Subdivision can other Member States of the European Union (hereinafter referred to as "Member State") be sent, for the purposes of recognition and execution, final court decisions that

a) imposed penalty of confiscation of property (Section 66 of the Criminal Code),
b) imposed penalty of confiscation of items or other asset values (Section 70 of the Criminal Code) or penalty of confiscation of an equivalent value for proceeds of criminal activity (Section 71 of the Criminal Code), or
c) declared forfeiture of items or other asset values (Section 101 of the Criminal Code) or forfeiture of an equivalent value for proceeds of criminal activity (Section 102 of the Criminal Code).

(2) According to this Subdivision is proceeded in the course of recognition and execution of final decisions of courts of another Member State, issued in criminal proceedings, that

a) imposed confiscation or forfeiture of an item or other asset value that was acquired by, or as a reward for criminal activity, or that was, even partially, obtained for an item or other asset value that was acquired by, or as a reward for criminal activity, or that is an equivalent value for an item or other asset value that may be declared as confiscated or forfeited by the court, or
b) imposed confiscation or forfeiture of an item or other asset value that was intended or used to commit a crime .

(3) According to this Subdivision is also proceeded in the course of recognition and execution of final decisions of courts of another Member State, issued in criminal proceedings, that imposed confiscation of property of a perpetrator convicted for conduct fulfilling attributes of a criminal act of terror (Section 312 of the Criminal Code) or terrorist attack (Section 311 of the Criminal Code) or for conduct committed within a criminal conspiracy consisting in

a) counterfeiting currency or means of payment,
b) legalization of proceeds of criminal activity and participation therein,
c) trafficking in human beings,
d) facilitation of unauthorised crossing of State borders, unauthorised transit through State territory and unauthorised residency,
e) sexual exploitation of children and child pornography,

f) illicit trafficking in narcotic drugs and psychotropic substances,

provided that by this conduct the perpetrator acquired or attempted to acquire proprietary profit and according to legal order of the Member State that requests recognition and execution of a decision is this conduct punishable by imprisonment for a maximum period of at least five years; for conduct referred to in paragraph (b) shall suffice a maximum period of at least four years[13].

(4) According to this Subdivision shall also be proceeded in the course of recognition and execution of final decisions of courts of another Member State imposing confiscation or forfeiture of property referred to in sub-sections (2) and (3), if it is possible to declare confiscation or forfeiture of such a property in criminal proceedings also in accordance with the legal order of the Czech Republic.

(5) Unless this Subdivision provides otherwise, provisions of Subdivision Seven shall apply mutatis mutandis also to procedure of transferring decision of a court of another Member State referred to in sub-section (1) (hereinafter referred to as "decision on confiscation or forfeiture") to another State Member for the purpose of recognition and execution and to procedure of recognition and execution of decision of a court of another Member State referred to in sub-sections (2) to (4) (hereinafter referred to as "decision of another Member State on confiscation or forfeiture").

Competence for Recognition an Execution

Section 460za

(1) Courts of the Czech Republic are competent for conducting proceedings on recognition and execution of decisions of another Member State on forfeiture or seizure, if the person whose property is subject to forfeiture or seizure has the required property in the territory of the Czech Republic or has his habitual residence or registered office, if an artificial legal person is concerned, in the territory of the Czech Republic. Verification of competence of courts of the Czech Republic shall be based on information stated in the certificate[14] of issuing a decision of another Member State on forfeiture or seizure and on own conducted examination, eventually also on additional information provided by the State requesting recognition and execution of such a decision.

(2) For proceedings on recognition and execution of decisions of another Member State on forfeiture or seizure is competent the Regional Court, in whose jurisdiction is the property concerned by the decision located. If the property is located in jurisdiction of multiple courts,

[13] Articles 2 and 3 of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the Application of the principle of mutual recognition to financial penalties.
[14] Appendix to Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

the competence shall belong to the court that has first received the decision required for recognition and execution. If it is not apparent where in the territory of the Czech Republic is the property subject to forfeiture or seizure belonging to the convict or other person located, the competence shall belong to the Regional Court, in whose jurisdiction is the property supposedly located according to the certificate of issuing the decision, and if no such a location is sufficiently specified, the competence shall belong to the Regional Court, in whose jurisdiction has the person his habitual residence or registered office.

