



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of the Czech Republic**

Review by Moldova and Turkmenistan  
of the implementation by the Czech Republic  
of articles 15 – 42 of Chapter III. “Criminalization and law  
enforcement” and articles 44 –50 of Chapter IV. “International  
cooperation” of the United Nations Convention against  
Corruption for the review cycle 2010 - 2015

## **I. Introduction**

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

The following review of the implementation by the Czech Republic of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the Czech Republic, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Moldova and Turkmenistan, by means of telephone conferences, videoconferences, e-mail exchanges. A country visit, agreed to by the Czech Republic, was conducted from 5 to 7 October 2017.

## **III. Executive summary**

### ***1. Introduction: overview of the legal and institutional framework of Czechia in the context of implementation of the United Nations Convention against Corruption***

*Czechia signed the Convention on 22 April 2005 and deposited its instrument of ratification with the Secretary-General on 29 November 2013. The Convention has entered into force for Czechia on 29 December 2013. Article 10 of the Constitution states that ratified international conventions form an integral part of domestic law and override any other contrary provision of domestic law.*

*Czechia is a parliamentary republic. Parliament is bicameral and consists of the Senate and the Chamber of Deputies. The President is elected directly by popular vote. The executive power is exercised by the Government, led by the Prime Minister. The Government is accountable to the Chamber of Deputies and must have the support of its majority.*

*The legal system of Czechia is based on civil law.*

*The anti-corruption legal framework in Czechia includes the Criminal Code (CC), the Code*

of Criminal Procedure (CCP), the Act on Criminal Liability of Legal Persons and Proceedings against them (ACLLP) and the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013).

Czechia is a member of the European Union, the Organization for Economic Cooperation and Development (OECD), the Council of Europe's Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

## **2. Chapter III: criminalization and law enforcement**

### **2.1. Observations on the implementation of the articles under review**

#### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

Sections 331 and 332 CC criminalize active and passive bribery in connection with "procuring affairs in the general interest" or "business activities", and cover both public and private sectors. The involvement of a public official, as defined in sections 127 and 334, constitutes an aggravated offence. While the definition is broad, certain positions within the public sector (e.g., secretaries, interns and spokespersons) are not covered.

The elements of "promise", "offer", "giving", "solicitation" and "acceptance" are covered. Paragraph 1, section 334 CC refers to "bribe" and defines it broadly as an undue advantage covering both material and immaterial advantages. Small gifts (less than 300 Czech koruna or approximately \$14) and courtesy gifts are acceptable (sect. 77/j Civil Service Act and art. 9 of the Regulation of the Director General for the Civil Service on the Code of Ethics for Civil Servants). While third-party benefits are covered by both active and passive bribery provisions, the indirect bribery is only explicitly included in the provision on passive bribery. However, at the time of review, Czechia was in the process of amending section 332 to rectify this. Both acts and omissions are covered (sects. 112, 331 and 332).

Bribery provisions are applicable to foreign public officials and officials of international organizations (sects. 331–334). However, persons authorized by an international organization to act on its behalf are not explicitly covered. Trading in influence is criminalized by section 333 on "indirect corruption", but the provision does not address the indirect form and third-party benefits. Both of these deficiencies, however, are planned to be rectified by the aforementioned amendment.

#### *Money-laundering, concealment (arts. 23 and 24)*

Money-laundering is criminalized (sects. 216 and 217 CC). While the provision explicitly covers only concealment of the origin of proceeds of crime, this term is interpreted broadly and includes conversion, transfer, acquisition, possession and use. Sections 214 and 215 (on participation) cover the transfer and use of proceeds of crime, and section 366 (on favouritism) targets those who assist offenders to evade prosecution. Provisions on preparation (sect. 20 CC), attempt (sect. 21 CC), accomplice (sect. 23 CC) and accessory (sect. 24 CC) also apply.

Sections 214–217 adopt an all-crimes approach and cover all Convention offences as predicate offences, including those committed in Czechia or abroad. Dual criminality is required.

*Self-laundering is criminalized for some behaviour (concealment or transfer), but not for the use of proceeds as this would be in conflict with the Czech Charter of Basic Human Rights and Freedoms and the principle of double jeopardy.*

*Concealment of proceeds of crime is covered by sections 214 and 215 CC, on participation.*

#### *Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

*Embezzlement is criminalized through CC provisions on embezzlement, breach of duty in administration of property of another and unauthorized use of an item of another (sects. 206, 207, 220 and 221). The provisions do not distinguish between the private and public sectors, but only apply to cases of “non-insignificant damage”, which amounts to at least 5,000 Czech koruna (approximately \$230).*

*Abuse of functions is criminalized in section 329 CC.*

*Czechia has considered criminalizing illicit enrichment, but has not implemented the offence, owing to constitutional limits.*

#### *Obstruction of justice (art. 25)*

*Several CC provisions relate to obstruction of justice, namely those on blackmail (sect. 175), violence against public authority (sect. 323), threatening with the aim of affecting public authority (sect. 324), violence against a public official (sect. 325), threatening with the aim of affecting a public official (sect. 326), interference in the independence of courts (sect. 335) and false testimony and false expert opinion (sect. 346). Corrupt practices aimed at inducing false testimony or production of evidence are not covered where the witness, in the end, refuses to participate. However, it is expected that they will be addressed by a new criminal offence on “obstruction of justice”, which will be created by the aforementioned amendment.*

#### *Liability of legal persons (art. 26)*

*Criminal liability of legal persons is established through the Act on Criminal Liability of Legal Persons and Proceedings against Them. Section 7 lists the crimes for which legal persons cannot be liable and corruption offences are not listed. However, section 248(2) CC, on breach of regulations on rules of economic competition, which may be linked to corruption, is listed. Sanctions available under the Act include dissolution of the legal person, confiscation or forfeiture of property, monetary punishment, prohibition of activity or to perform public contracts, debarment from public procurement, prohibition to receive grants and subsidies and publication of a judgment (sect. 15). Criminal liability of legal persons does not affect criminal liability of natural persons (sect. 9/3).*

#### *Participation and attempt (art. 27)*

*Several general CC provisions are relevant, namely provisions on preparation (sect. 20), attempt (sect. 21), accomplice (sect. 23) and participation (sect. 24, which covers the behaviour of organizers, instigators and accessories). Attempt is criminalized for all CC offences (sect. 21). Preparation is criminalized for felonies that are particularly serious (sect. 20) and as such covers only certain corrupt behaviour (e.g., money-laundering).*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Types of criminal penalties available in Czechia and the conditions of their imposition are listed in CC (sects. 36–80 and 96–104). The penalties prescribed for corruption offences include a maximum prison sentence of two to 12 years and pecuniary and other penalties, including forfeiture, monetary penalty or disqualification. Czechia provides for protective measures as alternatives to criminal sanctions, including protective therapy and non-conviction-based confiscation (sects. 96–104).

Members of Parliament can be prosecuted only with the consent of their respective chamber (art. 27(4) and (5) Constitution). The President cannot be prosecuted for any offence committed during his tenure, but the Senate may file a constitutional action against him for high treason or gross violation of the Constitution (art. 65 of the Constitution). The consent of the President must be given for the prosecution of judges. Other public officials do not enjoy any immunities or privileges.

Prosecution of offences is initiated *ex officio* based on the principle of legality (sect. 2(1)(3)(4) CCP). The CCP lists exceptional cases in which the prosecutor must (sect. 172(1), e.g., in the case of lack of evidence or insanity of the accused) or may (sect. 172(2), e.g., elimination of harmful consequences by other means) terminate the criminal prosecution. Such decisions are monitored and may be quashed by the General Prosecutor's Office (art. 174a CCP). In addition, a system of internal approbations of decisions by superior prosecutors is in place. The court may also terminate the criminal prosecution in certain circumstances (sect. 223 CCP).

Release pending trial is regulated (sect. 73 CCP) and Czechia has also introduced the replacement of custody by electro-monitoring. Bail in corruption cases is possible (sect. 73a CCP). The presence of the defendant in criminal proceedings is ensured through the provision on summons and compelled appearance (sect. 90 CCP) and arrest warrant (sect. 69). Early release is regulated (sects. 88 and 89 CCP).

Measures relating to the suspension of accused public officials are covered by the Act on Civil Service (ACS, sect. 48), the Act on the Courts, Judges and Lay Judges (ACJLJ, sects. 100 and 101), the Public Prosecutor's Office Act (PPOA, sect. 22), the Act on the Service Status of Members of the Police Forces (ASSMPF, sect. 40) and the Act concerning Services Relations of Members of the National Security Corps (ASRMNSC, sect. 21). Reassignment is not possible. Employment of these officials is terminated when they are convicted of a crime (sect. 74 ACS, sect. 94 ACJLJ, sect. 21 PPOA and sects. 42 and 100 ASSMPF).

Persons convicted of corruption can be disqualified (sect. 73 CC). This provision applies to public officials and employees of state enterprises, among others. However, this penalty, in principle, cannot be imposed separately and must follow another type of punishment envisaged for a criminal offence (sects. 53 and 73 CC). The prosecutor may refer a case to a competent disciplinary body or other authority for action (sects. 159a, 171 and 222 CCP). Disciplinary actions against public officials are regulated in ACS (sects. 87–89), ACJLJ (sects. 86–88), PPOA (sects. 27–30), ASSMPF (sects. 50 and 51) and ASRMNSC (sects. 27 and 28). Disciplinary proceedings are normally suspended during the course of ongoing criminal proceedings.

Reintegration of offenders is regulated through sections 49–57, 81–86, 88–91, 105 and 106 CC, the Act on Serving the Punishment of Imprisonment, the Decree on Imprisonment and

*the Act on Probation and Mediation Service. In October 2017, Czechia approved the concept of developing a probation and mediation project until 2025, aimed at better reintegration of convicted persons into society.*

*In determining the type and severity of the punishment, the courts of Czechia take into consideration factors including the defendant's level of cooperation with the authorities and the contribution to the clarification of a crime committed (sect. 39(1) CC), as well as mitigating and aggravating circumstances (sects. 41 and 42 CC). A cooperating accused (as defined in sect. 178a CCP) may be in certain circumstances given a mitigated punishment (sects. 39/3, 41/(l)(m) and 58 CC) or freed from any form of punishment (sect. 46 CC), provided that prescribed conditions are met (e.g., the crime committed is less serious than the crime to the clarification of which the accused contributed or the accused did not act as an organizer or an accessory (sect. 46 CC and sect. 178a CCP)). However, courts are not bound by agreements between prosecutors and cooperating defendants, which may weaken the concept. Plea bargaining is possible for less serious crimes (sects. 175a and 175b CCP). For certain crimes, including the promise of a bribe, the police or prosecutor may temporarily defer criminal prosecution for cooperating defendants (sect. 159c CCP).*

#### *Protection of witnesses and reporting persons (arts. 32 and 33)*

*The Act on the Special Protection of Witnesses and Other Persons in Connection with Criminal Proceedings (ASPW) provides for the protection of "endangered persons", and witnesses and experts are covered by the Act. Measures available include personal protection, relocation or concealment of identity (sect. 3). Relocation to other countries is possible on the basis of international treaties on police cooperation. In addition, the CCP includes several evidentiary rules aimed at protection of victims, witnesses and experts (sect. 55 on confidentiality and anonymity, sect. 183a on presenting evidence outside of courtroom or by means of videoconference). Victims have a right to make oral or written declarations at any stage of the criminal proceedings (sect. 43 CCP). The Act on Victims of the Crime regulates the rights of victims.*

*No special legislation is in place to protect reporting persons and Czechia referred to the provisions of the ASPW and anti-discrimination provisions of the Labour Code (sects. 16 and 17) as relevant. A new regulation was adopted in 2015, which, among others, stipulated that civil servants reporting a crime cannot be punished or discriminated and created a post of "investigators" within public bodies responsible for investigating claims received and advising reporting persons. The Labour Code provides for a general protection of employees that report wrongdoings (sect. 7).*

#### *Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

*The CC provides for both forfeiture of proceeds of crime and instrumentalities, including value-based (sects. 70 and 71) and non-conviction-based (sects. 101 and 102) confiscation.*

*Identification, tracing and freezing of assets are regulated (sects. 78–79g CCP).*

*Czechia has an asset management system in place through a dedicated Act on Seizure of Property and Assets in Criminal Proceedings (ASPACP). ASPACP provides for various categories of managers of seized property, including courts, the Office for Government Representation in Property Affairs and court-appointed bailiffs (sect. 9). Manager rights*

and obligations are set out (sects. 8a and 10). The sale of seized property in certain circumstances is allowed (sect. 12).

While the CC does not explicitly call for confiscation of proceeds of crime that are transformed, converted into or intermingled with other property, the authorities of Czechia reported that CC sections 70/2b and 101/2b would cover these proceeds, and provisions on value-based confiscation are also applicable. As for benefits derived from the crime, these are considered “the fruit” of or an “accessory” to a thing under the Civil Code (sects. 491 and 510–513) and as such would be liable to the same confiscation measures.

There is a general duty set out in the CCP to respond to information requests from law enforcement authorities (sect. 8), and institutions must provide them with financial or other requested records (sect. 8 CCP). The CC establishes as a crime a failure to report a criminal offence to relevant authorities (sect. 368).

The 2017 CC amendment has introduced the possibility of extended confiscation in case the person convicted for certain criminal offences cannot demonstrate the lawful origin of his property in situations where there is gross disproportion between the value of his property and his legal income (sect. 102(a)). However, the convicted person cannot be forced to do so and authorities must gather their own evidence (sect. 102a CC). The Civil Code protects the rights of bona fide third parties (sects. 1100 and 1109–1113).

The prosecutor or the presiding judge may request information that is subject to bank secrecy (sect. 8 CCP). As of January 2018, a new register of all bank accounts has been established.

#### Statute of limitations; criminal record (arts. 29 and 41)

The length of the statute of limitations for corruption offences varies between three and 15 years (sects. 34 and 35 CC). It starts to run from the moment when the effect of the offence occurred or upon the completion of the conduct (sect. 34/2). For accessories, it starts to run at the moment of completion of the act of the main offender (sect. 34/2). The statute of limitations can be suspended (sect. 34/4) or interrupted (sect. 34/3).

Previous criminal convictions, including those in other States, are considered an aggravating circumstance (sect. 42p CC). However, criminal convictions within the European Union have the same legal effect as national convictions (sect. 11, para. 2 CC).

#### Jurisdiction (art. 42)

The CC of Czechia establishes territorial jurisdiction (sect. 4), jurisdiction aboard the aircraft and ships of Czechia (sect. 5), passive personality jurisdiction (sect. 7/2) and active personality jurisdiction (sect. 6). Preparatory acts to money-laundering fall under the principle of territoriality (sect. 4/3). Czechia establishes jurisdiction over offences when the offender is present in its territory and it does not extradite him or her (sect. 8). In line with the regulations of the European Union, Czechia has a duty to consult with other European Union member States on ongoing investigations and prosecutions (sects. 257–260 of the Act on International Judicial Cooperation in Criminal Matters).

#### Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

*A juridical act is invalid if it is contrary to good morals or contrary to a statute (sect. 580 Civil Code). In addition, a contract can be annulled or rescinded or a remedial action can be taken if an act had involved corruption per section 588.*

*Compensation for damage can be claimed on the basis of the provisions of the Civil Code (sects. 2909–2910) and the Act on Responsibility for Damage Caused during Execution of Public Authority by Decision of Improper Execution of Official Duties. In addition, a civil action can directly be initiated within criminal proceedings (sects. 43–47 CCP).*

### *Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

*Police, prosecutor's offices and criminal courts are the main bodies involved in the fight against corruption. At the Supreme Public Prosecutor's Office (SPPO) a special Department of Serious Economic and Financial Crime was created. At the police level, a new nationwide National Organized Crime Agency has been established playing a key role, among others, in high-level corruption cases.*

*Law enforcement authorities are obliged to assist each other in the execution of tasks under the CCP (sect. 7). Public authorities are required to respond to the requests from the law enforcement authorities and are obliged to notify them of facts indicating that a criminal offence has been committed (sect. 8(1) CCP).*

*Special agreements exist between national authorities concerning cooperation and information-sharing relating to corruption.*

*A broad range of training and capacity-building activities are provided to practitioners involved in corruption cases. In addition, the extranet platform assists prosecutors by providing access to guidelines, previous cases and templates. The platform "electronic records of criminal proceedings" allows access to all case documentation for police officers and prosecutors. However, obstacles were reported in sharing information between agencies as well. For example, SPPO cannot access a database developed by the Office for the Protection of Competition of Czechia cost-free.*

*Financial institutions are required to report suspicious transactions to the Financial Analytical Unit. Section 368 CC provides for a general duty for anyone to report a crime committed that they have become aware of. The whistle-blower protection system of Czechia is decentralized and each public body establishes its own reporting lines and hotlines.*

## **2.2. Successes and good practices**

- *The provision in section 79g CC (seizure of equivalent value) (art. 31.2)*
- *The establishment of the national bank register (arts. 31.7 and 40)*
- *The introduction of extended confiscation procedure per section 102(a) of the Criminal Code can be regarded as a good practice conducive to the fight against corruption (art. 31.8)*
- *Provision of innovative and practical training activities, including case studies, to prosecutors and police officers (art. 36)*

- *Development of online platforms and databases (such as the extranet, ELVIZ or the “electronic criminal proceedings”) aimed at increasing knowledge and expertise of prosecutors and police officers (art. 36)*

### **2.3. Challenges in implementation**

*It is recommended that Czechia:*

- *Broaden the definition of public officials to cover persons who have ancillary and not necessarily only decision-making powers (arts. 2(a) and 15)*
- *Consider introducing a system through which public officials record gifts received (art. 15)*
- *Amend the active bribery provision to explicitly cover its indirect form (art. 15(a))*
- *Ensure that the definition of foreign public officials in section 334 CC covers also persons authorized by an international organization to act on its behalf (arts. 2(c) and 16)*
- *Remove the threshold of 5,000 Czech koruna in section 206 CC on embezzlement (art. 17)*
- *Consider explicitly covering the indirect form of trading in influence in section 333 CC (art. 18)*
- *Amend section 216 CC on money-laundering to explicitly and comprehensively cover all forms of money-laundering in order to ensure legal certainty (art. 23(1))*
- *Take measures to explicitly criminalize corrupt behaviour to induce false testimony or to interfere in the giving of testimony or the production of evidence (art. 25(a))*
- *Consider removing section 248/2 CC from the list of offences for which legal persons cannot be held liable (art. 26)*
- *Consider calculating the statute of limitations from the time of discovery of an offence (art. 29)*
- *Continue to ensure a balance between immunities of members of Parliament, senators and judges and the possibility of effectively investigating and prosecuting offences committed by them (art. 30(2))*
- *Continue to ensure that the discretionary legal powers relating to the prosecution of persons for the Convention offences are exercised in accordance with article 30(3)*
- *Given the lack of examples of implementation, continue to ensure that proceeds of crime that are transformed, converted into or intermingled with other property, as well as benefits derived from such proceeds of crime, are liable to the confiscation measures set out in the Criminal Code, including by considering more clearly regulating these elements in the Criminal Code (art. 31(4)–(6))*
- *Czechia may want to consider additionally providing measures protecting the rights of bona fide third parties in confiscation proceedings in relevant criminal legislation (art. 31(9))*

- *Continue the efforts to strengthen measures to provide protection of reporting persons against unjustified treatment and retaliation (art. 33)*
- *Ensure the prosecutorial independence, including through the adoption of clear rules on the removal of the Prosecutor General, and provide the prosecutor's offices with sufficient resources to carry out their tasks (art. 36)*
- *Consider providing additional resources for joint anti-corruption training activities of police officers and prosecutors (art. 36)*
- *Consider strengthening the protection of cooperating defendants and strengthen the measures allowing for mitigated punishment (art. 37)*
- *Consider entering into agreements or arrangements in accordance with article 37(5)*
- *Continue encouraging the cooperation between national authorities, including through removing obstacles to information-sharing (art. 38)*
- *Consider taking additional measures to encourage the reporting of corruption by citizens (art. 39(2))*

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

- *Sharing of good practices (art. 37)*

### **3. Chapter IV: international cooperation**

*Extradition and mutual legal assistance (MLA) in Czechia are mainly governed domestically by Act No. 104/2013, the provisions of the CCP apply mutatis mutandis to the provisions of the Act, where relevant issues are not addressed in the Act and where the application of CCP is not precluded by the Act (sect. 3).*

*The provisions of Chapter IV of the Convention can be applied directly by Czechia based on article 10 of the Constitution.*

*Czechia confirmed that it would use the Convention as a legal basis both for extradition, MLA and law enforcement cooperation, in the absence of a bilateral treaty.*

*Overall, Act No. 104/2013 provides a comprehensive regulation of extradition and MLA.*

#### **3.1. Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

*Act No. 104/2013 stipulates in section 90(1) that extradition is possible where the underlying conduct constitutes an offence under the law of Czechia with the upper limit of imprisonment of at least one year.*

*Czechia allows accessory extradition per section 90(3) of the Act subject to reciprocity.*

*It is not clear whether all the Convention offences are included in all the existing bilateral treaties of Czechia.*

*Section 91(1)(f) of Act. No. 104/2013 prohibits extradition "if the act, which the extradition is requested for, is of an exclusively political or military nature".*

*Czechia does not condition the provision of extradition on the existence of a bilateral treaty. In the absence of any other treaty basis for extradition, it would regard the Convention as a legal basis for cooperation.*

*Extradition requests are received by the Ministry of Justice (MOJ) that forwards them to the Public Prosecutor's Offices to perform preliminary investigation. The requests are then submitted to the regional courts for consideration of their admissibility. The decisions of the regional courts can be appealed. Once the court concludes that the request is admissible, it is submitted to the Minister of Justice who takes the final decision on the extradition.*

*Section 89(1)(c) of the Act states that the MOJ will refuse an extradition request before the initiation of preliminary investigation if the person concerned by the extradition may not be apprehended because of a privilege or immunity.*

*Simplified extradition is possible only where the person sought consents to be extradited per section 96 of the Act.*

*Preliminary custody of a person whose extradition is sought is possible under section 94 of the Act.*

*A citizen of Czechia cannot be extradited without his consent (sect. 91 of the Act). There are no specific provisions in the applicable legislation requiring the application of aut dedere aut judicare principle.*

*The Act provides detailed rules on the enforcement of foreign sentences in sections 118–135.*

*Generic fair treatment guarantees are contained in section 2 of CCP but not in the Act.*

*Article 44(15) is implemented in section 91.1(p) of the Act.*

*Extradition shall be refused if a fiscal matter is involved per section 91.1(g) of the Act. However, in cases based on the Convention, the provisions of article 44(16) will apply directly and will pre-empt the application of section 91.1(g).*

*Per sections 9 and 98 of the Act, the authorities of Czechia would request the requesting State to provide additional information. However, there are no requirements to consult with the requesting State to provide it with ample opportunity to present its opinions before refusing extradition.*

*Czechia participates in a significant number of multilateral and bilateral instruments on extradition.*

*Sections 137 and 138 of the Act provide a legal framework for the transfer of sentenced persons. Czechia also concluded corresponding agreements with a number of jurisdictions.*

*The Act provides a detailed procedure for transferring of legal proceedings in its sections 105, 106, 112 and 113.*

#### *Mutual legal assistance (art. 46)*

*Czechia indicated that it would be willing to provide the widest measure of mutual legal assistance to other States parties of the Convention. Incoming requests are processed within 2 to 5 months. Czechia also developed comprehensive internal instructions and guidelines for the prosecutors and judges on MLA process.*

*There are no legal impediments to the provision of MLA in relation to the offences for which a legal person may be held liable.*

*Czechia indicated that it could provide all types of legal assistance, including those listed in subparagraphs 3 (a)–(i) of article 46 of the Convention, based on section 47(1) of the Act under the condition that there are corresponding criminal proceedings being conducted in the foreign State and only for the purposes of these proceedings.*

*The assistance regarding the freezing of assets is regulated in sections 78–79g CCP.*

*The reviewing experts pointed out that section 135 of the Act authorizes only sharing of confiscated property, while the Convention in its chapter V requires the return of assets. However, the authorities noted that based on section 135 the full return to the requested State is also possible.*

*Specific legislative provisions on proactive sharing of information are contained in section 56 of the Act.*

*Czechia maintains the confidentiality of information obtained in the context of MLA based on sections 6(1) and 6(2) of the Act and sections 8a–8d of CCP.*

*Grounds for refusal of MLA are stipulated in sections 5, 47 and 54 of the Act and do not include bank secrecy.*

*Dual criminality is required only for the provision of coercive measures (sect. 47(2) of the Act).*

*The legislative basis for temporary surrender is provided for in sections 69 and 70 of the Act, though the requirements of article 46(12) are not addressed.*

*Czechia has two central authorities for receiving MLA requests. The Supreme Public Prosecutor's Office, based in Brno, is the central authority for the requests relevant to legal assistance in the pretrial period, and the MOJ, based in Prague, is the central authority for requests relevant to legal assistance during a trial period.*

*The requests need to be submitted in written form in Czech, English or French, but can be also made orally in urgent cases.*

*The requirements to the content of requests are listed in section 41 of the Act.*

*Section 58 of the Act provides a detailed regulation on hearing by a videoconference in the context of MLA.*

*The principle of speciality of the use of information and evidence obtained in the context of MLA is provided in section 7 of the Act.*

*The conditions for the refusal of MLA are stipulated in sections 5 and 54 of the Act. Section 54(1)(c) states that the execution of legal assistance can be also prevented by another serious reason without further explanation.*

*Section 53 of the Act stipulates that the execution of MLA may be suspended if its execution is temporarily impossible with regard to specific circumstances of the case. The reviewing experts particularly noted that this condition would benefit from further clarification.*

*There are no requirements to consult when considering whether assistance may be granted subject to other terms in the Act.*

*Section 44 of the Act provides certain guarantees of safe conduct to a witness, expert or other person for the purposes of article 46(27). However, the given guarantees may be interpreted as*

*narrower than the requirements of the Convention. For example, incarceration of such a person is permissible if he fails to appear at the procedural action for which he was summoned (sect. 44(2)(d) of the Act).*

*The ordinary costs of executing a request shall be borne by Czechia (sect. 11 of the Act).*

*The conditions on the provision of information as stipulated in article 46(29) of the Convention are not specifically regulated in the Act, though they can be provided based on other legal acts.*

*Czechia participates in many multilateral and bilateral instruments on MLA.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

*Czechia participates in a number of law enforcement, asset recovery and financial intelligence networks including the European Police Office (Europol), the Camden Asset Recovery Inter-Agency Network, the European Partners Against Corruption, the global asset recovery focal points network of the Stolen Asset Recovery (StAR) Initiative and the International Criminal Police Organization (INTERPOL), and the Egmont Group of Financial Intelligence Units. Within the European Union, the law enforcement agencies of Czechia cooperate through the European Anti-Fraud Office.*

*Czechia has extensive experience of using joint investigative teams, including for investigation of corruption offences. The activities of the teams are supervised by the Supreme Prosecutor's Office and are addressed in detail in sections 71–73 of Act No. 104/2013.*

*Provisions on the use of special investigative techniques are contained in section 65 of Act No. 104/2013, sections 86–88 and 158 of CCP. Section 158b (3) CCP stipulates that audio, video and other records obtained from special investigative techniques may be used as evidence. Czechia would be ready to conclude arrangements on the use of special investigative techniques internationally with other States parties when necessary and as part of the MLA process.*

### **3.2. Successes and good practices**

- *The possibility of enforcement of foreign sentences per the relevant procedures in sections 118–135 of Act No. 104/2013 (art. 44.13)*
- *Internal instructions and guidelines on MLA issued by the Supreme Prosecutor's Office and Ministry of Justice (art. 46)*
- *Specific legislative provision on proactive sharing of information contained in section 56 of Act No. 104/2013 (art. 46.4)*
- *The detailed regulation of the hearing by videoconference in section 58 of Act No. 104/2013 (art. 46.18)*
- *The detailed regulation of transfer of criminal proceedings in Act No. 104/2013 (art. 47)*
- *Active cooperation with law enforcement agencies of other States, including via membership in various practitioner networks (art. 48)*
- *The detailed regulation of joint investigations in sections 71–73 of Act No. 104/2013 (art. 49)*

### **3.3.Challenges in implementation**

*It is recommended that Czechia:*

- *Fully criminalizes all the mandatory offences under the Convention and considers criminalizing other offences to satisfy the dual criminality requirement applicable per article 90(1) of Act No. 104/2013 (art. 44 (1–2))*
- *Ensures that the Convention offences are not considered or identified as political and are included as extraditable offences in its extradition treaties with other States parties (art. 44(4))*
- *Takes into account the purposes of the Convention as stipulated in its article 1, and the requirements of paragraph 2 of article 30 of the Convention, when considering the application of section 89(1)(a) of Act No. 104/2013 to the requests based on the Convention (art. 44(8))*
- *Endeavours to further expedite extradition procedures and to simplify evidentiary requirements related in respect of any Convention offence (art. 44(9))*
- *Ensures that whenever a person sought in respect of a Convention offence is not extradited to another State party solely on the ground of his or her being a national of Czechia, the case is submitted to prosecution in line with article 44(11) of the Convention, including by considering the adoption of corresponding amendments to Act No. 104/2013*
- *May want to consider to specifically provide for fair treatment guarantees in Act No. 104/2013 (art. 44(14))*
- *Considers specifically stipulating in Act No. 104/2013 that extradition may not be refused when the underlying offence is a Convention offence involving fiscal matters (art. 44(16))*
- *Considers specifically stipulating in Act No. 104/2013 the requirements of paragraph 17 of article 44 of the Convention*
- *Ensures the full implementation of the requirements of Chapter V, while dealing with the recovery of assets based on the Convention (art. 46(3)(k))*
- *Specifically incorporates the requirements stipulated in art. 46 (12), (26) and (29) in its domestic legislation and ensures that they are followed in MLA processes with other States parties based on the Convention*
- *Explores the possibility of relaxing the strict application of the double criminality requirement in cases of offences covered by the Convention (art. 46(9))*
- *Ensures that the refusal of MLA requests of other States parties can be made in compliance with the requirements of article 46(21) of the Convention*
- *Ensures that the requirements of paragraph 24 of article 46 are followed in MLA processes with other States parties based on the Convention*
- *Ensures that the requirements of paragraphs 25 and 27 of article 46 are followed in MLA processes with other States parties based on the Convention.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

The Czech Republic signed the Convention on 22 April 2005 and after the Parliament gave its consent, the President of the Republic ratified the Convention on 12 November 2013. The Czech Republic deposited its instrument of ratification with the Secretary-General of the United Nations on 29 November 2013.

The Convention and the Czech Republic's legal system

Article 10 of the Constitution states that generally accepted rules of international law and international conventions when they have been ratified by an act and have come into effect shall form an integral part of the Czech Republic's domestic law and shall override any other contrary provision of domestic law.

Accordingly, the UN Convention against Corruption has become an integral part of the Czech Republic's domestic law following the ratification of the Convention by the President of the Republic on 12 November 2013, and entry into force on 29 December 2013 in accordance with Article 68 of the Convention.

### **B. Legal system of the Czech Republic**

The Czech Republic is a parliamentary republic with a multi-party system. Parliament is bicameral, composed of the Chamber of Deputies and the Senate. The 200 members of the Chamber of Deputies are elected in 14 constituencies for a four-year term by proportional representation. The election threshold for the Chamber of Deputies is five percent. Participation in the elections for the Chamber of Deputies is the exclusive competence of political parties and movements, and coalitions thereof. Electoral lists are open: voters have four preferential votes and can thus change the order on the list. The 81 members of the Senate are elected for a six-year term, with one-third elected every second (even) year, in single-seat constituencies through a two rounds majority system. Participation in the elections for the Senate is open to political parties and movements and coalitions thereof, as well as independent candidates.

The President of the Czech Republic is directly elected by the people (the Constitution has been amended in 2012 and first direct presidential elections took place in January 2013, second in January 2018).

The executive power is exercised by the Government, led by the Prime Minister (Head of Government). The Government is accountable to the Chamber of Deputies and must have the support of its majority.

The Constitution and other relevant laws determine the competences of the state and the local authorities.

The laws relevant to the implementation of the Convention include Constitutional Act no. 1/1993 Coll., the Constitution of the Czech Republic Constitutional Act no.2/1993 Coll., the

Charter of Fundamental Rights and Freedoms Act no. 40/2009 Coll., Criminal Code, Act no. 141/1961 Coll., Code of Criminal Procedure, Act no. 418/2011, on Criminal Liability of Legal Persons and Proceedings against them, Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, etc.

The Czech Republic is a member state of the Council of Europe's Group of States against Corruption (GRECO) from 2002 and a member state of the Working Group on Bribery of the OECD from 2000. Within these organizations the Czech Republic has been regularly evaluated all evaluation reports are available on the websites of these organizations: [www.coe.int/t/dghl/monitoring/greco/evaluations/index\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp) and [www.oecd.org/daf/anti-bribery/czechrepublic-oecdanti-briberyconvention.htm](http://www.oecd.org/daf/anti-bribery/czechrepublic-oecdanti-briberyconvention.htm).

As a member of the European Union, the Czech Republic has also been included in the EU Anti-Corruption Report in 2014 -[http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf).

## **C. Implementation of selected articles**

### **Chapter III. Criminalization and law enforcement**

#### **Article 15 Bribery of national public officials**

##### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Criminal Code of the Czech Republic**

##### **Section 332**

##### **Bribery**

(1) Whoever provides, offers, or promises a bribe to another person or for another person in relation to procuring matters of general interest, or whoever provides, offers, or promises a bribe to another person or for another person in relation to conducting own business or business of another, shall be punished by a prison sentence of up to two years or a monetary penalty.

(2) An offender shall be punished by a prison sentence of one to six years, a monetary penalty, or forfeiture of property, if:

*a) they committed an act referred to in Subsection 1 with the intention of gaining a substantial*

*benefit for themselves or another person or to cause a substantial damage to another person or another particularly serious consequence, or*  
*b) if they committed such an act against an official person.*

## **Section 334**

### **Common Provisions**

(1) A bribe means an unauthorized advantage of direct asset enrichment or other benefits that the bribed person is to receive or with their consent give to another person and to which they are otherwise not entitled.

(2) An official person, under Section 331 through 333 in addition to those referred to in Section 127 also means any person

*a) holding an office at the legislative authority, judicial authority, or another public authority of a foreign State,*

*b) holding an office or employed or working at an international judicial body,*

*c) holding an office or employed or working at an international or multinational organization established by the State or other subjects of international public law or within their body or institution, or*

*d) holding an office at an enterprising legal entity in which the Czech Republic or a foreign State has the decisive influence,*

if the performance of such functions, employment, or work is in connection with the powers in the procurement of goods of general interest, and the criminal offence was committed in connection with such powers.

(3) The procurement of goods of general interest also means maintaining an obligation imposed by a legal regulation or assumed by contract, the purpose of which is to ensure that the damage or unreasonable preference of the parties in business relationships or persons acting on their behalf are avoided in such relationships.

## **Section 127**

### **Official Person**

(1) An official person is

*a) the judge,*

*b) the public prosecutor,*

*c) the President of the Czech Republic, Senator or Member of Parliament of the Czech Republic, a member of the Government of the Czech Republic, or another person holding office in another public authority,*

*d) a council member or a responsible official of the local government, public authority, or other public authority,*

*e) a member of the armed forces or security forces, or police officer,*

*f) a court bailiff in the execution of enforcement activities and the activities carried out under the authority of the court or the public prosecutor,*

*g) the notary in carrying out actions in the probate proceedings as a court commissioner,*

*h) a financial arbiter and their deputy,*

*i) a natural person, who was appointed as forest guard, nature guard, hunting or fishing guard, if they perform tasks of the State or society while using competencies delegated for the implementation of such tasks.*

(2) The criminal liability and protection of public officers requires, under individual provisions of the Penal Code, the commission of a criminal offence in connection with their competencies and liabilities.

(3) An official person of a foreign State or an international organisation is under the terms set out in Subsection 1 and 2 deemed to be a public officer under the Penal Code, unless an international treaty stipulates otherwise or if they operate in the territory of the Czech Republic with the consent of the authorities of the Czech Republic; such consent is not required if it concerns an official of the International Criminal Court, International Criminal Tribunal or similar international judicial authority that meets at least one of the conditions stated in Section 145 Subsection 1 Paragraph a) of the Act on International Judicial Cooperation in Criminal Matters.

Section 332 criminalizes active bribery in connection with ‘procuring matters of general interest’ or ‘business activities’, and as such covers both public and private sector. The involvement of a public official, as defined in sections 127 and 334, constitutes an aggravated circumstance.

The Czech Republic provided examples of cases:

**Court judgment (Rt) 5 Tdo 1127/2014:**

The offer of a bribe within the meaning of a misdemeanour of bribery pursuant to Section 332 of the Criminal Code shall be any form of unjustified financial enrichment regardless of whether or not it has been specified by the perpetrator.

Examples of the Supreme Court’s judgments on the interpretation of the term ‘public official’ include:

8 Tdo 1092/2012-26

A social worker of a children’s social legal protection body is an official person within the meaning of Section 127(1) d) of the Criminal Code since, as a responsible territorial self-administration body officer performing state administration under delegated authority, he/she fulfills tasks for the society and the state and, in doing so, uses the powers directly entrusted to him/her pursuant to Act No. 359/1999 Coll., on Social Legal Protection of Children.

8 Tdo 197/2013-46

A probation officer performing supervision over a convict within the meaning of Sections 49 to 51 of the Criminal Code holds the position of an official person pursuant to Section 127(1) d) of the Criminal Code since, as an employee of the Probation and Mediation Service, he/she serves as a responsible officer of a public body, in particular, in the implementation of the service of a sentence imposed by courts within criminal proceedings.

6 Tdo 675/2014

Not only ancillary manual works or works of a technical organizational nature may be considered as the pursuit of tasks for the state or the society within the meaning of Section 127(1) i) of the Criminal Code. The thing is that the pursuit of a function performing tasks for the state or the society assumes a high level of self-reliance in the fulfilment of these tasks, as well as appropriate professional qualifications, with increased requirements for the compliance with ethical principles. Therefore, an official person’s position may be deduced only from the nature of the performed activity (for example, a prison instructor).

The following Supreme Court’s findings relate to the interpretation of the notion ‘procurement of matters of general interest’. The general interest needs to be interpreted in view of whether the provided favour/service is of a purely private nature (for example, someone “bribes” another

to expeditiously arrive to help with moving or to sell him/her his/her bike, which is not covered by the bribery provision) or whether the provided favour/service affects a broader circle of persons, that is, interests of a broader social group or the whole society, which is covered by the bribery provision.

The activity of a bank sector worker charged with handling loans, i.e., preparing documents, including the recommendation for concluding loan contracts needs to be considered as the procurement of general interest matters within the meaning of Section 160(1) of the Criminal Code. In fact, it concerns an activity relating to the satisfaction of interests of citizens and legal entities in the sphere of material needs and lying in the fulfilment of tasks in the proper and impartial fulfilment of which the whole society is interested (**Decision No. 20/1998 of the Collection of Decisions and Sentences [D&S Collection]**).

Since the accused solicited, within his part-time job as a grave digger for municipal technical services, various financial amounts from citizens for digging up graves although he was duly paid wage by the employer, he met the factual elements of a crime of bribery pursuant to Section 160(2) of the Criminal Code rather than a crime of consumer induced damage pursuant to Section 121 of the Criminal Code (**Decision No. 32/1990-I of the D&S Collection**).

The decision-making on medical care acts constitutes the procurement of general interest matters; however, a physician does not perform any public official power through such acts. Such decision-making also includes a decision to operate and hospitalize a patient in the hospital ward managed by the physician – superintendent – or the physician's decision to carry out an operation himself/herself. If he/she accepts a bribe for this decision, he/she may be charged with a crime of acceptance of a bribe as per Section 160(1) of the Criminal Code; however, he/she shall not meet the factual elements of Section 160(3) of the Criminal Code. In such a case, it is irrelevant whether the patient needs to be found incapable of working as a consequence of the implemented operation and the hospitalization (**Decision No. 13/1990-II of the D&S Collection**).

If the Chairman of the consultative committee of the social security office of the regional (district) national committee accepts a bribe in awarding spy treatment vouchers, he/she commits a crime of acceptance of a bribe as per Section 160 (1) and (3) of the Criminal Code. The person who has provided the bribe has committed a crime of bribery as per Section 161 (1) and (2) of the Criminal Code (**Decision No. 43/1987-II of the D&S Collection**).

The procurement of general interest matters shall include not only the decision-making of public (administration) bodies but also other activities in the satisfaction of citizens' and legal entities' interests in the sphere of material, social, cultural or other needs (**Decision No. 16/1988 of the D&S Collection, page 76**).

If a worker in a restaurant, whose obligation is to ensure proper operation of the restaurant, that is, to serve general interest, accepts or asks for a bribe to allow another to operate a party game in the restaurant (for example, cards), he/she meets the factual elements of a crime of acceptance of a bribe pursuant to Section 160(1) or Section 160(2) of the Criminal Code. If the players of such game provide the restaurant employee with a bribe for being allowed to operate the game in the restaurant, they meet the factual elements of a crime of bribery as per Section 161(1) of the Criminal Code (**Decision No. 13/1887 of the D&D Collection**).

The determination of the Chairman of the administrative consultative committee of the district national committee of a particular date of commencement of the awarded spy treatment shall constitute the procurement of a matter of general interest. The fact that the value of the bribe is low (2 foreign soaps and 10 Canadian dollars) and that the bribe is provided and accepted to cause the spy treatment to commence on the dates which spy treatment participants are not much interested in needs to be considered in relation to other circumstances co-determining the level of dangerousness of such act for the society (**Decision No. 11/1985 of the D&S Collection**).

The procurement of a general interest matter shall include not only the decision-making, but also other activities directly related to the fulfilment of tasks relating to general interest matters, such as the preparation of documents for the issuance of a decision – for the conclusion of a contract in the given case - etc. The relation between the acceptance of a bribe and the procurement of a general interest matter shall exist provided that the bribe relates to an activity falling within the procurement of the general interest matter (**Decision No. 1/1978 of the D&S Collection**).

Based on these deliberations and legal conclusions, the Supreme Court found that football matches needed to be perceived as matters of the whole society and, thus, with regard to the role played by football and football matches in a major part of the society, it was necessary to ensure their correct and proper operation in order to avoid the intentional influencing and manipulation of results of matches, in particular, of the prime competitions in which many entities for which influenced results could constitute adverse financial impacts were economically interested. The activity of persons moving in the football environment and knowingly influencing match results would need to be considered as activity serving “general interest” within the meaning of Sections 160 and 161 of the Criminal Code (now Sections 331 and 332 of the Criminal Code) and such conduct would need to be considered as a business activity within the meaning of Article 7 of the Criminal Convention (**Resolution of the Supreme Court No. 7 Tdo 932/2009 of 14 October 2009; www.nsoud.cz**).

If society tolerated the influencing of football matches by offering bribes to referees and the results did not depend on the skills of players, the stated sporting activity would be negated completely. Concurrently, it needs to be emphasized that organized performance-based sport, including football, is undoubtedly significant to a major part of people in the society, whether they concern sportsmen themselves, sports officials, or the large number of sports fans. Legal entities (state, sports clubs, municipalities, etc.) and individual natural persons spend a huge amount of money on sports. Sports matches are often the subjects of commercial utilization, for example, payment of entry fees, sports broadcasting through television or radio, advertising purposes, operation of betting offices, etc. (**Resolution of the Supreme Court No. 6 Tdo 1297/2007 of 29 November 2007; www.nsoud.cz**).

The anti-bribery legislation needs to be considered pursuant to Division Three of Chapter II of the special part of the Criminal Code as a whole. The Criminal Code regulates both the acceptance of a bribe and bribery. The procurement of general interest matters is the basic prerequisite for meeting the factual elements of these crimes. However, the claimant goes even further in its argumentation aimed at quashing the contested provision and claims that, in his/her entrepreneurial activity performed on the basis of a business licence and the concluded business contract, an entrepreneur cannot procure “general interest” matters at all, by which the claimant separates the private and the public aspects into two isolated spheres and omits the fact that the

Code does not restrict a bribe only to the direct procurement of general interest matters, but relates this concept to activities carried out in connection to the procurement of a general interest matter (**Award of the Constitutional Court No. 123/12 of the Collection of Awards and Resolutions, file number Pl. 6/1998, of 14 October 2008**).

With regard to the issue of gifts to public officials and when those are acceptable, the policy for accepting gifts is set in Section 77 (1) j) of the Civil Service Act that stipulates that a civil servant is forbidden to accept gifts in relation to the performance of his/her duties that surpass the limit of 300 CZK (approx. 12 EUR) with the exception of the gifts from his/her employer.

## **Civil Service Act**

### **Duties of Civil Servants**

#### **Article 77**

- (1) A civil servant shall have the duty to:
- a) Remain loyal to the Czech Republic when serving,
  - b) Serve impartially, act within the limits of their authority, and while serving refrain from anything that could undermine the trust in their impartiality,
  - c) When serving, observe the laws and bylaws governing the service, service instructions and service orders,
  - d) Perform service tasks personally, dutifully and timely,
  - e) Increase their qualifications as required by the service body,
  - f) Keep service discipline,
  - g) Provide information about the activities of the service authority pursuant to the Freedom of Information Act, if it is included in their service task,
  - h) Keep confidential any facts they learned during their service, and which, in the interest of the service authority, cannot be disclosed to other parties, this shall not apply is a civil servant released from this duty. The duty of confidentiality which arises to the civil servant from another law shall not be prejudiced,
  - i) Refrain from any actions that could lead to a conflict of public interest with personal interests, in particular not to use insider information for their own benefit or for the benefit of another person, and not to abuse their civil service position,
  - j) In connection with their service, refrain from accepting gifts or other benefits in a value exceeding CZK 300, with the exception of gifts or benefits provided by the service body,
  - k) Notify the service body of any criminal proceedings led against him, detailing the facts of it,
  - l) Represent a senior civil servant or a civil servant in a service post assigned to a higher pay grade,
  - m) Serve on a recruitment committee, examination committee, at an arbitration proceedings, on a disciplinary committee and in other bodies established by the service body pursuant to the service instruction,
  - n) Observe rules of decency with respect to the senior civil servant, other civil servants and employees in an administrative authority and on official business,
  - o) Make full use of the working time for serving,
  - p) Duly manage the funds entrusted to him by the service authority, guard and protect property put in their charge from damage, loss, destruction or unauthorised use,
  - q) When serving from a different service post, serve only in the post agreed in the agreement on service from another post, and observe the terms of this agreement,
  - r) When dealing in official capacity in person or in writing with natural or legal persons, to

- disclose their first name or names, last name, service rank and the name of the organisation unit of the service authority to which they are assigned for service,
- s) Serve to avert a natural disaster or another impending danger, or in mitigation of any immediate consequences of such events,
  - t) Observe rules of ethical conduct for civil servants as laid down in a service instruction.

(2) A civil servant is bound by duties pursuant to (1)(a) and (h)-(k) above also when not serving.

(3) Faith, religion or political or other beliefs of a civil servant must not stand in the way of their dutiful and impartial service.

(4) The service body may release a civil servant from their duty to keep service matters confidential; the Head of the service authority may be released from this duty by the Head of a supervising service authority. Should the service authority not have a supervising service authority, the Head of the service authority may be released from the duty of confidentiality by the Deputy for the Civil Service.

(5) The Deputy for the Civil Service may be released from their duty to keep service matters confidential by the Government or the Minister of the Interior acting on a mandate from the Government.

(6) Other laws setting forth the duty of confidentiality shall not be prejudiced by (4) and (5) above.

Further rules are set in Regulation of Deputy Minister of the Interior for the Civil Service No. 13/2015 on Code of Conduct of Civil Servants that in Article 9 in Paragraphs 2, 3, 4 and 5 stipulates that solicitation of gifts and accepting gifts capable of influencing the performance of duties is prohibited. It also enumerates in which cases the goods and advantages are not considered gifts (e.g. cases of common social courtesy, official gifts or small promotional items).

## **Regulation of the Director General for the Civil Service on the Code of Ethics for Civil Servants**

### **Article 9 Corruption**

(1) State employees shall prevent the risk of corruption and fraud and undesirable external influences capable of jeopardizing the due performance of their office. They shall also avoid the development of relationships and the occurrence of situations in which they would be or could feel to be bound to pay back gifts, benefits or other performance (“gifts”) they have been provided with.

(2) State employees shall not be allowed to solicit gifts for themselves or another person in relation to the performance of their service.

(3) State employees shall not be allowed, in relation to the performance of their service, to accept any gifts capable of influencing the due performance of their service. They shall not be allowed to accept gifts not capable of influencing the due performance of their service either if their value exceeds CZK 300, including those repeated low-value gifts from an identical donor or in an identical matter within a short period of time the total value of which exceeds CZK 300. State employees shall make a record on the offer of such gifts, in which they shall

state the donor's name, surname and signature, a description of the gift, the reason for which the gift has been offered, and the reason why he has not accepted it.

(4) State employees shall make a record on the acceptance of a gift which relates to the performance of their office and is not capable of influencing the due performance of their service. The record shall state the donor's name and surname, a description of the gift, and the reason why the gift has been accepted.

(5) Performance provided out of a mere social favour or at social or protocolar events shall not be considered as gifts if commensurate as for their purpose and value. Low-value promotional and advertising items shall not be considered as gifts either.

(6) If a state employee expects to lead dealings facing a risk of corruption or fraud or showing lobbying elements, he/she shall lead such dealings in the presence of another employee and shall make a record on such dealings, stating the names and surnames of the other present persons, a description and the purpose of the dealings, and, possibly, the reason for which there is a risk of corruption or fraud.

(7) The state employee shall hand over the records stated in paragraphs 3, 4 and 6 to his/her superior, who shall assess them and, should he find that the donor's conduct could constitute a crime, shall report this fact to the investigative, prosecuting and adjudicating bodies. The state employee's handover of the record to his/her superior shall not release him/her from the obligations ensuing from criminal laws.

(8) The rights and the obligations ensuing from the laws regulating the reporting of a suspected illegal action in the performance of an official service shall not be affected by these official regulations.

There is also a more benevolent regulation in relation to official gifts in diplomatic contact that is stipulated in Section 48 Paragraph 2 of the Foreign Service Act.

## **Foreign Service Act**

### **Section 48 Rights**

(1) The rights of the diplomatic, administrative or technical officer include, but are not limited to, the right

(a) to be accompanied by family members when posted abroad, unless the state secretary of the ministry decides that the presence of family members is not possible due to the security situation in the receiving State,

(b) to be repatriated when their lives or health, or the lives or health of their family members, are at risk due to a crisis situation in the receiving State.

(2) A diplomatic officer shall have the right to accept, in relation to the performance of foreign service, gifts and other benefits over and above the maximum value set in the Civil Service Act, provided that such practice is consistent with the customary rules of protocol; the state secretary of the ministry shall issue a service regulation to lay down the rules on treatment of such gifts and benefits.

### **(b) Observations on the implementation of the article**

Section 332 of the Criminal Code criminalizes active bribery in connection with 'procuring matters of general interest' or 'business activities', and as such covers both public and private

sector. The involvement of a public official, as defined in sections 127 and 334, constitutes an aggravating circumstance. While the definition is broad, certain positions within the public sector (e.g. secretaries, interns, spokespersons) are not covered. While this may not be problematic in practice for bribery, it may be an issue with other corruption offences, such as abuse of functions, that only concern public officials. Such person may however be punishable as a participant pursuant to Section 24 CC (organizer, instigator or assistant) to corruption offences in question. Criminal liability and criminality of an act of a participant will be governed by provisions on criminal liability of an offender and criminality of the main offence.

It is recommended that Czechia broaden the definition of public officials to cover persons who have ancillary and not necessarily only decision-making powers.

The elements of ‘promise’, ‘offer’, ‘giving’, ‘solicitation’ and ‘acceptance’ are covered. Para 1 s. 334 CC refers to ‘bribe’ and defines it broadly as an undue advantage covering both material and immaterial advantages.

Small gifts (less than 300 CZK, i.e. approx. 14 USD) and courtesy gifts are acceptable (s. 77/j Civil Service Act).

However, where such gifts are given with the intent of *of procuring matters of general interest, or in relation to conducting own business*, they are viewed as bribes.

It is recommended that Czechia consider introducing a system through which public officials record gifts received.

While third-party beneficiaries are explicitly covered by the active bribery provision, the indirect bribery is not explicitly included. However, at the time of review, Czechia was in the process of amending s. 332 to rectify this and explicitly include ‘by themselves or through another person’ into the provision. Under current legislation, active bribery through intermediaries is indirectly covered by the phrase “to another person or for another person”: if the bribe is for someone else, it will have been provided indirectly. In this sense, reference can be made to the commentary to the Criminal Code: “A person, to whom the bribe is provided, offered or promised, may be the person providing things in the public interest or an intermediary between the offender and such a person. Similarly, this applies to the provision, offer or promise of a bribe in connection with his/her someone else’s business activities”.

Both acts and omissions are covered (sections 112 and 332).

It is also recommended that Czechia amend the active bribery provision to explicitly cover its indirect form.

## **Article 15 Bribery of national public officials**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code of the Czech Republic**

**Section 331**

**Accepting Bribes**

(1) A person who themselves or through another person, in relation of procuring matters of general interest for themselves or for another person, accepts or accepts the promise of a bribe, or whoever themselves or through another person, in relation to conducting own business or business of another, accepts or accepts the promise of a bribe, shall be punished by a prison sentence of up to four years or punishment by disqualification.

(2) Whoever, under the circumstances referred to in Subsection 1 requests a bribe shall be punished by a prison sentence of six months to five years.

(3) An offender shall be punished by a prison sentence of three to ten years or forfeiture of property, if

a) they committed an act referred to in Subsection 1 or 2 with the intention of procuring a substantial benefit for themselves or someone else, or

b) they committed such an act as an official person.

(4) An offender shall be punished by a prison sentence of five to twelve years, if,

*a) they committed an act referred to in Subsection 1 or 2 with the intention of procuring another large-scale benefit for themselves or someone else, or*

*b) they committed such an act as an official person with the intention of procuring a substantial benefit for themselves or another person.*

The Czech Republic provided examples of cases:

**Court judgment (Rt) 11 Tz 3/83:**

The expression ‘is soliciting a bribe’ does not require the perpetrator to solicit a bribe explicitly. Any form of conduct insinuating that the perpetrator expects and wants a bribe shall be sufficient.

**Court judgment (Rt) 6 Tdo 1409/2014:**

The arrangement of a matter of a general interest shall mean activity relating to the fulfilment of tasks associated with matters of a general interest, that is, not only public power and administration bodies’ decision-making but also another activity associated with satisfying individuals’ and legal entities’ interests in the sphere of material, social, cultural and other needs. Therefore, it concerns the fulfilment of all tasks in the due and impartial fulfilment of which the whole society or a certain social group is interested. A bribe shall mean an illegitimate benefit which lies in direct property enrichment or another advantage which is received or shall be received by the person accepting such bribe or another person with his consent and to which such person is not entitled. It usually concerns a benefit for the person accepting a bribe or another person with his consent, lying, in particular, in direct property benefit, for example, financial or material. In terms of this element, the value of the bribe is not decisive. Official

persons shall be those named in the laws, fulfilling the state's tasks and using the powers entrusted to them to fulfil such tasks.

**(b) Observations on the implementation of the article**

Sections 331 of the Criminal Code criminalize passive bribery in connection with 'procuring matters of general interest' or 'business activities', and as such cover both public and private sector. The involvement of a public official, as defined in sections 127 and 334, constitutes an aggravating circumstance. While the definition is broad, certain positions within the public sector (e.g. secretaries, interns, spokespersons) are not covered. While this may not be problematic in practice for bribery, it may be an issue with other corruption offences, such as abuse of functions, that only concern public officials. Such person may, however, be punishable as a participant pursuant to Section 24 CC (organizer, instigator or assistant) to corruption offences in question. Criminal liability and criminality of an act of a participant will be governed by provisions on criminal liability of an offender and criminality of the main offence.

The elements of 'solicitation' and 'acceptance' are covered. Paragraph 1, section 334 of the Criminal Code refers to 'bribe' and defines it broadly as an undue advantage covering both material and immaterial advantages.

Small gifts (less than 300 CZK, i.e. approx. 14 USD) and courtesy gifts are acceptable (s. 77/j Civil Service Act).

However, where such gifts are given with the intent of *of procuring matters of general interest, or in relation to conducting own business*, they are viewed as bribes.

It is recommended that Czechia consider introducing a system through which public officials record gifts received.

Both third-party beneficiaries and the indirect bribery are explicitly covered by the provision on passive bribery.

Both acts and omissions are covered (s. 112 and 331 CC).

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

Please see measures under the subparagraph (a) of article 15 above (Section 332 of the Criminal Code).

## **Criminal Code of the Czech Republic**

### **Section 334**

#### **Common Provisions**

(1) A bribe means an unauthorized advantage of direct asset enrichment or other benefits that the bribed person is to receive or with their consent give to another person and to which they are otherwise not entitled.

(2) An official person, under Section 331 through 333 in addition to those referred to in Section 127 also means any person

*a) holding an office at the legislative authority, judicial authority, or another public authority of a foreign State,*

*b) holding an office or employed or working at an international judicial body,*

*c) holding an office or employed or working at an international or multinational organization established by the State or other subjects of international public law or within their body or institution, or*

*d) holding an office at an enterprising legal entity in which the Czech Republic or a foreign State has the decisive influence,*

if the performance of such functions, employment, or work is in connection with the powers in the procurement of goods of general interest, and the criminal offence was committed in connection with such powers.

(3) The procurement of goods of general interest also means maintaining an obligation imposed by a legal regulation or assumed by contract, the purpose of which is to ensure that the damage or unreasonable preference of the parties in business relationships or persons acting on their behalf are avoided in such relationships.

The Czech Republic provided examples of cases:

#### **Court judgment (Rt) 7 Tdo 311/2013:**

The arrangement of matters of a general nature within the meaning of a crime of bribery pursuant to Sections 332 and 334(3) of the Criminal Code shall also apply to business relationships as far as the contractually assumed or legally imposed obligation has to be observed and illegal damages or illegitimate benefits for the parties to these relationships or the persons acting on their behalf have to be avoided.

#### **(b) Observations on the implementation of the article**

Bribery provisions (s. 331 and 332 CC) are applicable to foreign public officials and officials of international organizations (s. 334), and as such, Czechia referred to its response under article 15 paragraph a) on active bribery.

Article 2 paragraph c of the Convention states that an official of a public international organization shall mean an international civil servant or any other person who is authorized by such an organization to act on behalf of that organization. Czech authorities explained during the review that Section 334 of the Criminal Code does not explicitly cover persons who are

authorized to act on behalf of the organization and who does not work in this organization on the basis of some contracts. However, at the time of review, Czechia was in the process of amending Section 334 to rectify this and planned to explicitly include into subparagraph 2(c) persons who act on the organization's behalf.

It is recommended that Czechia ensure that the definition of foreign public officials in Section 334 of the Criminal Code covers also persons authorized by an international organization to act on its behalf.

## **Article 16 Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

Please see measures under the subparagraph (b) of article 15 above (s. 331 of the Criminal Code).

The Czech Republic provided examples of cases:

Please see examples of cases under the paragraph (1) of article 16 above.

#### **(b) Observations on the implementation of the article**

Bribery provisions (s. 331 and 332 CC) are applicable to foreign public officials and officials of international organizations (s. 334 CC), and as such, Czechia referred to its response under article 15 paragraph b) on passive bribery.

Article 2 paragraph c of the Convention states that an official of a public international organization shall mean an international civil servant or any other person who is authorized by such an organization to act on behalf of that organization. Czech authorities explained during the review that section 334 of the Criminal Code does not explicitly cover persons who are authorized to act on behalf of the organization and who does not work in this organization on the basis of some contracts. However, at the time of review, Czechia was in the process of amending section 334 to rectify this and explicitly include into subparagraph 2(c) persons who act on the organization's behalf.

## **Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Criminal Code of the Czech Republic**

##### **Section 206**

##### **Embezzlement**

- (1) Whoever misappropriates a thing of another that has been entrusted to him/her and thus causes damage not insignificant on the property of another, shall be sentenced to imprisonment for up to two years, prohibition of activity or confiscation of a thing.
- (2) An offender shall be sentenced to imprisonment for six months to three years, if he/she commits the act referred to in Sub-section (1) and if he/she was convicted or sentenced for such an act in the past three years.
- (3) An offender shall be sentenced to imprisonment for one year to five years or to a pecuniary penalty, if he/she causes larger damage by the act referred to in Sub-section (1).
- (4) An offender shall be sentenced to imprisonment for two to eight years, if he/she
  - a) commits the act referred to in Sub-section (1) as a member of an organised group,
  - b) commits such an act as a person who has a special obligation to protect interests of the aggrieved person,
  - c) commits such an act in a state of national peril or state of war, during a natural disaster or another event seriously endangering lives or health of people, public order or property, or
  - d) causes substantial damage by such an act.
- (5) An offender shall be sentenced to imprisonment for five to ten years, if he/she
  - a) causes by the act referred to in Sub-section (1) extensive damage, or
  - b) commits such an act with the intention to enable or facilitate commission of a terrorist criminal offence of terrorism financing (Section 312d) or threat by terrorist criminal act (Section 312f).
- (6) Preparation is criminal.

##### **Section 207**

##### **Unauthorized Use of an Item of Another**

- (1) Whoever takes possession of an item of another of a not small value or a motor vehicle with the intention to temporarily use it, or

whoever causes damage not small on property of another by temporarily using such an item that was entrusted to him without authorization, will be sentenced to imprisonment for up to two years or to prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for six months to three years or to prohibition of certain activity, if he

a) commits the act referred to in sub-section (1) as a person who has a special obligation to protect interests of the aggrieved person,

b) commits such an act as a member of an organized group, or

c) causes substantial damage by such an act.

(3) An offender will be sentenced to imprisonment for one year to five years or pecuniary penalty, if he

a) causes extensive damage by the act referred to in sub-section (1), or

b) commits such an act with the intention to enable or facilitate commission of a terrorist criminal offense of Terrorism financing (Section 312d) or Threat by terrorist criminal act (Section 312f).

## **Section 220**

### **Breach of Duty in Administration of Property of Another**

(1) Whoever breaches a duty to procure or administer property of another imposed by law or assumed by contract, and thus causes damage not small on to another, will be sentenced to imprisonment for up to two years or to prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for six months to five years or to pecuniary penalty, if he

a) commits the act referred to in sub-section (1) as a person who has a special duty to defend interests of the aggrieved person, or

b) causes substantial damage by such an act.

(3) An offender will be sentenced to imprisonment for two years to eight years if he causes substantial damage by the act referred to in sub-section (1).

## **Section 221**

### **Negligent Breach of Duty in Administration of Property of Another**

(1) Whoever by gross negligence breaches an important duty to procure or administer property imposed by law or assumed by contract and so causes substantial damage to another, will be sentenced to imprisonment for up to six months or by prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for up to three years, if he

a) commits the act referred to in sub-section (1) as a person who has a special duty to protect interests of the aggrieved person, or

b) causes extensive damage by such an act.

## **Section 138**

### **Thresholds of Damage, Profit, Costs for Liquidation of Environmental Damage, and Value of an Item**

(1) Damage not insignificant will be understood as damage amounting to at least 5 000 CZK, damage not small will be understood as damage amounting to at least 25 000 CZK, larger damage will be understood as damage amounting to at least 50 000 CZK, substantial damage will be understood as damage amounting to at least 500 000 CZK and extensive damage will be understood as amounting to at least 5 000 000 CZK.

(2) The amounts as specified in sub-section (1) will apply mutatis mutandis to assess the amount of profit, cost for removing environmental damage and value of an item.

The Czech Republic provided examples of cases:

**Court judgment (Rt) 8 Tdo 741/2014:**

Anyone who has appropriated another person's thing or another property value entrusted to them and have caused considerable damage to another person's property shall be considered as having committed a crime of embezzlement. The subject of the crime of embezzlement shall be the ownership of a thing or similar property right to another property value. Anyone who has appropriated another person's thing or another property value entrusted to them and, concurrently, have caused considerable damage to such property shall be considered as having fulfilled the factual elements of the said crime. Another person's thing shall mean a thing which does not belong to the perpetrator and to which the perpetrator has no title. Another person's thing shall be considered as entrusted to the perpetrator if it is handed to him for handling (possession), usually for a particular purpose of handling. The perpetrator shall be considered as having appropriated another person's thing entrusted to him if he is handling the thing contrary to, and in manner thwarting, the purpose for which it has been entrusted. Therefore, the appropriation shall be such handling of a thing on the part of the perpetrator which is aimed at the permanent exclusion of the person entrusting such things from its handling. Considerable damage shall mean damage to the tune of at least CZK 50,000. From the subjective perspective, intention, which usually arises later and not immediately once a thing is entrusted, is required. Pursuant to Section 15 of the Criminal Code, a crime shall be considered as committed intentionally if the perpetrator has wanted, in a manner stipulated in the Code, to violate or jeopardize an interest protected by the Code [direct intention pursuant to Section 15(1) a) of the Criminal Code] or has known that his conduct is capable of causing such violation or jeopardy and that, if caused, damage may be suffered [contingent intention pursuant to Section 15(1) b) of the Criminal Code]. Being aware shall also mean the perpetrator reconciling with the fact that he may violate or jeopardize an interest protected by the Criminal Code in manner stated in the Criminal Code.

**Supreme Court Judgment 5 Tdo 492/2015 (20 May 2015):**

Pursuant to the judgment of the District Court in Hodonín, file number 1 T 35/2012, of 23 September 2014, the accused Ing. Bc. M. V., DiS. was found guilty of breach of the obligation to duly manage another person's property pursuant to Section 255 (1) and (3) of Act No. 140/1961 Coll., the Criminal Act, as amended until 31 December 2009 ("Criminal Act"), of misuse of official powers pursuant to Section 158 (1) a) and (2) c) of the Criminal Act, and of embezzlement pursuant to Section 248 (1) and (2) of the Criminal Act, committed through the acts described in detail in points 1 and 2 of the statement of guilt of the cited judgment:

1. The accused, as the **Mayor of the municipality of** authorized, pursuant to Section 103 (1) of Act No. 128/2000 Coll., on Municipalities, as amended, to act externally on the municipality's behalf, concluded on 15 November 2007 in T. on behalf of this municipality and without this act having been heard and approved by the municipality's council and, hence, contrary to Section 85 a) of Act No. 128/2000 Coll., on Municipalities, as amended, a contract of work with TA., being the contractor, the subject of which was the construction of the residential unit of the Local Authority in T. although she knew that the municipality did not and would not have sufficient funds to cover the price of work on the date set as the date of completion of the work, and as the date of handover of the work without defects and backlog, as a consequence of which

the contractor would be entitled, in compliance with the contract, which was unilaterally disadvantageous for the municipality, to demand the contractual interest on default with paying the invoices, which unreasonably benefited the contractor and which corresponded to 10 % of the amount due a week, while a contractual penalty of 0.01 % of the price of work a day was agreed to apply to the contractor if the contractor failed to observe the work completion date. Subsequently, contrary to Section 115 of Act No. 183/2006 Coll., on the Territorial Planning and the Building Procedure Code, the accused enabled the contractor to commence the construction of the residential unit without an approving decision of the Building Office on the location, which was only issued on 26 March 2008 and came into legal force on 26 April 2008, whereby, thereafter, on an unspecified date after the resignation of the members of the municipality's council and without the work being duly completed and the performed activities duly invoiced, the accused signed an Agreement to Settle an Acknowledged Debt in which she acknowledged the debt of the municipality, being the client, in the amount of the entire contracted price of work. The accused took over the work as completed without defects and backlog that would prevent its proper use as per the handover protocol, from the contractor although she knew that the work was not completed and that apparent defects and backlog prevented its proper use since the Municipal Authority in H. issued the occupancy permit decision only on a later date. By the conduct stated above, the accused breached Section 38 (1) and (2) of Act No. 128/2000 Coll., on Municipalities, as amended, pursuant to which she was obliged to use the municipality's property for the specified purpose and economically and in compliance with the municipality's interests and to protect the property from misuse, in conjunction with Section 301 d) of Act No. 262/2006 Coll., the Labour Code, as amended, pursuant to which she was obliged to manage funds entrusted to her by the employer with due care and to protect the employer's property from damage, loss, destruction and misuse. Since, in the Agreement to Settle an Acknowledged Debt, the accused concluded with the contractor a unilaterally disadvantageous arbitration clause pursuant to which all disputes from the contract of work and disputes from the relationships ensuing from it should be determined by an arbitrator appointed by the creditor, she enabled the contractor to enforce the payment of the price of the work and the contractual default interest in arbitration proceedings during which she repeatedly admitted the contractor's claims despite of knowing that the work had not been completed in a due manner. Conversely, contrary to Section 38 (7) of Act No. 128/2000 Coll., on Municipalities, as amended, she herself did not assert, on the municipality's behalf, any claims from the contract of work in relation to the handed-over work, which had not been completed duly, and did not make use, in a due and timely manner, of the remedies against the decisions handed down in the arbitration and seizure proceedings.

2. After she borrowed from her daughter V. V., ..., CZK 100,000 for her own needs, which V. V. drew from the credit account number ....., and, subsequently, handed over to her in T. or at other places, the accused, as the **Mayor of T.**, authorized, by virtue of her function, to handle funds in the municipality's bank account, paid without authorization and from T's bank account number ....., the instalments of the stated credit contrary to Section 38 (1) and (2) of Act No. 128/2000 Coll., on Municipalities, as amended, pursuant to which she was obliged to use the municipality's property for the specified purpose and economically and in compliance with its interests and to protect it from misuse, without using the credit funds to the municipality's benefit, by which she caused damages to T.

**Supreme Court's Judgment 4 Tdo 533/2010 (25 May 2010):**

The accused M. F., as the **Mayor of C.** who had access to C's cash and could handle it, was found guilty of a crime of embezzlement pursuant to Section 248 (1) and (2) of the Criminal Act, committed by paying himself unauthorized bonuses and for overtime work, by which he inflicted damages on the C. municipality. Pursuant to Section 248(2) of the Criminal Act, the accused was sentenced for this crime to nine months in prison, which the sentence was conditionally suspended for a probationary period of two years pursuant to Section 58 (1) of the Criminal Act and Section 59 (1) of the Criminal Act. Pursuant to Section 49 (1) and Section 50 (1) of the Criminal Act, the accused was also prohibited from holding public offices for a period of three years. Pursuant to Section 228 (1) of the Code of Criminal Procedure, he was ordered to pay C damages. Pursuant to Section 229 (2) of the Code of Criminal Procedure, C.'s remaining claim for compensation for damages depended on the civil proceedings. The accused filed an appeal against this judgment within the statutory time-limit of eight days. By the judgment of 11 June 2009, file number 6 To 386/2008, pursuant to Section 258 (1) e) and (2) of the Code of Criminal Procedure, the Regional Court in Usti nad Labem quashed the contested judgment with respect to the statement of the method of serving the term of imprisonment and with respect to the entire statement of the prohibition of activity and, pursuant to Section 259 (3) of the Code of Criminal Procedure, decided to conditionally suspend the accused's sentence for a probationary period of one year pursuant to Section 58 (1) of the Criminal Act and Section 59 (1) of the Criminal Act. Pursuant to Section 49 (1) and Section 50 (1) of the Criminal Act, it prohibited him from serving as a member of the municipality's Council for a period of two years. The statement of compensation for damages remained unchanged.

**(b) Observations on the implementation of the article**

Embezzlement is criminalized through the Criminal Code provisions on embezzlement, breach of duty in the administration of the property of another and unauthorized use of an item of another (s. 206-207, 220-221 CC). The provisions do not distinguish between the private and public sectors, but provision on embezzlement (s. 206 CC) only applies to cases of 'non-insignificant damage', which amounts to at least 5,000 CZK (approx. 230 USD), as per section 138 of the Criminal Code. Similarly, unauthorized use of an item of another (s. 207 CC) and breach of duty in the administration of the property of another (s. 220 CC) apply to cases of 'not a small value/damage', which amounts to at least 25,000 CZK. Negligent breach of duty in the administration of the property of another (s. 221 CC) applies to cases of 'substantial damage', which amounts to at least 500,000 CZK.

As for the third-party beneficiaries, Czechia explained that it did not matter if the criminal offence was committed for the benefit of the perpetrator or someone else as the only relevant elements are those explicitly mentioned in the sections 206-207 and 220-221 of the Criminal Code and as such noted that the scope of the provisions is broad. The Czech authorities confirmed that since the legislator had not explicitly specified that it was only for the benefit of perpetrator it followed that provision also applied to the situations whether the benefits were provided to another person or entity.

With regard to the scope of the term 'item/thing' in sections 206 and 207 of the Criminal Code, Czechia referred to section 489 of the Civil Code which defines the 'thing' and noted that all property defined in article 17 of the Convention would be covered.

It is recommended that Czechia remove the threshold of CZK 5,000 in s. 206 CC on

embezzlement.

## **Article 18 Trading in influence**

### **Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Criminal Code of the Czech Republic**

##### **Section 333**

##### **Indirect Corruption**

(1) A person who requests, accepts a promise or accepts a bribe for affecting the performance of power of an official person by their influence or through a third party or that they have already done so, shall be punished by a prison sentence of up to three years.

(2) Whoever, due to the grounds referred to in Subsection 1 provides, offers, or promises a bribe to another person, shall be punished by a prison sentence of up to two years.

Regarding the examples of cases, Czechia referred to the information cited under subparagraph (b) of Article 18 below.

### **(b) Observations on the implementation of the article**

Active trading in influence is criminalized by section 333(2) of the Criminal Code on ‘indirect corruption’.

The provision does not address the indirect form of corruption/trading of influence committed through intermediaries. At the time of review, Czechia was in the process of amending s. 333 to address this issue. Nevertheless, Czechia explained that the fact that this element is not explicitly covered does not mean that it would not fall under the scope of this article. The fact that it is not specified how the bribe is given means that it can also be given through intermediaries. Czechia also referred to the definition of a bribe in section 334 which includes third-party beneficiaries.

As for situations where the bribe-taker abuses his supposed influence (which does not in fact exist), Czechia explained that the bribe-giver’s behaviour would still be punishable as an attempt (Section 21) to commit an offence under article 333.

Czechia also explained that these deficiencies (the indirect form and third-party benefits in trading of influence) are planned to be addressed in upcoming amendments to the Criminal Code.

Czechia is recommended to consider explicitly covering the indirect form of trading in influence in s. 333 CC.

## **Article 18 Trading in influence**

### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Criminal Code of the Czech Republic**

#### **Section 333**

##### **Indirect Corruption**

(1) A person who requests, accepts a promise or accepts a bribe for affecting the performance of power of an official person by their influence or through a third party or that they have already done so, shall be punished by a prison sentence of up to three years.

(2) Whoever, due to the grounds referred to in Subsection 1 provides, offers, or promises a bribe to another person, shall be punished by a prison sentence of up to two years.

The Czech Republic provided the following examples of cases:

#### **R 16/1981**

A crime of trading in influence under Section 333 (1) of the Criminal Code is committed already when an offender demands or accepts a bribe so as to use his or her influence to affect the exercise of a public official's powers. It is not required that the offender actually intervenes with the public official. If the offender actually uses his or her influence to affect the exercise of a public official's powers, the crime has been completed and it shall be considered as an aggravating circumstance which increases the gravity of the committed crime.

An element of "requesting a bribe" pursuant to Section 333 (1) of the Criminal Code is fulfilled not only when the offender requests the bribe explicitly but also when the offender raises a situation which gives the briber an implicit indication that the offender requests a bribe.

#### **R 32/1987-II**

If an offender accepts or requests a bribe to use his or her influence to affect the exercise of a public official's powers, but acts without a direct cooperation of a public official, the crime of trading in influence is committed under Section 333 (1) of the Criminal Code. However, if an offender accepts or requests a bribe with a direct cooperation of and for a public official, the offender is considered as an accomplice in crime of accepting bribes under Section 24 (1), Section 331 (1) and Section 333 (3) (b) of the Criminal Code, in eventum under Section 333 (2) and Section 333 (3) (b) of the Criminal Code. If an offender accepts or requests a bribe for a person who is not a public official, but administers matters of public interest, while the offender does not administer such matters himself or herself, the offender is considered as an accomplice in crime of accepting bribes under Section 24 (1), Section 331 (1) or Section 333 (2) of the Criminal Code.

If the offender merely pretends that he or she would use his or her influence to affect the exercise of a public official's powers, alternatively the work of a person that administers matters of public interest, but does not undertake anything for the completion of such an undertaking and does not even intend to do so, the offender commits a fraud under Section 209 of the Criminal Code, in eventum an attempt of fraud under Section 21 (1), Section 209 of the Criminal Code, if the bribe had been requested but not accepted.

#### **6 Tdo 87/2011-48**

A person who has offered to hand a bribe to a public official while not requesting or accepting a bribe himself or herself might be considered as an accomplice in crime of trading in influence under Section 10 (1) of the Criminal Code (as effective until 31 December 2009, since 1 January 2010 under Section 24 (1) of the Criminal Code) in conjunction with Section 162 (1) of the Criminal Code (as effective until 31 December 2009, since 1 January 2010 as a misdemeanor of trading in influence under Section 331 (1) of the Criminal Code), or as an offender who committed a crime of accepting bribes under Section 160 of the Criminal Code (as effective until 31 December 2009, since 1 January 2010 as a crime of accepting bribes under Section 331 of the Criminal Code) provided that other statutory prerequisites are simultaneously fulfilled.

#### **8 Tdo 1019/2014**

If an accused person's cooperation with public officials is not unerringly and sufficiently proven, it shall not be understood that the accused person's conduct could not be legally considered as a conduct of bribery, provided that other statutory prerequisites are fulfilled, while a legal qualification of such a conduct, in particular a misdemeanor of trading in influence under Section 333 (1) of the Criminal Code might have been taken into consideration. Such a qualification of the aforementioned misdemeanor further applies to situations when an offender acts without a cooperation of a public official, and the fact that the public official whose competency is connected to the bribe in question is not informed about the bribe does not have any impact on the criminality.

In term of categories taken into consideration under Title 10 Chapter 3 of the Criminal Code, i.e. accepting bribes or trading in influence, it is beyond any reasonable doubt that decision of the Building Section of the District of Prague 3 during administrative proceedings is a matter of public interest and thus Mr. Ing. K. U. and Mr. Mgr. J.Š. were public officials pursuant to Section 127 (1) (d) of the Criminal Code, whilst the accused M.S. neither provided matters of public interest nor was a public official as concluded by both lower courts. According to the courts' factual findings, the accused person was the one who requested a sum of CZK 3.000.000 from an injured party Mr. Z.Š. and declared that the purpose was to influence a decision of the

Building Section of the District of Prague 3 in a matter of a building used by the corporation named Palmerston, s.r.o. In addition and in compliance with the aforementioned general principles for considering acts of corruption, it shall be further noted that it cannot be truly precluded that the accused person's conduct did not have a corruptive element even in a situation when the accused person did not act in cooperation with the public officials Mr. Ing. K.U. and Mr. Mgr. J.Š.

If the courts' factual conclusions were based on the finding that genuine link between the accused person and the public officials at the Building Section of the District of Prague 3 had not been proven, it was rightly concluded that the accused person's conduct could not be legally qualified as a crime of accepting bribes under Section 331 (2) and Section 331 (3) (a) of the Criminal Code. Furthermore, even the possibility hypothetically mentioned by the appellant could have been taken into consideration which was that the accused person would be legally considered as an accomplice in a crime of accepting bribes under Section 331 (2) and Section 331 (3) (a) and (b) of the Criminal Code. As accurately stated by the appellant, such a legal consideration would be problematic also with regard to the principle of accessory of participation of accomplices (concerning the commission of a crime of accepting bribes under Section 331 of the Criminal Code by Mr. Ing. K.U. or Mr. Mgr. J.Š., no reliable and relevant proof had been provided. A note on a found document about a financial sum to be provided to "Š." cannot be considered as such a proof).

If the accused person's cooperation with public officials is not unerringly and sufficiently proven, it shall not be understood that the accused person's conduct could not be legally considered as a conduct of bribery provided that other statutory prerequisites are fulfilled, while legal qualification of such a conduct, in particular, a misdemeanor of trading in influence under Section 333 (1) of the Criminal Code might have been taken into consideration.

As the Supreme Public Prosecutor persuasively emphasized, even if the accused person acted without any cooperation with public officials and did not have any intention to intervene himself or herself in the building administrative proceedings, but actually did request from the injured party, Mr. Z.Š., a sum of CZK 3.000.000, it shall be considered as a fraudulent conduct from both the objective as well as subjective point of view when the accused person merely pretended that the sum concerned is a corrupt conduct. As a matter of fact, such a conduct shall be considered as an attempt of fraud under Section 21 (1) in conjunction with Section 209 (1) and Section 209 (4) (d) of the Criminal Code which proposes the sentence of imprisonment ranging from 2 to 8 years.

It was therefore rightfully concluded by the Supreme Public Prosecutor that if there was any doubt whether the factual circumstances fall within the elements of a crime with a stricter or less strict sentence, the court should have worked on the assumption of the factual version that was for the most favorable for the offender. It was the courts' concern to evaluate the evidence whether the accused person's possibility to influence the results of the administrative proceedings was merely pretended, or whether such a possibility of influencing of such proceedings might have occurred, even if it is unlikely, based on the accused person's unproven link with public officials. In pursuance to the aforementioned consideration, such an offence should have been qualified under Section 209 or under Section 333 of the Criminal Code, not as an acquisition of the accused person of charges on the grounds under Section 226 (b) of the Code of Criminal Procedure.

**(b) Observations on the implementation of the article**

Passive trading in influence is criminalized in Section 333 (1) of the Criminal Code.

The provision does not address the indirect form committed through intermediaries. At the time of review, Czechia was in the process of amending s. 333 to address this issue. Nevertheless, Czechia explained that the fact that this element is not explicitly covered does not mean that it would not fall under the scope of this article. The fact that it is not specified how the bribe is accepted/requested means that it can also be accepted/requested through intermediaries. Czechia also referred to the definition of a bribe in section 334 which includes third-party beneficiaries.

Czechia also explained that these deficiencies (the indirect form and third-party benefits in trading of influence) are planned to be addressed in upcoming amendments to the Criminal Code.

It is recommended that Czechia consider explicitly covering the indirect form of trading in influence in s. 333 CC.

**Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code of the Czech Republic**

**Section 329**

**Abuse of Powers of an Official Person**

(1) An official person who, with the intention to cause damage or other serious harm to another person or to procure an unauthorized benefit for themselves or another person

*a) performs their powers in a manner contrary to another legal regulation,*

*b) exceeds their powers, or*

*c) fails to meet an obligation under their powers, shall be punished by a prison sentence of one to five years or punishment by disqualification.*

(2) An offender shall be punished by a prison sentence of three to ten years, if,

*a) they procured a substantial benefit for themselves or another person by committing an act referred to in Subsection 1,*

*b) they committed such an act on another person for their actual or perceived race, ethnicity, nationality, political belief, religion, or because they are actually or allegedly non-religious,*

*c) they caused substantial disruption to the activities of a public administration body, local government, court or another public authority by committing such an act,*

- d) they caused serious disruption to the activities of a legal entity or natural person who is an entrepreneur by committing such an act,*
  - e) they committed such an act while abusing the vulnerability, addiction, anxiety, cognitive weakness, or inexperience of another person, or*
  - f) they caused substantial damage by committing such an act.*
- (3) An offender shall be punished by a prison sentence of five to twelve years or forfeiture of property, if,*
- a) they procured another large-scale benefit for themselves or another person by committing an act referred to in Subsection 1, or*
  - b) they caused large-scale damage by committing such an act.*
- (4) Premeditation is punishable.*

The Czech Republic provided examples of cases:

**Court judgment (Rt) 6 Tz 73/74:**

A crime of misuse of official power shall be considered as committed by the officer who fails to fulfil an obligation ensuing from his power with the intention to cause damage to another person or obtain an unjustified advantage either for himself or for another person. The damage shall mean not only material but also immaterial damage, in particular, for example, damage to a natural person's or legal entity's rights. Likewise, the unjustified benefit shall mean not only property but also any other benefit to which the perpetrator or the benefited person is not entitled. The expression "with the intention to cause damage to another person or obtain an unjustified advantage either for himself or for another person" characterizes the perpetrator's motive, so the perpetrator's failure, led by such motive, to fulfil an obligation ensuing from his official power rather than the occurrence of actual damage or the obtaining of an unjustified advantage for the perpetrator or another person shall be sufficient for the crime to be considered as completed.

**Supreme Court judgment 4 Tdo 6/2013-28**

To arrive at a conclusion on intentional fault in a crime of misuse of official powers pursuant to Section 329 (1) c) and (2) a) of the Criminal Code, the period of practice exercised by the offender in the relevant public body in which he/she has not fulfilled the obligations ensuing from his powers is of significance. When it comes to fault regarding the element of considerable benefits pursuant to Section 329 (2) a) of the Criminal Code, fault out of negligence will do within the meaning of Section 17 a) of the Criminal Code. The conclusion on the existence of this serious consequence can be made, for example, with regard to the extent to which the cited crime has been committed and the value of the thing which the offender or another person could handle as a consequence of his/her failure to fulfil obligations ensuing from his official powers.

**(b) Observations on the implementation of the article**

Abuse of functions is criminalized in section 329 of the Criminal Code and covers performing of powers contrary to law, exceeding powers and failing to meet obligations under the powers. The provision covers third-party beneficiaries and includes a list of aggravating circumstances, including causing substantial damage or procuring a substantial benefit. The provision mentions 'unauthorized benefit', which is interpreted broadly and can be both material and immaterial.

## **Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Czechia has considered criminalizing illicit enrichment and numerous debates have been held on this issue, including at the level of a dedicated inter-ministerial working group consisting of the Ministry of Justice, Ministry of Finance, Ministry of Interior, Prosecutor's Office and Judiciary. In the end, Czechia has decided not to implement this criminal offence because of the constitutional limits (the reversal burden of proof and the principle of subsidiarity).

However, the amended provision of confiscation in the Criminal Code (section 102a) is relevant as it provides for a new protective measure concerning confiscation of a part of assets where the standard of proof is lowered to probability concerning the origin of confiscated assets ("The Court presumes that the assets are proceeds of crime"). The Court imposes this protective measure on a perpetrator who has been found guilty of an intentional criminal offence if the Criminal Code stipulates a prison sentence with the upper penalty limit of at least four years. In addition, this confiscation can be imposed for criminal offences listed in section 102a in cases where the perpetrator has obtained or tried to obtain property profit by this crime for himself or another person and the Court presumes that the part of assets is proceed of crime, including because assets are grossly disproportionate to the perpetrator's statutory guaranteed income or because other relevant facts have been found.

In addition, Czechia has passed tax legislation concerning evident contradictions in tax revenues and real property and standards of living of the taxpayers. In particular, amendment No. 321/2016 Coll. (in effect since 1 December 2016) to Act No. 586/1992 Coll., on Income Taxes, introduces the option to verify whether an increase in assets or the consumption or other expenditure of an income tax payer corresponds to the income declared to the tax administrator in the past years. The purpose for this is to detect and, subsequently, levy tax on the undeclared and untaxed income. In relation to the amount of cooperation and the convincing nature of the evidence submitted by the payer, a lower or higher default (estimate) rate shall be used for assessing the tax.

### **Section 38x**

#### **Call for Proving Income**

- (1) The tax administrator shall call on a tax payer to prove the occurrence and origin of income and other facts relating to an increase in his assets or his consumption or other expenditures if:
- a) it has reasonable doubts whether the payer's income notified or confirmed to the tax administrator corresponds to the increase in his assets or his consumption or other expenditures and the administrator is not aware of any facts justifying such increase in assets, consumption or other expenditure; and
  - b) after a preliminary assessment, it concludes that the difference between such income and the increase in the asset, consumption or other taxpayer's issue exceeds CZK 5,000,000.

(2) The tax administrator in the income statement shall raise his doubts in a manner that allows the taxpayer to comment on it and provide the evidence to eliminate such doubts.

(3) In a call for proof of revenue of the tax administrator it shall

a) determine the applicable period for assessing the taxpayer's income relationship to increase its capital, consumption or other issue,

b) set a time limit for the production of evidence and the production of evidence to prove the required facts, which may not be less than 30 days,

c) inform the taxpayer of the consequences associated with the failure to prove the facts requested and not provide the sufficient assistance in demonstrating the required facts.

(4) The tax administrator may supplement the requested facts by means of the further call for the evidence of the income.

(5) The tax administrator does not require the taxpayer to prove the facts that the tax administrator is aware, that have occurred in the period for which the tax assessment period has already expired.

### **§ 38y**

#### **Obligation to prove income**

The taxpayer is required to prove the facts required in the claim for the proof of the income, unless it proves that they occurred in the period for which the tax assessment period has already expired.

### **§ 38z**

#### **Demonstration of revenue**

(1) In the event of the proof of the facts required in the income statement, the tax administrator shall notify the taxpayer in an appropriate manner.

(2) The tax administrator shall proceed to the determination of the tax according to the aid in a special way, if

a) there has been no proof of the facts required in the call for Proof of Income,

b) the tax cannot be established on the basis of the proof and

c) after the preliminary assessment, the tax administrator will conclude that the tax determined according to the aids will in particular exceed CZK 2,000,000.

### **§ 38za**

#### **Determining the tax by the utility in a special way**

(1) When calculating the tax on the aid, the tax administrator shall determine in a specific way the basis of the tax by estimating the amount of the income, the taxpayer would have to achieve in order to match his increase in his property, consumption or other issue.

(2) When estimating the amount of the income referred to in paragraph 1, the tax administrator shall consider in particular the:

a) information from which it appears, directly and indirectly, that the taxpayer's income does not correspond to the increase in his property, consumption or other issue,

b) economic indicators,

c) comparison with comparable payers,

d) usual values of comparable assets, consumption or other issues,

e) movements and balances on accounts,

f) statement of assets.

(3) Where, in the determination of the tax by means of the aid in a particular way, it cannot be determined in which the taxable period the income falls, it is regarded as having occurred in the last taxable period for which the tax can be established.

**(4) In determining the tax according to the aid in a special way, the tax administrator shall take into the account** the circumstances giving rise to benefits to the taxpayer only if he has been applied and proved in a procedure for determining the tax according to the aid in a special way.

#### **§ 38zb**

##### **Penalties in determining the tax according to the aid in a special way**

(1) The taxpayer is liable to pay the penalty of the amount of the tax determined according to the aid in a special manner

(a) 50%; or

(b) 100% where the failure to cooperate with the taxpayer seriously hampers or does the assessment of the tax.

(2) The tax administrator shall decide on the obligation to pay a penalty payment within the scope of the payment assessment or an additional payment assessment, which specifies the tax according to the aid in a special way and impose the penalty in the tax records.

(3) The penalty payment is due on the same date as the established tax.

#### **§ 38zc**

##### **Invitation to Submit the Statement of Assets**

(1) The tax administrator of the taxpayer shall request the submission of the declaration of the assets if

(a) there has been no proof of the facts required in the call for Proof of Income,  
b) the information needed to establish the assets cannot be obtained in other ways or can be obtained only with disproportionate difficulties; and

c) After the preliminary assessment, the tax administrator shall conclude that the aggregate value of the asset which the taxpayer is required to declare in the asset that the declaration shall exceed CZK 10,000,000.

(2) The taxpayer is obliged to file a declaration of the assets within 60 days of the announcement of the call for the declaration of assets; this period may be extended.

(3) In the tax administrator's notice, the taxpayer shall inform the taxpayer of the obligations associated with the notification of the call and of the possible consequences associated with the failure to provide a declaration of the assets or the indication of false or grossly distorted information; the non-compliance with this obligation is not subject to the duty of confidentiality for the purposes of criminal proceedings.

(4) If the taxpayer does not submit the declaration of the assets to the tax administrator's request, or if he presents false or grossly distorted information, the tax administrator shall proceed without any further assistance in determining the tax according to the aid in a special way.

#### **§ 38zd**

##### **Requisitions of property declarations**

(1) In the statement of the assets, the taxpayer is required to provide the complete and true information.

(2) In the declaration of assets, the taxpayer shall be obliged to give the data to be included in the declaration of assets under the Tax Code.

(3) The taxpayer is obliged to state in the declaration of the assets

- a) the trust fund of which it is the founder or the founder, and the facts which are known to him about the assets in that trust fund,
  - b) the matter not subject to the enforcement in respect of the matter necessarily necessary for the conduct of its business,
  - c) monetary debt; or
  - d) an express statement that it has provided the complete and truthful information.
- (4) The decisive date for the compilation of the declaration of the assets is the date of the announcement of the call for the declaration of assets, unless another decisive day is stipulated in this notice.
- (5) A taxpayer's signature on a statement of the assets that is not orally entered into the log or by a data message shall be officially authenticated.

### **§ 38 ze**

#### **Special provisions on the requirements of property declarations**

- (1) In the declaration of the assets, the taxpayer shall not be obliged to provide the data which the tax administrator can find out of the registers and records to which he has the access. This tax administrator information will be published on the official board and in a manner allowing for remote access.
- (2) If the aggregate value of the asset that the taxpayer is required to state in the declaration of assets does not exceed CZK 10,000,000, the taxpayer in the statement of assets may state only this fact and an express the statement that this is true.
- (3) The taxpayer is not required to state the property statement of
- a) a movable property the value of which does not exceed CZK 100,000; or
  - b) a monetary debt not exceeding CZK 100,000. "

The Conflict of Interests Act (No. 159/2006 Coll.) regulates the duty of the public officers to communicate the facts that allow for the public control of their activities in addition to the performance of the function of a public official, the public control of the property acquired during the period of the office and other income, gifts or other benefits, obtained during the performance of the office or, where appropriate, of the obligations which the public official has. The central electronic registry administrator of the notification is the Ministry of Justice. Electronic documents held by the public officials are stored in the notification register. The Department for the Conflict of Interests of the Ministry of Justice ensures the maintenance of the Register of Notices of Public Officials and performs the registration activity of notifications in relation to public officials. The Department carries out the registration, control, surveillance and methodological activities in the area of the conflict of interests, both in relation to public officials and administrative penalties, and ensures the overall methodical guidance of the administrative punishment authorities in the area of the conflict of interest in terms of uniformity and predictability of their decision making. The Department accepts, processes and handles communications and suggestions regarding the facts that indicate the false or incomplete information contained in the notifications registered in the Notification Register. It further processes a notice of the conduct that has the characteristics of an offense under the Act on Conflict of Interests and this notification shall proceed without the delay to the administrative authority competent to deal with offenses. It also ensures that the public officers of the notifications have indeed submitted and oversee the completeness of the data that is part of the notification by law, ensures that the content of the information is checked in the individual notices and requires the addition of such data.

Furthermore, the Conflict of Interest Act requests certain categories of public officials to declare their assets. All declarations are registered and access to them is publicly accessible.

**(b) Observations on the implementation of the article**

Czechia has considered criminalizing illicit enrichment but has not criminalized the offence due to the constitutional limits. The 2016 amendment of the Czech Income Taxes Act has introduced an option to verify whether an increase in assets corresponds to the income declared in the past years.

**Article 21 Bribery in the private sector**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to its response under article 15(a) of the Convention. Section 332 of the Criminal Code criminalizes active bribery in connection with ‘procuring matters of general interest’ or ‘business activities’, and as such covers both public and private sector.

The Czech Republic provided examples of cases:

**Decision of the Supreme Court of 14 August 2013 No. 7 Tdo 311/2013:**

The arrangement of matters of a general interest within the meaning of a crime of bribery pursuant to Sections 332 and 334(3) of the Criminal Code shall also apply to business relationships as far as the contractually assumed or legally imposed obligation has to be observed or illegal damage or unjustified benefits for the parties to these relationships or the persons acting on their behalf have to be avoided. The bankruptcy trustee’s activity shall also be considered as the arrangement of matters of a general nature since a bankruptcy trustee, as a person appointed by the court, must meet the obligations contained, in particular, in Sections 5 and 36(1) of Act No. 182/2006 Coll., on Bankruptcy and the Methods of its Resolution (Bankruptcy Act), as amended, and materially corresponding to the definition stipulated in Section 334(3) of the Criminal Code.

**Decision of the Supreme Court No. 15 Tdo 885/2013:**

I. If claims ensuing from business relationships in which the bankruptcy trustee shall be obliged to make sure that damage or unjustified benefits for the parties to these relationships or the persons acting on their behalf are avoided within these relationships are submitted and judged within bankruptcy proceedings, the bankruptcy trustee’s activity within the bankruptcy proceedings pursuant to Act No. 182/2006 Coll., on Bankruptcy and the Methods of its Resolution (Bankruptcy Act), as amended, must be considered as ‘the arrangement of matters of a general interest’ within the meaning of Section 331(1) 1 and Section 332(1) 1 of the

Criminal Code (Section 334(3) of the Criminal Code).

II. Corruptive conduct, whether in the form of active provision, offer or promise of a bribe or in the form of passive acceptance of a bribe or of a promise or an offer to provide it, needs to be punished in the public and the private spheres primarily pursuant to the counter-bribery provisions as per Sections 331 and 332 of the Criminal Code. Thus, Section 226(3) of the Criminal Code may only apply as a subsidiary provision in the cases to which the counter-bribery provisions cited above are not applicable, that is, if it does not concern acceptance of a bribe in connection to the perpetrator's or another person's business (Section 331(1) 2 of the Criminal Code) or bribery in connection to the perpetrator's or another person's business (Section 332(1) 2 of the Criminal Code) or if it does not concern bribery relating to business relationships, within which a bankruptcy trustee shall be obliged to prevent damage or unjustified benefits for the parties to such relationships or the persons acting on their behalf within them (Section 334(3) of the Criminal Code). For this reason, Section 226(3) of the Criminal Code shall, as a subsidiary provision, apply to the bankruptcy trustee's conduct only in the cases in which the bankruptcy proceedings do not concern claims established within business relationships or claims associated with the perpetrator's or another person's business.

**Decision of the Supreme Court No. 5 Tdo 1127/2014:**

An offer of a bribe within the meaning of the crime of bribery pursuant to Section 332 of the Criminal Code shall be any form of unjustified financial enrichment regardless of whether or not it has been specified by the perpetrator.

**Decision of the Supreme Court No. 3 Tdo 814/2010:**

The due and objective selection of a public contract relating to the operation of a healthcare facility (with impact on the satisfaction of needs of the citizens in the given region) shall be a matter of a general interest within Section 161 of the Criminal Code (as applicable until 31 December 2009; pursuant to Section 332 of the Criminal Code from 1 January 2010).

**(b) Observations on the implementation of the article**

There is no separate offence of bribery in the private sector. Section 332 of the Criminal Code criminalizes active bribery in connection with 'procuring matters of general interest' or 'business activities', and as such covers both public and private sector.

**Article 21 Bribery in the private sector**

**Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to its response under article 15 (b) of the Convention. Section 331 of the Criminal Code criminalizes passive bribery in connection with ‘procuring matters of general interest’ or ‘business activities’, and as such covers both public and private sector.

The Czech Republic provided examples of cases:

**Decision of the Supreme Court No. Rt 11 Tz 3/83:**

I. Interpretation of the elements of a crime of acceptance of a bribe pursuant to Section 160(2) of the Criminal Code: The expression ‘is soliciting a bribe’ pursuant to Section 160(2) of the Criminal Code shall not require that the perpetrator solicits a bribe explicitly. Any conduct insinuating that a bribe is expected and wanted by the perpetrator shall be sufficient.

**Decision of the Supreme Court No. 4 Tz 77/2002:**

Crime of bribery and unfair competition in the form of bribery: If any competitor resorts to unfair competition lying in the bribery within the meaning of the Commercial Code, the conduct of a particular responsible natural person may be considered, upon fulfilment of all other statutory conditions, as the crime of bribery pursuant to Section 160 of the Criminal Code since it is the general interest for the competition rules to be observed by all actors within the competition.

**Decision of the Supreme Court No. Rt 11 Tzf 11/77:**

The crimes of acceptance of a bribe pursuant to Section 160(1) and Section 160(2) of the Criminal Code shall constitute separate crimes. No joinder of these crimes is possible. The crime of acceptance of a bribe pursuant to Section 160(2) of the Criminal Code shall be considered as completed once a bribe is solicited by a perpetrator. It shall be indecisive whether the perpetrator has been provided with or promised a bribe. That the perpetrator soliciting the bribe has accepted it shall be considered in the adjudication of the punishment within the circumstances determining the level of danger of a crime for the society (Section 3(4) and Section 31(1) of the Criminal Code).

**(b) Observations on the implementation of the article**

There is no separate offence of bribery in the private sector. Section 331 of the Criminal Code criminalizes passive bribery in connection with ‘procuring matters of general interest’ or ‘business activities’, and as such covers both public and private sector.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to its response under article 17 of the Convention. Embezzlement is criminalized through the provisions on embezzlement, breach of duty in the administration of the property of another and unauthorized use of an item of another (s. 206-207, 220-221).

The provisions do not distinguish between the private and public sectors.

The Czech Republic provided examples of cases:

**Court judgment 5 Tdo 894/2009:**

I. If the perpetrator simultaneously holds the position of a director and that of a company's registered agent, it has to be ascertained within the proceedings whether his conduct lying in the handling of the company's funds can be subordinated to the exercising of the registered agent's powers and, if such powers have been exceeded, considered whether it has concerned the appropriation of such funds within the meaning of Section 248 of the Criminal Code (as applicable until 31 December 2009; pursuant to Section 206 of the Criminal Code from 1 January 2010) or whether the accused's conduct has rather breached the obligation to act with due managerial care (compare Section 135(2) of the Commercial Code) or, possibly, whether at all it concerns an act establishing criminal liability. Not every action on the part of a company's registered agent or director which is contrary to the laws, in particular, when it does not meet the requirements for due bookkeeping or is not undertaken with due managerial care, needs to meet the elements of a crime. Moreover, it is not excluded that the perpetrator, as a company's registered agent and director, provides a loan for the employee in whom it is justified based on his extraordinary needs and not contrary to the company's conditions and financial situation. The circumstance that the perpetrator has concluded an oral loan contract and without an agreed due date and has not even exacted the loan cannot in itself be conducive to the fulfilment of the elements of the crime of embezzlement pursuant to Section 248 of the Criminal Code (as applicable until 31 December 2009; pursuant to Section 206 of the Criminal Code from 1 January 2010). Furthermore, the conceptual element of a loan is its temporary nature, but the determination of a due date shall not be an indispensable element of a contract. The due date of a loan may be agreed later and, if not agreed at all, the debtor shall be obliged to return it at the creditor's request pursuant to Section 536 of the Commercial Code. No form of the loan contract pursuant to Section 657 of the Commercial Code is prescribed. At general level, a company may also provide its employees with advantageous loans as incentives towards better performance or to keep the employees in their positions. In such case, the company does not necessarily have to have such activity entered in the Companies Register as the scope of business.

**Court judgment 8 Tdo 741/2014:**

Anyone who have appropriated another person's property or another property value entrusted to them and so have caused considerable damage to such property or value (that is, pursuant to the current wording, damage which is not insignificant) shall be considered as having committed a crime of embezzlement. The subject of the crime of embezzlement shall be the ownership of property or another property right to another property value. The objective side of the factual elements of the said crime shall be considered as met by anyone who have appropriated another person's property or another property value entrusted to them and, concurrently, have caused considerable damage to the entrusted property (that is, pursuant to the current wording, damage which is not insignificant). Another person's property shall be such property which does not belong to the perpetrator and to which the perpetrator does not have the title. Another person's property shall be considered as entrusted to a perpetrator if it is handed to him into his factual possession (handling), usually for a particular purpose of handling. A perpetrator shall be considered as having appropriated a thing entrusted to him if he is handling the thing contrary to the purpose for which it has been provided for possession or handling and in manner thwarting the basic purpose of such possession. Therefore, the

appropriation shall mean such handling of property on the perpetrator's part aimed at the permanent exclusion of the owner of the property from its handling. Considerable damage shall mean damage to the tune of at least CZK 50,000 (damage which is not insignificant shall mean damage of at least CZK 5,000). The intention, which usually arises later rather than immediately in the takeover of property, is required from the subjective point of view. Pursuant to Section 15 of the Criminal Code, a crime shall be considered as committed intentionally if the perpetrator has wanted, in manner stipulated in the Code, to violate or jeopardise an interest protected by the Code [direct intention pursuant to Section 15(1) a) of the Criminal Code] or has known that his conduct is capable of causing such violation or jeopardy and, that, if caused, damage may be suffered [contingent intention pursuant to Section 15(1) b) of the Criminal Code]. Being aware shall also mean the perpetrator reconciling with the fact that he may violate or jeopardise an interest protected by the Criminal Code in manner stated in the Criminal Code.

#### **7 Tdo 1153/2014:**

The appropriation of an entrusted thing shall mean the obtaining of an option to handle the thing without limitation rather than its acquisition into ownership, since no title can be acquired through a crime. It is irrelevant that the entrusted thing has been handled by someone without them enriching themselves. Since the "enrichment of oneself or of another" is not a factual element of a crime of embezzlement, it is not necessary for the wrongdoer to act with the intention to obtain a permanent benefit for himself or another person.

#### **5 Tdo 819/2013:**

Appropriation of Property Forming an Enterprise (Plant); Individual Criminal Liability

I. An enterprise, as a collective thing within the meaning of Section 5(2) of Act No. 513/1991 Coll., the Commercial Code, as amended until 31 December 2013 (a plant from 1 January 2014, pursuant to Section 502 of Act No. 89/2012 Coll., the Civil Code), is formed, among other things, by individual property values. Even an enterprise may be an entrusted thing within the meaning of the factual elements of a crime of embezzlement. Therefore, if the wrongdoer appropriates certain property values which are parts of an enterprise, he/she may be charged with the stated crime upon the simultaneous fulfilment of other statutory conditions.

#### **11 Tdo 620/2012-32:**

##### **Crime of Embezzlement in Banking**

The circumstance that things (for example, money) have been entrusted to the wrongdoer by the employer does not need to directly ensue from the employment contract if it ensues from another document (for example, from the job description). In such case, to meet the factual elements of a crime of embezzlement, it is important that the wrongdoer had a certain decision-making power to handle the entrusted things. It is not required for the wrongdoer to have access to such things; it will do that another person has handled them on the wrongdoer's instruction.

If, under the described circumstances, the wrongdoer alters documents for a transfer of money to the accounts designated by him/her and another person implements the transfer on his/her instruction, it concerns a crime of embezzlement rather than fraud. The thing is that the money, having the nature of another person's thing (another person's property value) in relation to the wrongdoer, was not entrusted as a result of the wrongdoer having misled someone or having taken advantage of another person's mistake. The consequence of the misleading action took place only in the phase of appropriation of the money when the wrongdoer directed it to pre-designated accounts.

## **(b) Observations on the implementation of the article**

Embezzlement is criminalized through the Criminal Code provisions on embezzlement, breach of duty in the administration of the property of another and unauthorized use of an item of another (s. 206-207, 220-221 CC). The provisions do not distinguish between the private and public sectors, but the provision on embezzlement (s. 206 CC) only applies to cases of ‘non-insignificant damage’, which amounts to at least 5,000 CZK (approx. 230 USD), as per section 138 of the Criminal Code. Similarly, unauthorized use of an item of another (s. 207 CC) and breach of duty in administration of property of another (s. 220 CC) apply to cases of ‘not a small value/damage’, which amounts to at least 25,000 CZK. Negligent breach of duty in administration of property of another (s. 221 CC) applies to cases of ‘substantial damage’, which amounts to at least 500,000 CZK.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Criminal Code of the Czech Republic**

#### **Section 214**

#### **Participation (sharing)**

(1) Whoever conceals, transfers to himself or to another person, or uses  
a) an item acquired by a criminal offense committed in the Czech Republic or abroad by another person or as a reward for such criminal offense, or  
b) an item acquired for an item referred to in paragraph a), or  
or whoever conspires to commit such act, will be sentenced to imprisonment for up to four years, to a pecuniary penalty, to prohibition of certain activity or to confiscation of an item; however, if he commits the act in relation to an item that derived from a criminal offense for which the law stipulates a lighter punishment, he will be sentenced to this lighter punishment.

#### **Section 215**

#### **Negligent Participation (Sharing out of Negligence)**

(1) Whoever conceals or transfers to themselves or another person, even out of negligence, an item that is not of a negligible value, which were acquired by an act committed in the Czech

Republic or abroad by another person or as a reward for such an act, shall be punished by a prison sentence of up to one year, punishment by disqualification, or forfeiture of items.

(2) An offender shall be punished by a prison sentence of up to three years, if,

*a) they committed an act referred to in Subsection 1 by violating an important obligation arising from their employment, profession, position or function, or one imposed upon them by law, or*

*b) they procured a substantial benefit by committing such act for themselves or another person.*

(3) An offender shall be punished by a prison sentence of one to five years, if,

*a) they committed an act referred to in Subsection 1 in relation to the item originating from a particularly serious crime, or*

*b) they procured another large-scale benefit by committing such act for themselves or another person.*

## **Section 216**

### **Legalisation of Proceeds from Crime (Money Laundering)**

(1) Whoever conceals the origin or otherwise attempts to substantially complicate or render impossible to find the origin

*a) of items that were acquired by a criminal offence committed in the Czech Republic or abroad, or as a reward for such criminal offence, or*

*b) of items that were obtained for an item referred to in Paragraph a),*

*or who allows the commission of such act by another person or enters into conspiracy to commit such act,*

*shall be punished by a prison sentence of up to four years, a monetary penalty, punishment by disqualification, or forfeiture of items; however, if they committed such an act in relation to the item that originated from a criminal offence for which the law stipulates a more lenient punishment, they shall be punished by the lenient punishment.*

(2) An offender shall be punished by a prison sentence of six months to five years or a monetary penalty, if,

*a) they committed an act referred to in Subsection 1 in relation to an item that have a higher value, or*

*b) they procured another benefit of greater extent by committing such act for themselves or another person.*

(3) An offender shall be punished by a prison sentence of two to six years or forfeiture of property, if

*a) they committed an act referred to in Subsection 1 as a member of an organised group,*

*b) they committed such an act in relation to the item originating from a particularly serious crime,*

*c) they committed such an act in relation to an item the value of which is not negligible,*

*d) they procured a substantial benefit by committing such act for themselves or another person, or*

*e) they exploited their employment status or their position to commit such an act.*

(4) An offender shall be punished by a prison sentence of three to eight years or forfeiture of property, if,

*a) they committed an act referred to in Subsection 1 in connection with an organised group operating in several States,*

*b) they committed such an act in relation to an item with a high value, or*

*c) they procured another large-scale benefit by committing such act for themselves or another person.*

## **Section 217**

### **Negligent Legalization of Proceeds from Crime**

(1) Whoever allows another person, even out of negligence, to conceal the origin or to render it impossible to find the origin of an item of a larger value, which were acquired by a criminal act committed in the Czech Republic or abroad or as a reward for such an act, will be sentenced to imprisonment for up to one year, to prohibition of certain activity, or to confiscation of items.

(2) An offender will be sentenced to imprisonment for up to three years, if he

a) commits the act referred to in sub-section (1) by violating an important obligation arising from their employment, profession, position or function, or imposed to him by law, or  
b) gains substantial profit for himself or for another by such act.

(3) An offender will be sentenced to imprisonment for one to five years, if he

a) commits the act referred to in sub-section (1) in relation to an item derived from an especially serious felony, or

b) gains extensive profit for himself or for another by such act.

### **Section 366**

#### **Favouritism**

(1) Whoever helps the offender with the intention to facilitate their escape from criminal prosecution, punishment or protective measures, or their enforcement, shall be punished by a prison sentence of up to four years; however, if they are assisting the offender of the criminal offence for which the criminal law stipulates a more lenient punishment, they shall be punished by such lenient punishment.

(2) Whoever commits an act referred to in Subsection 1 in favour of a familiar person shall not be punishable unless they did so with the intention to

*a) assist the person who committed the criminal offence of treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312) participation on a terrorist group (Section 312a), terrorism financing (Section 312d), support and promotion of terrorism (Section 312e), threat by terrorist criminal act (Section 312f), genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), aggression (Section 405a), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or abuse of internationally and State recognised symbols (Section 415), or*

*b) procure a property benefit for themselves or another person.*

At the time of review, Czechia was in the process of amending the Criminal Code to incorporate the requirements of the Moneyval Committee's evaluators and subordinate all types of actions (conversion, transfer, concealment, disguise), which are currently to be found under several articles (214, 215, 216, 217 of the Criminal Code), under one comprehensive offence of money-laundering. The amendment will therefore abolish the offenses of the participation (§ 214 of the CC) and the negligence participation (§ 215 of the Criminal Code) and the respective acts will be incorporated into the facts of the intentional and negligent legalization of proceeds of the crime. The amendment is likely to enter into force in late 2018.

The Czech Republic provided examples of cases:

#### **Court judgment 4 To 7/2013:**

##### **Money Laundering; Fraud; Complicity**

The conduct of a perpetrator who, after obtaining a thing through a property crime, transfers

the thing to another person - in particular, in the form of a purchase or exchange contract - cannot be qualified as the crime of fraud pursuant to Section 209 of the Criminal Code. The conduct of the perpetrator who has received a thing obtained through a property crime from the perpetrator of the basic crime and has transferred the thing (by sale or exchange) to another person despite of being aware that it has been obtained through a crime cannot be qualified as the crime of fraud either. Depending on the circumstances, such conduct may show the elements of a crime of complicity pursuant to Section 214 of the Criminal Code or a crime of money laundering pursuant to Section 216 of the Criminal Code (Resolution of the High Court in Prague of 27 February 2013, file number 4 To 7/2013).

**Court judgment 4 Tdo 382/2012-52:**

**Money Laundering**

If a perpetrator takes over stolen vehicles for the purpose of selling them and, thereafter, is pursuing an activity leading to disguising their actual origins (for example, is using an identity of another vehicle by forging the VIN label and placing it into the relevant component of the stolen car's body), the crime of money laundering pursuant to Section 216(1) a) of the Criminal Code shall not be considered as completed based on the mere takeover of the stolen vehicles but only based on the perpetrator's subsequent action. This moment is also decisive, for example, to consider the conditions for imposing a collective sanction.

**Court judgment 7 Tdo 108/2013-36:**

Issue of Factual Consumption of Crimes pursuant to Sections 247 and 252a of the Criminal Code: The joinder of the crimes of theft and money laundering is possible. For this reason, it is not possible to stem from the so-called factual consumption of these crimes due to the crime of money laundering being only a subsidiary product or means of the crime of theft.

**Supreme Court Resolution of 24th April 2012, file No. 4 Tdo 382/2012:**

The offender has taken over the stolen motor vehicles for the sale and then performs an activity aimed at concealing their true origin (for example, it uses the identity of another vehicle by the forgery of the VIN label and its placement in the relevant bodywork of the stolen vehicle); this act is considered as an offense of legalization of proceeds of the crime under § 216 of the Criminal Code.

**Supreme Court Resolution of 13th January 2016, file No. 4 Tdo 1441/2015:**

The offender alienated the motor vehicle and provided the vehicle with registration plates from another motor vehicle in order to make it more difficult to detect; this act is considered as an offense of legalization of proceeds of the crime under § 216 of the Criminal Code.

**Supreme Court Resolution dated 30th November 2016, file No. 8 Tdo 1542/2016:**

The offender had to register a stolen motor vehicle at the appropriate office for which he had altered the VIN number, and he also filed counterfeited Danish and Italian technical passes for their registration; this act is considered as an offense of legalization of proceeds of the crime under § 216 of the Criminal Code.

**(b) Observations on the implementation of the article**

Czechia relies on several criminal offences (s. 214, 215, 216 and 217 CC) to cover the acts under article 23 Subparagraph 1 of the Convention. Provisions 216 and 217 explicitly cover

concealment of the origin of proceeds of crime, but Czechia explained that this term is interpreted broadly (see explanation in Article 23 Subparagraph 1 a) ii) below). Sections 214 and 215 of the Criminal Code on participation (sharing) cover the acquisition (which corresponds to the term “transfers to him-/herself”), possession (also covered implicitly by “transfers to him-/herself”) and use of proceeds of crime (which is explicitly addressed), and s. 366 on favouritism targets those who assist offenders to evade prosecution.

While it appears that in practice all the requirements of the Convention are followed, Czechia is in the process of amending the Criminal Code to create one comprehensive money-laundering offence which explicitly incorporates all relevant types of conduct falling into the scope of money laundering.

As for the definition of property, Czechia explained that section 489 of the Civil Code is broad and covers all property listed in article 2(d) of the Convention. As for concrete examples, Czechia referred to cars, houses, securities, funds, business shares, property rights etc.

It is recommended that Czechia amend section 216 of the Criminal Code on money-laundering to explicitly and comprehensively cover all forms of money-laundering in order to ensure legal certainty

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to its response under article 23 (1) (a) i).

As for the definition of the element ‘disguise’, Czechia referred to the Commentary to a Criminal Code which interprets the term broadly:

“The disguise (concealment of origin of a thing) means that information on the origin of a thing is being concealed or distorted. The means of disguising the origin of a thing are the transfer of ownership to the thing, perhaps even bogus and repeated, investing such things in a “legal business”, as well as the concealment of the real nature or the location or the movement of the things or the concealment of their disposition or of information on their ownership or, possibly, on other rights associated with them.” (Commentary to the Criminal Code, ŠÁMAL, P. a kol., C. H. Beck, 2012, page 1944).

The Czech Republic further clarified that the term “another property value”, had been formerly defined as a property right or other values valued by money that was not a thing was under

current legislation considered to be incorporeal things.

A thing is defined in Section 134 Criminal Code. This definition was adapted to new terminology in the Act No. 89/2012 Coll., Civil Code and thus the amendment to the Criminal Code No. 86/2015 Coll. (entry into force on 1 June 2015) has removed the term “another property value” from Section 134 CC and newly the broad interpretation of the term “a thing” is used in accordance with the Civil Code (Section 489).

#### **(b) Observations on the implementation of the article**

Czechia relies on several criminal offences (s. 214, 215, 216 and 217 CC) to cover the acts under article 23 paragraph 1 of the Convention. Sections 216 and 217 of the Criminal Code explicitly cover concealment of the origin of proceeds of crime, but Czechia explained that this term is interpreted broadly and generally means that information on the origin of a thing is being concealed or distorted. Sections 214 and 215 of the Criminal Code on participation (sharing) also cover concealment, acquisition (which corresponds to the term “transfers to him-/herself”), possession (also covered implicitly by “transfers to him-/herself”) and use of proceeds of crime (which is explicitly addressed), and section 366 of the Criminal Code on favouritism targets those who assist offenders to evade prosecution.

While it appears that in practice all the requirements of the Convention are followed, Czechia is in the process of amending the Criminal Code to create one comprehensive money-laundering offence which explicitly incorporates all relevant types of conduct falling into the scope of money laundering.

As for the definition of property, Czechia explained that section 489 of the Civil Code is broad and covers all property listed in article 2(d) of the Convention. As for concrete examples, Czechia referred to cars, houses, securities, funds, business shares, property rights etc.

It is recommended that Czechia amend section 216 of the Criminal Code on money-laundering to explicitly and comprehensively cover all forms of money-laundering in order to ensure legal certainty

### **Article 23 Laundering of proceeds of crime**

#### **Subparagraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Criminal Code of the Czech Republic**

### **Section 214**

#### **Participation (Sharing)**

(1) Whoever conceals, transfers to themselves or another person, or uses

*a) an item, which were acquired by a criminal offence committed in the Czech Republic or abroad by another person or as a reward for such criminal offence, or*

*b) an item, which were obtained for an item or referred to in Paragraph a) or who enters into conspiracy to commit such act,*

*shall be punished by a prison sentence of up to four years, a monetary penalty, punishment by disqualification, or forfeiture of items; however, if they committed an act in relation to the item that originated from a criminal offence for which the law stipulates a more lenient punishment, they shall be punished by the lenient punishment.*

(2) An offender shall be punished by a prison sentence of six months to five years or a monetary penalty, if,

*a) they committed an act referred to in Subsection 1 in relation to an item that have a higher value, or*

*b) they procured another benefit of greater extent by committing such an act for themselves or another person.*

(3) An offender shall be punished by a prison sentence of two to six years or forfeiture of property, if,

*a) they committed an act referred to in Subsection 1 as a member of an organised group,*

*b) they committed such an act in relation to the item originating from a particularly serious crime,*

*c) they committed such an act in relation to an item with a substantial value, or*

*d) they procured a substantial benefit by committing such act for themselves or another person.*

(4) An offender shall be punished by a prison sentence of three to eight years or forfeiture of property, if,

*a) they committed an act referred to in Subsection 1 in relation to an item with a high value, or*

*b) they procured another large-scale benefit by committing such act for themselves or another person.*

### **Section 215**

#### **Negligent Participation (Sharing out of Negligence)**

(1) Whoever conceals or transfers to themselves or another person, even out of negligence, an item that is not of a negligible value, which were acquired by an act committed in the Czech Republic or abroad by another person or as a reward for such an act, shall be punished by a prison sentence of up to one year, punishment by disqualification, or forfeiture of items.

(2) An offender shall be punished by a prison sentence of up to three years, if,

*a) they committed an act referred to in Subsection 1 by violating an important obligation arising from their employment, profession, position or function, or one imposed upon them by law, or*

*b) they procured a substantial benefit by committing such act for themselves or another person.*

(3) An offender shall be punished by a prison sentence of one to five years, if,

*a) they committed an act referred to in Subsection 1 in relation to the item originating from a particularly serious crime, or*

*b) they procured another large-scale benefit by committing such act for themselves or another person.*

The Czech Republic provided examples of cases:

**Court judgment 4 To 7/2013:**

**Money Laundering; Fraud; Complicity**

The conduct of a perpetrator who, after obtaining a thing through a property crime, transfers the thing to another person - in particular, in the form of a purchase or exchange contract - cannot be qualified as the crime of fraud pursuant to Section 209 of the Criminal Code. The conduct of the perpetrator who has received a thing obtained through a property crime from the perpetrator of the basic crime and has transferred the thing (by sale or exchange) to another person despite of being aware that it has been obtained through a crime cannot be qualified as the crime of fraud either. Depending on the circumstances, such conduct may show the elements of a crime of complicity pursuant to Section 214 of the Criminal Code or a crime of money laundering pursuant to Section 216 of the Criminal Code (Resolution of the High Court in Prague of 27 February 2013, file number 4 To 7/2013).

**High Court in Prague**

The conduct of a perpetrator who takes over a vehicle from another person for the purpose of transporting it across the borders of the Czech Republic to abroad despite of knowing that the vehicle has been stolen and that by doing so, he is removing it from the place of possible revelation needs to be considered as the hiding of the thing, meeting the elements of a crime of complicity pursuant to Section 251(1) a) of the Criminal Code. It would concern complicity in the crime of theft pursuant to Section 10(1) c) and Section 247 of the Criminal Code only if the person has acted so upon agreement with the perpetrator prior to the commission of the theft.

**Court judgment 4 Tdo 1282/2014:**

If, based on the produced evidence, it is possible to conclude that the accused must have been aware at least of the fact that the thing purchased by him was a thing obtained by another through a crime, then it is also possible to conclude that the subjective side of the crime of complicity pursuant to Section 214(1) a) of the Criminal Code has been met. The fact based on which it can be assumed that a thing has been obtained through a crime may be, for example, when it comes to a religious painting furnished with an inventory number and the number with which personal cultural sights are marked on the frame, which the labelling complies with the valid usage applicable to inventorying of cultural sights.

**Court judgment 3 Tdo 723/2011-31:**

No perpetrator of the basic crime needs to be ascertained for the crime of complicity to be committed. To meet the elements of a crime of complicity pursuant to Section 214(1) and (3) d) of the Criminal Code, it is not necessary to unambiguously determine the main perpetrator of the crime of theft pursuant to Section 205 of the Criminal Code since the Criminal Code does not require that the identity of the perpetrator of the basic crime is ascertained. However, within the consideration of the cited crime, the investigative, prosecuting and adjudicating bodies must examine, in particular, the circumstances under which the stolen thing which has got into the perpetrator's possession has been obtained and consider the issue of intention of the perpetrator's action, lying in the perpetrator's awareness of the illegal origin of the given thing.

**Court judgment 8 Tdo 574/2011-19:**

Criminal Liability of An Accomplice Participating in Forgery and Alteration of Money (a crime of forgery and alteration of money since 1 January 2010): An accomplice participating in the crime of forgery and alteration of money pursuant to Section 140 of the Criminal Code (as

applicable until 31 December 2009; a crime of forgery and alteration of money under Section 233 of the Criminal Code since 1 January 2010) the proceeds of which stem from the exchange of forged money shall be considered as committing the crime of complicity pursuant to Section 251 of the Criminal Code (as applicable until 31 December 2009; a crime of complicity under Section 214 of the Criminal Code since 1 January 2010) and shall be liable the tune of the financial benefits obtained by him based on such forged money (the value of the obtained benefits in the cited crime as applicable until 31 December 2009; Section 214(2) b) and (3) d) or (4) b) of the Criminal Code).

**Court judgment 4 Tdo 463/2013-21:**

Intellectual Constituent of Fault in Complicity: The subjective side of the crime of complicity pursuant to Section 214 of the Criminal Code shall be considered as met, among other things, if the perpetrator has had a certain idea of the respective thing having been obtained through the commission of a crime. In the event of stolen vehicles, the intellectual constituent of fault can be deduced, for example, from the fact that such apparent changes which give the evidence of illegal obtaining of these things by another person have been made in the vehicles.

**Court judgment 3 Tdo 1023/2013:**

Criminal Liability for Complicity: The perpetrator's criminal liability for the crime of complicity pursuant to Section 214 of the Criminal Code shall not be excluded only because no criminal prosecution is admissible in relation to the another person who has obtained a thing or another property value through a crime pursuant to Section 11(1) e) of the Criminal Code. In terms of intentional commission of the crime of complicity pursuant to the cited provision, such action through which the perpetrator has transferred to himself the particular thing or another property value about which he has known it does not belong to the perpetrator of the primary crime shall be considered as typical.

**Court judgment 3 Tdo 1206/2011-14:**

Intentional Complicity: The intention of the perpetrator who has committed the crime of complicity pursuant to Section 251(1) a) of the Criminal Code may also ensue from the fact that the perpetrator has obtained a commonly non-tradeable thing, which, subsequently, he has tried to sell for a disproportionately low portion of its price. Such conduct on the part of a perpetrator refers to his knowledge of the illegal origin of the thing and, to the say the least, of his reconciliation with such fact.

**(b) Observations on the implementation of the article**

It appears that sections 214 and 215 of the Criminal Code cover all elements of the Convention, including 'acquisition' and 'use'. As for 'possession', Czechia explained that it is implicitly covered by the term 'transfers to himself'. A person cannot possess property without a prior transfer to him or her. If a person transfers a thing to himself/herself, he or she possesses it.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (b) (ii)**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code of the Czech Republic**

**Section 20**

**Premeditation**

(1) Conduct that is based in an intentional creation of conditions for the commission of a particularly serious crime (Section 14 Subsection 3), especially in its organisation, the acquisition or adaptation of the means or instruments for its commission, in conspiracy, unlawful assembly, in the instigation or aiding of such a crime, shall be deemed a premeditation only if the criminal law applicable for a specific criminal offence expressly stipulates for it and an attempt or completion of a particularly serious crime did not occur.

(2) Premeditation is punishable pursuant to the criminal penalty set out for a particularly serious crime to which it leads, unless the criminal law stipulates otherwise.

(3) Criminal liability for the premeditation to commit a particularly serious crime shall expire if an offender voluntarily waived further conduct towards the commission of a particularly serious crime and

*a) removed the risk to an interest protected by criminal law which occurred due to the attempted premeditation, or*

*b) reported the premeditation to commit a particularly serious crime at a time when the risk to an interest protected by criminal law which occurred due to the attempted preparation could still be removed; reporting must be performed to the public prosecutor or the police authority.*

A soldier may report it to their commander.

(4) If there are several persons involved in an act, the criminal liability for the premeditation is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act, if it is completed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other committed criminal offence which they have already committed by their conduct pursuant to Subsection 1.

**Section 21**

**Attempt**

(1) Any conduct that leads directly to the completion of a criminal offence and which the offender committed with the intention of the commission of a criminal offence, if the completion of the criminal offence did not occur is defined as an attempt to commit a criminal offence.

(2) An attempted criminal offence shall be punishable under the criminal penalty set for a completed criminal offence.

(3) Criminal liability for an attempted criminal offence shall expire if an offender voluntarily waived further conduct leading to the completion of a criminal offence and

*a) removed the risk to an interest protected by criminal law which occurred due to the attempted criminal offence, or*

*b) reported the attempted criminal offence at a time when the risk to an interest protected by criminal law which occurred due to an attempted criminal offence could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.*

(4) If there are several persons involved in an act, the criminal liability for an attempt is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act, if it is completed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other completed criminal offence which they have already committed by their conduct pursuant to Subsection 1.

### **Section 23**

#### **Accomplice**

If a criminal offence was committed by the intentional joint conduct of two or more persons, each of them shall be liable as if they committed a criminal offence on their own (accomplices).

### **Section 24**

#### **Accessory**

(1) An accessory to a completed criminal offence or its attempt is a person who intentionally

*a) plotted or managed (organiser) the commission of a criminal offence,*

*b) instigated the commission of a criminal offence in another person (instigator), or*

*c) allowed or facilitated the commission of a criminal offence by another person, in particular through the provision of means, removal of barriers, eliciting the victim to the place of an act, keeping watch during the commission of an act, providing advice, encouraging the resolve or vowing to participate in a criminal offence (accessory).*

(2) The provision on the criminal liability and culpability of an offender shall be applied to the criminal liability and culpability of an accessory unless the criminal law stipulates otherwise.

(3) The criminal liability of an accessory shall expire if they voluntarily waived any further accomplicity in the criminal offence and

*a) removed the risk to an interest protected by criminal law that occurred due to the attempted accomplicity, or*

*b) reported the accomplicity in a criminal offence at a time when the risk to an interest protected by criminal law which occurred due to attempted accomplicity could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.*

(4) If there are several persons involved in an act, the criminal liability of the accessory is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such an act, if it is still committed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an accessory for any other criminal offence which they have already committed by their conduct pursuant to Subsection 1.

**Section 214 (1(b)) as cited above.**

**Section 216 (1(b)) as cited above.**

The Czech Republic provided examples of cases:

**Court judgment 8 Tdo 137/2015:**

Complicity is an activity in which not all accomplices must act the same way. The accomplices' activities do not need to be of the same significance either. Accomplices perform an activity which, as an aggregate of all activities, forms the objective side of the factual elements of a crime. Through their joint action, accomplices intend to cause the results stipulated in the Criminal Code. If an activity consists of several constituents, the constituents may be divided into individual accomplices and individual perpetrators may be ascribed individual actions; however, these individual actions meet, as an aggregate, the factual elements of a crime. To meet the elements of a crime of complicity, it is not necessary that all accomplices participate in the crime to the same extent, but partial involvement shall be sufficient, even in a subordinate role. However, the involvement must be led by the same intention as the other perpetrator's activity since only then it objectively and subjectively becomes a component of the process constituting, as an aggregate, a crime. A decisive constituent is, in particular, the perpetrators' common intention, including both their joint action and the pursuit of a common goal. The common intention cannot be equated with the accomplices' express agreement, which is not required to be in place (an implied agreement is sufficient - compare Decision No. 2180/1925 of the Collection of Criminal Decisions). However, every accomplice must be aware at least of the possibility that his and the other accomplices' common actions are leading to the commission of a crime. The circumstance that each accomplice is pursuing his own benefit in their common action does not exclude common intention, in particular when each of them has assisted, through his own activity, in the activity of the others (compare Decision No. 22/1950 of the Collection of Criminal Decisions). In the complicity, common activity shall also include, besides common action, the fact that aware of their common criminal activity, the accomplices support one another in its pursuit.

**Court judgment 3 Tdo 247/2013-48:**

Complicity and Involvement in Insurance Fraud: The complicity in insurance fraud pursuant to Section 210 of the Criminal Code is usually in question when a perpetrator has solicited other persons, being the so-called white horses, to implement a fraudulent intention or goal, prepare schemes of feigned insured events, and collect funds in the form of insurance benefits. Depending on the concrete facts, such conduct cannot be considered as complicity within the meaning of Section 24(1) of the Criminal Code.

**Court judgment 3 Tdo 1196/2012-21:**

Interpretation of Provisions Pertaining to Assisted Crime: Section 10(1) c) of the Criminal Code does not need to narrowly and directly relate to a perpetrator's conduct meeting the factual elements of the relevant crime committed by the main perpetrator.

**(b) Observations on the implementation of the article**

The provision under review is implemented in provisions on preparation (s. 20 CC), attempt (s. 21 CC), accomplice (s. 23 CC) and accessory (s. 24 CC) as well as participation (sharing) section 214 (1(b)) and money laundering section 216 (1(b)) of the Criminal Code.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (a) and (b) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article:*

- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*
- (b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

The Czech Republic has all crimes approach, so the predicate offences are all offences regardless if they were committed in the Czech Republic or abroad.

### **Criminal Code of the Czech Republic**

#### **Section 13**

##### **Criminal Offence**

(1) A criminal offence is an illegal act identified as punishable by criminal law and which presents the characteristics set out under such law.

(2) An intentional wrongful act is necessary for the criminal liability of a criminal offence unless criminal law expressly stipulates that the fault of negligence is sufficient.

Please see measures under the subparagraph 1 (a) (i) and subparagraph 1 (b) (i) of article 23 above (Section 214, 215, 216, 217 of the Criminal Code).

Please see examples of cases under the subparagraph 1 (a) (i) and subparagraph 1 (b) (i) of article 23 above.

#### **(b) Observations on the implementation of the article**

Sections 214 - 217 of the Criminal Code adopt an all-crimes approach and covers all Convention offences as predicate offences, including those committed in Czechia or abroad.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and*

*would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

Please see measures under the subparagraph 1 (b) (ii) of article 23 above (Section 23 and 24 of the Criminal Code).

Please see examples of cases under the subparagraph 1 (b) (ii) of article 23 above.

Czechia reported that dual criminality is required. An act must be a punishable offence in the State on the territory of which it was committed and it also must be a criminal offence under the Criminal Code on the basis of article 13 – ‘A criminal offence is an illegal act identified as criminal by the Criminal Code, which shows the characteristics stated in this Code’.

**(b) Observations on the implementation of the article**

Dual criminality is required. An act must be a punishable offence in the State in the territory of which it was committed, and it also must be a criminal offence under the Criminal Code of Czechia on the basis of section 13.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Czechia has submitted its anti-money laundering provisions during the review process.

**(b) Observations on the implementation of the article**

Czechia has submitted its anti-money laundering provisions during the review process.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic's domestic system contains fundamental principles as referred to in the provision above. It is not possible to punish for a new offence the offender of the predicate offence, if he only uses or holds things that he gained from predicate offence, because it is inevitable consequence of committing a crime. It could be incompatible with the ne bis in idem principle.

**Charter of Fundamental Rights and Freedoms:**

**Article 40**

(5) No one may be criminally prosecuted for an act for which she has already been finally convicted or acquitted. This rule shall not preclude the application, in conformity with law, of extraordinary procedures of legal redress.

The Czech Republic provided examples of cases:

**Commentary:** No fraud is in question even if a fraudulent action is aimed at covering up the already caused damages (for example, a cashier is evading sales and is covering up the damages by altering documents on the sale of goods) since the cover-up is part of the basic crime (for example, embezzlement pursuant to Section 206). However, if such cover-up is committed by a person other than the perpetrator of the basic crime, the person could be liable for favouritism (section 366), participation (Section 214) or legalisation of proceeds from crime (Section 216).

**Court judgment 6 Tdo 430/2004:**

Fraudulent conduct is always aimed at the enrichment of the perpetrator or someone else. If the enrichment takes place through the commission of another property crime and the fraudulent conduct is solely aimed at covering it up, it does not concern fraud since the perpetrator's cover-up action is part of the basic property crime and is not subject to separate criminal liability. However, under certain circumstances, it could qualify for complicity pursuant to Section 251 of the Criminal Code or abetting pursuant to Section 166 of the Criminal Code.

**(b) Observations on the implementation of the article**

Self-laundering is criminalized for some behaviour (s. 216 – 217 CC), but not for the concealment, transfer or use of proceeds as defined in Sections 214 – 215 CC as this would be in conflict with the Czech Charter of Basic Human Rights and Freedoms and the principle of double jeopardy. The reason is that such conduct is a logical consequence of committing the predicate offence and so in fact the offender of the predicate offence would be criminalised twice for the same conduct.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code of the Czech Republic**

**Section 214**

**Participation (sharing)**

(1) Whoever conceals, transfers to himself or to another person, or uses  
a) an item acquired by a criminal offense committed in the Czech Republic or abroad by another person or as a reward for such criminal offense, or  
b) an item acquired for an item referred to in paragraph a), or  
or whoever conspires to commit such act, will be sentenced to imprisonment for up to four years, to a pecuniary penalty, to prohibition of certain activity or to confiscation of an item; however, if he commits the act in relation to an item that derived from a criminal offense for which the law stipulates a lighter punishment, he will be sentenced to this lighter punishment.

**Section 215**

**Negligent Participation (Sharing out of Negligence)**

(1) Whoever conceals or transfers to themselves or another person, even out of negligence, an item that is not of a negligible value, which were acquired by an act committed in the Czech Republic or abroad by another person or as a reward for such an act, shall be punished by a prison sentence of up to one year, punishment by disqualification, or forfeiture of items.

(2) An offender shall be punished by a prison sentence of up to three years, if,

*a) they committed an act referred to in Subsection 1 by violating an important obligation arising from their employment, profession, position or function, or one imposed upon them by law, or  
b) they procured a substantial benefit by committing such act for themselves or another person.*

(3) An offender shall be punished by a prison sentence of one to five years, if,

*a) they committed an act referred to in Subsection 1 in relation to the item originating from a particularly serious crime, or  
b) they procured another large-scale benefit by committing such act for themselves or another person.*

**(b) Observations on the implementation of the article**

Concealment of proceeds of crime is covered by sections 214-215 of the Criminal Code on sharing.

At the time of review, Czechia was in the process of amending the Criminal Code to incorporate the requirements of the Moneyval Committee's evaluators and subordinate all types of actions (conversion, transfer, concealment, disguise), which are currently to be found under several sections (s. 214-217 CC), under one comprehensive offence of money-laundering. The amendment is therefore planned to abolish the offences of the sharing (s. 214 CC) and sharing out of negligence (s. 215 CC) and the respective acts will be incorporated into the facts of the intentional and negligent legalization of proceeds of the crime (s. 216-217 CC). The amendment is likely to enter into force in late 2018.

## Article 25 Obstruction of Justice

### Subparagraph (a)

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

### (a) Summary of information relevant to reviewing the implementation of the article

The Czech Republic cited the following applicable measures.

#### Criminal Code of the Czech Republic

##### Section 175

##### Blackmail

(1) Whoever forces another person to do something, to fail to do something, or to suffer through violence, threat of violence or the threat of another serious detriment, shall be punished by a prison sentence of six months to four years, or a monetary penalty.

(2) An offender shall be punished by a prison sentence of two to eight years, if,

a) they committed an act referred to in Subsection 1 as a member of an organised group,

b) they committed such an act with at least two persons,

c) they committed such an act with a weapon,

d) they caused substantial damage by committing such an act,

e) they committed such an act on a witness, expert, or interpreter in connection with the performance of their obligations, or

f) they committed such an act on another person for their actual or perceived race, ethnicity, nationality, political belief, religion, or because they are actually or allegedly non-religious.

(3) An offender shall be punished by a prison sentence of five to twelve years, if,

a) they caused grievous bodily harm by committing such an act,

b) they committed such an act in order to facilitate or allow the commission of the terrorist criminal offence of Terrorism financing (Section 312d) or Threat by terrorist criminal act (Section 312f), or

c) they caused large-scale damage by committing such an act.

(4) An offender shall be punished by a prison sentence of eight to sixteen years if they caused death by committing an act referred to in Subsection 1.

(5) Premeditation is punishable.

##### Section 335

##### Interference in the Independence of Courts

(1) Whoever affects a judge to violate their obligations in the proceedings before the court shall be punished by a prison sentence of six months to three years.

(2) An offender shall be punished by a prison sentence of two to ten years if they committed an act referred to in Subsection 1 with the intention

a) to procure a substantial benefit for themselves or another person,

b) to cause substantial damage, or

*c) to seriously damage another person in their employment, to disrupt their family relationships, or to cause them any serious harm.*

(3) An offender shall be punished by a prison sentence of five to twelve years if they committed an act referred to in Subsection 1 with the intention

*a) to procure a large-scale benefit for themselves or another person, or*

*b) to cause large-scale damage.*

## **Section 346**

### **False Testimony and False Expert Opinion**

(1) Whoever, as an expert, submitted a false, incomplete, or grossly distorted expert opinion shall be punished by a prison sentence of up to two years, or punishment by disqualification.

(2) Whoever, as a witness or an expert in court or before an international judicial body, before a notary as a judicial commissioner, public prosecutor or the police authority, which performs preliminary proceedings under the Code of Criminal Procedure, or before the investigation committee of the Parliament of the Czech Republic

*a) states false circumstances of substantial importance for the decision or for the findings of the investigation committee of the Parliament of the Czech Republic, or*

*b) conceals such a fact, shall be punished by a prison sentence of six months to three years, or punishment by disqualification.*

(3) An offender shall be punished by a prison sentence of two to ten years, if

*a) they caused substantial damage by committing an act referred to in Subsection 1 or 2, or*

*b) they committed such an act with the intention of seriously damaging another person in their employment, disrupting their family relationships, or causing them another grievous harm.*

The Czech Republic provided examples of cases:

### **Court judgment (Rt) 4 13/81:**

It shall not be considered as bribery within the meaning of Section 161(1) of the Criminal Code if the perpetrator gives or promises another person a bribe for concealing, as a witness, from the investigative, prosecuting and adjudicating bodies any circumstance of great significance for a decision. In such case, it concerns, based on the circumstances, the preparation of, or, more precisely, the solicitation to, perjury and an untrue expert opinion pursuant to Section 175(1) b) of the Criminal Code.

### **8 Tdo 612/2011**

The statutory elements of a crime of blackmail lying in the threat of grievous harm may include various kinds of threat since it is not defined in any more detail in the Code. However, it must concern an unlawful action lying in the wrongdoer's threat to cause consequences the intensity of which is comparable to that associated with a threat of violence.

In considering whether it concerns a threat of another type of grievous harm, it is also necessary to take into account, for example, the gravity of possible disruption of the aggrieved party's personal, family, work, business or other relationships if the threat is actually carried out, the individual features of the aggrieved party's personality, the intensity of the influence on his/her psychological condition, etc. since one and the same threat may have different impacts on different aggrieved parties based on its nature.

Since the wrongdoer threatened the aggrieved girls that he would make their erotic photos public contrary to the contract pursuant to which they had been taken (that he would have them published in the magazines released in the Czech Republic or would hand them over to the girls' parents), such form of pressure exerted on the aggrieved parties, when the wrongdoer

made them do something, could be considered as a significant intervention in their personal lives, which meets the statutory element of a crime of blackmail lying in the threat of another kind of grievous harm.

### **3 Tdo 465/2010**

Threats of seizure proceedings, a property auction, inclusion of the aggrieved party in the database of debtors, or publication of the aggrieved party's name as a debtor in media or threats of criminal prosecution meet the element of a "threat of another kind of grievous harm" within the meaning of Section 235(1) of the Criminal Code (as amended until 31 December 2009; since 1 January 2010 as per Section 175(1) of the Criminal Code).

#### **(b) Observations on the implementation of the article**

Several provisions of the Criminal Code relate to obstruction of justice, namely those on blackmail (s. 175 CC), violence against the public authority (s. 323 CC), threatening with the aim to affect the public authority (s. 324 CC), violence against a public official (s. 325 CC), threatening with the aim to affect an official person (s. 326 CC), interference in the independence of courts (s. 335 CC) and false testimony and false expert opinion (s. 346 CC).

Corrupt practices with a view to inducing false testimony or production of evidence are not covered where the witness, in the end refuses, to do so. Section 332 of the Criminal Code on bribery does not apply because giving a bribe to a witness or expert does not fall into the scope of 'procurement of public interest' as witnesses and experts have the duty to give true testimony or expert opinion. The person giving a bribe would be punished as a participant to the offence according to section 346 of the Criminal Code on instigation [s. 24 (1) b]. However, Czechia explained that it was in the process of amending the Criminal Code to rectify this issue through a) amending section 346 of the Criminal Code; and b) introducing a new crime named 'obstruction of justice'. The amendment is expected to enter into force in late 2018.

At the time of review, the draft provisions looked as follows:

#### **Section 346**

##### **False testimony and false expert opinion**

(1) Whoever gives as an expert a false, grossly distorted or incomplete expert opinion, shall be sentenced to imprisonment for up to two years, a pecuniary penalty or to prohibition of activity.

(2) Whoever as a witness before court or international judicial authority, before a public notary as a judicial commissioner, public prosecutor or a police authority conducting pre-trial proceedings according to the Code of Criminal Procedure, or before the investigative committee of the Chamber of Deputies of the Parliament of the Czech Republic

a) states untrue about a circumstance that has essential relevance for decision making or for findings of the investigative committee of the Chamber of Deputies of the Parliament of the Czech Republic, or

b) conceals such a circumstance,

(1) shall be sentenced to imprisonment ~~for six months to three years~~ for up to three years, to a pecuniary penalty or to prohibition of activity.

(3) An offender shall be sentenced to imprisonment ~~for two to eight years~~ one year to five years, if he/she

a) commits an act referred to in Sub-section 1 or 2 with the intention to obtain for himself/herself or for another person material profit, or

b) commits such an act with the intention to seriously harm another person in his/her occupation, to disrupt his/her family relations or to cause another serious detriment.

(4) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) causes substantial damage by the act referred to in Sub-section 1 or 2, or

b) commits such an act with the intention to obtain for himself/herself or for another person considerable material profit.

(5) An offender shall be sentenced to imprisonment for three to ten years if he/she

a) causes substantial damage by the act referred to in Sub-section 1 or 2, or

b) commits such an act with the intention to obtain for himself/herself considerable material profit.

### **Section 347a**

#### **Obstruction of justice**

(1) Whoever, in proceedings before a court, before an international judicial authority or in criminal proceedings, submits proof of which he or she knows to be counterfeit or altered, with the intention to be used as genuine, or counterfeits or amends evidence with the intention to be used as genuine, shall be sentenced to imprisonment for up to two years or a pecuniary penalty.

(2) Whoever induces someone into committing a crime of false accusation (Section 345), false testimony and false expert opinion (Section 346) or a false interpretation (Section 347), shall be sentenced to imprisonment for up to two years or a pecuniary penalty.

(3) Whoever, himself/herself or by means of another person, provides, offers or promises material profit to or for another person for the purpose of committing a crime of false accusation (Section 345), false testimony and false expert opinion (Section 346) or a false interpretation (Section 347), shall be sentenced to imprisonment for up to three years or a pecuniary penalty.

(4) An offender shall be sentenced to imprisonment for one to five years, if he/she

a) commits an act referred to in Sub-section 1, 2 or 3 with the intention to obtain for himself/herself or for another person material profit,

b) commits such an act as a public official,

c) commits such an act with the intention to seriously harm another person in his/her occupation, to disrupt his/her family relations or to cause another serious detriment.

d) commits such an act with the intention of concealing or facilitating his/her own criminal offence, or

e) commits such an act to another person who has performed his or her duty as a result of his employment, profession, position or function or imposed by law.

(5) An offender shall be sentenced to imprisonment for two to eight years, if he/she

a) causes substantial damage by the act referred to in Sub-section 1, 2 or 3, or

b) commits such an act with the intention to obtain for himself/herself or for another person considerable material profit.

(6) An offender shall be sentenced to imprisonment for three to ten years if he/she

a) causes substantial damage by the act referred to in Sub-section 1, 2 or 3, or

b) commits such an act with the intention to obtain for himself/herself considerable material profit.

It is recommended that Czechia take measures to explicitly criminalize corrupt behaviour to induce false testimony or to interfere in the giving of testimony or the production of evidence

## Article 25 Obstruction of Justice

### Subparagraph (b)

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

### (a) Summary of information relevant to reviewing the implementation of the article

The Czech Republic cited the following applicable measures.

#### Criminal Code of the Czech Republic

##### Section 127

##### Official Person

(1) An official person is

*a) the judge,*

*b) the public prosecutor,*

*c) the President of the Czech Republic, Senator or Member of Parliament of the Czech Republic, a member of the Government of the Czech Republic, or another person holding office in another public authority,*

*d) a council member or a responsible official of the local government, public authority, or other public authority,*

*e) a member of the armed forces or security forces, or police officer,*

*f) a court bailiff in the execution of enforcement activities and the activities carried out under the authority of the court or the public prosecutor,*

*g) the notary in carrying out actions in the probate proceedings as a court commissioner,*

*h) a financial arbiter and their deputy,*

*i) a natural person, who was appointed as forest guard, nature guard, hunting or fishing guard, if they perform tasks of the State or society while using competencies delegated for the implementation of such tasks.*

(2) The criminal liability and protection of public officers requires, under individual provisions of the Penal Code, the commission of a criminal offence in connection with their competencies and liabilities.

(3) An official person of a foreign State or an international organisation is under the terms set out in Subsection 1 and 2 deemed to be a public officer under the Penal Code, unless an international treaty stipulates otherwise or if they operate in the territory of the Czech Republic with the consent of the authorities of the Czech Republic; such consent is not required if it concerns an official of the International Criminal Court, International Criminal Tribunal or similar international judicial authority that meets at least one of the conditions stated in Section 145 Subsection 1 Paragraph a) of the Act on International Judicial Cooperation in Criminal Matters.

### **Section 323**

#### **Violence against Public Authority**

(1) A person who uses violence with the intention to affect the execution of the powers of authority of the state administration, local government, court or another public authority, shall be punished by a prison sentence of six months to five years.

(2) An offender shall be punished by a prison sentence of two to eight years, if,

*a) they committed an act referred to in Subsection 1 with a weapon,*

*b) they caused bodily harm to another person by committing such an act, or*

*c) they caused substantial damage by committing such an act.*

(3) An offender shall be punished by a prison sentence of four to twelve years if by committing an act referred to in Subsection 1 they caused

*a) grievous bodily harm,*

*b) large-scale damage, or*

*c) the distortion of activities of such authority.*

(4) An offender shall be punished by a prison sentence of ten to eighteen years if they caused death by committing an act referred to in Subsection 1.

(5) Premeditation is punishable.

### **Section 324**

#### **Threatening with the Aim to Affect Public Authority**

(1) Whoever threatens another person by death, bodily harm, or by causing substantial damage

*a) with the intention to affect the execution of the powers of a public administration body, local government, court, or another public authority, or*

*b) for the performance of the powers of such authority, shall be punished by a prison sentence of up to three years.*

(2) An offender shall be punished by a prison sentence of up to five years if they committed an act referred to in Subsection 1 with a weapon.

### **Section 325**

#### **Violence against an Official Person**

(1) A person who uses violence

*a) with the intention to affect the performance of powers of an official person, or*

*b) for the performance of powers of such official person, shall be punished by a prison sentence of up to four years.*

(2) An offender shall be punished by a prison sentence of six months to six years, if,

*a) they committed an act referred to in Subsection 1 with a weapon,*

*b) they caused bodily harm to another person by committing such an act, or*

*c) they caused larger damage by committing such an act.*

(3) An offender shall be punished by a prison sentence of three to twelve years if by committing an act referred to in Subsection 1 they caused

*a) grievous bodily harm, or*

*b) large-scale damage.*

(4) An offender shall be punished by a prison sentence of eight to sixteen years if they caused death by committing an act referred to in Subsection 1.

(5) Premeditation is punishable.

### **Section 326**

#### **Threatening with the Aim to Affect an Official Person**

(1) Whoever threatens another person with death, bodily harm, or by causing substantial

damage

*a) with the intention to affect the performance of powers of an official person, or*

*b) for the performance of powers of such official person, shall be punished by a prison sentence of up to three years.*

(2) An offender shall be punished by a prison sentence of up to five years if they committed an act referred to in Subsection 1 with a weapon.

## **Section 327**

### **Common Provisions**

(1) Protection under Section 323 through 326 shall also be granted to a person who appeared to support or protect the public administration body, local government, court or another public authority, or official person.

(2) Protection under Section 323 through 326 is also provided to an internationally protected person, which means an official person of a foreign State or international organisation that exercises diplomatic or other privileges and immunities under international law, or a person holding an office or employed or working at an international judicial authority.

Please see measures under the subparagraph (b) of article 25 above (Section 335 of the Criminal Code).

The Czech Republic provided examples of cases:

#### **Court judgment 3 Tdo 1312/2012-25:**

Violence Against an Official; Weapon: If a perpetrator uses a vehicle against an official as a means of physical pressure with the aim to influence the performance of his official powers, the perpetrator's conduct can be considered, based on the fulfilment of other statutory conditions, as violence against an official with the use of a weapon pursuant to Section 325(1) a) and (2) a) of the Criminal Code (compare the decision published under No. 36/1976-I in the Collection of Criminal Decisions). To meet the statutory elements of this crime, it shall not be required that the official suffers damage to health. For this reason, it shall be irrelevant whether the perpetrator has driven the vehicle used against the official at an insignificant speed which has not been objectively capable of causing damage to health provided that such conduct has influenced the course of performance of the official's powers (for example, if the perpetrator has driven onto a police officer by hitting him with the car and so has made the police officer to step aside).

#### **Court judgment 4 Tdo 391/2014:**

The prerequisite for a perpetrator's criminal liability for violence against an official pursuant to Section 325(1) a) and (2) a) of the Criminal Code shall not be the achievement of the intended result in the performance of an official's power. Hence, for this crime to be considered as completed, the Code does not require that the perpetrator has actually achieved any change in the manner and in the result of the performed official power. It shall be sufficient that the perpetrator intends to influence the performance of official powers.

#### **Court judgment 6 Tdo 1210/2014:**

In a situation when the accused is directly attacking an official's property and the aggrieved party, being an official of the Police of the Czech Republic, is acting in compliance with his duties pursuant to Section 10(2) and in compliance with the authorization pursuant to Section 2 of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended, and is trying to

prevent the accused's action based on a certain procedure, the aggrieved party shall be considered as acting as an official within the meaning of Section 127(1) e) of the Criminal Code. If, in this situation when the aggrieved party has proven his identity through an official document and has asked the accused to refrain from his actions, the accused attacks the aggrieved party and the aggrieved party suffers from bodily injury, the accused's conduct shall be qualified as violence against an official pursuant to Section 325(1) b) and (2) b) of the Criminal Code.

### **Decision of the Supreme Court No. 11 Tdo 1223/2015**

A crime of intervention in the court's independence may be committed through the wrongdoer's express, verbal and implicit action. However, not every manifested private interest in a case heard by a judge qualifies for constituting an influence on the judge. For the subjective and the objective sides of the crime as per Section 335(1) of the Criminal Code to be met, it is not sufficient to prove the accused's interest in a case heard by another judge, lying in the handover of envelopes with documentary material to the judge contrary to the procedure stipulated in the Code of Criminal Procedure. The fulfilment of the elements of the subjective and the objective sides of the respective crime requires proving the intention to stimulate the judge into breaching his/her obligations in the proceedings before court, whereby the given intention aimed at the stated result cannot be only presumed.

#### **(b) Observations on the implementation of the article**

Several sections of the Criminal Code relate to obstruction of justice, namely those on blackmail (s. 175 CC), violence against public authority (s. 323 CC), threatening with the aim to affect public authority (s. 324 CC), violence against a public official (s. 325 CC), threatening with the aim to affect an official person (s. 326 CC), interference in the independence of courts (s. 335 CC) and false testimony and false expert opinion (s. 346 CC).

### **Article 26 Liability of legal persons**

#### **Paragraph 1 and 2 of article 26**

1. *Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*
2. *Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Act no. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against Them**

#### **PART ONE**

#### **GENERAL PROVISIONS**

#### **Section 1**

### **Scope of the Regulation and its Relation to Other Acts**

(1) This Act governs conditions of criminal liability of legal persons, punishments and protective measures that can be imposed on legal persons for committing stipulated criminal acts, and procedure against legal persons.

(2) If this Act does not stipulate otherwise, the Criminal Code and in proceeding against a legal person the Code of Criminal Procedure shall apply, and in proceeding concerning international cooperation in criminal matters, the Act on international judicial cooperation in criminal matters shall apply accordingly, if it is not excluded due to the nature of the thing/case.

(3) For the purpose of other legal regulations criminal proceeding has also to be understood as a proceeding against a legal person in accordance with this Act.

### **Territoriality Principle**

#### **Section 2**

(1) Liability to punishment of an act committed on the territory of the Czech Republic by a legal person which has a registered office in the Czech Republic or its establishment or branch is placed on the territory of Czech Republic or at least conducts its activities here or owns property here, shall always be considered under the law of the Czech Republic.

(2) A criminal act shall be considered as having been committed on the territory of the Czech Republic, if a legal person acted:

a) wholly or partly on the territory of the Czech Republic, even if the violation of, or threat to, an interest protected under Criminal Code resulted, or was to result, completely or partly abroad; or

b) abroad, if the violation of, or threat to, an interest protected under Criminal Code occurred or had to occur, even if only in part, on the territory of the Czech Republic.

(3) As for complicity/participation Section 4 Paragraph 3 and 4 of the Criminal Code shall similarly apply.

#### **Section 3**

Liability to punishment of an act committed abroad by a legal person with registered office in the Czech Republic shall also be considered under the law of the Czech Republic.

#### **Section 4**

(1) The law of the Czech Republic shall apply when assessing the punishability of the criminal offense of Torture and other Cruel and Inhumane Treatment (Section 149 of the Criminal Code), Forgery and Alteration of Money (Section 233 of the Criminal Code), Uttering Counterfeited and Altered Money (Section 235 of the Criminal Code), Manufacturing and Possession of Forgery Tools (Section 236 of the Criminal Code), Unauthorised Production of Money (Section 237 of the Criminal Code), Subversion of the Republic (Section 310 of the Criminal Code), Terrorist Attack (Section 311 of the Criminal Code), Terror (Section 312 of the Criminal Code), Participation on a Terrorist Group (Section 312a of the Criminal Code), Terrorism Financing (Section 312d of the Criminal Code), Support and Endorsement of Terrorism (Section 312e of the Criminal Code), Threatening with Terrorist Attack (Section 312f of the Criminal Code), Sabotage (Section 314 of the Criminal Code), Espionage (Section 316 of the Criminal Code), Violence against Public Authority (Section 323 of the Criminal Code), Violence against Public Official (Section 325 of the Criminal Code), Forgery and Alteration of Public Documents (Section 348 of the Criminal Code), Genocide (Section 400 of the Criminal Code), Attack against Humanity (Section 401 of the Criminal Code), Apartheid and Discrimination of a Group of People (Section 402 of the Criminal Code), Preparation of Offensive War (Section 406 of the Criminal Code), War Cruelty (Section 412 of the Criminal

Code), Persecution of Population (Section 413 of the Criminal Code), Pillage in the Area of Military Operations (Section 414 of the Criminal Code), Abuse of International and Government-Recognized Symbols (Section 415 of the Criminal Code), Abuse of Flag and Truce (Section 416 of the Criminal Code), Harming a Conciliator (Section 417 of the Criminal Code), even if such criminal act has been committed abroad by a legal entity without a registered office in the Czech Republic.

(2) The law of the Czech Republic shall also apply when determining the punishability for a criminal act committed abroad by a legal entity without a registered office in the Czech Republic, if the criminal act has been committed for the benefit of a legal entity with a registered office in the Czech Republic.

### **Section 5**

(1) The liability to punishment for a criminal act shall also be considered under the law of the Czech Republic in cases stipulated in a promulgated international agreement which is part of the legal order (further on “international treaty”).

(2) The provisions of Sections 2 to 4 shall not apply if it is not admitted under a promulgated international treaty.

### **Section 6**

#### **Exclusion of Liability to Punishment of Certain Legal Persons**

(1) Following legal persons are not criminally liable according to this Act:

*a) Czech Republic,*

*b) local self-governing entities while exercising public authority.*

(2) Share of legal persons stipulated in Paragraph 1 in (another) legal person does not preclude criminal liability of such legal person under this Act.

## **PART TWO**

### **PRINCIPLES OF CRIMINAL LIABILITY OF LEGAL PERSONS**

#### **Section 7**

##### **Criminal Acts**

Criminal acts for the purpose of this Act are to be understood as misdemeanours or felonies stipulated in the Criminal Code, with the exception of Manslaughter (Section 141 of the Criminal Code), Murder of a Newborn Child by its Mother (Section 142 of the Criminal Code), Accessory to Suicide (Section 144 of the Criminal Code), Brawling (Section 158 of the Criminal Code), Intercourse among Relatives (Section 188 of the Criminal Code), Abandoning a Child or Entrusted Person (Section 195 of the Criminal Code), Negligence of Mandatory Support (Section 196 of the Criminal Code), Maltreatment of a Person Living in Common Residence (Section 199 of the Criminal Code), Breach of Regulations on Rules of Economic Competition (Section 248 (2) of the Criminal Code), High Treason (Section 309 of the Criminal Code), Abusing Representation of State or International Organization (Section 315 of the Criminal Code), Collaboration with Enemy (Section 319 of the Criminal Code), War Treason (Section 320 of the Criminal Code), Service in Foreign Armed Forces (Section 321 of the Criminal Code), Liberation of Prisoners (Section 338 of the Criminal Code), Violent Crossing of State Borders (Section 339 of the Criminal Code), Mutiny of Prisoners (Section 344 of the Criminal Code), Dangerous pursuing (Section 354 of the Criminal Code), Insobriety (Section 360 of the Criminal Code), criminal offenses against conscription stipulated in Chapter XI of the Criminal Code, Military criminal offenses stipulated in Chapter XII of the Criminal Code and Use of Forbidden Means and Methods of Combat (Section 411 of the Criminal Code).

## **Section 8**

### **Criminal Liability of a Legal Person**

(1) Criminal act committed by a legal entity is an unlawful act committed in its interest or within its activity, if committed by

- a) statutory body or member of the statutory body or other person in a leadership position within the legal entity, who is entitled to act on behalf of or for the legal entity,
  - b) a person in a leadership position within the legal entity, who performs managerial or controlling activities, even if they are not a person as mentioned in paragraph a),
  - c) a person with a decisive authority on management of this legal entity, if his/her act was at least one of the conditions leading to a consequence establishing criminal liability of a legal entity, or
  - d) employee or a person with similar status (hereinafter “employee”) while fulfilling his/her duties/tasks, even if they are not a person as mentioned in paragraph a) to c),
- provided that the act can be attributed to the legal entity in accordance with sub-section (2).

(2) Commission of a criminal act as specified in Section 7 can be attributed to a legal entity, if committed by

- a) action of bodies or persons referred to in sub-section (1) a) to c), or
- b) an employee referred to in sub-section (1) d) on the grounds of a decision, approval or guidance of bodies of the legal entity or persons referred to in sub-section (1) a) to c), or because the bodies of the legal entity or persons referred to in sub-section (1) a) to c) did not take measures required by other legal regulation or that can be justly required, namely that they did not perform obligatory or necessary control (supervision) over the activities of employees or other persons they are superiors to, or they did not take necessary measures to prevent or avert the consequences of the committed criminal act.

(3) Criminal liability of a legal entity is not precluded by the fact that a specific natural person who has acted in a way specified in sub-section (1) and (2) cannot be identified.

(4) Sub-section (1) and (2) will apply also if

- a) the activity specified in sub-sections (1) and (2) took place prior to incorporation of the legal entity,
- b) the legal entity has been incorporated, but the court decided on nullity of the legal entity,
- c) the legal act establishing authorisation for acting on behalf of the legal entities is invalid or ineffective, or
- d) the acting natural person is not criminally liable for such criminal act.

(5) The legal entity will be relieved of criminal liability according to sub-section (1) to (4) if it made every effort which could be reasonably required of it in order to prevent the commission of the unlawful act by the persons referred to in sub-section (1).

## **Section 9**

### **Perpetrator, Accomplice and Participant**

(1) A perpetrator of a criminal act is a legal person to which a breach or endangering of an interest protected by the Criminal Code by means specified in this Act can be attributed to.

(2) A perpetrator is also a legal person that used other legal or natural person for the commitment of a criminal act.

(3) Criminal liability of legal person does not affect criminal liability of natural persons specified in Section 8 Paragraph 1 and criminal liability of these natural persons does not affect criminal liability of the legal person. If the criminal act has been committed by means of a joint action of more persons, where at least one of them was a legal person, every each one of these persons is liable as if the person committed the act on its own.

## **Section 10**

### **Criminal Liability of a Legal Successor of a Legal Person**

- (1) Criminal liability of legal person descends to all its legal successors.
- (2) If the criminal liability has descended in line with Paragraph 1 to more legal successors of the legal person, the court while deciding on type and terms of punishment or protective measure considers also the size of proceeds, benefits and other advantages of the committed criminal act that have been transferred to every each of them, eventually also in which extent whichever of these continues in the activity related to commitment of the criminal act.
- (3) The provisions of the Criminal Code will similarly apply to imposition of accumulative, multiple and joint punishment to a legal successor; if such procedure is not possible due to nature of legal succession or due to other reasons, the court imposes a separate punishment.
- (4) The Court will proceed similarly according to Paragraphs 1 to 3 in cases of dissolution of the legal person after the final conclusion of the criminal proceeding.

## **Section 11**

### **Effective Regret**

- (1) Criminal liability of the legal entity expires, if the legal entity voluntarily refrains from further unlawful activity and
  - a) extinguishes the danger that arose to an interest protected by the Criminal Code, or precludes such harmful effect or remedies such harmful effect, or
  - b) reports the criminal act to public prosecutor or police authority at a time when the danger to an interest protected by the Criminal Code could be eliminated or the harmful effect of the criminal act could be precluded.
- (2) Criminal liability of a legal entity does not expire in accordance with sub-section (1), if it concerns a criminal offense of Machinations in Insolvency Proceedings (Section 226 of the Criminal Code), Breach of Regulations on Rules of Economic Competition (Section 248 (1) e) of the Criminal Code), Arranging Advantage in Commission of Public Contract, Public Tender and Public Auction (Section 256 (3) or (4) of the Criminal Code), Machinations in Commission of Public Contract and Public Tender (Section 257 (1) b) or c) of the Criminal Code), Machinations in Public Auction (Section 258 (1) b) or c) of the Criminal Code), Passive Bribery (Section 331 of the Criminal Code), Active Bribery (Section 332 of the Criminal Code) or Trading in Influence (Section 333 of the Criminal Code) has been committed.

## **Section 12**

### **Statute of Limitation of Criminal Liability**

As for the limitation of criminal liability of legal persons Section 34 of the Criminal Code will similarly apply.

## **Section 13**

### **Exemption from the Statute of Limitation**

- Expiration of the limitation period shall not terminate criminal liability
- a) for criminal offenses stipulated in the Special Part, Chapter XIII of the Criminal Code, with the exemption of criminal offenses of Establishment, Support and Promotion of Movements Aimed at Suppression of Human Rights and Freedoms (Section 403 of the Criminal Code), Expressing Sympathies for Movements Seeking to Suppress Human Rights and Freedoms (Section 404 of the Criminal Code), Denial, Questioning, Approval and Justification of Genocide (Section 405 of the Criminal Code),

b) for criminal offenses of Subversion of the Republic (Section 304 of the Criminal Code), Terrorist Attack (Section 311 of the Criminal Code) and Terror (Section 312 of the Criminal Code), if these were committed under such circumstances, which qualify them as war crimes or crimes against humanity pursuant to the rules of international law.

## **PART THREE**

### **PUNISHMENTS AND PROTECTIVE MEASURES**

#### **Chapter I**

##### **General Provisions**

#### **Section 14**

##### **Proportionality of the Punishment and Protective Measure**

(1) While deciding on type and terms of punishment the court considers the nature and seriousness of the criminal act, situation (circumstances) of the legal person, including its actual activities and property owned; in doing so the court will consider whether the legal person conducts activity in public interest, having strategic or hardly replaceable significance for national economy, defence or security. Furthermore, the court considers the activities of the legal person following the commitment of the criminal act, above all its effective effort to restore damage or eliminate other harmful effects of the criminal act. Impacts and effects of the punishment that can be anticipated to future activity of the legal person are to be taken into account as well.

(2) A protective measure that is not proportional to the nature and seriousness of the criminal act as well as to the situation of the legal person cannot be imposed to a legal person.

(3) While imposing criminal sanctions the court will also consider implications, this imposition might have upon third parties, namely, legally protected interests of injured parties and creditors whose claims towards criminally liable legal person have occurred in good faith and do not originate or are not connected with the criminal act of the legal person, are to be considered.

#### **Section 15**

##### **Types of Punishments and Protective Measures**

(1) For criminal acts committed by a legal person only the following punishments can be imposed

*a) dissolution of the legal person,*

*b) forfeiture of property,*

*c) monetary punishment,*

*d) forfeiture of a thing,*

*e) prohibition of activity,*

*f) prohibition to perform public contracts, debarment from public procurement,*

*g) prohibition to receive endowments (grants) and subsidies,*

*h) publication of a judgement.*

(2) For criminal acts committed by a legal person protective measure of confiscation of a thing or confiscation of part of property can be imposed to the legal person.

(3) Punishments and protective measures as mentioned in Paragraphs 1 and 2 can be imposed to a legal person separately or concurrently. However, it is not possible to impose the punishment of monetary sanction or confiscation of part of property concurrently to forfeiture of such property and the punishment of forfeiture of a thing concurrently to confiscation of the same thing.

## **Chapter II**

### **Imposition of Particular Punishments**

#### **Section 16**

##### **Dissolution of a Legal Person**

(1) The court may impose the punishment of dissolution of a legal person to a legal person with a registered office in the Czech Republic if its activities, wholly or mainly, consisted in committing criminal act or criminal acts. The punishment of dissolution of a legal person cannot be imposed if it is excluded by nature of the legal person.

(2) If the legal person is a bank, the court may impose the punishment of dissolution of a legal person after an opinion of Czech National Bank on possibilities and consequences of its imposition has been delivered; the court considers such opinion. The first sentence will similarly apply to insurance company, reinsurance company, pension fund, investment company, investment fund, securities dealer, savings and credit co-operative (bank), central securities depository, electronic money institution, payment institution, operator of a settlement system and operator of markets in investment instruments (vehicles).

(3) If the legal person is a commodity exchange, the court may impose the punishment of dissolution of a legal person after an opinion of the respective body of state administration, which issues state licences for operating of an exchange according to other legal regulation, on possibilities and consequences of its imposition has been delivered; the court considers such opinion.

(4) With the legal effect of the decision that imposes the punishment of dissolution of a legal person, the liquidation procedure of the legal person commences.

(5) The property/assets of a legal person, upon which the punishment of dissolution of a legal person has been imposed, may be used to satisfy claims of creditors if the property/assets in question is not excluded due to its nature or kind or nature of the committed criminal act.

#### **Section 17**

##### **Forfeiture of Property**

(1) The court may impose the punishment of forfeiture of property, if the legal person is convicted of an extremely serious criminal act, by means of which the legal person acquired or tried to acquire property benefit for itself or for another.

(2) Without conditions according to Paragraph 1 the court may impose the punishment of forfeiture of property only in cases where the Criminal Code allows imposition of such a punishment for a committed criminal act.

(3) Forfeiture of property affects the whole property of a legal person or the part designated by the court.

(4) If the legal person is a bank or foreign bank which branch operates on the territory of the Czech Republic on behalf of a banking licence granted by the Czech National bank or on the basis of joint (unified) banking licence (European Banking Licence) according to other regulation, the court may impose the punishment of forfeiture of property after an opinion of Czech National Bank on possibilities and consequences of its imposition has been delivered; the court considers such opinion. The first sentence will similarly apply to insurance company, branch of an insurance company, reinsurance company, branch of a reinsurance company, pension fund, investment company, investment fund, securities dealer, branch of a securities dealer, savings and credit co-operative (bank), central securities depository, electronic money institution, branch of electronic money payment institution, payment institution, operator of a settlement system and operator of markets in investment instruments (vehicles).

## **Section 18**

### **Monetary Punishment**

- (1) The court may impose a monetary punishment to a legal person, if the legal person is convinced of intentional criminal act or a criminal act committed by negligence. Imposition of the monetary punishment cannot affect the rights of the injured person.
- (2) Daily rate is at least 1000 CZK and at the most 2 000 000 CZK. While determining the amount of a daily rate, the court considers property owned by the legal person.
- (3) The provision of Section 17 Paragraph 4 will similarly apply.

## **Section 19**

### **Forfeiture of a Thing**

The court may impose the punishment of forfeiture of a thing, including forfeiture of substitute value, under conditions stipulated by the Criminal Code.

## **Section 20**

### **Prohibition of Activity**

- (1) The court may impose the punishment of prohibition of activity to a legal person for one year to 20 years, if the criminal act has been committed in connection to this activity.
- (2) The provision of Section 17 Paragraph 4 will similarly apply.

## **Section 21**

### **Prohibition to Perform Public Contracts Debarment from Public Procurement**

- (1) The court may impose the punishment of prohibition to perform public contracts, debarment from public procurement to a legal person for one year to 20 years, if the legal person has committed the criminal act in connection to contracting to perform public contracts or performing of these contracts, participation in public tender or public procurement.
- (2) The punishment of prohibition to perform public contracts, debarment from public procurement as a separate punishment may be imposed only if the court deems it not necessary, due to the nature and seriousness of the committed criminal act, to impose other type of punishment.
- (3) Throughout the period of the execution of the punishment and in accordance to the extent defined by the court, the punishment of prohibition to perform public contracts, debarment from public procurement consists in prohibition for a legal person to make contracts to perform public procurement, take part in public tenders or public procurement according to other legal regulations.

## **Section 22**

### **Prohibition to Receive Endowments (Grants) and Subsidies**

- (1) The court may impose the punishment of prohibition to receive endowments (grants) and subsidies to a legal person for one year to 20 years, if the legal person has committed the criminal act in connection to submitting an application or dealing with applications for endowment, subsidy, refundable financial subsidy or contribution or in connection to their provision or use, and/or in connection to provision or use of any other state aid.
- (2) The punishment of prohibition to receive endowments (grants) and subsidies as a separate punishment may be imposed only if the court deems it not necessary, due to the nature and seriousness of the committed criminal act, to impose other type of punishment.
- (3) Throughout the period of the execution of the punishment and in accordance to the extent defined by the court, the punishment of prohibition to receive endowments (grants) and subsidies consists in prohibition for a legal person to apply for whatever endowments, subsidies,

refundable financial subsidies, contributions or any other state aid according to other legal regulations, as well as prohibition to receive any such endowments, subsidies, refundable financial subsidies, contributions or any other state aid.

### **Section 23**

#### **Publication of the Judgement**

(1) The court may impose publication of the judgement if it is deemed necessary to make the general public aware of the judgement of conviction, mainly due to the nature and seriousness of the criminal act, and/or if the interest in protection of safety of people or property, eventually the society, requires so. In doing so the court assigns the type of public media, where the judgement shall be published, the extent of publication and the time limit for the legal person to publish the judgement.

(2) The punishment to publish the judgement means that the convicted legal person publishes to its expenses the final judgement of conviction or its determined parts in a public media as assigned by the court, including identification data of the company or name of the legal person and its seat. Identification data of a natural or legal person that are different from the convicted legal person brought forward in the judicial dictum or its reasoning must be anonymised prior to publication.

### **Chapter III**

#### **Expiration of the Execution of the Punishment**

### **Section 24**

#### **Expiration of Limitation Period**

A punishment imposed to a legal person may not be executed after expiration of the period of limitation, which is

*a) thirty years, in cases of conviction to monetary punishment of at least 560 daily rates, or to punishment of prohibition of activity, prohibition to perform public contracts, debarment from public procurement, prohibition to receive endowments (grants) and subsidies for a time period of at least 15 years,*

*b) twenty years, in cases of conviction to monetary punishment of at least 380 daily rates, or to punishment of prohibition of activity, prohibition to perform public contracts, debarment from public procurement, prohibition to receive endowments (grants) and subsidies for a time period of at least 10 years,*

*c) ten years, in cases of conviction to monetary punishment of at least 200 daily rates, or to punishment of prohibition of activity, prohibition to perform public contracts, debarment from public procurement, prohibition to receive endowments (grants) and subsidies for a time period of at least 5 years,*

*d) five years in cases of conviction to another punishment.*

### **Section 25**

#### **Exclusion from Expiration of Limitation Period**

Execution of a sentence imposed for criminal offenses referred to in Section 13 shall not be subject to the expiration of limitation period.

### **Chapter IV**

#### **Protective Measure**

### **Section 26**

#### **Confiscation of a thing**

The court may impose a protective measure of confiscation of a thing to a legal person, including confiscation of a substitute value or files and devices, or instead of forfeiture of a thing impose modification of a thing, removal of a specific device, labelling or otherwise altering or restricting disposition to a thing under conditions set in the Criminal Code.

#### **Section 26a**

##### **Confiscation of a part of property**

The court may impose a protective measure of confiscation of a part of property to a legal person under the conditions stipulated by the Criminal Code.

#### **Chapter V**

##### **Extinction of the Effect of Conviction**

##### **Section 27**

The convicted legal person is deemed not to be convicted if the time period after a final convicting judgement as set in Section 24 has expired.

#### **PART FOUR**

##### **SPECIFIC PROVISIONS REGARDING PROCEDURE AGAINST LEGAL PERSONS**

##### **Section 28**

*Removed*

##### **Section 29**

##### **Local Jurisdiction**

If the crime scene cannot be found or the criminal offence was committed abroad, proceeding is conducted by the court in whose jurisdiction the accused legal person has its registered office or in whose jurisdiction the accused foreign legal person has its establishment or branch; if such places cannot be identified or are outside the Czech Republic, proceedings are performed by the court in whose jurisdiction the criminal act was uncovered.

##### **Section 30**

##### **Notification of Opening and Closing of a Criminal Proceeding**

(1) The police body notifies about opening of a criminal proceeding against a legal person a respective public authority or person which according to other legal regulation administers the commercial or any other legally appointed register, database or registry, authority granting licences or permissions to conduct activities to such legal person and an authority responsible for supervision over such legal person. Such authorities or persons are notified about the final closing of the proceeding by the chair of the panel of judges or in preliminary proceeding by the prosecutor.

(2) If for the purpose of dissolution or change of the legal person an entry into a legally appointed public register, database or a registry is required, the chair of the panel of judges notifies about the closing of the execution proceeding the public authority entitled to keep such register, database or registry.

##### **Section 31**

##### **Joint Proceeding**

(1) Joint proceeding takes place against accused legal person and accused natural person if their criminal acts are mutually related unless there are important reasons for the prohibition thereof. Joint proceeding is conducted by a Regional Court, provided it is competent to conduct proceeding on at least one of the criminal acts. In cases where the offenders of the most serious

criminal act or most serious criminal acts are accused natural person and accused legal person, the joint proceeding is conducted by a court which is competent to conduct a proceeding against the accused natural person.

(2) Criminal liability of the legal person and natural person is assessed independently throughout the joint proceeding.

(3) In cases where throughout the joint criminal proceeding against natural and legal person acts of criminal proceeding related to both these persons shall be conducted, such acts shall be first conducted in relation to the natural person as a rule.

## **Section 32**

### **Termination, Dissolution and Change of Legal Person**

(1) Legal person against which criminal proceeding has been opened is obliged to notify without delay in writing the prosecutor and during the court hearing the chair of the panel of judges, that acts towards its termination, dissolution or change prior to conducting such acts, these acts are otherwise deemed null and void.

(2) Legal person against which criminal proceeding has been opened cannot be terminated, changed or dissolved until the final closing of such proceeding, with the exception where the consequences would not be proportionate to the committed criminal act; in such a case the criminal liability of a legal person against which criminal proceeding has been opened is devolved on its successor. If the legal person has been established for a limited time period or to reach certain purpose, and after the criminal proceeding has been opened such time period for which it has been established has lapsed or the purpose for which it has been established has been achieved, from that point it is deemed to be established for indefinite time period.

(3) The judge during preliminary proceeding or the chair of the panel of judges during court hearing decides whether a legal person may be terminated and whether it may be changed eventually dissolved upon proposal submitted by this legal person or other entitled person.

(4) If a prosecutor and during a court hearing the chair of the panel of judges does not file a petition of nullity of acts aiming at termination, dissolution or change of the legal person, petition of nullity of decision approving change of a legal person or petition of nullity of the project of transformation as required by other legal regulation to the respective court, these acts are deemed valid.

(5) Prior to decision as required by Paragraph 3 the judge and during the court hearing the chair of the panel of judges may order the legal person to deposit to a given account and in a set time period a designated amount corresponding to anticipated monetary punishment or to provide other guarantee. As regards the duration of such measures and disposition with the deposited amount Section 73a Paragraph 5 first sentence and Section 73a Paragraph 6 to 9 of the Code of Criminal Procedure shall similarly apply.

(6) A complaint against decisions according to Paragraphs 3 and 5 is admissible; such complaint has in case of a decision according to Paragraph 3 suspensory effect.

(7) Restrictions according to Paragraphs 1 and 2 and the decision according to Paragraph 3 do not affect the power of the respective authority to withdraw a licence or other permission to conduct activity from a legal person against which criminal proceeding has been opened and to propose dissolution of such legal person according to other legal regulation.

(8) Paragraphs 1 to 7 are similarly to be applied in cases where the legal person shall be terminated, dissolved or changed due to execution of a judgement.

(9) Public authority or a person which according to other legal regulations administers commercial register or other register specified by law, database or registry of legal persons will not enter dissolution or change of such person into the respective register, database or registry

and will not delete such legal person without authorisation according to Paragraph 3, unless the termination or change is deemed valid according to Paragraph 4.

(10) If any condition under Paragraphs 1 to 9 enabling termination or change of the legal person is not met, the legal person is not dissolved.

(11) Change of the legal person for purposes of this act is meant merger, consolidation or division of a legal person, transfer of assets to a partner, change of legal form of the legal person or displacement of the legal person abroad.

### **Section 33**

#### **Securing Measures**

(1) If a justified concern arises that the accused legal person will act as specified in Section 67 Letter c) of the Code of Criminal Procedure the judge during the pre-trial proceeding and during court hearing the chair of the panel of judges may upon petition of the prosecutor temporarily suspend the exercise of one or more activities or impose restriction to dispose of property/assets of this legal person; at the same time possible impacts of the imposition of such securing measure shall be considered.

(2) For important reasons the presiding judge and during the pre-trial proceeding the public prosecutor upon a petition of the legal entity concerned may give permission to perform an act concerning property/assets secured according to sub-section (1). In case the public prosecutor does not grant the petition of the legal entity according to sentence one, he will be obliged to submit the matter to the judge for decision no later than 5 business days after the decision is delivered; the legal entity concerned will be notified of this procedure.

(3) The presiding judge and in pre-trial proceedings the public prosecutor will revoke or restrict the securing measure, if it is no longer necessary or not necessary in the given scope for the purpose of the proceedings.

(4) The decision according to Paragraph 1 which temporarily suspends the exercise of one or more activities, as well as the decision to cancel or to restrict such securing measure will be sent without delay to an authority granting licences or other permissions to conduct activity of the accused legal person and in case of legal person stipulated in Section 17 Paragraph 4 such decision is sent to the Czech National Bank.

(5) The legal person upon which securing measure under Paragraph 1 was imposed has the right whenever to ask for cancelling or restricting of such securing measure. Such petition must be decided without delay. If such petition has been rejected, the legal person may in cases where no new circumstances arise repeat its petition not earlier than in two weeks after legal effect of such decision. In case such petition is not granted by the public prosecutor in pre-trial proceedings, he will be obliged to submit the matter to the judge for decision no later than 5 business days after the decision is delivered; the legal entity concerned will be notified of this procedure.

(6) A complaint against decisions according to Paragraphs 1 to 5 is admissible; such complaint has in case of a decision to cancel or restrict the securing measure or permission of an act according to Paragraph 2 suspensory effect.

### **Section 34**

#### **Acts of the Legal Person**

(1) The person entitled to act for a legal person during a court hearing according to Civil Law Procedure Code acts for the legal person during the proceeding. Such person must prove its authority to act for the legal person.

(2) The legal person may choose a representative. The authorisation to represent is proved upon a letter of attorney. Power of attorney can be granted orally to the judicial record. During the proceeding the legal person may have only one representative.

(3) During the proceeding only one person may act for the legal person simultaneously.

(4) A person that is the accused, damaged person or witness in the same case cannot make acts during the proceeding. If throughout the proceeding such fact arises, the chair of the panel of judges or the prosecutor during the pre-trial proceeding calls upon the legal person to appoint another person for the purpose of acting during the further proceeding; for such appointment time limit of 7 days is set as a rule.

(5) If a person according to Paragraph 4 is not appointed in time or the legal person does not have any such person capable to act during the proceeding, eventually documents cannot be verifiably served to the legal person or its representative, the chair of the panel of judges and during the pre-trial proceeding the judge appoints a guardian to the legal person. The guardian may be appointed upon his/her consent only. A person cannot be appointed guardian if reasonable doubt arises that such person has interests on the outcome of the proceeding which would reasonably doubt his/her readiness to duly defend the interests of the legal person. The decision of appointment of the guardian is served to the person appointed a guardian and also to the legal person if possible.

(6) The person according to Paragraph 1, representative and guardian have during the proceeding the same rights and duties as the person against which the proceeding is conducted.

(7) If the person according to Paragraph 1, eventually the representative of the accused legal person or guardian do not appear at the trial without due excuse, the court may commence in their absence if the indictment has been dully served to the accused legal person, the legal person has been dully summoned for the trial, the provision on opening of criminal proceeding has been duly obeyed and the legal person was notified of the possibility to study the file and make proposals to supplement the investigation.

(8) If the legal person is represented or a guardian has been appointed and the Code of Criminal Procedure does not state otherwise, documents intended for the legal person are served only to such representative or guardian.

## **Section 35**

### **Defence Counsel**

(1) The provision of Section 34 does not affect the right of the accused person to defence.

(2) Provisions of the Code of Criminal Procedure concerning necessary defence will not apply for accused legal person.

## **Section 36**

### **Summons, Presentation and Disciplinary Fine**

(1) If a person acting for the legal person according to Section 34, who was dully summoned, fails to appear without sufficient excuse, such person may be presented.

(2) If a person acting for the legal person according to Section 34 Paragraphs 1, 2 or 4 despite previous warning disturbs the hearing/proceeding or who behaves offensively to the court, prosecutor or police authority, or without sufficient excuse disobeys the order, or does not grant the request which was made according the Code of Criminal Procedure or this Act, the legal person for which he/she is acting may be punished by the chair of the panel of judges and during the pre-trial proceeding the public prosecutor or the police authority with a disciplinary fine of up to 500 000 CZK. Should the guardian commit the conduct described in the first sentence, he/she may be punished with a disciplinary fine of up to 50 000 CZK.

(3) A complaint against the decision according to Paragraph 2 is admissible; such complaint has suspensory effect. For the decision over the complaint Section 146a of the Code of Criminal Procedure is similarly applied.

### **Section 37**

#### **Interrogation and Closing Speech at the Trial and Public Hearing**

(1) In cases of joint proceeding against a legal person and a natural person, the natural person is interrogated at the trial and public hearing prior to the representative of the legal person.

(2) After the public prosecutor's closing speech, the victim shall speak, followed by the parties involved, eventually their representatives, and the defence counsel of the legal person, then followed by the representative of the legal person, defence counsel of the natural person and the natural person itself. The last word is delivered first by the representative of the legal person and then by the natural person.

### **Section 38**

#### **Execution of the Punishment of Dissolution of the Legal Person**

(1) As soon as the judgement punishing the legal person with dissolution becomes effective, the chair of the panel orders its execution. In the executing order a liquidator is appointed. The legal person is wound up at the date when the judgement punishing the legal person with dissolution became effective. Legal person registered in the commercial register or any other legally appointed register, database or registry is dissolved upon deletion from such register, database or registry, if other legal regulation does not state otherwise.

(2) Throughout the course of winding up the legal person, the execution of the punishment of dissolution of a legal person follows other legal regulations concerning winding-up order, if this Act does not state otherwise.

(3) The chair of the panel of judges may upon petition of a person, who proves its legal interest, or without previous petition, if other legal regulation does not state otherwise, remove the liquidator who breaches his/her duties and replace him/her by another person.

### **Section 39**

#### **Execution of the Punishment of Prohibition to Perform Public Contracting Debarment from Public Procurement**

Section 350 of the Code of Criminal Procedure on execution of punishment of prohibition of activity will adequately apply to execution of the punishment of prohibition to perform public contracts or debarment from public procurement.

### **Section 40**

#### **Execution of the Punishment of Prohibition to Receive Endowments (Grants) and Subsidies**

Section 350 of the Code of Criminal Procedure on execution of punishment of prohibition of activity will adequately apply to execution of the punishment of prohibition to receive endowments (grants) and subsidies.

### **Section 41**

#### **Execution of the Punishment of Publication of the Judgement**

(1) As soon as the judgment punishing with publication of the judgement becomes effective, the chair of the panel of judges calls upon the legal person to publish it in a given time limit and extent on its own expenses and in the assigned type of public media.

(2) If the legal person does not publish the judgement as specified in Paragraph 1, the chair of the panel of judges decides on disciplinary fine of up to 500 000 CZK. Such a disciplinary fine may be ordered repeatedly until the ordered duty is fulfilled.

(3) A complaint against the decision according to Paragraph 2 is admissible; such complaint has suspensory effect.

## **PART FIVE**

### **SPECIFIC PROVISIONS CONCERNING LEGAL RELATIONS WITH FOREIGN STATES**

#### **Section 42**

##### **Request**

(1) For the purpose of the Act on International Judicial Cooperation in Criminal Matters, a legal entity with registered office in the territory of the Czech Republic shall be regarded as a citizen of the Czech Republic or as a person with permanent residence in the territory of the Czech Republic.

(2) Part five Chapter six Sub-chapter one of the Act on International Judicial Cooperation in Criminal Matters concerning recognition and execution of decisions of another Member State imposing financial penalty or other financial obligation shall apply to decision of another Member State, if the legal entity, against which such decision is aimed, has registered office or property in the territory of the Czech Republic. Final decision of the court of the Czech Republic which imposes a financial penalty or other financial obligation can be, if the conditions of Chapter six Sub-chapter two of the Act on International Judicial Cooperation in Criminal Matters are met, sent to another Member State, if it can be reasonably expected that the legal entity has its registered office or property in the territory of such state.

(3) Part five Chapter nine of the Act on International Judicial Cooperation in Criminal Matters shall not apply.

#### **Section 43 – 47**

*removed*

## **PART SIX**

### **EFFECTIVENESS**

#### **Section 48**

This Act comes into force on 1 January 2012.

Němcová m.p.

Nečas m.p.