(3) If two or more decisions of other Member States on forfeiture or seizure of property concerning the same person or the same property are simultaneously sent to the Czech Republic, the competence for conducting proceedings on all such decisions shall belong to the court that has first initiated proceedings on recognition and execution of either of those decisions.

(4) The court competent according to sub-sections (2) and (3) shall also make decisions and implement measures concerning all incidental questions of execution proceedings.

Section 460zb

(1) If a decision of another Member State on forfeiture or confiscation is sent to a court or another authority not competent for proceedings on its recognition and execution, this authority shall immediately forward it to the competent court and at the same time notify the judicial authority of the Member State that send the decision thereof.

(2) If the court that was sent or forwarded a decision of another Member State on forfeiture or confiscation ascertains that courts of the Czech Republic are not competent for proceedings on recognition and execution of this decision, the court shall immediately inform the judicial authority that has sent the decision thereof and return the decision to it. At the same time the court shall notify the judicial authority that, for the reason stated above, the decision cannot be recognised and executed in the territory of the Czech Republic.

(3) If it is not possible to initiate or proceed with proceedings on recognition and execution of a decision of another Member State on forfeiture or confiscation for reasons that do not constitute grounds for refusing recognition and execution of the sent decision, the court shall notify this fact to the competent judicial authority of the other Member State and ask whether it insists on recognition and execution of the decision.

Section 460zc Exceptions from Double Criminality Rule

For the purposes of proceedings on recognition and execution of a decision of another Member State on forfeiture or confiscation, the court shall not examine whether the deed concerned is criminal according to the Law of the Czech Republic, if the decision was issued for conduct referred to in Section 412 (2), which is punishable in the issuing State by imprisonment with the upper limit of at least three years.

Section 460zd Conditions for Recognition and Execution

(1) The court shall decide without undue delay in public session by a judgement, whether a decision of another Member State on forfeiture or confiscation shall be recognised or whether the recognition shall be refused. If a case other than the case referred to in Section 460zb is concerned or if there is no reason for refusing or postponing recognition and execution of such a decision, the court shall decide on its recognition and at the same time shall the court decide that the recognised decision shall be executed. The court shall notify the competent judicial authority of the other Member State about its decision without undue delay; in case of refusing recognition and execution of the decision the court shall state reasons therefor. If the court decides to recognise and execute a decision of another Member State on forfeiture or confiscation, it shall, along with sending its decision, requisition the competent judicial authority of the other Member State to be immediately informed, which authority is competent for sharing forfeited or confiscated property.

(2) The judgement on recognition and execution of a decision of another Member State on forfeiture or seizure shall the court deliver to the convict or another person, whose property is subject to forfeiture or confiscation on the basis of the recognised judgement, and to the public prosecutor. An appeal may not contest the reasons for which was the decision of another State on the forfeiture or confiscation issued. The court shall notify the competent judicial authority of the other Member State about lodging an appeal.

(3) The court shall decide to refuse recognition and execution of a decision of another Member State on forfeiture or confiscation, if

a) the deed, which was the decision issued for, is not criminal according to the legal order of the Czech Republic, unless it concerns conduct referred to in Section 460zc; in case of criminal offences concerning taxes, fees, customs or currency, recognition and execution of the decision may not be refused solely on the grounds that legal regulations of the Czech Republic do not impose the same type of taxes, fees and customs or do not contain the same provisions on taxes, fees, customs and currency as do legal regulations of the State that requests recognition and execution of the decision,
b) criminal prosecution is inadmissible for reasons referred to in Section 11 (1) f), g), h) and Section 11 (4).
c) property required to be forfeited or confiscated is not subject to forfeiture or confiscation according to other legal regulations,
d) the decision was issued for a deed committed by a person enjoying privileges or immunities according to domestic or international law,
e) execution of the decision is impeded by rights of third parties that acquired the property in bona fides,
f) the certificate implies that proceeding leading to issuing the decision was conducted in absentia of the person whose property is subject to forfeiture or confiscation or also in absentia of his defence counsel, and this person was not, either personally or via the