The Czech Republic provided examples of cases and statistics:

#### **Source: Special Report of the Supreme Public Prosecutor's Office on the Knowledge in Applying Act No. 418/2011 Coll.**

II. Statistical Data (tables from the activity reports of the Public Prosecutor's Office for 2012 Overview II/1k, for 2013 - table II/1f, for 2014 - a separate overview for 2014, not for the whole year). The statistical data relating to the verification and criminal prosecution of legal entities ensues from the tables applicable to the activity reports of the Public Prosecutor's Office for 2012 and 2013 and from the table for 2014. They also concern tables containing details of the number of criminal matters entered in the Pre-trial Proceedings section within Statement V MS-006 and relating to legal entities in the periods of 2012 and 2013 and the first half-year of 2014. In 2013, in the Pre-trial Proceedings sections in ZN, KZN and VZN registers there were 558

(1,185 in 2012) matters relating to justified suspicion of the commission by legal entities of any of the crimes stated in the enumeration in Section 7 of the Act on Criminal Liability of Legal Persons and Proceedings against them. Forty-eight legal entities (+30 compared to 2012) in total were prosecuted in 38 criminal matters. Except for 10 cases, natural persons were also prosecuted within all these cases. Fourteen legal entities (+10 compared to 2012) were charged with crimes and no motion for approving the guilt and punishment agreement was filed in any of these cases. The data in the Pre-trial Proceedings section in ZN, KZN and VZN registers can be ascertained, with regard to the time horizon of the statements, only for the period of the first half-year of 2014 - they concerned 323 cases. During the period from 1 January 2014 until 5 November 2014, 133 legal entities in total were prosecuted. Fifty-one legal entities were charged with crimes. Accelerated pre-trial proceedings were conducted in respect of 6 legal entities and motions for punishment were filed in respect of 6 legal entities. Motions for approving a guilt and punishment agreement were filed in relation to two legal entities. Eighteen legal entities were finally convicted by judgments and 7 legal entities by criminal orders. Guilt and punishment agreements were approved in relation to two legal entities. The highest incidence of cases pursuant to the Act on Criminal Liability of Legal Persons and Proceedings against them was recorded in the district of the Municipal Public Prosecutor's Office in Prague (see Special Report of the Supreme Public Prosecutor's Office on the Knowledge in Applying Act No. 418/2011 Coll., Statistical Data - annexes to the report).

The statistical data relating to the verification and criminal prosecution of legal entities ensues from the tables applicable to the activity reports of the Public Prosecutor's Office for 2012 and 2013 and from the table for 2014. They also concern tables containing details of the number of criminal matters entered in the Pre-trial Proceedings section within Statement V MS-006 and relating to legal entities in the periods of 2012 and 2013 and the first half-year of 2014. In 2013, in the Pre-trial Proceedings sections in ZN, KZN and VZN registers there were 558 (1,185 in 2012) matters relating to justified suspicion of the commission by legal entities of any of the crimes stated in the enumeration in Section 7 of the Act on Criminal Liability of Legal Persons and Proceedings against them. Forty-eight legal entities (+30 compared to 2012) in total were prosecuted in 38 criminal matters. Except for 10 cases, natural persons were also prosecuted within all these cases. Fourteen legal entities (+10 compared to 2012) were charged with crimes and no motion for approving the guilt and punishment agreement was filed in any of these cases. The data in the Pre-trial Proceedings section in ZN, KZN and VZN registers can be ascertained, with regard to the time horizon of the statements, only for the period of the first half-year of 2014 - they concerned 323 cases. During the period from 1 January 2014 until 5 November 2014, 133 legal entities in total were prosecuted. Fifty-one legal entities were charged with crimes. Accelerated pre-trial proceedings were conducted in respect of 6 legal entities and motions for punishment were filed in respect of 6 legal entities. Motions for approving a guilt and punishment agreement were filed in relation to two legal entities. Eighteen legal entities were finally convicted by judgments and 7 legal entities by criminal orders. Guilt and punishment agreements were approved in relation to two legal entities. The highest incidence of cases pursuant to the Act on Criminal Liability of Legal Persons and Proceedings against them was recorded in the district of the Municipal Public Prosecutor's Office in Prague.

**(b) Observations on the implementation of the article**

Criminal liability of legal persons is established through an Act on Criminal Liability of Legal Persons and Proceedings against them. Section 7 of the act comprehensively lists the crimes for which legal persons **cannot** be liable and corruption offences are not listed in the section.

However, section 248 paragraph 2 of the Criminal Code on the breach of regulations on rules of economic competition, which may be linked to corruption, is listed.

It is recommended that Czechia consider removing section 248 paragraph 2 of the Criminal Code from the list of offences for which legal persons cannot be held liable

## **Article 26 Liability of legal persons**

### **Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Act no. 418/2011 Coll. on Criminal Liability of Legal Persons and Proceedings against Them**

##### **Section 9**

##### **Perpetrator, Accomplice and Participant**

(1) A perpetrator of a criminal act is a legal person to which a breach or endangering of an interest protected by the Criminal Code by means specified in this Act can be attributed to.

(2) A perpetrator is also a legal person that used other legal or natural person for the commitment of a criminal act.

(3) Criminal liability of legal person does not affect criminal liability of natural persons specified in Section 8 Paragraph 1 and criminal liability of these natural persons does not affect criminal liability of the legal person. If the criminal act has been committed by means of a joint action of more persons, where at least one of them was a legal person, every each one of these persons is liable as if the person committed the act on its own.

The Czech Republic provided examples of cases where both natural and legal persons were liable:

##### **Case 2 ZT 36/2013:**

The limited liability company was criminally prosecuted for an offence of failure to levy tax, social security contributions and similar mandatory payments within Section 241(1) a) of the Criminal Code, as applicable until 31 December 2012. Pursuant to Section 188(1) c) of the Code of Criminal Procedure, with the application of Section 172(1) c) of the Code of Criminal Procedure, the court of first instance discontinued, by the resolution of 31 January 2013, file number 3 T 19/2013, the criminal prosecution of the legal entity, stating that the stated crime might be committed only by a limited circle of perpetrators -persons who, as payers, do not fulfil, to a great extent, the obligation to levy mandatory payments on the payer's behalf, whereby if the payer was a legal entity, then, with regard to Section 114(1) and (2) of the Criminal Code, the criminal liability should be borne by the natural person acting on the legal entity's behalf. By the resolution of 27 March 2013, file number 5 To 96/2013, the Municipal Court overruled the said resolution of the court of first instance upon the public prosecutor's

complaint and ordered the court to reconsider the case and hand down a new decision on the matter. The court of second instance referred to the relation of speciality between the Act on Criminal Liability of Legal Persons and Proceedings against them and the Criminal Code and to the fact that the Criminal Code was a subsidiary norm in relation to the Act on Criminal Liability of Legal Persons and Proceedings against them and that that proportion could not be reversed. The court also stated that the given crime was stipulated in Section 7 of the Act on Criminal Liability of Legal Persons and Proceedings against them and that, for that reason, it was obvious that no exclusive criminal liability of natural persons was given. Within the meaning of Section 8(1) and (2) of the Act on Criminal Liability of Legal Persons and Proceedings against them, the legal entity's criminal liability should then be established if it seemed that the crime had been committed by the governing body or the person authorized to act on the legal entity within the legal entity's activity and in its interest. The court of second instance pointed out that Section 9(3) of the Act on Criminal Liability of Legal Persons and Proceedings against them, clearly stipulating that it was not only possible but also absolutely appropriate that in the cases of that type - where the particular natural person who had acted in the interest of, or within, the legal entity's activity was revealed - the criminal liability should be borne by both the natural person and the legal entity was decisive to the given case. Then, by the judgment of the District Court for Prague 1 of 29 April 2013, file number 3 T 19/2013, the legal entity was found guilty within the meaning of the filed indictment and was ordered to publish the judgment in a printed means of communication within two months of the legal force of the judgment. The judgment came into legal force on the date of its award.

**Case 2 ZT 55/2013:**

An action with the District Court for Prague 10 against the legal entity M., s. r. o. for illegal disposal of waste pursuant to Section 298(2) and (4) b) of the Criminal Code. The legal entity was charged with the crime although the respective person who had committed the said crime by depositing in the reinforced asphalt area at the edge of arable land, by means of a Mercedes Benz truck with a voluminous container operated by the legal entity, a large amount of construction debris, plasterboards, isolations, tiles, carpets, and other types of community waste, including 5 plastic voluminous containers in steel cages with a volume of 1 m<sup>3</sup>, containing oil substances which spilled from the damaged vessels and contaminated an area of 150 m<sup>2</sup> in the depth of 1.2 m and the reinforced surface of the soak area of approximately 150-200 m<sup>2</sup> with used motor oil which, with regard to its toxic and carcinogenic nature, constituted hazardous waste pursuant to Section 4 a) of Act No. 185/2001 Coll., on Waste, by which the legal entity breached the obligations ensuing from the disposal of waste oils pursuant to Section 29 of the same Act. The legal entity also breached other regulations stated in more detail in the indictment and caused damages to the Municipal Authority of the Capital of Prague to the tune of CZK 909,794, being the cost of rehabilitating the prohibited landfill. In this case, the court identified itself with the public prosecutor's opinion and convicted the legal entity by a final judgment. In the district of the Regional Public Prosecutor's Office in Prague, it ensues from the practice of the District Public Prosecutor's Office in Příbram that if joint criminal proceedings relating to the criminal prosecution of a legal entity and a natural person authorized to act on the legal entity's behalf are conducted, such action should not be qualified as complicity and, thus, the procedure pursuant to Section 9 of the Act on Criminal Liability of Legal Persons and Proceedings against them should be followed. The same observations ensue from the criminal matters recorded by other district public prosecutor's offices in the district of the Regional Public Prosecutor's Office in Prague in the events when joint proceedings are conducted against both a legal entity and a natural person.

The Municipal Public Prosecutor's Office in Brno states a typical example of a legal entity's complicity in a natural person's crime in a situation when a legal entity's registered agent has issued a loan applicant an untrue confirmation of employment - the applicant is the main perpetrator and the legal entity which has issued the confirmation and its registered agent is the accomplices to the crime.

**(b) Observations on the implementation of the article**

Criminal liability of legal persons is established through the Act on Criminal Liability of Legal Persons and Proceedings against Them. Section 7 comprehensively lists the crimes for which legal persons cannot be liable and corruption offences are not listed. However, section 248 paragraph 2 of the Criminal Code on breach of regulations on rules of economic competition, which may be linked to corruption, is listed. Criminal liability of legal persons does not affect criminal liability of the natural persons (s. 9 (3) CC).

**Article 26 Liability of legal persons**

**Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 418/2011 Coll. on Criminal Liability of Legal Persons and Proceedings against Them**

**PART THREE  
PUNISHMENTS AND PROTECTIVE MEASURES**

**Chapter I  
General Provisions**

**Section 14  
Proportionality of the Punishment and Protective Measure**

(1) While deciding on type and terms of punishment the court considers the nature and seriousness of the criminal act, situation (circumstances) of the legal person, including its actual activities and property owned; in doing so the court will consider whether the legal person conducts activity in public interest, having strategic or hardly replaceable significance for national economy, defence or security. Furthermore, the court considers the activities of the legal person following the commitment of the criminal act, above all its effective effort to restore damage or eliminate other harmful effects of the criminal act. Impacts and effects of the punishment that can be anticipated to future activity of the legal person are to be taken into account as well.

(2) A protective measure that is not proportional to the nature and seriousness of the criminal act as well as to the situation of the legal person cannot be imposed to a legal person.

(3) While imposing criminal sanctions the court will also consider implications, this imposition might have upon third parties, namely, legally protected interests of injured parties and creditors whose claims towards criminally liable legal person have occurred in good faith and do not originate or are not connected with the criminal act of the legal person, are to be considered.

## **Section 15**

### **Types of Punishments and Protective Measures**

(1) For criminal acts committed by a legal person only the following punishments can be imposed

*a) dissolution of the legal person,*

*b) forfeiture of property,*

*c) monetary punishment,*

*d) forfeiture of a thing,*

*e) prohibition of activity,*

*f) prohibition to perform public contracts, debarment from concession procedure or public procurement,*

*g) prohibition to receive endowments (grants) and subsidies,*

*h) publication of a judgement.*

(2) For criminal acts committed by a legal person protective measure of confiscation of a thing or confiscation of a part of property can be imposed to the legal person.

(3) Punishments and protective measures as mentioned in Paragraphs 1 and 2 can be imposed to a legal person separately or concurrently. However, it is not possible to impose the punishment of monetary sanction or confiscation of a part of property concurrently to forfeiture of such property and the punishment of forfeiture of a thing concurrently to confiscation of the same thing.

## **Chapter II**

### **Imposition of Particular Punishments**

## **Section 16**

### **Dissolution of a Legal Person**

(1) The court may impose the punishment of dissolution of a legal person to a legal person with a registered office in the Czech Republic if its activities, wholly or mainly, consisted in committing criminal act or criminal acts. The punishment of dissolution of a legal person cannot be imposed if it is excluded by nature of the legal person.

(2) If the legal person is a bank, the court may impose the punishment of dissolution of a legal person after an opinion of Czech National Bank on possibilities and consequences of its imposition has been delivered; the court considers such opinion. The first sentence will similarly apply to insurance company, reinsurance company, pension fund, investment company, investment fund, securities dealer, savings and credit co-operative (bank), central securities depository, electronic money institution, payment institution, operator of a settlement system and operator of markets in investment instruments (vehicles).

(3) If the legal person is a commodity exchange, the court may impose the punishment of dissolution of a legal person after an opinion of the respective body of state administration, which issues state licences for operating of an exchange according to other legal regulation, on possibilities and consequences of its imposition has been delivered; the court considers such opinion.

(4) With the legal effect of the decision that imposes the punishment of dissolution of a legal person, the liquidation procedure of the legal person commences.

(5) The property/assets of a legal person, upon which the punishment of dissolution of a legal person has been imposed, may be used to satisfy claims of creditors if the property/assets in question is not excluded due to its nature or kind or nature of the committed criminal act.

## **Section 17**

### **Forfeiture of Property**

(1) The court may impose the punishment of forfeiture of property, if the legal person is convicted of an extremely serious criminal act, by means of which the legal person acquired or tried to acquire property benefit for itself or for another.

(2) Without conditions according to Paragraph 1 the court may impose the punishment of forfeiture of property only in cases where the Criminal Code allows imposition of such a punishment for a committed criminal act.

(3) Forfeiture of property affects the whole property of a legal person or the part designated by the court.

(4) If the legal person is a bank or foreign bank which branch operates on the territory of the Czech Republic on behalf of a banking licence granted by the Czech National bank or on the basis of joint (unified) banking licence (European Banking Licence) according to other regulation, the court may impose the punishment of forfeiture of property after an opinion of Czech National Bank on possibilities and consequences of its imposition has been delivered; the court considers such opinion. The first sentence will similarly apply to insurance company, branch of an insurance company, reinsurance company, branch of a reinsurance company, pension fund, investment company, investment fund, securities dealer, branch of a securities dealer, savings and credit co-operative (bank), central securities depository, electronic money institution, branch of electronic money payment institution, payment institution, operator of a settlement system and operator of markets in investment instruments (vehicles).

## **Section 18**

### **Monetary Punishment**

(1) The court may impose a monetary punishment to a legal person, if the legal person is convinced of intentional criminal act or a criminal act committed by negligence. Imposition of the monetary punishment cannot affect the rights of the injured person.

(2) Daily rate is at least 1000 CZK and at the most 2 000 000 CZK. While determining the amount of a daily rate, the court considers property owned by the legal person.

(3) The provision of Section 17 Paragraph 4 will similarly apply.

## **Section 19**

### **Forfeiture of a Thing**

The court may impose the punishment of forfeiture of a thing, including forfeiture of substitute value, under conditions stipulated by the Criminal Code.

## **Section 20**

### **Prohibition of Activity**

(1) The court may impose the punishment of prohibition of activity to a legal person for one year to 20 years, if the criminal act has been committed in connection to this activity.

(2) The provision of Section 17 Paragraph 4 will similarly apply.

## **Section 21**

### **Prohibition to Perform Public Contracts or Debarment from Public Procurement**

(1) The court may impose the punishment of prohibition to perform public contracts, debarment from public procurement to a legal person for one year to 20 years, if the legal person has committed the criminal act in connection to contracting to perform public contracts or performing of these contracts, participation in public tender, concession procedure or public procurement.

(2) The punishment of prohibition to perform public contracts, debarment from public procurement as a separate punishment may be imposed only if the court deems it not necessary, due to the nature and seriousness of the committed criminal act, to impose other type of punishment.

(3) Throughout the period of the execution of the punishment and in accordance to the extent defined by the court, the punishment of prohibition to perform public contracts, debarment from concession procedure or public procurement consists in prohibition for a legal person to make contracts to perform public procurement, take part in public tenders or public procurement according to other legal regulations.

## **Section 22**

### **Prohibition to Receive Endowments (Grants) and Subsidies**

(1) The court may impose the punishment of prohibition to receive endowments (grants) and subsidies to a legal person for one year to 20 years, if the legal person has committed the criminal act in connection to submitting an application or dealing with applications for endowment, subsidy, refundable financial subsidy or contribution or in connection to their provision or use, and/or in connection to provision or use of any other state aid.

(2) The punishment of prohibition to receive endowments (grants) and subsidies as a separate punishment may be imposed only if the court deems it not necessary, due to the nature and seriousness of the committed criminal act, to impose other type of punishment.

(3) Throughout the period of the execution of the punishment and in accordance to the extent defined by the court, the punishment of prohibition to receive endowments (grants) and subsidies consists in prohibition for a legal person to apply for whatever endowments, subsidies, refundable financial subsidies, contributions or any other state aid according to other legal regulations, as well as prohibition to receive any such endowments, subsidies, refundable financial subsidies, contributions or any other state aid.

## **Section 23**

### **Publication of the Judgement**

(1) The court may impose publication of the judgement if it is deemed necessary to make the general public aware of the judgement of conviction, mainly due to the nature and seriousness of the criminal act, and/or if the interest in protection of safety of people or property, eventually the society, requires so. In doing so the court assigns the type of public media, where the judgement shall be published, the extent of publication and the time limit for the legal person to publish the judgement.

(2) The punishment to publish the judgement means that the convicted legal person publishes to its expenses the final judgement of conviction or its determined parts in a public media as assigned by the court, including identification data of the company or name of the legal person and its seat. Identification data of a natural or legal person that are different from the convicted legal person brought forward in the judicial dictum or its reasoning must be anonymised prior to publication.

## **Chapter III**

### **Expiration of the Execution of the Punishment**

## **Section 24**

### **Expiration of Limitation Period**

A punishment imposed to a legal person may not be executed after expiration of the period of limitation, which is

- a) thirty years, in cases of conviction to monetary punishment of at least 560 daily rates, or to punishment of prohibition of activity, prohibition to perform public contracts, debarment from public procurement, prohibition to receive endowments (grants) and subsidies for a time period of at least 15 years,*
- b) twenty years, in cases of conviction to monetary punishment of at least 380 daily rates, or to punishment of prohibition of activity, prohibition to perform public contracts, debarment from public procurement, prohibition to receive endowments (grants) and subsidies for a time period of at least 10 years,*
- c) ten years, in cases of conviction to monetary punishment of at least 200 daily rates, or to punishment of prohibition of activity, prohibition to perform public contracts, debarment from public procurement, prohibition to receive endowments (grants) and subsidies for a time period of at least 5 years,*
- d) five years in cases of conviction to another punishment.*

## **Section 25**

### **Exclusion from Expiration of Limitation Period**

Execution of a sentence imposed for criminal offenses referred to in Section 13 shall not be subject to the expiration of limitation period.

## **Chapter IV**

### **Protective Measure**

## **Section 26**

### **Confiscation of a thing**

The court may impose a protective measure of confiscation of a thing to a legal person, including forfeiture of a substitute value or files and devices, or instead of forfeiture of a thing impose modification of a thing, removal of a specific device, labelling or otherwise altering or restricting disposition to a thing under conditions set in the Criminal Code.

## **Section 26a**

### **Confiscation of a part of property**

The court may impose a protective measure of confiscation of a part of property to a legal person under the conditions stipulated by the Criminal Code.

## **Chapter V**

### **Extinction of the Effect of Conviction**

## **Section 27**

The convicted legal person is deemed not to be convicted if the time period after a final convicting judgement as set in Section 24 has expired.

The Czech Republic provided examples of cases:

**Source: Special Report of the Supreme Public Prosecutor's Office on the Knowledge in Applying Act No. 418/2011 Coll.:**

The District Public Prosecutor's Office for Prague 7 referred to the fact that criminal proceedings against I. S. C., spol. s r.o., which was convicted of the crime of distortion of data relating to business management and assets and liabilities pursuant to Section 254(1) 1 of the Criminal Code, were conducted under file number 1 ZT 7/2014. Based on the judgment of the District Public Prosecutor's Office for Prague 7 of 12 March 2014, file number 39 T 13/2014, in conjunction with the resolution of the Municipal Court in Prague of 5 May 2014, file number 67 To 124/2014, the legal entity was ordered to be cancelled pursuant to Section 16(1) of the Act on Criminal Liability of Legal Persons and Proceedings against them. In imposing the punishment, the court considered the fact that the charged legal entity had no property, no actual registered address, and no employees and it was not ascertained at all that it would pursue any business activity. The imposed punishment was in compliance with the public prosecutor's motion.

Although criminal proceedings were conducted in the monitored period in the district of the Regional Public Prosecutor's Office in Prague against a small number of legal entities (12 in total) and decisions were handed down only in relation to 3 legal entities, 2 legal entities had already been ordered cancellation pursuant to Section 16 of the Act on Criminal Liability of Legal Persons and Proceedings against them - one for evading tax, fees and other similar payments pursuant to Section 240(1) of the Criminal Code and the other for credit fraud pursuant to Section 211(1) and (4) of the Criminal Code.

In the criminal matter recorded by the District Public Prosecutor's Office in Benešov, file number ZT 37/2013, a punishment in the form of cancellation of the legal entity pursuant to Section 16 of the Act on Criminal Liability of Legal Persons and Proceedings against them was finally imposed since the evidence showed that the charged legal entity had pursued solely activities associated with crime and, once the criminal prosecution had been commenced, had not practically pursued any activity and had had no assets. In essence, it concerned an entity which had only the 'external form without any contents'. In the given situation, the imposition of property sanctions affecting non-existing property or the prohibition of activity, which had not even been pursued, or the mere publication of the judgment were out of the question since in terms of their purpose, these punishments would have had no effect or would have been unenforceable. The imposed order to cancel the legal entity was then directly proportional to the fact that it concerned a legal entity which had not even fulfilled its basic obligations (for example, accounting documents had been thrown away, money for performed work had been sent to another person's account and had been drawn, etc.).

The final order to cancel the legal entity was also issued in the criminal case recorded by the District Public Prosecutor's Office in Příbram under file number 1 ZT 7/2014. Alongside the order to cancel the legal entity, the pecuniary punishment pursuant to Section 18 of the Criminal Code (case of the District Public Prosecutor's Office in Příbram, file number 2 ZT 71/2013) was determined in one case and the prohibition of activity lying in the prohibition to pursue business activity through own employees for a period of one year in another case (District Public Prosecutor's Office in Mladá Boleslav, file number 1 ZT 335/2013).

Only a single final judgment imposing a punishment on a legal entity was recorded in the district of the Regional Public Prosecutor's Office in Ústí nad Labem (District Public Prosecutor's Office Louny, file number ZT 112/2014). The court prohibited the accused legal entity from pursuing the scope of its business entered in the Companies Register, except for the bankruptcy trustee's acts undertaken within the bankruptcy proceedings, for a period of 18 months.

Beyond the foregoing, it can also be stated that the punishment most frequently imposed on legal entities is the pecuniary punishment, followed by the prohibition of activity, and others.

**(b) Observations on the implementation of the article**

Sanctions available under the Act include dissolution of the legal person, confiscation or forfeiture of property, monetary punishment, prohibition of activity or to perform public contracts, debarment from public procurement, prohibition to receive grants and subsidies and publication of a judgment (s. 15).

## **Article 27 Participation and attempt**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Criminal Code of the Czech Republic**

#### **Section 23**

##### **Accomplice**

If a criminal offence was committed by the intentional joint conduct of two or more persons, each of them shall be liable as if they committed a criminal offence on their own (accomplices).

#### **Section 24**

##### **Accessory**

(1) An accessory to a completed criminal offence or its attempt is a person who intentionally

- a) plotted or managed (organiser) the commission of a criminal offence,*
- b) instigated the commission of a criminal offence in another person (instigator), or*
- c) allowed or facilitated the commission of a criminal offence by another person, in particular through the provision of means, removal of barriers, eliciting the victim to the place of an act, keeping watch during the commission of an act, providing advice, encouraging the resolve or vowing to participate in a criminal offence (accessory).*

(2) The provision on the criminal liability and culpability of an offender shall be applied to the criminal liability and culpability of an accessory unless the criminal law stipulates otherwise.

(3) The criminal liability of an accessory shall expire if they voluntarily waived any further accomplicity in the criminal offence and

- a) removed the risk to an interest protected by criminal law that occurred due to the attempted accomplicity, or*

- b) reported the accomplicity in a criminal offence at a time when the risk to an interest protected by criminal law which occurred due to attempted accomplicity could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.*

(4) If there are several persons involved in an act, the criminal liability of the accessory is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such an act, if it is still committed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an accessory for any other criminal offence which they have already committed by their conduct pursuant to Subsection 1.

The Czech Republic provided examples of cases:

**Court judgment 8 Tdo 137/2015:**

Complicity is an activity in which not all accomplices are required to act the same way. Their activities do not need to be identical either. Accomplices perform such activities which, as an aggregate and a whole, form the objective side of the factual elements of a crime. The accomplices' intention is aimed at their joint activity causing the result stated in the Code. If an activity consists of several components, these components may be divided into individual accomplices, so the individual actions may be carried out by individual perpetrators but, in their aggregate, meet the factual elements of a crime. To fulfil the elements of complicity, it is not necessary that all accomplices participate in an offence in the same extent, but even partial involvement, for example, in a subordinate role, is sufficient. However, such involvement must be led by the same intention as the other perpetrators' activities since only then it becomes the objective and the subjective components of the process constituting, as a whole, a crime. In particular, the accomplices' common objective, including both their joint action and the pursuit of an identical objective, is decisive. The common intention cannot be identified with an explicit agreement among accomplices, which is not required (an implied agreement is sufficient - compare the decision entered under No. 2180/1925 in the Collection of Criminal Decisions). However, each accomplice must be aware at least of the fact that his conduct and the conduct of the other accomplices may lead to the commission of a crime. The circumstance that each of the accomplices has pursued his own benefit shall not exclude the existence of a joint intention, in particular when each of them has contributed to and assisted in the activity of the others (compare the decision entered under number 22/1950 in the Collection of Criminal Decisions). In complicity, the joint action includes, alongside the joint conduct, the fact that the accomplices support one another in the pursuit of their common activity.

**Court judgment 7 Tz 166/2000:**

Interpretation of the Concept of Complicity pursuant to Section 9(2) of the Criminal Code: If the prerequisite for complicity is, from the objective perspective, the fact that it concerns joint conduct of two or more persons, it does not mean that the actions of each of the acting persons need to meet the elements of a crime. The joint conduct within the meaning of the cited clause may also take place in a situation when the acting persons' roles are allocated in manner such that only some of them meet all of the elements of a crime while the others meet only some of them or in a situation when the acting persons' individual partial acts do not, as such, meet the elements of a crime and when the elements of a crime are met only as an aggregate of all partial acts of the acting persons. These conditions of a joint action, as the objective side of complicity, must include intention on the part of each of the acting persons, which includes, among other things, the circumstance that the partial action of each of such persons is part of a jointly committed crime. The principle that each accomplice shall be liable as if he has committed the crime himself applies in manner such that an accomplice shall be liable for a crime even if his own partial action, should it be considered separately, has not met the summary of the statutory elements of a crime.

**Court judgment 7 Tdo 406/2011-24:**

The principal offender of a crime is the perpetrator who has plotted or managed the crime. The

plotting shall mean activity lying in the initiation of an agreement to commit a crime, the preparation of a plan of its commission, the looking for persons who will participate in it, the arrangement of their mutual contacts, the allocation of tasks among these persons, etc. The management shall then mean activity lying in the coordination of all persons participating in the given crime, the giving of instructions, the demanding of their fulfilment, etc.

**Court judgment 6 Tdo 345/2010:**

In relation to an accomplice, it is irrelevant whether the given act has, as a final consequence, been committed by all the persons that have been provided with such assistance or by only one of them and whether such person has committed the particular (intentional) crime by himself, as the direct perpetrator, or has charged another person, to whom he has handed over [as the principal offender pursuant to Section 10(1) a) of the Criminal Code, as applicable until 31 December 2009; pursuant to Section 24(1) a) of the Criminal Code from 1 January 2010] information obtained from an accomplice, with its commission. It is essential that the person, as a participant in a crime, has provided the main perpetrator, though vicariously, with assistance in its commission and, thus, the causal relation between such person's action and that of the main perpetrator (principal offender), which has caused the consequences of the crime, has not been interrupted.

**Court judgment 7 Tdo 902/2011-17:**

Organization of Credit Fraud: The organization pursuant to Section 10(1) a) of the Criminal Code [as applicable until 31 December 2009; pursuant to Section 24(1) a) of the Criminal Code from 1 January 2010] of the crime of credit fraud pursuant to Section 250b(1) of the Criminal Code (as applicable until 31 December 2009; pursuant to Section 211(1) of the Criminal Code from 1 January 2010) is typical of the high rate of a participant's activity in the main perpetrator's crime. Such conduct on the part of the principal offender is not usually restricted only to the execution of false documents but is characterised by a much broader relation to the committed crime. A typical example of this may be, in particular, the arrangement of the person of the main perpetrator who will apply for a loan or the giving of instructions to take out a particular sum. Moreover, the principal offender may give the main perpetrator a lift to the bank or another entity providing loans and may accompany him in the dealings, etc.; that is, to state that a perpetrator has plotted and managed the commission of a crime, the principal offender's actions must, as an aggregate, go beyond assistance and not be restricted only to the main perpetrator's support.

**(b) Observations on the implementation of the article**

Section 23 of the CC refers to the **accomplice** in an offence, while Section 24 CC refers to the **accessory (participant)** meaning the person who organized, instigated or facilitated the commission of an offence. The provisions from the General Part of the Criminal Code regarding participation apply to all offences from the Special Part of the Criminal Code and correspondingly to crimes established in accordance with the Convention.

**Article 27 Participation and attempt**

**Paragraph 2**

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code of the Czech Republic**

**Section 21**

**Attempt**

(1) Any conduct that leads directly to the completion of a criminal offence and which the offender committed with the intention of the commission of a criminal offence, if the completion of the criminal offence did not occur is defined as an attempt to commit a criminal offence.

(2) An attempted criminal offence shall be punishable under the criminal penalty set for a completed criminal offence.

(3) Criminal liability for an attempted criminal offence shall expire if an offender voluntarily waived further conduct leading to the completion of a criminal offence and

*a) removed the risk to an interest protected by criminal law which occurred due to the attempted criminal offence, or*

*b) reported the attempted criminal offence at a time when the risk to an interest protected by criminal law which occurred due to an attempted criminal offence could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.*

(4) If there are several persons involved in an act, the criminal liability for an attempt is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act, if it is completed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other completed criminal offence which they have already committed by their conduct pursuant to Subsection 1.

The Czech Republic provided examples of cases:

**Court judgment (Rt) 4 To 13/76:**

I. An attempt may also be an action through which a perpetrator has not yet started meeting the objective side of a crime described in a special part of the Criminal Code but which is of direct significance to the completion of the crime, is carried out in direct time relation to the consequences that shall arise and in the place where they shall arise. The conduct of perpetrators who, with the intention to force, with the use of violence or under the threat of immediate violence, the aggrieved party to tell where his money is hidden and take it and who break into the aggrieved party's house to this effect and take things belonging to the aggrieved party and no violence or threat of immediate of violence is used only because the aggrieved party has hidden from the perpetrators in the house needs to be considered as an attempted robbery pursuant to Section 8(1) and Section 234(1) of the Criminal Code rather than the preparation for such crime.

**Court judgment (Rt) 1 Tzf 4/78:**

In dealing with the issue of whether the criminal nature of an attempted crime shall expire because the perpetrator has voluntarily desisted from further actions necessary to complete the crime and has eliminated the risk posed on the interest protected by criminal laws as a consequence of the given attempt (Section 8(3) a) of the Criminal Code) or because the perpetrator has voluntarily reported the attempted crime in the time when the risk posed on the interest protected by the criminal laws as a consequence of the given attempt could be eliminated (Section 8(3) b) of the Criminal Code), it is necessary to distinguish between complete and incomplete attempts. An incomplete attempt is a situation when the perpetrator has not yet carried out everything considered by him as necessary to complete a crime and has voluntarily refrained from further actions and, at the same time, is eliminating the risk posed on the interest protected by the criminal laws as a consequence of the given attempt. Therefore, as far as an incomplete attempt is concerned, for the criminal nature pursuant to Section 8(3) a) of the Criminal Code to be considered as expired, it is sufficient that the perpetrator voluntarily refrains from further actions considered by him as necessary to complete a crime. A complete attempt is a situation when a perpetrator has carried out everything considered by him as necessary to complete a crime but, despite this, the crime has not been completed. In such case, the perpetrator does not usually have the possibility to meet the conditions for the criminal nature to expire as stated in Section 8(3) a) or b) of the Criminal Code. The perpetrator has the possibility of meeting these conditions in the event of a complete attempt only in those exceptional cases when a certain period in which it is possible to prevent the consequences is still left between the perpetrator's conduct and the incidence of the intended consequences based on the nature of the used means and the perpetrator's intention. In such cases, the mere refraining from further actions as in the incomplete attempt shall not be sufficient and it shall be necessary that the perpetrator voluntarily and actively intervenes to avert the risk posed on the interest protected by criminal laws as a consequence of the given attempt or, possibly, that the perpetrator voluntarily reports the attempt in the time when the risk can be eliminated by the relevant authority. An action lying in stabbing, with the use of a knife, into places of a human body where, based on the perpetrator's intention, vital organs (heart, great vessels, etc.) may be hit but are not because of an obstacle independent of the perpetrator's will, for example, because the knife has hit a bone needs to be considered as the unsuccessful completion of an attempted murder pursuant to Section 8(1) and Section 219 of the Criminal Code. If, in such case, the perpetrator refrains from an action aimed at killing another person, the criminal nature of the already completed attempt shall not be considered as expired.

**(b) Observations on the implementation of the article**

Attempt is criminalized for all offences in the Criminal Code of the Czech Republic (s. 21).

**Article 27 Participation and attempt**

**Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Criminal Code of the Czech Republic**

### **Section 20**

#### **Premeditation**

(1) Conduct that is based in an intentional creation of conditions for the commission of a particularly serious crime (Section 14 Subsection 3), especially in its organisation, the acquisition or adaptation of the means or instruments for its commission, in conspiracy, unlawful assembly, in the instigation or aiding of such a crime, shall be deemed a premeditation only if the criminal law applicable for a specific criminal offence expressly stipulates for it and an attempt or completion of a particularly serious crime did not occur.

(2) Premeditation is punishable pursuant to the criminal penalty set out for a particularly serious crime to which it leads, unless the criminal law stipulates otherwise.

(3) Criminal liability for the premeditation to commit a particularly serious crime shall expire if an offender voluntarily waived further conduct towards the commission of a particularly serious crime and

*a) removed the risk to an interest protected by criminal law which occurred due to the attempted premeditation, or*

*b) reported the premeditation to commit a particularly serious crime at a time when the risk to an interest protected by criminal law which occurred due to the attempted premeditation could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.*

(4) If there are several persons involved in an act, the criminal liability for the premeditation is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act, if it is completed by other offenders.

(5) The provisions of Subsection 3 and 4 shall have no effect on the criminal liability of an offender for any other committed criminal offence which they have already committed by their conduct pursuant to Subsection 1.

Please see measures under the article 17; subparagraph (a) and (b) of article 25 above (Section 175, 206, 323, 325 of the Criminal Code).

The Czech Republic provided examples of cases:

#### **Court judgment 5 Tdo 1323/2011-26:**

Difference between Preparation For, and Attempt at, A Crime In the Event of Conduct Discontinued by Police's Intervention: The lack of a consequence of a crime may also be given by the fact that the perpetrator's conduct, which, within the meaning of Section 20(1) of the Criminal Code, directly led to the completion of the crime, has been discontinued by the police's intervention. Based only on the stated circumstance, it shall be excluded to consider the stated conduct as the preparation for a crime pursuant to Section 20(1) of the Criminal Code.

#### **Court judgment Tdo 1395/2012-55:**

Difference between Preparation and Attempt: The development of technical conditions for committing a crime (for example, the establishment of an account to which fraudulently obtained funds shall be remitted) cannot be considered as the implementation of an illegal act and such conduct does not even have any direct significance to its completion and is not in direct time and local relations. On the other hand, this conduct may, if criminal, show the elements of the preparation for a crime (see Section 20 of the Criminal Code).

### **Court judgment Tdo 1123/2011-29:**

Difference between Preparation for, and Attempt, at Crime: If the difference between the preparation for, and an attempt at, a crime lies in the fact that the preparation is an act through which a perpetrator develops the conditions for committing the crime, while an attempt is an act directly conducive to the completion of a crime, it ensues therefrom that the act through which the perpetrator has already fulfilled any of the statutory elements of the crime cannot be considered as preparation.

### **(b) Observations on the implementation of the article**

Preparation is criminalized for especially serious felonies (s. 20 CC) and as such covers only certain corrupt behaviour, for example money-laundering.

### **Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Criminal Code of the Czech Republic**

##### **Division 2**

##### **Limitation of Criminal Liability**

##### **Section 34**

##### **Period of Limitation**

(1) Criminal liability for a criminal offence shall expire upon the lapse of the period of limitation, which amounts to

- a) twenty years where a criminal offence is concerned for which the criminal law permits the imposition of an exceptional punishment and a criminal offence committed as part of the drafting or approving of a privatisation project as set out under another legal regulation,*
- b) fifteen years where the upper punishment limit of a prison sentence amounts to a minimum of ten years,*
- c) ten years where the upper punishment limit of a prison sentence amounts to a minimum of five years,*
- d) five years where the upper punishment limit of a prison sentence amounts to a minimum of three years,*
- e) three years for other criminal offences.*

(2) For criminal offences where the principle is the effect or those where the effect is a principle of the qualified merits of the case, the period of limitation shall start to run from the moment when such effect occurred; for other criminal offences, the period of limitation shall start to run

upon the completion of their conduct. The period of limitation begins for the accessory following the completion of the act of the main offender.

(3) The following shall not be counted into the period of limitation

- a) the period of time during which the offender could not be brought to the court due to a legal obstacle,*
- b) the period of time during which the criminal prosecution was suspended,*
- c) the period of time during which a victim of human trafficking (Section 168) or any of the criminal offences referred to in Chapter III of a special part of this Act, on Sexual criminal offences against human dignity, was younger than 18 years,*
- d) probational period applying to the conditional suspension of the criminal prosecution or conditional deferral of submission of the proposal for punishment,*
- e) the period of time during which the offender could not be criminally prosecuted in the Czech Republic if it concerns an act the culpability of which shall be assessed under the law of the Czech Republic under Section 8 Subsection 1,*
- f) the period of time from the issue of the detention order to its revocation or the expiration of its validity for another reason,*
- g) the period of time for which certain acts of the criminal proceedings were temporarily waived under the Act on International Judicial Cooperation in Criminal Matters,*
- h) the period of time for which the criminal prosecution was temporarily suspended.*

(4) The period of limitation shall be suspended

- a) at the commencement of the criminal prosecution for the criminal offence to which the period of limitation applies, as well as by the remand in custody, the issuance of an arrest warrant, the submission of a request for securing the requesting of a person from a foreign State, the issuance of the European Arrest Warrant, submission of an indictment, petition for approval of the agreement on guilt and punishment, petition for punishment, pronouncement of the convicting judgment for a criminal offence or by serving a criminal warrant for such criminal offence to the accused, or*
- b) if the offender has committed a new criminal offence at some point during the period of limitation for which criminal law sets out the same or a more severe punishment.*

(5) Any suspension of the period of limitation shall cause the period of limitation to start again the beginning.

## **Section 35**

### **Exclusions from Limitation**

The lapse of the period of limitation shall not cause criminal liability to expire

- a) for criminal offences under Chapter XIII of a special part of this Act, save for any criminal offences involving the establishment, support and promotion of movements seeking to suppress human rights and freedoms (Section 403), expressions of sympathy for movements seeking to suppress human rights and freedoms (Section 404), denial, questioning, approval and justification of genocide (Section 405), including where such acts were committed in the past that would now meet the criteria of such criminal offences,*
- b) for criminal offences of Treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311) and terror (Section 312), where the same were committed under circumstances so that they constitute war crimes or crimes against humanity as specified under the regulations of international law,*
- c) for any other criminal offences committed between 25 February, 1948 and 29 December, 1989, where the upper punishment limit of the prison sentence amounts to at least ten years, if, due to reasons incompatible with the fundamental principles of the legal order of a democratic State, final conviction or acquittal could not occur, and for any criminal offences committed by*

*public officials or in association with the persecution of an individual or a group of people due to political, racial or religious reasons.*

The Czech Republic provided examples of cases:

**Court judgment Tpjn 300/2011:**

Interpretation of Section 34 of Act No. 40/2009 Coll., the Criminal Code, as amended, in conjunction with Section 306a(2) of Act No. 141/1961 Coll., on Criminal Proceedings (the Code of Criminal Procedure), as amended: A final convicting judgment shall establish the statutory obstacle for which it is not possible to press charges against a perpetrator for one and the same act (ne bis in idem obstacle) and, for this reason, the limitation period shall be considered as terminated on the date of legal force of the convicting judgment pursuant to Section 34(3) a) of the Criminal Code, which means that the limitation period shall not run from the legal force of such judgment and shall continue after its possible cancellation (compare Section 139 of the Criminal Code). Hence, if, on the convicted person's motion pursuant to Section 306a(2) of the Criminal Code, the final convicting judgment handed down within the proceedings against a fugitive (Section 302 et seq. of the Code of Criminal Procedure) is cancelled, the period from the legal force of the convicting judgment handed down within the proceedings against a fugitive (Section 302 et seq. of the Code of Criminal Procedure) until the award of a decision to cancel it pursuant to Section 306a(2) of the Code of Criminal Procedure shall not be included in the limitation period since the perpetrator cannot be sued for the statutory obstacle pursuant to Section 34(3) a) of the Criminal Code, lying in the ne bis in idem obstacle (compare Section 11(1) f) of the Code of Criminal Procedure).

**(b) Observations on the implementation of the article**

The length of the statute of limitations for corruption offences varies between three and fifteen years (s. 34-35 CC). It starts to run from the moment when the effect of the offence occurred or upon the completion of the conduct (s. 34/2 CC). For accessories, it starts to run at the moment of completion of the act of the main offender (s. 34/2 CC). The statute of limitations can be suspended (s. 34/3 CC) or interrupted (s. 34/4 CC).

It is recommended that Czechia consider calculating the statute of limitations from the time of discovery of an offence.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

The relevant provisions including sanctions are described above. The relevant provisions are also Sections 52-80 and 96 - 104 of the Criminal Code.

## **Criminal Code of the Czech Republic**

### **Subdivision 4**

#### **Types of Penalties and Exceptional Punishment**

##### **Section 52**

###### **Types of Penalties**

(1) The court may impose the following penalties for committed criminal offences

- a) prison sentence,*
- b) house arrest,*
- c) community service,*
- d) forfeiture of property,*
- e) monetary penalty,*
- f) forfeiture of a possessed item,*
- g) disqualification,*
- h) prohibition of residence,*
- i) prohibition of entry to sporting, cultural and other social events,*
- j) loss of honorary degrees or accolades,*
- k) loss of military rank,*
- l) deportation.*

(2) Unless defined otherwise under criminal law, punishment by a prison sentence denotes,

- a) an unconditional prison sentence,*
- b) a conditional conviction to the punishment by prison sentence,*
- c) a conditional conviction to the punishment by prison sentence with supervision.*

(3) The exceptional punishment is a special type of prison sentence (Section 54).

##### **Section 53**

###### **Imposing Multiple Penalties Separately and Concurrently**

(1) Where the criminal law stipulates multiple penalties for certain criminal offences, such penalties may be imposed consecutively or concurrently. In addition to the punishment specified by criminal law for any criminal offence, other penalties may be imposed as stipulated under Section 52. However, the punishment of house arrest can not be imposed concurrently with a prison sentence and community service, community service next to a prison sentence, nor a monetary penalty with the forfeiture of property or prohibition of residence alongside deportation.

(2) House arrest, community service, monetary penalties, prohibition of entry to sporting, cultural and other social events, deportation and prohibition of residence may be imposed separately, even though criminal law does not provide for such penalties for specific criminal offences.

##### **Section 54**

###### **Exceptional Punishment**

(1) The term exceptional punishment denotes both a prison sentence for over twenty to thirty years and a life prison sentence. An exceptional punishment may only be imposed for a particularly serious crime where provided for by criminal law.

(2) The court may only impose a prison sentence for over twenty to thirty years if the severity of a particularly serious crime is extremely high or the offender's susceptibility to reform is especially low.

(3) The court may only impose a life prison sentence to offenders who have committed a particularly serious crime of murder as provided for under Section 140 Subsection 3, or who, while committing a particularly serious crime of general endangerment under Section 272 Subsection 3, treason (Section 309), terrorist attack under Section 311 Subsection 2, terror (Section 312), genocide (Section 400), attack against humanity (Section 401), use of prohibited means of combat and clandestine warfare under Section 411 Subsection 3, war atrocities under Section 412 Subsection 3, persecution of the population under Section 413 Subsection 3 abuse of internationally and State recognised symbols under Section 415 Subsection 3 intentionally caused the death of another person, provided that

*a) such particularly serious crime is extraordinarily serious with regard to the particularly heinous method of execution or its particularly heinous motive or particularly severe and hard to remedy effects thereof and*

*b) the imposition of such punishment is required to ensure the effective protection of society, or if there is no hope that the offender might be reformed by the punishment of prison sentence of twenty to thirty years.*

(4) Where the court imposes a punishment of a life prison sentence, it may at the same time decide that the term of the prison sentence served in a prison with increased guard service shall not be included in the term of the prison sentence for the purposes of conditional release.

## **Subdivision 5**

### **Imposing and Serving Individual Punishments**

#### **Section 55 Prison Sentence**

(1) A punishment of an unconditional prison sentence shall be imposed for a maximum of twenty years unless it involves an extraordinary increase of a prison sentence (Section 59), imposition of a prison sentence upon an offender of a criminal offence committed in favour of an organised criminal group (Section 108) or an exceptional punishment (Section 54) is concerned.

(2) For criminal offences where the upper punishment limit of a prison sentence does not exceed five years, an unconditional punishment of a prison sentence may be imposed solely subject to the condition that, with regard to the character of the offender, imposing a different punishment would evidently not assist the offender to lead an orderly life. For the criminal offence of desertion under Section 196 Subsection 1 or 2, the unconditional punishment of a prison sentence may be imposed solely on the condition that the imposition of such punishment is required to ensure the effective protection of society and there is no hope that the offender might be reformed using a different punishment.

(3) Unconditional punishment by prison sentence shall be served in prisons as specified under another legal regulation.

## **Section 56**

### **Serving a Prison Sentence**

(1) An unsuspended sentence of imprisonment will be served differentially in prisons

- a) with high security, or
- b) with maximum security.

(2) The court will generally place to a prison

- a) with high security an offender who does not meet the conditions for placement in a maximum security prison,

b) with maximum security an offender who was sentenced to an exceptional sentence of imprisonment (Section 54), who was sentenced to imprisonment for a criminal offense committed in favor of an organized criminal group (Section 108), who was sentenced for an especially serious felony (Section 14(3)) to imprisonment for at least eight years, or who was sentenced for an intentional criminal offense and has escaped or tried to escape from custody, from serving a sentence of imprisonment or from security detention.

(3) The court may place an offender into a prison of a different type than that to which they belong pursuant to Subsection 2 if it believes, after taking into account the severity of the criminal offence and the degree and nature of the offender's disturbance, that the effect of another type of prison establishment will have a greater chance of ensuring that the offender leads an orderly life; the court shall, however, always place offenders punished to life prison sentence in a prison with increased prison guard duty.

(4) The method of serving a prison sentence in the various types of prisons is regulated by another legal regulation.

## **Section 57**

### **Reallocating Convicts into another Type of Prison**

(1) While serving their prison sentence, the court may decide to transfer the convict to another type of a prison.

(2) The court shall decide to transfer the convict into a prison with high security if the convict's conduct and the way in which they are complying with their obligations leads to the conclusion that such transfer will contribute to their reform.

(3) The court may decide to transfer the convict into a prison with maximum security if

*a) the convict materially or repeatedly violates prison rules or discipline, or*

*b) the convict has been found finally guilty of a criminal offence committed during their prison sentence.*

(4) No transfer may occur from a prison with increased prison guard duty

*a) for a convict upon whom a life prison sentence has been imposed and who has not served at least ten years of the sentence yet,*

*b) for another convict serving their punishment in a prison with an increased prison guard duty before they have served at least one quarter of the punishment imposed.*

(5)

The court may decide, upon a petition of a convict who has served at least one quarter of the imposed sentence in a maximum security prison, but at least six months, to transfer him to a high security prison. The convict who was sentenced to imprisonment for life, may file a petition for transfer to a high security prison no sooner than after serving ten years of this sentence.

(6) Where a request pursuant to Subsection 5 is not granted, the convict may re-submit their request after six months has lapsed since the termination of the procedure dealing with their previous request.

## **Section 57a**

### **Conversion of a Prison Sentence into Punishment by House Arrest**

After serving half of the imposed sentence or, upon the decision of the President of the Czech Republic, a reduced prison sentence, the court may convert the remaining sentence of a person convicted of an offence into punishment by house arrest provided, following the full force and effect of the judgment, particularly when serving the sentence, the convicted demonstrated their reformation by their behaviour and by the performance of their duties, and may be expected to lead an orderly life in future. When converting a prison sentence into a punishment by house

arrest, each day of the remaining non-served prison sentence shall correspond to one day of punishment by house arrest; the court shall not be bound by the longest term of punishment by house arrest set out in Section 60 Subsection 1.

## **Section 58**

### **Extraordinary Reduction of a Prison Sentence**

(1) Where the court, in consideration of the circumstances of the case or the offender's circumstances, believes that use of the prison sentence set out by criminal law would be inappropriately severe and that the offender's reformation could be secured by a shorter prison sentence, it may reduce the length of the punishment to under the lower punishment limit stipulated by this Act.

(2) The court may also reduce a prison sentence to under the lower punishment limit where it convicts an offender who helped prevent a criminal offence that was premeditated or attempted by another person if, in consideration of the offender's situation and the nature of the criminal activity they committed, it is believed that the offender's reformation could be secured through a shorter prison sentence.

(3) Where a punishment of a prison sentence is reduced under Subsection 1 and 2 no punishment may be imposed

*a) shorter than a five years' prison sentence, where the lower punishment limit of the prison sentence amounts to a minimum of twelve years,*

*b) shorter than a three years' prison sentence, where the lower punishment limit of the prison sentence amounts to a minimum of eight years,*

*c) shorter than a one year's prison sentence, where the lower punishment limit of the prison sentence amounts to a minimum of five years.*

(4) The court shall reduce the prison sentence below the lower punishment limit also for an offender identified as a co-operating accused provided the conditions set out in Section 178a Subsection 1 of the Code of Criminal Procedure are fulfilled and provided the co-operating accused gave, both in the preliminary hearing and in the proceedings before the court, a full and truthful testimony on facts that are capable of contributing substantially to the clarification of a crime committed by members of an organised group, in connection with an organised group or in favour of an organised criminal group; while doing so, the court shall take account of the nature of the criminal offence stated in the offender's confession in comparison with the crime committed by the members of an organised group, in connection with an organised group or in favour of an organised criminal group, to the clarification of which they contributed, as well as the importance of such action on the part of the offender, the person of the offender and the circumstances of the case, particularly whether and how they participated in the crime that they have undertaken to clarify and the consequences they caused through their actions, if applicable. The court shall not be liable to the restrictions stipulated under Subsection 3.

(5) The court may further reduce a punishment of a prison sentence to under the lower punishment limit where it convicts an offender of premeditation to commit a criminal offence or attempted criminal offence or for abetting a criminal offence and believes, in consideration of the nature and seriousness of the premeditation, attempt or abetting, that application of the prison sentence stipulated by this Act would be inappropriately severe upon the offender and that the offender's reformation could be achieved with the use of a shorter punishment. The court shall not be liable to the restrictions stipulated under Subsection 3 .

(6) The court may further reduce a punishment of a prison sentence to under the lower penalty limit where the offender has acted in legal error yet could avoid the error (Section 19 Subsection 2), has committed a criminal offence while trying to avert an assault or other risk without having entirely met the conditions of extreme emergency (Section 28) or self defence (Section 29), or

exceeded the limits of admissible risk (Section 31) or the limits of another circumstance excluding illegality. The court shall not be liable to the restrictions stipulated under Subsection 3.

## **Section 59**

### **Extraordinary Increase of a Prison Sentence**

(1) An offender who has recommitted a particularly serious crime (Section 14 Subsection 3), despite having been punished for an identical or another particularly serious crime in the past, may be punished by the court to a punishment in the upper half of the prison sentence punishment range as specified under criminal law, with the upper limit increased by one third where the severity of a particularly serious crime is particularly grave with regard to such offence and other circumstances of the case, or where the chances of the offender's reform are low.

(2) The upper limit of a prison sentence increased in accordance with Subsection 1 may exceed twenty years. When imposing an exceptional prison sentence of over twenty to thirty years', the upper punishment limit must not exceed thirty years.

## **Section 60**

### **House Arrest**

(1) The court may impose a punishment of up to two years' house arrest when convicting an offender of an offence where

*a) in consideration of the nature and seriousness of the offence committed and the character and personal circumstances of the offender, it may be reasonably believed that imposition of such a punishment, perhaps concurrently with another punishment, will suffice, and where*

*b) the offender shall sign a written pledge to the effect that during the period of time stipulated they will remain resident at a determined address and will provide all the necessary co-operation during any checks.*

(2) House arrest may be imposed as a separate punishment where, considering the nature and seriousness of the offence committed and the character and personal circumstances of the offender, no other punishment need be imposed.

(3) Punishment by house arrest shall involve the convict's obligation to remain, throughout the period of execution of such a punishment, at a designated residence or its part at the time set out by the court, unless they are prevented from doing so for important reasons, especially their employment or pursuit of their occupation or the provision of health-care services at a provider of health-care services as a result of their illness or injury; the provider of health-care services shall be obliged to report such a fact to the law enforcement authority upon its request.

(4) Where the offender is of an age close to the legal age of a minor, the court may also impose educational measures set out under the Act on Juvenile Courts, subject to the equivalent conditions stipulated for young persons. This shall be done with a view to securing educational benefits of the family, school and other institutions, either as a separate measure or one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4.

(5) The court shall set the time when the convict is obliged to remain at the designated residence or its part on work days, rest days and public holidays, while taking account of their working hours and the time required for travel to work, the care of minor children and the arrangement of necessary personal and family matters so that the convict's freedom is reasonably affected while all the necessary needs of the convict and their family are satisfied. The court may also allow the convict to attend regular church services or religious assemblies on rest days and public holidays.

(6) During the process of serving this punishment, the court may impose appropriate restrictions or obligations upon the offender as provided for under Section 48 Subsection 4 with a view to ensuring that the offender leads an orderly life; as a general rule, the convict shall also be ordered to compensate any damage or redress the non-material damage they have caused by committing the criminal offence or to surrender any unjust enrichment obtained through a criminal offence, according to their ability to do so.

(7) Where the offender is of an age close to the legal age of a minor, the court may also impose educational measures set out under the Act on Juvenile Courts, subject to the equivalent conditions stipulated for young persons. This shall be done with a view to securing educational benefits of the family, school and other institutions, either as a separate measure or one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4.

## **Section 61**

### **Conversion of Punishment by House Arrest**

When the offender, at the time between their conviction and the termination of execution of the punishment by house arrest, avoids starting serving their punishment or, without serious justification, violates the agreed conditions of the execution of punishment by house arrest or otherwise defeats the execution of such punishment or culpably fails to serve the imposed punishment during the specified term, the court may convert the punishment by house arrest or its remaining part, even during the term specified for serving the punishment, into a prison sentence and, at the same time, decide on how such a prison sentence shall be served; simultaneously, every day of non-served punishment by house arrest only started but not finished shall correspond to one day of a prison sentence.

### **Section 62 Community Service**

(1) The court may impose community service where it convicts the offender of an offence; community service may be imposed as a separate punishment where, with regard to the nature and seriousness of the offence committed and the character of the offender and their personal circumstances, no other punishment needs to be imposed.

(2) The court shall generally not impose community service where the offender's community service punishment has been transformed, during the three years preceding the imposition of this type of punishment, into a prison sentence pursuant to Section 65 Subsection 2.

(3) A punishment of community service consists of a convict's obligation to complete a determined work for the sake of the community. Such work shall involve the maintenance of public spaces, the maintenance and cleaning of public buildings and roads or other activities in favour of municipalities or in favour of the State or other institutions working for public benefit in education and science, culture, the school system, healthcare, the fire service, environmental protection, the support and protection of youth, protection of animals, humanitarian, social, charitable, religious, fitness and sporting activities. The work must not be connected to any income generating activities of the convict.

## **Section 63**

### **Severity of Community Service**

(1) Generally, the court may impose between 50 and 300 hours of community service.

(2) The court may further impose appropriate restrictions and obligations upon the offender to apply during the term of the punishment as provided for under Section 48 Subsection 4 with a view to ensuring that they lead an orderly life; as a general rule, the convict shall also be ordered to compensate, depending on their ability, any damage or redress the non-material damage they

have caused by committing the offence or to surrender any unjust enrichment obtained through a criminal offence.

(3) Where the offender is of an age close to the legal age of a minor, the court may also impose educational measures set out under the Act on Juvenile Courts, subject to the equivalent conditions stipulated for young persons. This shall be done with a view to securing educational benefits of the family, school and other institutions, either as a separate measure or one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4.

## **Section 64**

### **Standpoint of the Offender and their Medical Health**

When imposing community service, the court shall take into account the offender's own standpoint, their health, as well as whether such a punishment can be practicably imposed. The court shall not impose community service if the offender's medical health will not allow for the systematic performance of such work.

## **Section 65**

### **Serving a Community Service Punishment**

(1) Community service must be completed by the convict in person, for no remuneration and in their spare time, at the latest within one year of the court imposing the obligation to serve the punishment. The above time limit shall not include the period during which the convict

- a) could not carry out community service due to health-related or statutory barriers, or*
- b) was in custody or serving a prison sentence.*

(2) When the offender, at the time between their conviction and the termination of execution of the community service punishment, does not lead an orderly life, or avoids starting serving their punishment, or without serious justification violates the agreed conditions of the execution of community service punishment, or otherwise defeats the execution of such punishment or culpably fails to serve the imposed punishment during the specified term, the court may convert the community service punishment or its remaining part, even during the term specified for serving the punishment,

- a) under the conditions of Section 60 Subsection 1, into punishment by house arrest where every hour of the non-served punishment by community service only started but not finished shall correspond to one day of punishment by house arrest,*

- b) into a monetary penalty and, in cases where such penalty is not paid within the specified period of time, impose a replacement prison sentence that must not be stricter than the punishment which the offender would face in the event of converting punishment by community service into a prison sentence, or*

- c) into a prison sentence and decide on how such a prison sentence shall be served; simultaneously, every hour of non-served community service punishment only started but not finished shall correspond to one day of a prison sentence.*

(3) In exceptional circumstances, the court, considering the circumstances of the case and character of the convict, may decide to leave the punishment by community service in effect or extend its term by up to six months, even if the conduct of the convict has given good grounds for transforming the punishment as provided for under Subsection 2, and

- a) set out supervision over the convict covering the term of the punishment or its remaining part,*

- b) impose upon the convict during the term of their punishment or its remaining part any hitherto non-imposed appropriate restrictions or obligations under Section 48 Subsection 4, or*

*c) impose upon the convict during the term of their punishment or its remaining part any of the educational measures as provided for under Section 63 Subsection 3, if the convict is of an age close to the age of a legal minor.*

The carrying out of supervision shall be similarly liable to Section 49 through 51.

(4) An offender upon whom community service has been imposed shall be regarded as if they had never been convicted once the punishment has been completed or where the punishment or its remaining part has been finally waived.

## **Section 66**

### **Forfeiture of Property**

(1) The court may, in consideration of the circumstances of the criminal offence committed and the offender's personal circumstances, impose the forfeiture of property if it punished an offender to an exceptional punishment or if it punished them for a particularly serious crime in which the offender sought to gain or gained for themselves or for another person material benefits.

(2) Where the conditions under Subsection 1 have not been met, the court may only impose the forfeiture of property in the event that the criminal law permits the imposition of such punishment for the criminal offence committed; as a separate punishment, forfeiture of property may be imposed if, in consideration of the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstances, the imposition of any further punishment is unnecessary.

(3) Forfeiture of property shall apply to the entire property of the convict or such part of it as determined by the court; the forfeiture, however, shall not apply to those items of possession that are essential in terms of satisfying the convict's fundamental needs or the needs of persons for whose alimentation and upbringing the convict is obliged to provide under the law.

(4) A tenancy by the entirety shall expire upon a statement of forfeiture of property.

(5) The confiscated property falls to the State.

## **Section 67**

### **Monetary Penalty**

(1) The court may impose a monetary penalty where the offender sought to secure or secured for themselves or for another person any material benefit by committing an intentional criminal offence.

(2) Where the conditions under Subsection 1 have not been met, the court may only impose a monetary penalty if

*a) criminal law allows the imposition of such punishment for the criminal offence committed, or*

*b) it is imposed for an offence and given the nature and severity of the offence committed and the character of the offender and their circumstance, they do not impose the unconditional prison sentence simultaneously.*

(3) A monetary penalty may be imposed as a separate punishment where, in consideration of the nature and seriousness of the criminal offence committed and the character of the offender and their situation, no other punishment need be imposed.

## **Section 68**

### **Severity of a Monetary Penalty**

(1) A monetary penalty shall be imposed in terms of daily rates, the total number of which shall be at least 20 and at most 730 full daily rates.

- (2) A daily rate shall amount to at least CZK 100 and at most CZK 50,000.
- (3) The court shall determine the number of daily rates by taking into account the nature and seriousness of the criminal offence committed. The court shall determine the amount of the single daily rate of a monetary penalty upon consideration of the personal and property-related situation of the offender. In so doing, the court shall, as a general rule, draw upon the offender's actual or potential average daily net income.
- (4) The offender's incomes, property and revenues generated from property, as well as the other assessment bases required for determining the daily rate may be set out by the court.
- (5) The court shall note the number and amount of daily rates in their decision. If, with regard to the offender's property-related and personal circumstances, the offender cannot be expected to pay the monetary penalty immediately, the court may set out that the monetary penalty be paid in reasonable monthly instalments; in so doing, it may decide that the concession whereby the monetary penalty is paid in instalments shall be dropped if the offender fails to provide payment of an instalment on time.
- (6) The court shall not impose a monetary penalty if it is evident that such punishment would be uncollectible.
- (7) Sums paid as a monetary penalty shall fall to the State.

## **Section 69**

### **Replacement Prison Sentence**

- (1) Where the court imposes a monetary penalty, it shall impose a replacement punishment of a prison sentence of up to four years in cases where payment of the monetary penalty is not set out within the specified period of time. The replacement punishment together with the imposed prison sentence, however, must not exceed the upper punishment limit.
- (2) If the offender fails to pay the monetary penalty within the specified period of time, the court may convert such penalty
- a) under the conditions of Section 60 Subsection 1, into punishment by house arrest, or*
  - b) into punishment by community service.*
- (3) Where the offender, during the time between the conversion of the monetary penalty into punishment by house arrest or punishment by community service and the termination of the execution of such punishment, does not lead an orderly life, or avoids starting to execute their punishment, or without serious justification violates the agreed conditions of executing their punishment, or otherwise defeats the execution of their punishment or culpably fails to execute the punishment during the specified term, the court shall convert such punishment into a replacement prison sentence imposed under Subsection 1.
- (4) An offender upon whom a monetary penalty has been imposed for an offence committed out of negligence shall be regarded as if they had never been convicted once the punishment is completed, or after the punishment or its remaining part is finally waived.

## **Section 70**

### **Forfeiture of a Possessed Item**

- (1) The court shall impose forfeiture of the item obtained by the offender through a criminal offence or as a reward for the criminal offence.
- (2) The court may impose forfeiture of an item
- a) that was used for committing a criminal offence or that was intended for committing a criminal offence, or*
  - b) that was, even if only partially, acquired by the offender for the item stated in Subsection 1 if the value of the item stated in Subsection 1 is not negligible in relation to the value of the acquired item.*

(3) The court may only impose forfeiture of a possessed item where the possession concerned belongs to the offender. The sentence of forfeiture of items also applies to fruits and profits of such item that belong to the offender.

(4) If, contrary to another legal regulation, the offender has an item referred to in Subsection 2 in their possession with regard to which the forfeiture of the item may be imposed, the court shall always impose this punishment as well.

(5) Before the decision enters into full force and effect, the prohibition on misappropriating a confiscated possession or other asset applies; this includes the prohibition on any activities that would lead to the defeating the punishment involving the forfeiture of an item of possession or other asset.

(6) The confiscated possessed item falls to the State.

## **Section 71**

### **Forfeiture of a Replacement Value**

(1) If, prior to the imposition of the forfeiture of a possessed item which the court may declare confiscated under Section 70, the offender destroys, damages or otherwise depreciates, misappropriates, renders unusable, removes or exploits, in particular by consumption of such possessed item or if they otherwise defeat its forfeiture, the court may impose the forfeiture of a replacement value up to the amount corresponding to the value of such possessed item or other asset. The value of the item that the court could declare confiscated may be set out based on an expert statement or report.

(2) Where the item is only in part depreciated, rendered unusable or removed, the court may impose forfeiture of a replacement value alongside the forfeiture of the possessed item under Section 70.

(3) The confiscated replacement value falls to the State.

## **Section 72**

### **Forfeiture of a Possessed Item as a Separate Punishment**

The court may only impose the forfeiture of a possessed item as a separate punishment where criminal law permits the imposition of such punishment and if, with regard to the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstance, no other punishment need be imposed.

## **Section 73**

### **Punishment by Disqualification**

(1) The court may impose a punishment consisting of a punishment by disqualification of one to ten years if the offender has committed a criminal offence in association with such activity.

(2) The court may only impose a punishment by disqualification as a separate punishment where the criminal law permits the administration of such punishment for the criminal offence committed and if, with regard to the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstance, no other punishment need be imposed.

(3) The punishment by disqualification consists of the convict being prevented for the duration of the punishment from pursuing certain employment, occupation or function or such an activity which is conditioned by a special licence, or whose pursuit is regulated by another legal regulation.

## **Section 74**

### **Serving a Punishment by Disqualification**

(1) Serving a punishment by disqualification shall not include any time serving a prison sentence; however, the period for which the offender was entitled to pursue an activity that is the subject of the prohibition, prior to the judgment of the court taking full force and effect, but during which, as a consequence of committing the criminal offence, the offender's licence was revoked under another legal regulation or on the basis of a measure taken by a public authority, shall count towards the serving of the punishment.

(2) Once the punishment by disqualification has been served, the offender shall be regarded as if they had not been convicted.

## **Section 75**

### **Prohibition of Residence**

(1) The court may impose a one to ten years prohibition of residence for an intentional criminal offence if, after taking into account the offender's current way of life and the place of committing an act, it deems it necessary for protecting the public order, family, health, good morals or property; a punishment of prohibition of residence shall not apply to the place or district in which the offender has their residence.

(2) The punishment of prohibition of residence may be imposed as a separate punishment for a criminal offence for which the criminal law stipulates a prison sentence whose upper punishment limit does not exceed three years if, in consideration of the nature and seriousness of the committed criminal offence, the character of the offender and their situation, no other punishment need be imposed.

(3) The court may impose appropriate restrictions and obligations on the offender to apply during the term of the punishment as provided for under Section 48 Subsection 4 with a view to ensuring that they lead an orderly life; as a general rule, the convict shall also be ordered to compensate any damage or redress the non-material damage they have caused by committing the criminal offence or to surrender any unjust enrichment obtained through a criminal offence, depending on their ability to do so.

(4) Where the offender is of an age close to the legal age of a minor, the court may also impose educational measures set out under the Act on Juvenile Courts, subject to the equivalent conditions stipulated for young persons. This shall be done with a view to securing educational benefits of the family, school and other institutions, either as a separate measure or one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4 .

(5) The serving of a punishment of prohibition of residence shall not include any prison sentence served; the decisions under Subsection 3 and 4 shall only be taken by the court after a prison sentence has been served or following a conditional release.

(6) The punishment of prohibition of residence consists of the convict being prohibited from staying at a certain place or in a certain district during the term of the punishment; if urgent personal reasons should necessitate a temporary stay at such a place or in such a district, then a permit must be issued.

## **Section 76**

### **Prohibition of Entry to Sporting, Cultural and Other Social Events**

(1) The court may impose a punishment prohibiting entry to sporting, cultural and other social events for up to ten years if the offender has committed an intentional criminal offence in association with their entry to such an event.

(2) The prohibition of entry to sporting, cultural and other social events may be imposed as a separate punishment where, considering the nature and seriousness of the offence committed and the character of the offender and their personal circumstance, no other punishment need be imposed.

(3) The prohibition of entry to sporting, cultural and other social events consist of the convict being prohibited from attending any designated sporting, cultural and other social events during the term of the punishment.

### **Section 77**

#### **Serving a Punishment by Prohibition of Entry to Sporting, Cultural and Other Social Events**

(1) A convict serving a prohibition of entry to sporting, cultural and other social events shall be obliged to co-operate with a probation officer, who shall set out the form of co-operation. Co-operation in particular shall involve proceeding in accordance with the determined probation plan, carrying out the determined programmes of social training and re-education, psychological counselling programmes as well as reporting in person, where deemed necessary by the probation officer and subject to their instructions, to the designated department of the Police of the Czech Republic during the period immediately coinciding with the scheduled date of a prohibited event.

(2) The punishment of prohibition of entry to sporting, cultural and other social events shall not include any term served of a prison sentence.

### **Section 78**

#### **Loss of Honorary Degrees or Accolades**

(1) The court may impose the punishment of denouncing honorary degrees or accolades if they convicted the offender for an intentional criminal offence committed out of an especially heinous motive to unconditional punishment by prison sentence of at least two years.

(2) The loss of honorary degrees or accolades consists in the convict losing the accolades, certificates of merit and other honorary degrees conferred subject to national legal regulations.

### **Section 79**

#### **Loss of Military Rank**

(1) The court may impose the punishment of loss of military rank if they convicted the offender to at least two years' unconditional prison sentence for an intentional criminal offence committed out of an especially heinous motive.

(2) The court may further impose such punishment simultaneously with other punishments if, with regard to the nature of the criminal offence committed, such action is required in order to maintain discipline and order in the armed forces.

(3) Loss of military rank consists of the convict having their rank in the armed forces lowered to that of private.

### **Section 80**

#### **Deportation**

(1) The court may impose a punishment of deportation from the territory of the Czech Republic upon an offender who is not a Czech national, either as a separate punishment or concurrently with another punishment, where it is required to protect the safety of the persons, or property, or other general interests; deportation may be imposed as a separate punishment if, considering the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstances, no other punishment need be imposed.

(2) After taking into account the nature and seriousness of the criminal offence committed, the possibility of reformation, the offender's personal circumstances and the degree to which the safety of the persons, property or other general interests are jeopardised, the court may impose a punishment of deportation with a varying severity of one to ten years, or indefinitely.

(3) The court shall not impose a punishment of deportation where

- a) the offender's nationality cannot be established,*
- b) the offender has been granted asylum or additional protection pursuant to another legal regulation,*
- c) the offender has permanent residence in the territory of the Czech Republic; they have their employment and social background here and any imposition of a deportation punishment would contravene the interest of keeping families united,*
- d) there is an imminent risk that the offender will be persecuted based on their race, ethnicity, nationality, belonging to a certain social group, political or religious conviction in the State to which the offender is to be deported, or where, as a result of the deportation, the offender would face torture or other types of inhumane or humiliating treatment or punishment,*
- e) the offender is an EU national or family member notwithstanding their nationality and has been granted permanent residence in the territory of the Czech Republic, or is a foreigner who has been granted the legal position of a long-term resident in the territory of the Czech Republic pursuant to another legal regulation, unless the court finds serious reasons involving a threat to national security or public order,*
- f) the offender is a European Union national and for the previous ten years has resided uninterruptedly in the territory of the Czech Republic, unless the court finds serious reasons involving a threat to national security, or*
- g) the offender is a minor who is a European Union national, unless the deportation is in their best interest.*

### **Division 3 Protective Measures**

#### **Subdivision 1**

#### **General Principles for Imposing Protective Measures**

##### **Section 96**

##### **Principle of Proportionality**

- (1) Protective measures may not be imposed unless it is appropriate to the nature and seriousness of the act committed and danger impending from the offender in the future for the interests protected by criminal law as well as the offender themselves and their circumstances.
- (2) Damage caused by imposed and executed protective measures must not be greater than necessary to achieve its purpose.

##### **Section 97**

##### **Imposition of Protective Measures**

- (1) Protective measures may be imposed to satisfy the statutory conditions alone and in addition to the punishment.
- (2) In addition to a punishment of a similar nature, the protective measure may be imposed only if its individual imposition was not sufficient in terms of the effect on the person on whom it is imposed and the protection of society.
- (3) If the conditions for the imposition of more protective measures are satisfied, they may be additionally imposed, unless criminal law stipulates otherwise. However, if a sufficient effect on a person may be achieved, on whom it is imposed as well as the adequate protection of society only by one of them, only such protective measure shall be imposed.
- (4) If several protective measures are additionally imposed that cannot be enforced simultaneously, the court shall determine the order of their enforcement.

#### **Subdivision 2**

## **Protective Measures and their Imposition**

### **Section 98**

#### **Types of Protective Measures**

- (1) Protective Measures are protective treatment, security detention, confiscation of items, confiscation of a part of property and protective education.
- (2) The imposition of protective education is governed by the Act on Juvenile Justice.
- (3) Protective treatment may not be imposed in addition to security detention. Confiscation of a part of property may not be imposed in parallel to forfeiture of the same part of property.

### **Section 99**

#### **Protective Treatment**

- (1) The court shall impose protective treatment in the case referred to in Section 40 Subsection 2 and Section 47 Subsection 1, or if an offender of an act otherwise punishable does not have the criminal capacity due to insanity and their remaining at liberty is dangerous.
- (2) The court may impose protective treatment even if
  - a) *an offender committed the criminal offence in a state caused by a mental disorder and their remaining at liberty is dangerous, or*
  - b) *an offender who abuses an addictive substance, committed a criminal offence under its influence or in connection with drug abuse; however, they shall not impose protective treatment if given the offender it is clear its purpose cannot be achieved.*
- (3) The court may impose protective treatment even in addition to punishment or waiver from punishment.
- (4) Based on the nature of the ailment and treatment options, the court shall impose a constitutional protective treatment or an outpatient protective treatment. If in addition to the constitutional protective treatment a prison sentence was imposed, the protective treatment is executed usually after the onset of a prison sentence in a prison. If the protective treatment may not be enforced after the commencement of the sentence in prison, the constitutional protective treatment shall be executed in a medical facility prior to the commencement of the prison sentence, provided it will satisfy the purpose of the treatment better, otherwise it shall be executed in a medical facility after serving the prison sentence or another termination of the prison sentence. Outpatient protective treatment is usually performed after the onset of a prison sentence in prison; if the execution of the outpatient protective treatment in prison may not be performed, it shall be executed after serving the prison sentence. If the duration of the prison sentence in a prison is not sufficient to satisfy the purpose of protective treatment, the court may decide on its continuation at a medical facility providing inpatient or outpatient care.
- (5) The court may amend the constitutional treatment additionally to an outpatient treatment and vice versa. The court may amend the constitutional protective treatment under the terms referred to in Section 100 Subsection 1 or 2 to a security detention. Without the conditions of Section 100 Subsection 1 or 2 the court may amend the institutional protective treatment to a security detention if the imposed and executed protective treatment does not fulfil its purpose or does not guarantee sufficient protection of society, in particular in the event that the offender escaped from the medical facility, used violence against the employees of the medical facility or against other persons under the execution of the protective treatment or repeatedly refused examinations or medical treatments or otherwise showed a negative approach to the protective treatment.
- (6) Protective treatment will last as long as it is required for reaching its purpose. Institutional protective treatment will last for up to two years; if the treatment is not concluded in this time, the court will decide on prolonging this period before it expires, also repeatedly, every time for further two years at most; otherwise it will decide to discharge the person concerned from the

protective treatment. . The duration of the protective treatment imposed under Subsection 2 Paragraph b) may be terminated once during its execution if it is discovered that its purpose may not be achieved; if there is a risk that the convicted commits another criminal offence, the court, in its decision on their release from protective treatment, shall impose a supervision over the behaviour of the convicted for up to five years; the provisions Section 49 through 51. shall be applicable to the execution of supervision similarly. The court decides on the release from protective treatment.

(7) The court shall waive the protective treatment, if the circumstance for which it was imposed expired before its commencement.

## **Section 100**

### **Security Detention**

(1) The court shall impose the security detention in the case referred to in Section 47 Subsection 2, or if the offender of an act, otherwise punishable, which would meet the characteristics of a crime, is not criminally responsible due to insanity, their remaining at liberty is dangerous, and it may not be expected that the imposed protective treatment, given the nature of the mental disorder and the possibilities of an effect on the offender, would lead to the sufficient protection of society.

(2) The court may impose security detention due to the offender with regard to their previous life and their circumstances even if

*a) an offender committed a crime in a state caused by a mental disorder, their remaining at liberty is dangerous, and it may not be expected that the imposed protective treatment with regard to the nature of their mental disorder and the possibilities of an effect on the offender would lead to the sufficient protection of society, or*

*b) an offender, who indulges in the abuse of addictive substances, committed a crime again, although they have previously been convicted for a particularly serious crime committed under the influence of an addictive substance or in connection with drug abuse to an unconditional prison sentence for at least two years, and it may not be expected that the imposition of protective treatment would achieve the sufficient protection of society, even with regard to the offender's previously expressed position on protective treatment.*

(3) The court may impose security detention separately, during a waiver from punishment or alongside the punishment. If the security detention was imposed in addition to an unconditional prison sentence, it shall then be executed after serving a prison sentence or another termination of a prison sentence. If an unconditional prison sentence was imposed at the time of the security detention, its execution shall be suspended for the period of such prison sentence. The execution of the security detention shall continue after the completion of the execution of punishment.

(4) Security detention is executed at an institute for the execution of security detention with special supervision and medical, psychological, educational, rehabilitation, and activity programmes.

(5) The security detention will last as long as required for the protection of society. The court shall examine whether the grounds for its further continuation still persist at least once every twelve months, and in the case of juveniles every six months.

(6) The court may amend the security detention additionally to an inpatient protective treatment, if the grounds for which it was imposed expired and the conditions for inpatient protective treatment have been satisfied.

(7) The court shall waive the security detention if the circumstances for which it was imposed expired prior to its commencement.

## **Section 101**

### **Confiscation of Items**

(1) If the punishment of forfeiture of items referred to in Section 70 (2) a) was not imposed, the court may impose that such item is confiscated,

- a) if it belongs to an offender who may not be prosecuted or convicted,
- b) if it belongs to an offender, whose punishment was waived by the court, or
- c) if it threatens the safety of persons or property or society, or if there is a risk that it will be used to commit a crime.

(2) The court may impose confiscation of an item acquired through a criminal offense or as a reward for criminal offense or that was, even in part, obtained in exchange for an item acquired through a criminal offense or as a reward for a criminal offence, if the value of the item acquired through a criminal offense or as a reward therefor is not insignificant as compared to the value of the obtained item, and if such item

- a) belongs to the offender, who was convicted for a criminal offense, from which the item originated;
- b) belongs to an offender, who cannot be prosecuted or convicted,
- c) belongs to an offender, whose punishment was waived by court,
- d) belongs to a deranged person, who committed an act otherwise criminal,
- e) belongs to a person, to which the offender transferred the item or who acquired the item in another way,
- f) is a part of assets in a trust fund or similar institution (hereinafter referred to as “trust fund”) or a mutual fund.

(3) Confiscation of an item also applies to fruits and profits of such item that belong to the person to whom the item is confiscated.

(4) If an offender or another person keeps an item referred to in Subsection 1 or 2, that is contrary to another legal regulation, in relation to which it is possible to impose the confiscation of an item the court shall always impose this protective measure upon them.

(5) The court may, instead of the confiscation of an item, impose an obligation upon them

- a) to modify an item or other asset, so that it can no longer be used for a socially dangerous purpose,*
- b) to remove a certain device,*
- c) to remove its label or perform its modification, or*
- d) to restrict the manipulation of an item and it shall set a reasonable deadline for it.*

(6) If an obligation that is set under Subsection 4 is not met within the set deadline, the court shall decide on the confiscation of an item.

### **Section 102**

#### **Confiscation of the Replacement Value**

If the person from whom an item that could be confiscated pursuant to Section 101 Subsection 1 or 2 destroys, damages or otherwise devalues it, alienates it, makes it unusable, removes or utilises it, particularly uses it up, or otherwise frustrates its confiscation prior to the decision on its confiscation, and if they frustrate the punishment of forfeiture of the item by conduct violating the prohibition under Section 70 Subsection 5, or frustrate the confiscation of the item by conduct violating the prohibition under Section 104 Subsection 2, the court may impose upon them the confiscation of a replacement value up to an amount which corresponds to the value of such item. The court may determine on the basis of an expert statement or expert opinion the value of an item the confiscation of which could be imposed by the court.

### **Section 103**

#### **Confiscation of Files and Equipment**

(1) The file or files with such content, the intentional distribution of which with the knowledge of their contents would meet the characteristics of a criminal offence under the Penal Code, shall be confiscated under Section 101 Subsection 1 if at least one piece of the file has already been distributed, intended or prepared for distribution. Simultaneously, the equipment used or designated for the production of such files, particularly the printers, panels, forms, print, blocks, negatives, plates, computer program, or copy machine shall be confiscated; the provisions of Section 101 Subsection 5 and 6 shall be applied accordingly.

(2) Confiscation applies only to the piece or pieces of the file that are in the possession of the person participating in its distribution or during its preparation for distribution, or if they were published by exposure, posting, performing, or by other similar manners, or by a mail order distribution and have not yet been delivered to the recipient.

(3) Confiscation of a file or files under Subsection 1 and 2 shall be applicable accordingly even in the case when by their intentional distribution with knowledge of their contents would mean the commission of a criminal offence when other circumstances occur that were not fulfilled in the assessed case, and the confiscation of the file or files is simultaneously necessary to prevent their illegal distribution.

## **Section 104**

### **Effect of Confiscation**

(1) Confiscated item, confiscated part of property, confiscated equivalent value, confiscated file or equipment will devolve to the state.

(2) Provision of Section 70 (5) will be applied accordingly for imposing confiscation of an item and for imposing an obligation according to Section 101 (5), prohibition of alienation will apply until the obligation referred to in Section 101 (5) is fulfilled, and if this obligation is not fulfilled, until the day the decision on confiscation of an item comes into force (Section 101 (6)).

### **(b) Observations on the implementation of the article**

The Criminal Code lists the types of criminal penalties and the conditions of their imposition in sections 36-80, 96-104. The penalties prescribed for corruption offences include a prison sentence with a maximum sentence of two to twelve years and pecuniary and other penalties, including forfeiture, monetary penalty or disqualification. Czechia provides for protective measures as alternatives to criminal sanctions, including protective therapy and non-conviction based confiscation.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Constitution of the Czech Republic**

### **Article 27**

- (1) There shall be no legal recourse against Deputies or Senators for their votes in the Assembly of Deputies or Senate respectively, or in the bodies thereof.
- (2) Deputies and Senators may not be criminally prosecuted for speeches in the Assembly of Deputies or the Senate respectively, or in the bodies thereof. Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are a member.
- (3) In respect of administrative offenses, Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are a member, unless a statute provides otherwise.
- (4) Deputies and Senators may not be criminally prosecuted except with the consent of the chamber of which they are a member. If the chamber refuses consent, criminal prosecution is ruled out for the duration of their mandate.
- (5) Deputies and Senators may be arrested only if they are apprehended while committing a criminal act or immediately thereafter. The arresting authority must immediately announce such an arrest to the chairperson of the chamber of which the detainee is a member; if, within twenty-four hours of the arrest, the chairperson of the chamber does not give her consent to hand the detainee over to a court, the arresting authority is obliged to release him. At the very next meeting of that chamber, it shall make the definitive decision as to whether he may be prosecuted.

### **Article 65**

- (1) The President of the Republic cannot be held in custody, prosecuted or prosecuted for an offence or other administrative offence during the performance of his/her function.
- (2) The Senate may, with the consent of the Chamber of Deputies, file a constitutional action against the President of the Republic at the Constitutional Court, either for treason or for gross violation of the Constitution or other constitutional order; "treason" means acts of the President of the Republic directed against the sovereignty and integrity of the republic as well as against its democratic order. The Constitutional Court may, on the basis of a constitutional action filed by the Senate, decide that the President of the Republic will lose the presidency and the eligibility to regain it.
- (3) To adopt a proposal concerning a constitutional action filed by the Senate, the consent of a three-fifth majority of Senators present is required. To adopt a proposal concerning a constitutional action filed by the Chamber of Deputies, the consent of a three-fifth majority of the Members of Parliament present is required; if the Chamber of Deputies does not give its consent within three months from the date on which the Senate has requested it, the consent shall not be given.

## **Code of Criminal Procedure of the Czech Republic**

### **Section 10**

#### **Exception from Competencies of Law Enforcement Authorities**

- (1) Pursuant to this Act, persons that enjoy privileges and immunities under the law or international law shall be exempt from the competencies of the law enforcement authorities.
- (2) Should any doubt arise as to whether or to what extent a person may be excluded from the competencies of the law enforcement authorities under this Act, the Supreme Court, shall decide on it upon the petition of the public prosecutor, court or the party in question.

## **Section 11**

### **Inadmissibility of the Criminal Prosecution**

(1) The criminal prosecution may not be commenced and if such was already commenced, it may not continue and must be terminated

- a) if the President of the Republic orders so, thus utilising his right to grant pardon or amnesty,*
- b) if the criminal prosecution is statute-barred,*
- c) if such prosecution concerns a person who is exempt from the competencies of the law enforcement authorities (Section 10) or a person that the law requires an official consent for their prosecution if such consent was not awarded by an entitled authority, unless temporary exemption from criminal jurisdiction is concerned or unless criminal prosecution of the person due to lack of consent of the competent authority is inadmissible only temporarily*
- d) if it concerns a person who is below the age of criminal responsibility,*
- e) if it is against a person who has died or has been declared deceased,*
- f) it is conducted against a person, whose serious illness makes it permanently impossible to stand him before a court,*
- g) against a person, whose mental illness, which came to be after the commission of the act, renders him permanently incapable of understanding the meaning of criminal prosecution,*
- h) if it is against a person who had been previously prosecuted for the same act that resulted in a final judgment of a court or decision of a court, or any other entitled authority that was finally terminated, provided the decision was not revoked during the prescribed proceeding,*
- i) if an earlier prosecution of a person for the same act was completed by a final decision on a settlement approval, if the decision was not revoked during the prescribed proceeding,*
- j) if an earlier prosecution of a person for the same act was completed by a final decision on the referral of a matter with the suspicion that the act is an offence, other tort or administrative disciplinary offence, if the decision was not revoked during the prescribed procedure,*
- k) if the criminal prosecution is subject to the consent of the victim and such consent was not given or was withdrawn,*
- l) if it is stipulated by an international treaty to which the Czech Republic is bound, or*
- m) if it is against a person in respect of whom criminal proceedings for the same act were transferred to a foreign State and a foreign court finally imposed a punishment or protective measure on such person for that act and a prison sentence or protective measure is being or has already been served by the person or cannot be served under the law of such State or if a foreign court finally waived the imposition of punishment or finally decided on acquittal.*

(2) Criminal prosecution may not be commenced, and if already commenced it may not continue and must also be terminated, if the court or any other judicial authority of a Member State of the European Union or a State associated by international agreement to implement the Schengen regulations has issued a decision for the same act by which

- a) a punishment or protective measure was finally imposed on the person and a prison sentence or protective measure is being or has already been served by the person or cannot be served under the law of such State, or by which imposition of punishment was finally waived, or*
- b) the person was finally acquitted of charges, or which has the effects of finally terminating criminal prosecution, unless the decision*

1. creates an obstacle to a finally decided matter in the State in which it was issued,
2. was issued solely because criminal prosecution was commenced in another State against the same person for the same act,
3. was issued solely because the act is not a criminal offence or does not fall within the powers of the authorities of the State that issued such decision, or
4. was issued solely for any of the reasons corresponding to the reasons stated in Subsection 1 Paragraphs a), c) through e), i) or j).

(3) If the reason given in Subsection 1 or 2 relates only to certain of the individual offences of a continued criminal offence, such does not prevent a criminal prosecution on the remaining parts of such actions.

(4) A criminal proceeding that was terminated for reasons as listed in Subsection 1 Paragraphs a), b) or i) will nevertheless continue if the accused declares, within three days of the date when the accused was notified of the decision to terminate the criminal prosecution, that they wish the trial to continue. The accused must be instructed on this.

(5) The provisions of Subsection 2 and 3 shall also apply accordingly to any decisions of the International Criminal Court, International Criminal Tribunal or similar international judicial authority with competence in criminal matters, which meet at least one of the conditions stated in Section 145 Subsection 1 Paragraph a) of the Act on International Judicial Cooperation in Criminal Matters, unless it is a decision issued due to its lack of competence or due to the insufficient seriousness of the act or dangerousness of the offender.

As such, the following can be said:

Persons exempted from the competencies of the law enforcement authorities are:

- a) President of the Czech Republic;
- b) a Deputy or a Senator if the crime was committed in relation to the voting in the respective chamber and/or to the verbal manifestations made in the respective chamber or in its bodies;
- c) a member of the European Parliament to the same extent as the member of the Chamber of Deputies.

Persons that the law requires an official consent for their prosecution:

- a) a Deputy or a Senator if the crime was not committed under abovementioned circumstances – then the consent of the respective chamber must be given in order to enable the prosecution of the Deputy or the Senator;
- b) a judge of the Constitutional Court regarding all crimes – the consent must be given by the Senate;
- c) a judge of one of the “general” courts (a district court, a regional court, a high court, the Supreme Court) regarding crimes committed in relation to the execution of their office – the consent must be given by the President of the Czech Republic.
- d) ombudsman regarding all crimes – the consent must be given by the Chamber of Deputies.

Prosecutors do not enjoy any immunity or exemption from the competencies of the law enforcement authorities. The general provisions of the Code of Criminal Procedure apply on cases of criminal proceedings against prosecutors; however the prosecutor supervising the observance of the legality in the preliminary hearing must be conducted by a prosecutor that is not biased in regard to his or her relationship to the accused prosecutor, other persons involved in the criminal proceedings, or in regard to his or her relationship to the case – this applies on all of the law enforcement authorities.

The Czech Republic provided examples of implementations:

### **Czech Republic Constitutional Court Judgment**

I. ÚS 3018/14 of 16 June 2015 The Scope of Parliamentary Indemnity in Relation to Statements Made by a Deputy on Facebook.

78. The parliamentary immunity belongs to the Parliament as a whole, not to its members. Therefore, in the event of indemnity, the Parliament, as a forum of debate among deputies and senators, not the individual freedom of speech or personal privileges and immunities of individual deputies or senators, is protected primarily. In order to activate the indemnity of deputies and senators within the meaning of Article 27 (2) of the Constitution, the following conditions must be complied with on a cumulative basis: (1) It must be the communication of information or the expression of opinion in a speech, writing, a picture or other means; (2) such expression must be made at the meeting of the Chamber of Deputies and the Senate, their committees, subcommittees and commissions, including committees of inquiry, or a joint meeting of the Chamber of Deputies and the Senate, or of those bodies; and (3) the expression made at the meeting of the respective chamber and its bodies must not be directed only outwardly, i.e. must be directed towards other participants in the parliamentary debate in a broader sense, namely deputies, senators and others who have the right to take part in the meeting of the respective chamber or its bodies (such as the President of the Republic or an external expert who is a committee or commission member of the chamber of the Parliament). In the present case, the complainant did not comply with the second and the third condition. 79. For the above-mentioned reasons, the Constitutional Court, under Section 82 (1) of Act No. 182/1993 Coll., on the Constitutional Court, dismissed the constitutional complaint since the contested decision has not violated the constitutionally guaranteed rights of the complainant.

Concrete instances have been there where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen.

Czechia noted several cases where the Chamber consented to criminal prosecution of deputies, including on the charges on spreading false news, incitement of racial and nationality hatred, bodily harm, complicity as assistance in accepting bribes, misuse of powers of a person in authority, credit fraud, breach of fair trading rules, and bribery. Similarly the Senate had in the past consented to the prosecution of senators on charges of arranging an advantage in public procurement, competitive bidding or public auction, misuse of powers of a person in authority, actual bodily harm, tax evasion, and bribery.

**(b) Observations on the implementation of the article**

Amendment of 2016 to article 11 paragraph 1(c) of the Code of Criminal Procedure establishes that the temporary obstacle to prosecution (consisting of the temporary removal from the jurisdiction of the prosecuting authorities and the temporary inadmissibility of criminal prosecution on the grounds that the consent of the competent authority has not been granted) does not constitute an obstacle to the decision. This amendment, therefore, allowed for the suspension or temporary postponement of the prosecution of a deputy, a senator, a judge of the Constitutional Court, the Ombudsman, persons enjoying certain immunities under international law (diplomatic immunities) and persons for whom prosecution has not been temporarily possible due to the principle of speciality.

With the amendment of 2013 to article 27 paragraph 4 of the Constitution, it is no longer applicable that if the Chamber refuses to consent, the prosecution of a deputy or a senator is ruled out forever. Criminal prosecution is ruled out only for the duration of the mandate. The

same applies to judges of the Constitutional Court who cannot be prosecuted without the consent of the Senate (article 86 paragraph 1 of the Constitution).

In conclusion, members of parliament can be prosecuted only with the consent of their respective chambers (art. 27(4) (5) Constitution). However, if the chamber refuses to consent, criminal prosecution is ruled out for the duration of the mandate. The president cannot be prosecuted during this tenure, but the Senate may file a constitutional action against him for high treason or gross violation of the Constitution (art. 65 of the Constitution). A consent of the President must be given for the prosecution of judges regarding crimes committed in relation to the execution of their office. Prosecutors and other public officials do not enjoy any immunities or privileges. In case a doubt arises as to the immunity and its scope, the Supreme Court can decide on it upon the petition from the public prosecutor, court or the party involved (s. 10 Code of Criminal Procedure).

It is recommended that Czechia continue to ensure a balance between immunities of Members of Parliament, senators and judges and the possibility of effectively investigating and prosecuting offences committed by them

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Code of Criminal Procedure of the Czech Republic**

#### **Section 2**

#### **Basic Principles of Criminal Procedure**

- (1) No person shall be prosecuted other than for legitimate reasons and in a manner as stipulated by this Act.
- (2) A person against whom a criminal procedure is carried out may not be perceived as guilty until the final convicting judgment of the court pronounces them as guilty.
- (3) The public prosecutor is obliged to prosecute all criminal offences of which they learn, unless the law or a promulgated international treaty to which the Czech Republic is bound stipulates otherwise.
- (4) Unless this Act stipulates otherwise, the law enforcement authorities act ex officio. Criminal cases must be dealt with expeditiously without undue delays; the most expeditious procedure shall be taken in particular for custody matters and the matters in which property was impounded if this is required with regard to the value and nature of the impounded property. Criminal cases shall be dealt with with a full investigation of rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms and by international treaties on human rights and fundamental freedoms that the Czech Republic is bound by; when conducting acts

of criminal proceedings, the rights of persons that such acts affect may be intervened only when justified by law and to the extent necessary to ensure the purpose of criminal proceedings. The law enforcement authorities shall not take the content of petitions affecting the performance of such obligations into account.

Section 2(5) Law enforcement authorities act in accordance with their rights and obligations under this Act and with the assistance of the parties so as to duly establish the facts of the case of which no reasonable doubt exists and to the extent that is necessary for their decisions. A confession of the accused shall not relieve the law enforcement authorities from the obligation to examine all the relevant circumstances of the case. During the preliminary hearings, the law enforcement authorities shall ascertain all the circumstances for and against the person against whom the proceeding is pending with the same care and in the manner provided by this Act even without petitions of the parties to an action. In proceedings before the court the public prosecutor and the accused may support their position with the proposal and submission of evidence. The public prosecutor must prove the guilt of the defendant. However, this does not relieve the court of the obligation to provide additional evidence to the extent required for their decision.

(6) Law enforcement authorities shall review the evidence according to their conviction based on careful consideration of all the circumstances of the case separately and as a whole.

(7) All law enforcement authorities shall cooperate with public interest groups and utilise their educational activities.

(8) A criminal prosecution before the courts is only possible on the basis of an indictment, a petition for punishment or a petition for approval of an agreement on the declaration of guilt and acceptance of punishment (hereinafter referred to as an “agreement on guilt and punishment”) served by the public prosecutor. A bill of indictment in proceedings before the court is represented by the public prosecutor.

(9) In criminal proceedings before the court, decisions are made by the court or a single judge; the presiding judge or a single judge decides alone only if so expressly stipulated by the law. Should the decision during a preliminary hearing be made by a court in the first instance, then such decisions shall be made by a judge.

(10) Criminal cases are heard in public before the court so that citizens may observe and participate in hearing. At the main trial and public hearing, the public may be excluded only in cases expressly stipulated for in this Act or in a special Act.

(11) Proceedings before the courts are oral; the testimony of witnesses, experts and the accused are normally undertaken through an interrogation.

(12) When deciding during a main trial, as well as during public, custody and closed hearings, the court may only take into account evidence that was given during such proceedings.

(13) The person against whom criminal proceedings have been initiated must be instructed in every stage of the proceedings in an appropriate and comprehensible manner as to their rights granting them the full use of defence and that they may choose their defence counsel; all law enforcement authorities are required to enable them to exercise their rights.

(14) Law enforcement authorities conduct the proceedings and produce decisions in the Czech language. Any person who declares that they do not speak Czech is entitled to speak their mother tongue or a language that they indicate they can speak to the law enforcement authorities.

(15) At every stage of the proceedings the law enforcement authorities are obliged to make it possible for the victim to fully exercise their rights and are also obliged to instruct the victim of the victim’s rights in an appropriate and comprehensible manner under the law so that the victim can achieve satisfaction of their claims; the proceedings must be conducted with the required consideration for the victim and while being duly regardful of their person.

## **Section 172**

### **Termination of the Criminal Prosecution**

(1) The public prosecutor shall terminate the criminal prosecution if

- a) it is virtually certain that the act for which the criminal prosecution is pending never occurred,*
- b) the act is not a criminal offence and there is no reason to refer the case,*
- c) it is not proven that the act was committed by the accused,*
- d) the criminal prosecution is inadmissible (Section 11),*
- e) the accused was not criminally liable due to insanity at the time of the act, or*
- f) the culpability of the act 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 irrelevant next to the punishment which was already imposed on the accused for another act or that will affect them as expected,*
- b) the act of the accused has already been decided by another authority in disciplinary or punitive terms, or by a foreign court or authority, or the International Criminal Court, International Criminal Tribunal or similar international judicial authority with competence in criminal matters, even if they do not comply with some of the conditions stated in Section 145 Subsection 1 Paragraph a) of the Act on International Judicial Cooperation in Criminal Matters, 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 after committing the act, particularly their effort to reimburse for damages or to eliminate other harmful consequences of their act, it is clear that the purpose of criminal proceedings has been reached.*

(3) The accused and, if known, the victim, may file a complaint which has a suspensive effect against the resolution under Subsection 1 and 2.

(4) A criminal prosecution that was terminated for any of the reasons referred to in Subsection 2 will however continue if the accused declares, within three days of the date when they were notified of the resolution to terminate the criminal prosecution that they wish the trial to continue. The accused must be instructed on this.

## **Section 223**

### **Termination of the Criminal Prosecution**

(1) The court shall terminate the criminal prosecution if it finds any one of the circumstances referred to in Section 11 during the main trial.

(2) The court may also terminate the criminal prosecution if it finds that there are any of the grounds referred to in Section 172 Subsection 2 during the main trial.

(3) The decision referred to in Subsection 1 and 2 may also relate to some of the acts for which an indictment was lodged.

(4) A complaint against the decision, which has a suspensive effect, may be lodged by the public prosecutor under Subsection 1 and 2.

The Czech Republic provided examples of implementations:

### **Court judgment N 50:**

The fulfilment of the mandatory condition stipulated in Section 172(2) c) of the Code of Criminal Procedure on the discontinuation of criminal proceedings lying in the fact that with regard to the accused's behaviour after the commission of a crime it is obvious that the purpose

of the criminal proceedings has been achieved (Section 1(1) of the Code of Criminal Procedure) will not usually be possible to deduce in the cases when the accused is denying the yet made conclusions of the investigative, prosecuting and adjudicating bodies when it comes to the substantial circumstances of the crime he is accused of (resolution of the Supreme Court of 28 April 2005, file number 11 Tdo 1200/2004).

On the motion filed by the public prosecutor against the accused M. D., the Supreme Court overruled the resolution of the Regional Court in Ostrava of 4 February 2004, file number 2 To 99/2004, as the court to which a complaint had been filed in the criminal matter recorded by the District Court in Přerov under file number 3 T 265/97, and, concurrently, ordered the District Court in Přerov to reconsider the matter to the necessary extent and hand down a new decision.

**From the reasoning:**

By the resolution of the District Court in Přerov of 2 December 2003, file number 3 T 265/97, and pursuant to Section 231(1), with the application of Section 223(2), of the Code of Criminal Procedure and Section 172(2) c) of the Code of Criminal Procedure, the criminal prosecution of M. D. accused of an act considered by the plaintiff as an attempted bodily harm pursuant to Section 8(1) and Section 222(1) of the Criminal Code and as vandalism pursuant to Section 202(1) of the Criminal Code. The act for which the criminal prosecution was discontinued was alleged to lie, according to the plaintiff, in the accused having groundlessly attacked, on 24 July 1997 at about 0115 hours in a wine bar in P and in front of more than 40 guests during a discotheque, R. J. sitting at a table. The accused first pushed the aggrieved party and then punched him in the face, as a result of which he suffered from a swollen lip and his nose started bleeding. The accused then physically attacked Z. G. who stood up for R. J. and took out from his back pocket a flick knife with a wooden handle with the total length of 27.5 cm, of which a blade of 12.5 cm, with the maximum width of the blade of 1.3 cm, and with the knife in his hand he followed Z. G. who, out of fear, ran to the kitchen. The accused called Z. G. vulgar names and when he caught him by the closed door, he threatened to kill him and stabbed him into stomach, by which the aggrieved party suffered a stab wound and was not capable of working for a period of 4 weeks. The accused also physically attacked J. N. who was trying to help Z. G. and stabbed J. N. into his chest, whereby the knife hit the chest skeleton and the aggrieved party suffered a cut wound on his right thigh, as a consequence of which J. N. was not capable of working for two weeks. In the reasoning of the decision, the District Court concluded that there was no reason for continuing the criminal prosecution of the accused with regard to the significance of the protected interest affected by the act, to the method of implementation of the act and its consequence, and to the accused's behaviour after the act.

On 4 February 2004, the public prosecutor filed complaint number 2 To 99/2004 against that resolution, which was rejected pursuant to Section 148(1) c) of the Code of Criminal Procedure. A copy of the resolution was delivered to the District Public Prosecutor in Přerov on 24 February 2004 and to the accused's defence lawyer on 25 February 2004. On 14 April 2004, the supreme public prosecutor filed an appeal against the resolution with the Regional Court in Ostrava, through which she contested the statement of the resolution rejecting the public prosecutor's complaint. As the reason for the appeal, she stated that the regular remedy had been rejected despite the fact that within the previous proceedings, it had been decided to discontinue the criminal prosecution without fulfilling the conditions for handing down such a decision. She referred to Section 265b(1) f) and l) of the Code of Criminal Procedure and stated in the text of the extraordinary remedy that she could not agree with the opinions of the courts of both instances on the achievement of the purpose of the criminal prosecution, which, in her opinion, could take place without handing down a judgment on guilt and punishment or

applying any of the so-called diversions, in particular in respect of less serious offences, that is, offences less dangerous for the society. The application of Section 172(2) c) of the Code of Criminal Procedure in the event of criminal prosecution of an accused person for a grossly serious intentional crime, such as bodily harm pursuant to Section 222(1) of the Criminal Code, seems dubious as such. She referred to the fact that the mandatory procedure pursuant to Section 172(2) c) of the Code of Criminal Procedure, being the condition of the accused's appropriate behaviour after the crime, had not been fulfilled. She stated that in that respect, the mere fact that the accused led a decent life throughout the period from the commission of the crime until the decision to discontinue the criminal prosecution was not sufficient. In terms of the achievement of the purpose of the criminal proceedings, it was necessary to consider the accused's attitude to the crime committed by him. For this reason, according to the contested resolution, it would not be essentially possible to discontinue the prosecution in the cases when the accused denied his guilt. It ensued from the recapitulation of the accused's testimony made by the court that it was obvious that the accused denied the existence of his intentional conduct and, at the same time, referred to the existence of circumstances calling for necessary defence. The protocol on the questioning of the accused showed that the accused described his behaviour as solely defensive and described in detail the violence committed towards him by other persons. On the other hand, he did not mention any initiative of his own leading to the conflict, did not show a sign of any self-critical approach to the activity he was accused of, and did not even admit that his conduct would be illegal. Considering such attitude of the accused to the criminal proceedings, it was not possible to deduce that the purpose of the criminal proceedings would have been achieved, not even despite the accused's short-term detention. None of the other alternatively set conditions for a decision pursuant to Section 172(2) c) of the Code of Criminal Procedure had been fulfilled either. The accused was prosecuted for a crime committed by attacking two people with a knife. The attack was directed at their stomachs and chests, that is, at such human body parts where there are vital organs. A regular consequence of an attack led this way against a person is, to say the least, severe damage to health. If the crime remained incomplete, it would be necessary to stem, in particular, from against what interests and in what manner the attack was committed by the perpetrator and what repercussions were intended by the perpetrator. It was not possible to stem only from the consequence the perpetrator had actually managed to evoke. After all, the actually caused injuries could not be identified as trivial. The public prosecutor considered the court's other arguments as irrelevant in terms of the conditions of the applied procedure. The contradictions between the accused's and the aggrieved parties' testimonies could be eliminated only within a trial. Where, in the reasoning of their decisions, the courts indicated the possibility of another course of the incident between the accused and the aggrieved parties and the possibility of applying less strict legal qualification, they, contrary to the principles of oral evidence and immediateness of criminal proceedings, prematurely evaluated evidence not produced in court at all. In terms of the level of dangerousness of the act for the society, the fact that the legal qualification of the crime as an act of vandalism pursuant to Section 202(1) of the Criminal could not be taken into account in the determination of guilt with regard to the decision of the President of the Republic on amnesty was of little significance. In this respect, it was essential to legally qualify the act as an attempt at a grossly serious intentional crime pursuant to Section 8(1) and Section 22(1) of the Criminal Code. Beyond the relevant circumstances, there was also the issue of the length of the criminal proceedings, which was strongly influenced by the attitude of the accused himself and his reluctance to participate in the trial. The public prosecutor considered as absolutely unacceptable the references to the accused's health condition and problems associated with the arrangement of his presence in the trial. In fact, there were completely different means pursuant to the Code of Criminal Procedure intended for these types of situations. If the proceedings

pursuant to Section 172(2) c) of the Code of Criminal Procedure had been discontinued because the court had not been able to ensure the accused's participation in the trial, it would have concerned a purely purposeful procedure. Finally, the public prosecutor proposed that the Supreme Court, being the appellate court, cancel the contested resolution of the complaint court and the previous resolution of the trial court pursuant to Section 265k (1) of the Code of Criminal Procedure and order the District Court in Přerov, pursuant to Section 265l(1) of the Code of Criminal Procedure, to reconsider the case to the necessary extent and hand down a new decision. The accused M. D. had not responded to the public prosecutor's appeal by the date of issue of that decision.

Therefore, the Supreme Court reviewed the case and arrived at the following conclusions: Pursuant to Section 231(1) in conjunction with Section 223(2) of the Code of Criminal Procedure, the court may discontinue the criminal prosecution even if, outside the trial, any of the reasons stipulated in Section 172(2) of the Code of Criminal Procedure comes to light. The reason stipulated in Section 172(2) c) of the Code of Criminal Procedure shall be considered as met if, with regard to the significance of the protected interest affected by the respective act, to the method of commission of the act and its repercussions, and to the circumstances under which the act has been committed and with regard to the accused's behaviour after the commission of the act, it is obvious that the purpose of the criminal proceedings has been achieved. In relation to the reasoning of the contested resolution to discontinue the criminal prosecution, the court of first instance stated that to determine the matter appropriately, it was necessary to stem from the actually caused injuries constituting the consequences of the accused's conduct. With respect to the method of the accused's conduct, it stated that each of the persons had described the event quite differently, both in relation between the accused and the aggrieved parties and among the aggrieved parties themselves. The court considered as proven that there was a skirmish between the accused and the aggrieved parties in which all parties were injured and emphasised that the accused did not deny having committed an illegal act, but explained the entire incident differently from the aggrieved parties. The court concluded that the degree of dangerousness of the accused's act for the society was diminished by the fact that more than six years had passed since the commission of the act, whereby for that period the accused had led a decent life and had stayed in Switzerland. It also referred to the accused's undesirable health condition and the invalidity pension benefits awarded to him. From the aforementioned, the court deduced that the purpose of the criminal proceedings had already been achieved within the up-to-then proceedings and pointed out that the accused had already been considerably limited during the proceedings due to his detention from July until September 1997.

The complaint court then identified itself with these conclusions and referred to other facts, being that the health condition of the accused, permanently staying in Switzerland, had not yet improved for him to be able to participate in the trial, that, as a consequence of his conduct, the aggrieved parties had not suffered any grossly serious or permanent consequences, and that, had the evidence been produced completely in the trial, the re-qualification of the act as a less serious crime would not have been excluded. In such case, the act would have been subject to the amnesty of the President of the Republic. After a review, the Supreme Court considered the public prosecutor's appeal as justified for the reasons claimed in her appeal. Therefore, in the matter concerned, the court of first instance had decided to discontinue the criminal prosecution pursuant to Section 172(2) c) of the Code of Criminal Procedure without the conditions for such decision set in the cited clause being fulfilled. Subsequently, the public prosecutor's complaint against the decision had been rejected by the court of second instance despite the stated error. The Supreme Court's legal opinion is also in line with the arguments submitted within the appeal. The basic condition of the procedure pursuant to Section 172(2) c) of the Code of

Criminal Procedure is the achievement of the purpose of the criminal prosecution. The obviousness of this state is deduced both from the accused's behaviour after the commission of an act and, alternatively, from the significance of the protected interest affected by the act, from the method of commission of the act and its repercussions, and from the circumstances under which the act has been committed. When it comes to the mandatory condition lying in the accused's behaviour after the commission of an act, it gives consideration, in particular, to the accused's attitude to the crime committed by him. In this stage, the accused's behaviour should be compelling enough to exclude the need for further procedures against his person which would result in the imposition of a punishment, a protective measure or any of the so-called diversions. However, from the logical point of view, this conclusion will not be possible to make in the cases when the accused takes issue with the conclusions which have so far been made by the investigative, prosecuting and adjudicating bodies within the criminal proceedings and which relate to the substantial circumstances of the crime he is accused of. In such case, it will not be possible to deduce the achievement of the purpose of the criminal proceedings from such circumstance (see Section 1(1) of the Code of Criminal Procedure). Based on the accused's testimony made so far, it is possible to undoubtedly deduce that the facts are described by the accused completely differently from the investigative, prosecuting and adjudicating bodies, whereby, in particular, the existence of an intentional act is fully excluded by him and he refers to the pure defensive character of his action during the incident. Hence, under such circumstances, it is not possible to conclude that the purpose of the criminal proceedings would be achieved when it comes to the condition of the accused's behaviour after the commission of the act.

When it comes to the other alternatively set legal conditions of the applied procedure, it needs to be stated that the factual findings made in the proceedings coming prior to the appeal were legally qualified as an attempt at committing bodily harm pursuant to Section 8(1) and Section 222(1) of the Criminal Code and vandalism pursuant to Section 202(1) of the Criminal Code. In the former case, it concerns an attempted crime considered as grossly serious pursuant to the Criminal Code [Section 41(2)]. The type dangerousness of this crime is expressed through the relevant punishment. The enumeration of circumstances as per Section 172(2) c) of the Code of Criminal Procedure, relating to the committed crime, corresponds to the type-based criteria serving for the evaluation of the particular material side of the committed crime (Section 3(4) of the Criminal Code). Hence, the significance of the protected interest can be easily deduced from the fact that according to the previous findings, the accused's conduct was immediately aimed at the commission of a grossly serious intentional crime. When it comes to the method of committing the crime, in particular, the finding that it allegedly concerned stabbing with a knife with a blade

of 12.5 cm against the stomach of one person and the chest of another is decisive. Thus, it concerned an attack capable of damaging or causing a failure of the vital organs of a human body. The consequence of the act, considering it was not completed, needs to be considered not only based on what has been actually caused, as done by the trial court, but also, in particular, based on what the act has been aimed at. None of the said circumstances stated by the court of first instance can lead, in the case concerned, to the conclusion that the purpose of the criminal proceedings has already been achieved. The same shall apply to the criterion of 'circumstances under which the act has been committed', which the court did not mention.

I. The term 'another act' in Section 172(2) a) of the Code of Criminal Procedure needs to be interpreted in manner such that it does not need to concern only 'another act' established through a different act within the meaning of substantive law but also a partial attack or, possibly, more partial attacks of one continuing crime; that is, the procedure pursuant to Section 172(2) a) of the Code of Criminal Procedure shall not be excluded if the accused is prosecuted

for partial attacks of a continuing crime for other partial attacks of which he has been convicted by a final judgment provided that the other conditions of that clause are also fulfilled.

**From the reasoning:**

The Regional Court in Ceske Budejovice rejected a complaint of the public prosecutor in Strakonice against the resolution of the District Court in Strakonice of 23 August 2002 file number 1 T 87/2002. The contested resolution of the District Court in Strakonice of 23 August 2002 file number 1 T 87/2002 stated that pursuant to Section 314c (1) b) of the Code of Criminal Procedure, for the reason stipulated in Section 172(2) a) of the Code of Criminal Procedure, the criminal prosecution of the accused M. R. - for an act lying in the fact that 1) in October 2001 he stole from the flat of his then girlfriend S. A. in S a Daewoo video recorder with a remote control of an unascertained serial number for CZK 2,000 to the detriment of the aggrieved party stated above and 2) on 10 February 2002 at about 1515 hours, close to B supermarket in S, he, having consumed alcoholic beverages, put a bottle of white Muškát wine, with a volume of 0.5 l for CZK 67.90, under his jacket to the detriment of company B. With the bottle under his jacket, he went through the register without paying and, subsequently, was caught by the security company's employee. All this despite the fact that based on the judgment of the District Court in Strakonice of 20 April 1999, file number 1 T 55/99, in conjunction with the resolution of the Regional Court in Ceske Budejovice of 20 May 1999, file number 4 To 427/99, he had been convicted, among other things, of theft pursuant to Section 247(1) b) and e) of the Criminal Code and had been imposed a summary unconditional sentence of 18 months in prison, which he completed on 19 July 2000 - should be discontinued.

The District Court handed down such decision, reasoning that the file raised reasonable suspicion that the accused had committed the stated acts, but those acts constituted partial attacks of one continuing crime. The Supreme Court's legal opinion was in line also with the appeal arguments. The basic condition of the procedure pursuant to Section 172(2) c) of the Code of Criminal Procedure is the achievement of the purpose of the criminal prosecution. The obviousness of this state is deduced from the accused's behaviour after the commission of a crime and alternatively from the significance of the protected interest affected by the act, the method of commission of the act and its repercussions, and the circumstances under which the act has been committed. When it comes to the mandatory condition of the accused's behaviour after the commission of an act, it gives consideration, in particular, to the accused's attitude to the crime committed by him. In this stage, the accused's conduct should be persuasive enough to exclude the need for any further procedures against his person which would result in the imposition of a punishment, a protective measure or any of the so-called diversions. However, from the logical point of view, this conclusion will not be possible to make in the cases when the accused takes issue with the conclusions which have so far been made by the investigative, prosecuting and adjudicating bodies within the criminal proceedings and which relate to the substantial circumstances of the crime he is accused of. In such case, it will not be possible to deduce the achievement of the purpose of the criminal proceedings from such circumstance (see Section 1(1) of the Code of Criminal Procedure). Based on the accused's testimony made so far, it is possible to undoubtedly deduce that the facts are described by the accused completely differently from the investigative, prosecuting and adjudicating bodies, whereby, in particular, the existence of an intentional act is fully excluded by him and he refers to the pure defensive character of his action during the incident. Hence, under such circumstances, it is not possible to conclude that the purpose of the criminal proceedings would be achieved when it comes to the condition of the accused's behaviour after the commission of the act. When it comes to the other alternatively set legal conditions of the applied procedure, it needs to be stated that the factual findings made in the proceedings coming prior to the appeal were legally

qualified as an attempt at committing bodily harm pursuant to Section 8(1) and Section 222(1) of the Criminal Code and vandalism pursuant to Section 202(1) of the Criminal Code. In the former case, it concerns an attempted crime considered as grossly serious pursuant to the Criminal Code [Section 41(2)]. The type dangerousness of this crime is expressed through the relevant punishment. The enumeration of circumstances as per Section 172(2) c) of the Code of Criminal Procedure, relating to the committed crime, corresponds to the type-based criteria serving for the evaluation of the particular material side of the committed crime (Section 3(4) of the Criminal Code). Hence, the significance of the protected interest can be easily deduced from the fact that according to the previous findings, the accused's conduct was immediately aimed at the commission of a grossly serious intentional crime. When it comes to the method of committing the crime, in particular, the finding that it allegedly concerned stabbing with a knife with a blade of 12.5 cm against the stomach of one person and the chest of another is decisive. Thus, it concerned an attack capable of damaging or causing a failure of the vital organs of a human body. The consequence of the act, considering it was not completed, needs to be considered not only based on what has been actually caused, as done by the trial court, but also, in particular, based on what the act has been aimed at. None of the said circumstances stated by the court of first instance can lead, in the case concerned, to the conclusion that the purpose of the criminal proceedings has already been achieved. The same shall apply to the criterion of 'circumstances under which the act has been committed', which the court did not mention.

I. The term 'another act' in Section 172(2) a) of the Code of Criminal Procedure needs to be interpreted in manner such that it does not need to concern only 'another act' established through a different act within the meaning of substantive law but also a partial attack or, possibly, more partial attacks of one continuing crime; that is, the procedure pursuant to Section 172(2) a) of the Code of Criminal Procedure shall not be excluded if the accused is prosecuted for partial attacks of a continuing crime for other partial attacks of which he has been convicted by a final judgment provided that the other conditions of that clause are also fulfilled.

**From the reasoning:**

The Regional Court in Ceske Budejovice rejected a complaint of the public prosecutor in Strakonice against the resolution of the District Court in Strakonice of 23 August 2002 file number 1 T 87/2002. The contested resolution of the District Court in Strakonice of 23 August 2002 file number 1 T 87/2002 stated that pursuant to Section 314c(1) b) of the Code of Criminal Procedure, for the reason stipulated in Section 172(2) a) of the Code of Criminal Procedure, the criminal prosecution of the accused M. R. - for an act lying in the fact that 1) in October 2001 he stole from the flat of his then girlfriend S. A. in S a Daewoo video recorder with a remote control of an unascertained serial number for CZK 2,000 to the detriment of the aggrieved party stated above and 2) on 10 February 2002 at about 1515 hours, close to B supermarket in S, he, having consumed alcoholic beverages, put a bottle of white Muškát wine, with a volume of 0.5 l for CZK 67.90, under his jacket to the detriment of company B. With the bottle under his jacket, he went through the register without paying and, subsequently, was caught by the security company's employee. All this despite the fact that based on the judgment of the District Court in Strakonice of 20 April 1999, file number 1 T 55/99, in conjunction with the resolution of the Regional Court in Ceske Budejovice of 20 May 1999, file number 4 To 427/99, he had been convicted, among other things, of theft pursuant to Section 247(1) b) and e) of the Criminal Code and had been imposed a summary unconditional sentence of 18 months in prison, which he completed on 19 July 2000 - should be discontinued. The District Court decided so, reasoning that the file raised reasonable suspicion that the accused had committed the said acts,

but those acts constituted partial attacks of one continuing crime and that fact would have zero or only minimal influence on the imposition of a summary punishment pursuant to Section 37a of the Criminal Code.

The District Court rejected the complaint of the public prosecutor.

**(Rt) 11 Tdo 1200/2004:** The fulfilment of the obligatory condition of Section 172(2) c) of the Code of Criminal Procedure pertaining to the discontinuation of criminal proceedings for the wrongdoer's behaviour after the commission of a crime showing that the purpose of the criminal proceedings has been achieved (Section 1(1) of the Code of Criminal Procedure) will probably not be possible to deduce in cases when the wrongdoer denies the conclusions already made by the investigative, prosecuting and adjudicating bodies with respect to the essential circumstances of the crime of which the wrongdoer is accused of.

**(Rt) 4 Tz 8/66:** In examining the reasons stated in Section 172(2) a) of the Code of Criminal Procedure, the court, in applying the procedure as per Section 188(2) b) or, possibly, Section 223(2) of the Code of Criminal Procedure, must consider not only the type and the length of the sentence imposed on the accused for another crime with regard to the sentence to which the prosecution may be conducive, but also all circumstances of both crimes and their degrees of dangerousness for the society and always in terms of the purpose of the sentence within the meaning of Section 23 of the Criminal Code; in particular, it needs to be considered whether the sentence already imposed earlier sufficiently ensures the appropriate education of the accused towards an orderly life of a working individual.

#### Approbation at the Public Prosecutor's Office:

Approbation is one of the tools of control and management in the system of the public prosecutor's office, which is applied not only in the area of performance of the prosecutor's office, but also in the field of administration of the public prosecutor's office. Approbation means an approval process where the processor (public prosecutor or another employee) submits a case for inspecting (for information) or approving the procedure or decision to his/her superior (including the case reserved to the superior to his/her own decision). In the system of the public prosecutor's office, some approbation procedures arise from the legal regulation, e.g. the processor prepares the case which is finally decided by the chief prosecutor, who acts according to the legal regulations of the public prosecutor's office. Other approbation procedures are determined by the internal need and the decision of the respective Chief Prosecutor. Individual Prosecutor's Offices issue organizational and approbation orders where the approbation rules are set. At the same time, however, it should be said that in the prosecution the prosecutor has his/her own original position and the chief prosecutor cannot intervene in the activity of this prosecutor for other than legal reasons.

Disclosure of information on the The Supreme Public Prosecutor's Office extranet:

**The Supreme Public Prosecutor's Office EXTRANET** is a departmental electronic network designed to transmit information to the public prosecutor's office on professional, organizational, personnel and other issues related to the jurisdiction of the public prosecutor's office. It is technically operated by the Supreme Public Prosecutor's Office. Unlike the websites of the Supreme Public Prosecutor's Office, which are content-oriented towards the widest public, EXTRANET is conceived more professionally. It contains, in particular, information from the work of the Supreme Public Prosecutor's Office, but also allows lower levels of prosecution to initiate the placement of their own files on EXTRANET. The access to EXTRANET is allowed

only to the prosecutor's office, both the prosecutors and other employees. The dissemination of information published in the EXTRANET network is subject to the obligation of confidentiality to the extent stipulated by Section 25, para. 1 of Act No. 283/1993 Coll., On State Prosecutor's Office, as amended, or Section 303, para. 1, 2, point b) of Act No. 262/2006 Coll., the Labour Code, as amended. Methodological materials, important judicial decisions as well as decisions in the scope of the Prosecutor's Office and other important information about the operation of the Prosecutor's Office are published on EXTRANET.

**ELVIZ** is an abbreviation composed of the first letters of words ELektronické Vedení Informací Zastupitelství (Electronic Management of Prosecutorial Information). ELVIZ is a new information system of the Public Prosecutor's Office, which is currently being developed. Workgroup for the new information system called ELVIZ was established in June of 2015. The main change in comparison to the existing system is that it envisages keeping and management of complete Public Prosecution files in the electronic form. At this point we need to point out that this will concern digitalization of files of Public Prosecutor's Office, not the criminal case file (the actual file on the criminal proceedings) – this will remain in documentary form. Creation of the ELVIZ information system is necessitated by the statutory obligation of Public Prosecutor's Offices to manage the file service in electronic form in an electronic file management system. ELVIZ will be more than just an electronic file management system, we plan a number of additional functions to facilitate more efficient work of public prosecutors, and also tools for better overview of the exercise of competence of Public Prosecutor's Office, including the competence in the area of criminal proceedings.

An important component thereof is strengthening of statistics and the possibility to statistically evaluate the operation of Public Prosecutor's Office. Under the current circumstances we need to add that now the regularly conducted statistics do not allow us to ascertain all the necessary data on criminal sanctions of various types of crime, including foreign bribery (current statistics show only very basic data), this also applies to crime linked to corruption crimes, e.g. criminal offences associated with money laundering (this is of course a more general problem associated not only with this particular type of crime). We believe that more detailed records, also of statistical nature, and the analysis thereof may help us to gain a more thorough overview, among other things, of foreign bribery crime and crime associated therewith, as important background data for the formulation of other measures in combatting this type of crime.

The works on the ELVIZ information system have begun in June on 2015 (as mentioned before) and currently we are in the stage of processing background data and procedural analyses. Project management of creation of ELVIZ lies in the discretion of the Ministry of Justice, but the Public Prosecutor's Office is very actively involved in preparatory analytical works.

Furthermore we need to add that the document Department Strategy for Development of eJustice 2016 to 2020 approved by the resolution of the Government of the Czech Republic no. 505 of 8. 6. 2016 envisages the creation of ELVIZ information system. ELVIZ should be operational in or after year 2019.

**ETR** stands for Records of Criminal Proceedings. ETR is an information system of the Police of the Czech Republic for documenting the course of criminal proceedings, over time supplemented with documenting the course of offence proceedings and other agendas processed by the Police of the Czech Republic. The State Prosecutor's Office accesses this information system through ETR Lite, a special, secure access interface, for the purpose of the prosecution service (not access to all agendas, but only to the criminal proceedings agenda). Within the

framework of the Czech Police, documents of the criminal (investigation) file are produced in the ETR. Since the Code of Criminal Procedure of the Czech Republic requires creation of an analogue (paper) file, the electronic file in ETR is understood as an unauthorized electronic copy of the criminal (investigation) file. It is in this electronic file that the public prosecutors can consult using ETR Lite on-line and they can also communicate with the police authorities using this means. This is positively appreciated by both public prosecutors and police officers and is part of standard work and communication within criminal proceedings.

#### **(b) Observations on the implementation of the article**

Prosecution of offences is initiated ex officio based on the principle of legality (s. 2(1)(3)(4) CCP). The Code of Criminal Procedure lists exceptional cases in which the prosecutor must (s. 172(1) CCP, e.g. no evidence or insanity of the accused) or may (s. 172(2) CCP, e.g. elimination of harmful consequences by other means) terminate the criminal prosecution. Such decisions are monitored and may be quashed by the General Prosecutor's Office (s. 174a CCP). In addition, a system of internal approbations of decisions by superior prosecutors is in place. The court may also terminate the criminal prosecution in certain circumstances (s. 223 CCP).

It is recommended that the Czech Republic continue to ensure that the discretionary legal powers relating to the prosecution of persons for the Convention offences are exercised in accordance with art. 30(3) of the Convention.

### **Article 30 Prosecution, adjudication and sanctions**

#### **Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Code of Criminal Procedure of the Czech Republic**

##### **Section 73**

##### **Replacement of the Custody with Guarantees, Supervision, Interim Measures or Pledges**

(1) In terms of the grounds given for custody referred to in Section 67 Paragraph a) or c), the competent authority deciding on the custody may leave the accused at large or release them from custody, if

*a) the Public Interest Group referred to in Section 3 Subsection 1, or a trustworthy person able to positively influence the behaviour of the accused, offers to undertake the guarantee for the future behaviour of the accused and that the accused arrives at the summons of the court, public prosecutor or police authority, and that they will always notify in advance when they leave their*

*place of residence, and the authority deciding on the custody deems the guarantee provided for the accused and the nature of the case as sufficient and acceptable,*

*b) the accused gives a written pledge to lead an orderly life, particularly not to commit criminal activities, to appear before the court, public prosecutor or police authority upon the summons, to always notify in advance when they leave their place of residence and to fulfil their obligations and comply with the restrictions imposed on them, and the authority deciding on the custody deems the pledge given by the accused and the nature of the case as sufficient and acceptable,*

*c) with regards to the accused and the nature of the opened case, the purpose of the custody may be achieved with the supervision of the accused by a probation officer, or*

*d) it also decides on imposing an interim measure.*

(2) The court and in the preliminary hearing, the public prosecutor, shall inform those who offered to undertake the guarantee pursuant to Subsection 1 Paragraph a) and who meet the conditions for its acceptance on the nature of the allegations and facts that are the reason for the custody.

(3) The accused, who was granted supervision by a probation officer to replace the custody, is obligated to meet with the probation officer within the determined periods and change their residence only with their consent and submit to other restrictions set out in the decision, which are there to eliminate the possibility of committing a criminal activity or interfering with the course of criminal proceedings. The authority deciding on custody may at the same time impose an obligation to the accused person to stay in the designated residence or a part thereof in the stated time, unless important reasons prevent it, in particular performing an occupation or provision of medical services at a medical services provider as a result of illness or injury of the accused person; determination of the time period will be governed by Section 60 (4) of the Code of Criminal Procedure. The accused person will be obliged to allow the probation officer to enter the designated residence or a part thereof.

(4) In connection to substitution of custody by some of measures referred to in sub-section (1) the authority deciding on custody may also decide on electronic control of compliance with the obligations imposed in relation to this measure by the means of an electronic control system enabling to monitor movement of the accused person, if the accused person undertakes to provide his full cooperation during the performance of electronic control. Before that the authority deciding on custody will advise the accused person of the course of performance of electronic control.

(5) In regards to the replacement of custody by the measures referred to in Subsection 1 the authority deciding on the custody may simultaneously impose restrictions involving a ban on travel abroad to the accused. In such a case, the authority deciding on the custody of the accused or the person who has the passport of the accused in their possession, to give the travel documentation<sup>1</sup> within the period set out, otherwise it will be withdrawn; the procedure for the withdrawal of travel documents, pursuant to Section 79 shall reasonably apply. A copy of the resolution, which was intended to impose a prohibition of travel abroad restriction, that concerns a citizen of the Czech Republic shall be sent by the authority deciding on the custody to the competent authority for the issue of travel documents; such authority shall also notify on the granting or withdrawal of the travel documents.

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<sup>1</sup> Act No. 329/1999 Coll., on Travel documents and on the amendment of Act No. 283/1991 Coll., on Police of the Czech Republic, as amended, (the Travel Documents Act), as amended.

(6) The accused who, in connection with the replacement of custody, had restrictions imposed upon them as referred to in Subsection 4 or 5, has the right to ask for their cancellation. Such a request must be decided by the authority deciding on the custody without undue delay. If the application is dismissed, the accused may not repeat it until after three months from the full force and effect of the decision, unless new reasons are presented.

(7) The authority that decided to cancel the prohibition to travel abroad restriction, which concerns a citizen of the Czech Republic, shall inform the competent authority that issues travel documents about this fact without undue delay; the authority must also inform on the return of travel documents to the accused.

(8) If the accused fails to fulfil the obligations imposed in connection with the replacement of custody by certain measures referred to in Subsection 1 and if the grounds for custody remain, the court and in the preliminary hearing upon the petition of the public prosecutor, the judge, shall decide on custody.

## **Section 73a**

### **Bail**

(1) If a reason for the custody referred to in Section 67 Paragraph a) or c), is given, the relevant authority may decide on the arrest of the accused or their release from custody even if they accepted to take financial bail at the designated amount. However, if the accused is prosecuted for the criminal offence of murder (Section 140 of Penal Code), serious bodily harm (Section 145 of Penal Code), torture and other cruel and inhuman treatment under Section 149 Subsection 3 and 4 of the Penal Code, human trafficking (Section 168 of the Penal Code), robbery under Section 173 Subsection 4 of the Penal Code, hostage taking under Section 174 Subsection 3 and 4 of the Penal Code, rape under Section 185 Subsection 3 and 4 of the Penal Code, sexual abuse under Section 187 Subsection 3 and 4 of the Penal Code, general threat of life under Section 272 Subsection 2 and 3 of the Penal Code, the development, manufacture and possession of prohibited weaponry (Section 280 of the Penal Code), illegal production and other use of narcotic and psychotropic substances and poisons in accordance with Section 283 Subsection 3 and 4 of the Penal Code, the highjacking of air transport, civilian vessels and a fixed platform (Section 290 of the Penal Code), the highjacking of an aircraft to a foreign country under Section 292 Subsection 2 and 3 of the Penal Code, treason (Section 309 of the Penal Code), dividing of the Republic (Section 310 of the Penal Code), a terrorist attack (Section 311 of the Penal Code), terrorism (Section 312 of the Penal Code), sabotage (Section 314 of the Penal Code), espionage (Section 316 of the Penal Code), collaboration with an enemy (Section 319 of the Penal Code) and war treason (Section 320 of the Penal Code), genocide (Section 400 of the Penal Code), an attack against humanity (Section 401 of the Penal Code), apartheid and discrimination against groups of people (Section 402 of the Penal Code), aggression (Section 405a of the Penal Code), preparation of aggressive war (Section 406 of the Penal Code), contacts that threaten the peace (Section 409 of the Penal Code), use of prohibited means of combat and clandestine warfare (Section 411 of the Penal Code), war atrocities (Section 412 of the Penal Code), the persecution of the public (Section 413 of the Penal Code), looting in an area of military operations (Section 414 of the Penal Code), abuse of internationally and state recognised symbols (Section 415 of the Penal Code), or misuse of the flag and ceasefire (Section 416 of the Penal Code), and if the reasons are given for custody referred to in Section 67 Paragraph c), then bail cannot be accepted. With the consent of the accused, bail may be lodged by another person. However, prior to its acceptance, they must be made aware of the nature of the allegations and facts that are the reason for seeking custody.

(2) Upon the petition of the accused or the person who offered to cover the bail, the authority referred to in Subsection 1 shall decide that,

*a) the acceptance of bail is permitted also with regard to the person and wealth of the accused or the person who offered to cover it for them, the nature and seriousness of the criminal offence for which the accused is prosecuted, and the seriousness of the grounds for custody shall determine the bail at the relevant amount of more than CZK 10,000 and its composition thereof, or*

*b) with regard to the circumstances of the case or the seriousness of the facts justifying the custody, offer of bail is not accepted.*

(3) If the authority referred to in Subsection 1 decides that the acceptance of bail is permitted, it may also decide to impose a prohibition of travel abroad restrictions. For cases under the first sentence of Section 73 Subsection 5 through 7 shall apply accordingly.

(4) The court, and in the preliminary hearing upon the petition of the public prosecutor, the judge, shall decide that the bail belongs to the state, if the accused

*a) flees, hides, or fails to advise on their change of residence, and thus prevents the delivery of the summons or other documents of the court, public prosecutor, or police authority,*

*b) deliberately does not respond to summons to appear for the criminal proceedings, the performance of which is impossible without their presence,*

*c) they repeat the criminal activity or attempt to complete the criminal offence that they had previously failed or planned or threatened to perform, or*

*d) they avoid the enforcement of prison sentence or a monetary penalty or the execution of an alternative prison sentence for a monetary penalty.*

(5) The bail shall be revoked or its amount changed upon the petition of the accused or the person who paid it or, even without the petition, by the court or the public prosecutor who is conducting the proceeding at that time, if the reasons that led to its acceptance expired or the circumstances for determining its amount have changed. If they decide to revoke the bail or its accrual to the state, they will also examine if there are any grounds for the decision to remand in custody and, if necessary, they shall carry out the necessary actions thereto.

(6) Unless the court decides otherwise, the bail for the accused, who was sentenced to an unconditional prison sentence or a monetary penalty, remains until the day the accused begins serving a prison sentence, pays the fine, and covers the costs of criminal proceedings. Should the accused fail to pay a monetary penalty or the costs of criminal proceedings within the prescribed period, the bail fund should be used to cover it; Subsection 7 shall not be affected thereby.

(7) If the convicting judgment imposes upon the accused an obligation to compensate the victim in monetary terms for damage or non-material damage and the victim places this request within the set deadline, then bail shall be used for the payment of the receivable of the victim once the convicted has fulfilled their obligations referred to in Subsection 6. If the funds of the bail are insufficient to satisfy the receivables of all victims, these receivables shall be satisfied proportionally.

(8) The court shall notify the victim as soon as the bail may be used to pay the victim's receivables under Subsection 7. If the victim fails to request that bail be used for payment of their receivables within three months after such notification, the bail shall be reimbursed to the convicted or the person who paid the bail. The victim must be instructed on this.

(9) The accused and the person who paid the bail must be warned in advance of the grounds on which bail may accrue to the state, be used to pay a fine or the costs of criminal proceedings or for payment of the victim's receivables.

## **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.

If the accused fails to fulfil the obligations imposed on him/her in connection with the replacement of the custody by certain measure the court can issue an arrest warrant:

## **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 arrested person has the right to choose a defense counsel, to talk to him without the presence of any third person and to consult him as soon as in the course of the arrest. Furthermore, the arrested person is entitled at his own expense to communicate in writing or via telephone with any person he elects, if it is technically possible and if the circumstances allow it, in particular if it does not endanger reaching the purpose of criminal proceedings or if it is not precluded by the interest on the protection of the victim; such communication is subject to control. An arrested foreigner is entitled to have his consular office of the state he is a national of notified and to communicate with this consular office. If the arrested foreigner does not have sufficient finances, communication with the consular office will be allowed free of charge. The arrested person must be advised on these rights and provided with full possibility to exercise them.

(5) 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.

(6) 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.

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

### **Section 360a**

#### **Performance of Electronic Control over the Fulfilment of Obligations Imposed in Connection with a Measure Replacing Custody**

(1) Electronic control of the fulfilment of obligations imposed in connection with a measure replacing custody shall be provided by the Ministry of Justice or by a branch of the State established by the Ministry of Justice for this purpose in cooperation with the Probation and Mediation Service. Once the decision to perform electronic control becomes enforceable, the authority deciding on the custody shall send it without undue delay to the authority providing the electronic control.

(2) When the control referred to in Subsection 1 is being performed, the accused is obliged to allow the authority providing the electronic control to enter the designated residence or its part (Section 73 Subsection 3) and to allow the authority providing the control to obtain their biometric data at the request of such authority upon the initiation and in the course of the electronic control, if there is a suspicion of a breach of the obligations being controlled, and to provide the authority providing the control with all required assistance. The biometric data to be obtained are fingerprints, facial features and a voice recording. The provision of Section 334b Subsection 2 shall apply accordingly.

(3) If the accused fails to fulfil the obligations subject to electronic control, the authority providing the electronic control shall report this fact without undue delay to the court and in a preliminary hearing to the public prosecutor. It shall also report this fact without undue delay to the police authority that shall detain the accused if there is a reasonable concern that they will defeat the purpose of custody; Section 75 shall apply accordingly to the procedure to be followed when detaining the accused. For this purpose, the authority providing the electronic control shall provide the police authority with the data required to identify the accused and the reasons for their possible detention.

The Czech Republic provided examples of implementations:

#### **Court judgment N34:**

The condition for the authority determining the imposition of detention to be able to accept a guarantee for the accused's further conduct within the meaning of Section 73(1) a) of the Code of Criminal Procedure is the ability of the person offering it to influence the accused and his behaviour. This ability is conditional upon the existence of certain relationship (for example, family, work) between these two persons. However, with regard to his procedural position, such person cannot be the accused's defence lawyer (Resolution of the Regional Court in Ceske Budejovice of 30 June 2003, file number 4 To 558/2003). The Regional Court in Ceske Budejovice rejected a complaint filed the defendant M. G. against the resolution of the District Court in Jindřichův Hradec of 14 June 2003 file number 7 Nt 39/2003.

#### **From the reasoning:**

Based on the resolution of 14 June 2003, file number 7 Nt 39/2003, the District Court in Jindřichův Hradec decided, pursuant to Section 68(1) of the Code of Criminal Procedure and for the reasons stated in Section 67 a) and c) of the Code of Criminal Procedure, to impose detention on the accused M. G. At the same time, it did not accept his written promise pursuant

to Section 73(1) b) of the Code of Criminal Procedure or the trustworthy person's offer of guarantee pursuant to Section 73(1) a) of the Code of Criminal Procedure. Immediately once the resolution was awarded, the accused filed a complaint through his defence lawyer, stating that the social dangerousness of his conduct was not high enough to omit the means replacing the detention, provided, however, that there were specific circumstances justifying the reasons for detention. The accused stated that he had not stayed at the given address because he was hiding from persons of Azerbaijan nationality who had threatened him with physical attack and that he did not want to leave his girlfriend and had no reason to flee or hide. When he had learnt about the police investigation against him, he turned himself in to the police as advised by his defence lawyer.

Based on the filed complaint, the Regional Court reviewed the correctness of all statements of the contested resolution and the proceedings preceding it pursuant to Section 147(1) a) and b) of the Code of Criminal Procedure. However, it did not find the complaint justified. No error was found by the court with respect to the procedure coming prior to the contested resolution. The accused, a foreign national, was criminally prosecuted for a justified suspicion of participation in criminal conspiracy pursuant to Section 163a (1) of the Criminal Code and disallowed crossing of the state borders pursuant to Section 171a (1) and (2) b) and c) of the Criminal Code, which he was alleged to commit between October 2001 and the end of September 2002 in at least 50 cases of transfer of foreign nationals without personal documents from the Czech Republic to Austria. The accused was arrested by the Police of the Czech Republic, Organized Crime Investigation Division, Criminal Police and Investigation Service, on 12 June 2003 at 1400 hours. The motion for detention was delivered to the court on 13 June 2003 at 1116 hours and the court ordered detention after the accused was questioned on 14 June 2003 at 1100 hours. Thus, the statutory time-limits of 48 hours between the arrest and the handover to the court and 24 hours for the court's decision ordering detention as stipulated in Section 77(1) and (2) of the Code of Criminal Procedure were observed. In the reasoning of its decision, the District Court stated that the so far obtained evidence showed that the act for which the criminal prosecution had been commenced had been committed, that the applied legal qualification corresponded to the up-to-then factual conclusions, and that the up-to-then findings indicated that the crime had been committed by the accused and that with regard to his person and the gravity of the crime, the purpose of the detention could not be achieved by any other measure. It concerned a foreign national staying, at that time, in the Czech Republic without the relevant residence permit and moving on the territory of the state without staying at a certain place long enough to be available to the investigative, prosecuting and adjudicating bodies.

The current legal qualification of the accused's conduct means that he may be imprisoned for between two and ten years. The accused is unemployed and is alleged to gain money to secure his existence through the commission of crimes in the long term. His stay in the Czech Republic was illegal. The complaint court arrived at the conclusion that the particular circumstances justified the concern that if cut loose, the accused would flee or hide to avoid criminal prosecution or punishment. The said facts also indicated that once cut loose, the accused would repeat his criminal activity since he could hardly gain the money securing his existence legally. For this reason, the complaint court agreed with the District Court and found the reasons for detention pursuant to Section 67 a) and c) of the Code of Criminal Procedure justified. The District Court cannot be rebuked either, under those circumstances, for not accepting the accused's defence lawyer's guarantee that he would assume responsibility for the accused's further behaviour within the meaning of Section 73(1) a) of the Code of Criminal Procedure. With respect to the defence lawyer's offer of guarantee, the Regional Court considered as necessary to point out that Section 73(1) a) of the Code of Criminal Procedure made the

acceptance of such means conditional upon a trustworthy person's ability to favourably influence the accused's behaviour and his respecting of the summons served by the court, the public prosecutor or the police. It ensues from the nature of the case that the person offering a guarantee for the accused's further behaviour in a situation highly unfavourable for the accused is supposed to be able to effectively influence his behaviour. For such person to be able to do so, he should know the accused in person and should have a certain psychological relationship with him, meaning the possibility to positively stimulate him. With regard to his procedural position, such person cannot be the accused's defence lawyer. In this context, it is necessary to remind, for example, Section 3(1) of the Advocacy Act (Act No. 85/1996 Coll., as amended) pursuant to which an attorney-at law shall act independently in providing legal services and shall be bound by the laws and, within them, by the client's instructions. A situation constituting a conflict of interests between the defence lawyer and the person stipulated in Section 73(1) a) of the Code of Criminal Procedure cannot be excluded to arise in the subsequent course of the criminal proceedings. Since the filed complaint was found unjustified, it had to be rejected.

**(Rt) 4 To 558/2003:** The condition for the body determining the imposition of a jail sentence to be able to accept a guarantee for the accused's further behaviour within the meaning of Section 73(1) a) of the Code of Criminal Procedure shall be the ability of the person offering the guarantee to effectively influence the accused and his/her behaviour. Such ability shall be conditional upon the existence of a particular relationship (for example, family, work) between these two persons. However, with regard to his/her position in the process, the accused's defence lawyer cannot serve as such person.

**(Rt) 6 To 14/92:** Before the court accepts, pursuant to Section 73 b), the accused's promise to lead an orderly life and, in particular, not to commit any crime and to fulfil the obligations and observe the limitations imposed on him, it must carefully consider all circumstances that relate to the respective case and the accused's person and that are important in terms of whether the promise can be considered as sufficient. Such promise is considerably questioned by the facts that the damage caused by the accused through his/her crime is extensive or that the accused is not working or has no money and is supposed to have committed the crime in various places of the Republic.

**(b) Observations on the implementation of the article**

Release pending trial is regulated (s. 73 CCP) and Czechia has also introduced the replacement of custody by electro-monitoring. Bail in corruption cases is possible (s. 73a CCP). The presence of the defendant in criminal proceedings is ensured through the provision on summons and compelled appearance (s. 90 CCP) and arrest warrant (s. 69 CCP).

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Criminal Code of the Czech Republic**

### **Section 88**

#### **Conditional Release from Serving a Prison Sentence**

(1) The court may conditionally release the convicted from custody if, following the full force and effect of the judgment, particularly when serving the sentence, the convicted demonstrated their reformation by their behaviour and by the performance of their duties, and may be expected to lead an orderly life in the future, or if the court accepts a guarantee for completion of the reformation of the convicted, and

a) the convicted has served at least half of the imposed prison sentence or, upon the decision of the President of the Czech Republic, reduced prison sentence, or

b) the convicted who was not convicted of a particularly serious crime and who has not previously served a prison sentence has served at least a third of the imposed prison sentence or, upon the decision of the President of the Czech Republic, reduced prison sentence.

(2) If the person convicted of an offence has demonstrated, by their exemplary behaviour and performance of their duties that further execution of punishment is not necessary, the court may conditionally release them from custody even before they have served the part of the prison sentence which is required for conditional release under Subsection 1. The court shall not grant the petition of the director of the prison for conditional release of the convicted from custody only if it is obvious that the convicted would not lead an orderly life after being released from custody.

(3) The court, when deciding upon the conditional release of a person convicted of a crime, shall also take into account whether the convicted started to execute the punishment on time and whether they have partly or completely compensated, or otherwise atoned for, the damage or other harm caused by the criminal offence, or whether they have surrendered any unjust enrichment obtained through the criminal offence. If the convicted executed the protective treatment prior to serving the prison sentence or during its course, the court shall also take the expressed position of the convicted to the execution of the protective treatment into account.

(4) A person convicted of a criminal offence of murder (Section 140), manslaughter Section 141 Subsection 2, grievous bodily harm under Section 145 Subsection 3, torture and other cruel and inhuman treatment under Section 149 Subsection 4, illegal abortions without the consent of the pregnant woman under Section 159 Subsection 3, 4, unauthorised removal of tissues and organs under Section 164 Subsection 3, 4, human trafficking under Section 168

Subsection 4, 5, denial of personal freedom under Section 170 Subsection 2, 3, kidnapping under Section 172 Subsection 3, 4, robbery under Section 173 Subsection 3, 4, hostage taking under Section 174 Subsection 3, 4, blackmail under Section 175 Subsection 3, 4, rape under Section 185 Subsection 3, 4, sexual abuse under Section 187 Subsection 3, 4, general threats under Section 272 Subsection 2, 3, unauthorised production and other handling of narcotic and psychotropic substances and poisons under Section 283 Subsection 4, gaining control over means of air transport, civilian vessels and fixed platforms (Section 290), hijacking of a means of air transport to a foreign State under Section 292 Subsection 3, treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage under Section 316 Subsection 3, 4, war treason (Section 320), state border crossing using violence under Section 339 Subsection 3, organising and facilitating illegal state border crossing under Section 340 Subsection 4, genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section

402), aggression (Section 405a), preparation for aggressive war (Section 406), relations threatening peace (Section 409), use of prohibited means of combat and clandestine warfare under Section 411 Subsection 3, war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or abuse of internationally and State recognised symbols under Section 415 Subsection 3, as well as a person convicted to an exceptional prison sentence of more than twenty up to thirty years (Section 54 Subsection 2), may be conditionally released only after serving two-thirds of the imposed prison sentence, if there is no risk, considering the circumstances of act, for which they were convicted and the nature of their character, of the recurring of the committed act or any other similar exceptionally serious crime.

(5) A person convicted to an exceptional life prison sentence may be conditionally released only after at least twenty years of their punishment is served, unless there is no risk, considering the circumstances of act, for which they were convicted and the nature of their character, of the recurring of the committed act or any other similar exceptionally serious crime.

## **Section 89**

### **Probational period and Reasonable Restrictions and Reasonable Obligations of Conditional Release**

(1) In the case of conditional release the court sets a probational period of up to three years for persons convicted of an offence and from one year to seven years for persons convicted of a crime; the probational period shall begin upon the conditional release of the convicted. The court may also pronounce supervision over an offender and simultaneously order that at the determined part of the probational period following the beginning of the probational period the offender shall remain at the determined time at their residence or its part. The execution of the supervision of Section 49 through 51 shall be applicable.

(2) The court may impose upon the conditionally released the reasonable restrictions and obligations referred to in Section 48 Subsection 4 in order for them to lead a decent life; they may also be imposed, based on their ability, to compensate for damage or redress the non-material damage caused by their criminal offence or to surrender any unjust enrichment obtained through a criminal offence. The court may order the conditionally released under Section 88 Subsection 2 to remain in their residence or its part during the set time during the probational period, or to perform work on behalf of municipalities, State or other community beneficial institutions, or to deposit a specified sum of money to the account of the court in order to help the victims of crime.

(3) The total duration of the determined stay of the conditionally released in the residence under Subsection 1 and 2 may not exceed one year, even in the event of a longer probational period. Performance of works under Subsection 2 may be set out in the range from 50 to 200 hours. The sum for financial assistance for victims of crime under Subsection 2 shall be set out in the region of CZK 2,000 to 10,000,000; in setting out this sum, the court shall take into account the personal wealth of the convicted and based on that it may be decided that the set out sum shall be paid in reasonable monthly instalments.

#### **(b) Observations on the implementation of the article**

Early release is regulated (s. 88-89 CC).

## **Article 30 Prosecution, adjudication and sanctions**

## **Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Act no.234/2014 Coll., on Civil Service**

##### **Article 48**

##### **Dismissal from Service as a Result of a Decision to Initiate Criminal Proceedings or for the Reason of Custody**

(1) The civil servant's service shall be suspended should there be a decision made to initiate criminal proceedings to investigate an intentional crime or a crime against law and order by negligence, until the termination of the relevant criminal proceedings. The civil servant's service shall be suspended should the civil servant be taken into custody, for the entire period of their custody.

(2) The law enforcement bodies shall inform, without any undue delay, the service body of the decision to initiate criminal proceedings pursuant to Subarticle (1) or about taking the civil servant in custody.

(3) The civil servant shall be eligible to receive, from the day of the suspension of their service, an allowance of 50 percent of their monthly pay, at least the minimum wage pursuant to another Act; the allowance shall be increased by 10 percent of their monthly pay for each dependent person to the maximum of 80 percent of their monthly pay. A dependent person shall be understood to be a person supported by the civil servant or a person the civil servant is obliged to support.

(4) Should the civil servant not be convicted, finally and conclusively, of the crime pursuant to (1) above, should the criminal proceedings in the given case be conditionally suspended, or should there be a decision made on the conciliation and termination of the criminal prosecution, the percentage of the pay due shall be reimbursed after the termination of the criminal proceedings.

#### **Act no. 6/2002 Coll., on the Courts, Judges, Lay Judges and on an Amendment to Some Other Laws**

##### **Temporary Release from Office**

##### **Section 100**

(1) The Minister of Justice may temporarily release a judge from office,

*a) if the judge is subject to criminal prosecution, until the date of legal force of termination of criminal prosecution,*

*b) if the judge is subject to disciplinary prosecution due to such disciplinary infringement that can result in disciplinary measure consisting in recalling from office, until the date of final termination of the disciplinary proceedings,*

*c) if proceedings have been commenced for a reason specified in Section 91 on inability of the judge to exercise office of judge, until the date of legal force of termination of these proceedings.*

(2) During the term of temporary release from office pursuant to paragraph 1 above, a judge shall be entitled to 50 % of the salary which the judge is entitled to receive on the effective day of temporary release from office and for the duration of such temporary release from office pursuant to a special regulation. Unless office of judge has become terminated, the remaining part of the salary shall be paid to the judge including additional salary if the right to such salary has been incurred by the judge; this shall not apply if the judge is finally convicted of a crime.

(3) The provision of Section 99 (2) shall apply mutatis mutandis.

(4) The judge may, within 5 working days from delivery, challenge the decision on temporary release from office under paragraph 1, b) before the court that is competent for disciplinary proceedings pursuant to a special regulation; such objections do not have any suspensive effect.

### **Section 100a**

(1) Minister of Justice may temporarily release a president or vice-president of court a) on conditions set in sec. 100 para 1 (a) and (c).

(2) During the term of temporary release for a reason specified in para 1 above, a president or vice-president of court shall not be entitled to an increase in salary coefficient for his/her function stipulated by special law. Unless function of the president or vice-president is terminated, the remaining part of the salary shall be paid to the president or vice-president if the right to such salary has been incurred; this shall not apply if the judge is finally convicted of a crime.

(3) The provision of sec. 99 (2) shall apply mutatis mutandis.

### **Section 101**

#### **Temporary Release from Office of Lay Judge**

(1) A lay judge may be temporarily released from his/her office if

*a) he/she is subject to criminal prosecution, until the date of legal force of termination of criminal prosecution,*

*b) a proposal has been submitted for his/her recalling, until a decision is made on the proposal for recalling.*

(2) The President of the relevant court shall make a decision on temporary release from office of lay judge.

(3) Temporary release from office of lay judge shall commence as of the date of delivery of the decision on temporary release to the lay judge, unless a later date is specified in the decision.

### **Act no. 283/1993 Coll., the Public Prosecutor's Office Act**

#### **Section 22**

##### **Temporary Removal**

1) The Ministry of Justice shall temporarily remove the public prosecutor from the position, if he/she has been temporarily assigned to the Ministry or Judicial Academy according to Section 19a (1), for the period of such temporary assignment.

2) The Ministry of Justice may temporarily remove the public prosecutor from the position if the public prosecutor

*a) Is criminally prosecute, until the final end effective termination of the prosecution;*

*b) Is under disciplinary prosecution in which a disciplinary punishment of removal from the public prosecutor's position may be imposed, until the termination of the disciplinary prosecution;*

c) If for the reason referred to in Section 26 the proceeding on his/her incapacitation to perform the public prosecutor's position has been opened; until the day of the final and effective

termination of this proceeding.

3) Temporary removal from the public prosecutor's position is realized on the day on which the public prosecutor receives the decision on temporary removal, unless a later date is stated in the decision.

4) For the period of temporary removal from the position the public prosecutor is entitled to his/her present salary according to a special legal regulation.<sup>5h)</sup>

5) The public prosecutor may lodge objections against the decision on temporary removing from the position according to Sub-section (2) (b) within 5 working days from its delivery, to the Court competent according to a special legal enactment to disciplinary procedure<sup>5i)</sup>; lodging of objections does not have a dilatory effect.

## **Act no. 361/2003, on the Service Status of Members of the Police Forces**

### **Section 40**

#### **Discharge**

(1) An officer must be discharged from his office for the period for which he is suspected, for good reason, of the commission of an offence, a disciplinary misdemeanour, an act having the elements of a misdemeanour, or another administrative misdemeanour if the performance of his office is posing a threat to an important professional interest or the course of investigation of his action.

(2) For the period of discharge from his office, the officer shall not have the powers and the duties ensuing for him from special laws.

(3) A service official shall be entitled to order the officer discharged from his office to be reachable in the place of his permanent residence or another place designated by the officer to the extent to which it is necessary to determine the commencement of his office.

(4) If, in relation to the commission of a crime, a disciplinary misdemeanour, an action having the elements of a misdemeanour, or another administrative misdemeanour, there is a reason for discharging an officer from his office pursuant to Section 42(1) a) to d), his discharge from the office shall last until the termination of the office.

(5) If the reasons for which the officer has been discharged no longer apply, the discharge from office shall be terminated.

## **Act no. 100/1970, concerning Services Relations of Members of the National Security Corps**

### **Section 21**

#### **Discharge from Office**

(1) If an officer is suspected, for good reason, of having seriously breached an official obligation, in particular, a crime and his performance of the office is posing a threat to an important professional interest or the course of re-investigation of the crime, he may be temporarily discharged pursuant to a written decision of the relevant official authority.

(2) An officer may be discharged from his office only for the period necessary to clarify his actions, but at most for three months. In exceptional cases, this period may be extended by the Minister of the Interior for at most three more months.

(3) From the day of discharge, the officer who has been discharged shall be entitled to 30 % and, if married, 50 % of his income. This portion of income shall be increased by 10 % of the income for each dependent child for whom the officer is entitled to receive benefits or who the officer supports and maintains, but at most 80 % of the income. If, in such period, the officer has other income, his salary shall be decreased in manner such that the aggregate of this

decreased income and other work income does not exceed his service income prior to the discharge from office. The officer shall not be entitled to the work income or its part for the period of detention. (4) If the discharge from office is terminated, the officer shall be paid the difference by which his income has been decreased. This shall not apply if the conduct for which the officer has been discharged constitutes an intentional crime for which he was convicted pursuant to a final judgment, his employment has been terminated for the action for which he has been discharged, or his rank has been taken away from him for such reason.

**(b) Observations on the implementation of the article**

Measures relating to the suspension of accused public officials are covered by the Act on Civil Service (ACS, s. 48), the Act on the Courts, Judges and Lay Judges (ACJLJ s. 100-101), the Public Prosecutor's Office Act (PPOA, s. 22), the Act on the Service Status of Members of the Police Forces (ASSMPF, s. 40) and the Act concerning Services Relations of Members of the National Security Corps (ASRMNSC, s. 21). Reassignment is not possible. Employment of these officials is terminated when they are convicted of a crime (ACS s. 74, s. 94 ACJLJ, s. 21 PPOA, s. 42 ASSMPF and s. 100 ASRMNSC).

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

- (a) Holding public office; and*
- (b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has reported that it partially implemented the provision under review.

**Criminal Code of the Czech Republic**

**Section 53**

**Imposing Multiple Punishments Individually and in Parallel**

If the Criminal Code stipulates several punishments for a criminal act, each of these penalties may be imposed separately, or more punishments may be imposed concurrently. **Besides a punishment stipulated by the Criminal Code for a criminal offense, other punishments referred to in Section 52 may also be imposed.** However, house confinement may not be imposed in parallel to imprisonment and community service, community service in parallel to imprisonment, pecuniary penalty in parallel to confiscation of property and prohibition of stay in parallel to banishment.

**Section 73**

**Punishment by Disqualification**

- (1) The court may impose a punishment consisting of a punishment by disqualification of one to ten years if the offender has committed a criminal offence in association with such activity.
- (2) The court may only impose a punishment by disqualification as a separate punishment where

the criminal law permits the administration of such punishment for the criminal offence committed and if, with regard to the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstance, no other punishment need be imposed.

(3) The punishment by disqualification consists of the convict being prevented for the duration of the punishment from pursuing certain employment, occupation or function or such an activity which is conditioned by a special licence, or whose pursuit is regulated by another legal regulation.

## **Section 74**

### **Serving a Punishment by Disqualification**

(1) Serving a punishment by disqualification shall not include any time serving a prison sentence; however, the period for which the offender was entitled to pursue an activity that is the subject of the prohibition, prior to the judgment of the court taking full force and effect, but during which, as a consequence of committing the criminal offence, the offender's licence was revoked under another legal regulation or on the basis of a measure taken by a public authority, shall count towards the serving of the punishment.

(2) Once the punishment by disqualification has been served, the offender shall be regarded as if they had not been convicted.

## **Act no. 234/2014 Coll., on Civil Service**

### **Article 25**

1) An applicant for appointment to the civil service shall:

- a) Be a citizen of the Czech Republic, a citizen of another EU member state, or a citizen of a country being a party to the Agreement on the European Economic Area,
- b) Be at least 18 years of age,
- c) Have full legal capacity,
- d) **have integrity,**
- e) Have reached education stipulated hereby, and
- f) Be of good health.

2) Applicants, who are not citizens of the Czech Republic shall, by ways of an examination taken by a subject which is a regular member of the European association for language testing in Europe, take a Czech as a foreign language test certified by the aforementioned authority to prove their knowledge of the Czech language; this shall not apply should the applicant prove to have attended, for at least three academic years, an elementary, secondary, or higher institution of learning, where the language of tuition was Czech. An applicant, who is not a citizen of the Czech Republic, shall be entitled to a compensation of costs of one language test by the service authority they are applying with. Contents and scope of the test shall be determined by a Regulation issued by the Ministry of Education, Youth and Sports.

**3) The person who has been convicted of an intentional offence or a criminal offence against public order in matters of public negligence shall not be considered as having integrity unless the conviction is cancelled or unless the offender is regarded as not having been convicted; if the criminal prosecution for such an offence has been conditionally suspended or if the decision on the approval of the settlement and the cessation of the prosecution has been decided, the presumption of integrity is met only after the expiration of 5 years from the effective date of these decisions.**

4) The Government may, in the course of systemisation, select service posts which absolutely

require, with respect to protection of public interests, the candidate to be a citizen of the Czech Republic.

5) The service body may, by ways of a Service instruction, determine the following requirements for a service post:

- a) Certain level of command of a foreign language, field of education, or any other professional competence necessary for the service,
- b) Security clearance pursuant to the law on protection of confidential information.

#### **Article 74**

##### **Termination of Civil Service Status by Law**

(1) The civil service status shall be terminated

- d) if a civil servant has been finally convicted for an intentional offence or has been finally convicted of a criminal offence against public order in public affairs of negligence or has been finally convicted of an unconditional imprisonment sentence by the date on which the judgment becomes final,**
- e) Should the civil servant be finally and conclusively convicted of an intent crime or of a crime against public law and order by negligence, or should the court decide, finally and conclusively, on a determinate prison sentence, on the day of legal effect of such conviction,
- f) Should the proceedings in respect of a crime pursuant to (a) above, committed by the civil servant and punishable by a prison sentence of no more than 5 years, be suspended or should there be a decision made on conciliation and termination of the criminal prosecution, on the day of legal effect of such decision,
- g) Should the civil servant be legally prohibited from serving in the civil service, on the day of legal effect of such decision,
- h) Should the civil servant be, based on a final and conclusive court decision, deprived of their legal capacity, on the day of legal effect of such decision,
- i) Should the civil servant be legally dismissed, as a disciplinary measure, from the civil service status, on the day of legal effect of such decision,
- j) Upon termination of the civil service status by the service body or the civil servant within the probation period for any reason or without determining a reason, on the day of service of the written notice of the termination of civil service status, unless the notice stipulated a later date; the service body shall not terminate the civil service status within the first 14 days of temporary inability of the civil servant to serve in the probation period,
- k) On the last day of the calendar month in which the civil servant failed to successfully complete the repeated civil service examination, or
- l) On 31st December of the year in which the civil servant reached the age of 70.

The civil service status shall also terminate on the day of origination of an obstacle to the civil servant's service pursuant to Article 33(4)(b).

#### **Act no. 6/2002 Coll., on the Courts, Judges, Lay judges and on amendment to some other laws**

##### **Section 60**

##### **Preconditions for Office of Judge and Lay Judge**

(1) A citizen of the Czech Republic (hereinafter a "citizen"), who enjoys full legal capacity **and is unimpeachable** may be appointed as a judge or lay judge, provided that his/her experience and moral characteristics guarantee that (s)he will properly exercise his/her office, and that

(s)he has reached at least 30 years of age on the day of appointment and agrees with his/her appointment as a judge or lay judge and assignment to a certain court.

**(2) The condition of integrity pursuant to paragraph 1 is not fulfilled by the person who has been convicted of a criminal offence if he/she is considered as not having been convicted according to a special legal regulation or a decision of the President of the Republic.**

(3) A precondition for appointment as a judge shall also consist in university education acquired by proper completion of studies in a master's study program in the sphere of law at a university in the Czech Republic and passing of an expert judicial examination.

(4) Other preconditions for appointment as a judge or lay judge are laid down in a special regulation.

(5) An expert judicial examination shall also be considered to include a Bar examination, final examination for prosecution trainees, notarial examination and expert executor's examination. Exercise of the office of judge of the Constitutional Court for a period of at least two years shall have the same effect.

## **Section 94**

### **Termination of Office of Judge**

Office of judge shall be terminated

- a) upon expiry of the calendar year during which the judge reached 70 years of age,
- b) on the date of legal force of a decision on inability to exercise office of judge for a reason specified in Section 91,
- c) **the date on which the decision, by which he/she has been convicted of an offence committed intentionally or he/she has been convicted of an unconditional imprisonment for a negligent offence, becomes effective,**
- d) *repealed*
- e) on the date of legal force of a decision on imposing a disciplinary measure on the judge consisting in recalling from office of judge [Section 88 (1) (d)],
- f) on the date of legal force of a decision on limiting the legal capacity of the judge,
- g) on the date when the judge loses citizenship of the Czech Republic,
- h) upon death or the date of legal force of a decision declaring the judge dead.

## **Act no. 283/1993 Coll., the Public Prosecutor's Office Act**

### **Section 17**

1) A citizen of the Czech Republic may be appointed the public prosecutor, if he /is ha full legal capacity, **is unimpeachable**, no criminal conviction, is over 25 years old on the day of appointment, achieved university education by studying a masters study program in the area of law at a university in the Czech Republic, has successfully passed the final examination, has moral attribute guaranteeing due execution of the office, and agrees to be appointed as a public prosecutor, and assigned to a specific Public Prosecutor's Office.

2) The specialized judicial examination, judge examination, unified judge and advocacy examination, military juridical examination and prosecutor examination taken before the day

of this Act came into full force and effect shall have the same effects as the final examination according to this Act.

3) The Minister of Justice shall decide on recognizing other examinations as the final examination according to this Act.

4) **The condition of integrity is not fulfilled by the person who has been convicted of a criminal offence if he/she is considered as not having been convicted according to a special legal regulation or a decision of the President of the Republic.**

## **Section 21**

### **Termination of Public Prosecutor's Position**

1) The public prosecutor position is terminated by the date

a) On which the public prosecutor was to take the oath, if he/she refused to do so or did so with reservation;

b) On which the public prosecutor, upon his/her appointment, additionally withdrew his/her approval of the first assignment, unless he/she may be assigned to another Public Prosecutor's Office with his/her approval;

c) As of which the public prosecutor lost the citizenship of the Czech Republic;

d) As of which the public prosecutor was appointed for a judge, elected to be a representative or senator of the Parliament of the Czech Republic or a member of the council of a local self-administration;

e) As of which an office in public administration commenced for the public prosecutor;

f) Of December 31 of the calendar year in which the public prosecutor achieved 70 years of age;

g) Of the public prosecutor's death or legal force of decision of declaration his/her death.

2) The public prosecutor's position also ceases to exist by the date of legal force of a decision

a) By which the legal capacity of the public prosecutor was limited;

b) **by which the public prosecutor has been convicted of an offence committed intentionally or he/she has been convicted of an unconditional imprisonment for a negligent offence, becomes effective;**

c) Finding out that the public prosecutor is not qualified to perform the public prosecutor's position for the reason referred to in Section 26;

d) Of imposing a disciplinary punishment of removal from the public prosecutor's position.

3) The public prosecutor may resign from his/her position by a written notice to the Ministry of Justice; the public prosecutor's position ceases by expiration of 2 calendar months following the month of service of the public prosecutor's notice of his/her resignation to the Ministry of Justice.

## **Act no. 361/2003, on the Service Status of Members of the Police Forces**

### **Section 13**

#### **Prerequisites for recruitment to the service relationship**

(1) A citizen of the Czech Republic (hereinafter referred to as a "citizen") may be recruited to the service relationship on condition that

a) he/she requests for recruitment in writing,

b) he/she is over 18 years of age,

c) **he/she has integrity,**

d) he/she meets the level of education prescribed for the post of service to which he/she is to

be appointed,

e) he/she is physically, personally and physically fit to perform the service

f) he/she is fully sui juris,

g) he/she is entitled to acquaint himself/herself with classified information under a special legal regulation if he/she is to be appointed for a post for which such a competence is required,

(h) he/she is not a member of a political party or political movement and, if this is a case of a service relationship between a member of the intelligence service and the trade unions,

(i) he/she does not engage in business or other gainful activity and is not a member of the management or supervisory bodies of legal persons who conduct business activities.

(2) If an important interest in the service requires so, a member of the intelligence service may, in exceptional cases, be recruited, even if he/she does not meet the level of education prescribed for the post in which he/she is to be appointed.

(3) The assumptions referred to in paragraph 1 under points h) and i) shall be demonstrated by the citizen's affidavit.

## **Section 14**

### **Integrity**

(1) For the purposes of this Act, a citizen is not considered a person of integrity, if he/she has been

a) convicted, in the last 10 years, for a intentional criminal offence with a maximum penalty of imprisonment not exceeding 2 years,

b) convicted, in the last 15 years, for a intentional criminal offence with a maximum penalty of imprisonment exceeding 2 years, but not exceeding 5 years,

c) convicted for a intentional criminal offence with a maximum penalty of imprisonment exceeding 5 years, or to an extraordinary punishment, or

d) convicted, in the last 5 years, for a criminal offence of negligence if his/her conduct, by means of which he/she committed the offence, is contrary to the requirements imposed on the member.

(2) For the purposes of this Act, a citizen is not considered a person of integrity

a) if his/her prosecution for an intentional offence was terminated on the basis a final decision on settlement and, since this decision, a period of 5 years has not elapsed, if his/her conduct, by means of which he/she committed the offence, is contrary to the requirements imposed on the member,

b) if his/her prosecution for an intentional offence was legally conditionally suspended and, since expiration of the probationary period or the period within which it is to be decided that he/she has acquitted himself/herself well, a period of 10 years has not elapsed, or, in the criminal proceedings against him/her, it was decided upon conditional postponement of the petition for punishment, and, since this decision, a period of 5 years has not elapsed, if his/her conduct, by means of which he/she committed the offence, is contrary to the requirements imposed on the member,

c) if he/she has been legally found guilty of an offence in the last 5 years if the conduct by means of which he/she committed the offence is contrary to the requirements imposed on the member, or

d) if he/she shows signs of addiction to alcohol or other psychotropic substances or activities.

(3) In assessing integrity, cancellation of the conviction according to special legal regulation<sup>12)</sup> or a decision of the President of the Republic, as a result of which the citizen is considered as not having been convicted, shall be disregarded.

## **Section 42**

## Dismissal

(1) A member shall be dismissed if

**a) he/she has been finally convicted of a criminal offence committed intentionally,**  
**b) he/she has been finally convicted of a criminal offence committed of negligence and the conduct, by which the offence has been committed, is contrary to the requirements imposed on the member,**

c) in the proceedings of an intentional criminal offence, it has been legally decided upon suspension of his/her criminal prosecution, it has been legally approved to settle or it has been legally determined to conditionally suspend the proposal for the punishment and the act by which the offence was committed is inconsistent with the requirements imposed on the member,

(d) he/she has breached a professional oath by committing a contemptible act which has the characteristics of a criminal offence and is capable of jeopardizing the reputation of the security corps,

e) he/she has been subjected to a disciplinary punishment for the withdrawal of the service rank,

he/she has violated the limitations set forth in Section 47 or Section 48,

g) he/she has lost the citizenship of the Czech Republic,

h) according to the medical opinion of the provider of occupational health services, he/she has, in the long term, lost his/her medical fitness to perform the service, except for medical reasons related to pregnancy,

i) he/she has been deprived of a certificate of physical fitness or professional competence set forth in a special legal regulation,

j) according to the opinion of a psychologist of the security corps, he/she has lost his personality to perform the service,

k) his/her legal capacity has been limited,

l) the period referred to in Article 32, para. 2 has elapsed and the reason for the inclusion in the reserves for the temporarily non-assigned has not ceased, or

m) he/she has asked for dismissal.

(2) A member of the intelligence service shall also be dismissed if his/her certificate has expired if he/she is a contact person appointed to deal with classified information, and cannot be appointed to another post, even after 1 year of enrolment in the reserves for the non-assigned.

(3) A member in service for a specified period shall also be dismissed if

(a) the post for which he/she was appointed was cancelled as a result of organizational changes and the member cannot be appointed to another post,

b) his/her certificate has expired if he/she is a contact person appointed to deal with classified information, and cannot be appointed to another post, or

c) he/she has achieved unsatisfactory results in the service according to the conclusion of the service evaluation.

The decision on the dismissal for the reasons referred to in paragraph 1, points b) to d) and point f), and paragraph 3, point c), shall be delivered to the member without undue delay, but no later than one year after the date on which this reason was caused.

(5) When a member is dismissed in accordance with paragraph 1

a) points a) to k), his/her service relationship is terminated on the date of delivery of the decision on the dismissal,

b) point l), his/her service relationship is terminated after expiration of 2 calendar months following the date of delivery of the decision on the dismissal, or

c) point m), his/her service relationship is terminated after expiration of 2 calendar months following the date of delivery of the request for the dismissal unless the official functionary

makes a decision on a shorter period of time based on the member's request.

(6) When a member is dismissed according to paragraph 2 and paragraph 3, his/her service relationship is terminated after expiration of 2 calendar months following the date of delivery of the decision on the dismissal unless the official functionary makes a decision on a shorter period of time based on the member's request.

## **Act no. 100/1970, concerning Services Relations of Members of the National Security Corps**

### **Section 3**

#### **Recruitment conditions and the recruitment process**

(1) A Czechoslovak citizen over 18 years of age, who requests for recruitment, may be recruited to a service relationship and this person

a) is committed to the socialist establishment,

**b) has integrity,**

c) has attained the required level of education,

d) is physically and mentally competent for the performance of the service, and

e) has performed the basic (substitute) military service if he/she is subject to military service.

(2) The service authorities shall be obliged to inform the candidates about having been engaged in the service relationship, about the fundamental rights and obligations arising from the service relationship, in particular the conditions of the service and the material security, and to notify him/her in writing about the conclusion of the recruitment procedure.

(3) The engagement procedure shall be adjusted by the Minister of the Interior of the Czechoslovak Socialist Republic.

### **Dismissal**

#### **Section 100**

(1) A member may be dismissed from the service relationship:

a) If there is no other assignment for him/her due to major organizational changes approved by the Government of the Czech and Slovak Federal Republic in the National Security Corps,

b) if, in the opinion of the Medical Commission, he/she is permanently incapacitated for the performance of any service for health reasons or if his/her ability to perform the service is altered and the member cannot be transferred to a function the performance of which would not be detrimental to his/her health,

c) if he/she fulfils the conditions for entitlement to a retirement pension,

d) if he/she has been assessed as unsatisfactory in the service evaluation and is incapable of holding a different, less responsible function,

e) if he/she has infringed the professional oath, service obligation or the power of a public official in a particularly gross manner, and his/her retention in the service relationship would be prejudicial to the essential interests of the service; or

**f) if he/she has been finally convicted of a criminal offence for an unconditional imprisonment,**

g) if, in the opinion of the Civil Commission, he/she is not eligible to serve in the National Security Corps.

(2) The decision on dismissal of a member for the reasons set forth in the previous paragraph, points d), e) and f), may be made only within two months of the date on which the service authority discovered the reason for the dismissal, but no later than one year after the date on which this reason was caused; the members' decisions shall also be notified within these time periods. If the member is dismissed for a reason referred to in the previous paragraph, point d),

the period during which the member is recognized as being temporarily incapacitated due to illness or accident shall not be included within the period of two months.

(3) The service body shall be obliged to discuss, in advance, the dismissal of the member due to any of the reasons referred to in paragraph 1, points b), d) and e) with the special commission established pursuant to Section 18, paragraph 4.

The Czech Republic provided examples of implementations:

**Court judgment (Rt) Tzv 10/66:**

The prohibition of an activity cannot be expressed generally as the prohibition to pursue the office of a commander in armed forces.

**(b) Observations on the implementation of the article**

Persons convicted of corruption can be disqualified for a period of one to ten years (s. 73 CC). This provision applies, among others, to public officials and employees of state enterprises. In principle, this penalty cannot be imposed separately if it is not explicitly listed among penalties for a respective criminal offence in the Special Part of the Criminal Code and must be followed by another type of punishment envisaged for a criminal offence (s. 53 and 73 CC). However, per s. 73 (2) of the Criminal Code, a sentence of prohibition of certain activity may be imposed as an **individual (separate) sentence**, if the Criminal Code allows imposition of this sentence for the committed criminal offence and if with regard to the nature and gravity of the committed criminal offence and to the character and circumstances of the offender is imposition of another penalty not necessary. The prosecutor or court may refer a case to a competent disciplinary body or other authority for action (s. 159(a), 171, 222 CCP).

In addition, persons convicted of an intentional offence or a criminal offence against public order in matters committed of negligence cannot apply for civil service positions.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Code of Criminal Procedure of the Czech Republic**

**Section 159a**

**Deferral or a Different Execution of the Matters**

(1) Except in cases of a suspected criminal offence, the public prosecutor or the police authority may defer the matter by a resolution, provided it is not appropriate to execute the case otherwise. Such execution may be, in particular,

- a) the submission of the matter to the competent authority to discuss an offence, or
  - b) the submission of the matter to another authority for a disciplinary hearing.
- (2) The public prosecutor or the police authority, before the commencement of the criminal prosecution, shall defer the matter, if, pursuant to Section 11 the criminal prosecution is inadmissible.
- (3) The public prosecutor or the police authority may, before the commencement of the criminal prosecution, defer the matter by a resolution, if pursuant to Section 172 Subsection 2 Paragraph a) or b), the criminal prosecution is inefficient.
- (4) The public prosecutor may defer the matter, if the results of the verification show that the circumstances referred to in Section 172 Subsection 2 Paragraph c) occurred.
- (5) The public prosecutor or the police authority shall also defer the matter if they failed to establish the facts justifying the initiation of the criminal prosecution (Section 160). If the grounds for the deferral expired, the criminal prosecution will be initiated.
- (6) The resolution to defer the matter must be served to the victim, if they are known. The resolution to defer the matter referred to in Subsection 1 through 5 must be served to the public prosecutor within 48 hours. The reporting person must be notified on the deferral of the matter according to Section 158 Subsection 2 if they requested it.
- (7) The victim referred to in Subsection 6 may lodge a complaint against the resolution to defer the matter, which has a suspensive effect.

## **Section 171**

### **Referral to another Authority**

- (1) The public prosecutor shall refer the case to another authority if the results from the preliminary hearing show that there is no criminal offence, but that it is an act which might be considered by another competent authority as an offence or disciplinary offence.
- (2) The accused and, if known, the victim, may file a complaint which has a suspensive effect against the resolution under Subsection 1.

## **Section 222**

### **Referral of the Matter**

- (1) If the court finds that the prosecuted act is a criminal offence for which they are not competent to deal with, they shall decide to submit the matter for a decision on the jurisdiction of the court that is the closest commonly superior to them and the court that is according to them in jurisdiction. However, they are obliged to decide on the matter themselves if it is only a local lack of jurisdiction and the defendant did not complain against it; they are also obligated to decide on the matter themselves if the matter is to be ordered by the closest commonly superior court to a court of the same kind but of a lower level. A court to whom the matter was transferred to by another superior court cannot decide on the submission of the matter for a decision on the court jurisdiction, unless the factual basis for the assessment of jurisdiction was in the meantime significantly changed.
- (2) The court shall refer the matter to another authority if they find that it is not a criminal offence, but the act could be regarded as a petty offence or disciplinary offence by another authority on which such authority has jurisdiction.
- (3) The public prosecutor may file a complaint against the resolution on the referral under Subsection 2 that has a suspensive effect.

## **Act No. 7/2002 on the Proceedings Concerning the Affairs of Judges, Prosecutors and Court Executors**

### **Section 15**

(1) If the panel of judges is of the opinion that the deeds which the defendant has been in disciplinary proceedings accused being guilty of bear the signs of a criminal offence or a misdemeanour or other administrative delict, the disciplinary proceedings are suspended and the matter is assigned to the competent authority; a similar procedure shall be followed also in the event that criminal proceedings or administrative proceedings have been instituted for the same deed against a judge, president of a court, deputy president of a court, president of a division of the Supreme Court or Supreme Administrative Court, or a prosecutor.

(2) The disciplinary proceedings are suspended until the ruling of the authority to which the case has been assigned as per paragraph 1 becomes legal adjudication. After the ruling has become legal adjudication, the senate reinstates the proceedings, provided it is of the opinion that the sanctions available in administrative or criminal proceedings are inadequate; otherwise it terminates the proceedings.

(3) The senate shall suspend the disciplinary proceedings against the person accused of a breach of discipline also if proceedings have been instituted against the accused pursuant to Section Four of this Act. The disciplinary proceedings are resumed after the ruling in the proceedings instituted pursuant to Section Four of this Act has become legal adjudication, unless the office of the judge, president of a court, deputy president of a court, president of a division of the Supreme Court or Supreme Administrative Court, or the prosecutor against whom the disciplinary proceedings have been instituted, has been abolished.

## **Act No.234/2014 Coll., on Civil Service**

### **Section 87**

#### **Service Discipline**

Service discipline shall mean dutiful performance of duties arising to a civil servant from legislation pertaining to the service in the given field of service, and from service instructions and service orders.

### **Section 88**

#### **Breach of Discipline**

(1) A deliberate breach of service discipline shall constitute a disciplinary infraction.

(2) A civil servant shall be responsible for their disciplinary infraction. The Deputy for the Civil Service shall not be held accountable for disciplinary infraction.

(3) A senior civil servant or a service body may address petty issues with service by way of a verbal or written admonition. A written note of admonition shall be filed in the personal file of the civil servant for a period of 1 year and removed from file after the expiration of one year.

### **Section 89**

#### **Disciplinary Measures**

(1) A disciplinary measure may be imposed on a civil servant for a disciplinary infraction. (2) A disciplinary measure may be in the form of the following:

*a) A written reprimand,*

*b) Deduction of 15% of the pay for up to 3 calendar months, c) Recall from the service post of a senior civil servant, or d) Dismissal from the civil service.*

(3) When determining the type of disciplinary measure, the following shall be taken into account: severity of the disciplinary infraction, in particular the way it had been committed, the significance and scope of the consequences, the circumstances of the infraction, culpability, motives, previous record of the civil servant in the area of service discipline and any previous disciplinary actions against them resulting in a disciplinary measure. The disciplinary measure

of recall from the service post of the senior civil servant or dismissal from the civil service, shall be given only for serious infractions, especially should the civil servant be in breach of service discipline for a significant duration of time, or should their actions have weighty consequences, or should they have acted on contemptible motives.

(4) In the event of multiple disciplinary infractions by a civil servant in a single disciplinary action, a disciplinary measure shall be derived from the most serious disciplinary infraction.

(5) A disciplinary measure shall be imposed should the civil servant have been finally and conclusively sentenced for the same act in court or by an administrative body.

(6) A disciplinary measure may be waived by means of a decision on the disciplinary action should the disciplinary action alone be sufficient to redress the situation.

(7) The decision imposing a disciplinary measure which had become final and conclusive shall be filed in the personal file of the civil servant.

## **Act No. 6/2002 Coll., on the Courts, Judges, Lay Judges and on Amendment to some other laws**

### **Division 4**

#### **Disciplinary Liability of Judges**

##### **Section 86**

###### **General Provisions**

A judge, president of court, vice-president of court, president of a panel of the Supreme Court or Supreme Administrative Court shall bear disciplinary liability for disciplinary violations.

##### **Section 87**

###### **Disciplinary Violations**

(1) A disciplinary violation shall consist in voluntary breach of duties of a judge, as well as voluntary behavior or conduct impairing dignity of the office of judge or endangering confidence in independent, impartial, professionally competent and fair decision-making by the courts.

(2) A disciplinary violation of president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court shall also consist in voluntary breach of duties connected to function of president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court.

##### **Section 88**

###### **Disciplinary Measure**

(1) One of the following disciplinary measures may be imposed on a judge for a disciplinary violation according:

*a) a reprimand,*

*b) reduction of salary up to 30 % for a period not exceeding 1 year, and in case of repeated disciplinary violation committed by a judge prior to erasure of the disciplinary violation, for a period not exceeding 2 years,*

*c) recalling from office of president of a panel, d) recalling from office of judge.*

(2) One of the following disciplinary measures may be imposed on a president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court for a disciplinary violation, according to the seriousness of the disciplinary violation:

*a) a reprimand,*

*b) withdrawal of an increase in salary coefficient for the function of president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court for a period not exceeding 1 year and in case of repeated disciplinary offense committed by president of court, presidents of panels of the Supreme Court or Supreme Administrative Court prior to erasure of disciplinary measure for a period not exceeding 2 years,*

*c) reduction of salary up to 30 % for a period not exceeding 1 year, and in case of repeated disciplinary violation committed by a president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court prior to erasure of the disciplinary violation, for a period not exceeding 2 years,*

*d) recalling from office of president of court, presidents of panels of the Supreme Court or Supreme Administrative Court,*

(3) A disciplinary measure may be waived if discussion of the disciplinary violation is sufficient.

(4) For more disciplinary offenses of the same judge, president of court, vice-presidents of court, presidents of panels of the Supreme Court or Supreme Administrative Court, discussed in joint case, a disciplinary measure shall be imposed under the provisions relating to disciplinary offense punishable most strictly.

(5) The disciplinary measure consisting in salary reduction under para 1, letter b) and para 2, letter b) and c) shall be applied against the judge, president of court, presidents of panels of the Supreme Court or Supreme Administrative Court punished by such disciplinary sanction as from the first day of the month following the day when the relevant decision imposing the disciplinary measure came into force.

## **Act No. 283/1993 Coll., the Public Prosecutor's Office**

### **Section 27**

The public prosecutor shall be responsible for disciplinary violation.

### **Section 28**

Disciplinary violation means a deliberate violation of the public prosecutor's duties, the public prosecutor's deliberate behaviour or conduct diminishing the trust in the Public Prosecutor's Office activity or proficiency of its operation or degrading reputation and dignity of the public prosecutor's position.

### **Section 30**

1) For disciplinary violation the public prosecutor may be imposed with some of the following disciplinary punishments by seriousness of the disciplinary violation:

*a) A reprimand;*

*b) Salary decrease of up to 30% for a period of not more than 1 year and for repeated disciplinary violation committed by the public prosecutor in the period before erasure of the disciplinary punishment for a period of not more than 2 years;*

*c) Removal from the office.*

2) The disciplinary punishment may be waived, if mere hearing of the disciplinary violation of the public prosecutor is sufficient.

3) The chief public prosecutor may reproach minor failures and lapses to the public prosecutor in writing without filing a motion for opening disciplinary proceedings.

4) The disciplinary punishment of salary decrease according to Sub-section (1) (b) shall apply towards the affected public prosecutor from the first day of the month following the day of legal force of decision imposing the disciplinary punishment.

## **Act no. 361/2003, on the Service Status of Members of the Police Forces**

## **Section 50**

### **Disciplinary Misdemeanour**

(1) A disciplinary misdemeanour is an action which breaches a service duty but does not qualify for a crime or for an act having the elements of a misdemeanour or another administrative offence. The achievement of unsatisfactory professional results stated in the final professional evaluation may also qualify for a disciplinary misdemeanour.

(2) A disciplinary misdemeanour shall be considered as having been committed out of negligence if an officer:

a) has known that his conduct may breach a service duty but has relied, without good reasons, on the service duty not being breached; or

b) has not known that his conduct may breach a service duty although he should or could know it with regard to the circumstances

(3) A disciplinary misdemeanour shall be considered as having been committed intentionally if an officer:

a) *has wanted to breach a service duty by his conduct; or*

b) *has known that his conduct is capable of breaching a service duty and, in case of its breach, has been aware of it*

(4) A disciplinary misdemeanour may also be a failure to act in compliance with an officer's obligations.

## **Section 51**

### **Disciplinary Sanctions**

(1) An officer shall be imposed a disciplinary sanction in the form of: a) *written reprimand;*

b) *decrease in basic tariff by up to 25 % for at most 3 months;* c) *removal of a service medal;*

d) *removal of a service rank;* e) *fine;* f) *forfeiture of property;* or g) *prohibition of activity*

(2) *The disciplinary sanctions stated in paragraph 1 e) to g) may be imposed only for an action showing the elements of a misdemeanour.*

They can be imposed all at once or, possibly, along with the disciplinary sanctions stated in paragraph 1 a) and c).

(3) A fine shall be imposed on an officer to the tune as stipulated for the respective misdemeanour pursuant to special laws and even in the event of a repeated action showing the elements of a misdemeanour.

## **Act no. 100/1970 Coll., Concerning Services Relations of Members of the National Security Corps**

### **Article 27**

#### **Disciplinary Misdemeanour**

A disciplinary misdemeanour shall mean breach of an officer's service duty, unless it concerns a crime, an offence or a misdemeanour.