defence counsel, notified of the proceedings, or has not waived the right to appeal against the decision, has not withdrawn it or has not in other ways expressed that he shall not lodge an appeal,

g) forfeiture or confiscation of property is requested on the basis of a decision other than a decision of another Member State on forfeiture or confiscation referred to in Section 460z (2) to (4),
h) property requested to be forfeited or confiscated has already been forfeited or confiscated, got lost, was destroyed or cannot be found in the location specified in the certificate6 of issuing the decision or such a place is not sufficiently specified in the certificate,
i) the penalty or protective measure, related to forfeiture or confiscation of property, imposed by a decision of another Member State on forfeiture or confiscation of property, has already been executed in another State, or the person specified in the decision has already voluntarily settled the required amount in another State,
j) the person, whose property is subject to forfeiture or confiscation, was granted pardon or amnesty in the State requesting recognition and execution, or this State issued another decision or measure or another matter of fact came into being, as a result of which the decision that is requested for recognition and execution was rendered unenforceable, or
k) recognizing and executing such a decision would be contrary to interests of the Czech Republic protected in Section 377.

(4) The court may decide to refuse recognition and execution of a decision of another Member State on forfeiture or confiscation, if it concerns a decision

a) issued for a deed committed in the territory of the Czech Republic or outside the territory of the Czech Republic onboard of a ship or a plane registered in the Czech Republic,
b) issued for a deed committed outside the territory of the Czech Republic and the State requesting recognition and execution, and according to the legal order of the Czech Republic this deed cannot be criminally prosecuted,
c) referred to in Section 460z (3), to the extent in which confiscation of such a property cannot be ordered in similar criminal proceedings in the Czech Republic, or
d) referred to in Section 460z (4).

(5) If there is a reason for refusing recognition and execution of a decision of another Member State on forfeiture or confiscation referred to in sub-section (3) b), e), f), g), h), i) or in sub-section (4) a) or b), the court shall, prior to deciding on refusing recognition and execution of such a decision, always requisition an opinion of a competent judicial authority of another Member State, especially in order to obtain all necessary information for making the decision; in case of need may the court requisition the Member State to immediately transmit supplementary documents and information. Prior to issuing a decision on refusing recognition and execution of a decision of another Member State on forfeiture or confiscation for another reason, the court may requisition an opinion of a judicial authority of another Member State or other data, if the court considers those necessary for making the decision.

(6) If the court is informed, prior to recognising a decision of another Member State on forfeiture or seizure, that the penalty or protective measure related to forfeiture or confiscation of property, imposed by the decision requested for recognition and execution, has already been partially executed in another State, or if the court is informed of another matter of fact that rendered the decision requested for recognition and execution partially unenforceable, the court shall decide to recognise and execute the remaining portion of the penalty or protective measure. Prior to making the decision the court shall requisition an opinion of the competent judicial authority of the other Member State; in case of need may the court requisition immediate transmission of supplementary documents and information.

Section 460ze Certificate

Furthermore, the court shall decide to refuse recognition and execution of a decision of another Member State on forfeiture or confiscation, if this decision is not provided with a certificate [15] of issuing this decision, if the certificate is incomplete, evidently not corresponding to content of the decision it is attached to, or if it is not translated to the Czech language or other language, in which can the certificate be accepted according to declaration of the Czech Republic[16]. Prior to deciding on refusing recognition and execution of the sent decision, the court shall always requisition the competent authority of the other Member State to deliver the certificate, its corrected version or translation of the certificate into an appropriate language within a time limit determined by the court. At the same time the court shall caution the competent authority that failing to deliver the certificate within the stated time limit without stating substantial reasons for the non-compliance shall result into refusing of recognition and execution of the decision on forfeiture or confiscation.

Section 460zf Currency Conversion

If the object of forfeiture or confiscation is a financial sum, the court shall recalculate its amount in the judgement on recognition and execution of the decision of another Member State on forfeiture or confiscation from a foreign currency to Czech currency, according to exchange rate of the exchange market published by the Czech National Bank on the day the recognised decision was issued.