### **Article 28**

Disciplinary Sanctions Disciplinary sanctions shall be:

a) *written reprimand;*

b) *decrease of income by up to 10 % for at most three months;*

c) *removal of an honorary badge;*

d) *degradation by one degree for one year*

#### **(b) Observations on the implementation of the article**

Disciplinary actions against public officials are regulated in the ACS (s. 87-89), ACJLJ (s. 86-88), PPOA (s. 27-30), ASSMPF (s. 50-51) and ASRMNSC (s. 27-28). Disciplinary proceedings are normally suspended during the course of ongoing criminal proceedings.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Criminal Code of the Czech Republic**

#### **Section 49**

##### **Definition and Purpose of Supervision**

(1) Supervision denotes regular personal contact between the offender and an official from the Probation and Mediation Service (hereinafter referred to as a “probation officer”), co-operation in drawing up and implementing a probation plan for supervision during probational period and checking compliance with the requirements stipulated for the offender by the court or inherent in the law.

(2) The purpose of supervision is to

- a) monitor and check the offender’s behaviour; i.e. to ensure the protection of society and reduce the possibility of any repeated criminal activity,*
- b) provide expert guidance and assistance to the offender with a view to ensuring that they lead an orderly life in the future.*

(3) Supervision over the offender shall be entrusted to the probation officer.

#### **Section 50**

##### **Obligations of the Offender**

An offender upon whom supervision has been imposed is obligated to

- a) co-operate with the probation officer as required by the officer concerned and fulfil the probation plan for the supervision,*
- b) attend appointments with the probation officer at a frequency specified by the officer concerned,*
- c) inform the probation officer of their whereabouts, employment, means of support, compliance with the appropriate restrictions and obligations stipulated by the court and any other facts that are important in terms of carrying out the supervision by the probation officer concerned,*
- d) allow the probation officer to enter the house where they live.*

#### **Section 51**

##### **Obligations and Entitlements of the Probation Officer**

(1) The probation officer is obligated to perform their supervision over the offender in line with

the drawn-up probation plan, assist the offender in their circumstances and carry out the instructions of the presiding judge conducive to the exercise of supervision and to ensure that the offender leads an orderly life. The probation officer is obliged to regularly update the probation plan, taking into account the results of the supervision and the personal, family and other circumstances of the offender.

(2) If an offender, who is subject to the supervision, fails to comply, either repeatedly or in any material way, with the conditions of the supervision, probation plan or the appropriate restrictions and obligations, the probation officer shall report the fact without undue delay to the presiding judge who imposed the supervision. In the event of less serious violations of the specified conditions, probation plan or appropriate restrictions and obligations, the probation officer shall caution the offender with regard to the established deficiencies and instruct them that, in the event of any repeated or more serious violations of the specified conditions, probation plan or appropriate restrictions and obligations, they will report such violations to the presiding judge.

(3) Unless the presiding judge stipulates otherwise, the probation officer shall draft a report at least once every six months, advising the presiding judge of the court which imposed the supervision regarding how the execution of the supervision over the offender has progressed, on the offender's compliance with the specified conditions, the probation plan and appropriate restrictions and obligations, as well as the offender's general circumstances.

## **Section 56**

### **Execution of a Sentence of Imprisonment**

(1) An unsuspended sentence of imprisonment will be served differentially in prisons

- a) with high security, or
- b) with maximum security.

(2) The court will generally place to a prison

- a) with high security an offender who does not meet the conditions for placement in a maximum security prison,
- b) with maximum security an offender who was sentenced to an exceptional sentence of imprisonment (Section 54), who was sentenced to imprisonment for a criminal offense committed in favor of an organized criminal group (Section 108), who was sentenced for an especially serious felony (Section 14(3)) to imprisonment for at least eight years, or who was sentenced for an intentional criminal offense and has escaped or tried to escape from custody, from serving a sentence of imprisonment or from security detention.

(3) The court may place an offender to a prison of a different type than to which is he supposed to be placed according to sub-section (2), if the court believes that in the view of the seriousness of the criminal offense and the degree and nature of disturbance of the offender his placement to another type of prison will better induce him to lead an upright life; however an offender who was sentenced to imprisonment for life will always be placed to a prison with maximum security.

(4) The manner of execution of a sentence of imprisonment in individual types of prisons is regulated by a special legal enactment.

## **Section 57**

### **Reallocating Convicts into another Type of Prison**

(1) While serving their prison sentence, the court may decide to transfer the convict to another type of a prison.

(2) The court shall decide to transfer the convict into a prison with high security if the convict's conduct and the way in which they are complying with their obligations leads to the conclusion

that such transfer will contribute to their reform.

(3) The court may decide to transfer the convict into a prison with maximum security if

*a) the convict materially or repeatedly violates prison rules or discipline, or*

*b) the convict has been found finally guilty of a criminal offence committed during their prison sentence.*

(4) No transfer may occur from a prison with increased prison guard duty

*a) for a convict upon whom a life prison sentence has been imposed and who has not served at least ten years of the sentence yet,*

*b) for another convict serving their punishment in a prison with an increased prison guard duty before they have served at least one quarter of the punishment imposed.*

(5) The court may decide, upon a petition of a convict who has served at least one quarter of the imposed sentence in a maximum security prison, but at least six months, to transfer him to a high security prison. The convict who was sentenced to imprisonment for life, may file a petition for transfer to a high security prison no sooner than after serving ten years of this sentence.

(6) Where a request pursuant to Subsection 6 is not granted, the convict may re-submit their request after six months has lapsed since the termination of the procedure dealing with their previous request.

## **Section 57a**

### **Conversion of a Prison Sentence into Punishment by House Arrest**

After serving half of the imposed sentence or, upon the decision of the President of the Czech Republic, a reduced prison sentence, the court may convert the remaining sentence of a person convicted of an offence into punishment by house arrest provided, following the full force and effect of the judgment, particularly when serving the sentence, the convicted demonstrated their reformation by their behaviour and by the performance of their duties, and may be expected to lead an orderly life in future. When converting a prison sentence into a punishment by house arrest, each day of the remaining non-served prison sentence shall correspond to one day of punishment by house arrest; the court shall not be bound by the longest term of punishment by house arrest set out in Section 60 Subsection 1.

## **Subdivision 6**

### **Conditional Conviction to the Punishment by Prison Sentence**

## **Section 81**

### **Conditional Deferral of Enforcement of Prison Sentence**

(1) The court may conditionally defer the serving of a prison sentence which does not exceed three years where, considering the character of the offender and their personal circumstances, and especially considering their life so far and the environment in which they live and work, and taking into account the circumstances of the case, it justifiably believes that no term need be served by the offender in order for them to begin leading an orderly life.

(2) The permission for the conditional deferral of serving a prison sentence shall not apply to other punishments imposed along with this punishment.

## **Section 82**

### **Probational Period, Appropriate Restrictions and Reasonable Obligations**

(1) For a conditional conviction, the court shall set out a probational period of one to five years; the probational period shall start to run as soon as the judgment enters into full force and effect.

(2) The court may impose upon a probationer appropriate restrictions and appropriate obligations as set out in Section 48 Subsection 4 with a view to ensuring that they lead an orderly life; as a general rule, the convict shall also be ordered to compensate any damage or redress the non-material damage they have caused by committing the criminal offence or to surrender any unjust enrichment obtained through a criminal offence, depending on their ability to do so.

(3) Where the offender is of an age close to the legal age of a minor, the court may also impose educational measures set out under the Act on Juvenile Courts, subject to the equivalent conditions stipulated for young persons. This shall be done with a view to securing educational benefits of the family, school and other institutions, either as a separate measure or one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4.

(4) The period during which the probationer has led an orderly life during their probational period and complied with the set out conditions shall be included in any newly set out probational period when a conditional conviction for the same act is imposed, or in any probational period determined when the court imposes a cumulative or multiple punishment or joint punishment for a continued criminal offence.

### **Section 83**

#### **Decision on Conditional Conviction**

(1) Where the probationer has led an orderly life during their probational period and complied with the specified conditions, the court shall pronounce that they have proven themselves competent; otherwise the court shall decide that the punishment shall be served. Where relevant, the punishment shall start as early as during the probational period. In exceptional cases, the court may, given the circumstances of the case and the character of the convict, retain the conditional conviction in effect even if the convict gave grounds for the enforcement of the punishment, and

*a) set out supervision over the convict,*

*b) appropriately prolong the probational period by up to two years, it being understood that it must not exceed the upper limit of the probational period stipulated under Section 82 Subsection 1, or*

*c) set out any so far non-applied, appropriate restrictions and appropriate obligations set out under Section 48 Subsection 4 aiming at the convicted leading an orderly life.*

(2) The provisions of Section 49 through 51 shall be similarly applicable to the execution of the supervision.

(3) If the court does not decide to proceed pursuant to Subsection 1, within one year of the probational period having lapsed, and providing that the probationer is not at fault for such inaction, the probationer shall be deemed to have proven themselves competent.

(4) Where it is pronounced that the probationer has proven themselves competent, or it is believed that he has proven themselves competent, the probationer shall be regarded as if they had not been convicted.

(5) Where the court decides pursuant to Subsection 1, that the punishment shall be served, it shall also decide on the method in which the punishment shall be served.

### **Section 84**

#### **Conditional Deferral of Punishment by Prison Sentence with Supervision**

Where the offender's conduct needs greater monitoring and supervision and where the offender must be provided with due care and assistance during their probational period, subject to the conditions under Section 81 Subsection 1 the court may conditionally defer the execution of punishment by a prison sentence of up to three years while simultaneously pronouncing

supervision over the offender. The carrying out of the supervision shall be similarly liable to the provisions under Section 49 through 51.

## **Section 85**

### **Probational Period, Appropriate Restrictions and Appropriate Obligations**

(1) In the case of conditional conviction to the punishment with supervision, the court shall set out probational period of one to five years; the probational period shall start to run upon the judgment entering into full force and effect.

(2) The court may impose appropriate restrictions and appropriate obligations upon a probationer for whom supervision has been set out, as set out in Section 48 Subsection 4 with a view to ensuring that they lead an orderly life; as a general rule, the probationer shall also be ordered to compensate any damage or redress the non-material damage they have caused by committing the criminal offence or to surrender any unjust enrichment obtained through a criminal offence, depending on their ability to do so.

(3) Where the offender is of an age close to the legal age of a minor, the court may also impose educational measures set out under the Act on Juvenile Courts, subject to the equivalent conditions stipulated for young persons. This shall be done with a view to securing educational benefits of the family, school and other institutions, either as a separate measure or one taken concurrently with the appropriate restrictions and obligations under Section 48 Subsection 4.

## **Section 86**

### **Decision on Conditional Sentence with Supervision**

(1) If the conditionally convicted, who the supervision was regarding, led a decent life during the probational period and complied with the conditions imposed, the court will pronounce that they have proven themselves competent; otherwise they shall decide, where appropriate even during the probational period, that the punishment shall be executed. Exceptionally, the court may, depending on the circumstances of the case and the convicted, leave the conditional conviction with supervision as valid, even if the convicted provided the cause for the enforcement of the sentence and

a) set out further obligations of the convicted within the imposed supervision,

b) reasonably extend the probational period but not by more than two years while it may not exceed the upper limit of the probational period stipulated in Section 85 Subsection 1, or

c) set out not yet imposed reasonable restrictions and reasonable obligations referred to in Section 48 Subsection 4 in order for them to lead a decent life.

(2) If the court does not make a decision under Subsection 1, within one year from the lapse of the probational period, unless the conditionally convicted was responsible, it is considered that the conditionally convicted has proven themselves competent.

(3) If it is pronounced that the conditionally convicted has proven themselves competent, or where it is considered that they have proven themselves competent, the offender is perceived as though they have never been convicted.

(4) Where the court decides pursuant to Subsection 1, that the punishment shall be enforced, they shall also decide on the method of enforcement of the punishment.

## **Subdivision 7**

### **Conditional Release from Serving a Prison Sentence and Conditional Waiver from Serving the Remaining Term of the Punishment by Disqualification, Residency Ban, or Prohibition to Enter Sporting, Cultural and other Social Events**

## **Section 88**

### **Conditional Release from Serving a Prison Sentence**

(1) The court may conditionally release the convicted from custody if, following the full force and effect of the judgment, particularly when serving the sentence, the convicted demonstrated their reformation by their behaviour and by the performance of their duties, and may be expected to lead an orderly life in the future, or if the court accepts a guarantee for completion of the reformation of the convicted, and

a) the convicted has served at least half of the imposed prison sentence or, upon the decision of the President of the Czech Republic, reduced prison sentence, or

b) the convicted who was not convicted of a particularly serious crime and who has not previously served a prison sentence has served at least a third of the imposed prison sentence or, upon the decision of the President of the Czech Republic, reduced prison sentence.

(2) If the person convicted of an offence has demonstrated, by their exemplary behaviour and performance of their duties, that further execution of punishment is not necessary, the court may conditionally release them from custody even before they have served the part of the prison sentence which is required for conditional release under Subsection 1. The court shall not grant the petition of the director of the prison for conditional release of the convicted from custody only if it is obvious that the convicted would not lead an orderly life after being released from custody.

(3) The court, when deciding upon the conditional release of a person convicted of a crime, shall also take into account whether the convicted started to execute the punishment on time and whether they have partly or completely compensated, or otherwise atoned for, the damage or other harm caused by the criminal offence, or whether they have surrendered any unjust enrichment obtained through the criminal offence. If the convicted executed the protective treatment prior to serving the prison sentence or during its course, the court shall also take the expressed position of the convicted to the execution of the protective treatment into account.

(4) A person convicted of a criminal offence of murder (Section 140), manslaughter Section 141 Subsection 2, grievous bodily harm under Section 145 Subsection 3, torture and other cruel and inhuman treatment under Section 149 Subsection 4, illegal abortions without the consent of the pregnant woman under Section 159 Subsection 3, 4, unauthorised removal of tissues and organs under Section 164 Subsection 3, 4, human trafficking under Section 168 Subsection 4, 5, denial of personal freedom under Section 170 Subsection 2, 3, kidnapping under Section 172 Subsection 3, 4, robbery under Section 173 Subsection 3, 4, hostage taking under Section 174 Subsection 3, 4, blackmail under Section 175 Subsection 3, 4, rape under Section 185 Subsection 3, 4, sexual abuse under Section 187 Subsection 3, 4, general threats under Section 272 Subsection 2, 3, unauthorised production and other handling of narcotic and psychotropic substances and poisons under Section 283 Subsection 4, gaining control over means of air transport, civilian vessels and fixed platforms (Section 290), hijacking of a means of air transport to a foreign State under Section 292 Subsection 3, treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage under Section 316 Subsection 3, 4, war treason (Section 320), state border crossing using violence under Section 339 Subsection 3, organising and facilitating illegal state border crossing under Section 340 Subsection 4, genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), aggression (Section 405a), preparation for aggressive war (Section 406), relations threatening peace (Section 409), use of prohibited means of combat and clandestine warfare under Section 411 Subsection 3, war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or abuse of internationally and State recognised symbols under Section 415 Subsection 3, as well as a person convicted to an exceptional prison sentence of more than twenty up to thirty years (Section 54 Subsection 2), may be conditionally released only after serving two-thirds of the imposed prison sentence,

if

there is no risk, considering the circumstances of act, for which they were convicted and the nature of their character, of the recurring of the committed act or any other similar exceptionally serious crime.

(5) A person convicted to an exceptional life prison sentence may be conditionally released only after at least twenty years of their punishment is served, unless there is no risk, considering the circumstances of act, for which they were convicted and the nature of their character, of the recurring of the committed act or any other similar exceptionally serious crime.

## **Section 89**

### **Probational period and Reasonable Restrictions and Reasonable Obligations of Conditional Release**

(1) In the case of conditional release the court sets a probational period of up to three years for persons convicted of an offence and from one year to seven years for persons convicted of a crime; the probational period shall begin upon the conditional release of the convicted. The court may also pronounce supervision over an offender and simultaneously order that at the determined part of the probational period following the beginning of the probational period the offender shall remain at the determined time at their residence or its part. The execution of the supervision of Section 49 through 51 shall be applicable.

(2) The court may impose upon the conditionally released the reasonable restrictions and obligations referred to in Section 48 Subsection 4 in order for them to lead a decent life; they may also be imposed, based on their ability, to compensate for damage or redress the non-material damage caused by their criminal offence or to surrender any unjust enrichment obtained through a criminal offence. The court may order the conditionally released under Section 88 Subsection 2 to remain in their residence or its part during the set time during the probational period, or to perform work on behalf of municipalities, State or other community beneficial institutions, or to deposit a specified sum of money to the account of the court in order to help the victims of crime.

(3) The total duration of the determined stay of the conditionally released in the residence under Subsection 1 and 2 may not exceed one year, even in the event of a longer probational period. Performance of works under Subsection 2 may be set out in the range from 50 to 200 hours. The sum for financial assistance for victims of crime under Subsection 2 shall be set out in the region of CZK 2,000 to 10,000,000; in setting out this sum, the court shall take into account the personal wealth of the convicted and based on that it may be decided that the set out sum shall be paid in reasonable monthly instalments.

## **Section 90**

### **Conditional Waiver from the Remaining Term of Punishment by Disqualification, Residency Ban, or Prohibition to Enter Sporting, Cultural and other Social Events**

(1) After half of the execution of punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events, the court may conditionally waive its remaining term if the convicted, at the time of the execution of punishment, demonstrated by way of their life that further enforcement of such punishment is not necessary, or if the court accepts a guarantee for the completion of the reformation of the convicted.

(2) In the case of the conditional waiver from the remaining term of punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events, the court shall set the probational period of up to five years, but not less than the remaining term of punishment; the probational period begins by the full force and effect of the decision on such waiver.

## Section 91

### Common Provisions

(1) If the conditionally released or convicted, whose remaining term of punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events was conditionally waived, led a decent life during the probational period and complied with the conditions imposed, the court shall pronounce them proven competent; otherwise they shall decide, even during the probational period, that the remaining term of punishment shall be enforced. In exceptional cases, the court, considering the circumstances of the case and the character of the convicted, may retain in effect the conditional release or conditional waiver of the execution of the remaining part of punishment by disqualification, residency ban, or prohibition on entering sporting, cultural and other social events, even if the convicted has given grounds for the decision that the remaining part of the punishment should be executed, and

*a) set out not yet imposed supervision over the convicted,*

*b) reasonably extend the probational period, but not by more than two years, whereby it may not exceed the upper limit of the probational period stipulated in Section 89 Subsection 1 or Section 90 Subsection 2, or*

*c) set out the not yet imposed reasonable restrictions and reasonable obligations referred to in Section 48 Subsection 4 in order for them to lead an orderly life.*

(2) If the court pronounced that the conditionally released or convicted, whose remaining term of punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events was conditionally waived, has proven themselves competent, it is considered that the punishment was executed on the day when they were conditionally released, or when the decision that the remaining term of the punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events was conditionally waived, came into full force and effect.

(3) For the conditionally released or convicted, whose remaining term of punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events was conditionally waived, it is considered that the punishment was executed on the day when they were conditionally released, or when the decision that the remaining term of the punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events was conditionally waived, came into full force and effect, even when the court did not make a decision pursuant to Subsection 1 within a year of the probational period without the fault of the convicted.

(4) Reinstated conditional release from the execution of punishment is possible after serving half of the remaining term of the punishment, and in the cases referred to in Section 88 Subsection 4 after the execution of two thirds of the remaining term of the punishment. Reinstated conditional release from an exceptional life prison sentence is not possible.

(5) If the guarantee for the completion of the reformation of the convicted was revoked by the provider, the court shall review the behaviour of the convicted during the probational period, and if it finds that the conditional release or conditional waiver from the remaining terms of the punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events does not comply with their mission, it shall decide that the remaining term of the punishment shall be enforced; otherwise they shall leave the conditional release or conditional waiver from the enforcement of the remaining term of punishment by disqualification, residency ban, or prohibition to enter sporting, cultural and other social events in effect.

As a very important legal institution in this area the Effacement of Conviction can be mentioned (section 105 and 106 CC). Once the conviction is effaced it will not appear in the extract from the Criminal Register so it cannot be taken into account by for example the potential employer.

## **Section 105**

### **Terms of Effacement of Conviction**

(1) The court shall efface the conviction, if the convicted led a decent life after the execution or pardon of the punishment, or after its limitation for a continuous period of at least

- a) fifteen years, if it is a conviction for an exceptional punishment,
- b) ten years, if it is a conviction for a prison sentence exceeding five years,
- c) five years if it is a conviction for a prison sentence exceeding one year,
- d) three years, if it is a conviction for a prison sentence not exceeding one year or punishment by deportation,
- e) one year, if it is a conviction for house arrest, the punishment by forfeiture of property, punishment by forfeiture of items residency ban, prohibition of entry to sporting, cultural and other social events, or a monetary penalty for an intentional criminal offence.

(2) If it is a conviction for the loss of honorary titles or awards, or the loss of military rank, the period referred to in Subsection 1 follows the prison sentence term in addition to which the presented punishment was imposed.

(3) If the convicted demonstrated very good behaviour after the execution or pardon of the punishment or its limitation and that they are reformed, the court may, with regard to the interests protected by criminal law, efface the conviction at the request of the convicted or the person who is entitled to offer a guarantee, for the completion of the reformation of the convicted even before the expiry of the period referred to in Subsection 1.

(4) The period referred to in Subsection 1 follows the actual length of the punishment, in the event that the conditionally released is considered to have completed the punishment on the date on which they were conditionally released; if the punishment was reduced by the decision of the President of the Czech Republic, it follows the length of the reduced punishment.

(5) If an offender was imposed several parallel punishments, the conviction may not be effaced if the period for the effacement of such punishment, for which this Act stipulates the longest period of effacement, has not expired.

(6) The provisions of Subsection 5 shall be applied accordingly also to the case where an offender was imposed several parallel punishments, which may under this Act be viewed as punishments for which the offender may be considered not convicted.

(7) Even if the period referred to in Subsection 1, has lapsed, the conviction may not be effaced unless the imposed protective measure was executed or otherwise terminated; such provisions shall also apply accordingly where the criminal law stipulates that an offender shall be considered not convicted.

## **Section 106**

### **Effects of Effacement**

If the conviction was effaced, the offender is considered not convicted.

As of January 2017, Czechia has introduced a change in the classification of prisons. Pursuant to the older version of the Criminal Code (Section 56), the punishment of imprisonment was served in prisons of one of four categories, namely high security prison, security prison, guarded prison and supervised prison. Newly have been introduced only two types of prison, namely security prison and high security prison, which are further internally divided into sections according to the level of security. The objective is to allow effective differentiation of the inmates of these prisons, and thus be able to better assess personal factors, criminal activities from the penitentiary aspects, and take into account risks, security and overall handling needs. Thus the Prison Service will be able to better organise the development and implementation of standardised programmes and specialised treatment in concrete prisons, which should lead to more effective handling of the prisoners and their more successful integration into the society, and in the long term in a reduced risk of recidivism.

In respect of resocialisation of sentenced persons, Czechia mentioned the project of the so called open prison in Jiřice, which opened in October 2017. Thirty-two prisoners in this facility have been a few months before being released given the unique opportunity to test the life in freedom. The goal was to lead the prisoners towards more self-reliance, and as a result reduce recidivism.

In October 2017 the Czech Republic government approved the concept of developing a probation and mediation project until 2025. The concept focuses on the prevention of criminal activities, targets the protection of victims of criminal acts and on guaranteeing security in the society, and proposes steps to be taken for the Probation and Mediation Service to function effectively. The concept introduces effective ways how to prevent crime perpetrators from repeating criminal activities: this should be achieved primarily by imposition of suitable alternative punishments. The material also plans to make more intensive use of probation officers, both in individual and group work with crime perpetrators, and to prepare the prisoners better for their return to a normal life.

Furthermore, the number of prisoners who work has been increased. The demand by external employers for the labour of persons sentenced to imprisonment exceeds the possibilities of the Czech Republic Prison Service. For example in Central Bohemia prisons, up to two thirds of prisoners work. It is the intention to increase the number of prisoners who work further. This is after all one of the main priorities of the Czech Republic Prison Concept until 2025. This concept among other things plans to build production halls in the vicinity of prisons, and it considers reinstating agricultural activities of prisons or establishing prison bakeries and restaurants. Prisoners could participate in the maintenance and administration of buildings owned by the state or by municipalities. According to this concept, every prison should have the so called prison card which would transparently inform potential employers about the number of prisoners and their employment potential. In addition, the Ministry of Justice together with other resorts drafted in 2017 a methodological instruction for procurers of public contracts, who will newly have the possibility to specify as a special condition for rewarding public contracts that the supplier employs a certain number of persons sentenced to imprisonment, or persons with a criminal record. They will be also able to state the number of prisoners they employ as one of the bid evaluation criteria. The goal of these measures is to contribute towards the reduction of recidivism following the prisoners' release after having served their sentences.

On 1<sup>st</sup> April 2018, Government Decree No. 361/2017 on the amount and conditions of

remuneration of prisoners assigned to work during their imprisonment has come into force, and Public Notice No. 362/2017 which amends the Ministry of Justice Notice No. 10/2000 on the deductions made from the remuneration of persons who are, while serving their sentences of imprisonment, employed, on the ruling concerning deductions from the remuneration of these persons and inmates of special education institutions and on the reimbursement of other costs, as amended. Following this new legislation, the remuneration of prisoners will be increased by more than 20% compared to the status quo. In addition, new work categories will be created which require tertiary education at the master degree level. The remuneration of these people will be increased by 50% compared to what it is today. This will help to resolve the high level of debt, boost the prisoners' incentive to work, and by working they will acquire work habits which in turn will help them when they are released after having served their sentences. Furthermore, reduced will be also the deductions taken from prisoners' remuneration to cover the costs of their imprisonment from the current 32% to 26%, which in turn will improve their situation when they are released after having served their sentences (a risk period due to the return to the morality-deficient environment and the resulting recidivism). These financial means will be allocated in the benefit of the so-called depository (money which the prisoners save in a special account and which they will get after being released), where the rate will be increased from the current 2% to 11%.

### **Act No. 169/1999 on Serving the Punishment of Imprisonment and on the Amendments of certain related laws**

#### **Article 74**

##### **Pre-release section**

(1) Prisons can establish a pre-release section to which are usually moved prisoners serving sentences longer than 3 years, an adequate time prior to the expected end of their imprisonment, and prisoners who require assistance with creating favourable conditions for being able to lead a law-abiding and self-supporting life.

(2) Handling programmes following the prisoners' relocation to the pre-release section are updated and focused on their preparation for a law-abiding and self-supporting life.

#### **Article 75**

##### **Collaboration with social welfare authorities**

During imprisonment, prisons create conditions for the prisoners to enable them after their release, to smoothly integrate into a law-abiding and self-supporting life. In this the prisons closely collaborate with relevant social welfare authorities, especially by providing them with timely necessary information and making it possible for them to keep in continual contact with the prisoners.

### **Ministry of Justice Decree No. 345/1999, through which regulations governing imprisonment have been issued.**

#### **Implementation of handling programmes**

##### **Article 36**

(1) Prisons, based on a comprehensive report, select a handling programme which they deem suitable for a particular prisoner. In this programme they monitor in particular the minimisation of identified risks which had or have a connection to criminal activities, or which may possibly have an influence on committing criminal acts in the future.

(2) The prisoner handling programme is divided into

- a) work activities,
  - b) educational activities,
  - c) special education activities,
  - d) hobby activities,
  - e) creating external relationships.
- (3) By handling programme's work activities is understood
- a) employment,
  - b) work necessary for everyday prison operation (Article 32 paragraph 2 of the Act),
  - c) therapy by work lead by Prison Service employees with the relevant specialised education.
- (4) By the handling programme's educational activities is understood
- a) education organised or provided by medium-level apprenticeship centres,
  - b) education organised or controlled by employees of the Imprisonment Section (Department of Custody and Imprisonment),
  - c) education through correspondence courses and in the network of primary, secondary and higher technical or tertiary schools in the Czech Republic.
- (5) By the handling programme's special education activities are understood social, special pedagogical, psychological and therapeutic courses presented by employees with the relevant specialised education, focusing in particular on
- a) issues of the causes and consequences of committing criminal acts,
  - b) risks and criminogenic needs,
  - c) the prisoner's personality, or
  - d) changes in the prisoner's attitudes, the way of their thinking and their behaviour.
- (6) By the handling programme's hobby activities are understood the forms of individual and group hobby activities organised and lead by employees with the relevant specialised education and developed to match the objectives of imprisonment, the prisoners' abilities, knowledge and social skills.
- (7) When implementing the handling programme, the prison must make use of the broadest possible variety of forms, methods and means which require an active approach of the prisoners, and which contain self-servicing features.
- (8) Handling programmes for individual prisoners are approved by the prison director or his deputy.

### **Article 36a**

- (1) For low-risk prisoners, devised is a programme of minimum handling, in which the emphasis is on work and hobby activities. The programme of minimum handling is characterised by a lower degree of specialist intervention.
- (2) For medium-to-high-risk prisoners, devised is a programme of standard handling, in which the emphasis is on work and hobby activities. The programme of standard handling is characterised by a medium-degree of specialist intervention and generally targeted activities.
- (3) For high-to-very-high risk prisoners, devised is a programme of special handling, in which the emphasis is on special behavioural and educational activities. The programme of special handling is characterised by a higher degree of specialist intervention and special behavioural education activities.
- (4) For prisoners who due to the length of their imprisonment require help in creating favourable conditions for leading a law-abiding, self-supporting life after their release from prison, a pre-release handling programme is devised.
- (5) A regular part of the handling programme are, subject to the prison's possibilities and facilities, hobby and free-time activities.

(6) The activities defined in Article 36 paragraphs 3 to 6, can be combined in order to devise a handling programme which is to the necessary degree individualised. If there are more variants of the handling programme which are in their consequence equivalent, the prisoner is given the choice which variant he prefers. The prisoners confirm the acceptance of the handling programme by their signature.

#### **Article 37**

A prisoner who refuses to confirm by his signature the acceptance of a handling programme, is assigned to the programme of elementary motivation handling, in which the emphasis is on maintaining order and safety and on work activities matching the prisoner's state of health. This motivation programme is characterised by an individual degree of specialist intervention, with the goal to motivate the prisoner to change his attitudes and behaviour.

#### **Article 38**

(1) The success of the handling programme in respect of goals, individual activities, maintaining order and discipline, is usually reviewed

- a) once a month in prisons for juvenile offenders,
- b) every two months in pre-release sections of security and high security prisons,
- c) every three months in security prisons,
- d) every six month in high security prisons.

(2) The prisoner must be demonstrably acquainted with the review's outcome by employees of the Imprisonment Department (Department of Custody and Imprisonment).

(3) When being assessed, the handling programme is updated in accordance with the degree of success of its implementation.

#### **Article 39**

(1) Assessing the success of the handling programme implementation is part of a comprehensive assessment of meeting the objective of the punishment by imprisonment.

(2) The motion to reassign a prisoner to a prison of a different type is made on the basis of a comprehensive assessment to establish to what degree has the objective of the punishment by imprisonment been achieved. The motion is submitted by the prison director, usually based on the recommendation of specialist employees.

(3) The specialist employees recommend to the prison director to file a motion to reassign the prisoner to a security prison, if the outcome of the comprehensive assessment of meeting the objective of the punishment by imprisonment is positive, and if all other options of the prison when updating the handling programme have been exhausted.

(4) The specialist employees recommend to the prison director to reassign the prisoner to a high security prison if it has been demonstrated that

- a) the prisoner has been refusing to accept the handling programme or to abide by it for the period of at least three consecutive months, or
- b) the prisoners has committed in the prison a criminal act, or in a specially serious manner has repeatedly refused to abide by or violated the prohibitions specified in Article 28 of the Act.

(5) The compliance with the handling programme, the prisoner's personal characteristic and the chances for his resocialisation are, besides his behaviour, acting and the attitudes towards the criminal act he has committed, among the crucial criteria for assigning the prisoner to a prison of the pervading internal differentiation group.

(6) The pervading internal differentiation groups form an integral system of positive motivation of prisoners. The prison's internal order defines more detailed conditions of internal differentiation, so that the prisoner can be during his incarceration, based on the changes of

attitudes, the prisoner's personal characteristic, chances for resocialisation, compliance with the handling programme, behaviour and acting in compliance with or violation of the prison's internal order, gradually reassigned to different groups.

(7) The decision to change the prisoner's assignment to a pervading group of internal differentiation is made by the prison director or his deputy based on the recommendation of specialist employees (Article 8 paragraph 1), usually during the assessment of the handling programme.

#### **Article 40**

(1) Besides the activities defined in the handling programme, the prisoner may, at the time defined in the internal order, satisfy his needs

- a) by making use of the prison library,
- b) by ordering press, books and publications,
- c) by participating in publishing the prisoners' internal magazine,
- d) by listening to radio and watching television programmes,
- e) by participating in other educational and hobby activities intermediated by the prison.

(2) When intermediating activities aimed at satisfying the prisoners' needs defined in paragraph (1) above, the prison must make use of the broadest possible variety of forms, methods and means, with the emphasis on those which require an active approach of the prisoners and which lead to the minimisation of risks which had or still have a connection to criminal activities, or which might have an influence on committing criminal activities in the future.

#### **Employing prisoners**

##### **Article 41**

(1) A prisoner is assigned to work by the decision of the prison director, usually based on the recommendation of specialist employees (Article 8 paragraph 1) and by taking into account the prisoner's specialist know-how, the prohibition for the prisoner to perform certain activities, or the impact on the prison's order and security.

(2) The obligation to work does not apply to a prisoner

- a) who is over the age of 65,
- b) who was the recipient of a disability pension for third degree disability,
- c) whose state of health does not allow him to be assigned to permanent work,
- d) who is temporarily work incapacitated,
- e) whose obligation to work is excluded on account of the nature of obstacles.

(3) Refusal by a prisoner who has been assigned to work to comply is a gross breach of his obligations, as the consequence of which the prisoner is as a rule given a disciplinary punishment. If he refuses to work, the prisoner is usually at the time when he was supposed to be working placed separately from other prisoners, and is allowed only activities leading to the minimisation of risks which were or still are, associated with the criminal activity, or which may have an influence on committing criminal activities in the future.

(4) The provision of the previous paragraph does not apply to prisoners who have retracted their consent with being assigned to work at foreign subjects named in Article 30 paragraph 4 of the Act.

##### **Article 42**

The prison director is authorised, in compliance with legal labour regulations, to schedule prisoners' working hours and when necessary order them to work overtime; he is especially authorised to change the prisoners' working hours so that they coincide with the employer's

working hours. When ordering overtime work, the prison director must take into consideration the length of the imprisonment which the prisoner is to serve in that calendar year.

#### **Article 43**

(1) Prisoners who have been assigned for work are usually divided into work groups; the leaders of these groups are appointed by the prison director or by him nominated employee of the Imprisonment Department (Department of Custody and Imprisonment).

(2) Prisoners are assigned and reassigned to work groups in harmony with the objective of imprisonment. The decision to reassign a prisoner to a different work group is made by the prison director.

#### **Article 44**

(1) Before being assigned to work, the prisoner must be demonstrably advised about his rights and obligations, as well as about occupational health and safety regulations and fire protection regulations, all of which the prisoner must abide by when working. Before being assigned to work, or after already being assigned to work, provided there are legitimate reasons for it, the prisoner must undergo a work-related medical examination; the prisoner may be assigned to work only if he is medically fit or conditionally fit to perform that kind of work.

(2) The prisoner must receive training to perform the work he was ordered to perform, if the nature of the work requires it; the length and extent of the training must be identical as that provided to other employer's employees.

(3) For those prisoners who have the necessary ability, organised are specialised training courses focused on increasing their qualification.

(4) Supervision of the prisoners' work activities performed at all workplaces inside and outside the prison is conducted by a nominated employee of the Prison Service.

(5) In order to deal with the issues concerning work organisation and accomplishing work tasks, meetings are held with the work groups, usually once a month, with the employer's employees in charge taking part.

#### **Article 45**

(1) Prisoners who can be trusted that they will not abuse the privilege, can be assigned to unguarded work groups.

(2) To prisoners who have been placed to the section with low or medium level of security within a security prison, the prison director can allow their free movement outside of the prison when performing their work duties. In this respect the prison director issues a permit to these prisoners, allowing them to leave the prison, defining the limits within which they may, during the specified time, freely move.

#### **Article 46**

##### **Prisoner education**

(1) Prisoner education is an integral part of the prisoner handling programme. Education is usually provided by detached workplaces of a medium-level apprenticeship centre. In prisons without an established detached workplace of a medium-level apprenticeship centre, prisoner education is provided by the Imprisonment Department (Department of Custody and Imprisonment). The prisoner must be medically fit to participate in the particular educational programme.

(2) In providing mandatory schooling of juvenile offenders, the Prison Service authorities collaborate with relevant schools and public administration authorities and with school councils.

(3) The prisoner's education certificates must not show that they have been obtained during imprisonment. Prisoners who fail to complete their study while serving a sentence of imprisonment, have the right to complete the study in the appropriate school.

(4) To prisoners placed in the section with low or medium level security in a security prison or prison for juvenile delinquents, the prison director can permit free movement outside of the prison to make it possible for them to attend school.

(5) For prisoners assigned to one of the forms of education, prisons must create suitable conditions for study, both by providing premises and from the organisation point of view.

## **Act No. 257/2000 on Probation and Mediation Service**

### **Article 2**

#### **Definition**

(1) By probation is for the purposes of this Act understood organising and exercising supervision of accused, defendants or sentenced persons ("accused"), checking the imposed punishments other than imprisonment, including the imposition of obligations and restrictions, monitoring the accused's behaviour during the probation period after his conditional release from serving the sentence of imprisonment, and furthermore individual assistance rendered to the accused and exerting an influence on him to lead an orderly life and to abide by the conditions imposed by the court or prosecutor, and thus reinstate his disrupted legal and social relations.

(2) By mediation is for the purposes of this Act understood out-of-court mediation aimed at resolving a dispute between the accused and the aggrieved person, and activities aimed at settling the conflict, performed in connection with criminal proceedings. Mediation can be performed only with an explicit consent of the accused and the aggrieved.

### **Article 4**

#### **Activity of the Probation and Mediation Service**

(1) Probation and Mediation Service creates conditions for the matter to be in favourable cases deliberated in one of the special types of criminal proceedings, or to allow a punishment other than imprisonment to be imposed and executed, or to allow custody to be substituted by other measures. For this purpose it provides to the accused specialised leadership and assistance, monitors and checks his behaviour and collaborates with the family and social environment in which he lives and works, with the objective that in the future he leads an orderly life.

(2) The probation and mediation activity as defined in paragraph 1 above involves mainly

- a) acquiring materials about the accused's person and his family and social background,
- b) creating conditions for a ruling to be issued to conditionally terminate the instituted criminal prosecution or to approve a settlement, especially through negotiations and entering into an agreement between the accused and the aggrieved to pay indemnity for damages or to return the proceeds of illegitimate enrichment, or by creating conditions for further such process procedures or for punishments not involving imprisonment,
- c) overseeing the accused's behaviour in cases when a ruling has been issued to substitute custody with probation supervision,
- d) overseeing the accused's behaviour in cases when a ruling has been issued to monitor and check the accused during the probation period, checking the serving of the punishments not involving imprisonment, including the punishment of performing publically beneficial works and monitoring imposed protective measures.

e) monitoring and checking the accused's behaviour during the probation period in cases when a ruling has been issued to conditionally release the prisoner from serving a sentence of imprisonment.

(3) Probation and Mediation Service also helps with remedying the damages suffered by the aggrieved and by other affected persons as a consequence of the criminal act committed.

(4) Probation and Mediation Service renders special care to juvenile accused and accused of an age close to the juvenile age, contributes towards the protection of the rights of persons who have suffered damages as the consequence of a criminal act, and towards the coordination of social and therapeutic programmes of working with the accused, especially juveniles and users of narcotics and psychotropic substances.

(5) Probation and Mediation Service contributes towards the prevention of criminal activities.

(6) The tasks of probation and mediation, unless they are by this or by a special law assigned to the exclusive competency of the Probation and Mediation Service, can be performed by, or can participate in them, also other persons.

(7) Probation and Mediation Service performs as part of its competencies, tasks at the instruction of law and order enforcement authorities, and in suitable cases may mediate even without receiving such instruction, especially at the initiative of the accused and the aggrieved; in such cases the Service must inform forthwith the relevant law and order enforcement authority which may decide that the matter is not to be passed for mediation, and hence no mediation will take place thereafter.

(8) In respect of probation and mediation tasks, the Probation and Mediation Service is authorised to acquire information and findings about the accused's person or about the standpoints of the aggrieved which are relevant for a ruling of the court or prosecutor.

(9) Police and the prosecutor inform the centre about matters suitable for mediation; especially in criminal cases involving juveniles, they proceed in a way which will allow the mediation to be used from the beginning of prosecution or in lieu of it.

#### **(b) Observations on the implementation of the article**

Reintegration of offenders is regulated through the general principles of sentencing (s. 49-57, 81-86 CC), provisions on conditional release (s. 88-91 CC) and effacement of convictions (s. 105-106 CC), as well as the Act on Serving the Punishment of Imprisonment, the Decree on Imprisonment and the Act on Probation and Mediation Service. In October 2017, Czechia approved the concept of developing a probation and mediation project until 2025, aimed at better reintegration of convicted persons into society.

#### **Article 31 Freezing, seizure and confiscation**

##### **Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Criminal Code of the Czech Republic**

### **Section 70**

#### **Forfeiture of Items**

- (1) The court will impose a sentence of forfeiture of an item that the offender acquired by a criminal act or as a reward therefor.
- (2) The court may impose a sentence of forfeiture of an item that
  - a) was used to commit a criminal act or intended to commit a criminal act, or
  - b) was acquired by the offender, at least in part, for an item referred to in sub-section (1), provided that the value of the item referred to in sub-section (1) is not insignificant in relation to the value of the acquired item.
- (3) The sentence of forfeiture of an item can be imposed only if an item belonging to the offender is concerned. The sentence of forfeiture of items also applies to fruits and profits of such item that belong to the offender.
- (4) If the offender possesses the item specified in sub-section (2) in contradiction to another legal enactment, in connection to which a sentence of forfeiture of an item may be imposed, the court will always impose this sentence as well.
- (5) Prior to legal force of this decision, prohibition of alienation of the forfeited item will apply, which also includes other disposal of the item intended to thwart the forfeiture of the item.
- (6) The forfeited item will devolve on the state.

### **Section 71**

#### **Confiscation of Equivalent Value**

- (1) If an offender, to whom an item that could be forfeited according to Section 70, destroys, damages or otherwise disvalues, alienates, renders useless, removes or utilizes, in particular consumes or otherwise circumvents forfeiture of such item, or if he obstructs the execution of forfeiture of the item before the court could decide on forfeiture, the court may decide on forfeiture of equivalent value up to a value not exceeding the value of such item. The value of the item, forfeiture of which may be ordered by the court, will be determined by a professional statement or expert opinion.
- (2) If the item is, even in part, destroyed, damaged or otherwise disvalued or removed, the court may impose forfeiture of equivalent value along with forfeiture of the item specified in Section 70.
- (3) The forfeited equivalent value will devolve on the state.

### **Section 101**

#### **Confiscation of an Item**

- (1) In case a sentence of forfeiture of an item under Section 70 (2) a) was not imposed, the court may order that such item will be confiscated,
  - a) if it belongs to an offender who cannot be prosecuted or sentenced,
  - b) if it belongs to an offender whose punishment has been waived by the court, or
  - c) if it endangers safety of persons or property, eventually safety of society, or if there is a threat that it will be used to commit a crime.
- (2) The court may impose confiscation of an item acquired through a criminal offense or as a reward for criminal offense or that was, even in part, obtained in exchange for an item acquired through a criminal offense or as a reward for a criminal offense, if the value of the item acquired through a criminal offense or as a reward therefor is not insignificant as compared to the value of the obtained item, and if such item

- a) belongs to the offender, who was convicted for a criminal offense, from which the item originated;
  - b) belongs to an offender, who cannot be prosecuted or convicted,
  - c) belongs to an offender, whose punishment was waived by court,
  - d) belongs to a deranged person, who committed an act otherwise criminal,
  - e) belongs to a person, to which the offender transferred the item or who acquired the item in another way,
  - f) is a part of assets in a trust fund or similar institution (hereinafter referred to as “trust fund”) or a mutual fund.
- (3) Confiscation of an item also applies to fruits and profits of such item that belong to the person to whom the item is confiscated.
- (4) If the offender or other person unlawfully or contrary to another legal regulation possesses an item referred to in sub-section (1) or (3), in relation to which is possible to impose confiscation of an item, the court will always impose this protective measure.
- (5) Instead of imposing confiscation of an item, the court may impose an obligation
- a) to modify the item in such a way to it could not be used for a purpose dangerous to society;
  - b) to remove a certain devise;
  - c) to remove a marking or make alterations to it; or
  - d) to restrict disposition with such item;
- and determine a reasonable time therefor.
- (6) If the obligation referred to in sub-section (5) is not fulfilled within the stated time, the court will decide on confiscation of the item.

## **Section 102**

### **Confiscation of Equivalent Value**

If a person, to whom an item that could be confiscated according to Section 101 (1) or (2) belongs, prior to ordering the confiscation, destroys, damages or otherwise disvalues, alienates, renders unusable, removes or utilizes, in particular consumes or otherwise circumvents confiscation of such an item, or if he thwarts the execution of the sentence of forfeiture of an item by conduct contrary to the prohibition imposed under Section 70 (5), or eventually if he thwarts forfeiture of an item by conduct contrary to the prohibition imposed under Section 104 (2), the court may order confiscation of an equivalent value up to a value not exceeding the value of such item. The value of an item, confiscation of which may be ordered by court, will be determined by an elaborate professional opinion or by an expert opinion.

## **Section 102a**

### **Confiscation of a Portion of Assets**

(1) The court may impose confiscation of a portion of assets to an offender, who was found guilty of an intentional criminal offense, for which the Criminal Code stipulates a sentence of imprisonment with the upper limit of at least four years or a criminal offense of Production and other disposal with child pornography (Section 192), Unauthorized access to computer systems and information media (Section 230), Obtaining and possession of access device and computer system passwords and other such data (Section 231), Machinations in commission of public contract and public tender (Section 257), Machinations in public auction (Section 258), Unauthorized growing of plants containing narcotic or psychotropic substance according to Section 285 (2) to (4), Spreading of drug addiction (Section 287), Bribery (Section 332), Indirect corruption (Section 333), if the offender obtained or tried to obtain profit for himself or for another and the court believes that a certain portion of his assets is proceeds from crime and given the fact the value of property acquired or transferred by the offender to another person

or to a trust fund within a period of no more than five year prior to commission of such criminal offense, in time of its commission or after its commission, is grossly disproportionate to the legally gained income of the offender or if there are other matters of fact justifying such conclusion.

(2) The court may impose confiscation of a portion of assets in relation to an item, that would otherwise be confiscated according to sub-section (1), if the offender

a) transferred such item to another person free of charge or under markedly advantageous conditions and such person was aware or could and should be aware that such item was transferred to them in order to avoid confiscation of the item, or that such item was acquired contrary to the law,

b) transferred such item to a close person,

c) transferred such item to a legal entity, in which he has a majority share or majority voting right or decisive influence on the management either by himself or in connection with other close persons, and the offender uses such item either free of charge or under markedly advantageous conditions,

d) transferred such item to a trust fund, or

e) acquired to community property.

(3) When determining the portion of assets to be confiscated the court will appoint specific items to be subject to confiscate. If there is a gross disproportion between the value of property and legally gained income in the period in question, the court may appoint any items of the offender up to the value of the found gross disproportion.

(4) If the location of the items that could be confiscated is unknown or if confiscation thereof is not suitable in particular with regard to the rights of third parties or if the person, to whom an item may be confiscated destroys, damages alienates or otherwise thwarts its confiscation before the decision on confiscation is made, the court may impose confiscation of an equivalent value, including a financial sum up to the amount corresponding to the value of such thing. The value of the item, confiscation of which could have been imposed by the court, will be determined by the court on the basis of and expert opinion or expert evaluation.

(5) Confiscation also applies to fruits and profits of such item that belong to the person, to whom the item is confiscated. Confiscation does not apply to items necessary to satisfy basic life needs of the person, a portion of whose assets is confiscated, or persons, whose support or upbringing is this person obliged to provide according to the law.

## **Section 104**

### **Effect of Confiscation**

(1) The confiscated item, confiscated portion of assets, confiscated replacement value, confiscated file, or device belongs to the State.

(2) The provisions of Section 70 Subsection 5 shall be applied accordingly for the imposition of the confiscation of items, confiscation of portion of assets and for the imposition of the obligation under Section 101 Subsection 5; the prohibition of disposal applies until the implementation of the obligation under Section 101 Subsection 5, and if such obligation was not satisfied, until the full force and effect of the decision on the confiscation of items (Section 101 Subsection 6).

## **Code of Criminal Procedure of the Czech Republic**

### **Section 7a**

(1) In order to ascertain the nature, extent or location of items for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution

of a criminal penalty the presiding judge and in pre-trial proceedings the public prosecutor or police authority may call the person, whose assets are to be seized, or a person close to such person, to send them within a stipulated reasonable time limit a statement on assets of the person, whose assets are to be seized. The called person is entitled to refuse to make the statement on assets; Section 92 (1), Section 100 and Section 158 (8) will apply accordingly. In the call the person called to make the statement on assets must be advised about the consequences of failure to comply with such call and about their right to refuse to make the statement on assets.

(2) The person referred to in sub-section (1) will be called to state in the statement on assets, in such extent, in which such facts are known to them, all information regarding the assets of the person, whose assets are to be seized, in particular

a) the payer of remuneration in labor relationship or a relationship similar to labor relationship or another income, and the sum of such remuneration or other income,

b) bank, savings and loan association, electronic currency institute, small-scope issuer of electronic currency, payment institute, small-scope provider of payment services or similar foreign entity, at which such person has accounts, amount of claims and account numbers or other unique identifiers according to the Payment Relations Act,

c) debtors, against which such person has claims, the grounds of such claims, their sum and term of payment,

d) overview of assets owned or co-owned by this person, including the co-ownership share and location of the assets, and

e) trust funds or similar arrangements this person has established or which this person is the beneficiary of.

(3) The presiding judge and in pre-trial proceedings the public prosecutor or police authority may call the person referred to in sub-section (1) to make a new statement on assets of the person, whose assets are to be seized, if they reasonably believe that there has been a change in the property relations of the person, whose assets are to be seized.

(4) If the person called to make a statement on assets fails to send the statement in the stipulated time limit or if the authority involved in criminal proceedings that called the person to make the statement on assets has any doubts about the truthfulness or completeness of the statement made by such person, it may call it to appear to give testimony; provisions of this Code that regulate submission of explanation, interview of accused person and witness will apply accordingly.

## **Section 8**

(2) If the criminal proceedings require it for a proper investigation of the circumstances indicating that a criminal offence has been committed, in order to assess the nature, extent or location of assets for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty, the public prosecutor and after filing an indictment or a motion for punishment the presiding judge may request information subject to banking secrecy and data from the register of investment instruments and booked 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. In criminal proceedings, which allows to impose a protective measure of forfeiture of a portion of assets, the public prosecutor and after filing an indictment or motion for punishment the presiding judge may request information from tax administration authority associated with a decision on income tax assessment for the purpose of assessing the fulfillment of conditions for imposing this protective measure or for the purpose of securing its execution; provision of information according to this clause does not breach the obligation of secrecy according to the Tax Procedure Code. The conditions under

which the authorities involved in criminal proceedings may require the data obtained in the administration of taxes for other purposes 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.

## **Section 78**

### **Obligation to Handover or Surrender Items**

(1) Anyone who has an item that may serve for evidentiary purposes 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 due ascertaining of facts important for criminal proceedings, the person is obliged to surrender such item upon a request to these authorities. Along with the request the person will be advised 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). The call to handover or surrender an item may be made by the presiding judge and in pre-trial proceedings by the public prosecutor or police authority.

(2) The obligation referred to in sub-section (1) does not apply to documents or other tangible media containing video, audio or data record, the 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 occurred.

(3) Nobody must be forced to handover or surrender an item that may, in the time the request for its handover or surrender is made, serve as evidence against him or a person close to him; this is without prejudice to provisions on removal of items, house search, search of other premises and land and personal search.

(4) If it is necessary in order to prevent obstruction of confiscation or forfeiture of an item, the authority involved in criminal proceedings referred to in sub-section (1) will issue an order that the person, to whom the item was seized, must not transfer the item or encumber it during the time of seizure. Any legal action contrary to this order will be null and void; the court will consider the nullity even without a petition. The person concerned must be advised thereof.

(5) The person, who handed over or surrendered the item that may serve for evidentiary purposes, will be immediately issued a written confirmation on takeover of such item or a transcript of the protocol; therein the item must be described with sufficient accuracy so that it could be identified.

(6) The authority involved in criminal proceedings, to which an item that may serve for evidentiary purposes was surrendered, will take it into their custody.

(7) The person, to whom the item was seized, is entitled to request at any time its return. The authority involved in criminal proceedings referred to in sub-section (1) will decide on such request without an undue delay. If the request was refused, this person may repeat it no sooner than after 30 days following the full force and effect of such decision, unless he states new reasons.

## **Section 79**

### **Removal of Items from Possession**

(1) If an item that may serve for evidentiary purposes in criminal proceedings is not handed over or surrendered by the person who has it in his possession, such an item may be removed from possession 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; without such consent the police authority may issue such consent only if the previous consent cannot be secured an the matter cannot be delayed.

- (2) If the authority that issued the order does not perform the removal of the item from possession by itself, it will be performed by the police authority on the basis of the order.
- (3) Removal of the tangible item from possession will be witnessed by a non-participating person.
- (4) Section 78 (4) through (7) will apply accordingly to an item that was removed from possession.

### **Section 79a**

#### **Seizure of Instruments and Proceeds from Crime**

- (1) If the ascertained facts indicate that a certain item is an instrument or proceeds from a criminal offence, the presiding judge and in pre-trial proceedings the public prosecutor or police authority may decide to seize such item. 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. A complaint is admissible against the decision on seizure.
- (2) The items subject to the seizure must be properly and unmistakably identified in the decision on seizure or in the attached documents. In case the seizure concerns a right, also a right that will arise in the future may be seized. The decision on the seizure will prohibit the person, to whom the item is seized, to transfer such item, to another or to encumber it after the decision is announced, and also to intentionally damage or destroy it. If it is necessary for the purpose of seizure or administration of the seized item, the decision on seizure or a subsequent decision may also prohibit or restrict the exercise of other rights associated with the seized item, including rights that will arise in the future, as well as to call to handover all documents or tangible media, presentation of which is necessary to exercise a certain right to the seized item, with a caution about the consequences of failure to comply with such call in the stated time (Section 66 and 79). Provisions on the decision on seizure will apply accordingly to a subsequent decision on the prohibition or restriction of exercising other rights associated with the seized item.
- (3) The decision on the seizure will also order the person, to whom the item was seized, to notify the authority involved in criminal proceedings that decided on the seizure within 15 days after the decision is announced which rights of third parties apply to the seized item, whether and in what manner the right do dispose with the item is restricted, and whether a right to property has been secured and also who is obliged to provide the corresponding performance, with a caution about the consequences of failure to comply with such call in the stated time (Section 66).
- (4) The authority involved in criminal proceedings that decided on the seizure will take all necessary steps in order to enforce such decision.
- (5) A complaint is admissible against the decision on seizure.

### **Section 79b**

#### **Service of Decision on Seizure and Notification**

- (1) The authority involved in criminal proceedings that decided on the seizure will deliver the decision on seizure without undue delay to the authority or person competent to execute the seizure, and after this authority or person executes the seizure, also to the person, to whom the item was seized. At the same time the authority or person competent to execute the seizure will be called to immediately notify the authority involved in criminal proceedings that decided on the seizure in case they learn the seized item is being disposed with in a way threatening to thwart or obstruct the purpose of seizure The authority or person competent to execute the

seizure is obliged to seize the item immediately after the decision is served and to take all necessary steps to prevent violation of prohibitions and restrictions stated in the decision on seizure of the item.

(2) In case of seizure of a claim, which is not a claim on the account against a bank or another entity entitled to manage accounts on behalf of other person, the authority involved in criminal proceedings that decided on the seizure will deliver the decision on the seizure also to the debtor of the claim owner and order him to deposit the subject of performance to its custody or another designated location instead of giving the performance to the creditor. By depositing the subject of performance to custody or a designated place the debtor will have fulfilled his obligation in the extent of the provided performance. The decision on seizure will be notified to the debtor before notifying the owner of the seized claim.

(3) In case the authority involved in criminal proceedings that decided on the seizure deems it necessary to reach the purpose of seizure, it will notify the seizure also to other authorities and persons than referred to in sub-section (1) which based on other legal enactments have a record-keeping, supervisory or other obligation in relation to the seized item or its owner or possessor, and at the same time call them to immediately notify it in case they learn that the seized item is being disposed with in a way threatening to thwart the purpose of seizure; these authorities or persons will be obliged to comply with such call. Furthermore, the authority involved in criminal proceedings that decided on the seizure will notify persons and authorities it is aware of having a right of first refusal, lease or another right to the seized item or conduct proceedings, in which the exercise of rights to dispose with such item was limited. The authority involved in criminal proceedings that decided on the seizure of a share in a business corporation will notify this fact after such decision becomes final and effective also to the business corporation in question.

(4) The authority involved in criminal proceedings that decided on the seizure of real estate will notify the Cadastral Office about the fact this decision came to full force and effect.

## **Section 79c**

### **Execution of Seizure of Movable Assets**

(1) Whoever has a movable item in their possession, which may be subject to seizure, will be obliged to surrender such item upon a call of the presiding judge and in pre-trial proceedings of public prosecutor or police authority; if the person fails to do so, the item may be removed from his possession. Procedure of surrender and removal of a movable asset from possession will be governed by Section 78 and 79 accordingly.

(2) The authority involved in criminal proceedings competent to issue the order to remove an item from possession may, after considering all decisive circumstances, leave the movable asset in its present location, provided that

- a) removal of such item would result in its devaluation or devaluation of an item, it is functionally connected to,
- b) removal of such item would be associated with excessive technical difficulties,
- c) the item concerned requires special care or care associated with excessive expenses,
- d) the item concerned is of an insignificant value.

(3) In case the movable item is left in present location, this fact along with the reason for such procedure will be stated in the protocol and the movable item will be defined so that it could not be confused with any other item. The authority competent to order removal of the item from possession will at the same time issue an order to refrain from disposing with the item, in which it will duly and unmistakably identify the movable item and prohibit any legal dealing or factual disposal with the item in a way leading to obstruction of the purpose of seizure, in particular from transferring it to another person, encumbering, damaging or destroying it. The

prohibition applies to anyone and is effective as of the moment of publishing the order in the location ,where the movable item is located; the order must contain advice in this sense, including a caution of the consequences of breaching the order. Any legal actions made contrary to the prohibition contained in the order are null and void, whereas the court will take the nullity into account even without a petition. The movable item that was left in its present location will be labelled so that it was clear it is subject to an order to refrain from disposal therewith.

(4) Leaving a movable item in its present location does not preclude the authority involved in criminal proceedings competent to decide on such item from subsequently at any time issuing a call for surrender of such item or order for its removal from possession, if they believe it is necessary in view of the purpose of the seizure. The authority involved in criminal proceedings competent to decide on a surrendered movable item or movable item that was removed from possession may decide at any time to leave it with the person, to whom it was secured for reasons stated in sub-section (2); therein it will proceed accordingly pursuant to sub-section 3. A complaint against this decision is not admissible.

(5) The decision on seizure according to Section 79a concerning a movable item that was surrendered or removed from possession according to sub-section (1) or that was left in its present location according to sub-section (2) must be made within 96 hours following such action.

(6) Sub-sections (1) to (5) will apply accordingly also to other fixed devices that form a part of an immovable asset and are removable.

## **Section 79d**

### **Examination of Real Estate**

(1) Based on the order to examine a real estate issued by the presiding judge and in pre-trial proceedings by judge upon a motion of public prosecutor the court or public prosecutor or upon their instruction a police authority may perform examination of real estate and its accessories in order to ascertain the state of the real estate and evaluate the suitability of its seizure. The authority involved in criminal proceedings performing the examination will notify the time and location of examination to the real estate owner or a person living in common household with him, and a person known to have rights to the real estate. These persons are obliged to allow the examination of the real estate and its accessories.

(2) The authority performing the examination may include other persons, presence of which may be necessary, in particular for the purpose of price evaluation of the real estate.

(3) In case a movable item or machine or other fixed device forming a part of the real estate is found during the real estate examination and such item is removable and if there are grounds for seizure thereof according to Section 79a, procedure according to Section 79c (2) to (5) may be applied accordingly even without a house search warrant or order to search other premises and parcels.

## **Section 79e**

### **Effects of Seizure**

(1) Legal actions made by a person, to whom the prohibitions stated in the decision on seizure apply, contrary to the stated prohibitions will be null and void; this person must be advised thereon. Court will consider the nullity even without a petition.

(2) An item subject to a decision on seizure may be disposed with within the frame of execution of a decision, public auction, distraintment or insolvency proceedings only after a previous consent of the presiding judge and in pre-trial proceedings the public prosecutor; this does not apply in case the execution of a decision or disposal with the item in distraintment or insolvency proceedings or public auction is done in order to satisfy a claim of the state. Claims that are the

subject of execution of a decision, public auction, distraintment or insolvency proceedings will be primarily settled using items not affected by decision on seizure.

(3) In case transfer or establishing a right to a seized item requires an entry in a register kept according to other legal enactments, the authority or person maintaining such register, may make an entry to such item after the decision on seizure was delivered on the basis of legal action made by the person, to whom such item was seized, only with a previous consent of the presiding judge and in pre-trial proceedings the public prosecutor.

(4) In case a motion for registration of rights to real estate in the Land Register was filed according to the Cadastral Act on the basis of legal action of a person, to whom the real estate was seized, and the legal action was made prior to issuing the decision on its seizure and the competent authority has not rendered a final decision on the registration as of the day the resolution on seizure was issued, the filed motion loses its legal effects as of the day the resolution on the seizure became final and effective.

(5) In case of seizure of a claim on an account the seizure also applies to finances present on the account as of the moment the bank or other entity managing the account for another person receives the decision on its seizure up to the sum referred to in the decision and accessories thereof. Unless this Code stipulates otherwise, as of the moment of seizure of a claim on an account in a bank or other entity competent to manage accounts for another person it is prohibited do dispose with the finances on the account in any way up to the seized amount.

#### **Section 79f**

##### **Cancellation or Limitation of Seizure**

(1) Seizure of an item will be cancelled or limited, if it is no longer necessary or not necessary in the stated extent. In case of cancelling seizure of an item that was left in its present location, the order to refrain from disposing with the item will be repealed as well.

(2) The person, to whom the item was seized, is entitled to request cancellation or limitation of the seizure at any time. Such request must be decided on without undue delay. If the request is denied, this person may repeat it no sooner than after 30 days following full force and effect of the decision, unless new reasons are stated.

(3) The decision on cancellation or limitation of seizure is made by the presiding judge and in pre-trial proceedings by public prosecutor or with his previous consent the police authority.

(4) A complaint is admissible against the decision on cancellation or limitation of seizure, which has a dilatory effect.

(5) Final and effective decision on cancellation and limitation of seizure will be served to authorities and persons, to which the decision on seizure was delivered. Authorities and persons, which were notified about the seizure must be notified also about the decision referred to in sentence one; limitation of seizure will be notified only to those concerned by the limitation.

#### **Section 79g**

##### **Seizure of Equivalent Value**

(1) If it is impossible to seize an item that is an instrument or proceeds from crime, an equivalent value may be seized in its stead, which corresponds, at least in part, to its value; therein the procedure according to the relevant provisions regulating seizure of items that are instruments or proceeds from crime will apply accordingly (Section 79a to 79f). An equivalent value may be seized to a person, which was obliged to bear the seizure of the original item.

(2) For important reasons the presiding judge and in pre-trial proceedings the public prosecutor may allow taking an action regarding the seized equivalent value upon a motion of the person, to whom the equivalent value was seized. A complaint is admissible against such decision, which has a dilatory effect.

The Czech Republic provided examples of cases:

**Court judgment 6 Tz 64/2013:**

Forfeiture of a Substitute Value as per Section 71 of the Criminal Code to the Benefit of Governing Body: The forfeiture of a substitute value as per Section 71 of the Criminal Code is a punishment substituting the forfeiture of a thing or another property value pursuant to Section 70 of the Criminal Code. If a perpetrator has acted as a person authorized to act on behalf of a legal entity and, by virtue of such authorization, has committed a crime the essence of which is the evasion of corporate income tax, the substitute sanction may be imposed on the perpetrator upon the fulfilment of other statutory conditions only if it is proven within the proceedings that, through the crime, he, as a natural person, has obtained a property benefit.

**Court judgment 8 Tdo 916/2014:**

The sanction lying in the forfeiture of a thing as per Section 70 (2) of the Criminal Code shall be applicable to a thing belonging to a perpetrator. It is not essential whether the perpetrator is the owner of the thing or that the legitimate owner or possessor is not known. However, a necessary condition in imposing such punishment shall be the fact that the court has ascertained the perpetrator's property situation prior to the commission of the respective crime and has arrived at the conclusion that the thing belonging to the perpetrator and being the object of the stated punishment constitutes the proceeds of crime.

**(b) Observations on the implementation of the article**

The Criminal Code provides for both forfeiture of proceeds of crime and instrumentalities (s. 70-71) and non-conviction-based confiscation (s. 101-102). In particular, sections 70 and 71 of the Criminal Code can be used for the confiscation of proceeds and instrumentalities of a criminal offence belonging to the perpetrator, who is convicted. Sections 101 and 102 of the Criminal Code can be used for the confiscation of proceeds and instrumentalities of a criminal offence belonging to the perpetrator, who cannot be prosecuted or sentenced or whose punishment has been waived by the court, **or to a person different from the perpetrator** (so it covers cases when Sections 70 and 71 cannot be used). Czechia adopts a combined approach, allowing also forfeiture of property of a corresponding value (s. 71-72 CC) and confiscation of corresponding value (s. 102 CC).

At the time of review, amendments of the Criminal Code and Code of Criminal Procedure were going through the legislative process. The amendment of the Criminal Code will, among others, introduce material and legal definition of the terms “proceeds from criminal activities” and “instrument of criminal activities”. The expected date of the amendment becoming effective is the first day of the second calendar month after the Act has been enacted in the Statute Book, i.e. approximately the end of 2018.

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to the measures under the subparagraph (a 1) of article 31 above (Section 70, 71, 101, 102, 104 of Criminal Code of the Czech Republic).

The Czech Republic provided examples of cases:

**Court judgment 8 Tdo 916/2014:**

The sanction lying in the forfeiture of a thing as per Section 70(2) of the Criminal Code shall be applicable to a thing belonging to the perpetrator. It is not essential whether the perpetrator is the owner of the thing or that the legitimate owner or possessor is not known. However, a necessary condition in imposing such punishment shall be the fact that the court has ascertained the perpetrator's property situation prior to the commission of the respective crime and has arrived at the conclusion that the thing belonging to the perpetrator and being the object of the stated punishment constitutes the proceeds of crime.

**Court judgment No. 32:**

It shall not be excluded for a perpetrator of crime of obstruction of the enforcement of an official decision pursuant to Section 171(1) a) of the Criminal Code, committed by the perpetrator driving a vehicle despite the prohibition to drive, to be imposed a sanction lying in the forfeiture of the thing - the driven vehicle. If the perpetrator is committing the said crime, for example, repeatedly or under the influence of alcohol or, possibly, under other circumstances increasing the dangerousness of his action for the society, such sanction may contribute to the effective protection of the society.

**Court judgment 6 Tz 64/2013:**

Forfeiture of a Substitute Value as per Section 71 of the Criminal Code to the Benefit of Governing Body: The forfeiture of a substitute value as per Section 71 of the Criminal Code is a sanction substituting the forfeiture of a thing or another property value as per Section 70 of the Criminal Code. If a perpetrator has acted as a person authorized to act on behalf of a legal entity and, under such authorization, has committed a crime the essence of which is the evasion of corporate income tax, the perpetrator may be imposed the said substitute sanction upon the fulfilment of other statutory conditions only if it has been proven within the proceedings that the perpetrator, as a natural person, has obtained any property benefit through the commission of the crime.

**(b) Observations on the implementation of the article**

The Criminal Code provides for both forfeiture of proceeds of crime and instrumentalities (s. 70-71) and non-conviction-based confiscation (s. 101-102). At the time of review, Czechia was in the process of amending the Criminal Code and the Criminal Procedure Code to introduce definitions of proceeds of crime and instrumentalities.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to the measures under the Article 31 subparagraph 1 a) (s. 78 – 78g CCP).

The Czech Republic provided examples of implementations:

Right to Judicial and Other Legal Protection Constitutional Court judgment II. US 267/03  
In the event of release or seizure of a thing within the meaning of Sections 78, 79m 79a, 79b and 79c of the Code of Criminal Procedure, the title of the owner of the thing is intervened in since the content of this right is, among other things, the right to use and handle the thing. In the given case - with regard to the fact that it concerns seizure of book-entry securities - the complainant, being their owner, was temporarily limited in their handling. The fact that it concerns only a time-limited measure does not exclude the possibility of intervening in an individual's constitutional rights. The given intervention may take place pursuant to, and in compliance with, the laws (Article 11(4) of the Charter, Article 1 of the Protocol Amending the Convention). In relation to the case in question, it means that the intervention may take only until the occurrence of the facts prescribed for its termination pursuant to the laws (Section 80(1) first sentence of the Criminal Code), whereby the consideration of this question shall be vested in the relevant authority competent to terminate the measure (Section 80(1) first sentence of the Criminal Code) and the relevant investigative, prosecuting and adjudicating bodies.

#### **Court judgment 4 Tz 7/2013-2: 4 Seizure of a Substitute Value**

The seizure of a substitute value pursuant to Section 79f of the Code of Criminal Procedure must be fully proportionate to the procedural and evidentiary situation. The prerequisite for applying this sanction is the impossibility of applying the primary provisions as per Sections 78 to 79e of the Code of Criminal Procedure. The decision to seize a substitute value pursuant to the cited provision cannot lie in the principle of certainty without reasonable doubts since it does not concern a decision on merits. The decision on such seizure expresses the mere probability of the consequences that may arise if the seizure is not carried out. The resolution of the investigative, prosecuting and adjudicating bodies to seize a substitute value needs to state the purpose of this procedural act. In terms of application of Section 79f of the Code of Criminal Procedure, the amount of damage allegedly caused by the accused as a consequence of his illegal action shall be irrelevant. On the other hand, it is necessary to preserve the requirement for a reasonable period of seizure, necessary to achieve the purpose of the criminal proceedings. The Code of Criminal Procedure does not stipulate such period any further, but the reasonableness of the limitation of title shall be considered similar to the time-limits set by the laws for the restriction of personal freedom (see Section 72a of the Code of Criminal Procedure). The investigative, prosecuting and adjudicating bodies are then obliged to proceed as if it concerned a matter of detention.

**(b) Observations on the implementation of the article**

Identification, tracing and freezing of assets is regulated (s. 78, 79, 79a-g CCP). At the time of review, Czechia was in the process of amending the Criminal Code and Code of Criminal Procedure to introduce definitions of proceeds of crime and instrumentalities.

**(c) Successes and good practices**

The reviewers, in particular, observed that provision in section 79g of the Criminal Code (Seizure of Equivalent Value) can be regarded as a good practice conducive to the efficiency and effectiveness of financial investigations, including in the context of corruption cases.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 279/2003 Coll., on Seizure of Property and Assets in Criminal Proceedings  
MANAGEMENT OF SEIZED PROPERTY**

**Section 8a**

**Purpose of Property Management and Manager's Responsibility**

(1) The property seized within criminal proceedings shall be managed pursuant to the said Act if it is necessary to legally act or take necessary steps to avoid groundless depreciation or reduction of the seized property or to appreciate the property as expected.

(2) To achieve the purpose of the management, the manager shall exercise the seized property-related rights and obligations which are vested in him pursuant to this Act or the exercising of which by the accused has been prohibited by the court. The manager shall exercise the individual rights and obligations based on the nature of the seized property and the rights associated with it in compliance with this Act and special laws and in compliance with the management authorization or management contract. In doing so, the manager shall proceed appropriately and conscientiously.

(3) Unless otherwise stipulated in special laws, the manager shall be liable to the person who has suffered damages in connection to the performance of his activity for damages caused in the performance of his activity on his part or on the part of the persons employed to fulfil his tasks. The manager may release himself from such liability if he proves that the damages could not have been prevented despite all efforts that might have been demanded of him.

(4) Throughout the period of performance of his activity, the manager shall be obliged to conclude a contract of insurance against liability for damages or other harm, which may occur in connection to the performance of the management. This shall not apply if the responsibility for the manager's activity is vested in the state pursuant to the Act on liability for damages

caused by an official decision or an incorrect official procedure. The contract must cover the manager's liability for damages caused as a consequence of, or in relation to, his activity or omission in the performance of his office or activity or omission of his employees in the performance of his office, if the activity or omission has taken place in the insurance period. The manager shall be obliged to conclude such contract at the latest within 5 days of being charged with the management or of concluding the management contract and to substantiate such fact, immediately after the conclusion of such contract, to the person who has charged him with the management or has concluded the management contract with him.

(5) The insurance benefits limit agreed in the liability insurance contract stated in Article 4 has to be at least CZK 1,000,000 per insured event. The insurance benefits limit for a manager who performs the office of a member of the governing body of a corporation the annual aggregate of its net turnover pursuant to the Accounting Act for the last fiscal period coming prior to the authorization to carry out the management was at least CZK 100,000,000 and who employs at least 100 employees has to correspond to at least CZK 10,000,000 per insured event.

## **Section 9**

### **Manager of Seized Property**

(1) Unless otherwise stated below, the property shall be managed for the period of its seizure, depending on the nature and scope of the things and the rights forming such property, either by the court who has determined the seizure at first-instance level or to which the competence to carry out such management has passed pursuant to Section 1(5) or, based on the relevant authorization, by:

*a) territorial workplace of the Office for Government Representation in Property Affairs;*  
*or*

*b) court-appointed bailiff; -in whose district the seized property is located; if the seized property is located in the districts of two or more territorial workplaces of the Office for Government Representation in Property Affairs or two or more territorial workplaces of the court-appointed bailiffs, the court may charge each of these workplaces with performing the management.*

(2) If rights associated with a share in a corporation and enabling participation in the corporation's management have been forfeited and it is necessary to manage the share in the corporation ("share management"), the court stated in Article 1 shall charge with the management any of the persons entered in the list of bankruptcy trustees having special licenses pursuant to the Act on Bankruptcy Trustees. If it is not possible to proceed this way, the court shall charge another bankruptcy trustee with the management. If a special law ties the ownership of a share or the performance of the governing body's office in a corporation to the fulfilment of certain special conditions, these conditions do not need to be fulfilled with respect to the manager of the share. However, if these conditions are met by any of the bankruptcy trustees, such bankruptcy trustee shall be appointed preferentially. A bankruptcy trustee may refuse the authorization to manage a share only for important reasons to be considered by the court stated in Article 1. The court stated in Article 1 shall not charge the bankruptcy trustee with the management of the share if it has reasonable doubts about his impartiality.

(3) The management of seized:

*a) property with respect to which there is reasonable suspicion that it has been obtained in connection to the breach of customs regulations or regulations pertaining to the management of excise taxes shall be carried out by the General Directorate of Customs;*

*b) radioactive waste and sources of ionising radiation shall be carried out by the Administration of Radioactive Waste Repositories;*

*c) specimen of plants and animals, regulated furs and products made of seals and other animals protected pursuant to the Act on the Trade in Endangered Animals and Specially Protected*

*Specimen of Plants and Animals and Wild Birds Protected pursuant to the Act on the Protection of Nature and Countryside shall be carried out by the Czech Environmental Inspectorate;*

*d) weapons, ammunition, explosives, addictive substances, and precursors, including the equipment for their production, preparations containing addictive substances, and other hazardous substances, shall be carried out by the Regional Police Directorate in the territorial district of which the court conducting the criminal proceedings has its seat*

(4) If the person charged with managing the seized property pursuant to Article 1 cannot perform such management, he shall ensure the management, based on the nature of the seized property:

*a) through authorization of the state organizational unit or the state organization competent to manage certain state property; or*

*b) through another person doing business in the relevant sphere or having sufficient professional qualifications for managing the given property for the agreed consideration or gratuitously and on the basis of a contract*

(5) For the contract as per Article 4 b) to be valid, it has to contain provisions relating to liability for damage to the seized property during the period of its management. The contract may be concluded even in relation to partial legal acts or performance associated with the seized property. If the management lying in the sale of the seized property is the subject of the contract, the contract has to contain the method of determining the purchase price and the procedure of the sale. The consideration for the management shall be paid by the court from the state budget.

(6) The Office for Government Representation in Property Affairs or the court-appointed bailiff shall immediately notify the court stated in Article 1 of the procedure as per Article 4a) and may only handover the seized property to the contractual manager as per Article 4 b) for management upon this court's prior consent.

(7) The authorization to manage seized property is a measure which has to be reduced to writing and has to contain, in particular, the identification of the authority which has issued the authorization, the identification of the authorized manager, and the specification of the rights and the obligations associated with the management. The authorization document or the attached deeds need to appropriately and incommutably identify the seized property to which the authorization applies. The authorization may also be issued for the performance of a partial legal act associated with the seized property. The authorization shall not be issued for the management of the property stated in Article 3. The authority stated in Article 1 may cancel the authorization in writing at any time and, under the conditions stipulated in this Act, may charge another manager/trustee, conclude a management contract, or manage the seized property itself.

(8) The authorization to manage seized property pursuant to Article 1b) and Article 2 shall be communicated to the person whose property has been seized. The authorization to manage a share shall be communicated to the given corporation. The cancellation of the authorization, the authorization of another manager, and the conclusion of a management contract shall be communicated to the persons who have been notified of the authorization to manage the seized property according to the first sentence.

## **Section 10**

### **Manager's Rights and Obligations**

(1) The manager shall be obliged to take legal steps to prevent depreciation of the value of the seized property or reduction of such property and, in particular, to:

*a) claim, in timely manner, compensation for damages and return of unjust enrichment;*

*b) continuously monitor whether the debtors fulfil their obligations relating to the seized property in due and timely manner, assert and enforce, in timely manner, the rights otherwise*

*vested in the owner of the seized property or, possibly, in another person entitled to handle the property, and prevent the limitation or termination of these rights;*

*c) invoke invalidity of a legal act undertaken by the accused contrary to the prohibitions imposed on the accused pursuant to a decision to seize property as per the Code of Criminal Procedure*

(2) The manager shall be obliged to properly safeguard the personal property handed over by, or taken from, the accused and protect it from depreciation, in particular, from damage, destruction, loss, theft or misuse and to undertake the necessary acts leading to the preservation of the value of the property.

(3) For the purpose of protecting the seized property, the manager shall undertake, within legal, administrative or other proceedings, all acts which the owner of such property or another person entitled to handle such property would otherwise be obliged to undertake.

(4) The manager shall keep evidentiary and well-arranged records on the seized property until the property is finally disposed of. The seized property shall not be the subject of accounting and inventorying.

(5) The manager shall fulfil no other obligations relating to the seized property but those stated in Articles 1 to 4. The other rights associated with the seized property shall be exercised by the manager for the purpose of protection of the seized property and only to the extent to which the court has prohibited the accused from exercising them pursuant to the Code of Criminal Procedure. The manager shall not be entitled to use, rent, or encumber the seized property or transfer it to another person.

(6) For the purpose of proper management of the seized property, the manager shall be entitled to undertake all necessary acts, in particular, to consult accounting records, contracts and other written documents relating to the seized property and enter the places where they are stored. The accused, as well as other persons towards whom an act is undertaken, shall be obliged to provide the manager with all necessary assistance. If the persons stated in the first sentence fail to comply with the manager's order or call without a sufficient excuse and fail to provide the manager with the necessary assistance, the court may impose a procedural fine of up to CZK 50,000 on them. If such order or call is ignored by the person acting on behalf of a legal entity, the legal entity represented by such person may be imposed a procedural fine of up to CZK 500,000. These persons need to be notified of this in advance. A complaint, with an effect of suspension, against the decision to impose a procedural fine shall be admissible. The decision in the matter of a complaint shall be subject to Section 146a of the Code of Criminal Procedure accordingly.

## **Section 10a Share Management**

(1) The manager charged with managing a share pursuant to Section 9(2) shall enter into the secured rights of a corporation's member/partner or those of a cooperative's member and shall exercise them to the necessary extent and in compliance with this act and the Companies Act.

(2) If it is necessary, for the purpose of achieving the purpose of the management, to replace one or more members of a corporation's governing body and the secured rights allow the manager to follow such procedure, the manager shall convene the corporation's highest body through which he will achieve their discharge and shall have himself elected the governing body's member in lieu of them. The provisions of the Companies Act pertaining to the clean records of the members of a corporation's body, the substantiation of clean records, the number of members of a corporation's governing body, and the minimum time-limits for notifying the dates of meeting of the corporation's highest body shall not apply.

(3) At the court's request, the manager shall be obliged to submit to the court a report on his activity lying in the management of a share within an adequate time-limit set by the court. The manager shall be obliged to submit this report to the court within 15 days of the day on which his authorization to manage the share expired or was cancelled.

(4) The manager's authorization to manage a share shall be considered as terminated:

*a) upon the termination of his right to pursue the activity of a bankruptcy trustee pursuant to the Act on Bankruptcy Trustees;*

*b) upon the cancellation of his license or a special license as per the Act on Bankruptcy Trustees;*

*c) upon the dissolution of a corporation without a universal legal successor; or d) upon his death*

(5) The provisions of Article 4 shall not affect the court's right to cancel the manager's authorization for other reasons.

(6) If, in the period of expiration or cancellation of the authorization, the manager performs the office of a corporation's member, such office shall expire on the date of expiration or cancellation of the authorization. However, if the court has authorized a new manager to manage the share pursuant to this Act within 14 days of expiration or cancellation of the previous manager's authorization, the office shall pass onto the new manager on the date of the new manager's authorization to carry out the management. The legal acts undertaken by the previous manager holding the position of a member of a corporation's governing body in the period between the expiration or cancellation of his authorization and the moment when he learns about the expiration or cancellation of his authorization shall remain valid if approved by the new governing body. The previous manager shall be obliged to provide the new manager, liquidator or bankruptcy trustee with the necessary assistance at their request and, in particular, to inform them of the legal acts undertaken by him.

## **Section 10b**

### **Share Manager's Fee**

(1) The manager charged with managing a share pursuant to Section 9(2) shall be entitled to remuneration and compensation of out-of-pocket expenses.

(2) The fee of the manager who, based on the secured rights to a share, performs the office of a member of a corporation's governing body and the compensation for his out-of-pocket expenses shall be paid from the corporation's assets. If the corporation's assets are not sufficient, in whole or in part, to cover the manager's fee and the compensation for his out-of-pocket expenses, they shall be paid by the state. The fee of the manager who manages a share and is not a member of a corporation's governing body and the compensation for his out-of-pocket expenses shall be paid by the state.

(3) On the manager's proposal, the court shall determine the manager's remuneration and, if the out-of-pocket expenses are reimbursed by the state, the compensation for his out-of-pocket expenses. The manager's proposal has to contain the billing of the remuneration and the out-of-pocket expenses. The manager shall be obliged to demonstrably substantiate the proposed compensation for out-of-pocket expenses and justify their purpose and reason. A complaint, which has the effect of suspension, against such decision shall be admissible.

(4) In determining the manager's fee/remuneration, the court shall stem from the fact whether the manager performs the office of a member of a corporation's governing body and from the corporation's turnover. If the manager's fee cannot be determined based on these criteria, the court shall give consideration to the length of the period of management, the scope and demandingness of the manager's activity, and, if the manager performs the office of a corporation's governing body, the remuneration of the governing body's other members or, if there are no such members, the remuneration of the governing body's former members.

(5) Where the manager's remuneration and the compensation for his out-of-pocket expenses are paid by the state, the court shall pay them from the state budget.

(6) During the period of management of a share, the court may determine the payment of an advance on the manager's remuneration and the compensation for his out-of-pocket expenses, even repeatedly.

(7) The method of determining the remuneration and the out-of-pocket expenses of the manager charged with managing a share, the highest admissible remuneration and out-of-pocket expenses paid by the state, and the method of their payment are stipulated in the implementing laws.

## **Section 11**

### **Cost of Management**

The cost necessary to ensure the proper management of seized property shall be reimbursed by the court from the state budget, unless the special laws regulating the handling of seized property enable another method of reimbursement of such cost.

## **Section 12**

### **Sale of Seized Property**

(1) The court may decide to sell the seized property with the accused's prior consent. The consent to the sale may be granted in writing or verbally based on a protocol. In such case, the accused may bindingly react to the lowest price for which the property may be sold and has to be notified of such right.

(2) The court may decide to sell the seized property without the consent pursuant to Article 1 if it is possible to reasonably assume that:

*a) the property is subject to fast deterioration or to damage which is difficult to avert;*

*b) the property will lose its market value, in particular, when it comes to vehicles and electric equipment;*

*c) the management is associated with unreasonable expenses; or*

*d) the management will require special handling conditions or special professional qualifications which can be ensured with unreasonable difficulties only*

(3) In the event of fulfilment of the conditions stipulated in this Act, the authorized or contractual manager shall be obliged to propose the sale of seized property to the court. The court shall decide on such proposal immediately upon receipt.

(4) In determining the purchase price and in the sale:

*a) the court shall proceed reasonably, pursuant to the laws regulating the sale of property in the legal enforcement of a decision;*

*b) the investigative, prosecuting and adjudicating bodies, the territorial workplace of the Office for Government Representation in Property Affairs, the state organizational unit or the state organization shall proceed reasonably, pursuant to the special laws regulating the management of state property;*

*c) the bailiff shall proceed reasonably, pursuant to the special law regulating the confiscation of property;*

*d) the manager charged with managing a share shall proceed reasonably, pursuant to the Public Auctions Act;*

*e) the contractual manager shall proceed in manner agreed in the contract*

(5) The financial sum obtained from the sale shall be deposited in the court's escrow.

(6) A complaint, which has the effect of suspension, shall be admissible against the resolution as per Article 1 and Article 2 b) to d). The decision on a complaint against the resolution

pursuant to Article 2 c) or d) shall be subject to Section 146a of the Code of Criminal Procedure accordingly.

**(b) Observations on the implementation of the article**

Czechia has an asset management system in place through a dedicated Act on Management of Seized Property (AMSP). The AMSP provides for various categories of managers of seized property, including courts, the Office for Government Representation in Property Affairs and court-appointed bailiffs (s. 9). Managers' rights and obligations are set out (s. 8a, 10). The sale of seized property in certain circumstances is allowed (s. 12).

**Article 31 Freezing, seizure and confiscation**

**Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to the measures under the subparagraph 1 (a) of article 31 above (Section 70, 71, 101, 102 and 104 of the Criminal Code).

**(b) Observations on the implementation of the article**

While the Criminal Code does not explicitly call for confiscation of proceeds of crime that are transformed, converted into or intermingled with other property, Czechia confirmed that sections 70/2b and 101/2b of the Criminal Code would cover these proceeds and provisions on value-based confiscation are also applicable. No cases of implementation have been provided.

Given the lack of examples of implementation, it is recommended that Czechia continue to ensure that proceeds of the crime that are transformed, converted into other property are liable to the confiscation measures set out in the Criminal Code, including by considering more clearly regulating these elements in the Criminal Code.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to the measures under the subparagraph 1 (a) of article 31 above (Section 70, 71, 101, 102 and 104 of the Criminal Code).

## **(b) Observations on the implementation of the article**

While the Criminal Code does not explicitly call for confiscation of proceeds of crime that are transformed, converted into or intermingled with other property, Czechia confirmed that sections 70/2b and 101/2b of the Criminal Code would cover these proceeds and provisions on value-based confiscation are also applicable. No cases of implementation have been provided.

Given the lack of examples of implementation, it is recommended that the Czech Republic continue to ensure that proceeds of the crime that are intermingled with other property are liable to the confiscation measures set out in the Criminal Code, including by considering more clearly regulating these elements in the Criminal Code.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The relevant provisions are in Section 70 (3) and 101 (3) of the Criminal Code [and also 102a (5) CC] according to which it is explicitly stated that forfeiture and confiscation of a thing also affects fruits and revenues, which are owned by the offender or by a person, whose thing is being confiscated.

Supporting legislation can be also found in Civil Code, especially Section 491, 510 and 513. Section 491 of the Civil Code shall apply by interpretation of the terms “fruit” and “revenues”. A fruit is considered to be a corporeal thing (for example young animals, fruits, milk, eggs). The examples of revenue are typically rents, annuities, dividends etc. The general civil rule is, that fruit and revenues usually have the same legal regime as the main thing.

## **Civil Code of the Czech Republic**

### **Section 491**

(1) A fruit is what a thing regularly provides by its inherent nature, as follows from and is appropriate to its usual intended purpose, whether or not as a result of the endeavour of man.

(2) Revenues are what a thing regularly provides by its legal nature.

### **Section 510**

#### **Accessory to a thing**

(1) An owner's thing accessory to the principal thing constitutes its accessory, provided that the accessory thing is intended to be permanently used jointly with the principal thing within their economic purpose. Temporary separation of an accessory thing from the principal thing does not deprive it of the quality of an accessory.

(2) Juridical acts, and rights and duties related to the principal thing are presumed to also relate to its accessories.

## **Section 511**

In case of doubt whether something constitutes an accessory to a thing, the case is considered according to usages.

## **Section 512**

Where a structure is a component part of a tract of land, the owner's things accessory to the structure constitute accessory to the tract of land if they are intended to be permanently used with the structure or tract of land within their economic purpose.

## **Section 513**

Accessories to a claim include interest, default interest and costs of asserting the claim.

Please see measures under the subparagraph 1 (a) of article 31 above (s. 70 (3) and 101 (3) CC).

### **(b) Observations on the implementation of the article**

The amendment to the Criminal Code No. 55/2017 Coll. (entry into force on 18 March 2017) has expressly amended a provision of forfeiture of a thing (s. 70 (3) CC) and confiscation of a thing (s. 101 (3) CC), according to which forfeiture or confiscation of a thing also affects fruits and revenues, which are owned by the person, whose thing is forfeited or confiscated. The abovementioned legislation thus ensures that not only direct proceeds but also indirect proceeds (i.e. fruits and revenues arising from direct proceeds, including income, profits or other benefits) are also subject to forfeiture or confiscation of a thing. After all, case law also confirms that the term “proceeds of crime” shall be interpreted broadly as “any economic benefit following from criminal activity”.

Benefits derived from the crime are also considered ‘the fruit’ of or an ‘accessory’ to a thing under the Civil Code (s. 491, 510-513) and as such are liable to the same confiscation measures.

Given the lack of examples of implementation, it is recommended that the Czech Republic continue to ensure that benefits derived from proceeds of crime, are liable to the confiscation measures set out in the Criminal Code, including by considering more clearly regulating these elements in the Criminal Code

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Code of Criminal Procedure of the Czech Republic**

## Section 8

(1) Public authorities, legal entities and natural persons are required to comply with letters of request from law enforcement authorities for the performance of their actions without undue delay and unless a special regulation stipulates otherwise, to comply without payment. Furthermore, public authorities are also obliged to immediately notify the public prosecutor or the 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, in order to assess the nature, extent or location of assets for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty, the public prosecutor and after filing an indictment or a motion for punishment the presiding judge may request information subject to banking secrecy and data from the register of investment instruments and booked 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. In criminal proceedings, which allows to impose a protective measure of forfeiture of a portion of assets, the public prosecutor and after filing an indictment or motion for punishment the presiding judge may request information from tax administration authority associated with a decision on income tax assessment for the purpose of assessing the fulfillment of conditions for imposing this protective measure or for the purpose of securing its execution; provision of information according to this clause does not breach the obligation of secrecy according to the Tax Procedure Code. The conditions under which the authorities involved in criminal proceedings may require the data obtained in the administration of taxes for other purposes 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 or booked securities according to other legal enactments 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 performance of obligations under Subsection 1 may be rejected with reference to the obligation to maintain the secrecy of classified information protected by a special Act or imposed by the State or the recognised duty of confidentiality; this does not apply,

*a) if the person who has the obligation would otherwise risk criminal prosecution for the failure to notify or prevent a criminal offence, or*

*b) in executing the request of a law enforcement authority with regards to a criminal offence, where the requested person is also the reporter of the criminal offence.*

The State recognised obligation of confidentiality under this Act does not consider such obligation the scope of which is not defined by law but instead arises from a legal action taken under the law.

(5) Unless a special Act stipulates the conditions under which information may be disclosed for

the purpose of criminal proceedings that are deemed classified pursuant to such Act or which is subject to an obligation of secrecy, such information may be requested for criminal proceedings upon the prior consent of the judge. This does not affect the obligation of confidentiality of an attorney under the Advocacy Act.

(6) The provisions of Subsection 1 and 5 shall not affect the obligation of confidentiality imposed on the basis of a declared international treaty to which the Czech Republic is bound.

Please see measures under the paragraph 2 of article 31 above (Section 78, 79 of the Code of Criminal Procedure).

## **Criminal Code of the Czech Republic**

### **Section 368**

#### **Failure to Report a Criminal Offence**

(1) Whoever learns in any credible way that another person committed the criminal offence of murder (Section 140), grievous bodily harm (Section 145), torture and other cruel and inhumane treatment (Section 149), human trafficking (Section 168), denial of personal freedoms (Section 170), hostage taking (Section 174), abuse of a child for the production of pornography (Section 193), maltreatment of an entrusted person (Section 198), counterfeit and alteration of money (Section 233), unauthorised procurement, counterfeiting and alteration of a means of payment (Section 234), unauthorised production of money (Section 237), violation of regulations on the control of the export of dual-use goods and technologies (Section 262), violation of obligations in the export of dual-use goods and technologies (Section 263), execution of foreign trade with military material without a permit or license (Section 265), violation of obligations in connection with the issue of permits and licenses for foreign trade with military material (Section 266), general threats (Section 272), development, production and possession of prohibited means of warfare (Section 280), unauthorised production and possession of radioactive substances and highly dangerous substances (Section 281), unauthorised production and possession of nuclear material and special fissionable material (Section 282), gaining control over means of air transport, civilian vessels and fixed platforms (Section 290), hijacking of a means of air transport to a foreign State (Section 292), treason (Section 309), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), Participation on a Terrorist Group (Section 312a), Terrorism Financing (Section 312d), Support and Endorsement of Terrorism (Section 312e), sabotage (Section 314), espionage (Section 316), endangering classified information (Section 317), war treason (Section 320), accepting bribes (Section 331), bribery (Section 332), genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), aggression (Section 405a), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414) or the abuse of internationally and State recognised symbols under Section 415 Subsection 3, and does not report such a criminal offence to the public prosecutor or the police authority without delay, or instead, if it is a soldier, to a superior, shall be punished by a prison sentence of up to three years; if this Act stipulates a more lenient punishment for any of these criminal offences they shall be punished by such lenient punishment.

(2) Whoever commits an act referred to in Subsection 1, shall not be punishable if they were not able to report it without putting themselves or a person familiar to them in danger of death, bodily harm, other grievous harm, or criminal prosecution.

(3) The reporting obligation under Subsection 1 does not apply to an attorney or their employee who learns of a criminal offence in connection with the performance of their legal profession and legal practice. The reporting obligation also does not apply to clergymen of a registered church or religious society authorised to exercise special rights when they become aware of a criminal offence in connection with the performance of confession, or in connection with the practice of similar confessional secrets. The reporting obligation in respect of the criminal offence of human trafficking under Section 168 Subsection 2 and denial of personal freedoms (Section 170) also does not apply to a person providing help to the victims of criminal offences.

## **Act No. 280/2009 Coll., Tax Code**

### **Section 53**

(1) A breach of confidentiality does not provide the tax information obtained in Tax Administration

*a) Ministry of Finance under the Act on Combating Money Laundering and Terrorist Financing Act or the implementation of international sanctions,*

*b) Office for Protection of Competition in fulfilling reporting obligations in respect of public support provided by the tax administrator,*

*c) the court in the case of*

*a) the proceedings conducted at the initiative of the tax body of the management of its taxes,*

*b) application of the law by the tax authorities in tax administration, or*

*c) data required for the purposes of maintenance decisions,*

*d) an administrative authority which conducts the proceedings on administrative offenses, which relates to infringement in tax administration,*

*e) Ministry of Labour and Social Affairs in the exercise of its powers and other social security institutions in exercising their jurisdiction in the case of data which may require these authorities to the extent necessary to carry out tasks within their competence,*

*f) health insurance, if the data necessary for determining the payment of premiums for general health insurance, these insurance companies in the exercise of its statutory powers to require contributors who are taxpayers,*

*g) the Supreme Audit Office, as well as other control authorities, if made within the scope of its powers under the control of the approved plan and control activities may check if the tax administration,*

*h) of the Czech Statistical Office, in the case of data necessary for the purposes of compiling the national accounts of the European Communities to the management and statistical registers*

*i) Chamber of Tax Advisors or the Czech Bar Association for disciplinary proceedings with its members, as well as the authority which appointed expert or interpreter for the management of its appeal,*

*j) the competent public authority to discuss the claim under the law on liability for damage caused in tax administration exercise of public authority decision or maladministration,*

*k) the Ombudsman if the investigation carried out under other legislation.*

(2) A breach of confidentiality also does not provide the tax information obtained in the administration of taxes for purposes of criminal proceedings when requested by the prosecutor and the court indictment in connection with an explanation of the circumstances indicating that it was committed

*a) any of the offenses of tax and fee, which covers the breach in tax administration,*

*b) the offense of which such notification, or report a crime*

*c) the offense subsidy fraud, misrepresentation crime data relating to economic and property crime and damage the financial interests of the European Communities,*

*d) any of the offenses against the exercise of public powers and public officers, one of the offences of official persons, one of the offenses of bribery and the offense of obstructing an official decision, or*

*e) an offense indicating counterfeit and altered money, forgery and falsification of public documents, illegal production and possession of the Great Seal seals and official stamps.*

(3) The tax authority has the obligation to notify under Law 7), if the performance of its activities actually suggesting that it was committed one of the offenses listed in paragraph 2.

#### **(b) Observations on the implementation of the article**

There is a general duty set out in the Code of Criminal Procedure to respond to information requests from law enforcement authorities (s. 8 CCP), and institutions must provide them with financial, tax or other requested records (s. 8 CC, s. 53 Tax Code). The possibility to do financial investigation was extended through possibility of the public prosecutor or presiding judge to request information which is subject to banking secrecy for the purpose of seizure of a thing (s. 8 (2) CCP).

The Criminal Code establishes as a crime a failure to report a criminal offence to relevant authorities (s. 368).

As of January 2018, a new register of all bank accounts has been established in the Czech Republic, which contains information not only on account holders' names but also persons authorized to dispose the funds on the account, date of opening, cancelling of the account and of the authorization to dispose the funds.

#### **(c) Successes and good practices**

The establishment of the national bank register was highlighted by the reviewers as a good practice conducive to the efficiency and effectiveness of financial investigations, including in the context of corruption cases.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

In 2016, the Criminal Code amendment introduced the possibility of extended confiscation in case the convicted person cannot demonstrate the lawful origin of his property. However, the offender cannot be forced to do so and the relevant authorities must give own evidence that such property is probably the proceed of crime (for example, the gross disproportion between property and lawfull income of the offender). For this reason, the duty to declare property was introduced in the Code of Criminal Procedure (Section 7a). Such duty was transferred from Act No. 279/2003 Coll., on enforcement of seizure of assets and items in criminal proceedings and on amendments to some Acts. Such declaration is possible to request from the person, whose

assets are to be seized or from a person close to such person. The presiding judge and in pre-trial proceedings the public prosecutor or police authority may request such declaration in order to ascertain the nature, extent or location of things for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty.

In particular, the amendment provides the new protective measure concerning confiscation of the part of assets (Section 102a of the Criminal Code), where the standard of proof is lowered on probability concerning the origin of confiscated assets (“The Court presumes that the assets are proceeds of crime”). The Court may impose this protective measure to a perpetrator who has been found guilty for an intentional criminal offence if the Criminal Code stipulates a sentence to imprisonment with the upper penalty limit of at least four years or for a criminal offence listed in Section 102a of the Criminal Code, if the perpetrator has obtained or tried to obtain property profit by this crime for himself or another person and the Court presumes that the part of an asset is proceed of crime, considering the fact that the market value of the asset which the perpetrator has acquired or transferred to another person at latest five years before the initiation of the commission of the criminal offence, at the time of committing a criminal offence or after committing, is grossly disproportionate to the perpetrator’s statutory guaranteed income or there have been found other facts that justify this conclusion. In limited circumstances, the property can be confiscated also from the third parties.

## **Criminal Code of the Czech Republic:**

### **Section 102a**

#### **Confiscation of Part of Property**

(1) The court may order the confiscation of a part of property of a wrongdoer who has been found guilty of an intentional crime for which a sentence with the upper limit of at least four years in prison is imposed pursuant to the Criminal Code or of a crime of production and handling of children’s pornography (Section 192), a crime of unauthorized access to a computer system or an information carrier (Section 230), a crime of acquisition and storage of an access device and a password to a computer system or other such data (Section 231), a crime of intrigues in awarding a public contract and within a tender (Section 257), a crime of intrigues in a public auction (section 258), a crime of prohibited growing of plants containing a toxic or psychotropic substance [Section 285 (2) to (4)], a crime of distribution of toxic drugs (Section 287), a crime of bribery (Section 332), or a crime of indirect bribery (Section 333), if the wrongdoer has obtained or has tried to obtain a property benefit for himself/herself or another person through his/her act and the court is of the opinion that a certain part of his/her property constitutes the proceeds of crime with regard to the fact that the value of the property acquired by the wrongdoer or transferred by the wrongdoer to another person or into the assets of a trust fund in the period of at most 5 years prior to the commission of the crime, in the time of its commission, or after its commission is in gross disproportion to the wrongdoer’s legal income obtained in compliance with the laws or if other facts justifying such conclusion have been ascertained.

(2) The court may order the confiscation of a part of property in relation to a thing which could otherwise be confiscated pursuant to paragraph 1 if the wrongdoer:

- a. has transferred such thing to another person gratuitously or under remarkably advantageous conditions and such other person knew or could or should have known that such thing was transferred to him for the wrongdoer to avoid its confiscation or that such thing was obtained contrary to the laws;
- b. has transferred such thing to a close person;

- c. has transferred such thing to the legal entity in which he/she himself/herself or in conjunction with his/her close persons holds a majority share, a majority share in the voting rights, or a decisive influence on the management and is using such thing gratuitously or under remarkably advantageous conditions;
- d. has transferred such thing into the assets of a trust fund; or
- e. has acquired such thing into community property of spouses

(3) In determining the part of property which shall be confiscated, the court shall determine the particular things which shall be confiscated. If a gross disproportion between the property value and the wrongdoer's income acquired in compliance with the laws in the monitored period is ascertained, the court may determine for confiscation any of the wrongdoer's property up to the value of the ascertained gross disproportion.

(4) If it is not known where the property which could be confiscated is located or its confiscation is not suitable, in particular, with regard to any third party rights, or if the person from whom the property could be confiscated destroys, damages or alienates it or otherwise thwarts its confiscation, the court may order the confiscation of a replacement value, including a financial sum, up to the value of such property. The value of the property the confiscation of which could have been ordered by the court shall be determined by the court on the basis of a professional statement or an expert opinion.

(5) Confiscation also applies to fruits and profits of such item that belong to the person, to whom the item is confiscated. Confiscation does not apply to items necessary to satisfy basic life needs of the person, a portion of whose assets is being confiscated, or persons, whose support or upbringing is this person obliged to provide according to the law.

## **Code of Criminal Procedure of the Czech Republic**

### **Section 7a**

1) In order to ascertain the nature, extent or location of items for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty the presiding judge and in pre-trial proceedings the public prosecutor or police authority may call the person, whose assets are to be seized, or a person close to such person, to send them within a stipulated reasonable time limit a statement on assets of the person, whose assets are to be seized. The called person is entitled to refuse to make the statement on assets; Section 92 (1), Section 100 and Section 158 (8) will apply accordingly. In the call the person called to make the statement on assets must be advised about the consequences of failure to comply with such call and about their right to refuse to make the statement on assets.

(2) The person referred to in sub-section (1) will be called to state in the statement on assets, in such extent, in which such facts are known to them, all information regarding the assets of the person, whose assets are to be seized, in particular

- a) the payer of remuneration in labor relationship or a relationship similar to labor relationship or another income, and the sum of such remuneration or other income,
- b) bank, savings and loan association, electronic currency institute, small-scope issuer of electronic currency, payment institute, small-scope provider of payment services or similar foreign entity, at which such person has accounts, amount of claims and account numbers or other unique identifiers according to the Payment Relations Act,
- c) debtors, against which such person has claims, the grounds of such claims, their sum and term of payment,

d) overview of assets owned or co-owned by this person, including the co-ownership share and location of the assets, and

e) trust funds or similar arrangements this person has established or which this person is the beneficiary of.

(3) The presiding judge and in pre-trial proceedings the public prosecutor or police authority may call the person referred to in sub-section (1) to make a new statement on assets of the person, whose assets are to be seized, if they reasonably believe that there has been a change in the property relations of the person, whose assets are to be seized.

(4) If the person called to make a statement on assets fails to send the statement in the stipulated time limit or if the authority involved in criminal proceedings that called the person to make the statement on assets has any doubts about the truthfulness or completeness of the statement made by such person, it may call it to appear to give testimony; provisions of this Code that regulate submission of explanation, interview of accused person and witness will apply accordingly.

## **Section 358b**

### **Enforcement of confiscation of Part of Property**

(1) If the accused is prosecuted for a crime for which the imposition of a sentence of confiscation of a part of property needs to be expected with regard to the nature and the gravity of the crime and the accused's conditions, the court and, in pre-trial proceedings, the prosecutor may confiscate the accused's or another person's property if the ascertained facts indicate that the conditions for its confiscation as per Section 102a of the Criminal Code are fulfilled.

(2) It shall not be possible to determine for confiscation such property which is excluded from the enforcement of a confiscation decision pursuant to a special law.

(3) A complaint against a confiscation decision shall be admissible.

(4) The decision to enforce the confiscation of a part of property and the confiscation procedure shall otherwise be subject to Section 47 (4) to (6) and Section 47(8) accordingly. The decision to cancel or limit the confiscation and the permit to undertake an act in relation to the confiscated property shall be subject to Section 344b accordingly.

### **(b) Observations on the implementation of the article**

The 2017 Criminal Code amendment has introduced the possibility of extended confiscation in case the person convicted for certain criminal offences cannot demonstrate the lawful origin of his property in situations where there is a gross disproportion between the value of his property and his legal income. However, the convicted person cannot be forced to do so and authorities must gather their own evidence (s. 102a CC).

Additionally, the presiding judge and in pre-trial proceedings the public prosecutor or police authority may request a declaration on assets of the person in order to ascertain the nature, extent or location of things for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty (s.7a CCP).

The introduction of extended confiscation procedure per section 102(a) of the Criminal Code can be regarded as a good practice conducive to the fight against corruption.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

The good will is protected according to Civil Code and the relevant authorities take it into account.

### **Civil Code of the Czech Republic**

#### **§ 1100**

(1) If a party transfers the right of ownership in a thing not registered in a public register to various persons by successively concluded contracts, the right of ownership is acquired by the first person to whom the transferor surrendered the thing. In the absence of any such person, the right of ownership is acquired by the person with whom the first contract to become effective was concluded.

(2) If a party successively transfers the right of ownership in a thing registered in a public register to several persons, the person who acts in good faith and whose right of ownership was the first to be registered in the public register becomes the owner, even if the person's right of ownership was created later.

#### **Subdivision 7**

#### **Acquisition of the right of ownership from a non-entitled person**

#### **§ 1109**

A person who has acquired a thing which is not registered in a public register and, considering all the circumstances, was in good faith that he was authorised by the other party to transfer the ownership on the basis of a proper title, is the owner of the thing, if it was acquired:

- a) at a public auction,*
- b) from an entrepreneur in his business activities in the ordinary course of business,*
- c) for a reward from a person to whom the owner entrusted the thing,*
- d) from an unlawful heir, whose acquisition of inheritance has been confirmed,*
- e) when trading with an investment instrument, security or instrument made out to the bearer,*  
*or*
- f) when trading at the commodity exchange.*

#### **§ 1110**

If a person, acting in good faith, has acquired for consideration a used movable thing from an entrepreneur who trades in such things in his business activities in the ordinary course business, he shall surrender the thing to the owner who proves that he has lost the thing or that the thing was wilfully taken away from him and no more than three years have expired since the thing was lost or taken away.

#### **§ 1111**

If a person acquires a movable thing under circumstances other than those provided under Sections 1109 or 1110, he becomes the owner of the thing if he proves to have been in good faith that he was authorised by the transferor to transfer the right of ownership in the thing. This does not apply if the owner proves that he lost the thing due to his own fault or due to an act having the nature of an intentional criminal offence.

### **§1112**

A person who has acquired a movable thing knowing that the right of ownership was acquired from a non-entitled person may not invoke his right of ownership or the good faith of his predecessor to his advantage.

### **§ 1113**

The provisions of Sections 1110 to 1112 do not apply to investment instruments, securities or deeds made out to the bearer, or to things acquired at a public auction, at an auction in the enforcement of a decision or during private enforcement by the sale of movable property, or to things acquired by trading on a commodity exchange.

## **Code of Criminal Procedure of the Czech Republic**

### **Returns and the Further Handling of Property**

#### **Section 80**

(1) If the property, which was released 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 is returned to the person who released it or from whom it was removed. If another person applies for the right to it, then it shall be released to the person whose rights in the case cannot be doubted. If there are doubts, it shall be placed into custody and the person who applies their right to it shall be advised to apply their right to it in the civil matters proceedings. If a person who has the right to the property does not take it over, despite repeated calls, the property will be sold and the amount from sale shall be stored in the custody of the court. An appropriate regulation on the judicial sale of impounded movable assets is applied for such sale.

(2) If there is a danger that the property, that could not be returned or released pursuant to Subsection 1, should fall into disrepair, it will be sold and the amount from its sale shall be placed into the custody of the court. An appropriate regulation on the judicial sale of impounded movable assets is applied for the sale.

(3) The presiding judge, and in the preliminary hearing, the public prosecutor or the police authority, make decisions in accordance with Subsection 1 and 2. A complaint, which has a suspensive effect, against the decision on the return and release of property, as well as its imposition in custody, is admissible.

#### **Section 81**

(1) If a property, which the accused obtained or likely obtained through a criminal offence was removed or released from them and if it is either not known to whom the property belongs or the residence of the claimant is not known, a public description of the property shall be published. The announcement shall be done in the most efficient way possible for the detection of the claimant, along with a call for the claimant to come forth within six months after publication.

(2) If someone other than the accused exercises the right to property within the deadline set out in Subsection 1 they shall proceed in accordance with Section 80 Subsection 1. If no one else

exercised the right to the property, the property shall be released or if due to a danger of the property falling into disrepair it has already been sold, the amount from its sale shall, at the request of the accused, be deducted, unless the property was obtained by criminal offence. If it is a property, which the accused obtained through a criminal offence or if the accused did not request the return of the property and no one else exercised the right to the property within the six months' deadline, the property falls to the State after the deadline referred to in the second sentence of Subsection 1 has lapsed; this however does not affect the right of the owner to demand the release of such property or the amount deducted for its sale.

(3) If it is valueless property, it can be destroyed without the prior publication of a description.

(4) The measures and decisions referred to in Subsection 1 through 3 shall be performed by the presiding judge, and in the preliminary hearing, the public prosecutor or police authority. A complaint against the resolution on the release or the destruction of the property, which has a suspensive effect, is admissible.

### **Section 81a**

The provisions of Section 80 and 81 shall be reasonably applied to the procedure for returning the funds to a bank account, booked securities, real estate and other intangible property which were impounded in accordance with Section 79a through 79e and their further handling, as well as to the procedure for returning the replacement value, which was impounded in accordance with Section 79f.

Please see measures under the paragraph 2 of article 31 above (Section 79 of the Code of Criminal Procedure).

The Czech Republic provided examples of implementations:

#### **Court judgment (Rt) 6 To 35/76:**

The right to property within the meaning of Section 80(1) of the Code of Criminal Procedure shall mean any right to property which is protected by the laws (Section 4 of the Civil Code). Such right is usually the ownership right. However, it may also be the lien as per Section 495 of the Civil Code, the right of retention of a socialistic organization as per Section 278 of the Civil Code, the borrower's right to borrowed property as per Sections 257 and 389 of the Civil Code, and others.

#### **Court judgment (Rt) 10 Tz 12/69:**

Another person's right to property may be considered by the court within the proceedings pursuant to Section 80(1) of the Code of Criminal Procedure only if such another person is asserting the right to property. If he is not, the court shall return the property to the person who has released it or from whom it has been taken without examining the issue of whether or not such person is the owner of the property. The decision according to the first sentence of Section 80(1) of the Code of Criminal Procedure does not deal with the issue of title to the property which is the subject of the decision. Even after such decision, another person shall be entitled to seek release of the property within civil proceedings.

#### **(b) Observations on the implementation of the article**

The Civil Code protects the rights of bona fide third parties (s. 1100, 1109-1113).

The Czech Republic may want to consider additionally providing measures protecting the rights of bona fide third parties in confiscation proceedings in relevant criminal legislation.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Act no.137/2001 Coll., on the Special protection of a witness and other persons in connection with criminal proceedings**

#### **Section 1**

##### **Purpose of the Act**

(1) The purpose of this Act is to amend the provision of a special protection and assistance to a witness and other persons who are in danger of bodily harm or in other grave jeopardy (hereinafter "endangered person") in connection with criminal proceedings.

(2) This Act is applied, if the safety of the endangered person cannot be ensured in any other way.

(3) This Act is applied to provide special protection and assistance also upon a request of an authorised authority of a foreign state deciding about a similar protection of a person in accordance with the law of a foreign state (hereinafter the „foreign state authority“), or upon a request of an international criminal court, international criminal tribunal, or a similar international judicial authority, which fulfil at least one of the conditions listed in Section 145 (1) of the Act on International Judicial Cooperation in Criminal Matters (hereinafter the “judicial authority“).

(4) There is no legal right pursuant to this Act to special protection and assistance.

#### **Section 2**

##### **Endangered and Protected Person**

(1) An endangered person shall for the purposes of this Act be a person who

*a) has given or shall give an explanation, a testimony or has testified or shall testify as an accused, or has assisted in any other way or shall assist according to the provisions of the penal code for achieving the aim of criminal proceedings, or*

*b) is an expert or an interpreter and/or attorney for the defence, if the accused whom the attorney represents testified or shall testify to assist in the achievement of the aim of criminal proceedings, and/or c) is a person in close relationship 1 to the person mentioned in letter a) or b).*

(2) A protected person is an endangered person referred to in (1), to whom special protection and assistance is provided.

### **Section 3**

#### **Special Protection and Assistance**

(1) Special protection and assistance is a set of measures including

*a) personal protection,*

*b) moving of the protected person including members of his/her household<sup>2</sup> to another address and assistance*

*to the protected person with the aim to achieve the person's social assimilation in a new environment,*

*c) concealing the real identity of the protected person,*

*d) examining whether the condition for the provision of special protection and assistance are met.*

(2) The special protection and assistance is provided by the Police of the Czech Republic (hereinafter the "Police") and the Penitentiary Service of the Czech Republic (hereinafter the "Penitentiary Service") by carrying out the measures referred to in (1). The Penitentiary Service can carry out only the measures referred to in (1), letters a) and c). The Police and the Penitentiary Service are obliged to assist each other while fulfilling the tasks pursuant to this Act.

(3) Public Administration authorities are obliged within the scope necessary for meeting the purpose of this Act to co-operate with the Police and the Penitentiary Service when implementing the measures referred to in (1). To conceal the real identity of the protected person it is possible to create a legend on another personal existence (hereinafter the "legend") and insert personal data ensuing from the legend into the information systems operated according to special laws. Such data are not marked and are kept together with other personal data, unless the Police stipulates otherwise. With the consent of the protected person, some of his/her personal data may be used to create the legend.

The protection of victims of the crime is regulated by the Act No. 45/2013 Coll., on Victims of the Crime and on the Amendment to Certain Acts (the Act on Victims of the Crime). This Act incorporates the relevant European Union provisions (Council Directive 2004/80/EC of 29th April 2004 on compensation to the crime victims, Directive 2012/29/EU of the European Parliament and of the Council of 25th October 2012 laying down the minimum rules for the rights, support and protection of victims of the crime and replacing the Council Framework Decision 2001/220/JHA). The Act regulates the rights of victims of the crime, the provision of the financial assistance to the victims of the crime by the state and the relations between the state and the entities providing services to the victims of the crime.

The Probation and Mediation Service establishes counseling centers for victims of a crime, which operate in all judicial districts of the Czech Republic. There are 74 centers and 4 branches in total. These counseling centers provide the information on victims' rights, on the course of criminal proceedings and on how to file a complaint. The part of the service includes also the psychological support in coping with difficult life situations or the information about other professional services. The injured are also supported on how to claim the damages. In addition, the cities set up free civic councils, providing independent, expert, impartial and socially-competent counseling in various legal areas.

The Czech Republic provided examples of implementation:

**Court judgment (Rt) 10 To 319/2008:**

I. Pursuant to Section 55(2) of the Code of Criminal Procedure, within criminal proceedings it is not possible to conceal an interpreter's identity and refer to the fact that the interpreter may be a person at risk and a protected person within the meaning of Section 2 of Act No. 137/2001 Coll. II. If a telecommunication operation record in a foreign language is used as a proof, its content has to be interpreted into Czech. Part of the protocol on this record has to be a detail of the language of the telecommunication operation and the literal interpreted content of the record, including the interpreter's name.

III. The accused must not be forced in any way, that is, not even under the threat of imposition of a procedural fine, to provide a comparative audio record, for example, for the purpose of processing an expert opinion in the sphere of criminalistics and audio expertise.

**(b) Observations on the implementation of the article**

The Act on the Special Protection of Witnesses and Other Persons in connection with Criminal Proceedings (ASPW) provides for the protection of 'endangered persons', and witnesses and experts are covered by the Act (s. 2). Measures available include personal protection, relocation or concealment of identity (s. 3).

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to the measures under the paragraph 1 of article 32 above (Section 3 of Special Witness Protection Act of the Czech Republic).

**b) Observations on the implementation of the article**

The Act on the Special Protection of Witnesses and Other Persons in connection with Criminal Proceedings (ASPW) provides for the protection of 'endangered persons', and witnesses and experts are covered by the Act (s. 2). Measures available include personal protection, relocation or concealment of identity (s. 3).

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Code of Criminal Procedure of the Czech Republic**

**General Provisions for Transcript Recording**

**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.

**Section 55**

(2) Should the identified condition indicate that the witness or persons close to them appear to be under threat of bodily harm or any other serious risk of violation of their fundamental rights in relation to their testimony and witness protection can not be safely ensured by some other means, the law enforcement authorities shall take steps to conceal the identity of the witness; the name and surname and other personal information is not recorded in the transcript but are kept separate from the criminal file and only law enforcement authorities may gain access to such details for the purpose of the case. A witness shall be instructed on the right to request confidentiality of their identity and must sign the transcript under an assumed name and surname under which they are further recorded. If the protection of such persons is required, law enforcement authorities must take all necessary steps without undue delay. A special manner to protect witnesses and persons close to them is stipulated by a special Act. If the reasons for the confidentiality of identity and a separate record of personal data of witnesses has expired, the authority responsible for the legal proceedings at the time shall revoke the level of classification of information, attach the information to the criminal file, and the identity and details of the witnesses cease to be classified; this does not apply to the classified identity of persons listed in Section 102a.

**Section 183a**

(1) In proceedings before the court, the presiding judge or another designated member of the court may exceptionally, and for important reasons, interrogate the accused, witness, expert, or present other evidence outside the main trial and public hearing. The public prosecutor and defence counsel of the accused, whom such an act concerns, are entitled to participate in such action and be notified of it in advance, unless the performance of the action cannot be deferred and notice cannot be achieved. Participation of the accused in such interrogation can be accepted especially in cases when they do not have a defence counsel and if it is the interrogation of a witness who has the right to refuse to testify. The notice of the interrogation of a witness or other action concerning such a witness, whose identity is to be kept confidential for the reasons set out in Section 55 Subsection 2 cannot include any information according to which the true identity of a witness could be established.

(2) The participation of persons referred to in Subsection 1 in an action may be provided,

especially when it is an action that concerns a person younger than eighteen years or a witness whose identity is to be kept confidential due to the reasons set out in Section 55 Subsection 2, even through videoconference equipment.

(3) If such evidence is later used to make a decision at the main trial, public or non-public hearing, it must be executed in compliance with the law. Reading of the transcripts on the interrogation of a witness at the main trial or a public hearing on an appeal will be possible only under the conditions set out in Section 211, and in the case of a witness who is younger than eighteen years of age, on the circumstances that recovery from the memory of the said person could, due to their age, adversely affect their mental and moral development, under the conditions set out in Section 102 Subsection 2.

(4) The presiding judge shall ensure the protection of witnesses and persons close to them who, in connection with their testimony, are in danger of bodily injury, death, or other serious dangers, and where necessary even the confidentiality of their identity or appearance. If it is necessary to ensure the protection of such persons after giving testimony, the presiding judge shall make all the necessary measures after the conclusion of interrogation without undue delay. If necessary, they shall ask for the protection of the said persons by the Police of the Czech Republic. A special protection of witnesses and persons close to them is provided by a special Act.

The Czech Republic provided examples of implementations:

**Constitutional Court judgment I. US 481/04:**

In relation to the case in question, the Constitutional Court refers to its award of 12 October 1994, file number Pl US 4/94 (published under number 214/1994 Coll.), pursuant to which the sense of the right to the public hearing of a case, in conjunction with the right to respond to all evidence, is to provide the defendant, within a criminal process, with the opportunity to verify the evidence against him before the public. In the event of testimony, such verification consists of two components: the first one is the verification of the veracity of the made allegations and the second one is the opportunity to verify a witness' trustworthiness. Hence, the possibility of anonymous witnesses limits the defendant's ability to verify the veracity of the testimonies made against him since it excludes the opportunity to react to the witness and his trustworthiness. Thus, it limits his right to defence and is contrary to the principle of contradiction of a process and the principle of equality of the parties. The fundamental rights or freedoms may be limited, even if their constitutional regulation does not contemplate any limitation, in the event of conflict of these rights and freedoms. In this respect, an essential principle is the maxima principle based on which a fundamental right or freedom may be limited only in the interest of another fundamental right or freedom. If the priority of one of two conflicting fundamental rights is justified, the use of all possibilities of minimizing the intervention in the other of them shall be a necessary condition of the final decision. This conclusion can also be deduced from Article 4(4) of the Charter, meaning that fundamental rights and freedoms have to be saved not only in the application of the provisions pertaining to the limits of fundamental rights and freedoms but also analogously in the event of their mutual conflict.

In the opinion of the Constitutional Court expressed in its judicature (see, for example, award number III. US 210/98 or award number III. US 499/04, [www.judikatura.cz](http://www.judikatura.cz)), the decisive criteria of constitutionality of the possibility of anonymous testimonies are the observance of the principle of subsidiarity (the questioning of a witness may apply if the witness's protection cannot be reliably ensured otherwise) and the necessity to minimize the limitation of the defendant's rights, which undoubtedly happens if evidence is submitted by a witness with

concealed identity, due to a clear conflict between the principle of just proceedings on the one side and the well-founded endeavour of the constitutional law maker and the legislator to protect the democratic society from the growth of crime and, in particular, organized crime on the other. The requirements for proportionality need to be tied not only to the legislative activity but also, to the same extent, to the sphere of judicial power. For this reason, the general court shall be obliged to carefully evaluate the two conflicting values within its decision-making activity and under the strictly restrictive application of the laws (Sections 55 and 209 of the Code of Criminal Procedure).

In terms of the case concerned, it is an essential fact that persons who shall testify against the possible perpetrators are regularly intimidated within organized crime and are threatened with 'revenge' if they provide such testimony, which shall serve as a warning for the other witnesses (or persons who could be potential witnesses). For this reason, the Constitutional Court is of the opinion that even the fact that the prosecuted crime may be related to organized crime based on concrete observations can be considered as a circumstance indicating threatening harm or a serious risk within the meaning of the cited clause.

#### **b) Observations on the implementation of the article**

The Act on the Special Protection of Witnesses and Other Persons in connection with Criminal Proceedings (ASPW) provides for the protection of 'endangered persons', and witnesses and experts are covered by the Act. In addition, the Code of Criminal Procedure includes several evidentiary rules aimed at protection of victims, witnesses and experts (s. 55a on using a video-conference device, s. 55 on confidentiality and anonymity, s. 183a on presenting evidence outside of courtroom or videoconference).

Pursuant to Section 55 par (2) the Code of Criminal Procedure, law enforcement authorities can take steps to conceal the identity of the witness. Thus, the name and surname and other personal information is not recorded in the transcript but are kept separate from the criminal file and only law enforcement authorities may gain access to such details for the purpose of the case. The witness shall be instructed on the right to request confidentiality of their identity and must sign the transcript under an assumed name and surname under which they are further recorded. Regarding the proceedings before the court, the presiding judge or another designated member of the court may exceptionally, and for important reasons, interrogate the accused, witness, expert, or present other evidence **outside the main trial and public hearing**. The public prosecutor and defence counsel of the accused, whom such an act concerns, are entitled to participate in such action and be notified of it in advance, unless the performance of the action cannot be deferred and notice cannot be achieved. The participation of these persons (witness, expert) may be provided even through videoconference equipment (s. 183a CCP).

### **Article 32 Protection of witnesses, experts and victims**

#### **Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no.137/2001 Coll., on the Special Protection of a Witness and Other Persons in Connection with Criminal Proceedings**

**Section 21**

**International Cooperation**

(1) In the framework of international cooperation, classified facts are provided abroad without the approval of the competent state authority.

(2) If it is necessary for the fulfilment of Police tasks pursuant to this Act, it is possible on the basis of an international agreement by which the Czech Republic is bound or if such an agreement has not been concluded, with the approval of the Police President and with the approval of the competent authority of a foreign state, to use for the fulfilment of these tasks a member of a foreign-law enforcement agency. A member of the foreign-law enforcement agency has the rights and obligations of a policeman pursuant to this Act.

(3) When carrying out tasks pursuant to (2) the activity of the member of the foreign-law enforcement body is supervised by an officer designated by the Police President.

(4) The Police is entitled to request, with a prior consent of the protected person, the foreign state authority for cooperation in providing special protection and assistance.

Relocating of witnesses and other persons in connection with criminal proceedings to another country is possible. This is done on the basis of the international treaties on police cooperation that we have concluded with Austria, Germany, Slovakia, Poland, Kazakhstan, Albania, Belgium, Romania, Bulgaria, Macedonia, Serbia, the USA and Israel. Over the last few years, a number of meetings and workshops have taken place within the framework of the international police cooperation, where the issue of relocation has been regularly included in the agenda. These were, in particular, the periodic meetings of the Salzburg Forum – the Working Party on the Protection of witnesses and Europol meetings

**b) Observations on the implementation of the article**

Relocation to other countries is possible on the basis of international treaties on police cooperation.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech referred to the measures under the paragraph 1 of article 32 above (Section 2 of Special Witness Protection Act of the Czech Republic).

**b) Observations on the implementation of the article**

The Act on the Special Protection of Witnesses and Other Persons in Connection with Criminal Proceedings (ASPW) provides for the protection of ‘endangered persons’, and witnesses and experts are covered by the Act. As such, it applies to victims as well. In addition, the Act on Victims of the Crime regulates the rights of victims in detail.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Code of Criminal Procedure of the Czech Republic**

#### **Section 43**

(4) A victim of a criminal offence under the Act on Victims of Criminal Offences has a right to make a declaration in any stage of the criminal proceedings stating what impact the committed criminal offence has had on the victim’s life. The declaration may also be made in writing. A written declaration shall be used in the proceedings before the court as documentary evidence.

The so called Victim Impact Statement enables the victim to execute his or her right to be heard before the court and to share information relevant to the criminal proceedings and/or to the victim him or herself. The Victim Impact Statement is intended to help the victims to deal with the fact they were subjected to a crime and thus moreover to influence the accused to make him realize what the crime he committed has caused.

The victim can make the Victim Impact Statement orally when he or she is interrogated and/or in written form. In the latter case the court then presents the Victim Impact Statement as documentary evidence and it can have impact on the evaluating of the severity of the crime.

The Czech Republic provided examples of implementations:

#### **Constitutional Court judgment I. US 1587/07:**

Within its decision-making activity, the Constitutional Court has many times expressed the conclusion that no person or entity may achieve the criminal prosecution of a particular person through a constitutional complaint. It ensues from this that the aggrieved party has no fundamental right to the person who has inflicted damages on him being criminally prosecuted. The aggrieved party shall be entitled to submit proposals for the completion of evidence, to consult the files, to participate in the trial and the public appellate hearing, and to express his opinion on the matter prior to the completion of the proceedings. The aggrieved party who, pursuant to the laws, seeks compensation for damages from the accused suffered as a consequence of a crime shall also be entitled to propose that the court orders the defendant to

provide compensation for such damages. However, in the criminal proceedings the state's right (Article 80(1) of the Constitution) to the conduct identified as criminal pursuant to the laws being prosecuted and condemned shall prevail over the aggrieved party's right or right of any other natural person or legal entity (as ensues from Article 36(1) and Article 38(2) of the Charter). The Constitutional Court understands the anchorage of the aggrieved party's rights in the Code of Criminal Procedure as beneficium legis given by the legislator. The centre of the basic purpose of the criminal proceedings is the need for investigating crimes appropriately and imposing just sanctions on the perpetrators pursuant to the laws. To consider whether a person qualifies as an aggrieved party within the meaning of Section 43 of the Code of Criminal Procedure, the legal qualification for which the criminal proceedings are conducted shall not be decisive but it shall be necessary to compare the definition of an aggrieved party in the cited clause with the facts supported in the given phase of the criminal proceedings based on the available findings. However, in the case concerned it needs to be pointed out that the complainant asked for being allowed to consult the file in the initial phase of the criminal proceedings and during the verification, in which the basic facts were ascertained and only then the documents justifying the suspicion of a crime, its consequences, the aggrieved parties, and the perpetrator(s) and supporting the possible relevant legal qualification of the ascertained conduct were collected, so the investigative, prosecuting and adjudicating bodies could arrive at a completely convincing opinion on who was the aggrieved party in the given matter. Nevertheless, in this respect it is necessary to emphasise that with regard to the initial phase of the criminal proceedings and the nature of the verified facts, the investigative, prosecuting and adjudicating bodies would have carefully considered the procedure pursuant to Section 65(2) of the Code of Criminal Procedure, that is, the possibility of consulting a file, even if they had recognized the complainant's status of an aggrieved party.

**(b) Observations on the implementation of the article**

Victims have a right to make oral or written declarations at any stage of the criminal proceedings (s. 43 CCP).

**Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

According to the present Czech legal system, employee cannot face any retaliation for his whistleblowing related activities. Employee cannot be dismissed without regular legal reason literally expressed in **Labour Code** or face any unlawful retaliation (see below **Sections 16 and 17 on discrimination and unequal treatment**).

**Act No. 262/2006 Coll., the Labour Code, as amended**

**Section 16**

(1) Employers shall ensure equal treatment for all employees as regards employee working conditions, remuneration for work and other emoluments in cash and in kind (of monetary value), vocational (professional) training and opportunities for career advancement (promotion).

(2) Any form of discrimination in labour relations is prohibited. The terms, such as direct discrimination, indirect discrimination, harassment, sexual harassment, persecution, an instruction to discriminate and/or incitement to discrimination, and the instances in which different treatment is permissible, are regulated in the Anti-Discrimination Act (Note 108).

(3) Different treatment arising from the nature of occupational activities where this different treatment is a substantial requirement necessary for work performance is not considered as discrimination; the purpose followed by this derogation must be legitimate and the requirement must be adequate. Measures which are justified and aimed at preventing, or levelling out, disadvantages arising from the fact that a certain individual belongs to a group in respect of which relevant reason is laid down in the Anti-Discrimination Act shall not be deemed as discrimination.

### **Section 17**

Remedial measures relating to protection against discrimination in labour relations are regulated in the Anti-Discrimination Act..

The same legal protection is also provided in **Civil Service Act** for civil servants.

### **Article 98**

Provisions of Articles 16 and 17 of the Labour Code shall similarly apply to equal treatment and non-discrimination in the civil service status.

### **Article 205**

#### **Enabling Provisions**

The Government shall promulgate, by ways of a Decree, the following:

- m) Service authority organisational rules,
- n) Rules to ensure balance of the service and the family and personal life,
- o) Rules for service performed from another location and characteristics of activities pertaining to individual fields of service, in respect of which the service from another location may not be arranged,
- p) Rules to protect civil servants who reported their suspicion of unlawful conduct of a senior civil servant or another civil servant, an employee, or a person serving pursuant to another law. The Government shall determine proper measures to protect such whistle-blowers; in particular, the Government shall stipulate conditions under which the whistle-blower would remain anonymous, set up means to report, also anonymously, unlawful conduct of civil servants, and select a procedure to disseminate information on the process and results of investigation of the whistle-blowers' reports and relevant statutory periods.

and in the subsequent **Government Regulation No. 145/2015 Coll.** Already today an employer cannot retaliate employee for whistleblowing, although the whistleblowing is not explicitly mentioned in Czech law.

- The **draft law on legislative protection of whistleblowers** that was proposed and adopted by the Government but not by the Parliament was a result of long-term debate among Czech legal experts. Regulatory Impact Assessment process, legal study made by the Office of the Government and inter-ministerial commenting procedure were made before the draft law. Czech legal experts (sitting in Government Legislative Council) recommended amending Czech law only with particular provisions due to character of the private law relations between employer and his employees and labouring law protection which already exists. The suggested draft law proposed to extend the protections to discriminatory treatment against whistleblowers, and introduced a shared burden of proof. The provision would apply even when the whistleblowing was made directly to the law enforcement authorities.
- As the previous governmental draft law was not adopted by the Parliament, there is a **new draft law on whistleblowing** that is in preparation. The current Government has undertaken to draft the new law on whistleblowing, which is stated in the Government's Legislative Work Plan for the remainder of 2018, in which the Minister of Justice is required to submit the new draft law to the Government for its decision in 2018. The new draft law should provide more comprehensive legal regulation over the previous draft law and strengthen the whistleblower protection measures that are already in place. According to the Policy Statement of the Government of the Czech Republic, the new draft law should be in line with international recommendations. The new draft law will build also on the *Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting breaches of Union law* presented at the end of April 2018, currently in the legislative process. As the transposition of this comprehensive Directive should take place in 2021, any differences will be solved in 2021 by an amendment to the Czech legislation.
- **Government Regulation No. 145/2015 Coll.** stipulates that any civil servant reporting a crime or wrongdoing cannot be in any way punished, discriminated or under coercion (even when reporting anonymously). The rules and procedures of whistleblowing process within the civil service are also set in the Regulation. The Regulation creates a post of so called “investigator” that is responsible for collecting and investigating received claims and subsequently for informing responsible the whistleblower (if his identity is known) and responsible authorities. The “investigator” has 20 (in more difficult cases 40) days to investigate the claims. The role of “investigator” is set at each central authority (also for its subordinate bodies) and also at the governmental level for members of government and certain other supreme officials. When civil servants notice corruption activities, they should inform the investigator. The Regulation stipulates the process of submitting a claim and includes also rules for anonymizing those claims, where the whistleblower wishes to remain anonymous. The claims can also be made anonymously. The system of processing whistleblower claims does not affect the general obligation to report crimes to law-enforcement bodies. Also “investigators” share this obligation to report (see an annex – Governmental Decree on Whistleblowing).

For the private sector there is no general regulation of whistleblowing, but the Labor Code contains basic framework of protection of employees that report wrongdoings (dismissal is permitted in several enumerated situations - violation of law, gross breach of working duties, evident redundancy; employer has general duty of equal treatment with employees and obligation of no-discrimination). Nevertheless, some of the big enterprises (banks, international

companies, large industrial companies etc.) have also hotlines for whistleblowers reporting the corruption, bribery or other illicit acts established.

**Court judgment (Rt) 10 To 319/2008:**

I. Pursuant to Section 55(2) of the Code of Criminal Procedure, within criminal proceedings it is not possible to conceal an interpreter's identity and refer to the fact that the interpreter may be a person at risk and a protected person within the meaning of Section 2 of Act No. 137/2001 Coll. II. If a telecommunication operation record in a foreign language is used as a proof, its content has to be interpreted into Czech. Part of the protocol on this record has to be a detail of the language of the telecommunication operation and the literal interpreted content of the record, including the interpreter's name.

III. The accused must not be forced in any way, that is, not even under the threat of imposition of a procedural fine, to provide a comparative audio record, for example, for the purpose of processing an expert opinion in the sphere of criminalistics and audio expertise.

**(b) Observations on the implementation of the article**

No special legislation is in place to protect reporting persons and Czechia referred to the provisions of the ASPW and anti-discrimination provisions of the Labour Code (s. 16-17) as relevant. A new regulation was adopted in 2015, which, among others, stipulated that civil servants reporting a crime cannot be punished or discriminated against and created a post of 'investigators' within public bodies responsible for investigating claims received and advising reporting persons. A draft law on whistleblower protection was prepared in 2016 and Czechia was in the process of assessing the usefulness of its adoption. As for the private sector, the Labour Code provides for general protection of employees that report wrongdoings (s. 7). Several larger enterprises have established reporting hotlines.

It is recommended that Czechia continue the efforts to strengthen measures to provide protection of reporting persons against unjustified treatment and retaliation.

**Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Civil Code of the Czech Republic**

**§ 580**

(1) A juridical act is also invalid if it is contrary to good morals or contrary to a statute, if so required by the sense and purpose of a statute.

### **§ 588 of the Civil Code**

A court shall, even of its own motion, take into account the invalidity of a juridical act which is manifestly against good morals or which is contrary to a statute and manifestly disrupting public order. This also applies in cases where a juridical act requires the provision of a performance which was impossible from the beginning.

According to **Section 48 Paragraph 5 Letter b) of the Act No. 134/2016 Coll. on Public Procurement** the contracting authority has the possibility to exclude the competitor from the awarding process if the conflict of interests has occurred and that it cannot be remedied by any other solution except for cancelling the competition altogether.

#### **(b) Observations on the implementation of the article**

A juridical act is invalid if it is contrary to good morals or contrary to a statute (s. 580 Civil Code). In addition, s. 588 states that the court shall take into account its own motion for invalidity of legal acts which are clearly abhorrent to morality or which contravene the law or public order. As such, a contract can be annulled or rescinded, or remedial action can be taken if an act had involved corruption.

### **Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Civil Code of the Czech Republic**

##### **§ 2909**

##### **Breach of good morals**

A tortfeasor who causes harm to a victim by an intentional breach of good morals has the duty to provide compensation for it; however, if the tortfeasor was exercising his right, he has the duty to provide compensation for the damage only if his main purpose was to harm another.

##### **§ 2910**

##### **Breach of a statute**

A tortfeasor who is at fault for breaching a statutory duty, thereby interfering with an absolute right of the victim, shall provide compensation to the victim for the harm caused. A tortfeasor also becomes obliged to provide compensation if he interferes with another right of the victim by a culpable breach of a statutory duty enacted to protect such a right.

Section 43 (in force since 1 January 2018) and Section 47 of the Code of Criminal Procedure:  
**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 who suffered 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. In case a criminal offence of Negligence of mandatory support is concerned (Section 196 of the Criminal Code), a material damage caused or the aggrieved person will be understood for the purpose of this Code also as owed support payments.

(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. The aggrieved person in obliged to prove the grounds and amount of damage, non-material harm or unjust enrichment. The aggrieved person must be advised on these rights and obligations. If the background documentation for deciding on the claim of the aggrieved person is insufficient and if there are no substantial reasons against it, in particular the need to announce the judgment or issue a penal order without undue delay, the court will notify the aggrieved person in what manner he may supplement the documentation and provide him an adequate time limit therefor, which he will determine at the same time.

(4) The aggrieved person, who is a victim of crime according to the Act on Victims of Crime, is entitled to make a statement on how the committed crime affected his life in any stage of the criminal proceedings. The statement may also be made in writing. Such written statement will be produced in evidence in proceeding before the court.

(5) 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.

### **Securing Claims of Aggrieved Persons**

#### **Section 47**

(1) If the aggrieved person suffered damage or non-material harm by the criminal offence or if the accused person gained unjust enrichment at his expense, will be obstructed or impaired, the claim may be secured on the assets of the defendant up to the probable amount of damage or non-material harm, or up to the probable extent of unjust enrichment. Claims that cannot be asserted in criminal proceedings cannot be secured. Assets that are excluded from execution of the decision on securing a claim according to a special legal enactment cannot be used for securing such claim.

(2) The securing referred to in sub-section (1) will 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 will 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 will prohibit the accused person, in the resolution on securing the claim, from transferring the assets referred to in the resolution on securing the claim and eventually also with assets that will be listed in the course of execution of such a decision, after being notified of the decision, to another person or to encumber it or to intentionally damage or destroy it. They will also order the accused person to notify the court and in pre-trial proceedings the public prosecutor within 15 days following the notification of the resolution, and as far as subsequently listed assets is concerned, in a time limit set by these authorities, whether and who has the right of first refusal or other right to the seized assets, or whether the right of disposal with the assets is otherwise limited, and in case a right to property was secured, also who is the person obliged to provide the corresponding consideration; the accused person will be advised about the consequences of failing to comply with such order in the stated time limit (Section 66). If it is necessary for the purposes of securing the claim, the resolution on securing or any subsequent resolution may forbid or restrict execution of other rights associated with the seized assets, including future rights. Legal acts conducted contrary to the prohibitions referred to in sentence one and three will be null and void, whereas the court will hold the action null and void even without a petition; the accused person must be advised thereof.

(5) The assets of the accused person subject to the decision on the securing referred to in subsection (1) and (2) may be disposed with within the frame of execution of a decision, public auction, distraint proceedings or insolvency proceedings, only with a prior consent of the court and in pre-trial proceedings the public prosecutor; this does not apply if execution of the decision is performed or if the assets or disposed with in distraint or insolvency proceedings or public auction in order to settle a claim of the State. Claims that form the subject of execution of a decision, public auction, distraint or execution proceedings will primarily be settled by assets not affected by the decision on seizure.

(6) Rights of third parties to the seized assets may be applied under special legal enactment.

(7) 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.

(8) Execution of the decision on securing a claim of the aggrieved person and the procedure in administration of the seized assets is stipulated by a special legal enactment. Return, handover and other disposal with the seized item that was surrendered or removed from possession, will be governed accordingly by provisions on return, handover or other disposal with items important for criminal proceedings.

Czechia provided examples of implementation:

**Resolution of the Supreme Court dated 10 December 2008, file No. 7 Tdo 1057/2008  
Convictions for football corruption.**

The court treated the Czech-Moravian Football Association as a victim, but under § 229 (1) of the Code of Criminal Procedure the injured party was referred to compensation to civil proceedings.

The attribution of fair and unbiased decision-making is impartiality. Any person or collective body that is called upon to make a decision in conflict of two parties, for whatever reason, must decide impartially. Impenetrability lies in qualities of the decisive person, respectively, persons, to make decisions in accordance with the rules for decision-making without prejudice and fairness, without favoring any party. If they do not do so, their actions have legally and morally no significance. In all democratic countries, the impartiality of decision-making is an attribute of fair decision-making, and it is generally accepted that the impartiality of decision-making interferes primarily with corruption in any form. This is true as well to the full extent of the football judges who decide football matches. It does not, therefore, hold the view that the bribery cannot be considered as influencing the results of football matches because the spectators see primarily the victory of their team and it means, therefore, especially in lower competitions, that the audience collects among themselves to bribe for the referee or that the acceptance of bribes is not excluded in case when the bereaved football referee accepts them to proceed in accordance with their duties and to resist the pressure of others.

On 10th December, 2008, the Supreme Court of the Czech Republic dealt with the extraordinary appeal in an in camera hearing of the accused 1) J. H., 2) Mgr. V. Z., 3) S. H., 4) J. H., 5) J. D., 6) Ing. B. K., 7) E. C., 8) P. Ř., and 9) I. V., against the decision of the Regional Court in Brno - Branch in Zlín dated 4th March, 2008, file No. 6 To 560/2007, which decided as a court of appeal in criminal proceedings before the District Court in Kromeriz under the file No. 2 T 186/2004 as follows:

According to § 265i (1) e) of Civil Procedure Code the appeals of the accused J. H., Mgr. V. Z., S.H., J.H., J.D., Ing. B.K., E.C., P.R. and I. V. have been rejected.

#### **Justification:**

By judgment of the District Court in Kromeriz of 11th October, 2007, file No. 2 T 186/2004, as amended by the same court dated 31.10.2007, file. No. 2 T 186/2004, in connection with the resolution of the Regional Court in Brno - branch in Zlín dated 4th March, 2008, file No. 5 To 560/2007, the accused have been convicted and sentenced as follows:

The accused J.H. was convicted of the bribery under § 161 (1) of the Criminal Code in points (1) to (5), which under the paragraph 3) committed in complicity pursuant to § 9 (2) of the Criminal Code and this offence he was, pursuant to § 161 (1) of the Criminal Code sentenced to the imprisonment for six months. According to § 58 (1) of the Criminal Code and § 59 (1) of the Criminal Code his sentence was conditionally postponed for a probationary period of two and a half years. He was also placed under § 53 (2) a) of the Criminal Code a fine in the amount of CZK 100,000 and pursuant to § 54 (3) of the Criminal Code in the event that a fine was not imposed within the prescribed period, a penalty of one month's imprisonment. According to § 49 (1) of the Criminal Code and § 50 (1) of the Criminal Code the defendant was ordered to impose a ban on an activity consisting of a ban on the exercise of the function of the football official in relation to football competitions organized by the Czech-Moravian Football Association ("CMFS"), by all regional and district football associations for a period of five years. In terms of § 55 (1) (a), (b) of the Criminal Code the defendant has been charged with the forfeiture of the thing, namely the mobile phone NOKIA 6310i, the Koracell NK 5110 battery and the cash of CZK 175,000.

The accused Mgr. V. Z. has been recognized as guilty of receiving a bribe pursuant to § 160 (1) of the Criminal Code under the item 6), and for this offence and for the concluding offence of accepting a bribe pursuant to § 160 (1) of the Criminal Code, which was recognized by a guilty verdict of the District Court in Ostrava of 28th November, 2006, file No. 15 T 66/2005, in connection with the judgment of the Regional Court in Ostrava dated 4th May, 2007, the file No. 3 To 243/2007, he was convicted according to § 160 par. 1 of the Criminal Code pursuant to § 35 (2) of the Criminal Code to a total imprisonment of ten months. According to § 58 of the Criminal Code and § 59 (1) of the Criminal Code he was suspended for two and a half years for a probationary sentence. According to § 35 (2) of the Criminal Code at the same time, the sentence on punishment from the judgment of the District Court in Ostrava of 28th November, 2006, file No. 15 T 66/2005-749 has been cancelled, in conjunction with the judgment of the Regional Court in Ostrava of 4th May, 2007, file No. 3 To 243/2007 897, at the same time, all other decisions to this statement have been cancelled in the following content, if due to the change that occurred by the annulment, the substance disappeared. Pursuant to § 53 (1) of the Criminal Code, the accused Mgr. V. Z. has been imposed to a fine in the amount of CZK 200,000. Under § 54 (3) of the Criminal Code, the defendant was ordered to impose a two-month standstill sentence in the event that a fine was not enforced within the prescribed period. According to § 49 (1) and § 50 (1) of the Criminal Code he was charged with a ban on an activity consisting of a ban on the performance of a football referee in relation to football competitions organized by CMFS, all regional and district football associations for five years.

The accused S. H. was found guilty of receiving a bribe pursuant to § 160 (1) of the Criminal Code under the item 7), and for this crime, according to § 160 (1) of the Criminal Code sentenced to imprisonment of six months. According to § 58 (1) of the Criminal Code and § 59 (1) of the Criminal Code he was suspended for a trial period of two years to the accused prisoner. Pursuant to § 53 (1) of the Criminal Code, an amount of CZK 100,000 was imposed on the accused. Under § 54 (3) of the Criminal Code, the defendant was granted a one-month surrender penalty in the event that a financial penalty would not be executed within the prescribed period. According to § 49 (1) of the Criminal Code and § 50 (1) of the Criminal Code the defendant was ordered to impose a ban on an activity consisting of a ban on the performance of a football referee in relation to football competitions organized by CMFS, all regional and district football associations for a period of three years. Pursuant to § 55 (1) a) of the Criminal Code the defendant was charged with forfeiting the case, namely the Nokia 6310i mobile phone, with the Nokia KI 4811123A battery.

The accused J. H. was found guilty of committing an offence under § 160 (1) of Criminal Code in form of assistance pursuant to § 10 (1) c) of the Criminal Code under item 8) and the offence of accepting a bribe pursuant to § 160 (1) of the Criminal Code under the paragraph 9) and was convicted under § 160 (1) of the Criminal Code to the imprisonment of eight months. According to § 58 (1) and § 59 (1) of the Criminal Code he was suspended for two and a half years for a probationary period. Pursuant to § 53 (1) of the Criminal Code, an amount of CZK 100,000 was imposed on the accused. Under § 54 (3) of the Criminal Code, the defendant was charged with a penalty of one month's imprisonment in the event that a fine was not enforced within the prescribed period. According to § 49 (1) and § 50 (1) of the Criminal Code an injunction was imposed on the accused, consisting in a ban on the performance of a football referee in relation to football competitions organized by CMFS, all regional and district football associations for a period of three years.

The accused J. D. was found guilty of receiving a bribe under § 160 (1) of the Criminal Code under the point 10) and was, according to § 160 of the Criminal Code sentenced to the imprisonment of five months. According to § 58 of the Criminal Code and § 59 (1) of the Criminal Code his sentence was conditionally suspended for a trial period of two years. Pursuant to § 53 (1) of the Criminal Code, he was charged with a fine of CZK 50,000. Under § 54 (3) of the Criminal Code, the defendant was ordered to impose a two-week prison sentence in the event of a non-pecuniary penalty being enforced within the prescribed period. According to § 49 (1) and § 50 (1) of the Criminal Code an injunction was imposed on the accused, consisting in a ban on the performance of a football referee in relation to football competitions organized by CMFS, all regional and district football associations for a period of two years.

The accused Ing. B. K. has been recognized as guilty of the bribery under § 160 (1) of the Criminal Code under points 11) and 12) and was, according to § 160 of the Criminal Code sentenced to the imprisonment of eight months. According to § 58 of the Criminal Code and § 59 (1) of the Criminal Code his sentence was conditionally suspended for a trial period of two years. Pursuant to § 53 (1) of the Criminal Code, he was charged with a fine of CZK 100,000. Under § 54 (3) of the Criminal Code, the defendant was charged with a penalty of one month's imprisonment in the event that a fine was not enforced within the prescribed period. According to § 49 of the Criminal Code and § 50 (1) of the Criminal Code an injunction was imposed on the accused, consisting in a ban on the performance of a football referee in relation to football competitions organized by CMFS, all regional and district football associations for a period of three years.

The accused E.C. was recognized as guilty of the bribery under § 160 (1) of the Criminal Code under paragraph 13), and for this offence, according to § 160 (1) of the Criminal Code sentenced to imprisonment of six months. According to § 58 (1) of the Criminal Code. and § 59 (1) of the Criminal Code he was suspended for a trial period of two years to the accused prisoner. Pursuant to § 53 (1) of the Criminal Code, a fine of 50,000 CZK was imposed on the accused person. Under § 54 (3) of the Criminal Code, he was granted a two-week prison sentence in the event that a fine was not enforced within the prescribed period. According to § 49 (1) of the Criminal Code and § 50 (1) of the Criminal Code an injunction was imposed on the accused, consisting in a ban on the performance of a football referee in relation to football competitions organized by CMFS, all regional and district football associations for a period of two years.

The accused P. Ř. has been found guilty of receiving a bribe pursuant to § 160 (1) of the Criminal Code under the point 15) and has been, according to § 160 of the Criminal Code sentenced to imprisonment of six months. According to § 58 of the Criminal Code and § 59 (1) of the Criminal Code his sentence has been conditionally suspended for a trial period of two years. Pursuant to § 53 (1) of the Criminal Code, he was charged with a fine of CZK 50,000. Under § 54 (3) of the Criminal Code, the defendant has been sentenced to two weeks' imprisonment in the event that a fine was not enforced within the prescribed period. According to § 49 of the Criminal Code and § 50 (1) of the Criminal Code an injunction has been imposed on the accused, consisting in a ban on the performance of a football referee in relation to football competitions organized by CMFS, all regional and district football associations for a period of two years.

The accused has been convicted of the bribery under § 161 (1) of the Criminal Code in the form of instructions pursuant to § 10 (1) b) of the Criminal Code under the points 16) and 17) and has been sentenced for this offence pursuant to § 161 (1) of the Criminal Code to a term of

imprisonment of four months. According to § 58 of the Criminal Code and § 59 (1) of the Criminal Code his penalty has been suspended for two and a half years for a probationary sentence. Pursuant to § 53 (2) a) of the Criminal Code a fine of CZK 350,000 has been imposed on the accused. Under § 54 (3) of the Criminal Code, the defendant has been sentenced to three months and two weeks' imprisonment if a fine was not imposed within the prescribed period.

According to § 229 (1) of the Civil Procedure Code the Czech-Moravian Football Association as the injured party has been referred to for damages to civil proceedings.

The appeal of all defendants against the judgment of the court of the first instance was by an order of the Regional Court in Brno - a branch in Zlin dated 4th March, 2008, the file No. 6 To 560/2007, rejected according to § 256 of the Code of Criminal Procedure as unjustified.

**Judgment of the Regional Court in Prague dated 18th May, 2012, file No. 7 T 97/2011**

Condemnation of the contemporary deputy mayor of the city and then a deputy for corruption. The court negotiated with the city of Kolin as a victim, but under § 229 (1) of the Code of Criminal Procedure, as the injured party it has been referred to for the compensation for civil proceedings.

**(b) Observations on the implementation of the article**

Compensation for damage can be claimed on the basis of the provisions of the Civil Code (s. 2909-2910) and the Act on Responsibility for Damage Caused during Execution of Public Authority by Decision of Improper Execution of Official Duties. In addition, a damaged person can initiate a civil action directly within criminal proceedings (s. 43-47 CCP).

**Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

Police, prosecutor's offices and criminal courts are the main bodies involved in the fight against corruption.

At the police level, a new nation-wide National Organized Crime Agency (NOCA) has been established playing a key role, among others, in high-level corruption cases.

**Police Presidential Decree No. 103/2013 on the fulfillment of certain tasks of the Police of the Czech Republic in criminal proceedings.**

**PART TWO**

# **JURISDICTION**

## **Chapter I**

### **Factual and functional jurisdiction**

#### **Article 4**

Tasks of the police authorities of the territorial departments of the regional headquarters and district and city directorates

(1) The tasks of the police authorities shall be carried out within the territorial departments of the regional headquarters and the district and municipal headquarters of

(a) district (local) police departments

by investigating and verifying the offenses to which the law provides a custodial sentence whose upper limit does not exceed 3 years and which do not fall within the competence of other organizational articles of the territorial unit,

b) traffic inspectorates

by investigating and verifying the offenses to which the law provides a custodial sentence of no more than 3 years, committed in breach of law 10a),

(c) General Criminal Unions (Unions), Economic Crime Units (Unions) and Case Analysis and Crime Information

by the investigation of the offenses appointed at first instance to the district court and the investigation and inspection of criminal offenses,

1. if they have been notified to them and if the law provides for a custodial sentence of up to three years,

2. which themselves reveal,

3. which have been passed on to them for reasons of factual and local jurisdiction,

4. which were taken over by the decision of the chief officer,

5. which were ordered by decision of a senior manager or the prosecutor, or

6. for cases of

6.1. suicide,

6.2. finds of unknown corpses,

6.3. deaths in suspicious circumstances,

6.4. related to extremism<sup>11</sup>),

6.5. related to the protection of intellectual property rights,

6.6. when the purpose of the attack is the environment<sup>12</sup>),

and where these tasks have not been taken over by the police authorities referred to in Articles 5 to 7 and 9.

(2) The Director of the District Directorate, the City Directorate and the Head of the Territorial Department of the Regional Directorate may, in justified cases, via the Director of the Regional Directorate, request the Deputy Police Chief of Criminal Police and the Investigation Service to approve the partial amendment of the material jurisdiction (Article 5 (2)). The request must include an opinion from the Director of the Regional Directorate.

## Article 5

### Tasks of the police authorities of the regional directorates

(1) The tasks of the police authorities are carried out within the regional headquarters of the police officers at:

a) Criminal Police and Investigation Services and Traffic Accident Investigation Unit of the Prague Police Headquarters

by investigating, verifying and inspecting the crimes of which the Regional Court is the first instance and at the District Police Department of the Prague City Police Headquarters and the District Court,

1. which reveals itself,
2. which have been handed over to them for reasons of factual and local jurisdiction,
3. which were taken over by the decision of the chief officer,
4. assigned to them by decision of a senior manager, or
5. criminal offenses within the competence of the District Court,
  - 5.1. against the currency and means of the payment, with the exception of a criminal offense under § 234 (1) of Act No. 40/2009 Coll., Criminal Code,
  - 5.2. which have been ordered by a decision of a senior manager or a public prosecutor, where these tasks have not been taken over by the police authorities referred to in Articles 6 and 7

b) Department of Traffic Accidents of the Department of Traffic Police of the Regional Directorate of Police of the Capital City of Prague

by investigating and verifying the offenses to which the law provides a custodial sentence with the upper limit of no more than 3 years, committed in breach of law 10a),

(c) motorway departments

by investigation and verification of criminal offenses in territorial jurisdiction established by the internal act of the director of the regional police headquarters<sup>14</sup>), for which the law provides for a custodial sentence whose upper limit does not exceed 3 years and which do not fall under the competence of other organizational articles of the regional directorate,

d) department of residence control, search and escort, department of residence programs, department of documents and specialized activities, and documentation department of the Aliens Police

by investigating and verifying the offenses to which the law provides a custodial sentence with the upper limit of no more than 3 years,

1. committed in connection
  - 1.1. with violation of the residence regime of foreigners in the territory of the Czech Republic and assisting in unauthorized residence,
  - 1.2. with the damage to the equipment designed to identify and notify the state frontiers and the equipment designed to prevent unauthorized crossing of the state border,
  - 1.3. with the cross-border crime,
  - 1.4. with the organization, facilitation or abetting of unauthorized crossing of the state border or assistance with transportation across the territory of the Czech Republic after illegal crossing of the state border,
2. which they themselves reveal in connection
  - 2.1. with unlawful behavior in the driving sector,

2.2. with prostitution and threatening morality.

(e) Department of Rail Police and Trains Escort

by investigation and verification of offenses to which the law provides a custodial sentence of no more than 3 years if committed in or in connection with rail transport or in railway buildings and sidings designated by the competent regional directorate of the police and which do not fall within the competence other organizational articles of the regional directorate.

(2) The Director of the Regional Directorate, in justified cases, after prior approval of the Deputy Chief Police Officer for the Criminal Police and Investigation Service, grants authorization to the partial modification of substantive/material jurisdiction by his/her own internal act on the basis of the development of the criminal occurrence or the security situation, after prior discussion with the State Prosecutor's Office.

## **Article 6**

Tasks of police bodies of the Criminal Police Service and investigations of the police bodies with the national field of action

Tasks of the police authorities are carried out within the framework of the Criminal Police Service and the investigation of the police bodies with the nationwide jurisdiction the police officers at

a) National Anti-drug Headquarters of the Criminal Police and Investigation Service

1. by investigation, verifying and inspecting of the illicit manufacture and other handling of narcotic and psychotropic substances and poisons according to § 283, possession of narcotic and psychotropic substances and poison under § 284, illicit cultivation of plants containing narcotic or psychotropic substances according to § 285, production and the possession of the object for the illicit manufacture of narcotic and psychotropic substances and poisons pursuant to § 286, the spread of drug abuse according to § 287, the production and other handling of substances with hormonal effect according to § 288 of the Criminal Code and the crimes committed in connection with these crimes,

1.1. which he discovers by his own investigation, unless he decides to transfer them according to local and substantive jurisdiction to another police authority,

1.2. which shall be taken over by the decision of the Director of the Service, with the prior consent of the competent and local police authority,

1.3. which have been found to have been committed as organized or continuing crimes, in the territory of more than one regional directorate or with an international element, taking into account their size and gravity and the decision of the Director; or

1.4. which have been ordered by the decision of a senior manager or prosecutor, including offenses committed in connection with the legalization of proceeds from such offenses,

2. by providing methodological and professional assistance to other police authorities in criminal matters within the scope of the department,

(b) National Headquarters against Organized Crime of the Criminal Police and Investigation Service

1. Investigation, verifying and inspecting

1.1. of intentional criminal offenses supervised by the Chief Prosecutor's Office<sup>15)</sup> if, by analogy with the Prosecutor's Office, and in view of the lower level of factual, legal or evidentiary complexity, he does not decide to refer to a differently competent and locally competent police body,

1.2. criminal offenses committed in connection with the exercise of  
1.2.1. Senators, Deputies, Members of the Government, President and Vice-President of the Supreme Audit Office, Member of the Czech National Bank Board, Ombudsman, Judges and Public Prosecutors,

1.2.2. representatives of the central state administration bodies (in the capacity of the Minister, the Deputy Minister, the Director of the Office and his/her deputy), which they reveal in their own investigation or are forwarded to them by a department with territorial competence or by another department with national competence,

1.2.3. representatives of the territorial self-government of the regions in the capacity of the governor and his deputy, which are revealed by his own investigation or are handed over to him by a department with territorial competence or by another department with the national competence, in particular if with regard to the seriousness of the conduct, the factual, legal or evidential simplicity taking into account other relevant circumstances of the case, does not decide to refer to a differently competent and locally competent police authority,

1.3. criminal offenses of the organized criminal groups (§ 361 of the Criminal Code), or particularly serious and organized crimes in the field of violent manifestations, extortion and explosive systems used against life, health or property, illicit trafficking in weapons, explosives, military material, chemical, biological, radioactive and other highly dangerous substances, illegal migration and trafficking in human beings, terrorism and extremism, against currency and means of payment, terrorist financing,

1.4. cyber-crime cyber-attacks (16) reported by the National Security Authority, which are characterized by a particularly sophisticated mode of execution or a particularly serious consequence,

1.5. criminal offenses which

1.5.1. they reveal by his own investigation if it does not decide to transfer them according to local and substantive jurisdiction to another police body,

1.5.2. takes upon the decision of the Director of the National Center against Organized Crime of the Criminal Police Service and Investigation, upon prior consent of the competent and locally competent police authority, or

1.5.3. were ordered by decision of a senior manager or prosecutor,

1.6. criminal offenses committed in connection with the legalization of the proceeds of the offenses listed in subsections 1.1 to 1.5 and the execution of acts in connection with the activities of the National Center against Organized Crime of the Criminal Police Service and Investigation as the Criminal Investigation Office of the Czech Republic<sup>16a)</sup>

2. by providing methodological and professional assistance to other police authorities in criminal matters within the competence of the unit,

3. providing methodological and professional assistance to other police authorities in criminal matters within the competence of the unit,

c) the Office for Documentation and Investigation of Crime of Communism of Crime Police and Investigation by investigating, verifying and inspecting of Criminal Offenses

1. committed from 25th February, 1948 to 29th December, 1989 if, for political reasons

incompatible with the fundamental principles of the rule of law of the democratic state, no final conviction or release of the indictment occurred<sup>17)</sup>  
2. according to the internal management act<sup>18)</sup>.

#### **Article 7**

Tasks of police bodies of the Police Presidium of the Czech Republic

Tasks of the police authorities are performed by the police officers within the Police Presidium of the Czech Republic (hereinafter referred to as the "Police Presidium") at the Criminal Police and Investigation Service. Such tasks are investigations, verifications and inspections of criminal offenses which have been taken on the basis of a decision by the Director of the Criminal Police and Investigation Service Office, or which have been ordered by the Deputy Chief of Police for the Criminal Police and Investigation Service or by the Police President.

#### **Article 8**

Tasks of the police authorities of Directorate of the Alien Police Service

Tasks of the police authorities are fulfilled within the Directorate of the Alien Police Service by the officers included in the

(a) Department of criminal investigation and documentation  
by investigating and verifying the crimes to which the law provides a custodial sentence with the upper limit of no more than 5 years, especially

1. committed in connection

1.1.with violation of the residence regime of foreigners in the territory of the Czech Republic and assisting in unauthorized residence,

1.2.with the damage to the equipment designed to identify and notify the state frontiers and the equipment designed to prevent unauthorized crossing of the state border,

1.3.with the cross-border crime,

1.4.with the organization, facilitation or abetting of unauthorized crossing of the state border or assistance with transportation across the territory of the Czech Republic after illegal crossing of the state border,

2. which they themselves reveal in connection

2.1.with unlawful behavior in the driving sector,

2.2. with prostitution and threatening morality,

b) Aliens Police Inspectorate at Prague - Ruzyne International Airport, Aliens Police Inspectorate at Karlovy Vary International Airport, Aliens Police Inspectorate at Pardubice International Airport, Aliens Police Inspectorate at Brno-Turany International Airport and Foreign Police Inspectorate at Ostrava-Mosnov International Airport

by investigating and verifying the offenses to which the law provides a custodial sentence, the upper limit of which does not exceed 3 years,

1. committed on the territory of the international airports Prague - Ruzyne, Karlovy Vary, Pardubice, Brno - Turany and Ostrava - Mošnov,

2. which they themselves discover outside the territory of an international airport in carrying out tasks in the field of civil aviation protection,

where these tasks have not been taken over by the police authorities referred to in Articles 4 to 7,

c) the reception center of foreigners the Stop by investigation and verification of criminal offenses, to which the law provides a custodial sentence, the upper limit of which does not exceed 3 years, committed in connection with violation of the residence regime of foreigners in the territory of the Czech Republic.

## **Article 9**

Tasks of the police bodies of the control bodies

(1) The tasks of the police bodies are performed by the police officers of the control services 8) until the identification of the facts indicating that the person responsible for the proceedings is the General Inspectorate of the Security Corps

(a) investigating submissions or the information obtained by the police,

(b) investigation and verification in cases of

1. Missing policeman or police officer,

2. Suicides and sudden deaths of police officers or police officers outside health facilities.

(2) Disputes concerning the competence between the police authorities of any of the control units shall be decided by the Head of the Internal Control Department of the Police Presidium.

(3) Disputes concerning the competence between the police authorities and the police authorities of the control departments of the different regional directorates or services with the national competence shall be decided by the deputy of the Police President for the Criminal Police and Investigation Service, as a rule after discussion with the Head of the Internal Control Department of the Police Presidium.

## **Article 10**

(1) The Police President shall decide on the permanent fulfillment of the tasks of the police authorities by other lower organizational units of the police units other than those referred to in Articles 4 to 9.

(2) Where this is not in contradiction with the previous decision of the public prosecutor in the criminal field to supervise, the senior officials may decide, on a case-by-case basis, to change the jurisdiction of subordinate police authorities or to take over a case from a lower-level police authority. If the police authority decides to exclude itself<sup>19</sup>, a senior supervisor decides to change the jurisdiction of the police authority, who may delegate this authority to senior officials of the higher level of management than the excluded police authority. The State Prosecutor's Office, which exercises supervision in criminal matters, shall be informed about the change of jurisdiction. If the a person acting in the police force decides to exclude itself, or if a case is taken from such a person by a public prosecutor, as well as in other justified cases, the next senior official shall decide on the assignment of the matter to another person employed by the same police authority.

(3) The decision on the factual and functional jurisdiction shall be issued by the relevant manager in writing. If it is issued orally, it shall be recorded in the supporting documents (Article 79b (1) (c)).

(4) Leaders may set up work teams<sup>21</sup>), unless otherwise specified.

(5) The other police officers may in particular carry out investigations and individual acts of criminal proceedings with regard to urgent and unrepeatable acts or at the request of the police authorities<sup>22</sup>) and acts on the instructions of the public prosecutor.

(6) The police authorities shall perform the tasks referred to in Articles 4 to 9 in carrying out investigations, verifying and inspecting on the basis of the legitimate requirements of foreign police and judicial authorities.

Within the Police, the NOCA essentially processes only serious cases, the so-called "lighter" (very often defined by the amount of damage) can be done by the territorial districts of the police, then by the Regional Directorates and then by the NOCA. In the case of corruption offenses, the system of the state prosecutor's offices corresponds to it as well - the district, the regional and the higher state prosecutor's offices. The NOCA usually cooperates on corruption with High Public Prosecutor's Office.

As for the prosecutor's offices, Czechia referred to the following measures:

### **Public Prosecutor Offices:**

**District Prosecutor's Offices** - are competent in general, unless otherwise stated.

Section 16 of the Code of Criminal Procedure

Unless this Act stipulates otherwise, the proceeding in the first instance is conducted by the District Court.

**Regional Public Prosecutor's Offices** - follow the jurisdiction of the court, specifically the regional one.

### **Section 17 of the Code of Criminal Procedure**

(1) The County Court performs in the first instance of proceedings for criminal offences when the law stipulates a prison sentence with the lower limit of no less than five years, or if they are able to impose an exceptional sentence. The County Court performs proceedings in the first instance in the case of criminal offences, such as

a) of manslaughter, murder of a newborn child by its mother, unauthorised removal of tissues and organs, illegal handling of tissues and organs, taking tissue, organs and performing transplantation for a fee, the illegal handling of human embryos and human genomes, or human trafficking,

b) committed by means of investment instruments that are admitted for trading on a regulated market or for which admission to trading on a regulated market was requested, or counterfeits and pirate copies if their legal character can cause substantial damage or obtain substantial benefits,

c) of infringement of competition rules, manipulation of the rate of investment instruments and misuse of information and position in the trade, damage to the financial interests of the European Community, infringement of export control of goods and dual use technologies, breach of duties in the export of goods and dual use technologies, distortion of data and failure to keep data records on the export of goods and dual use technologies, the performance of foreign trade in military material without permission or license, breach of obligations in

connection with issuing permits and licenses for foreign trade in military material, distortion and failure to keep data records on foreign trade in military material, development, manufacture and possession of prohibited weaponry and

d) of sabotage, abuse of representing the State and international organisation, espionage, threat to classified information, cooperation with an enemy, relations threatening the peace, the use of prohibited means of combat and clandestine warfare, looting in the area of military operations, even if the lower limit of prison sentence is less.

(2) The County Court shall also act in the first instance of proceedings on the criminal offence of insobriety in cases when an act that is otherwise criminal and that was committed by the offender in a condition of diminished responsibility which the offender caused themselves fulfils the characteristic criteria of any of the criminal offences for which the competence of the County Court is stipulated under Subsection 1.

(3) The County Court performs proceedings in the first instance in the case of individual incidences of a continued criminal offence if, pursuant to the procedure of Section 45 of the Penal Code a decision on the guilt of the criminal offences listed in Subsection 1 or 2 comes into consideration during this proceeding.

**High Public Prosecutor's Offices** - special provisions in § 15 of the Order No. 23/1994 Coll., On the Rules of Proceedings of the Public Prosecutor's Office, establishment of branches of some public prosecutor's offices and details of acts performed by judicial candidates, as amended.

**Order of Ministry of Justice on Rules of Procedure of Public Prosecutor's Offices (no. 23/1994 Coll., as amended)**

## § 15

### **Supervision of the High Public Prosecutor**

(1) The competence to perform supervision over the maintaining of legality in pre-trial proceedings in case of intentional criminal offenses

a) committed in the course of operation of a bank, investment company or investment fund, securities broker, insurance company, pension fund, building savings association or savings and loan society, if the damage caused amounts to at least 150 mil. CZK,

b) of natural persons or legal entities committed in relation to the operation of entities referred to in paragraph a), if the damage caused amounts to at least 150 mil. CZK,

c) which caused damage to the property or property interest of the state in the amount of at least 150 mil. CZK,

d) according to Chapter five or six of the Special part of the Criminal Code, if committed for the benefit of an organized criminal group<sup>3e</sup> and also criminal offenses of abuse of powers of a public official according to Section 329 of the Criminal Code or criminal offenses of accepting bribe, bribery or indirect bribery according to Sections 331 to 333 of the Criminal Code, if committed in relation to detection or investigation of criminal offenses according to Chapter five or six of the Special part of the Criminal Code,

e) which affected financial or economic interests of the European Union, provided that the damage caused amounts to at least 150 mil. CZK,

f) committed against the single European currency for the benefit of an organized criminal group<sup>3e</sup>, by a member of an organized group<sup>3f</sup>, in a substantial or large extent<sup>3g</sup> or if the proceeding on criminal offenses aimed against the single European currency is conducted by a

police authority which fulfills the tasks of a special central office according to article 12 of the International Convention For The Suppression Of Counterfeiting Currency<sup>3h</sup>.

g) committed in relation to insolvency proceedings,

h) according to Chapter seven Division 2 of the Special Part of the Criminal Code and criminal offenses of relations endangering peace according to Section 409 of the Criminal Code and breach of international sanctions according to Section 410 of the Criminal Code,

i) in case the elements of crime include the intent to allow or facilitate commission of the crime of high treason according to Section 309 of the Criminal Code, terrorist attack according to Section 311 of the Criminal Code or terror according to Section 312 of the Criminal Code,

j) of participation on an organized criminal group according to Section 361 of the Criminal code or committed for the benefit of an organized criminal group, if the circumstances of the case indicate a link to a crime referred to under paragraph h) or i), pertains to the public prosecutor of the High Public Prosecutor's Office, in the jurisdiction of which is located the lower Public Prosecutor's Office, which would otherwise be competent in the case.

(2) The performance of supervision over the maintaining of legality in pre-trial proceedings in case of criminal offenses referred to in Chapter nine Division 1 and 2 of the Special Part of the Criminal Code pertains to the competence of a public prosecutor of the High Public Prosecutor's Office, in the jurisdiction of which is located the lower Public Prosecutor's Office, which would otherwise be competent in the case.

(3) The competence to perform supervision over the maintaining of legality in pre-trial proceedings in case of criminal offenses of participation according to Section 214 of the Criminal Code, negligent participation according to Section 215 of the Criminal Code, legalization of proceeds from crime according to Section 216 of the Criminal Code and negligent legalization of proceeds from crime according to Section 217 of the Criminal Code pertains to the public prosecutor of the High Public Prosecutor's Office, in the jurisdiction of which is located the lower Public Prosecutor's Office, which would otherwise be competent in the case, if the source criminal offense is any of the offenses referred to in sub-section (1) or (2).

(4) The High public Prosecutor's Office is competent in the matter of criminal offenses referred to in sub-sections (1) to (3) to perform supervision over the maintaining of legality in pre-trial proceedings also in case of other criminal offenses, concerning which joint proceedings are conducted<sup>3i</sup>, unless the case is excluded from the joint proceedings<sup>3j</sup>. In the event a case is excluded from joint proceedings and the competence to handle such case no longer pertains to the High Public Prosecutor's Office according to sub-section (1), (2) or (3), the High Public Prosecutor's Office may, with a previous consent of the Supreme Public Prosecutor, decide that it will be competent to perform supervision over the maintaining of legality in pre-trial proceedings also in this case, otherwise it is obliged to immediately forward the case to the Public Prosecutor's Office having the subject matter and territorial competence.

(5) The High Public Prosecutor's Office may, after a previous consent of the Supreme public Prosecutor, decide that the competence to perform supervision over the maintaining of legality in pre-trial proceedings in case of criminal offenses referred to in sub-sections (1) to (4) pertains to a lower Public Prosecutor's Office; the competence thereof will be determined according to the principles referred to in Sections 12, 14 and 16 hereof.

(6) If required by the seriousness, factual or legal complexity of the case, the High Public Prosecutor's Office may, with a previous consent of the Supreme public Prosecutor, decide that it is competent to perform supervision over the maintaining of legality in pre-trial proceedings in cases

a) referred to in sub-section (1) a) to c) and e), even though the damage caused is lower than 150 mil. CZK,

b) in case the property of another entity suffered damage of at least 150 mil. CZK, or

c) criminal offenses of unauthorized access to computer systems and information media according to Section 230 of the Criminal Code, obtaining and possession of access device and computer system passwords and other such data according to Section 231 of the Criminal Code, damage to computer systems and information media records and interference with computer equipment out of negligence according to Section 232 of the Criminal Code, public menace according to Section 272 of the Criminal Code, unlicensed arming according to Section 279 of Criminal Code, Development, Manufacture and Possession of Prohibited Means of Combat according to Section 280 of the Criminal Code, unauthorized production and possession of radioactive substances and highly dangerous substances according to Section 281 of the Criminal Code, unauthorized production and possession of nuclear material and special fissionable material according to Section 282 of the Criminal Code, Unauthorized Production and other Disposal with Narcotic and Psychotropic Substances and Poisons according to Section 283 of the Criminal Code, if the circumstances of the case imply a connection to any of the criminal offenses referred to in sub-section (1) h) or i) or sub-section (2).

## **Code of Criminal Procedure of the Czech Republic**

### **Section 2**

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

## **Public Prosecutor's Office Act No. 283/1993 Coll.**

### **Section 1**

1) The public prosecutor's office has been established as a system of state authorities determined to represent the state in public interest protection in cases entrusted by law in the public prosecutor's office jurisdiction.

2) This Act regulates the status, jurisdiction, internal relations, organization and administration of the public prosecutor's office; further this Act namely regulates the status of public prosecutors as persons by whom the public prosecutor's office performs its competence, position of interns and the Ministry of Justice jurisdiction.

### **Section 2**

1) In performance of its competence the public prosecutor's office is obliged to use means provided by law.

2) In performance of its competence the public prosecutor's office always cares for quick and effective proceeding according to law; it performs its competence impartially, while respecting and protecting human dignity, equality of all before law and cares for protection of human rights and liberties.

### **Section 3**

- 1) Unless otherwise stipulated by law, solely public prosecutors dispose of cases entrusted in jurisdiction of the public prosecutor's office; other authorities or persons may not interfere with their powers or replace or represent them in their performance.
- 2) In the scope and under conditions stipulated by a special legislation, higher officers of the public prosecutor's office (hereinafter the "higher officer"), assistants to the public prosecutors and judicial trainees are entitled to participate in acts falling into the competence of the public prosecutor's office.
- 3) A superior public prosecutor's office is authorized by law to interfere with disposal of cases in jurisdiction of an inferior public prosecutor's office only in a method and scope stipulated hereby.

The Czech Republic provided examples of implementations:

**Court judgment (Rt) Zm I 1050/34:**

Public Interest. The citizens' interest in the observance of national laws and orders issued by the relevant executive power authorities definitely needs to be considered as a public interest

The Czech Republic provided information on the measures adopted to ensure the independence of the specialized body:

Please see measures under the same article above (Section 1, and 3 of Public Prosecutor's Office Act No. 283/1993 Coll.)

The Czech Republic provided information on how staff is selected and trained:

**Act No. 283/1993 Coll., Public Prosecutor's Office**

**Section 32a**

**Assistants of public prosecutors**

- 1) At least one assistant is appointed to the Supreme Public Prosecutor, to his/her deputy and to the director of department of the Supreme Public Prosecutor's office, who is a public prosecutor. An assistant can be appointed to another public prosecutor as well.
- 2) The Supreme Public Prosecutor appoints and discharges the assistant referred to in Sub-Section (1) upon a proposal of the public prosecutor, whose assistant is concerned. The chief public prosecutor of the competent Public Prosecutor's Office appoints and discharges assistants of other Public Prosecutor's Office upon a proposal of the public prosecutor, whose assistant is concerned. The function of assistant is considered to be cancelled, if the office of the competent public prosecutor is terminated.
- 3) A person with no criminal conviction, who achieved university education by studying a magisterial study program in the field of law, can be appointed as an assistant. The condition of no criminal conviction is not met, if the person was convicted by a final judgment, unless he/she is considered as if never been convicted.
- 4) The assistant is obliged to keep confidentiality of facts that he/she has learned in connection to performance of his/her duties, even after his/her position is terminated. The Supreme Public Prosecutor may release the assistant from this duty.
- 5) The assistant performs the competence of intern and other acts on the authority of the public prosecutor.
- 6) The employment of assistant is created by appointment and is governed by the Labour Code, unless provided otherwise by this Act.

## **Section 33**

### **Training of Interns**

- 1) The training of interns is a professional preparation of interns for performance of the public prosecutor's position. The period of the training of interns is 36 months, while vacations taken in the period of training of interns is included into this period. If an intern does not attend the training of interns due to impediments in performance of occupation on his/her side or other excused absence at work, these periods are included into the intern-training period only for up to 70 working days in each year of the term.
- 2) The term of execution of offices of judge, assistant of the public prosecutor and judicial intern, judge of the Constitutional Court, the judge assistant of the Constitutional Court or the Supreme Court or the Supreme Administrative Court, practice of a lawyer and law clerk shall be included into the training of interns. At the request of an intern the Ministry may include the period of another legal activity into the term of training of interns, if the intern gained experience necessary for performance of the public prosecutor's position during this term; such included term may exceed 24 months.
- 3) The training of interns is executed in the employment created by the employment contract. On behalf of the state the competent Regional Public Prosecutor's Office concludes the employment contract with the intern and acts on behalf of the state with the intern in employment relations.
- 4) A person complying with requirements for being appointed as a public prosecutor, excluding the age, final examination and approval with the assignment, may be employed as an intern and attend the training of interns.
- 5) The employment with the intern is established for a definite period of 40 months. Unless the period of training of interns reaches the term of 36 months in the course of such employment, then prolonging of his/her employment may be agreed with the intern for a period necessary to reach the term of training of interns, however, not more than by 20 months. The intern's employment shall always be prolonged for a necessary period with his/her approval, if the intern has not completed the period training of interns of 36 months due to being enlisted in military service or absence from work due to pregnancy or care for a minor child.
- 6) Upon commencement of his/her employment, the intern takes the following oath before the regional public prosecutor: "I swear to comply with the legal code of the Czech Republic, carefully prepare for performance of the public prosecutor's position and master ethic principles of performance of the public prosecutor's position"
- 7) The intern is entitled to perform simple tasks of the public prosecutor or administrative activity under leadership of a public prosecutor or another professional employee of the Public Prosecutor's Office. In criminal proceedings may a public prosecutor authorize an intern or assistant of public prosecutor to represent him/her in individual steps of these proceedings; trial proceedings may a public prosecutor be represented by an intern or assistant only in a hearing before a District Court.
- 8) The intern is obliged to keep confidentiality of facts that he/she learned in performance of his/her duties, even after his/her employment termination; the Supreme Public Prosecutor may release the intern from the confidentiality duty for serious reasons.
- 9) Unless specified otherwise by this Act, the employment of the intern is governed provisions of the Employment Code.

## **Section 34**

### **Final Examination**

- 1) After completing the training the intern is obliged to take the final examination, the purpose

of which is to prove whether he/she has the necessary knowledge and is appropriately professionally prepared to perform the position of a public prosecutor.

2) The final examination is taken before the examination board appointed by the Ministry of Justice. The examination board has 5 members and consists of public prosecutors, judges, employees working at the Ministry and other experts of legal theory and practice.

3) The final examination consists of a written and oral part. It especially focuses on judicial branches applied by the Public Prosecutor's Office in performance of its jurisdiction, and legal regulations related to organization of the Public Prosecutor's Office, Courts and to the status and duties of public prosecutors.

4) The Ministry shall allow the intern to take the final examination by the end of the last month before the last month of his/her employment term upon his/her request, filed through the competent Regional Public Prosecutor's Office; the Ministry shall determine the date of the examination after completion of the interns' training, at the latest 1 week prior to the employment termination. If the intern cannot take the final examination due to a serious obstacle, the Ministry shall determine another examination date within 1 month from the day when the Ministry learnt that the obstacle disappeared; in such a case the employment of the intern shall be prolonged with his/her consent, by no more than 6 months, so that it terminates a week after the day previously determined for taking a repeated final examination.

5) If an intern, having failed the final examination, applies for its repetition before the employment termination, the Ministry shall allow him/her to repeat the final examination within 6 months following the submission of the application, however, the final examination may only be repeated once. In such a case the intern's employment shall be prolonged with his/her consent until the day determined for taking the repeated final examination.

6) Employment of the intern that passed the final examination shall be changed with his consent about employment for an indeterminate term. In case the intern has become a public prosecutor, the employment terminates by the day preceding day which was determined to be his/her appointment to the office.

7) In the course of the employment according to Sub-Section (6) the intern performs tasks referred to in Section 33 (7).

8) The specialized judicial examination, as well as the advocacy examination, is considered the final examination.

9) If an assistant that has three years of legal practice and fulfils the conditions for performing the duties of a public prosecutor, except for passing the final examination, consent to be appointed to the public prosecutor's position and assigned to a specific Public Prosecutor's Office, applies for taking the final examination, then he/she shall be allowed to take the final examination within 3 months following the application delivery. If an assistant who failed the final examination applies for its repetition, he/she shall be allowed to repeat it within 6 months following the application delivery. If he/she did not pass the repeated examination, he/she can not submit a new application for taking the final examination before expiration of 5 years from the date of the repeated examination.

### **Section 34a**

Professional training of interns is secured especially by the Judicial Academy. The judicial Academy shall provide also professional training of public prosecutors and officers.

#### **(b) Observations on the implementation of the article**

Police, prosecutor's offices and criminal courts are the main bodies involved in the fight against corruption. At the Supreme Public Prosecutor's Office (SPPO) a special Department of Serious Economic and Financial Crime was created. At the police level, a new nation-wide National Organized Crime Agency has been established playing a key role, among others, in high-level corruption cases.

A broad range of training and capacity-building activities are provided to practitioners involved in corruption cases, including through the Judicial Academy, Police Academy and at a regional level. In addition, the extranet platform assists prosecutors by providing access to guidelines, previous cases, and templates. The platform 'electronic records of criminal proceedings' allows access to all case documentation for police officers and prosecutors.

During the country visit a need to continue to ensure the prosecutorial independence, including through the adoption of clear rules on the removal of the Prosecutor General was highlighted; as well the importance of having sufficient resources by the prosecutor's offices in order to carry out their tasks effectively were highlighted.

It is recommended that Czechia ensure the prosecutorial independence, including through the adoption of clear rules on the removal of the Prosecutor General, and provide the prosecutor's offices with sufficient resources to carry out their tasks

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraphs 1-4**

- 1 Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*
- 2 Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*
- 3 Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*
- 4 Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Criminal Code of the Czech Republic**

##### **Section 39**

##### **Determination of the Type and Severity of Punishment**

(1) In determining the type and severity of the punishment, the court shall take due account of the nature and seriousness of the criminal offence committed, of the personal, family, property

and other relations of the offender and their existing way of life and the possibility of their personal reform; moreover, the offender's behaviour after the act shall also be taken into account, in particular their efforts at making good any damage or mitigating any other detrimental effects of the act, and where the offender has been designated as a co-operating accused; account shall further be taken of the extent to which they have contributed to the clarification of a crime committed by members of an organised group, in connection with an organised group or in favour of an organised criminal group. They shall also take account of the effects and consequences that may be expected from the punishment in terms of the offender's future life.

(3) In determining the type and severity of the punishment, the court shall take into account any mitigating and aggravating circumstances (Section 41 and 42), the time that has lapsed since the criminal offence was committed, any change in the situation, and the length of criminal proceeding should it take a disproportionately long period of time. When assessing the proportionality of the length of a criminal proceeding, the court shall take into account the complexity of the case, the actions taken by the law enforcement authorities, the importance of the criminal proceeding for the offender and their conduct as a result of which they may have contributed to delaying the criminal proceeding.

#### **Section 41**

##### **Mitigating Circumstances**

l) has contributed to the clarification of their own criminal activity or significantly contributed to the clarification of a criminal offence committed by another offender,

*m) has contributed, in particular as a co-operating accused, in clarifying the criminal activity committed by members of an organised group, in association with an organised group, or in favour of an organised criminal group.*

#### **Section 46**

##### **General Provisions**

(2) The court shall abandon punishment of the offender identified as a co-operating accused, provided that the conditions set out in Section 178a Subsection 1 and 2 of the Code of Criminal Procedure are fulfilled and the co-operating accused gave a full and truthful testimony, both in the preliminary hearing and in the proceedings before the court, on facts that are capable of contributing substantially to the clarification of a crime committed by members of an organised group, in connection with an organised group or in favour of an organised criminal group; the provision of Section 48 Subsection 1 shall not be affected thereby. Punishment of an offender identified as a co-operating accused may not be abandoned this way if the criminal offence committed by them is more serious than the crime to the clarification of which they contributed, if they participated as an organiser or accessory in committing the crime to the clarification of which they contributed, if they wilfully caused severe bodily harm or death, or if there are reasons for an extraordinary increase of the prison sentence (Section 59).

#### **Section 58**

##### **Extraordinary Reduction of a Prison Sentence**

(4) The court shall reduce the prison sentence below the lower punishment limit also for an offender identified as a co-operating accused provided the conditions set out in Section 178a Subsection 1 of the Code of Criminal Procedure are fulfilled and provided the co-operating accused gave, both in the preliminary hearing and in the proceedings before the court, a full and truthful testimony on facts that are capable of contributing substantially to the clarification of a crime committed by members of an organised group, in connection with an organised group or

in favour of an organised criminal group; while doing so, the court shall take account of the nature of the criminal offence stated in the offender's confession in comparison with the crime committed by the members of an organised group, in connection with an organised group or in favour of an organised criminal group, to the clarification of which they contributed, as well as the importance of such action on the part of the offender, the person of the offender and the circumstances of the case, particularly whether and how they participated in the crime that they have undertaken to clarify and the consequences they caused through their actions, if applicable. The court shall not be liable to the restrictions stipulated under Subsection 3.

## **Code of Criminal Procedure of the Czech Republic**

### **Section 178a**

#### **Co-operating Accused**

(1) In proceedings on a crime, the public prosecutor may indicate that the accused is a co-operating person in the indictment, if the accused

*a) notifies the public prosecutor of facts that are capable of significantly contributing to the clarification of a crime committed by members of an organised group, in conjunction with an organised group, or in favour of an organised criminal group, and undertakes to submit both to a preliminary hearing and to proceedings before a court a full and truthful testimony about these facts,*

*b) confess to the crime for which they are being prosecuted, and there is no reasonable doubt that their confession was made freely, seriously and definitely, and*

*c) declare that they agree to be designated as a co-operating accused,*

*and the public prosecutor finds such designation appropriate, given the nature of the criminal offence for which the accused undertook to clarify, even with regard to the criminal offence referred to in the confession of the accused, the accused, and the circumstances of the case, namely whether and how the accused took part in committing the criminal offence which they committed to clarify and what consequences their actions have caused.*

(2) If the co-operating accused did not commit a criminal offence which is more serious than the crime to the clarification of which they contributed, if they did not participate as an organiser or accessory in committing the crime to the clarification of which they contributed, if they did not wilfully cause by such crime any serious bodily harm or death, and if there are no reasons for an extraordinary increase of the prison sentence (Section 59 of the Penal Code), the public prosecutor may propose in the indictment a waiver of punishment if the public prosecutor deems that this is necessary with regard to all circumstances, particularly with regard to the nature of the criminal offence stated in the confession of the accused in comparison with the criminal offence that the accused has undertaken to clarify, to the degree in which the co-operating accused may contribute to the clarification of a crime committed by members of an organised group, in connection with an organised group or in favour of an organised criminal group, to the importance of their testimony for the given criminal proceedings with regard to the obtained evidence, to the person of the accused and to the circumstances of the case, particularly whether and how the accused participated in committing the criminal offence that they have undertaken to clarify, and the consequences they caused through their actions.