Section 460zg Concurrence of Decisions of other Member States

(1) If the court simultaneously conducts proceedings on recognition and execution of two or more decisions of other Member States, requesting forfeiture or confiscation of identical item or other asset value, or request forfeiture or confiscation of a financial sum of identical

[15] Articles 2 and 3 of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

[16] Article 19(2) of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

person, whose property is not sufficient to cover execution of all decisions of other Member States, the court shall decide which decisions of other Member States to recognise and execute and which to refuse. The court shall notify competent judicial authorities of the Member States about its decision.

(2) Prior to making the decision according to sub-section (1) the court shall consider all known prevailing circumstances, especially rights of aggrieved parties, seriousness and place of commission of the criminal offences and dates of issue and delivery of the decisions of other Member States on forfeiture or confiscation. In the course of decision making shall the court especially consider whether the property concerned was frozen in any of the criminal proceedings, for the purposes of which the forfeiture or confiscation is requested.

Section 460zh Postponement of Recognition and Execution

(1) The court may postpone recognition and execution of a decision of another Member State on forfeiture or confiscation, if

a) the gathered information indicate that, with regard to concurrent execution of a decision of another Member State on forfeiture or confiscation in more States, the total financial amount collected by execution of the recognised decision in more States could exceed the amount specified in the decision,
b) its recognition and execution could impair criminal proceedings conducted in the Czech Republic, or
c) another proceeding is being conducted in the Czech Republic that can be expected to result in forfeiture, confiscation, expropriation or to other permanent deprivation of property, which is requested for forfeiture or confiscation by another Member State.

(2) As soon as the reason for postponement disappears, the court shall proceed with proceedings on recognition of the decision of another Member State on forfeiture or confiscation.

(3) The court shall immediately inform the competent judicial authority of another Member State about postponing recognition and execution of a decision according to sub-section (1), as well as about reasons and presumed duration thereof, and also that the reasons for postponement disappeared and the decision was recognised and executed.

Section 460zi Execution of Punishment and Protective Measure

(1) In the course of execution of a punishment or protective measure imposed in a judgement on recognition and execution of a decision of another Member State on forfeiture or confiscation shall be proceeded mutatis mutandis according to provisions of Chapter Twenty One. If it is not apparent from the judgement, the presiding judge shall notify the administrative body of State, competent to manage State property according to a special legal enactment, that the property concerned is forfeited or confiscated upon a request of another Member State and shall specify, when the judgement came into force. At the same time the

court shall inform this administrative body, to which authority of the other Member State shall this administrative body transfer the respective portion of the shared property according to Section 460zj.

(2) The court shall without undue delay notify the competent judicial authority of another State about all matters impeding execution of punishment or protective measure imposed in the judgement on recognition and execution of a decision of another Member State on forfeiture or confiscation.

(3) Furthermore, the court shall immediately notify the competent judicial authority of the other member State about forfeiture or confiscation of the required property and at the same time shall the court caution this authority that if it is not informed about reasons impeding forfeiture or confiscation of such a property or a portion thereof within 3 moths from the day the decision on recognition and execution of another Member State came into effect, this property shall be further disposed with as if it was a property of the Czech Republic in accordance with its legal order, and in case of compensation for damages that incurred to the convict or to another person by forfeiture or confiscation of the required property, the Czech Republic shall request remuneration of the financial sum paid as compensation for damages to such a person.

(4) If the competent judicial authority of another Member State, within the three-month period referred to in sub-section (3), sends information on reasons impeding forfeiture or confiscation of property or a portion thereof, especially that the punishment or protective measure imposed by the decision of another Member State on forfeiture or confiscation of property has already been fully or partially executed in another State, or that the person specified in the decision has already voluntarily settled the required amount in another State, the court shall immediately inform the administrative State body referred to in sub-section (1) thereof. Consequently the court shall issue a judgement repealing its previous judgement on recognition and execution of a decision of another Member State on forfeiture or confiscation. If the stated reason is related only to a portion of the forfeited or confiscated property, the court shall, after cancelling its previous judgement, decide on recognition and execution of the decision of another Member State on forfeiture or confiscation in the remaining extent. The judgement on cancellation and eventually also the new judgement on recognition and execution of a decision of another Member State on forfeiture or confiscation in the remaining portion shall the court deliver to the convict or other person, whose property was forfeited or confiscated on the basis of the recognised judgement, to the public prosecutor, to the administrative State body referred to in sub-section (1) and to the competent authority of another Member State.