(3) Before the public prosecutor identifies the accused as co-operating, they shall interrogate them on the contents of the statement and their confession. They shall also interrogate the accused as to whether they are aware of the consequences of their actions. Before interrogation, the public prosecutor shall instruct the accused on their rights, on the merits of the identification of the co-operating accused, the obligation to stand by their confessions and to comply with their obligations under Subsection 1, and also that once the accused violates their commitments

during the preliminary hearing or the proceedings before a court, they will no longer be considered as a co-operating accused.

Apart from the cited provisions enabling abandoning the punishment or lowering the severity of the punishment below the given range there also can be mentioned a newly formed legal institution enabling a temporary deferral of criminal prosecution and to render a decision on non-prosecution of the suspect in cases of corruption under given circumstances.

### **Section 159c**

#### **Special Provisions on Temporary Deferral of Criminal Prosecution**

(1) The police authority shall decide on temporary deferral of criminal prosecution of a person suspected of committing a criminal offence of machinations in insolvency proceedings under Section 226 Subsection 2, 4 or 5 of the Penal Code, violation of regulations on the rules of competition under Section 248 Subsection 1 Paragraph e), Subsection 3 or 4 of the Penal Code, machinations during public procurement and tenders under Section 257 Subsection 1 Paragraph b), Subsection 2 or 3 of the Penal Code, machinations at a public auction under Section 258 Subsection 1 Paragraph b), Subsection 2 or 3 of the Penal Code, bribery under Section 332 of the Penal Code or indirect corruption under Section 333 Subsection 2 of the Penal Code, if the suspect promised a bribe, material or any other benefit only because they were asked to do so, reported this fact to the public prosecutor or police authority voluntarily and without undue delay, reports to the police authority the facts known to the suspect about the criminal activity of the person who asked for the bribe, material or any other benefit, and undertakes to submit to a preliminary hearing and the proceedings before a court by a full and truthful testimony about these facts.

(2) A decision on the temporary deferral of criminal prosecution pursuant to Subsection 1 may not be rendered, if the bribe, material or any other benefit was promised in connection with the execution of powers of an official person referred to in Section 334 Subsection 2 Paragraphs a) through c) of the Penal Code or an official person referred to in Section 334 Subsection 2 Paragraph d) of the Penal Code, if it is an official person holding an office at an enterprising legal entity in which a foreign State has the decisive influence.

### **Section 159d**

#### **Decision on Non-prosecution of the Suspect**

(1) If no facts that exclude a decision on the temporary deferral of criminal prosecution are additionally ascertained and if the suspect fulfilled their commitments under Section 159c Subsection 1, the public prosecutor shall decide that they will not be prosecuted, otherwise the public prosecutor shall decide that the suspect failed to comply with the conditions under Section 159c Subsection 1. Complaints against this resolution with a suspensive effect are permissible.

(2) A decision on non-prosecution of the suspect may only be rendered after final completion of the criminal prosecution of the person who asked the suspect for the bribe, material or any other benefit, if the deadline for filing an appeal has expired or if it has been decided on a filed appeal, and if the deadline for filing a constitutional complaint has expired or it has been decided on a filed constitutional complaint, or after final deferral or other settlement of the matter, if criminal prosecution of the person who asked the suspect for a bribe, material or any other benefit cannot be commenced.

(3) The resolution on non-prosecution of the suspect shall be delivered by the public prosecutor to the Attorney General's Office without undue delay after the resolution comes into full force and effect.

(4) Criminal prosecution shall be commenced by the police authority without undue delay after the decision on failure to comply with the conditions under Section 159c Subsection 1 comes into full force and effect.

The Czech Republic provided examples of implementations:

**Court judgment (Rt) 7 Tdo 410/2013:**

The mitigating circumstance stated in Section 41 l) of the Criminal Code, that is, assistance in the clarification of an act, depends on a perpetrator's overall attitude to the act committed by him. The stated mitigating circumstance shall be inapplicable if, during the criminal proceedings, the perpetrator has only accommodated his testimony to the given evidentiary situation.

**(b) Observations on the implementation of the article**

In determining the type and severity of the punishment, the Czech courts take into consideration, among others, the defendant's level of cooperation with the authorities and the contribution to the clarification of a crime committed (s. 39(1) CC), as well as mitigating and aggravating circumstances (s. 41-42 CC). A cooperating accused (as defined in s. 178a CCP) may be in certain circumstances given a mitigated punishment (s. 39/3, 41/(1)(m), 58/4 CC) or freed from any form of punishment (s. 46/2 CC), provided that prescribed conditions are met (e.g. the crime committed is less serious than the crime to the clarification of which the accused contributed or the accused did not act as an organizer or an accessory (s. 46 CC, 178a CCP)). However, courts are not bound by agreements between prosecutors and cooperating defendants, which may weaken the concept. Plea bargaining is possible for less serious crimes (s. 175a-175b CCP). For certain crimes, including the promise of a bribe, the police or prosecutor may temporarily defer criminal prosecution for cooperating defendants (s. 159c CCP).

It is recommended that Czechia consider strengthening the protection of cooperating defendants and strengthen the measures allowing for a mitigated punishment.

**(d) Technical assistance needs**

Sharing of good practices (art. 37).

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

No existing bilateral agreements contain provisions that would related to the provision under review.

**(b) Observations on the implementation of the article**

The Czech Republic indicated that no bilateral agreements to which the Czech Republic was a party, and which were in effect at the time of the review contained relevant provisions.

It is recommended that Czechia consider entering into agreements or arrangements in accordance with article 37(5) of the Convention.

**Article 38 Cooperation between national authorities**

**Subparagraph (a) and (b)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

- (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*
- (b) Providing, upon request, to the latter authorities all necessary information.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Code of Criminal Procedure of the Czech Republic**

**Section 7**

Law enforcement authorities are obliged to assist each other in the execution of tasks arising under this Act.

**Section 7a**

(1) In order to ascertain the nature, extent or location of items for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty the presiding judge and in pre-trial proceedings the public prosecutor or police authority may call the person, whose assets are to be seized, or a person close to such person, to send them within a stipulated reasonable time limit a statement on assets of the person, whose assets are to be seized. The called person is entitled to refuse to make the statement on assets; Section 92 (1), Section 100 and Section 158 (8) will apply accordingly. In the call the person called to make the statement on assets must be advised about the consequences of failure to comply with such call and about their right to refuse to make the statement on assets.

(2) The person referred to in sub-section (1) will be called to state in the statement on assets, in such extent, in which such facts are known to them, all information regarding the assets of the

person, whose assets are to be seized, in particular

- a) the payer of remuneration in labor relationship or a relationship similar to labor relationship or another income, and the sum of such remuneration or other income,
- b) bank, savings and loan association, electronic currency institute, small-scope issuer of electronic currency, payment institute, small-scope provider of payment services or similar foreign entity, at which such person has accounts, amount of claims and account numbers or other unique identifiers according to the Payment Relations Act,
- c) debtors, against which such person has claims, the grounds of such claims, their sum and term of payment,
- d) overview of assets owned or co-owned by this person, including the co-ownership share and location of the assets, and
- e) trust funds or similar arrangements this person has established or which this person is the beneficiary of.

(3) The presiding judge and in pre-trial proceedings the public prosecutor or police authority may call the person referred to in sub-section (1) to make a new statement on assets of the person, whose assets are to be seized, if they reasonably believe that there has been a change in the property relations of the person, whose assets are to be seized.

(4) If the person called to make a statement on assets fails to send the statement in the stipulated time limit or if the authority involved in criminal proceedings that called the person to make the statement on assets has any doubts about the truthfulness or completeness of the statement made by such person, it may call it to appear to give testimony; provisions of this Code that regulate submission of explanation, interview of accused person and witness will apply accordingly.

## **Section 8**

(1) Public authorities, legal entities and natural persons are required to comply with letters of request from law enforcement authorities for the performance of their actions without undue delay and unless a special regulation stipulates otherwise, to comply without payment. Furthermore, public authorities are also obliged to immediately notify the public prosecutor or the 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, in order to assess the nature, extent or location of assets for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty, the public prosecutor and after filing an indictment or a motion for punishment the presiding judge may request information subject to banking secrecy and data from the register of investment instruments and booked 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. In criminal proceedings, which allows to impose a protective measure of forfeiture of a portion of assets, the public prosecutor and after filing an indictment or motion for punishment the presiding judge may request information from tax administration authority associated with a decision on income tax assessment for the purpose of assessing the fulfillment of conditions for imposing this protective measure or for the purpose of securing its execution; provision of information according to this clause does not breach the obligation of secrecy according to the Tax Procedure Code. The conditions under which the authorities involved in criminal proceedings may require the data obtained in the administration of taxes for other purposes 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 Subsection 2, the presiding judge may, and upon the proposal of the public prosecutor during a preliminary hearing, order the surveillance of the bank accounts or accounts of persons entitled to the records of investment instruments or booked securities according to other legal enactments for a maximum period of six months. If the reason for which the surveillance of an account was ordered exceeds this time, it may be extended upon the order of a judge from a court of higher instance and, during preliminary hearing, upon the proposal of the public prosecutor of the County Court judge for a further six months, and such prolongation can be performed repeatedly. Information obtained under this provision may not be used for a purpose other than the criminal proceedings for which it was obtained.

(4) The performance of obligations under Subsection 1 may be rejected with reference to the obligation to maintain the secrecy of classified information protected by a special Act or imposed by the State or the recognised duty of confidentiality; this does not apply,

a) if the person who has the obligation would otherwise risk criminal prosecution for the failure to notify or prevent a criminal offence, or

b) in executing the request of a law enforcement authority with regards to a criminal offence, where the requested person is also the reporter of the criminal offence.

The State recognised obligation of confidentiality under this Act does not consider such obligation the scope of which is not defined by law but instead arises from a legal action taken under the law.

(5) Unless a special Act stipulates the conditions under which information may be disclosed for the purpose of criminal proceedings that are deemed classified pursuant to such Act or which is subject to an obligation of secrecy, such information may be requested for criminal proceedings upon the prior consent of the judge. This does not affect the obligation of confidentiality of an attorney under the Advocacy Act.

(6) The provisions of Subsection 1 and 5 shall not affect the obligation of confidentiality imposed on the basis of a declared international treaty to which the Czech Republic is bound.

**ELVIZ** is an abbreviation composed of the first letters of words **E**lektronické **V**edení **I**nformací **Z**astupitelství (Electronic Management of Prosecutorial Information). ELVIZ is a new information system of the Public Prosecutor's Office, which is currently being developed. Workgroup for the new information system called ELVIZ was established in June of 2015. The main change in comparison to the existing system is that it envisages keeping and management of complete Public Prosecution files in the electronic form. At this point we need to point out that this will concern digitalization of files of Public Prosecutor's Office, not the criminal case file (the actual file on the criminal proceedings) – this will remain in documentary form. Creation of the ELVIZ information system is necessitated by the statutory obligation of Public Prosecutor's Offices to manage the file service in electronic form in an electronic file management system. ELVIZ will be more than just an electronic file management system, we plan a number of additional functions to facilitate more efficient work of public prosecutors, and also tools for better overview of the exercise of competence of Public Prosecutor's Office, including the competence in the area of criminal proceedings.

An important component thereof is strengthening of statistics and the possibility to statistically evaluate the operation of Public Prosecutor's Office. Under the current circumstances we need to add that now the regularly conducted statistics do not allow us to ascertain all the necessary data on criminal sanctions of various types of crime, including foreign bribery (current statistics show only very basic data), this also applies to crime linked to corruption crimes, e.g. criminal offences associated with money laundering (this is of course a more general problem associated not only with this particular type of crime). We believe that more detailed records, also of statistical nature, and the analysis thereof may help us to gain a more thorough overview, among

other things, of foreign bribery crime and crime associated therewith, as important background data for the formulation of other measures in combatting this type of crime.

The works on the ELVIZ information system have begun in June on 2015 (as mentioned before) and currently we are in the stage of processing background data and procedural analyses. Project management of creation of ELVIZ lies in the discretion of the Ministry of Justice, but the Public Prosecutor's Office is very actively involved in preparatory analytical works.

Furthermore we need to add that the document Department Strategy for Development of eJustice 2016 to 2020 approved by the resolution of the Government of the Czech Republic no. 505 of 8. 6. 2016 envisages the creation of ELVIZ information system.

ELVIZ should be operational in or after year 2019.

**The Supreme Public Prosecutor's Office EXTRANET** is a departmental electronic network designed to transmit information to the public prosecutor's office on professional, organizational, personnel and other issues related to the jurisdiction of the public prosecutor's office. It is technically operated by the Supreme Public Prosecutor's Office. Unlike the websites of the Supreme Public Prosecutor's Office, which are content-oriented towards the widest public, EXTRANET is conceived more professionally. It contains, in particular, information from the work of the Supreme Public Prosecutor's Office, but also allows lower levels of prosecution to initiate the placement of their own files on EXTRANET. The access to EXTRANET is allowed only to the prosecutor's office, both the prosecutors and other employees. The dissemination of information published in the EXTRANET network is subject to the obligation of confidentiality to the extent stipulated by Section 25, para. 1 of Act No. 283/1993 Coll., On State Prosecutor's Office, as amended, or Section 303, para. 1, 2, point b) of Act No. 262/2006 Coll., the Labour Code, as amended. Methodological materials, important judicial decisions as well as decisions in the scope of the Prosecutor's Office and other important information about the operation of the Prosecutor's Office are published on EXTRANET.

**ETR** stands for Records of Criminal Proceedings. ETR is an information system of the Police of the Czech Republic for documenting the course of criminal proceedings, over time supplemented with documenting the course of offence proceedings and other agendas processed by the Police of the Czech Republic. The State Prosecutor's Office accesses this information system through ETR Lite, a special, secure access interface, for the purpose of the prosecution service (not access to all agendas, but only to the criminal proceedings agenda). Within the framework of the Czech Police, documents of the criminal (investigation) file are produced in the ETR. Since the Code of Criminal Procedure of the Czech Republic requires creation of an analogue (paper) file, the electronic file in ETR is understood as an unauthorized electronic copy of the criminal (investigation) file. It is in this electronic file that the public prosecutors can consult using ETR Lite on-line and they can also communicate with the police authorities using this means. This is positively appreciated by both public prosecutors and police officers and is part of standard work and communication within criminal proceedings.

The Czech Republic provided examples of implementations:

**Constitutional Court judgment II. US 2499/14:**

I. Medical documentation shall be protected by the fundamental right to protection of privacy. This sphere of protection shall also include a natural person's right to decide, at his own discretion, whether at all and, if so, to what extent and how the facts of his privacy shall be disclosed to others.

II. The interest in the clarification of crimes and the just punishment of perpetrators is a legitimate case where the right to protection of privacy may be limited even in relation to health-related information. In filing a public prosecutor's application for the judge's consent to the communication of demanded information and in the issuance of such consent pursuant to Section 8(5) of the Code of Criminal Procedure, it is necessary, in each individual case, to carefully consider to what extent such consent is demanded and, subsequently, granted. For this reason, such consent cannot be interpreted as an unlimited breakthrough of the legal obligation to maintain confidentiality. It must always be clear (1) for what reasons (that is, in relation to a particular activity) it is necessary to provide the relevant information and (2) to what necessary extent with regard to the investigation of the respective crime. The public prosecutor's application and the judge's consent must clearly and convincingly state the need for communicating the demanded information, which is capable of legitimizing the necessity of intervention in the person's fundamental rights.

**(b) Observations on the implementation of the article**

Law enforcement authorities are obliged to assist each other in the execution of tasks under the Code of Criminal Procedure (s. 7). Public authorities are required to respond to the requests from the law enforcement authorities and are obliged to notify them of facts indicating that a criminal offence has been committed (s. 8(1) CCP). A new information system of the Public Prosecutor's Office (ELVIZ) is being developed to keep and manage public prosecution files electronically and provide guidelines to prosecutors.

Special agreements exist between national authorities, such as between the police and the customs administration concerning cooperation and information sharing relating to corruption, between Ministry of Interior and Ministry of Finance regarding fulfilling obligations arising from the Anti-Money Laundering Act, or the police and the Financial Analytical Unit regarding money-laundering. The General Prosecutor's Office has also signed agreements with the Supreme Audit Office, Ombudsman's Office and the Office for the Protection of Competition.

A broad range of training and capacity-building activities are provided to practitioners involved in corruption cases, including through the Judicial Academy, Police Academy and at a regional level. In addition, the extranet platform assists prosecutors by providing access to guidelines, previous cases and templates. The platform 'electronic records of criminal proceedings' allows access to all case documentation for police officers and prosecutors.

Though obstacles were reported in sharing information between agencies as well. For example, SPPO cannot access a database developed by the Office for the Protection of Competition of Czechia cost-free.

It is recommended that Czechia continue encouraging the cooperation between national authorities, including through removing obstacles to information-sharing

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to its response under article 38.

The Financial Analytical Office (hereinafter “FAU”) is in close cooperation with the private sector represented by so called “obliged entities”. Obligated entities are according to Section 2 of the Act No. 253/2008 Coll., on selected measures against legitimization of proceeds of crime and financing of terrorism (hereinafter the “AML Act”) for instance banks, cooperative savings, insurance companies, investment funds, payment services providers, etc.

Obligated entities are required to prepare system of internal controls (stipulated under Section 21 of the AML Act) and also risk assessments (Section 21a of the AML Act). These documents should also include internal controls and they are by certain types of obliged entities delivered in writing to the FAU (or the Czech national Bank (hereinafter “CNB”)) for consultation. These documents are then controlled by the FAU (or the CNB) and they can also verify in practice if the obliged entity follows the procedures described there.

Both the FAU and the CNB but also Czech Trade Inspection Authority and professional Chambers (in cases of lawyers, notaries, tax advisors, bailiffs and auditors) realize control on AML/CFT measures in practice. Such controls can be and are realized in accordance with the Inspection plan but also ad hoc in case of need or detected potential breach of obligation. The controls can be realized as desk based controls and also in the form of on-site inspection. Some of the institutions mentioned above can also use the procedure of “control purchase”.

If the authority finds out a breach of obligation stipulated under the AML Act which can be understood as an offence it can initiate an administrative proceedings and can also impose quite significant fine for certain types of offences (up to CZK 10.000.000 for example in cases of extensive breach of the obligation to keep data, to cooperate and provide information to the FAU, fails to postpone the realization of customer’s order, etc. – see Sections 43, 44, 45, 46, 47, 48, 49 and 50 of the AML Act). These fines stipulated in the AML Act are relatively high in comparison with usual extend of administrative fines in the Czech Republic and they are therefore having a preventative impact on the sector.

The FAU provides obliged entities with wide scope of consultations and trainings. These can be done in a form of workshop for wide scope of representatives of obliged entities, trainings organized under certain association or chamber (for instance the FAU closely cooperates with the Czech Bank Association and actively participate nearly on every meeting), trainings organized by one certain obliged entity or consultation of detected issues in practice. The FAU also creates and updates periodically in relation with the needs detected in practice Methodological Instruction which should help the obliged entity to answer the most common questions and explain potential doubts. The FAU also provides legal statements and publishes the most frequent questions and answers on websites.

**Article 41:**

**Criminal Code of the Czech Republic**

**Section 11**

**Effects of Foreign Judgments**

(1) A criminal judgment of a foreign state cannot be executed in the territory of the Czech Republic or have other effects in this territory unless the law or an international treaty stipulates otherwise.

(2) A final and effective judgment of another member state of the European Union issued in criminal proceedings will be deemed as a judgment of a court of the Czech Republic for the purposes of criminal proceedings, if it was issued for an act that is criminal also under the law of the Czech Republic.

## **Act No. 269/1994 Coll., On Register of Criminal Records**

### **Section 4**

(1) The records of convictions shall also be recorded in the Register of Criminal Records

a) by a foreign court if the court has decided on the recognition of such a court in accordance with a special legal regulation and the recognized decision has been issued by a foreign court for a criminal offense even under the law of the Czech Republic,

b) the International Criminal Court, the International Criminal Tribunal or a similar international judicial body (hereinafter referred to as "the International Court"), which meets at least one of the conditions set out in § 145 (1) b) or c) of the Act on International Judicial Cooperation in Criminal Matters, if the decision of the court has been recognized by the court pursuant to the Act on International Judicial Cooperation in Criminal Matters,

(c) an international court which complies with at least one of the conditions set out in § 145 (1) a) of the Act on International Judicial Cooperation in Criminal Matters, as regards the conviction of a citizen of the Czech Republic, a stateless person having permanent residence in its territory, a legal entity having its registered office in the Czech Republic or an enterprise located in the Czech Republic or an organizational unit, or at least performs the business activity here, or where he has his property, or another person who is serving the sentence imposed by such an international court in the Czech Republic.

(2) The Supreme Court, on a proposal from the Ministry of Justice, decides to record in the Criminal Register a data on another conviction of a citizen of the Czech Republic by a court other than a Member State of the European Union or an international court that fulfills at least one of the conditions specified in § 145, b) or c) of the Act on International Judicial Cooperation in Criminal Matters, if such conviction relates to an offense which is also a criminal offense under the Czech law, and the entry in the record is justified by the severity of the act and the type of sentence imposed on it.

(3) On the basis of a proposal from the Ministry of Justice, the Supreme Court shall decide on the recording of the conviction of a stateless person residing in the Czech Republic, or of a legal entity having its registered office in the Czech Republic or having the territory of the Czech Republic is located in an enterprise or an organizational unit, or at least he is carrying out his activity here or he has his property here, if he is convicted by a foreign court or an international court that meets at least one of the conditions specified in § 145, b) or c) of the Act on International Judicial Cooperation in Criminal Matters and if such conviction relates to an offense which is also a criminal offense under the Czech Republic's law, and the entry in the record is justified by the severity of the act and the type of sentence imposed on it.

(4) If the data on the conviction of a citizen of the Czech Republic, a stateless person residing in its territory or a legal entity under paragraphs 2 or 3 have been recorded in the Register of Criminal Records, and a court under the Act on International Judicial Cooperation in Criminal Matters subsequently decides to recognize such a decision, the Supreme Court, upon the initiative of that court, shall cancel its previous decision on the records of the conviction data; In such a case, the criminal record only registers the decision of recognition.

(5) The decision of a foreign court or international court recorded in the Register of Criminal Records under paragraphs 1 to 3 shall be regarded as a conviction by a court of the Czech Republic.

#### **Section 4a**

(1) The records of final convictions of citizens of the Czech Republic, courts of another Member State of the European Union in criminal proceedings and the data following such convictions shall also be recorded in the Criminal Register, namely on the basis of the information sent by other Member States of the European Union.

(2) If the Criminal Records Register is informed by another Member State of the European Union about the change of the data pursuant to paragraph 1, it shall make such change in the Register of Criminal Records.

(3) The Supreme Court, on a proposal from the Ministry of Justice, decides that the conviction of a citizen of the Czech Republic by a court of another Member State of the European Union shall be regarded as a conviction by a court of the Czech Republic in respect of an offense punishable under the law of the Czech Republic and it is justified by the seriousness of the act and the type of sentence imposed on it.

#### **Chapter III**

Transmission of information on convictions with the Member States of the European Union (§ 16d-16h)

#### **Section 16d**

(1) The Criminal Records Register provides the information to the competent authority of another Member State of the European Union<sup>6</sup> (the "competent authority") on the final convictions of its nationals in the criminal proceedings of the Czech Republic and on the related data entered in the Criminal Records Register of such convictions.

(2) The criminal record shall send the information specified in the paragraph 1 in the Czech language to the competent authority no later than 10 working days after the registration of the data relating to the conviction into the Criminal Records Register. If a convicted person is a national of two or more other Member States of the European Union, the Criminal Records Division shall send that information to the competent authority of each of these States.

(3) The Criminal Records Register shall, upon the request, send to the competent authority a copy of the decision and additional information to the information provided under the paragraph 1. In order to comply with this obligation, the courts shall be obliged to provide the Criminal Register with assistance.

#### **Section 16e**

(1) At the request of a competent authority sent in the Czech language on a prescribed form<sup>7</sup> filed for the purposes of criminal proceedings, the Criminal Register shall send to the competent authority a copy, including all data received from another Member State of the European Union pursuant to § 16f, paragraph 1; § 10 (5) does not apply.

(2) At the request of a competent authority sent in the Czech language on a prescribed form<sup>7</sup> filed for purposes other than criminal proceedings, the Criminal Register shall send to the competent authority an extract from the Criminal Records Register, including all data received from another Member State of the European Union pursuant to § 16f, paragraph 1; instead of the conviction information for which the convicting Member State of the European Union has excluded its transfer for purposes other than criminal proceedings, the Criminal Records Register informs the competent authority that it cannot send such data and which Member State of the European Union has transmitted the data.

(3) The description or the extract in terms of the paragraph 1 or 2 shall be sent by the Criminal Register to the competent authority no later than 10 working days after receipt of the request; together with this copy or the extract, on the prescribed form<sup>7</sup> in Czech language information on the final convictions and the related data on such convictions recorded in the Criminal Records Register shall be sent. If further information is required for the handling of the request for a person for whom the data from the Criminal Records Register is required, the Criminal Records Register shall promptly request the competent authority to supplement them. In such case, it shall send the requested information to the competent authority within 10 working days from delivery of such further information.

### **Section 16f**

(1) The Criminal Records Register receives the information on final convictions of citizens of the Czech Republic, courts of another Member State of the European Union in criminal proceedings and related data entered into the register of another Member State of the European Union on such convictions sent by other Member States of the European Union. Information on final convictions of citizens of the Czech Republic by courts of another Member State of the European Union in criminal proceedings will be sent by the Criminal Records Register to the Ministry of Justice for the procedure pursuant to § 4a (3).

(2) The criminal record shall be requested by the competent authority to send a copy of the decision or additional information to the information provided under paragraph 1 upon the request of the Ministry of Justice or the criminal prosecution authority or, if necessary, for purposes to keep the criminal record.

(3) The information obtained pursuant to paragraph 2 may be used only for the purposes for which it was requested or for the keeping of the Criminal Records Register.

### **Section 16g**

(1) The Criminal Records Register shall request the competent authority to provide the information on the final convictions of a natural person for offenses and on the related data recorded in that State's records of such convictions, if such information is necessary for the purposes of criminal proceedings.

(2) Where a person who is a national of another Member State of the European Union asks for an extract pursuant to § 11, 11a or 11aa, the Criminal Register shall request the competent authority of the Member State of which that person is a national to provide information on its final convictions for criminal offenses and related data on such convictions recorded in that State's records.

(3) Where a person who has or has been residing in another Member State of the European Union or who is a national of another Member State of the European Union requests an extract pursuant to § 11, 11a or 11aa, the Criminal Register shall request, upon such application, an extract from the competent authority of a Member State of the European Union in which that person has been or still is resident or who has been a national of such state, with the information on his or her final convictions for offenses and the related data on such convictions recorded in that State's records.

(4) The application in terms of the paragraphs 1 to 3 shall be sent by the Criminal Register on the prescribed form<sup>7</sup> translated into the official language or one of the official languages of the requested Member State of the European Union.

(5) The information obtained pursuant to paragraph 1 may be used only for the purposes of the criminal proceedings for which it has been requested. This restriction shall not apply if this is necessary to prevent an immediate and serious threat to public security.

## **Section 16h**

The information and requests under § 16d to 16g shall be transmitted electronically between the Criminal Records and the competent authority using a standardized format<sup>8</sup>. Where this mode of transmission is not possible, they shall be transmitted in paper form or in any other way allowing the competent authority to verify its authenticity.

## **Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

### **Section 66**

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

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

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

(3) If an international treaty enables direct contact of judicial authorities, the competence for execution of the request pursuant to Sub-section (2) will pertain to the Regional Public Prosecutor's Office in case a pre-trial proceeding is conducted in the foreign state, otherwise to the Regional Court, in jurisdiction of which has the person, regarding which is the information from the Criminal Register requested, his residence; in case such person does not have his place of residence in the territory of the Czech Republic, the competence for executing this request will pertain to the Regional Public Prosecutor's Office in Prague and the Regional Court in Prague. In case one request concerns several persons, it will be executed by the competent Regional Public Prosecutor's Office or the competent Regional Court, to which was the request first served or forwarded by an authority not competent for its execution. 43

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

#### **(b) Observations on the implementation of the article**

Financial institutions are required to report suspicious transactions to the Financial Analytical Unit. In addition, section 368 of the Criminal Code provides for a general duty for anyone to report the crime committed that they have become aware of.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to its response under article 33.

Czechia's whistleblower protection system is decentralized and each public body establishes its own reporting lines and hotlines.

Also, according to Section 8 of the Code of Criminal Procedure the public authorities are obliged to immediately notify the public prosecutor or the police authorities of facts indicating that a criminal offence has been committed. Regarding the private financial institutions (banks etc) the reporting obligation provided in section 368 of the Criminal Code applies.

With regard to measures to encourage citizens to report the commission of an offence established in accordance with the Convention can be named:

- 1) the reporting obligation provided in Section 368 of the Criminal Code which constitutes an imminence of criminal prosecution for those who do not fulfil the reporting obligation;
- 2) possible Whistleblowers Protection Act (still in the legislative process, has not come into effect yet). The purpose of this act is mainly to grant the whistleblowers a special status to protect them from being dismissed from the job or being bullied at workplace and to provide the whistleblowers with some financial compensation for the harm they might have suffered as a result of reporting the potentially criminal act.
- 3) Running endowment programs for NNOs to secure providing for free legal counseling for potential whistleblowers to motivate and stimulate them to be more cooperative towards the law enforcement authorities.
- 4) Preparation of eLearning course for whistleblowers focused on the legislation applying on this area (rules for accepting gifts, ethical code etc.).
- 5) Forthcoming evaluation of possibilities of establishing the national Whistleblowers Centre (as a follow-up on the CZ10 Program [www.cz10.cz](http://www.cz10.cz)) and issuing a textbook collecting all the information and experience gained during the execution of the CZ10 Program.
- 6) Anti-corruption telephone lines, email addresses or mail boxes designed to gather anonymous whistleblowing reports, typically in some of the state organs (Office of the Government, ministries).
- 7) Internal anti-corruption ombudsman in some of the state organs and corporations in private sector (for example Ministry of Interior's ombudsman intended to collect and examine whistleblowing reports from the police).

**Court judgment (Rt) 11 To 34/76:**

The obligation to report the crime stated in Section 368(1) of the Criminal Code shall apply even if the person reporting a crime has learnt about the crime but does not know the perpetrator.

**(b) Observations on the implementation of the article**

Czech authorities have mentioned Section 368 of the Criminal Code, pursuant to which whoever learns in any credible way that another person committed the criminal offence of accepting bribes (s. 331), bribery (s. 332) and does not report such a criminal offence to the public prosecutor or the police authority without delay, or instead, if it is a soldier, to a superior, shall be punished by a prison sentence of up to three years (reporting obligation). The person shall not be punished if they were not able to report it without putting themselves or a person familiar to them in danger of death, bodily harm, other grievous harm, or criminal prosecution. The reporting obligation does not apply to attorneys or their employee, clergymen and also does not apply to a person providing help to the victims of criminal offences (in respect of the criminal offence of human trafficking under Section 168 Subsection 2 and denial of personal freedoms (s. 170)).

Czechia's whistleblower protection system is decentralized and each public body establishes its own reporting lines and hotlines.

It is recommended that Czechia consider taking additional measures to encourage the reporting of corruption by citizens.

#### **Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Code of Criminal Procedure of the Czech Republic**

##### **Section 8**

(2) If the criminal proceedings require it for a proper investigation of the circumstances indicating that a criminal offence has been committed, in order to assess the nature, extent or location of assets for the purpose of their seizure, to ascertain the property relations of the accused person or for the purpose of securing execution of a criminal penalty, the public prosecutor and after filing an indictment or a motion for punishment the presiding judge may request information subject to banking secrecy and data from the register of investment instruments and booked 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. In criminal proceedings, which allows to impose a protective measure of forfeiture of a portion of assets, the public prosecutor and after filing an indictment or motion for punishment the presiding judge may request information from tax administration authority associated with a decision on income tax assessment for the purpose of assessing the fulfillment of conditions for imposing this protective measure or for the purpose of securing its execution; provision of information according to this clause does not breach the obligation of secrecy according to the Tax Procedure Code. The conditions under which the authorities involved in criminal proceedings may require the data obtained in the

administration of taxes for other purposes 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 Subsection 2, the presiding judge may, and upon the proposal of the public prosecutor during a preliminary hearing, order the surveillance of the bank accounts or accounts of persons entitled to the records of investment instruments or booked securities according to other legal enactments for a maximum period of six months. If the reason for which the surveillance of an account was ordered exceeds this time, it may be extended upon the order of a judge from a court of higher instance and, during preliminary hearing, upon the proposal of the public prosecutor of the County Court judge for a further six months, and such prolongation can be performed repeatedly. Information obtained under this provision may not be used for a purpose other than the criminal proceedings for which it was obtained.

The law does not provide for any period of time within which the financial institution would be obliged to give the necessary information. A certain period of time may however be set by the competent law enforcement authority. If the financial institution fails to provide the public prosecutor (presiding judge) with the necessary information, the disciplinary fine may be imposed upon it according to Section 66 of the Code of Criminal Procedure.

If a complaint against the disciplinary fine is filed, the court then decides whether it was imposed in compliance with the law, and if not, dissolves it.

The correspondence between the public prosecutor (presiding judge) is usually held in written form.

### **Code of Criminal Procedure of the Czech Republic Section 66**

(1) A person who despite previous warnings cancels the trial or who behaves offensively to the court, public prosecution or police authority, or without sufficient excuse disobeys the order, or does not grant the request which was made under this Act, may be punished by the presiding judge and in preliminary hearing, the public prosecutor or the police authority, with a fine of up to CZK 50,000.

(2) Should a member of the armed forces or armed corps in active service commit the conduct described in Subsection 1 a competent commander or a disciplinary punishment chief may decide the disciplinary punishment. Should a person be guilty of such conduct who is in custody or serving a prison sentence, the prison director may decide the order measures or disciplinary punishment. The competent commander, chief or director is obliged to inform the law enforcement authorities of the result of the criminal proceedings.

(3) Should the defence counsel commit the conduct described in Subsection 1 or in the proceeding before the court, the prosecutor, it shall be forwarded to the appropriate authority for disciplinary sanctions. This authority is obliged to inform the law enforcement authorities of the results.

(4) A complaint against the decision under Subsection 1 through 3 which has a suspensive effect, is admissible.

The Czech Republic provided examples of implementations:

**Court judgment (Rt) 1 To 189/97:**

The limitation regulated in Section 8(2) last sentence of the Code of Criminal Procedure applicable to the parties to the procedural usability of evidence is aimed at the procedural sphere (rather than substantive), as a consequence of which the use of such evidence, obtained in compliance with the laws, in a divergent legal consideration of an act by the court - if the act to which the decision relates is identical to the act in the clarification of which such evidence has been obtained - is not excluded.

**(b) Observations on the implementation of the article**

Pursuant to Section 8 of the Code of Criminal Procedure, the public prosecutor and, after the indictment or a punishment petition, the presiding judge may request information that is subject to banking secrecy and data from the security register, if the criminal proceedings require a proper investigation of the circumstances suggesting that a criminal offence has been committed or to assess the circumstances of the accused during court proceedings or for the enforcement of a decision. Also, the presiding judge may, and upon the proposal of the public prosecutor during a preliminary hearing, order the surveillance of the bank accounts or accounts of persons entitled to the records of investment instruments under a special Act for a maximum period of six months.

The prosecutor or the presiding judge may request information that is subject to bank secrecy (s. 8 CCP).

Since January 2018, a new register of all bank accounts has been established in the Czech Republic, which contains information not only on account holders' names but also persons authorized to dispose the funds on the account, date of opening, cancelling of the account and of the authorization to dispose the funds. The establishment of the national bank register was highlighted by the reviewers as a good practice conducive to the efficiency and effectiveness of financial investigations, including in the context of corruption cases.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code of the Czech Republic**

**Section 11**

**Effects of a Judgment of a Foreign State**

(1) A criminal judgment of a foreign State cannot be executed in the territory of the Czech Republic or have other effects in such territory unless the law or an international treaty stipulates otherwise.

(2) For the purposes of criminal proceedings, the final conviction by a court of another EU Member State in criminal proceedings shall be regarded as the conviction by a court of the Czech Republic if it was rendered for an act that is also punishable under the law of the Czech Republic.

## **Section 42**

The court shall consider as aggravating circumstances especially those in which the offender p) has already been convicted for a criminal offence; depending on the nature of the previous conviction, the court shall be entitled not to regard the circumstance as aggravating, especially in terms of the significance of the protected interest affected by the act, the method of carrying out the act and its consequences, the circumstances under which the act was committed, the offender, the extent of their fault, their motives and the period of time that has lapsed since the last conviction; and in cases where criminal offences were committed by an offender in a condition caused by a mental disorder, or where an offender who indulges in the abuse of addictive substances commits a criminal offence under their influence, or in connection to their abuse, and also where the offender has already begun their treatment or taken other action necessary to start treatment.

The Czech Republic has provided information on recent cases where the Czech Republic took an alleged offender's previous conviction(s) in another State into consideration for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention:

Information not available. The alleged offender's previous conviction is however usually taken into consideration by the court while determining the type and severity of punishment of the alleged offender.

## **Criminal Register Act**

### **Section 4**

- (1) The Criminal Register shall also contain records on convictions:
  - a) by a foreign court, if the recognition of a decision of such court is determined by the court pursuant to a special law and the recognized decision has been issued by the foreign court for an act criminal even pursuant to the laws of the Czech Republic;
  - b) by an international criminal judge, an international criminal tribunal, or similar international judicial body (“international court”), meeting at least one of the conditions stated in Section 145(1) b) or c) of the Act on International Judicial Cooperation in Criminal Matters, if the recognition of its decision has been determined by a court pursuant to the Act on International Judicial Cooperation in Criminal Matters;
  - c) by an international court meeting at least one of the conditions stated in Section 145(1) a) of the Act on International Judicial Cooperation in Criminal Matters if it concerns a conviction of a citizen of the Czech Republic, a person without citizenship and with permanent residence in the Czech Republic, a legal entity having its registered address in the Czech Republic or having an enterprise or an organizational unit on the territory of the Czech Republic or pursuing its activity or having its property in the Czech

Republic, or another person serving a sentence imposed by such international court in the Czech Republic.

(2) Upon the proposition of the Ministry of Justice, the Supreme Court shall decide to enter in the Criminal Register the data on another conviction of a citizen of the Czech Republic by a court of another member state of the European Union or an international court meeting at least one of the conditions stated in Section 145(1) b) or c) of the Act on International Judicial Cooperation in Criminal Matters, if such conviction relates to an act which is criminal even pursuant to the laws of the Czech Republic and the entry in the register is justified by the gravity of the act and the type of sentence imposed for such act.

(3) On the proposition of the Ministry of Justice, the Supreme Court shall decide to enter in the Criminal Register the data on another conviction of a person without citizenship and with permitted permanent stay on the territory of the Czech Republic or of a legal entity having its registered office in the Czech Republic or having its enterprise or organizational unit in the Czech Republic or at least performing its activity in the Czech Republic or having its property in the Czech Republic, if it concerns a conviction by a foreign court or an international court meeting at least one of the conditions stated in Section 145(1) b) or c) of the Act on International Judicial Cooperation in Criminal Matters and if the conviction relates to an act which is criminal even pursuant to the laws of the Czech Republic and the entry in the register is justified by the gravity of the act and the type of sentence imposed for such act.

(4) If data on the conviction of a citizen of the Czech Republic, a person without citizenship but with permitted permanent stay in the Czech Republic, or a legal entity as per paragraph 2 or 3 is entered in the Criminal Register and the court decides to recognize such decision pursuant to the Act on International Cooperation in Technical Matters, the Supreme Court shall, on the initiative of such court, cancel its previous decision to enter conviction-related data in the register. In such case, only decisions to recognize decisions are entered in the Criminal Register.

(5) The decisions of a foreign court or an international court entered in the Criminal Register pursuant to paragraphs 1 to 3 shall be considered as convictions ordered by a court of the Czech Republic.

#### **Section 4a**

(1) The records of final convictions of citizens of the Czech Republic, courts of another Member State of the European Union in criminal proceedings and the data following such convictions shall also be recorded in the Criminal Register, namely on the basis of the information sent by other Member States of the European Union.

(2) If the Criminal Records Register is informed by another Member State of the European Union about the change of the data pursuant to paragraph 1, it shall make such change in the Register of Criminal Records.

(3) The Supreme Court, on a proposal from the Ministry of Justice, decides that the conviction of a citizen of the Czech Republic by a court of another Member State of the European Union shall be regarded as a conviction by a court of the Czech Republic in respect of an offense punishable under the law of the Czech Republic and it is justified by the seriousness of the act and the type of sentence imposed on it.

The other member states of European Union can ask directly the competent Czech authority for information regarding convictions of their own citizens by the courts of the Czech Republic - section 16d of the Act on the Criminal Register:

**Section 16d of the Criminal Register Act:**

(1) The Criminal Register provides information on the competent body of another member state of the European Union (6a) [“competent body”] and on final convictions of citizens of the Czech Republic in criminal proceedings and on the related conviction-related data entered in the Criminal Register.

(2) The registrar of the Criminal Register shall send the information stated in paragraph 1 in the Czech language to the competent body at the latest within 10 working days of entry of the conviction-related data in the Criminal Register. If the convict is a citizen of two or more other member states of the European Union, the registrar of the Criminal Register shall send the stated information to the respective body of each of these states.

(3) The registrar of the Criminal Register shall send the competent body, at its request, a copy of a decision and additional information to the information provided as per paragraph 1. To fulfil this duty, the courts shall be obliged to cooperate with the registrar of the Criminal Register.

For non-EU states, it is possible to acquire information regarding convictions of their citizens by the courts of the Czech Republic pursuant to Section 66 of the Act on International Judicial Cooperation in Criminal Matters.

**Section 66**

**Provision of Information from Criminal Register**

(1) If a request of a state other than a member state for the provision of information from the Criminal Register for the purposes of criminal proceedings is part of the request of this state for legal assistance consisting in several actions, the competence over the fulfilment of such request shall pertain to the judicial authority competent to fulfil the remaining part of the request for legal assistance.

(2) If a request of a state other than a member state concerns solely the provision of information from the Criminal Register for the purposes of criminal proceedings and pre-trial proceedings are conducted in the foreign state, the competence over the fulfilment of the request shall pertain to the Supreme Public Prosecutor’s Office, otherwise to the Ministry.

(3) If an international treaty enables direct contact of judicial authorities, the competence over the fulfilment of the request pursuant to subsection (2) shall pertain to the Regional Public Prosecutor’s Office if the pre-trial proceedings are conducted in the foreign state; otherwise, to the Regional Court in the jurisdiction of which the person in relation to whom the information from the Criminal Register is requested has his residence. If such person does not have his residence in the Czech Republic, the competence over the fulfilment of the request shall pertain to the Regional Public Prosecutor’s Office in Prague and the Regional Court in Prague. If one request concerns several persons, it shall be fulfilled by the competent Regional Public Prosecutor’s Office or the competent Regional Court to which the request was first served or forwarded by an authority not competent over the fulfilment.

(4) For the purposes of fulfilling requests of foreign authorities for the provision of information from the Criminal Register as per subsections (1) and (2), the authority competent to fulfil the request shall be entitled to demand a copy of this record made pursuant to the Criminal Register Act.

The national authority for exchange of information from the criminal records with other states is designated by the respective international treaty. The Czech Republic usually designates two Central Authorities for mutual legal assistance in criminal matters. The Supreme Prosecutor's Office handles requests made in proceedings before the case is brought before a court while the Ministry of Justice handles requests made in proceedings after the case is brought before a court.

If the respective international treaty enables direct contact between the judicial authorities of the contracting states (parties), in-coming requests shall be addressed to the competent regional prosecutor's office or the competent regional court. On the other hand, any of the district, regional, county prosecutor's offices, the City Prosecutor's Office in Prague, the City Prosecutor's Office in Brno and the Supreme Prosecutor's Office of the Czech Republic may issue a request for assistance and address it directly to the competent authority of the respective foreign state. The same applies to district, regional, county courts, the City Court in Prague and the City Court in Brno and the Supreme Court of the Czech Republic.

The Ministry of Justice is the Central Authority for annual exchange of information from criminal records based on Article 22 of the European Convention on Mutual Assistance in Criminal Matters as amended by the Additional Protocol as well as bilateral treaties on mutual assistance in criminal matters.

#### **(b) Observations on the implementation of the article**

A foreign criminal judgment cannot be executed or have other effects in Czechia unless the law or an international treaty stipulates otherwise (s. 11 para. 1 CC). However, criminal convictions within the European Union have the same legal effect as national convictions (s. 11 para. 2 CC). Previous criminal convictions, including those in other States, are considered an aggravating circumstance (s. 42p CC). If the conditions prescribed are met, foreign convictions are also recorded in the Czech criminal register (s. 4, 4a, 5 Criminal Register Act).

### **Article 42 Jurisdiction**

#### **Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Criminal Code of the Czech Republic**

## **Section 4**

### **Principle of Territoriality**

(1) The culpability of an act committed in the territory of the Czech Republic shall be assessed pursuant to the law of the Czech Republic.

(2) A criminal offence shall be deemed committed in the territory of the Czech Republic,  
*a) if an offender committed the act here, either entirely or in part, even though the violation or endangering of the interest protected by the criminal law occurred or was supposed to occur, either entirely or in part, abroad, or*

*b) if the offender violated or endangered an interest protected by criminal law or if such a consequence was supposed to ensue here, if only to a certain extent, even though they committed the conduct abroad.*

(3) Accomplicity is committed in the territory of the Czech Republic,

*a) if the act was committed here by an offender and the place where such an act was committed shall be assessed similarly pursuant to Subsection 2, or*

*b) if the accomplice of the act committed abroad acted, in part, here.*

(4) If the accomplice acted in the territory of the Czech Republic, the law of the Czech Republic shall apply to the participation, notwithstanding whether the offender's act is punishable abroad.

## **Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them**

### **Territoriality Principle**

#### **Section 2**

(1) Punishability of an act committed on the territory of the Czech Republic by a legal entity which has a registered office in the Czech Republic or its establishment or branch is placed on the territory of Czech Republic or at least conducts its activities here or owns property here, shall always be assessed under the law of the Czech Republic.

(2) A criminal act shall be considered as having been committed on the territory of the Czech Republic, if a legal entity acted:

*a) wholly or partially on the territory of the Czech Republic, even if the violation of or threat to an interest protected under the Criminal Code took effect or was supposed to take effect completely or partially abroad; or*

*b) abroad, if the violation of or threat to an interest protected under the Criminal Code occurred or was supposed to occur, even if only in part, in the territory of the Czech Republic.*

(3) Complicity/participation will be governed accordingly by Section 4 (3) and (4) of the Criminal Code.

#### **(b) Observations on the implementation of the article**

Pursuant to Section 4 par. (1) of the Criminal Code and Section 2 of Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them the culpability of an act committed in the territory of the Czech Republic shall be assessed pursuant to the law of the Czech Republic (territoriality principle).

Czech Republic is in compliance with the provision of paragraph 1.

### **Article 42 Jurisdiction**

### **Subparagraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Criminal Code of the Czech Republic**

#### **Section 5**

##### **Principle of Registration**

The culpability of an act committed outside of the territory of the Czech Republic, aboard a ship or another vessel, or aircraft or other means of air transport, which is registered in the Czech Republic, shall also be assessed pursuant to the law of the Czech Republic. The place of commission of such an act is assessed pursuant to Section 4 Subsection 2 and 3.

#### **(b) Observations on the implementation of the article**

Czech authorities referred to the principle of registration. Thus, pursuant to Section 5 of the Criminal Code the culpability of an act committed outside of the territory of the Czech Republic, aboard a ship or another vessel, or aircraft or other means of air transport, which is registered in the Czech Republic, shall also be assessed pursuant to the law of the Czech Republic.

### **Article 42 Jurisdiction**

#### **Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Criminal Code of Czech Republic**

#### **Section 7**

(2) The law of the Czech Republic shall also assess the culpability of an act committed abroad against a Czech national or a person without a nationality to whom permanent residence in the territory of the Czech Republic was granted if an act is punishable in the place of its commission and if the place where such an act was committed is not subject to any criminal capacity.

#### **(b) Observations on the implementation of the article**

Czechia establishes the passive personality jurisdiction in Section 7 (2) of the Criminal Code.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Criminal Code of Czech Republic**

#### **Section 6**

##### **Principle of Personality**

The law of the Czech Republic shall also assess the culpability of an act committed abroad by a citizen of the Czech Republic or a person with no nationality who has been granted permanent residence in their territory.

#### **Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them**

##### **Section 3**

Punishability of an act committed abroad by a legal entity with a registered office in the Czech Republic shall also be assessed under the law of the Czech Republic.

The Czech Republic provided examples of implementations:

##### **Court judgment (Rt) 5 Tdo 834/2010:**

III. Within the meaning of the principle of active personality pursuant to Section 18 of the Criminal Code (as applicable until 31 December 2009; pursuant to Section 6 of the Criminal Code from 1 January 2010) in the crime lying in the violation of protected industrial rights pursuant to Section 269 of the Criminal Code), the general criminal nature of an illegitimate intervention in the rights to a protected invention, industrial design, utility design or topography of a semi-conductor product in the Czech Republic shall be sufficient. Thus, the perpetrator's conduct committed abroad shall be subject to the Czech criminal law without the elements of the cited crime being met even on the territory of the Czech Republic.

#### **(b) Observations on the implementation of the article**

Czechia establishes the active personality jurisdiction in section 6 of the Criminal Code and in Section 3 of Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them

## **Article 42 Jurisdiction**

### **Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### **Criminal Code of the Czech Republic**

##### **Section 4**

##### **Principle of Territoriality**

(1) The criminality of an act committed in the territory of the Czech Republic will be assessed pursuant to the law of the Czech Republic.

(2) A criminal offense will be considered as committed in the territory of the Czech Republic  
a) if an offender committed the act here, either entirely or in part, even though the violation or endangering of an interest protected by the criminal law occurred or was supposed to occur, either entirely or in part abroad, or

b) if an offender violated or endangered an interest protected by criminal law or if such a consequence was supposed to occur, even partially, within the territory, even though the act was committed abroad.

(3) Participation is committed in the territory of the Czech Republic,

a) the act of the offender has been committed within its territory; which is determined analogically according to sub-section (2), or

b) if the accomplice of the act committed abroad partially acted within its territory.

(4) If the accomplice acted in the territory of the Czech Republic, the law of the Czech Republic will apply to the participation, regardless of whether the act of the offender is criminal abroad.

### **(b) Observations on the implementation of the article**

In Czechia, preparatory acts to money-laundering fall under the principle of territoriality, under article 4 paragraph 3 of the Criminal Code.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (d)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code the Czech Republic**

**Section 7**

**Principle of Protection and Principle of Universality**

(1) The law of the Czech Republic assesses the culpability of torture and other cruel and inhumane treatment (Section 149), counterfeit and alteration of money (Section 233), presentation of counterfeit and altered money (Section 235), production and possession of counterfeiting equipment (Section 236), unauthorised production of money (Section 237), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage (Section 316), violence against public authority (Section 323), violence against an official person (Section 325), counterfeiting and alteration of public documents (Section 348), participation in an organised criminal group pursuant to Section 361 Subsection 2 and 3, genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414), abuse of internationally and State recognised symbols (Section 415), abuse of flag and armistice (Section 416) and harm of a parliamentarian (Section 417) even when such a criminal offence was committed abroad by a foreign national or a person with no nationality to whom permanent residence in the territory of the Czech Republic was not granted.

**Section 8**

**Subsidiary Principle of Universality**

(1) The law of the Czech Republic shall also assess the culpability of an act committed abroad by a foreign national or a person with no nationality who was not granted a permanent residence in the territory of the Czech Republic even if

- a) the act is punishable even under the law effective in the territory where it was committed,*
- b) the offender was apprehended in the territory of the Czech Republic, extradition or transfer proceedings took place and the offender was not extradited or transferred for criminal prosecution or to serve a sentence to another State or another entitled entity, and*
- c) the foreign State or other entitled entity that requested extradition or transfer of the offender for criminal prosecution or to serve a sentence requested criminal prosecution of the offender in the Czech Republic.*

**Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them**

**Section 4**

(1) The law of the Czech Republic shall apply when assessing the punishability of the criminal offense of Torture and other Cruel and Inhumane Treatment (Section 149 of the Criminal Code), Forgery and Alteration of Money (Section 233 of the Criminal Code), Uttering Counterfeited and Altered Money (Section 235 of the Criminal Code), Manufacturing and Possession of Forgery Tools (Section 236 of the Criminal Code), Unauthorised Production of Money (Section 237 of the Criminal Code), Subversion of the Republic (Section 310 of the Criminal Code),

Terrorist Attack (Section 311 of the Criminal Code), Terror (Section 312 of the Criminal Code), Participation on a Terrorist Group (Section 312a of the Criminal Code), Terrorism Financing (Section 312d of the Criminal Code), Support and Endorsement of Terrorism (Section 312e of the Criminal Code), Threatening with Terrorist Attack (Section 312f of the Criminal Code), Sabotage (Section 314 of the Criminal Code), Espionage (Section 316 of the Criminal Code), Violence against Public Authority (Section 323 of the Criminal Code), Violence against Public Official (Section 325 of the Criminal Code), Forgery and Alteration of Public Documents (Section 348 of the Criminal Code), Genocide (Section 400 of the Criminal Code), Attack against Humanity (Section 401 of the Criminal Code), Apartheid and Discrimination of a Group of People (Section 402 of the Criminal Code), Preparation of Offensive War (Section 406 of the Criminal Code), War Cruelty (Section 412 of the Criminal Code), Persecution of Population (Section 413 of the Criminal Code), Pillage in the Area of Military Operations (Section 414 of the Criminal Code), Abuse of International and Government-Recognized Symbols (Section 415 of the Criminal Code), Abuse of Flag and Truce (Section 416 of the Criminal Code), Harming a Conciliator (Section 417 of the Criminal Code), even if such criminal act has been committed abroad by a legal entity without a registered office in the Czech Republic.

(2) The law of the Czech Republic shall also apply when determining the punishability for a criminal act committed abroad by a legal entity without a registered office in the Czech Republic, if the criminal act has been committed for the benefit of a legal entity with a registered office in the Czech Republic.

**(b) Observations on the implementation of the article**

Czechia assumes jurisdiction for a list of criminal offences even if they had been committed abroad by a foreign national or a person with no nationality to whom permanent residence in the territory of the Czech Republic was not granted. Corruption offences are not among the list.

**Article 42 Jurisdiction**

**Paragraph 3**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

**(a) Summary of information relevant to reviewing the implementation of the article**

**Criminal Code of the Czech Republic**

**Section 6**

**Principle of Personality**

The law of the Czech Republic will also apply to assessment of criminality of an act committed abroad by a citizen of the Czech Republic or a person with no nationality, who has been granted a permanent residence in its territory.

**(b) Observations on the implementation of the article**

Section 6 CC provides that the law of the Czech Republic shall also assess the culpability of an act committed abroad **by a citizen of the Czech Republic.**

## **Article 42 Jurisdiction**

### **Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

### **Criminal Code**

#### **Section 8**

##### **Subsidiary Principle of Universality**

(1) The law of the Czech Republic shall also assess the culpability of an act committed abroad by a foreign national or a person with no nationality who was not granted a permanent residence in the territory of the Czech Republic even if

*a) the act is punishable even under the law effective in the territory where it was committed, b) the offender was apprehended in the territory of the Czech Republic, extradition or transfer proceedings took place and the offender was not extradited or transferred for criminal prosecution or to serve a sentence to another State or another entitled entity, and c) the foreign State or other entitled entity that requested extradition or transfer of the offender for criminal prosecution or to serve a sentence requested criminal prosecution of the offender in the Czech Republic.*

(2) The law of the Czech Republic will apply to assessment of criminality of an act committed abroad by a foreign national or a person without a nationality to who has not been granted permanent residence in the territory of the Czech Republic, also when the act was committed in favor of a legal entity with a registered office or branch in the territory of the Czech Republic.

(3) However, the offender cannot be imposed a more severe sentence than the sentence prescribed by the law of the state, in the territory of which was the criminal offense committed.

#### **(b) Observations on the implementation of the article**

Czechia establishes jurisdiction over offences when the offender is present in its territory and it does not extradite him or her (s. 8 CC).

## **Article 42 Jurisdiction**

### **Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

If the competent authorities of the Czech Republic learned that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, they have the possibility to consult the situation (vis-a-vis the EU Member States it is the obligation – see Section 257-260 of the Act no. 104/2013, on International Judicial Cooperation in Criminal Matters).

**Act no. 104/2013, on International Judicial Cooperation in Criminal Matters  
Prevention of Competence Disputes**

**Section 257**

This Chapter shall be applied whenever another Member State applies legal regulations for the implementation of the relevant legal regulation of the European Union<sup>2</sup>.

**Section 258**

(1) The judicial authority will request authorities of another member state to inform it within a time limit set by it, whether there are or were criminal proceedings being conducted in this Member State for the same act against the same person (hereinafter referred to as “concurrent criminal proceedings”), if it can be reasonably expected that such proceedings.

(2) In the request the judicial authority will state

- a) its contact information,
- b) description of the facts of the case,
- c) name and surname of the person, against whom is the proceeding being conducted, eventually also the name and surname of the aggrieved person and other personal data enabling their identification, and
- d) the state of the criminal proceedings.

(3) The judicial authority may state additional information in the request, concerning criminal proceedings conducted in the Czech Republic, especially whether the accused person is in custody.

(4) The request will be sent to the other Member State in a language, in which this state is willing to accept it.

**Section 259**

(1) The judicial authority will notify the authority of another member state upon its request within a time limit set by it, whether there is or was any concurrent criminal proceeding being conducted in the Czech Republic; if the person concerned is apprehended or placed in custody according to information of the authority of the other member state, it will be done immediately.

(2) If the judicial authority cannot comply with the time limit set for execution of the request, it will notify the authority of the other Member State thereof, including the reason therefor and the expected date of execution of the request. In case the time limit for execution of the request is not set, the judicial authority will notify the requested information to the authority of the other member state without an undue delay.

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<sup>2</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

(3) In case a concurrent criminal proceedings are or were conducted in the Czech Republic, the judicial authority will send the authority of the other Member State its contact information and inform it about the current stage of such proceeding, and in case it has already been finally and effectively concluded, also about the manner of its conclusion. The judicial authority may communicate also other necessary information to the authority of the other Member State concerning criminal proceedings conducted in the Czech Republic.

(4) In case the request pursuant to sub-section (1) was sent to an authority that does not and did not conduct the concurrent criminal proceeding, it will immediately forward it to the judicial authority that may be considered to conduct such proceedings and at the same time it will notify forwarding of the request to the authority of the other Member State, which has sent it. In case such proceeding is not conducted in the Czech Republic, the competence for sending the information according to Sub-section (1) will pertain to any judicial authority.

### **Section 260**

(1) In case concurrent criminal proceeding is being conducted in another Member State, the judicial authority will consult the competent authority of the other member state about further procedure in order to achieve an effective solution preventing adverse consequences caused thereby.

(2) In the course of consultations the judicial authority will inform the competent authority of the other member state about the important procedural steps that have been taken and notify further necessary information to this authority upon its request; however, such information will not be provided, if it would imperil substantial national security interest or the security of persons.

(3) Information and requests between the judicial authority and authority of another member state will be exchanged in writing or in any way enabling written recording. Consultations will be conducted in a language agreed upon between the judicial authority and the authority of the other member state.

(4) Provisions of this Chapter are without prejudice to the provisions of Part two Chapter II. The dispute can be solved by means of extradition or transfer of criminal proceedings – see the part concerning international cooperation in criminal matters.

### **(b) Observations on the implementation of the article**

In line with the EU regulations, Czechia has a duty to consult with other member States on ongoing investigations and prosecutions (s. 257-260 the Act on International Judicial Cooperation in Criminal Matters).

Czechia also confirmed that it would consult with other States Parties to the Convention as required by the provision under review when such a need arises.

## **Article 42 Jurisdiction**

### **Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Criminal Code of the Czech Republic**

**Section 9**

**Competency Set Out by International Treaty**

(1) The culpability of an act is assessed by the law of the Czech Republic even if an international treaty which is incorporated into the system of law (hereinafter referred to as “international treaty”) stipulates it.

(2) The provisions of Section 4 through 8 shall not apply if it is not admissible by an international treaty.

**Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them**

**Section 5**

(1) The punishability of a criminal act shall also be assessed under the law of the Czech Republic in cases stipulated in a promulgated international treaty which is a part of the legal order of the Czech Republic (hereafter “international treaty”).

(2) Section 2 to 4 shall not apply if it is not allowed in the international treaty.

**Section 6**

**Exclusion of Punishability of Certain Legal Entities**

(1) Following legal entities are not criminally liable according to this Act:

a) Czech Republic,

b) local self-governing entities while exercising public authority.

(2) Property participation of legal entities stipulated in sub-section (1) in (another) legal entity does not preclude criminal liability of such legal entity under this Act.

**(b) Observations on the implementation of the article**

Pursuant to Section 9 par.(1) CC and Section 5 of Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them the criminality of an act shall be assessed according to the law of the Czech Republic also if an international treaty incorporated into the system of law (hereinafter referred to as (“international treaty”) stipulates so.

## **Chapter IV. International cooperation**

Extradition and mutual legal assistance (MLA) in the Czech Republic are mainly governed domestically by Act no. 104/2013 on International Judicial Cooperation in Criminal Matters (Act no. 104/2013), the provisions of the Czech Procedure Code would also apply *mutatis mutandis* to the provisions of the Act, where relevant issues are not addressed in the Act and where the application of other legislation is not precluded by the Act (section 3 of Act no. 104/2013).

The Act primarily governs the procedural issues (Section 1 of the Act: *This Act regulates procedure of judicial, central and other authorities within the framework of international judicial cooperation in criminal matters (hereinafter referred to as „international judicial cooperation“) and incorporates the relevant regulations of the European Union))* which is mirrored in the provision of Section 12, paragraph 10 of the Code of Criminal Procedure (*The criminal proceedings will be understood as a procedure pursuant to this Code and the Act on International Judicial Cooperation in Criminal Matters, ...*), which defines the term “criminal proceedings” as proceedings conducted in accordance with the Code of Criminal Procedure as well as according to the Act. The relation of subsidiarity between the Act and the Code of Criminal Procedure is then expressed in Section 3, paragraph 1 of the Act.

The provision on subsidiary application of the Code of Criminal Procedure is necessary since both the Act and the Code of Criminal Procedure contain regulation of certain criminal procedures but the Act regulates only procedures concerning international judicial cooperation and hence not all general procedures of the criminal proceedings as does the Code of Criminal Procedure.

On the other hand, the nature of the Act and the Criminal Code is completely different as the Act regulates the procedure and the Criminal Code regulates the substantive criminal law. Therefore, even without any specific provision regarding the application of the Criminal Code, it is obvious that the Criminal Code applies to matters of substantive criminal law and the Act in connection with the Code of Criminal Procedure to procedural matters. There are no overlaps of their contents which would have to be addressed.

According to article 10 of the Constitution of the Czech Republic, ratified international agreements constitute a part of the legal order of the country and where an international agreement has provisions contrary to the domestic law, the international agreement will prevail. Based on this approach, the provisions of Chapter IV of the Convention can be applied directly by the Czech Republic and they would trump the conflicting provisions of the national law.

The Czech Republic confirmed that it would use the Convention as a legal basis both for extradition and MLA in the absence of a bilateral treaty. The Czech Republic also considers the Convention as a legal basis for law enforcement cooperation.

Extradition requests are received by the Ministry of Justice that forwards them to the Public Prosecutor’s Offices to perform preliminary investigation. The requests are then submitted to the regional courts for consideration of their admissibility. The decisions of the regional courts can be appealed. Once the court concludes that the request is admissible, it is

submitted to the Minister of Justice who takes the final decision on the extradition. Even after the Minister's decision, a person whose extradition is sought could file a constitutional complaint in case there are sufficient legal grounds for doing that.

The Czech Republic has two central authorities for receiving MLA requests. The Supreme Public Prosecutor's Office, based in Brno, is the central authority for the requests relevant to legal assistance in pre-trial period, and the Ministry of Justice, based in Prague, is the central authority for the requests relevant to legal assistance during a trial period and with regard to the execution of court judgments. The two authorities then forward the requests to competent regional Public Prosecutor's Offices and courts.

Extradition and MLA requests can be directly transmitted to the central authorities without the involvement of diplomatic channels.

Overall, Act no. 104/2013, on International Judicial Cooperation in Criminal Matters provides a comprehensive regulation of extradition and MLA. The Czech Republic has expert prosecutors and judges that specialize on international cooperation cases; for these experts special internal guidelines and manuals have been developed.

The Czech Republic also has an extensive experience in law enforcement cooperation and joint investigations that was positively commended by the reviewing experts.

## **Article 44 Extradition**

### **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

#### **Section 90**

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

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

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

(3) If the foreign state requested extradition of a person for several acts, at least one of which

meets the conditions referred to in Sub-section (1) and (2), extradition is admissible, subject to the condition of reciprocity, also for the other acts, if they constituted criminal offences according to the law of the Czech Republic.

The Czech Republic provided the following statistical information with regard to incoming and outgoing extradition requests.

**IN-COMING EXTRADITION REQUESTS  
(CZECH REPUBLIC IN POSITION OF THE REQUESTED STATE)**

<b>Year</b>	<b>Total Number of Requests Received</b>	<b>Number of Fugitives Surrendered</b>	<b>Number of Fugitives not Surrendered</b>	<b>Number of Pending Cases</b>
2011	67	15	20	32
2012	13	8	6	22
2013	12	5	8	32
2014	23	5	13	46
2015	22	5	12	Not available
2016	16	11	10	38

Jurisdictions: Albania, Armenia, Azerbaijan, Belarus, Montenegro, China, Croatia, Georgia, Kazakhstan, Kosovo, Republic of Macedonia (FYROM), Moldova, Mongolia, Panama, Qatar, Russia, United Arab Emirates, Serbia, Taiwan, Turkey, Turkmenistan, Ukraine, USA, Uzbekistan, Viet Nam

**OUT-COMING EXTRADITION REQUESTS  
(CZECH REPUBLIC IN POSITION OF THE REQUESTING STATE)**

<b>Year</b>	<b>Total Number of Requests Received</b>	<b>Number of Fugitives Surrendered</b>	<b>Number of Fugitives not Surrendered</b>	<b>Number of Pending Cases</b>
2011	38	7	9	22
2012	23	5	6	39
2013	12	5	6	40
2014	15	16	1	43
2015	11	12	3	Not available
2016	14	5	2	46

Jurisdictions: Albania, Argentina, Armenia, Australia, Azerbaijan, Bahamas, Belarus, Brazil, Cabo Verde, Canada, Costa Rica, Dominican Republic, Croatia, Indonesia, Israel, Mexico, Moldova, Montenegro, New Zealand, Panama, Peru, South Africa, Russia, United Arab Emirates, Serbia, Ukraine, USA, Venezuela, Viet Nam

The Czech Republic additionally provided details of corruption-related extradition cases.

### **Case No. 1 (2013)**

Czech Republic in the position of a Requested State.

The United States of America in position of a Requesting State

Treaty base: Treaty between the Czechoslovak Republic and the United States of America of 2 July 1925 Concerning the Mutual Extradition of Fugitive Criminals, as amended by the Supplementary Treaty of 29 April 1935 and the Second Supplementary Treaty of 16 May 2006  
U.S. offences: - Conspiracy to Bribe a Public Official, in violation of Title 18, United States Code, Sections 371 and 2; - Use of a Facility in Interstate or Foreign Commerce in Aid of Bribery Activity, in violation of Title 18, United States Code, Sections 1952(a)(3) and 2.  
Czech offences: Arranging Advantage in Commission of Public Contract, Public Tender and Public Auction according to Section 256(1)(3) of the Criminal Code.

Simplified extradition procedure applied. The fugitive consented to his/her extradition to the USA. There was no decision of a court on admissibility of extradition nor decision of the Minister of Justice to grant the extradition.

Consent of a person to his/her extradition to a foreign state must be given in the presence of his/her counsel and before a court. The person must be advised by the judge on the meaning of such consent, especially about that the extradition will be executed without a decision on admissibility (by a court) and authorization of the extradition (by the Minister of Justice), and also on the consequences related thereto, including waiver of application of the rule of specialty.

Extradition proceedings initiated on 28 April 2013

Fugitive surrendered on 22 November 2013

Arrest for the purposes of extradition: 28 April – 22 November 2013; 2 months and 25 days

Duration of extradition proceedings: 2 months and 25 days

### **Case No. 2 (2014-2016)**

Czech Republic in the position of a Requested State.

The United States of America in position of a Requesting State

Treaty base: Treaty between the Czechoslovak Republic and the United States of America of 2 July 1925 Concerning the Mutual Extradition of Fugitive Criminals, as amended by the Supplementary Treaty of 29 April 1935 and the Second Supplementary Treaty of 16 May 2006

US offences: Bribery of a Public Official in violation of Title United States Code, Section 201; -violation of Title 18, United States Code, Section 201(b)(1)(A) for any person to, directly or indirectly, corruptly give, offer or promise anything of value to any public official with intent to influence any official act; -violation of Title United States Code, Section 201(b)(1)(A) for any person to, directly or indirectly, corruptly give, offer or promise anything of value to any public official with intent to induce a public official to do, or omit to do, any act in violation of his or her lawful duty. influence any official act;

Czech offences: Criminal offence of bribery according to Section 332 (1)(2)(b) of the Criminal Code.

Extradition proceedings initiated on 2 October 2014.

Fugitive surrendered on 20 July 2016.

Arrest for the purposes of extradition: from 2 October 2014 to 4 May 2015 (released on bail) and from 1 March 2016 to 20 July 2016 (with the view of fugitive's surrender)

Duration of extradition proceedings: 1 year, 9 months and 13 days

**(b) Observations on the implementation of the article**

Act no. 104/2013, on International Judicial Cooperation in Criminal Matters (Act no.104/2013) stipulates in its article 90(1) that extradition is possible where the underlying conduct constitutes an offence under the law of the Czech Republic with the upper limit of imprisonment in the extent of at least 1 year. There is an indirect indication that the criminalization of the underlying offence would be also necessary in practice per article 88(3) of the Act as cited under paragraph 8 of article 44 of the Convention below.

However, as discussed above not all the elements of the Convention's offences are fully criminalized in the applicable legislation of Czechia.

It is recommended that Czechia fully criminalize all the mandatory offences under the Convention and consider criminalizing other offences to satisfy the dual criminality requirement applicable per article 90(1) of Act No. 104/2013.

**Article 44 Extradition**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has reported that it did not implement the provision under review.

All the offences covered by the Convention are punishable under domestic law. Under Act no.104/2013, on International Judicial Cooperation in Criminal Matters, Section 90, the extradition into a foreign state is admissible only if the act, for which is the extradition requested, constituted a criminal offence under the law of the Czech Republic.

**(b) Observations on the implementation of the article**

Czechia clarified that due to the fundamental requirement of its law, it would not be able to extradite a person for the offences that are not punishable under the Czech domestic law.

It is recommended that Czechia fully criminalize all the mandatory offences under the Convention and consider criminalizing other offences to satisfy the dual criminality requirement applicable per article 90(1) of Act No. 104/2013.

## Article 44 Extradition

### Paragraph 3

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Czech Republic has cited the following implementation measure.

#### Act no. 104/2013, on International Judicial Cooperation in Criminal Matters

##### Section 90

##### Criminal Offences Subject to Extradition

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

#### (b) Observations on the implementation of the article

Czechia allows accessory extradition per section 90(a) of Act 104/2013 subject to the condition of reciprocity.

## Article 44 Extradition

### Paragraph 4

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Czech Republic has indicated that the offences extraditable under the Convention are considered to be crimes against property under Chapter V, Part II of the Criminal Code and Criminal offences against order in public matters under Chapter X Part II of the Criminal Code.

An obligation to extradite is set forth in European Convention on Extradition, to which the Czech Republic is a contracting party.

#### European Convention on Extradition Paris, 13.XII.1957

##### Article 1

## **Obligation to extradite**

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

## **Article 2**

### **Extraditable offences**

(1) Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.

(2) If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.

The Czech Republic provided a list of relevant extradition treaties:

- 1) European Convention on Extradition Paris, 13.XII.1957
- 2) Criminal Convention on Corruption Strasbourg, 27.1.1999
- 3) Treaty between the United States of America and Czechoslovakia/the Czech Republic concerning the Mutual Extradition of Fugitive Criminals Prague 2. VII. 1925; amended 16.V. 2006 (Second amendment concerning extraditable crimes)

## **Act No. 104/2013 Coll. of Laws on Judicial Cooperation in Criminal Matters.**

### **Section 91**

#### **Inadmissibility of Extradition**

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

...

*f) the act, which the extradition is requested for, is of an exclusively political or military nature,*

...

#### **(b) Observations on the implementation of the article**

The Czech Republic has an obligation to extradite to other States Parties of the European Convention on Extradition of 1957.

It is not clear, however, whether all the Convention offences are included in all the existing bilateral treaties of the Czech Republic.

Section 91(1)(f) of Act. No.104/2013 prohibits extradition “*if the act, which the extradition is requested for, is of an exclusively political or military nature*”. The authorities did not report any cases where extradition for corruption offences was denied on the ground that they were political offences. Nevertheless, it is important that the authorities continue to ensure that any

crime covered by the Convention against Corruption is not considered or identified as a political offence.

It is recommended that Czechia ensure that the Convention offences are not considered or identified as political and are included as extraditable offences in its existing and future extradition treaties with other States Parties.

## **Article 44 Extradition**

### **Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

### **Paragraph 6**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

- (a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*
- (b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has reported that it does not require a treaty to provide extradition. Extradition can be provided in the absence of a treaty based on the principle of reciprocity.

The Czech Republic further clarified that it would consider the Convention as a treaty basis for extradition if it does not have a bilateral treaty in place with the Requested State.

The Czech Republic cited the following relevant measures.

#### **Act No. 104/2013 Coll. of Laws on Judicial Cooperation in Criminal Matters.**

##### **Section 4**

##### **Guarantee of Reciprocity**

(1) Unless the international judicial cooperation between the Czech Republic and a foreign state is regulated by an international treaty, the competent judicial authority will grant the request of the foreign state authority for international judicial cooperation *only in case the foreign state provides a guarantee of reciprocity, which the Minister of Justice will accept, or in case the foreign state has formerly accepted a guarantee of reciprocity from the part of the Czech Republic in a similar case. The Ministry will secure the request for guarantee of reciprocity from the foreign state.*

(2) If the foreign state conditions granting the request for international judicial cooperation by a guarantee of reciprocity, the Minister of Justice will provide it, having considered all decisive

matters of fact; in pre-trial proceedings he will do so upon a motion of the Supreme Public Prosecutor's Office.

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

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

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

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

*Comment: Part five of the Act No. 103/2014 specifically deals with cooperation between the Czech Republic and other Member States of the European Union. Cooperation is carried out on the basis of a uniform European Union legislation.*

#### **(b) Observations on the implementation of the article**

The Czech Republic does not condition the provision of extradition on the existence of a bilateral treaty and can extradite based on the principle of reciprocity. The Czech Republic also notified the Secretary-General of the UN that Secretary-General that in the absence of any other treaty basis for extradition it would regard the Convention as a legal basis for cooperation on extradition.

### **Article 44 Extradition**

#### **Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has cited the following applicable measures.

#### **Article 15 - Bribery of national public officials**

#### **Article 16 - Bribery of foreign public officials and officials of public international organizations**

Abovementioned Articles correspond to elements of crime under Sections 331 (Corruption) a 332 (Bribery) Criminal Code, Act no. 40/2009 Coll.

**Article 17 - Embezzlement, misappropriation or other diversion of property by a public official**

**Article 18 - Trading in influence**

**Article 19 - Abuse of functions**

**Article 20 - Illicit enrichment**

**Article 21 - Bribery in the private sector**

**Article 22 - Embezzlement of property in the private sector**

Abovementioned Articles correspond to elements of crime under the Criminal Code, act no. 40/2009 Coll.: Section 206 (Embezzlement), Section 329 (Abuse of Competence of Public Official). Article 18 also corresponds to Section 333 (Indirect Corruption).

Various forms of corruption are elements of crime under the Criminal Code Section 255 (Abuse of Information and Status in Business Relations), Section 257 (Machinations in Commission of Public Contract and Public Contest), Section 226 (Machinations in Insolvency Proceedings). Corruption in private sector according to Article 21 is covered by Sections 331 - 334 of the Criminal Code. Article 20 (as to illicit enrichment) may be indirectly extraditable under Section 329 of the Criminal Code (Abuse of Competence of Public Official).

**Article 23 - Laundering of proceeds of Crime**

Abovementioned Article corresponds to elements of crime under the Criminal Code. Sections 214 (Participation) and 216 (Money Laundering). Sections 215 and 217 cover also negligent participation and negligent money laundering.

**Article 24 - Concealment**

Article 24 corresponds to elements of crime under the Criminal Code Sections 214 (Participation -intentional) and 215 (Negligent Participation).

**Article 25 - Obstruction of justice**

Article 25 a) corresponds either to Section 175 par. 2 e) of the Criminal Code (Extortion) or to Section 335 of the Criminal Code (Interfering with Independence of Courts).

Article 25 b) corresponds to Section 346 of the Criminal Code (False Testimony) and also to Sections 323 (Violence against Public Authority), 324 (Threatening with Intention to Affect Public Authority), 325 (Violence against Public Official), 326 (Threatening with Intention to Affect Public Official) and 335 (Interfering with Independence of Courts) of the Criminal Code.

**Article 26 - Liability of legal persons**

Liability of legal persons is covered by a special act. no. 418/2011 Coll. on Liability of Legal Persons and Proceedings against them.

**Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against them**

**Article 27 - Participation and attempt**

Article 27 corresponds to Sections 23 and 24 of the Criminal Code.

### **Article 28 - Knowledge, intent and purpose as elements of an offence**

Article 28 corresponds to Sections 15 (Intent) of the Criminal Code.

#### **(b) Observations on the implementation of the article**

The reviewing experts referred to their observations cited under paragraph 1 above.

### **Article 44 Extradition**

#### **Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters Section 88**

##### **Accepting Extradition Requests**

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

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

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

##### **Section 89**

##### **Refusing Extradition Requests**

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

*a) the person concerned by the extradition died,*

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

*c) the person concerned by the extradition may not be apprehended because of a privilege or immunity, which make him exempt from jurisdiction of authorities involved in criminal proceedings,*

*d) the place of stay of the person concerned by the extradition in the territory of Czech Republic is unknown,*

*e) the foreign state failed to supplement the request according to Section 88 (3), or*

*f) the extradition request was served after full force and effect of the decision that the person concerned by the extradition will be surrendered to another state according to Part five, Chapter II, or after authorization of extradition to another state, or after authorization of surrendering to an international court authority.*

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

## **Section 90**

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

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

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

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

## **Section 91**

### **Inadmissibility of Extradition**

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

*a) it concerns a citizen of the Czech Republic, who has not given the consent*

*b) it concerns a person that has been granted an international protection in the Czech Republic within the scope of protection provided by special legal regulations or by an international treaty,*

*c) criminal prosecution or execution of the sentence of imprisonment have become statute-barred according to the legal regulations of the Czech Republic,*

*d) the criminal prosecution is inadmissible as a result of granting a pardon or by an act of amnesty,*

*e) the act, which the extradition is requested for, is not a criminal offence subject to extradition,*

*f) the act, which the extradition is requested for, is of an exclusively political or military nature,*

*g) the act consists in the violation of tax, customs, currency regulations or in violation of other financial rights of the state, unless the principle of reciprocity is granted,*

*h) the act, which the person is requested for, is punishable by death penalty in the requesting*

state, except for cases where the requesting state guarantees that the death penalty shall not be imposed,

i) the requesting state requests the extradition for the purpose of executing death penalty,

j) the requested person was not criminally liable at the time of commission of the act according to legal regulations of the Czech Republic, or there are other reasons precluding his criminal liability,

k) there is a criminal prosecution being conducted against the same person for an act, for which is requested the extradition, or if the act, for which is requested the extradition, was committed fully in or in part in the territory of the Czech Republic, with the exception of cases, where it is necessary to give priority to conducting criminal prosecution in the foreign state, especially by virtue of appropriate ascertaining of the facts or for reasons related to the imposed sentence or protective measure or execution thereof,

l) criminal prosecution for the same act conducted against this person in the Czech Republic was concluded by a final and effective judgment of court or was finally and effectively terminated by a decision of court or public prosecutor or was concluded by another decision of the same effect, provided that such a decision has not been repealed,

m) criminal prosecution for the same act conducted against this person in another Member State or an associated state was concluded by a decision that constitutes preclusion or *res judicata* according to Section 11 (2) of the Code of Criminal Procedure, or if criminal prosecution for the same act conducted against this person in a third state was concluded by a final and effective judgment or other decision of court of the same effect, provided that such a decision was not repealed and that the sentence, if it was imposed to the person concerned by the extradition, has already been executed, is currently being executed or can no longer be executed under the law of the condemning state,

n) the state, from which was the person concerned by the extradition previously extradited or surrendered according to provisions of Part five, Chapter II, has not granted a consent with extradition to another state, with the exception of cases, where the principle of specialty does not apply,

o) it would be contrary to the obligations of the Czech Republic arising from international treaties on human rights and basic freedoms, or

p) there is a reasonable concern that the person concerned by the extradition would be exposed to persecution because of his origin, race, religion, sex, membership to a certain national or other group, citizenship or political beliefs or for other similar reasons, or that it would impair his position in criminal proceeding or in serving a sentence of imprisonment or a protective measure associated with incarceration.

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

## **(b) Observations on the implementation of the article**

The conditions to which extradition is subject to are provided in sections 88-91 of Act no. 104/2013.

The reviewing experts noted the condition contained in section 89(1)(a) of the Act “Refusing Extradition Requests” that states that the Ministry of Justice will refuse an extradition request before the initiation of the preliminary investigation if *the person concerned by the extradition may not be apprehended because of a privilege or immunity, which make him exempt from the jurisdiction of authorities involved in criminal proceedings.*

The authorities clarified that such privileges and immunities may be derived either from the international law (for example, persons enjoying diplomatic or consular privileges, the President of the State) or from the national law (the President of the Czech Republic, Members of the Parliament, Justices of the Constitutional Court and judges).

The authorities also referred Section 10 of the Code of Criminal Procedure.

## **Section 10**

### **Exemption from Competencies of Law Enforcement Authorities**

*(1) Pursuant to this Act, persons that enjoy privileges and immunities under the law or international law shall be exempt from the competencies of the law enforcement authorities.*

*(2) Should any doubt arise as to whether or to what extent a person may be excluded from the competencies of the law enforcement authorities under this Act, the Supreme Court, shall decide on it upon the petition of the public prosecutor, court or the party in question.*

In that regard it is recommended that the Czech Republic take into account the purposes of the Convention as stipulated in its article 1, as well the requirements of paragraph 2 of article 30 of the Convention, when considering the application of section 89(1)(a) of Act no. 104/2013 to the requests based on the Convention.

## **Article 44 Extradition**

### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has indicated that when the offender is in custody (common for such offences) the cases are being dealt with highest urgency. One of the basic principles of criminal proceedings under the Czech law is that Criminal cases must be dealt with expeditiously without undue delays (s. 2 CCP).

The Czech Republic cited the following applicable measures.

## **Code of Criminal Procedure of the Czech Republic**

### **Section 2**

#### **Basic Principles of Criminal Procedure**

(4) Unless this Act stipulates otherwise, the law enforcement authorities act ex officio. Criminal cases must be dealt with expeditiously without undue delays; the most expeditious procedure shall be taken in particular for custody matters and the matters in which property was impounded if this is required with regard to the value and nature of the impounded property. Criminal cases shall be dealt with a full investigation of rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms and by international treaties on human rights and fundamental freedoms that the Czech Republic is bound by; when conducting acts of criminal

proceedings, the rights of persons that such acts affect may be intervened only when justified by law and to the extent necessary to ensure the purpose of criminal proceedings. The law enforcement authorities shall not take the content of petitions affecting the performance of such obligations into account.

## **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

### **Section 96**

#### **Simplified Extradition**

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

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

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

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

(5) In case that after filing the petition under Sub-section (2) arises a reason for termination of preliminary investigation referred to in Section 92 (7) (c), (e) or (g) or if a reason for termination of preliminary investigation referred to in Section 92 (7) (d) is ascertained, the presiding judge will dismiss the petition. If the person concerned by the extradition is placed in custody, the presiding judge will decide on his release. A complaint of the public prosecutor is admissible against these decisions. Extradition proceedings are terminated upon full force and effect of the decision of dismissing the petition according to Sub-section (2).

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

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

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

The Czech Republic additionally clarified that extradition proceedings [as well as surrender proceedings based on the European arrest warrant (EAW)] can be initiated also on the basis of red notices circulated via INTERPOL channels. In such a case the INTERPOL red notice must contain at least the following information:

- a) on identity of the person sought for extradition/surrender on the basis of an EAW;
- b) that condemning judgment, arrest warrant or other decision with the same effect, issued in the requesting foreign state against the person sought for extradition, exists (must include information on the issuing authority, date of issuance, reference number and that it is still valid and enforceable);
- c) description of act(s), for which the extradition is to be requested, including the time and place of its commission and its legal qualification, as well as maximum penalty, which can be imposed for such act(s) under the law of the requesting foreign state or information on penalty already imposed in the requesting foreign state if the extradition is to be sought for the purpose of enforcement of the sentence.

In many of extradition treaties binding on the Czech Republic, including the UNCAC, a request for provisional arrest of the fugitive as well as an extradition request itself can be communicated directly between the Ministry of Justice of the Czech Republic and the counterpart Central Authority in the foreign state. Transmission of the requests via diplomatic channels is not required by the Czech Republic.

In urgent cases, the extradition proceedings can be initiated upon the receipt of the request for provisional arrest via electronic means, such as e-mail or fax transmission.

In that regard the Czech Republic has cited additional applicable measures.

#### **Article XI paragraph 2 of the Czech - US Extradition Treaty(2006)**

Requests for provisional arrest may be made directly between the United States Department of Justice and the Ministry of Justice of the Czech Republic, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organization (Interpol) may also be used to transmit such a request.

#### **Article 12 paragraph 3 of the Czech - Hong Kong Agreement on Surrender of Persons Wanted for Criminal Proceedings (2013)**

An application for provisional arrest may be transmitted by any means affording a record in writing through the Central Authorities or through the International Criminal Police Organization (Interpol).

#### **Article 12 of the Council of Europe Convention on Extradition (1957) as amended by Article 5 of the Second Additional Protocol (1978)**

The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties.

**Article 2 paragraph 1 to 3 of the Czech - Hong Kong Agreement on Surrender of Persons Wanted for Criminal Proceedings (2013)**

(1) The Contracting Parties shall convey their requests for surrender and supporting documents through their Central Authorities.

(2) The Central Authority of the Hong Kong Special Administrative Region is the Secretary for Justice or his or her duly authorized officer. The Central Authority for the Czech Republic is the Ministry of Justice or a state authority authorized by the Ministry of Justice.

(3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.”

**(b) Observations on the implementation of the article**

The authorities clarified that the duration of extradition proceedings may vary from several months to several years. It depends on a fugitives’ defence strategy and his determination to challenge his/ her extradition.

Simplified extradition is possible where the person sought consents to be extradited and is addressed in section 96 of Act no 104/2013.

It is recommended that Czechia endeavour to further expedite extradition procedures and to simplify evidentiary requirements related in respect of any Convention offence.

**Article 44 Extradition**

**Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic indicated that it could take a person whose extradition is sought into a custody or to take other appropriate measures. Preliminary custody is covered by section 94 of the Act no. 104/2013, on International Judicial Cooperation in Criminal Matters and Custody in general by Section 67 and subsequent of the act no. 141/1961 Coll. - the Code of Criminal Procedure.

The Czech Republic cited the following applicable measures.

**Act no. 104/2013, on International Judicial Cooperation in Criminal Matters  
Section 94**

### **Preliminary Custody**

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

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

(3) The public prosecutor will release the person concerned by the extradition from preliminary custody, if the preliminary investigation has been initiated without receiving a request for extradition of a foreign state and this request was not delivered to the Ministry within 40 days following the day of imposing the preliminary custody; this does not apply in case of simplified extradition. Release from the preliminary custody does not preclude new imposing of preliminary custody, if the request for extradition is served subsequently. Delivering the request to the Supreme Public Prosecutor's Office, to a diplomatic office of the Czech Republic in the foreign state or Ministry of Foreign Affairs has also the effect of service.

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

## **Code of Criminal Procedure of the Czech Republic**

### **Section 2**

#### **Basic Principles of Criminal Procedure**

(4) Unless this Act stipulates otherwise, the law enforcement authorities act *ex officio*. Criminal cases must be dealt with expeditiously without undue delays; the most expeditious procedure shall be taken in particular for custody matters and the matters in which property was impounded if this is required with regard to the value and nature of the impounded property. Criminal cases shall be dealt with a full investigation of rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms and by international treaties on human rights and fundamental freedoms that the Czech Republic is bound by; when conducting acts of criminal proceedings, the rights of persons that such acts affect may be intervened only when justified by law and to the extent necessary to ensure the purpose of criminal proceedings. The law enforcement authorities shall not take the content of petitions affecting the performance of such obligations into account.

#### **(b) Observations on the implementation of the article**

Preliminary custody of a person whose extradition is sought is possible in the Czech Republic per Section 94 of the Act no. 104/2013.

The Czech authorities further clarified that other measures could be applied as well per the general rules on custody of the Code of Criminal Procedure *mutatis mutandis* unless their

application is precluded by Section 94 of the Act on International Judicial Cooperation in Criminal Matters.

Section 73 of the Code of Criminal Procedure provides for replacement of custody with guarantees, supervision, interim measures or pledges. In regards to the replacement of custody by any of these measures the authority deciding on the custody may simultaneously decide to perform electronic control through an electronic control system that allows for the detection of movement of the accused or it may simultaneously impose restrictions involving a ban on travel abroad to the accused.

Section 73a of the Code of Criminal Procedure provides for release from custody on financial bail. The authority may simultaneously decide to impose restrictions involving a ban on travel abroad.

As the application of Section 73 and 73a of the Code of Criminal Procedure is not precluded by Section 94 of the Act no. 104/2013, these provisions may apply in this regard.

## **Article 44 Extradition**

### **Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measure.

### **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

#### **Section 91**

##### **Inadmissibility of Extradition**

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

*a) it concerns a citizen of the Czech Republic, who has not given the consent*

#### **(b) Observations on the implementation of the article**

The extradition of a Czech national to a foreign state is only possible with his/her consent according to Section 91(1)(a) of the Act no. 104/2013. Bilateral treaties on extradition might derogate from this principle. At the present time, the Czech Republic has no extradition treaty in force which would enable the extradition of a Czech national to a foreign state without his/her consent. However, under the concept of the European Arrest Warrant (applied solely

between the Member States of the European Union), the surrender of a Czech national even without his/her consent is possible if specified conditions are met.

The principle of personality as a basis for the application of criminal jurisdiction of the Czech Republic is contained in Section 6 of the Criminal Code. If the extradition cannot be granted solely on the ground of a Czech nationality of the fugitive, the case is automatically submitted by the Ministry of Justice to the respective public prosecutor's office in order to institute criminal proceedings. However, the possibility to proceed with the case is considerably dependent on the willingness of the requesting state to provide evidence against the individual concerned and assist, if a necessary mutual legal assistance is requested. If it is a conviction case, i.e. a Czech national is obliged to serve a sentence of imprisonment imposed by a judgments issued by a court in a foreign state, the judgment can be recognized and executed in the Czech Republic in accordance with Sections 118 and following of the Act no. 104/2013. On the other hand, under the European Arrest Warrant the surrender of own nationals is a general concept. Surrender of a Czech national to another EU Member State can be subject to conditions, such as that he/she will be given the opportunity to be transferred back to the Czech Republic to serve a sentence of imprisonment upon his conviction in the requesting Member State.

However, in practice, foreign counterparts are well known of the fact that the Czech Republic, apart from the extradition cases based on the European Arrest Warrant can extradite its own nationals only under limited terms (consent to extradition given by the fugitive). This results to the situation that the foreign states do not request the extradition of Czech nationals from the Czech Republic. Between 2012 and 2017 we had no extradition request from a foreign state (other than the EU Member State) for a Czech national.

Instead of seeking extradition, the foreign state rather requests the Czech Republic for take-over of criminal proceedings or makes a denunciation in order that the Czech Republic considers initiating criminal proceedings against its own national who is suspected of having committed a criminal offence. The most common treaty base for such requests is the European Convention on the Transfer of Proceedings in Criminal Matters of 1972 and Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 1959. The authority responsible for the take-over of criminal proceedings from a foreign jurisdiction is the Supreme Public Prosecutor's Office. Sections 113 through Section 117 of the Act no. 104/2013 apply.

Below, numbers of cases are provided when the Czech Republic decided about the transfer of criminal proceedings from abroad to the Czech Republic, including the information on how many cases concerned suspects who are Czech nationals:

year	total number of criminal proceedings transferred from abroad to the Czech Republic	number of cases concerned suspects who are Czech nationals
2015	45	37
2016	43	33
2017	49	36

It is recommended that Czechia ensure that whenever a person sought in respect of a Convention offence is not extradited to another State party solely on the ground of his or her being a national of Czechia, the case is submitted to prosecution in line with article 44(11) of

the Convention, including by considering the adoption of corresponding amendments to Act No. 104/2013

## **Article 44 Extradition**

### **Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has indicated that in general, the extradition of its own citizen is not excluded under Czech law on the condition that citizen has given the consent (in accordance with Section 91 of the Act no. 104/2013).

Under the concept of the European Arrest Warrant (vis-à-vis other members of the European Union) the surrender of a Czech national even without his/her consent is possible if specified conditions are met. One of those conditions is a conditional surrender, as envisaged by the Article 44, paragraph 12 of the UNCAC.

As regards the condition that a person will be returned back to serve the sentence in the European Arrest Warrant procedure, please see the following sections of the Act no. 104/2013:

#### **Section 203**

##### **Preliminary Investigation**

(...)

(5) If the person concerned by the surrender is a citizen of the Czech Republic or a citizen of another Member State with a permanent residence in the territory of the Czech Republic and the European Arrest Warrant was issued for the purpose of surrender for criminal prosecution, the public prosecutor will request a reassurance from the competent authority of the requesting state that this person will be allowed to serve an unconditional sentence or a protective measure associated with incarceration in the Czech Republic, if such a type of sentence or protective measure is imposed and the person does not give consent with execution of the sentence or protective measure in the requesting state.

#### **Section 205**

##### **Decision on Surrender**

(...)