(5) If the competent judicial authority of another Member State notifies the court, before the three-month period referred to sub-section (3) expires, that there is no reason impeding forfeiture or confiscation of such a property or a portion thereof, the court shall immediately forward this information to the administrative State body referred to in sub-section (1).

Section 460zj Sharing of Forfeited and Confiscated Property with another Member State

(1) A financial sum in the amount up to 10 000 Euro, forfeited or confiscated on the basis of a recognised decision of another Member State on forfeiture or seizure, shall be kept by the Czech Republic.

(2) A financial sum in the amount exceeding 10 000 Euro, forfeited or confiscated on the basis of a recognised decision of another Member State on forfeiture or confiscation, shall be divided in half. One half shall be kept by the Czech Republic, the other half shall belong to another Member State that issued the recognised and executed decision.

(3) An item or other asset value not mentioned in sub-section (1) and (2) that has been forfeited or seized on the basis of a recognised decision of another Member State on forfeiture or confiscation shall be sold, unless it is a part of national cultural treasure of the Czech Republic or another State. Procedure concerning financial sum acquired by the sale shall be governed mutatis mutandis by sub-sections (1) and (2).

(4) If an item or other asset value is impossible to sell due to its nature or for other reasons, it shall be kept by the Czech Republic. An item that is a cultural asset of another Member State shall be disposed with according to another legal enactment.

(5) Costs of proceedings of recognition and execution of a decision of another Member State on forfeiture and confiscation shall be borne by the Czech Republic.

(6) Provisions of sub-sections (1) to (5) shall be applied, unless the Czech Republic and another Member State stipulate otherwise in respect of sharing of property or remuneration of costs of proceedings. The Ministry of Finance is competent to stipulate such an agreement on behalf of the Czech Republic. Motion for stipulation of such an agreement may be lodged to the Ministry of Finance also by the court, which recognised and executed the decision of another Member State on forfeiture or confiscation.

(7) Forfeited or confiscated property subject to sharing shall be disposed with, in particular be sent to a competent authority of another State, by the administrative State body that is competent to manage property of the State according to another legal enactment.

Section 460zk Sending the Decision on Forfeiture or Confiscation to another Member State

(1) If it is necessary for securing proper execution of a decision on forfeiture or confiscation, the court that issued such a decision may send this decision to the competent judicial authority of another Member State for the purpose of its recognition and execution, if there is a reasonable belief that the person, whose property is subject to forfeiture or confiscation, has the required property in this State. If it is not known, in which State does the person

concerned have such a property, the decision on forfeiture or confiscation may be sent to another Member State, in which this person has his habitual residence or registered office.

(2) The court may send the decision on forfeiture or confiscation to more Member States, provided that such a decision

a) imposes forfeiture or confiscation of items or asset values that are reasonably believed to be located in more Member States,
b) imposes forfeiture or confiscation of an item or other asset value that is subject to trial proceedings conducted in more States,
c) imposes forfeiture or confiscation of an item or other asset value that is reasonably believed to be located in one of more Member States, or
d) imposes forfeiture or confiscation of financial resources and these financial resources were not secured for this purpose in the required amount in another Member State.

(3) The court shall send the decision on forfeiture or confiscation to a competent judicial authority of another Member State along with a certificate[17] translated to an official language or one of official languages of the other Member State that is being requested to recognise and execute such a decision, or into a language in which this State accepts certificates according to its declaration7[18]. The court shall also state, which administrative State body, competent for managing State property according to another legal enactment, shall receive a portion of the shared property, if the decision is recognised and executed in the other Member State. If the court sends a decision on forfeiture or confiscation for the purpose of its recognition and execution to more States, the court shall notify all concerned States thereof.

(4) Sending a decision on forfeiture or confiscation to another Member State does not prevent execution of such a decision in the Czech Republic.

Section 460zl Information Duty

(1) The court shall, upon the request of the competent judicial authority of another Member State, provide additional information and amendments necessary for the recognition and execution of the forfeiture or confiscation.

(2) If the court sent the decision on the forfeiture or confiscation to one or more Member States and based on found information they reasonably believe that such a decision has already been or shortly will be entirely or partially executed in the Czech Republic or in another Member State, they shall immediately notify the competent judicial authorities of the other Member States of such fact, including the estimated extent of the execution of the decision on forfeiture or confiscation. The court shall also immediately notify these States about the fact that the expected execution of the decision on the forfeiture or confiscation in

[17] Articles 2 and 3 of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
[18] Appendix to Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

the Czech Republic or the stated Member State never occurred or it happened in a different extent.

(3) The court shall immediately notify the competent judicial authority of another Member State, to which they sent the decision on forfeiture or confiscation for the purpose of the recognition and execution, that the convict was awarded a pardon or amnesty in the Czech Republic or another decision, measure, or fact due to which such decision no longer became enforceable or enforceable only in part.

Section 460zm Sharing of Property Forfeited or Confiscated in another Member State

(1) Property forfeited or seized in another Member State on the basis of a decision on forfeiture or confiscation shall the Czech Republic share with this State in a way provided for by the legal order of this other Member State, unless stipulated otherwise.

(2) Stipulation of the agreement with another Member State on sharing property that was forfeited or confiscated in this State on the basis of a decision on forfeiture or confiscation lies within the competence of the Ministry of Finance. Motion for entering such an agreement may be lodged to the Ministry of Finance also by the court that issued the decision on forfeiture or confiscation.

(3) As soon as the competent judicial authority of another Member State notifies the court that its decision has been recognised and executed, the court shall immediately forward this information to the administrative State body competent to manage State property according to another legal enactment. This administrative State body shall take over the property shared with another Member State.

Common Provisions

Section 460zn

(1) The Ministry of Justice shall, upon a request of a Member State that has recognised and executed a decision on forfeiture and confiscation, settle the required financial amount, paid as compensation for damages under the condition that

a) damage compensated by the Member State according to its domestic legal regulations was caused as a result of the issued decision on forfeiture or confiscation,
b) request of the Member State for remuneration of compensated damage or attached documents contain the amount of paid compensation of damages that is required for remuneration, rationalization thereof, and specification of an authority competent for accepting the reimbursement, including banking connection for the purpose of transferring the required financial amount or a request for another means of payment,
c) final decision of the competent authority of this member State on compensation of damages shall be attached to the request.

(2) If a request of a Member State does not contain necessary information, the Ministry of Justice shall requisition the competent authority of the Member State for completion of the request and shall set an adequate time limit therefor. Thereat the Ministry of Justice shall notify the authority of consequences of non-compliance with this requisition. If the competent authority of the executing State does not comply with the requisition in the determined time limit and not state reasons for this non-compliance, the Ministry of Justice shall not comply with such a request.

(3) The Ministry of Justice would not refund the damages to the executing State if the damage was caused by wrongful procedure of authorities of the foreign State.

Section 460zo

(1) The Ministry of Justice shall be entitled to request another Member State, whose decision on forfeiture or seizure has been recognised in the Czech Republic, to reimburse the financial amount paid as compensation for damages if

a) the damage was incurred as a result of a decision on forfeiture or confiscation issued by the other Member State,
b) the Ministry of Justice paid compensation of damages according to another legal enactment to the person who was affected by the recognised decision of the other State on forfeiture or confiscation.

(2) The claim for reimbursement of the paid compensation for damages according to sub-section (1) shall be filed in the form or a request to a competent authority of another Member State in accordance with legal regulations and requirements of this State. If the requirements of the other Member State concerning the requirements of the request are unknown, the request or attached documents shall state the amount of paid compensation of damages and its rationalization, specification of an authority competent for accepting the reimbursement, including banking connection in order to transfer the required amount or a request for other means of payment, and eventually further details necessary for making the payment.

(3) Other Member States shall not be required to reimburse compensation of damages if the damage was caused by wrongful procedure of authorities of the Czech Republic.

Section 460zp

The Ministry of Justice shall, on the basis of a request of a court, provide cooperation in gathering necessary information, especially in identification of the competent judicial authority of another Member State to which shall be sent a decision on forfeiture or confiscation, or in verification of conditions for recognition and execution of such a decision set by the legal order of this other Member State.

PART FIVE

Transitional and Final Provisions

Section 461

Starting from 1 July 1990, regulations on criminal proceedings valid before that day shall be applicable only within the provisions of this Part.

Section 462

(1) In proceedings on misdemeanours in cases, in which the court was served a motion for punishment before 1 July 1990, regulations valid before that date shall apply.

(2) In execution of punishment by corrective measure imposed before 1 July 1990, the regulations valid before that date shall apply.

(3) Criminal orders issued before 1 July 1990 shall be governed by the existing regulations.

Section 463

(1) In the proceedings on a new trial, which were finally completed before the effective date of this Act, the provisions of this Act shall apply. The conditions for authorisation of the new trial shall, however, in such case be assessed pursuant to the law which is more favourable to the accused.

(2) If the decision against which is aimed the petition for the new trial was issued in the first instance by a court that no longer exists, the petition for the new trial shall be decided by the court which would, under this Act, have subject matter and territorial jurisdiction; if the former State court decided in the first instance, the petition for the new trial shall be decided by the Regional (Higher Military) court, which would, under this Act, have subject matter and territorial jurisdiction.

Section 464

(1) The Regional court has the jurisdiction to act in the first instance of proceedings on an act punishable according to previously effective regulations, which correspond to the criminal offences referred to in Section 17 by their nature and seriousness.

(2) Decisions and measures regarding the execution of judgments declared by the Supreme Court as the court in the first instance shall be executed by the Regional Court in Prague and in the field of military justice by the Higher Military Court, which shall be determined by the Minister of Justice.

Section 465

(1) A decision that a sentence imposed for an act, which no longer constitutes a criminal offence due to the change of the Criminal Code, shall not be executed, shall be made by the court that decided in the matter in the first instance.

(2) A decision that an imposed cumulative or aggregate sentence for an act, which no longer constitutes a criminal offence due to the change of the Criminal Code, and for another concurrent criminal act, shall be proportionally reduced, shall be made in a public session by the court that decided in the matter in the first instance.

(3) If a death sentence imposed before 1 July 1990 was changed to a prison sentence, the court that decided in the matter in the first instance shall also decide on the manner of its execution in a public session.

(4) A complaint is admissible against the decision pursuant to sub-section (1) through (3), which has a dilatory effect.

Section 466

The public prosecution shall examine the motions for submitting complaints for the violation of law, which are addressed to it or which are referred to it by the Minister of Justice. The public prosecutor's office immediately superior to the public prosecutor's office that was active in the last instance during the original proceedings shall be competent to perform investigations. After the investigation, the public prosecutor's office shall submit its opinion to the Minister of Justice, in which it shall either petition to adjourn the motion or to file a complaint for the violation of law.

Section 467

The Act No. 64/1956 Coll., on Criminal Procedure (Code of Criminal Procedure) is repealed.

Section 468

The Minister of Justice may stipulate which simple actions entrusted under this Act to the presiding judge may be performed by another member of the court.

Section 468a

Simple decisions and actions entrusted to the public prosecutor may be issued, conducted and in connection thereto, the relevant administrative measures may be taken, in the extent and under the terms stipulated by a special Act[19], by a senior clerk of the public prosecutor's

[19] The Act no. 121/2008 Coll., on Senior Clerks of Court and Senior Clerks of the Public Prosecutor's Office, and on the change of the related Acts.

office. Under the conditions stipulated by the law the individual actions may be made by an assistant of the public prosecutor.

Section 469

The Ministry of Justice is entitled to issue the rules of procedure for District and Regional Courts by a public notice.

Section 470
Repealed

Section 471

This Act comes into effect on 1 January 1962.

Novotný by own hand

Fierlinger by own hand

Široký by own hand