(2) The person will not be surrendered into the requesting state, if

a) he is a citizen of the Czech Republic or a citizen of another Member State with a permanent residence in the territory of the Czech Republic, the European Arrest Warrant was issued for

the purpose of surrender for criminal prosecution and the competent authority of the requesting state failed to provide sufficient reassurance according to Section 203 (5),

b) he is a citizen of the Czech Republic or a citizen of another Member State with a permanent residence in the territory of the Czech Republic, the European Arrest Warrant was issued for the purpose of surrender for execution of an unconditional sentence of imprisonment or protective measure associated with imprisonment, conditions for recognition and execution of the decision in the territory of the Czech Republic, imposing such a sentence or protective measure, are met, and this person declares before the court into the protocol that he does not consent with execution of this sentence or protective measure in the requesting state.

## **Section 215**

### **Execution of Sentence or Protective Measure Imposed in Requesting State**

(1) If it was decided not to surrender a person for the reason referred to in Section 205 (2) (b), the presiding judge will call on the competent authority of the requesting state to express within 30 days from the service of the notice as to whether the decision, on the basis of which was issued the European Arrest Warrant, is to be recognized and executed in the territory of the Czech Republic, and to deliver a certified copy of the enforceable decision and its translation into the Czech language for these purposes, unless it has been provided in the course of the surrender proceedings.

(...)

(4) If the person was surrendered on the basis of a reassurance according to Section 203 (5), the presiding judge will ascertain at the competent authority of the requesting state, whether he was imposed an unconditional sentence of imprisonment or protective measure associated with incarceration and whether the person gave his consent with its execution in the requesting state, or whether the requesting state requests his takeover for execution of such a sentence or protective measure, unless it received such information within a reasonable time after surrendering the person.

### **(b) Observations on the implementation of the article**

The Czech Republic is able to surrender its nationals upon the condition that the person will be returned to the Czech Republic to serve the sentence but only to the other EU Member States under the concept of the European Arrest Warrant (ss. 203, 205, 215 of Act no. 104/2013).

## **Article 44 Extradition**

### **Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic indicated that if extradition is refused, it is possible to request the enforcement of the sentence imposed in the state seeking extradition. The issue is covered by Section 118 and subsequent of the Act. no 104/2013.

The Czech Republic cited the following applicable measure.

**Act no. 104/2013, on International Judicial Cooperation in Criminal Matters  
Foreign Decisions**

**Section 118**

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

**Section 119**

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

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

**Section 120**

**Conditions of Recognition**

(1) A foreign decision may be recognized in the territory of the Czech Republic, if

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

(2) Provision of Sub-section (1) (i) will not apply, if a decision on recognition of a foreign decision imposing a sentence of prohibition of a certain activity, sentence of confiscation of property or confiscation of items or a protective measure consisting in forfeiture of items is

concerned. This provision will also not apply in case of takeover of execution of an unconditional sentence of imprisonment or a protective measure associated with incarceration imposed by a foreign decision and if it was decided on inadmissibility of extradition of the person concerned for a reason referred to in Section 91 (1) (b), (c), (k), (o) or (p), if the Minister of Justice decided not to authorize his extradition, or if it was decided to surrender him to another Member State for a reason referred to in Section (205) (2) (g), (l) or (m) or to the Republic of Island (hereinafter referred to as “Island”) or to the Kingdom of Norway (hereinafter referred to as “Norway”) for similar reasons.

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

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

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

## **Division 2**

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

#### **Section 121**

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

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

(3) The court competent to conduct proceedings on recognition and execution of foreign decisions is the Regional Court, in the jurisdiction of which the person, against whom the foreign decision is directed, has or had the last permanent residence or place of stay. If the foreign decision concerns items, the competence to conduct proceedings will pertain to the Regional Court, in the jurisdiction of which is the item located. If the court cannot be determined in this way, the competence will pertain to the Regional Court in Prague.

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

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

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

### **Section 122**

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

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

(3) In case the request of the foreign state for taking the person, against whom this decision is directed, into custody, does not provide sufficient grounds for a decision of the court on recognition custody, especially data on the identity of such person, basic data on such decision, including description of the act, its legal qualification and the imposed sentence or protective measure and matters of fact substantiating such custody, the Ministry will request its supplementation within a time limit set by it, before forwarding it to the court. If the foreign state failed to send the requested supplementation within the set time limit without stating substantial reasons therefor, the request will be dismissed.

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

### **Section 123**

(1) Decision on the petition for recognition and execution of a foreign decision is made by the court in a public session in the presence of the public prosecutor. In case the person, against

whom is the foreign decision directed, is in custody, serving a sentence or a protective measure associated with incarceration, he will be served only a call to select a defense counsel, appointment of a defense counsel and the decision on the petition for recognition and execution of the foreign decision; the public session is held in the presence of his defense counsel.

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

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

#### **Section 124**

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

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

*a) if the type of the sentence or protective measure is not compatible with the law of the Czech Republic, the court will adapt it to a type of sentence or protective measure according to the Criminal Code, which correspond to it best, or*

*b) if the extent of the sentence imposed exceeds the upper limit of the criminal rate for the corresponding criminal offense under the Criminal Code, the court will adapt it by reducing it to this upper limit of the criminal rate.*

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

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

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

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

#### **Section 125**

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

*a) conditions for recognition are not met,*

*b) the person, against whom the foreign decision is directed, died or was declared dead, or*

*c) it is clear that it would be impossible to secure execution of the foreign decision, especially if the person, against whom the foreign decision is directed, which imposed an unsuspended sentence of imprisonment or a protective measure associated with incarceration, is unreachable due to his unknown place of stay.*

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

(3) If the court dismisses the petition of the Ministry and the person, against whom the foreign decision is directed, is in recognition custody, it will simultaneously decide to release him. A complaint of the public prosecutor is admissible against this decision, which has a dilatory

effect only if filed immediately after the decision is declared and if the public prosecutor filed a complaint pursuant to Sub-section (2) at the same time.

### **Section 126**

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

### **Section 127**

- (1) Judgments according to Section 124 and 126 may be challenged by an appeal filed by
  - a) the public prosecutor and the Ministry for wrongness of operative part of any decision, also to the detriment of the person, against whom the foreign decision is directed, and*
  - b) the person, against whom the foreign decision is directed, for wrongfulness of any operative part thereof directly concerning him.*
- (2) The appeal may not challenge the grounds, for which was the foreign decision issued.
- (3) Provisions of Section 249 (2) and Section 251 (1) of the Code of Criminal Procedure will also apply to an appeal filed by the Ministry.
- (4) If the appeal of the person, against whom the foreign decision is directed and who is located in a foreign state, free, and does not have a defence counsel, does not comply with the requisites of the content of appeal according to Section 249 (1) of the Code of Criminal Procedure, than provisions of Section 251 (2) and Section 253 (3) of the Code of Criminal Procedure will not apply and the appeal court will review the correctness of all operative parts of the challenged judgment, which this person may challenge by an appeal.
- (5) If the appeal court decides by a judgment, it will do so in a public session. Section 123 (1) sentence two will apply accordingly.
- (6) The appeal court will repeal the challenged judgment and dismiss the petition of the Ministry, if it finds any of the grounds referred to in Section 125 (1). The appeal court may repeal the challenged judgment also if the reviewed part of the judgment was in breach of another provision of this Act, if this breach could have affected the correctness of the reviewed part of the judgment.
- (7) The appeal court may change the challenged judgment to the detriment of the person, against whom the foreign decision is directed, also on the basis of an appeal of the Ministry filed to the detriment of this person.
- (8) Provisions of Section 247 (1), Section 257 (1) (a) to (c), Sub-section (2) and (3), Section 258 (1) (d) to (f), Section 259 (3) and (5), Section 260, 261 and 265 of the Code of Criminal Procedure will not apply.

## **Section 128**

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

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

## **Division 3**

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

#### **Section 129**

##### **Takeover of Execution of Foreign Decision**

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

#### **Section 130**

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

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

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

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

#### **Section 131**

##### **Takeover of Person from Foreign State**

(1) The person transferred by a foreign state for execution of a sentence of imprisonment or

protective measure associated with incarceration will be taken over by the authorities of the Prison Service and delivered to a prison or facility for execution of protective measures. The Ministry and the court will be immediately notified thereof.

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

## **Section 132**

### **Costs of Takeover**

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

(2) The person, who was taken over with his consent from a foreign state for the purpose of execution of an unsuspended sentence of imprisonment imposed by a recognized foreign decision, will be obliged to reimburse the Czech Republic for the expenses expended in relation to his takeover by a flat-rate sum.

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

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

## **Section 133**

### **Costs of Proceedings**

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

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

## **Section 134**

### **Supervision and Control of the Convict**

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

## **Section 135**

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

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

(2) The shared property will be transferred to the foreign state by organizational unit of the state

competent to administer the property of the Czech Republic according to the Act on the Property of the Czech Republic and its Representation in Legal Relations.

**(b) Observations on the implementation of the article**

The Czech Republic can enforce foreign sentences and has stipulated detailed rules on the relevant procedures in sections 118-135 of Act no. 104/2013.

**(c) Successes and good practices**

The possibility of enforcement of foreign sentences per the relevant procedures in sections 118-135 of Act no. 104/2013 can be regarded as a good practice conducive to the effectiveness of international cooperation.

## **Article 44 Extradition**

### **Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Code of Criminal Procedure of the Czech Republic**

#### **Section 2**

##### **Basic Principles of Criminal Procedure**

(1) No person shall be prosecuted other than for legitimate reasons and in a manner as stipulated by this Act.

(2) A person against whom a criminal procedure is carried out may not be perceived as guilty until the final convicting judgment of the court pronounces them as guilty.

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

(4) Unless this Act stipulates otherwise, the law enforcement authorities act ex officio. Criminal cases must be dealt with expeditiously without undue delays; the most expeditious procedure shall be taken in particular for custody matters and the matters in which property was impounded if this is required with regard to the value and nature of the impounded property. Criminal cases shall be dealt with a full investigation of rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms and by international treaties on human rights and fundamental freedoms that the Czech Republic is bound by; when conducting acts of criminal proceedings, the rights of persons that such acts affect may be intervened only when justified by law and to the extent necessary to ensure the purpose of criminal proceedings. The law enforcement authorities shall not take the content of petitions affecting the performance of such obligations into account.

- (5) Law enforcement authorities act in accordance with their rights and obligations under this Act and with the assistance of the parties so as to duly establish the facts of the case of which no reasonable doubt exists and to the extent that is necessary for their decisions. A confession of the accused shall not relieve the law enforcement authorities from the obligation to examine all the relevant circumstances of the case. During the preliminary hearings, the law enforcement authorities shall ascertain all the circumstances for and against the person against whom the proceeding is pending with the same care and in the manner provided by this Act even without petitions of the parties to an action. In proceedings before the court the public prosecutor and the accused may support their position with the proposal and submission of evidence. The public prosecutor must prove the guilt of the defendant. However, this does not relieve the court of the obligation to provide additional evidence to the extent required for their decision.
- (6) Law enforcement authorities shall review the evidence according to their conviction based on careful consideration of all the circumstances of the case separately and as a whole.
- (7) All law enforcement authorities shall cooperate with public interest groups and utilize their educational activities.
- (8) A criminal prosecution before the courts is only possible on the basis of an indictment, a petition for punishment or a petition for approval of an agreement on the declaration of guilt and acceptance of punishment (hereinafter referred to as an “agreement on guilt and punishment”) served by the public prosecutor. A bill of indictment in proceedings before the court is represented by the public prosecutor.
- (9) In criminal proceedings before the court, decisions are made by the court or a single judge; the presiding judge or a single judge decides alone only if so expressly stipulated by the law. Should the decision during a preliminary hearing be made by a court in the first instance, then such decisions shall be made by a judge.
- (10) Criminal cases are heard in public before the court so that citizens may observe and participate in hearing. At the main trial and public hearing, the public may be excluded only in cases expressly stipulated for in this Act or in a special Act.
- (11) Proceedings before the courts are oral; the testimony of witnesses, experts and the accused are normally undertaken through an interrogation.
- (12) When deciding during a main trial, as well as during public, custody and closed hearings, the court may only take into account evidence that was given during such proceedings.
- (13) The person against whom criminal proceedings have been initiated must be instructed in every stage of the proceedings in an appropriate and comprehensible manner as to their rights granting them the full use of defence and that they may choose their defence counsel; all law enforcement authorities are required to enable them to exercise their rights.
- (14) Law enforcement authorities conduct the proceedings and produce decisions in the Czech language. Any person who declares that they do not speak Czech is entitled to speak their mother tongue or a language that they indicate they can speak to the law enforcement authorities.
- (15) At every stage of the proceedings the law enforcement authorities are obliged to make it possible for the victim to fully exercise their rights and are also obliged to instruct the victim of the victim’s rights in an appropriate and comprehensible manner under the law so that the victim can achieve satisfaction of their claims; the proceedings must be conducted with the required consideration for the victim and while being duly regardful of their person.

**(b) Observations on the implementation of the article**

Generic fair treatment guarantees for all types of criminal procedural actions are contained in Section 2 of the Code of Criminal Procedure.

The Czech Republic may want to consider to specifically provide for fair treatment guarantees in Act No. 104/2013.

## **Article 44 Extradition**

### **Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

##### **Section 91**

##### **Inadmissibility of Extradition**

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

*p) there is a reasonable concern that the person concerned by the extradition would be exposed to persecution because of his origin, race, religion, sex, membership to a certain national or other group, citizenship or political beliefs or for other similar reasons, or that it would impair his position in criminal proceeding or in serving a sentence of imprisonment or a protective measure associated with incarceration.*

#### **(b) Observations on the implementation of the article**

The provision under review is implemented in section 91.1(p) of Act no. 104/2013.

## **Article 44 Extradition**

### **Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has indicated that according to the domestic law the Czech Republic may refuse the request for extradition in the case when the act consists in the violation of tax, customs, currency regulations or in violation of other financial rights of the state, unless the reciprocity is granted. However, in such case the Czech Republic would apply directly the article 44 paragraph 16, so extradition cannot be refused solely on this ground.

The Czech Republic has cited the following applicable measures.

## **Constitution of the Czech Republic**

### **Art. 10**

Promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied.

## **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

### **Section 91**

#### **Inadmissibility of Extradition**

(1) Extradition of a person into a foreign state is inadmissible, if ...  
*g) the act consists in the violation of tax, customs, currency regulations or in violation of other financial rights of the state, unless the principle of reciprocity is granted.*

#### **(b) Observations on the implementation of the article**

The authorities clarified that generally section 91.1(g) of Act no. 104/2013 stipulates that *extradition shall be refused if the underlying offences consist of the violation of tax regulation...or is in violation of other financial rights of the states, unless the principle of reciprocity is granted.* However, in cases based on the Convention the provisions of paragraph 16 of article 44 will apply directly and will pre-empt the application of section 91.1(g) of the Act.

Nevertheless, the Czech Republic is recommended to consider specifically stipulating in Act no. 104/2013 that extradition may not be refused when the underlying offence is a Convention offence involving fiscal matters.

## **Article 44 Extradition**

### **Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

### **Section 9**

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

**Section 88**  
**Receipt of the Extradition Request**  
(...)

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

**Section 92, paragraph 5**

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

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

**Section 98**  
**Additional Information**

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

**(b) Observations on the implementation of the article**

Per sections 9 and 98 of Act no. 104/2013, the Czech authorities would request the requesting State to provide additional information. Consultation opportunities are also provided for in Section 88, paragraph 3 and Section 92, paragraphs 4 and 5 of the Act no. 104/2013. Section 98 of the Act no. 104/2013 is a general provision enabling the Czech authorities to request additional information from the Requesting State at any stage of the extradition proceedings before the extradition is granted or refused. It covers all the stages of the extradition proceeding, i.e. a preliminary investigation conducted by a prosecutor, a court hearing on admissibility of

the extradition as well as a ministerial phase of the proceedings before the Minister of Justice makes his final decision on the extradition request.

However, there are no requirements *to consult with the requesting State to provide it with ample opportunity to present its opinions before refusing extradition.*

The Czech Republic is recommended to consider specifically stipulating in Act no. 104/2013 the requirements of paragraph 17 of article 44 of the Convention.

## **Article 44 Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic provided the following list of the bilateral and multilateral agreements or arrangements on extradition it concluded with other States.

##### **a) Multilateral regional treaties**

United Nations Convention against Transnational Organized Crime, 29 September 2003, and three amending Protocols thereto

European Convention on Extradition, Paris, 13 December 1957 (ETS No. 24)

Additional Protocol to the European Convention on Extradition, Strasbourg, 15 October 1975 (ETS No. 86)

Second Additional Protocol to the European Convention on Extradition, Strasbourg, 17 March 1978 (ETS No. 98)

Third Additional Protocol to the European Convention on Extradition, Strasbourg, 10 November 2010 (ETS No. 209)

European Convention on the Suppression of Terrorism, Strasbourg, 27 January 1997 (ETS No. 90)

##### **b) Bilateral treaties**

**NIF** : not in force, replaced by the Council of Europe Convention on Extradition (ETS No. 24) and its Additional Protocols

**ADD**: additional treaty, supplementing existing Council of Europe Convention on Extradition (ETS No. 24) and its Additional Protocols

<b>Jurisdiction</b>	<b>Signed on</b>
Afghanistan	24.06.1981 + 01.04.2009
Algeria	04.02.1981
Austria	13.12.1957 ADD + 20.4.1959 ADD
Bahamas	11.11.1924 + 04.06.1926
Belarus	12.08.1982
Belgium	19.7.1927 NIF
Bosnia and Herzegovina	20.01.1964 NIF
Bulgaria	25.11.1976 NIF
Canada	11.11.1924 + 04.06.1926
Croatia	20.01.1964 NIF
Cuba	18.04.1980
Cyprus	23.4.1982 NIF
Denmark	7.10.1931 NIF
Federal Republic of Germany	2.2.2000 ADD
France	17.5.1929 NIF
Gambia	11.11.1924 + 04.06.1926
Georgia	12.8.1982 NIF
Greece	22.10.1980 NIF
Hong Kong	04.03.2013
Hungary	28.3.1989 NIF
India	11.11.1924 + 04.06.1926
Italy	6.12.1985 NIF
Kenya	11.11.1924 + 04.06.1926
Kosovo	20.01.1964
Kyrgyzstan	12.08.1982
Luxembourg	1.12.1934 NIF
Moldova	12.08.1982 NIF
Monaco	22.12.1934 NIF
Mongolia	15.10.1976
Netherlands	4.12.1931 NIF
New Zealand	11.11.1924 + 04.06.1926
People's Republic of Korea	11.09.1988
Poland	21.12.1987 + 30.10.2003 NIF
Portugal	23.11.1927 NIF
Republic of South Africa	11.11.1924 + 04.06.1926 NIF
Romania	25.10.1958 NIF
Russia	12. 8. 1982 NIF
Serbia	20.1.1964 NIF
Slovakia	22.10.1992 + 29.10.2012 NIF
Slovenia	20.1.1964 NIF

Spain	26.11.1927 NIF
Swaziland	11.11.1924 + 04.06.1926
Syria	18.04.1984
The FYR Macedonia	20.01.1964 NIF
Tunis	12.04.1979
Uganda	11.11.1924 + 04.06.1926
United Kingdom	11.11.1924 + 04.06.1926 NIF
United States	02.07.1925 + 29.04.1935 + 16.05.2006
Uzbekistan	18.01.2002
Vietnam	12.10.1982
Yemen	19.01.1989
Zambia	11.11.1924 + 04.06.1926

**(b) Observations on the implementation of the article**

The Czech Republic has concluded a significant number of bilateral treaties and also participates in a number of multilateral instruments on extradition.

**(c) Successes and good practices**

Participation in many international instruments on extradition can be highlighted as a good practice.

**Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures:

Measures cited under paragraph 13 above (Sections 118,119,120,129,130,131 of Act no. 104/2013, on International Judicial Cooperation in Criminal Matters).

**Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

**Section 137**

**Transfer of Persons**

(1) In case the person is located in the Czech Republic, serving an unsuspended sentence of imprisonment or protective measure associated with incarceration, the Ministry may request

the state, this person is a citizen of, or the state, concerning which may be expected that it will take over execution the decision, for takeover of this person in order to execute such a sentence or protective measure, or it may grant a consent with transferring such person, if

*a) the court that decided in the case in the first instance granted a consent with transfer of the person,*

*b) transferring the person will not obstruct or thwart achievement of the purpose of the sentence or protective measure,*

*c) at the time of filing the request or granting the consent of the ministry the person is to serve a sentence or protective measure in the extent of at least one year; in cases worth of special consideration the person may be transferred for execution of a sentence or protective measure of a shorter term,*

*d) execution of the sentence or protective measure in the foreign state will not breach the obligations arising for the Czech Republic from international treaties on human rights and basic freedoms and*

*e) transferring the person will not thwart or obstruct achievement of the purpose of criminal proceedings conducted in the Czech Republic against this person for another act.*

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

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

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

## **Section 138**

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

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

*a) monitoring the behaviour of the convict in the probation period and in submitting reports in the determined dates on the behaviour of the convict, as well as about complying with the imposed restrictions and obligations, or*

*b) in performing tasks referred to in Paragraph (a) and following execution of an unsuspended sentence of imprisonment in case the convict did not approve himself.*

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

The Czech Republic additionally provided the following list of the bilateral and multilateral agreements or arrangements on the transfer of sentenced persons it concluded with other States.

#### **a) Multilateral regional treaties**

Inter-American Convention on Serving Criminal Sentences Abroad, Managua, 9 June 1993

Convention on Transfer of Sentenced Persons, Strasbourg, 21 March 1983 (ETS No. 112)

Additional Protocol to the Convention on Transfer of Sentenced Persons, Strasbourg, 18 December 1997 (ETS No. 167)

Convention on Transfer of Persons Sentenced to Imprisonment in Order to Serve the Sentence in the State of Their Nationality, Berlin, 19 May 1978

**b) Bilateral treaties**

**NIF** : not in force

<b>State</b>	<b>Signed on</b>
Bosnia and Herzegovina	23.05.1989
Croatia	23.05.1989
Hong Kong	04.03.2013
Kosovo	23.05.1989
Montenegro	23.05.1989 NIF
People´s Republic of Korea	11.09.1988
Serbia	23.05.1989
Slovakia	29.10.1992
Slovenia	23.05.1989
Thailand	26.04.2000
"The Former Yug. Rep. of Macedonia"	23.05.1989

The Czech Republic provided the following statistical information on the transfer of sentenced persons.

**STATISTICS ON TRANSFERS OF SENTENCED PERSONS  
TRANSFER OF SENTENCED PERSONS FROM A FOREIGN STATE TO THE  
CZECH REPUBLIC**

<b>Year</b>	<b>Total Number of Requests Received</b>	<b>Number of Fugitives Surrendered</b>	<b>Number of Fugitives not Surrendered</b>	<b>Number of Pending Cases</b>
2011	24	3	5	16
2012	4	0	2	9
2013	2	0	3	8
2014	3	0	5	5
2015	2	1	1	Not available
2016	1	0	0	10

Jurisdictions: Australia, Bolivia, Columbia, Costa Rica, Croatia, Cuba, Ecuador, India, Japan, Morocco, Panama, Russia, Serbia, Turkey, USA

**TRANSFER OF SENTENCED PERSONS FROM THE CZECH REPUBLIC TO A FOREIGN STATE**

<b>Year</b>	<b>Total Number of Requests Received</b>	<b>Number of Prisoners Transferred</b>	<b>Number of Prisoners not Transferred</b>	<b>Number of Pending Cases</b>
2011	11	1	4	6
2012	15	5	8	24
2013	13	1	14	28
2014	5	1	7	28
2015	17	3	2	Not available
2016	8	3	3	43

Jurisdictions: Algeria, Armenia, Belarus, Bosna and Hercegovina, Canada, Kosovo, Republic of Macedonia (FYROM), Moldova, Mongolia, Panama, Paraguay, Russia, Serbia, Ukraine, Uzbekistan, Venezuela

**(b) Observations on the implementation of the article**

Sections 137-138 of Act no. 104/2013 provide a legal framework for the transfer of sentenced persons. The Czech Republic also concluded corresponding agreements with a number of jurisdictions.

**Article 46 Mutual legal assistance**

**Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that it will afford the widest measure of mutual legal assistance in corruption cases to other States Parties in accordance with Act no. 104/2013 and applicable international instruments.

Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters (the Act) is the basic national legal framework for international judicial cooperation in criminal matters (MLA is regulated in Sec. 39-77) together with:

- the Code of Criminal Proceedings (Sec. – 3(1) of the Act – “Unless this Act stipulates otherwise or in case it does not regulate a certain issue, the Code of Criminal Procedure will apply.”)
- the ratified and published MLA international treaties (Sec. – 3(2) of the Act – “Procedure according to this Act will apply, unless an international treaty stipulates otherwise.”)

The Czech Republic adopted a special bylaw for the prosecutors on MLA, called Instruction of General Nature of the Prosecutor General, No. 10/2013 dated December 16, 2013 on

International Judicial Assistance in Criminal Matters. The instruction is binding for all prosecutors and covers the processing of MLA requests, special kinds of cooperation (undercover investigation, temporary transfer of a witness, seizure of items, JITs, tapping of telecommunications).

There is also an internal MLA methodology for the prosecutors on MLA developed by Supreme Public Prosecutor's Office (SPPO). It is available only to the prosecutors and is published on the internally accessible web. It contains 38 templates of documents related to international judicial cooperation (IJC), overview of International Treaties, including translation of reservation and declarations, overview of the relevant EU legislation and information about its implementation in the EU Member States, case law concerning IJC of the Czech Supreme and Constitutional Courts and of the Strasbourg and Luxembourg Courts, information about Eurojust, the EJC, other information useful for application of the IJC (usage of languages, legalisation, etc)

A similar internal web resource also exists for judges.

The prosecutors of the International Department of the Supreme Public Prosecutor's Office and representatives of International Department of the Ministry of Justice provide also education of judges and prosecutors in the area of the international judicial cooperation in criminal matters within the Judicial Academy of the Czech Republic. They provide presentations also on international conferences and seminars both in the Czech Republic and abroad.

The Act introduced two tools for acceleration of execution of MLA requests:

- **a specialisation for international cooperation** - only the Regional PPOs and the regional Courts execute a MLA request (there are a specialised prosecutors that deal only with cases of international cooperation - requests of other countries for extradition, MLA, ... – at regional and high level) - with certain exceptions:
  - requests for legal assistance consists solely in service of documents (a District PPO or a District Court)
  - request for cross border surveillance, controlled delivery, crossborder telecommunication tapping (the Regional PPO in Prague)
  - requests for covert investigation - a simulated transfer and an agent (the High PPO in Prague)
  - requests for joint investigation teams (the SPPO) – the CR has entered 50 JITs agreement between 2008 and November 2017.
- **concentration of execution of MLA requests**
  - the local jurisdiction depends on a place where the requested act of legal assistance is to be performed (except for some special kinds of MLA requests – see above)
  - in case several PPO or courts are competent to execute the MLA request, the MLA request will be executed by the PPO or court, to which was the request forwarded by the SPPO in case of PPO or by the Ministry of justice – in case of courts (or in case of direct contacts the PPO or a court, to which the request was first delivered or forwarded by a Czech authority not competent to accept it) - the central authority will forward the MLA request of the foreign authority primarily to the PPO or court, in the jurisdiction

of which is supposed to be performed the majority of the requested actions of MLA or the most demanding action of MLA – see Sec 48(6) of the IJCCM.

Since the adoption of the Act No. 104/2013, 94 % of the incoming MLA requests have been processed at the regional level.

Regarding statistical information the Czech Republic noted that since the adoption of Act no. 104/2013, a new concept of registry of international judicial cooperation has been introduced and there has also been a substantial change in the competences for executing requests for legal assistance in the Czech Republic.

The current system of statistics does not allow for central level monitoring of the manner of execution of such requests, to which states they were sent, the type of criminal activity, the requested action or whether such requests concerned prosecution of legal entities.

In year 2016 the SPPO conducted an audit of 161 randomly selected files concerning the execution of MLA requests for legal assistance in pre-trial criminal proceedings that were sent from abroad to the Czech Republic and were executed on the level of Regional Public Prosecutor's Offices.

The audit has shown that the average time of execution was approximately 1-2 months. A longer time (3-4 months) was registered only at the Municipal Public Prosecutor's Office in Prague, which, however, deals with the highest number of requests for legal assistance (as the consequence of the control there is now one prosecutor more who is specialised for international cooperation in criminal matters).

The provision of legal assistance to foreign authorities by Regional Public Prosecutor's Offices is on a very good level. The found shortcomings were of an administrative nature and related to the communication between individual Regional Public Prosecutor's Offices, registration of annexes or failing to advise on the necessity to comply with the principle of specialty.

Vast majority requests for legal assistance from all States were granted. Legal assistance was declined only in isolated cases, where e.g. it was not possible to locate the person to be interviewed or the request concerned an action subject to review of double criminality and the deed described in the request does not constitute a criminal offense in CR or it did not meet the criteria for authorization of the action according to the Code of Criminal Procedure of the CR.

### **Statistics of legal assistance in pre-trial criminal proceedings**

#### **The Czech Republic**

**2014-2016**

<b>Overall numbers of requests for legal assistance delivered from abroad to Regional Public Prosecutor's Offices in the CZR</b>			
	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Municipal PPO Prague</b>	704	760	900
<b>Regional PPO Prague</b>	330	247	496

<b>Regional PPO České Budějovice</b>	146	126	139
<b>Regional PPO Plzeň</b>	234	291	328
<b>Regional PPO Ústí nad Labem</b>	336	339	334
<b>Regional PPO Hradec Králové</b>	191	207	184
<b>Regional PPO Brno</b>	502	453	482
<b>Regional PPO Ostrava</b>	408	394	506
<b>Total</b>	<b>2851</b>	<b>2817</b>	<b>3369</b>

<b>Overall numbers of requests sent to abroad from the CZR</b>			
	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>From District PPO</b>	769	1665	1853
<b>From Regional PPO</b>	201	685	835
<b>From High PPO</b>	10	44	120
<b>Total</b>	<b>980</b>	<b>2394</b>	<b>2808</b>

<b>Numbers of requests for legal assistance communicated through the International Affairs Department of the Supreme PPO</b>			
	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>From CZR to abroad</b>	371	392	435
<b>From abroad to CZR</b>	234	318	237

**(b) Observations on the implementation of the article**

Czechia indicated that it would be willing to provide the widest measure of mutual legal assistance to other States Parties of the Convention in accordance with the provision under review. During the country visit, the authorities highlighted that they proactively communicate with foreign counterparts while executing incoming MLA requests.

**(c) Successes and good practices**

Internal instructions/guidelines on MLA issued by the Supreme Prosecutor's Office and Ministry of Justice can be regarded as a good practice conducive to the effectiveness of MLA.

## **Article 46 Mutual legal assistance**

### **Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that it could provide MLA in cases of prosecution of legal persons.

The Act of 27 October 2011 on Criminal Liability of Legal Persons and Proceedings against them, Number 418/2011 Coll. Came into force on 1 January 2012.

The Czech Republic received such MLA requests before from Poland, France, Slovakia, India, the Netherlands, the USA, and Belgium (majority of these requests concerned tax criminality). The requesting authority usually asked for hearing of persons, banking information and seizure of bank accounts, seizure of accountancy, service of documents, finding of ID address. There were no particular problems in practice with these cases.

#### **(b) Observations on the implementation of the article**

The Czech Republic does not have legal impediments to the provision of MLA in relation to the offences for which a legal person may be held liable and will provide such assistance to the fullest possible extent.

## **Article 46 Mutual legal assistance**

### **Subparagraphs 3 (a) to 3 (i) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic can provide assistance in criminal proceedings for any investigative measure listed in this provision. The most common request is a request for a statement of persons, service of documents and providing originals or certified copies of relevant documents and records. The execution of some of the acts requires dual criminality – these acts are listed in Section 47 para 2 of Act no. 104/2013.

The Czech Republic cited the following applicable measures.

**The Act on International Judicial Cooperation in Criminal Matters no. 104/2013**

**Section 47 - Providing Legal Assistance to Foreign Authorities**

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

(2) Legal assistance consisting in

- a) performing actions pursuant to Chapter IV, Sub-division four and five of the Code of Criminal Procedure,
  - b) securing execution of a sentence of confiscation of property pursuant to Chapter XXI, Sub-division five of the Code of Criminal Procedure,
  - c) securing the claim of an aggrieved person pursuant to Chapter IV, Sub-division six of the Code of Criminal Procedure,
  - d) intercepting and opening consignments and its replacement pursuant to Chapter IV, Subdivision six of the Code of Criminal Procedure,
  - e) monitoring consignments Pursuant to Section 65,
  - f) interception and recording of telecommunications pursuant to Chapter IV, Sub-division seven of the Code of Criminal Procedure,
  - g) inspection of mental state pursuant to Section 116 (2) of the Code of Criminal Procedure,
  - h) use of operative-search means pursuant to Section 158b to 158 f of the Code of Criminal Procedure, or
  - i) covert investigation pursuant to Section 59 to 61,
- may be provided to a foreign authority only in relation to an act, which would be criminal also under the law of the Czech Republic

**(b) Observations on the implementation of the article**

Czechia indicated that it could provide all types of legal assistance, including those listed in subparagraphs 3 (a)-(i) of article 46 of the Convention, based on s.47(1) of Act no.104/2013 *under the condition that there are corresponding criminal proceedings being conducted in the foreign state and only for the purposes of these proceedings.*

**Article 46 Mutual legal assistance**

**Subparagraphs 3 (j) and 3 (k) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of*

*chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic reported that the Police is the main law enforcement authority responsible for tracing and identification of criminal assets. Financial investigators are deployed in different police departments dealing with economic crime, whilst the Special Police Department for Financial Investigations is based in Prague. 210 financial investigators are deployed all over the country (60 in Prague). As a general principle, they do not take part in the crime investigations but only in the parallel financial investigations.

Although there is no specific law which would state that the financial investigations are mandatory in each of proceeds-generated or damage causing crimes. There is - The Instruction of the President of the Police No. 174/2011 on Financial Investigations in Criminal Proceedings.

Financial investigators have various instruments at their disposal to collect relevant data on assets. Surveillance, observation and criminal analysis aimed at tracing and identifying criminal assets is executed through various means such as access to different databases (land, vehicles, commercial registry, recently established BO Registry) in addition to other, more common investigative powers such as house search, interrogations, seizure of documents, interception of communication, etc

The assistance on identifying, freezing and tracing proceeds of crime can be provided based on the principle of double criminality.

- it is necessary to describe the purpose of seizure (evidence, subsequent confiscation etc. ...)
- the seizure is carried out according to Sections 78 – 79g of the Criminal procedural Code
- there are no fixed time limits for a seizure in criminal proceedings in the CR, however, “In case an item or property has been seized upon a request of a foreign authority, the judicial authority will verify at this authority, whether the reason for seizure still persists. If this authority fails to respond to these inquiries within a reasonable time, the reason for seizure will be considered to have expired.” (section 68 of Act no. 104/2013)

- seizure of material evidence

- Item surrendered or removed from possession on the basis of a request of a foreign authority for legal assistance may be transferred by the judicial authority competent for executing such a request for the necessary time for evidentiary purposes to the competent foreign authority (Section 67(1) of Act no. 104/2013)
- at the same time, the judicial authority competent for executing will request its return – unless rights of third persons prevent it. In such a case the judicial authority competent for execution of the request for legal assistance may waive its returning to the CR (Section 67(1) of Act no. 104/2013)
- transfer of items to a foreign authority may be temporarily suspended or the item may be transferred to a foreign authority only for a time specified by the judicial authority competent for execution of the request for legal assistance, if such item is necessary for criminal proceedings conducted in the CR (Section 67(2) of Act no. 104/2013)

- In case an item has been surrendered or removed from possession in criminal proceedings conducted in the CR, the judicial authority competent for execution of the request for legal assistance may, with a consent of the competent public prosecutor or presiding judge, transfer this item to a foreign authority for evidentiary purposes for the specified time (Section 67(3) of Act no. 104/2013).

It is also possible to seize such an item and return it to a beneficial owner abroad if there are no rights of bona fide third parties based on sections 80 - 81b of the Criminal Procedural Code, in such cases the matter is handed over to a court acting in civil proceedings.

Finally, it is also possible to seize items and assets for purposes of subsequent confiscation (proceeds of crime, an equivalent value, property of offender)

The Czech Republic also can recognize a foreign decision on confiscation. Such a decision needs to be recognised by a regional court in the jurisdiction of which the item is located, if the court cannot be determined in this way, the competence will pertain to the Regional Court in Prague (see section 121 (3) of Act no. 104/2013).

Additionally, sharing of confiscated property is possible pursuant to section 135 of Act no. 104/2013.

The Czech Republic cited the following applicable measures.

## **Section 78**

### **Obligation to Handover or Surrender Items**

(1) Anyone who has an item that may serve for evidentiary purposes 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 due ascertaining of facts important for criminal proceedings, the person is obliged to surrender such item upon a request to these authorities. Along with the request the person will be advised 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). The call to handover or surrender an item may be made by the presiding judge and in pre-trial proceedings by the public prosecutor or police authority.

(2) The obligation referred to in sub-section (1) does not apply to documents or other tangible media containing video, audio or data record, the 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 occurred.

(3) Nobody must be forced to handover or surrender an item that may, in the time the request for its handover or surrender is made, serve as evidence against him or a person close to him; this is without prejudice to provisions on removal of items, house search, search of other premises and land and personal search.

(4) If it is necessary in order to prevent obstruction of confiscation or forfeiture of an item, the authority involved in criminal proceedings referred to in sub-section (1) will issue an order that the person, to whom the item was seized, must not transfer the item or encumber it during the time of seizure. Any legal action contrary to this order will be null and void; the court will consider the nullity even without a petition. The person concerned must be advised thereof.

(5) The person, who handed over or surrendered the item that may serve for evidentiary purposes, will be immediately issued a written confirmation on takeover of such item or a

transcript of the protocol; therein the item must be described with sufficient accuracy so that it could be identified.

(6) The authority involved in criminal proceedings, to which an item that may serve for evidentiary purposes was surrendered, will take it into their custody.

(7) The person, to whom the item was seized, is entitled to request at any time its return. The authority involved in criminal proceedings referred to in sub-section (1) will decide on such request without an undue delay. If the request was refused, this person may repeat it no sooner than after 30 days following the full force and effect of such decision, unless he states new reasons.

## **Section 79**

### **Removal of Items from Possession**

(1) If an item that may serve for evidentiary purposes in criminal proceedings is not handed over or surrendered by the person who has it in his possession, such an item may be removed from possession upon an order of the presiding judge and 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; without such consent the police authority may issue such consent only if the previous consent cannot be secured and the matter cannot be delayed.

(2) If the authority that issued the order does not perform the removal of the item from possession by itself, it will be performed by the police authority on the basis of the order.

(3) Removal of the tangible item from possession will be witnessed by a non-participating person.

(4) Section 78 (4) through (7) will apply accordingly to an item that was removed from possession.

## **Section 79a**

### **Seizure of Instruments and Proceeds from Crime**

(1) If the ascertained facts indicate that a certain item is an instrument or proceeds from a criminal offence, the presiding judge and in pre-trial proceedings the public prosecutor or police authority may decide to seize such item. 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. A complaint is admissible against the decision on seizure.

(2) The items subject to the seizure must be properly and unmistakably identified in the decision on seizure or in the attached documents. In case the seizure concerns a right, also a right that will arise in the future may be seized. The decision on the seizure will prohibit the person, to whom the item is seized, to transfer such item, to another or to encumber it after the decision is announced, and also to intentionally damage or destroy it. If it is necessary for the purpose of seizure or administration of the seized item, the decision on seizure or a subsequent decision may also prohibit or restrict the exercise of other rights associated with the seized item, including rights that will arise in the future, as well as to call to handover all documents or tangible media, presentation of which is necessary to exercise a certain right to the seized item, with a caution about the consequences of failure to comply with such call in the stated time (Section 66 and 79). Provisions on the decision on seizure will apply accordingly to a subsequent decision on the prohibition or restriction of exercising other rights associated with the seized item.

- (3) The decision on the seizure will also order the person, to whom the item was seized, to notify the authority involved in criminal proceedings that decided on the seizure within 15 days after the decision is announced which rights of third parties apply to the seized item, whether and in what manner the right to dispose with the item is restricted, and whether a right to property has been secured and also who is obliged to provide the corresponding performance, with a caution about the consequences of failure to comply with such call in the stated time (Section 66).
- (4) The authority involved in criminal proceedings that decided on the seizure will take all necessary steps in order to enforce such decision.
- (5) A complaint is admissible against the decision on seizure.

## **Section 79b**

### **Service of Decision on Seizure and Notification**

- (1) The authority involved in criminal proceedings that decided on the seizure will deliver the decision on seizure without undue delay to the authority or person competent to execute the seizure, and after this authority or person executes the seizure, also to the person, to whom the item was seized. At the same time the authority or person competent to execute the seizure will be called to immediately notify the authority involved in criminal proceedings that decided on the seizure in case they learn the seized item is being disposed with in a way threatening to thwart or obstruct the purpose of seizure. The authority or person competent to execute the seizure is obliged to seize the item immediately after the decision is served and to take all necessary steps to prevent violation of prohibitions and restrictions stated in the decision on seizure of the item.
- (2) In case of seizure of a claim, which is not a claim on the account against a bank or another entity entitled to manage accounts on behalf of other person, the authority involved in criminal proceedings that decided on the seizure will deliver the decision on the seizure also to the debtor of the claim owner and order him to deposit the subject of performance to its custody or another designated location instead of giving the performance to the creditor. By depositing the subject of performance to custody or a designated place the debtor will have fulfilled his obligation in the extent of the provided performance. The decision on seizure will be notified to the debtor before notifying the owner of the seized claim.
- (3) In case the authority involved in criminal proceedings that decided on the seizure deems it necessary to reach the purpose of seizure, it will notify the seizure also to other authorities and persons than referred to in sub-section (1) which based on other legal enactments have a record-keeping, supervisory or other obligation in relation to the seized item or its owner or possessor, and at the same time call them to immediately notify it in case they learn that the seized item is being disposed with in a way threatening to thwart the purpose of seizure; these authorities or persons will be obliged to comply with such call. Furthermore, the authority involved in criminal proceedings that decided on the seizure will notify persons and authorities it is aware of having a right of first refusal, lease or another right to the seized item or conduct proceedings, in which the exercise of rights to dispose with such item was limited. The authority involved in criminal proceedings that decided on the seizure of a share in a business corporation will notify this fact after such decision becomes final and effective also to the business corporation in question.
- (4) The authority involved in criminal proceedings that decided on the seizure of real estate will notify the Cadastral Office about the fact this decision came to full force and effect.

## **Section 79c**

### **Execution of Seizure of Movable Assets**

(1) Whoever has a movable item in their possession, which may be subject to seizure, will be obliged to surrender such item upon a call of the presiding judge and in pre-trial proceedings of public prosecutor or police authority; if the person fails to do so, the item may be removed from his possession. Procedure of surrender and removal of a movable asset from possession will be governed by Section 78 and 79 accordingly.

(2) The authority involved in criminal proceedings competent to issue the order to remove an item from possession may, after considering all decisive circumstances, leave the movable asset in its present location, provided that

a) removal of such item would result in its devaluation or devaluation of an item, it is functionally connected to,

b) removal of such item would be associated with excessive technical difficulties,

c) the item concerned requires special care or care associated with excessive expenses,

d) the item concerned is of an insignificant value.

(3) In case the movable item is left in present location, this fact along with the reason for such procedure will be stated in the protocol and the movable item will be defined so that it could not be confused with any other item. The authority competent to order removal of the item from possession will at the same time issue an order to refrain from disposing with the item, in which it will duly and unmistakably identify the movable item and prohibit any legal dealing or factual disposal with the item in a way leading to obstruction of the purpose of seizure, in particular from transferring it to another person, encumbering, damaging or destroying it. The prohibition applies to anyone and is effective as of the moment of publishing the order in the location, where the movable item is located; the order must contain advice in this sense, including a caution of the consequences of breaching the order. Any legal actions made contrary to the prohibition contained in the order are null and void, whereas the court will take the nullity into account even without a petition. The movable item that was left in its present location will be labelled so that it was clear it is subject to an order to refrain from disposal therewith.

(4) Leaving a movable item in its present location does not preclude the authority involved in criminal proceedings competent to decide on such item from subsequently at any time issuing a call for surrender of such item or order for its removal from possession, if they believe it is necessary in view of the purpose of the seizure. The authority involved in criminal proceedings competent to decide on a surrendered movable item or movable item that was removed from possession may decide at any time to leave it with the person, to whom it was secured for reasons stated in sub-section (2); therein it will proceed accordingly pursuant to sub-section 3. A complaint against this decision is not admissible.

(5) The decision on seizure according to Section 79a concerning a movable item that was surrendered or removed from possession according to sub-section (1) or that was left in its present location according to sub-section (2) must be made within 96 hours following such action.

(6) Sub-sections (1) to (5) will apply accordingly also to other fixed devices that form a part of an immovable asset and are removable.

## **Section 79d**

### **Examination of Real Estate**

(1) Based on the order to examine a real estate issued by the presiding judge and in pre-trial proceedings by judge upon a motion of public prosecutor the court or public prosecutor or upon their instruction a police authority may perform examination of real estate and its accessories in order to ascertain the state of the real estate and evaluate the suitability of its seizure. The authority involved in criminal proceedings performing the examination will notify the time and location of examination to the real estate owner or a person living in common household with

him, and a person known to have rights to the real estate. These persons are obliged to allow the examination of the real estate and its accessories.

(2) The authority performing the examination may include other persons, presence of which may be necessary, in particular for the purpose of price evaluation of the real estate.

(3) In case a movable item or machine or other fixed device forming a part of the real estate is found during the real estate examination and such item is removable and if there are grounds for seizure thereof according to Section 79a, procedure according to Section 79c (2) to (5) may be applied accordingly even without a house search warrant or order to search other premises and parcels.

## **Section 79e**

### **Effects of Seizure**

(1) Legal actions made by a person, to whom the prohibitions stated in the decision on seizure apply, contrary to the stated prohibitions will be null and void; this person must be advised thereon. Court will consider the nullity even without a petition.

(2) An item subject to a decision on seizure may be disposed with within the frame of execution of a decision, public auction, distraintment or insolvency proceedings only after a previous consent of the presiding judge and in pre-trial proceedings the public prosecutor; this does not apply in case the execution of a decision or disposal with the item in distraintment or insolvency proceedings or public auction is done in order to satisfy a claim of the state. Claims that are the subject of execution of a decision, public auction, distraintment or insolvency proceedings will be primarily settled using items not affected by decision on seizure.

(3) In case transfer or establishing a right to a seized item requires an entry in a register kept according to other legal enactments, the authority or person maintaining such register, may make an entry to such item after the decision on seizure was delivered on the basis of legal action made by the person, to whom such item was seized, only with a previous consent of the presiding judge and in pre-trial proceedings the public prosecutor.

(4) In case a motion for registration of rights to real estate in the Land Register was filed according to the Cadastral Act on the basis of legal action of a person, to whom the real estate was seized, and the legal action was made prior to issuing the decision on its seizure and the competent authority has not rendered a final decision on the registration as of the day the resolution on seizure was issued, the filed motion loses its legal effects as of the day the resolution on the seizure became final and effective.

(5) In case of seizure of a claim on an account the seizure also applies to finances present on the account as of the moment the bank or other entity managing the account for another person receives the decision on its seizure up to the sum referred to in the decision and accessories thereof. Unless this Code stipulates otherwise, as of the moment of seizure of a claim on an account in a bank or other entity competent to manage accounts for another person it is prohibited do dispose with the finances on the account in any way up to the seized amount.

## **Section 79f**

### **Cancellation or Limitation of Seizure**

(1) Seizure of an item will be cancelled or limited, if it is no longer necessary or not necessary in the stated extent. In case of cancelling seizure of an item that was left in its present location, the order to refrain from disposing with the item will be repealed as well.

(2) The person, to whom the item was seized, is entitled to request cancellation or limitation of the seizure at any time. Such request must be decided on without undue delay. If the request is denied, this person may repeat it no sooner than after 30 days following full force and effect of the decision, unless new reasons are stated.

(3) The decision on cancellation or limitation of seizure is made by the presiding judge and in pre-trial proceedings by public prosecutor or with his previous consent the police authority.

(4) A complaint is admissible against the decision on cancellation or limitation of seizure, which has a dilatory effect.

(5) Final and effective decision on cancellation and limitation of seizure will be served to authorities and persons, to which the decision on seizure was delivered. Authorities and persons, which were notified about the seizure must be notified also about the decision referred to in sentence one; limitation of seizure will be notified only to those concerned by the limitation.

### **Section 79g**

#### **Seizure of Equivalent Value**

(1) If it is impossible to seize an item that is an instrument or proceeds from crime, an equivalent value may be seized in its stead, which corresponds, at least in part, to its value; therein the procedure according to the relevant provisions regulating seizure of items that are instruments or proceeds from crime will apply accordingly (Section 79a to 79f). An equivalent value may be seized to a person, which was obliged to bear the seizure of the original item.

(2) For important reasons the presiding judge and in pre-trial proceedings the public prosecutor may allow taking an action regarding the seized equivalent value upon a motion of the person, to whom the equivalent value was seized. A complaint is admissible against such decision, which has a dilatory effect.

### **Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

#### **Section 135**

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

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

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

The Czech Republic has also a possibility to seize an item in order to return it to a legitimate owner.

#### **(b) Observations on the implementation of the article**

Freezing of assets is regulated (s. 78, 79, 79a-g CCP).

The reviewing experts pointed out that section 135 of Act no. 104/2013 authorizes only sharing of confiscated property, while the Convention and, in particular, its chapter V requires the return of assets.

In that regard, the Czech authorities noted that based on this provision still the full amount could be returned to the requested State without withholding a share of the proceeds by the Czech Republic.

The reviewing expert recommended that the Czech Republic ensures the full implementation of the requirements of Chapter V, while dealing with the recovery of assets based on the Convention.

## **Article 46 Mutual legal assistance**

### **Paragraph 4**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic can provide spontaneous information to other States. It is regulated in Section 56 of Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters.

The Czech Republic cited the following applicable measure.

#### **Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters.**

##### **Section 56**

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

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

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

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

#### **(b) Observations on the implementation of the article**

Section 56 of Act no. 104/2013 provides a legislative basis for spontaneous sharing of information. The Czech Republic fully implemented the provision under review.

#### **(c) Successes and good practices**

Specific legislative provision on proactive sharing of information contained in section 56 of Act no. 104/2013 can be regarded as a good practice conducive to the effectiveness of international cooperation in transnational corruption cases.

## **Article 46 Mutual legal assistance**

### **Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

##### **Section 6**

##### **Provision of Information**

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

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

##### **Section 8a**

##### **Provision of Information on Criminal Proceedings and Parties Concerned**

(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 criminal proceeding is conducted, an aggrieved person, parties concerned and a witness.

(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 will 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, to which the prohibition of disclosure according to Section 8a (1) second sentence applies, for the purposes of criminal proceedings or for exercising rights or for fulfilling duties imposed by a special legal Act, will not forward such information to any third parties, unless it is necessary for the stated purposes. These persons must be instructed thereof.

(2) Nobody will, 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 a criminal offence of murder (Section 140 of the Criminal Code), manslaughter (Section 141 of the Criminal Code), grievous bodily harm, exposure to venereal disease (Section 155 of the Criminal Code), any of the criminal offences against the pregnancy of women (Section 159 to 162 of the Criminal Code), trafficking in human beings (Section 168 of the Criminal Code), any of the offences against human dignity in the sexual area (Section 185 to 193 of the Criminal Code), abandoning a child or entrusted person (Section 195 of the Criminal Code), maltreatment of a person living in common residence (Section 199 of the Criminal Code), abduction of a child or a person suffering from mental disease (Section 200 of the Criminal Code) or stalking (Section 354 of the Criminal Code).

(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), will be prohibited.

(4) Final judgement will 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.

### **Section 8c**

Nobody will, 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 Code. 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 a person with a restricted legal capacity, by their legal representative or 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).

**(b) Observations on the implementation of the article**

The provision under review can be applied directly based on section 10 of the Constitution of Czechia. The Czech Republic maintains the confidentiality of MLA and extradition requests based on Sections 6(1), 6(2) Act no. 104/2013 and Sections 8a - 8d of the Code of Criminal Procedure.

**Article 46 Mutual legal assistance**

**Paragraph 7**

*7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

522. The Czech Republic confirmed that applicability of paragraphs 9 to 29 in the MLA process with other States Parties to the Convention.

**(b) Observations on the implementation of the article**

523. The Czech Republic confirmed that applicability of paragraphs 9 to 29 in the MLA process with other States Parties to the Convention.

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**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that mutual legal assistance cannot be declined solely on the ground of bank secrecy. There was no case in practice during last 15 years when the Czech Republic would decline a mutual legal assistance request only based on the existence of bank secrecy. Grounds for declining mutual legal assistance are stipulated in the Act n. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters and they are following:

**Act n. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 5**

**Protection of Interests of the Czech Republic**

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

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

(Part V concerns the cooperation with the EU Member States)

**Section 47**

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

**Section 54**

**Refusal of Providing Legal Assistance**

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

a) the request of the foreign authority does not provide sufficient grounds for executing the requested action of legal assistance and the foreign state fails to supplement it within reasonable time despite being requisitioned to do so,

b) the requested action of legal assistance cannot be executed under the Czech law, or

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

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

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

**(b) Observations on the implementation of the article**

Grounds for refusal of mutual legal assistance are stipulated in Sections 5, 47 and 54 of Act no. 104/2013 and do not include bank secrecy as one of such. The authorities of the Czech Republic confirmed that they would not refuse MLA on the ground of bank secrecy.

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## **Paragraph 9.**

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

*.( b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that it would require dual criminality only with regard to the coercive measures including the following:

- search of closed properties (home search) and open properties (other premises and land)
- seizure of items, proceeds of crimes and equivalent value
- securing execution of a sentence of confiscation of property (a kind of extended confiscation)
- seizure of accused person's property in order to secure the claim of an aggrieved person
- intercepting and opening consignments and its replacement
- monitoring consignments
- interception and recording of telecommunications
- inspection of mental state
- covert investigation - simulated transfer, use of agent
- surveillance of persons and items

The Czech Republic applies exclusively the “in concreto” assessment of dual criminality (assessment of criminality of a specific act according to the law of both states concerned).

MLA does not require application criminal jurisdiction and criminal substantive law of the Czech Republic (the crime was/will still be sentenced according to the substantive criminal law of the requesting state). In such a case, the CR applies an approach called “the analogical transposition principle” – the requesting state is viewed as if it was the CR (all elements of crime associated with jurisdiction of CR – commission of crime against the interests of the CR, crossing state borders, commission of a crime on own territory or by own national – are assessed in this way), it means the CR does not assess whether i.e. the tax crime described in the MLA request constitutes any criminal offence according to its law, but whether such a tax crime would constitute any criminal offence according to its law if it was committed against the CR (i.e. against the tax system of the CR).

The Czech Republic cited the following applicable measure.

## **Section 47**

### **Legal assistance**

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

(2) Legal assistance consisting in

*a) performing actions pursuant to Chapter IV, Sub-division four and five of the Code of Criminal Procedure, (it concerns a seizure of items and other property and searches of premises),*

*b) securing execution of a sentence of confiscation of property pursuant to Chapter XXI, Sub-division five of the Code of Criminal Procedure,*

*c) securing the claim of an aggrieved person pursuant to Chapter IV, Sub-division six of the Code of Criminal Procedure,*

*d) intercepting and opening consignments and its replacement pursuant to Chapter IV, Sub-division six of the Code of Criminal Procedure,*

*e) monitoring consignments Pursuant to Section 65,*

*f) interception and recording of telecommunications pursuant to Chapter IV, Sub-division seven of the Code of Criminal Procedure,*

*g) inspection of mental state pursuant to Section 116 (2) of the Code of Criminal Procedure,*

*h) use of operative-search means pursuant to Section 158b to 158 f of the Code of Criminal Procedure, or*

*i) covert investigation pursuant to Section 59 to 61,*

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

#### **(b) Observations on the implementation of the article**

Section 47(2) of Act no. 104/2013 contains the list of the measures that can be carried out at the request of another State only based on the double criminality. As to all other investigation measures the dual criminality condition is not applied unless an international treaty binding upon the Czech Republic stipulates otherwise.

The Czech Republic is recommended to explore the possibility of relaxing the strict application of the double criminality requirement in cases of offences covered by the Convention against Corruption, in line with article 44, paragraph 2, of the Convention.

### **Article 46 Mutual legal assistance**

#### **Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it*

*through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that the Central Authority for receiving MLA requests from abroad related to trial and court judgements is the Ministry of Justice and for the request related to pre-trial proceedings is the Supreme Public Prosecutors Office.

**(b) Observations on the implementation of the article**

The Czech Republic has two Central Authorities for receiving MLA requests. The Supreme Public Prosecutors Office, based in Brno, is the central authority for the requests relevant to legal assistance in the pre-trial period, and the Ministry of Justice, based in Prague, is the central authority for requests relevant to legal assistance during a trial period and with regard to the execution of court judgments. The MLA request according to this Convention can be transmitted directly to these central authorities of the Czech Republic.

**Article 46 Mutual legal assistance**

**Subparagraph 10 (a) and (b) of article 46**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 70**

**Temporary Surrender of Persons to Foreign States**

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

*a) this person consents to the temporary surrender,*

*b) he is not in the position of suspect or accused in criminal proceedings in the foreign state,*

*c) his presence in the territory of the Czech Republic is not necessary for the purposes of criminal proceedings,*

*d) his surrender will not result in thwarting the purpose of custody, imposed sentence or protective measure,*

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

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

a) custody in pre-trial proceedings, by the court competent under Section 26 of the Code of Criminal Procedure upon a petition of the public prosecutor,

b) custody in proceedings after lodging an indictment, by the presiding judge of the court conducting the proceedings,

c) execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, by the presiding judge of the District Court, in the jurisdiction of which is this sentence or protective measure being executed.

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

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

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

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

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

## **(b) Observations on the implementation of the article**

The legislative basis for temporary surrender is provided for in Section 70 of Act no. 104/2013.

## **Article 46 Mutual legal assistance**

### **Subparagraph 11 (a) to 11 (c) of article 46**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 69**

**Temporary Takeover of Persons from Foreign States**

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

(2) If the foreign state allows a temporary surrender of a person, the judge will decide upon a petition of the public prosecutor, and after lodging an indictment the presiding judge will decide that this person will be held in custody for the time of the temporary surrender. The custody will begin at the moment of taking over this person by the authorities of the Czech Republic. The decision will be served to the person without an undue delay after his placement in the prison facility. Provisions of Chapter IV, Sub-division one of the Code of Criminal Procedure will not apply.

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

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

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

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

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

## **Section 70**

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

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

- a) this person consents to the temporary surrender,
- b) he is not in the position of suspect or accused in criminal proceedings in the foreign state,
- c) his presence in the territory of the Czech Republic is not necessary for the purposes of criminal proceedings,
- d) his surrender will not result in thwarting the purpose of custody, imposed sentence or protective measure,
- e) the foreign state provides an assurance that for the time of the temporary surrender the person will be incarcerated and will be imposed the required restrictions implied by the reason for custody applicable in the territory of the Czech Republic.

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

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

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

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

(5) Prior to giving his consent with the temporary surrender, the person concerned by the temporary transfer must be made acquainted with the reason for the temporary surrender by the judge or

presiding judge of the court competent pursuant to Sub-section (2) and advised on the meaning of such consent and the consequences associated thereto. The consent with temporary surrender may not be withdrawn.

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

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

Please provide examples of implementation, including related court or other cases - see above.

**(b) Observations on the implementation of the article**

The provisions under review are implemented via Section 69 of Act no. 104/2013.

**Article 46 Mutual legal assistance**

**Subparagraph 11 (d) of article 46**

*11. For the purposes of paragraph 10 of this article:*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 70**

**Temporary Surrender of Persons to Foreign States**

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

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

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

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

a) custody in pre-trial proceedings, by the court competent under Section 26 of the Code of Criminal Procedure upon a petition of the public prosecutor,

b) custody in proceedings after lodging an indictment, by the presiding judge of the court conducting the proceedings,

c) execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration, by the presiding judge of the District Court, in the jurisdiction of which is this sentence or protective measure being executed.

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

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

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

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

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

#### **(b) Observations on the implementation of the article**

The provision under review is implemented via Section 70.3 of Act no. 104/2013.

### **Article 46 Mutual legal assistance**

#### **Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that there are no specific provisions implementing the provision under review in the domestic legislation, however, it can be applied directly per section 10 of the Constitution of the Czech Republic.

**(b) Observations on the implementation of the article**

The Czech Republic does not have specific provisions implementing the provision under review in its domestic legislation; however, it can be directly applied per section 10 of the Constitution.

The Czech Republic is recommended to specifically incorporate the requirements stipulated in the provision under review in its domestic legislation and ensure that they are followed in MLA processes with other State parties based on the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

The Czech Republic is in compliance with this provision with regard to the communication of requests for mutual legal assistance. All request have to be translated into Czech, English or French. The Czech Republic has notified the Secretary-General of the United Nations as prescribed above.

The Czech Republic informed that MLA requests generally need to be submitted in a written documentary form. The Czech Republic can accept requests in Czech, English and French.

If the matter clearly cannot be delayed and if there is no doubt about the credibility of the request, the Czech judicial or central authorities may initiate execution of actions of international judicial cooperation on the basis of a request of a foreign authority made via telephone, facsimile, electronically, through international police cooperation, personally via a representative of the foreign authority or otherwise – unless an international treaty or Act no. 104/2013 provide otherwise, they will always request the foreign authority to send the original

of the request in documentary form within a time period specified by them.

The urgent requests can be also transmitted via INTERPOL channels.

**(b) Observations on the implementation of the article**

The Czech Republic has implemented the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 15**

*15. A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic informed that according to section 10 of the Constitution, the provision can be applied directly. However, there is also a general provision in Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters concerning the content of the request as cited below.

The Czech Republic cited the following applicable measure.

**Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 41**

**Request for Legal Assistance**

- (1) Request for legal assistance contains especially
  - a) specification of the judicial authority requesting the legal assistance, date of drawing up the request,
  - b) data on the person, against whom the criminal proceeding being is conducted,
  - c) description of the act, its legal qualification with literal wording of the Criminal Code and eventually other legal regulations,
  - d) accurate description of the requested actions of legal assistance, including the requirements for its execution and substantiation of the need for its execution.
- (2) The request will be accompanied by documents and items necessary for executing the requested action of legal assistance.
- (3) The judicial authority will provide additional information and supplementations necessary for executing the request upon a petition of the foreign authority.

**(b) Observations on the implementation of the article**

The provision under review is generally implemented via Section 41 of Act no. 104/2013. It can also be applied directly based on section 10 of the Constitution of Czechia.

**Article 46 Mutual legal assistance**

**Paragraph 16**

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measure.

**Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 48**

**Request for Legal Assistance**

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

**(b) Observations on the implementation of the article**

The Czech Republic will request additional information when necessary per Section 48 of Act no. 104/2013. The provision under review can also be applied directly per section 10 of the Constitution of Czechia

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures:

**Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

**Section 49**

**Using Provision of Foreign State Law**

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

**(b) Observations on the implementation of the article**

The provision under review is addressed in section 49 of Act no. 104/2013.

**Article 46 Mutual legal assistance**

**Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

**Section 57**

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

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

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

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

(4) The judicial authority will conduct the interview via a video-conference device or telephone according to the Code of Criminal Procedure; at the same time it will take into account arrangements made the foreign authority in order to prevent breaching of basic principles of the law of the foreign state in question in the course of conducting the interview.

If it cannot comply with these arrangements and fails to reach an agreement concerning the manner of conducting the interview, the interview will be terminated.

**Section 58**

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

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

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

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

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

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

(7) The judicial authority will be present during the interview and will mind that the basic principles of criminal proceedings and interests of the Czech Republic referred to in Section 5 were not breached in the course of the interview. In case of their breach the interview will be stopped and measures will be taken in order to make the interview proceed in compliance with these principles, or the interview will be terminated.

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

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

The Czech Republic further reported that there were cases of hearing of accused persons and witnesses in practice. The majority of them concerned hearing in pre-trial proceedings – a number of them in direct contact between courts and prosecutors within the EU. The videoconferences with the USA and Canada were coordinated in the Czech Republic by the Supreme Public Prosecutor's Office.

The Czech Republic also provided the details of a case where it was acting as a requesting State as follows.

Czech Republic in position of a requesting State

The United States of America in position of a requested State

Treaty base: Treaty on Mutual Legal Assistance between the Czech Republic and the United States of America of 4 February 1998, as amended by the Supplementary Treaty of 16 May 2006

Czech offence: attempted fraud according to Section 21(1) in connection with Section 209(1)(5)(a) of the Criminal Code; upon performing evidence at trial the court changed legal qualification of the facts from attempted fraud to the offence of aiding to a criminal offence of accepting bribes.

Requested assistance: hearing of a witness at trial by means of video link  
The USA complied with the request in 2016.

**(b) Observations on the implementation of the article**

Section 58 of Act no. 104/2013 provides a detailed regulation on hearing by video conference in the context of MLA. The Czech Republic also has the actual practice of organizing such video conferences at the request of other States.

**(c) Successes and good practices**

The detailed regulation of the hearing by video conference in section 58 of Act no. 104/2013 can be regarded as good practice conducive to the effectiveness of international cooperation.

**Article 46 Mutual legal assistance**

**Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

**Section 7**

**Specialty Principle**

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

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

**(b) Observations on the implementation of the article**

The Czech Republic implemented the provision under review in section 7 of Act no. 104/2013. The provision under review can also be applied directly per section 10 of the Constitution of Czechia.

**Article 46 Mutual legal assistance**

**Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic has indicated that the general rule is that MLA requests in criminal proceedings from foreign states are not published anywhere and are submitted only to the State authorities responsible to deal with the particular request. There is no obligation of banks to inform their clients about a request concerning their accounts. One of the general rules of hearing of persons is that the questions to be asked are not presented to such a person in advance of a hearing.

Confidentiality will be respected unless it is in contrary with Czech law. The Code of Criminal Procedure allows to keep confidential information in order to keep safety of witness (Section 55 par. 2, Section 102a, Section 183a, Section 209 of the Code of Criminal Procedure). Czech Republic has also a special Act no. 137/2001 on protection of witnesses in criminal proceedings. According to Section 56 Act no. 104/2013 on International Judicial Cooperation in Criminal Matters the judicial authority may set conditions for using the information or evidence in the foreign state. In such a case it will verify at the foreign authority in advance, whether it consents to such conditions.

**(b) Observations on the implementation of the article**

The provision under review can be can also be applied directly based on section 10 of the Constitution of Czechia. It is also followed in practice by the Czech authorities. However, there are no detailed regulations on the matter of confidentiality Act no. 104/2013.

The Czech Republic is recommended to specifically incorporate the requirements stipulated in the provision under review in its domestic legislation and ensure that they are followed in MLA processes with other State parties based on the Convention.

**Article 46 Mutual legal assistance**

**Subparagraph 21 (a) to (d) of article 46**

*21. Mutual legal assistance may be refused:*

- (a) *If the request is not made in conformity with the provisions of this article;*
- (b) *If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, order public or other essential interests;*
- (c) *If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) *If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 104/2013 on International Judicial Cooperation in Criminal Matters**

**Section 5**

**Protection of Interests of the Czech Republic**

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

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

**Section 53**

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

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

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

**Section 54**

**Refusal of Providing Legal Assistance**

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

a) the request of the foreign authority does not provide sufficient grounds for executing the requested action of legal assistance and the foreign state fails to supplement it within reasonable time despite being requisitioned to do so,

b) the requested action of legal assistance cannot be executed under the Czech law, or

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

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

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

**(b) Observations on the implementation of the article**

The conditions for the refusal of MLA are stipulated in Sections 5 and 54 of Act no. 104/2013 and generally are in line with subparagraph 21 (a) to (d) of Article 46 of the Convention. Nevertheless, the Czech law also contains some additional grounds for refusal that are not present in the Convention. For example, according to section 54(1)(c), the execution of legal assistance can be prevented by “*another serious reason*” without providing the actual list of such reasons.

Based on the above and with the understanding that the provision under review can be also applied directly based on section 10 of the Constitution of Czechia, the Czech Republic is recommended to ensure that the refusal of MLA requests of other States Parties can be made in compliance with the requirements of paragraphs 21 of article 46 of the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that its Act no. 104/2013 does not include the involvement of fiscal matters as a ground for refusal of a request for MLA.

**(b) Observations on the implementation of the article**

Act no. 104/2013 does not include the involvement of fiscal matters as a ground for refusal of a request for MLA. The provision under review can also be applied directly per section 10 of the Constitution of Czechia.

**Article 46 Mutual legal assistance**

**Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act No. 104/2013 on International Judicial Cooperation in Criminal Matters**

**Section 54**

**Refusal of Providing Legal Assistance**

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

## **(b) Observations on the implementation of the article**

The Czech Republic implemented the provision under review in Section 54(3) of Act no. 104/2013.

### **Article 46 Mutual legal assistance**

#### **Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

#### **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

##### **Section 9**

(1) Judicial authorities perform actions of international judicial cooperation or secure execution thereof without undue delay.

The Czech Republic further clarified that the customary length of time for receiving requests for mutual legal assistance and responding to them- 2-5 months.

There is an electronic criminal cases management system that allow to register both outgoing and incoming MLA requests. However, the system is outdated and does not allow to have the central overview about MLA cases if there are direct contacts between courts and prosecutors.

MOJ had initiated a project to develop a pilot database that would include information about MLA. The project should be developed by 2019.

In 2014, 2015 and 2016, the Regional Public Prosecutor's Offices received a total of 9037 MLA requests. The vast majority of these requests were executed within one to four months and where delays occurred, they were often due to the need to translate documentation. This data is not broken down according to the underlying offence or Convention, and therefore it is not known whether any of these requests related to corruption.

During the same period, Supreme Public Prosecutor's Office received 200 to 300 requests per year. There is no formal process of recognition of MLA request. If the request of the foreign authority provides sufficient grounds for executing the requested action of legal assistance, the Supreme Public Prosecutor's Office (in a pre-trial proceedings) hands over the case to one of the eight Regional Offices for execution (requests of foreign courts are dealt with by the Ministry of Justice and courts). The responsible prosecutors from the Regional Public

Prosecutor's Office decide about an investigative measure themselves or charge police to perform it.

In 2014, 2015 and 2016, a total of 6182 MLA requests were initiated by the Czech authorities. This data is not broken down in terms of the underlying offence or Convention, and therefore it is not known whether any concerned bribery.

The most effective cooperation is within the EU (due to harmonisation of certain areas of the criminal law, legal framework that provides direct contacts in MLA between prosecutors or other authorities responsible for MLA in the given criminal matter, Eurojust, EJM and other networks of specialists). There are also good cooperation with some foreign countries (i.e. the US) due to regular consultations about pending cases of MLA and direct contact between specialists for MLA at the central judicial authorities.

#### **(b) Observations on the implementation of the article**

According to section 9 of Act no. 104/2013, the Czech authorities shall perform actions of international judicial cooperation without undue delay.

The authorities also explained to the reviewing experts that usually incoming requests are processed within 2-5 months.

The Czech Republic also has an electronic database for handling MLA requests and is developing a new electronic system for the same purpose.

The Czech Republic is recommended to ensure that the requirements of the provision under review are followed in MLA processes with other State parties based on the Convention.

### **Article 46 Mutual legal assistance**

#### **Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

### **Act no. 104/2013 on International Judicial Cooperation in Criminal Matters**

#### **Section 53**

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

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

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

also about the supposed time it will be possible to execute the action of legal assistance.

**(b) Observations on the implementation of the article**

Section 53 of Act no. 104/2013 specifically stipulated that the execution of MLA may be suspended if it could imperil criminal proceedings conducted in the Czech Republic or its execution is temporarily impossible with regard to specific circumstances of the case. Specifically, to the last condition, the reviewing experts noted that it would benefit from further clarifications.

The provision under review can also be applied directly based on section 10 of the Constitution of Czechia.

The Czech Republic is recommended to ensure that the requirements of the provision under review are followed in MLA processes with other States parties based on the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no. 104/2013 on International Judicial Cooperation in Criminal Matters**

**Section 53**

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

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

**Section 54**

**Refusal of Providing Legal Assistance**

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

**(b) Observations on the implementation of the article**

The requirement to immediately notify the requested State regarding the reasons for suspension/refusal of the request are stipulated in section 53(2) and section 54(3) (as cited under

paragraph 23 above) of Act no. 104/2013, however, there are no requirements to consult to consider whether assistance may be granted subject to other terms.

The provision under review can also be applied directly based on section 10 of the Constitution of Czechia.

The Czech Republic is recommended to specifically incorporate the requirements stipulated in the provision under review in its domestic legislation and ensure that they are followed in MLA processes with other State parties based on the Convention.

## **Article 46 Mutual legal assistance Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Act no. 104/2013, on International Judicial Cooperation in Criminal Matters**

### **Section 44 Summoning Persons from Foreign States**

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

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

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

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

(4) In case a foreigner is to be summoned, the judicial authority will inform the Directorate of Foreign Police Service at least 30 days in advance before the day the foreigner is to appear about the time period, for which is his presence in the Czech Republic necessary for the purposes of criminal proceedings, and will ask it to verify, whether he is not considered a *persona non grata* according to the Act on the Stay of Foreigners in the Territory of the Czech Republic, and in case he is registered in the list of **personae non gratae**, it will request his temporary removal for this time period. In case the foreigner was recorded in the list of **personae non gratae** on the basis of a finally and effectively imposed sentence of banishment, the judicial authority will inform the presiding judge of the court competent for its execution about the time the presence of the foreigner is necessary in the Czech Republic, and will request suspension of execution of this sentence for this time period.

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

#### **(b) Observations on the implementation of the article**

Act no. 104/2013 in its section 44 provides certain guarantees of safe conduct to a witness, expert or other person who, at the request of the Czech Republic, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in its territory.

However, the given guarantees may be interpreted as narrower than the requirements of the Convention. For example, *the incarceration of such a person is permissible if he fails to appear at the procedural action he was summoned for...* (section 44(2)(d) of the Act).

The provision under review can also be applied directly based on section 10 of the Constitution of Czechia.

In that regard the Czech Republic is recommended to ensure that the requirements stipulated in the provision under review are followed in MLA processes with other States parties based on the Convention.

### **Article 46 Mutual legal assistance**

#### **Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

## **Act no. 104/2013 on International Judicial Cooperation in Criminal Matters**

### **Section 11**

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

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

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

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

(4) Provisions of Sub-sections (1) to (3) will not affect the right to claim compensation of costs against the convict; in such case the administration of payment of costs will be governed by the Tax Procedure Code.

#### **(b) Observations on the implementation of the article**

The Czech Republic implemented the provision under review in Section 11 Act no. 104/2013.

## **Article 46 Mutual legal assistance**

### **Paragraph 29 of article 46**

*29. The requested State Party:*

- (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*
- (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic clarified that if any kind of gathering evidence is not specifically stipulated by Act No. 103/2014 Coll., evidence is gathered according to the Criminal Procedural Code – see Sec. 3 of Act No. 103/2014 Coll. All kind of documents (both publically available and non-public documents (e.g. tax law, governmental records, social security records, etc.) can be gathered for the purposes of criminal proceedings.

**Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

The Czech Republic cited the following applicable measures.

**Section 3**

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

**(b) Observations on the implementation of the article**

The conditions on the provision of information as stipulated in paragraph 29 of article 46 of the Convention are not specifically regulated in Act No. 103/2014; yet such information can be provided based on section 10 of the Constitution of Czechia, and also with reference to the Criminal Code per section 3 of the Act.

The Czech Republic is recommended to specifically incorporate the requirements stipulated in the provision under review in its domestic legislation and ensure that they are followed in MLA processes with other States parties based on the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**List of bilateral and multilateral treaties binding the Czech Republic on mutual assistance in criminal matters**

The UN Conventions (1988, 2000, 2003)

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

**a) Multilateral regional treaties**

European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20 April 1959 (ETS No. 30 )

Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 17 March 1978 (ETS No. 99 )

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 8 November 2001 (ETS No. 182 )

European Convention on the Suppression of Terrorism, Strasbourg, 27 January 1977 (ETS No. 90)

**b) Bilateral treaties**

**ADD:** additional treaty, supplementing existing Council of Europe Convention on mutual assistance in criminal matters (ETS No. 30)

<b>State</b>	<b>Signed on</b>
Afghanistan	24.06.1981
Albania	16.1.1959
Algeria	04.02.1981
Austria	18.11.1982 + 27.6.1994 + 5.12.2014 ADD
Belarus	12.08.1982
Belgium	28.2.1928
Bulgaria	25.11.1976
Bosnia and Herzegovina	20.1.1964
Cuba	18.04.1980
Canada	03.11.1997
Croatia	20.1.1964
Cyprus	23.4.1982
Denmark	7.10.1931
Federal Republic of Germany	2.2.2000 ADD
France	7.5.1928
Georgia	12.8.1982
Greece	22.10.1980
Hong Kong	04.03.2013
Hungary	28.3.1989
Italy	6.12.1985
Kazakhstan	6.6.2013
Kosovo	20.01.1964
Kyrgyzstan	12.08.1982
Luxembourg	1.12.1934
Moldovia	12.8.1982
Monaco	22.12.1934

Mongolian	15.10.1976
Netherlands	4.12.1931
People´s Republic of Korea	11.09.1988
Poland	21.12.1987 + 30.10.2003
Portugal	23.11.1927
Romania	25.10.1958
Russia	12.8.1982
Serbia	20.1.1964
Slovakia	29.10.92 + 29.10. 2012 ADD
Slovenia	20.1.1964
Socialistic Republic of Vietnam	12.10.1982
Spain	26.11.1927
Syria	18.04.1984
The FYR Macedonia	20.1.1964
Tunisia	12.04.1979
United States	04.02.1998 + 16.05.2006
Uzbekistan	18.01.2002
Yemen	19.01.1989

**(b) Observations on the implementation of the article**

The Czech Republic participates in many multilateral and bilateral instruments on MLA.

**Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Chapter III**

**Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters  
Takeover and Transfer of Criminal Proceedings  
Sub-chapter 1**

**Section 105**

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

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

authorities.

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

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

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

*a) extradition or surrender of a person, against whom the criminal proceeding is conducted, to the Czech Republic may be achieved,*

*b) the person, against whom the criminal proceeding is conducted, is located in the territory of this foreign state,*

*c) the evidence, in particular witnesses, is located in the territory of this foreign state,*

*d) this foreign state is already conducting criminal proceedings against this person for the same act,*

*e) transferring criminal proceedings to this foreign state would cause delays in the proceedings,*

*f) trying the case in the Czech Republic is required by the nature of the protected interest affected by the criminal offense, or circumstances, under which the act was committed,*

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

## **Section 106**

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

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

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

## **Sub-chapter 2**

### **Section 112**

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

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

### **Section 113**

### **Decision on Takeover of Criminal Proceedings**

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

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

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

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

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

### **Section 116**

#### **Return of Criminal Proceedings**

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

The transfer of criminal proceedings can be made also without an international treaty, only base on the above-mentioned provisions of Act No. 104/2013 Coll. The only authority that can decide on transfer of the criminal proceedings in such cases is the Supreme Public Prosecutors Office.

The Czech Republic as the requested state has to assess at least:

- 1) if the description of the act constitutes any criminal offense according to its law.
- 2) if punishability of the act in the requested state has not expired on the grounds of the statute of limitations, repentance and compensation (e.g. payment of the correct amount of tax prior to initiation of criminal proceedings), granting a pardon, and
- 3) if it may apply its jurisdiction on any grounds (territorial, personal,...).

The Czech Republic further informed that its Supreme Public Prosecutor's Office decided about transfer of the criminal proceedings from abroad to the Czech Republic in 66 cases in 2014, 46 cases in 2015, 50 cases in 2016. Prosecutors of the Czech Republic sent abroad via the Supreme Public Prosecutor's Office 86 requests in 2014, 77 requests in 2015 and 62 requests in 2016. The exact number of transfer of criminal proceedings in or out the Czech Republic in direct contacts between courts and prosecutors (based on the bilateral treaties) are not available yet.

**(b) Observations on the implementation of the article**

Act no. 104/2013 provides a detailed procedure for transferring of legal proceedings in its sections 105, 106, 112 and 113. There is also an extensive practice of such transfers both in an out of the country.

The Czech Republic fully implemented the provision under review.

**(c) Successes and good practices**

The detailed regulation of transfer of criminal proceedings in Act no. 104/2013 can be regarded as a good practice conducive to the effectiveness of international cooperation.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (a)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

**Subparagraph 1 (b) (i), (ii) and (iii)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic informed that it regularly cooperates other States Parties for offences covered by the Convention.

Act No. 273/2008 Coll. on the Police of the Czech Republic, namely article 89 of this Act provides legal basis for international police cooperation. According to this Article, when meeting their tasks the Police shall cooperate with Interpol, Europol, relevant authorities and institutions of the European Union and its Member States, as well as with other international organisations, foreign security forces and other competent foreign entities.

Police of the Czech Republic is involved in various topic-oriented practitioners' networks on EU as well as global level. For instance, the CARIN network (focused on the identification of proceeds of crime), EPAC network (network focused on combating corruption), StAR Initiative – INTERPOL Global Focal Point on Asset Recovery Network and Europol.

Communication through Interpol channel is common and it is widely used. Interpol National Central Bureau (Interpol Prague) is located within the Police Presidium and it operates as a central contact point for all law enforcement matters relating to international investigations which involve the Czech Republic.

Good examples of cooperation are cases covered by OLAF (European Anti-Fraud Office established to combat corruption and frauds concerning financial interests of the EU). There are two cases of corruption and fraud ongoing (one relating to fraud and corruption at the Commercial Chamber, another relation to fraud and possible corruption in a biological research project), both involving EU subventions. Investigating these cases Czech and German judicial authorities have been exchanging information as well as letters rotator directly. Information from OLAF investigation have also been an added value to both cases and the exchange has been done both by secured e-mail and regular mail (the complete files with evidence especially).

The Czech law enforcement authorities can make use of the Schengen Information System, Europol and Euro just as platforms for information (and evidence) exchange. There are formal and informal police and justice networks making information exchange possible (e.g. CARIN, ARO, etc.).

The Financial Analytical Office (hereinafter FAU) which is the FIU of the Czech Republic communicates with foreign FIUs through Egmont secure web and also through FIU.net. FAU can provide all relevant information including bank statements, tax returns, documents obtained within CDD and other also for the intelligence purposes of foreign FIUs. The FAU provides these information upon request and also spontaneously. The possibility to provide these information is set in the AML Act (see below) and in cases when the counterparty needs a special agreement there are Memorandums of Understanding with such countries. The FAU also actively participates on the regional meetings within FIU Platform, Egmont meetings and FIU.net meetings to help to improve the international cooperation between FIUs.

With regard to communication channels between specialized anti-corruption authorities, in 2015 the then Corruption and Financial Crime Unit (UOKFK) has joined EU funded project called S4ACA (SIENA for Anti-Corruption Agencies). S4ACA aims to enhance the communication with Europol and to increase the exchange of information via Europol's Secure Information Exchange Network Application (SIENA) by initiating SIENA's extension to and use by European anti-corruption authorities. SIENA is Europol's Secure Information Exchange

Network Application, which allows Law Enforcement Agencies (LEA) to share operational and strategic crime-related information and intelligence via a secure communication channel. A direct connection to SIENA for European Anti-Corruption Authorities (ACA) is beneficial since it allows for a secure and direct communication between European partners.

The Czech Republic cited the following applicable measures.

### **Act No. 273/2008 Coll. on the Police of the Czech Republic**

#### **Section 89:**

When fulfilling its tasks, the Police cooperates with the Interpol international organization, European Police Office, relevant authorities and institutions of the European Union and its Member States, as well as with other international organizations, international criminal courts, international criminal tribunals, or with similar international judicial authorities which meet at least one of the conditions stipulated in Section 145 par. 1 b) and c) of the Act on International Judicial Cooperation, with foreign security forces and other relevant foreign entities.

#### **Section 93:**

A police officer is entitled to operate on the territory of another state:

- a) under the conditions, within the scope and in a manner stipulated by an international treaty,
- b) within a framework of peace or other operation in which the Czech Republic participates on the basis of a decision of an international organisation of which the Czech Republic is a member or with which it has concluded relevant international agreements, or on the basis of a decision of a relevant authority or an institution of the European Union, or
- c) in case the officer is sent to fulfil tasks on the basis of a decision of the Minister with the consent of the relevant authority of a foreign state or upon a request of a relevant authority of a foreign state.

### **Act No. 253/2008 Coll., on Selected Measures Against Legitimization of Proceeds of Crime and Financing Terrorism**

#### **Section 33**

##### **International Co-operation**

(1) In the scope set out by an international treaty by which the Czech Republic is bound, or on the principle of reciprocity, the Office shall co-operate with third country authorities and international organisations of the same scope of competence, in particular in providing and obtaining information to deliver on the purpose of this Act.

(2) Provided that the information is used exclusively for the purpose of this Act and is protected at least in the scope laid down in this Act, the Ministry may co-operate also with other international organisations.

#### **(b) Observations on the implementation of the article**

The Czech Republic has extensive experience in law enforcement cooperation, including in corruption cases.

The Czech Republic also participates in a number of law enforcement and asset recovery networks including EUROPOL, CARIN, EPAC, StAR-Interpol Global Asset Recovery Focal Points network.

Within the EU the Czech law enforcement agencies cooperate with their EU counterpart via OLAF (European Anti-Fraud Office established to combat corruption and fraud concerning the financial interests of the EU).

The Czech FIU is actively involved in the activities of the Egmont Group

Act No. 273/2008 Coll. on the Police and Act No. 253/2008 Coll. on selected measures against the legitimization of proceeds of crime and financing terrorism provide a legal basis for law enforcement cooperation.

**(c) Successes and good practices**

Active cooperation with law enforcement agencies of other States, including via membership in various practitioners' networks can be regarded as a good practice.

**Article 48 Law enforcement cooperation  
Subparagraph 1 (c)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic indicated that such samples, items or substances are provided either for analytical purposes within Europol or via the above described channels and platforms upon request. Schengen Information System, Europol and its Analytical Work Files or Interpol may be examples of platforms where the Czech Republic law enforcement authorities participate (by obligation given by international agreements and the EU legislation).

**(b) Observations on the implementation of the article**

The Czech Republic implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (d)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic reported that means and methods to commit corruption offences and counter them are regularly shared via the platforms provided by GRECO, OECD and Open Government Partnership; as the Czech Republic is also a subject of evaluation by these organisations and institutions. The Czech authorities take into consideration results and recommendations of evaluations and make use of recommended methodologies (e.g. OECD Bribery Awareness Handbook, the Council of Europe (CoE) Liability of Legal Persons for Corruption Offences manual, FRONTEX Study on Anti-Corruption Measures in EU Border Control, etc.). Czech police and prosecution have elaborated their own methodologies too.

**(b) Observations on the implementation of the article**

The Czech Republic implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (e)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic reported that there are Czech police liaison officers in Poland, Slovakia, Russian Federation, Serbia, Ukraine and Vietnam. There are national police representatives abroad at Europol and Eurojust (The Hague). Policemen, judges and prosecutors also take part in civil missions in Kosovo, Georgia and Afghanistan. Common police international cooperation centres have been established on the borders with all neighbouring countries. All policemen, judges and prosecutors working abroad keep their domestic positions, duties and competences.

Sections 89 and 93 of the Act on Police of the Czech Republic (Act No. 273/2008 Coll.) is the basis for seconding liaison police officers.

There are also foreign liaison officers based in foreign diplomatic missions in the Czech Republic.

There are also common police international cooperation centres established at the border with all the neighbouring countries.

The Czech Republic provided the following information regarding the posting of liaison

officers.

**Liaison Officers Accredited for the Czech Republic**

Sending Country	Name	Surname
Poland	Piotr	BLACHOWSKI
France	Alexandre	JEUNAUX
Germany	Robert	FISCHER
Germany Switzerland	Marwan Eric	MUSSA GROSSENBACHER
Spain	Vicente	GARCIA SANJUAN
Canada	Ed	HUBBARD
Israel	Elyakim	KAPLAN
USA, FBI	Mark	KIRBY
USA, DHS/ICE	Michael	Vaughn
Austria	Friedrich	LENNKH
Italy	Roberto	MAGNI
Australia – LO	Bianca	WARLAND
Australia – Senior LO	Andrea	HUMPHRYS
Ukraine	Liubomyr	SOROKA
Slovakia	Ivan	ŠEVČÍK
Japan	Takuya	TAKITA
Romania	Tudor	VISAN
Germany, Customs SD	Dieter	Wurche

**Liaisons officers with embassies (EMB) or institutions (INS) and seconded national experts (SNE) of the Czech Police in foreign countries**

Classification	Rank	Degree	Name	Surname	Competence
EMB	colonel	Mgr.	Tomáš	Dokulil	United Kingdom
EMB	lieutenant colonel	Mgr.	Robert	Knobloch	Vietnam
EMB	lieutenant colonel	Mgr.	Tomáš	Kudláček	Russia
EMB	colonel	Mgr.	Marian	Paštinský	Slovakia, Hungary
EMB	lieutenant colonel	Mgr.	Marek	Pražák	Ukraine
EMB	lieutenant colonel	JUDr.	Kateřina	Prouzová	Germany
EMB	lieutenant colonel	Mgr.	David	Janda	Romania plus accredited for Bulgaria, Turkey and Moldova

EMB	lieutenant colonel	Mgr.	Lukáš	Kepič	Serbia plus accredited for Montenegro, Bosnia and Herzegovina, Albania, Macedonia and Croatia
EMB	captain		Adriatik	Shino	Albania
PRB	lieutenant colonel	Mgr.	Jan	Vojta	Permanent EU Representation, Brussels (PRB), Belgium
INS	lieutenant colonel	Mgr.	Petr	Farník	Europol, Haag, Netherlands
INS	lieutenant colonel	Mgr.	Iva	Petráčková	Europol, Haag, Netherlands
INS	lieutenant colonel	Mgr.	Jan	Drápal	Interpol, Lyon, France
SNE	captain	Bc.	Pavel	Selčan	Frontex, Warsaw, Poland
SNE	captain	MSc.	Ladislav	Kürti	Frontex, Warsaw, Poland
SNE	lieutenant colonel	Mgr.	Jiří	Perníček	Frontex, Warsaw, Poland
SNE	lieutenant colonel	Mgr.	David	Heřman	Europol, Haag, Netherlands
SNE	lieutenant colonel	Mgr.	Karel	Pelán	Interpol, Lyon, France
SNE	captain	Mgr.	Karel	Březina	European Commission, Brussels, Belgium

**(b) Observations on the implementation of the article**

The Czech Republic has implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (f)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic referred to the information cited under subparagraph 1 (e) above.

**(b) Observations on the implementation of the article**

The Czech Republic exchanges information on a regular basis on different platforms as explained above.

**(c) Successes and good practices**

Active cooperation with law enforcement agencies of other States, including via membership in various practitioners' networks can be highlighted as a good practice conducive to international cooperation in anti-corruption matters.

**Article 48 Law enforcement cooperation**

**Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic reported that it is a party to the Civil Law Convention Against Corruption of the Council of Europe, the Criminal Law Convention Against Corruption of the Council of Europe, the OECD Convention on Combating Bribery in Foreign Public Officials in International Business Transactions, UN Convention Against Corruption, Convention on the fight against Corruption involving Officials of the EC or Officials of Members States of the EU. All bilateral agreements on mutual legal assistance in criminal matters provide for exchange of information between law enforcement agencies.

The assistance is provided regularly, most frequently to the EU countries and neighbouring countries. There are thousands of cases per year; most of the cooperation is direct between judicial and law enforcement authorities.

The Czech Republic considers UNCAC as a basis for mutual law enforcement cooperation in respect of the offences covered by this Convention.

The Czech Republic has concluded numerous bilateral agreements on cooperation in the fight against crime. There is a bilateral agreement on law enforcement cooperation with the following jurisdictions: Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Montenegro, France, Chile, Croatia, Italy, Israel, Kazakhstan, Cyprus, Kyrgyzstan, Lithuania, Latvia, Hungary, FYROM, Moldavia, Poland, Austria, Romania, Russia, Slovakia, Slovenia, Germany, Serbia, Switzerland, Turkey, Ukraine, USA and Uzbekistan.

The Czech Republic provided the list of following agreements on cooperation in countering crime concluded by its Police.

Reporting EU MS/SAC: CZECH REPUBLIC				
Countries	Type of agreement/project	Main activities covered by the action	LOs Posted (P)	Comments/remarks

			Accredited (A)	
Armenia	Readmission agreement	Readmission/return		
Albania	Agreement between the Government of the Czech Republic and the Council of Ministers of the Republic of Albania on cooperation in combating crime  Protocol between the Government of the Czech Republic and the Council of Ministers of the Republic of Albania Implementing the Agreement between the European Community and the Republic of Albania on the Readmission of Persons Residing without Authorization	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Austria	Agreement between the Czech Republic and the Republic of Austria on police cooperation and on the second amendment to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959  Readmission agreement	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information Cross-border operations		
Belgium	Agreement between the government of the Czech Republic and the government of the Kingdom of Belgium on police cooperation	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Bulgaria	Readmission agreement	Readmission/return		
Bulgaria	Agreement between the Government of the Czech Republic and the Government of the Republic of Bulgaria on cooperation in combating crime and ensuring public order and security	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Bosnia and Herzegovina	Agreement between the Czech Republic and Bosnia and Herzegovina on cooperation in combating organised crime, trafficking in narcotics and psychotropic substances, terrorism and other forms of serious crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Canada	Readmission agreement	Readmission/return		
Chile	Agreement between the Government of the Czech Republic and the Government of the Republic of Chile on cooperation in combating international terrorism, international organised crime and trafficking in narcotics, psychotropic and radioactive substances	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Croatia	Readmission agreement	Readmission/return		

Croatia	Agreement between the Government of the Czech Republic and the Government of the Republic of Croatia on cooperation in combating organised crime, trafficking in narcotics and psychotropic substances, terrorism and other forms of serious crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - A	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Cyprus	Agreement between the Czech Republic and the Republic of Cyprus on cooperation	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
France	Agreement between the Federal Ministry of the Interior of the Federal Republic of the Czech and Slovak Republic and the Ministry of the Interior of the French Republic on police cooperation	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Germany	Agreement between the Czech Republic and the Federal Republic of Germany on police cooperation  Readmission agreement	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information Cross-border operations		
Hungary	Agreement between the Government of the Czech Republic and the Government of the Republic of Hungary on cooperation in combating terrorism, suppressing trafficking in narcotics and psychotropic substances and organised crime  Readmission agreement	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - A	
Italy	Agreement between the Government of the Czech Republic and the Government of the Republic of Italy on cooperation in combating terrorism, organised crime and trafficking in narcotics and psychotropic substances	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Israel	Agreement between the Czech Republic and the State of Israel on cooperation in combating organised crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Kazakhstan	Agreement between the Government of the Czech Republic and the Government of the Republic of Kazakhstan on cooperation in combating organised crime, trafficking in narcotics and psychotropic substances, terrorism and other forms of serious crime  Readmission agreement	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Kosovo	Readmission agreement	Readmission/return		

Kyrgyzstan	Agreement between the Government of the Czech Republic and the Government of the Republic of Kyrgyzstan on cooperation in combating organised crime, trafficking in narcotics and psychotropic substances, terrorism and other forms of serious crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Latvia	Agreement between the Government of the Czech Republic and the Government of the Republic of Latvia on cooperation in combating terrorism, trafficking in narcotics and psychotropic substances and organised crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Lithuania	Agreement on cooperation between the Ministry of the Interior of the Czech Republic and the Ministry of the Interior of the Republic of Lithuania	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Macedonia	Agreement between the Government of the Czech Republic and the Government of The former Yugoslav Republic of Macedonia on cooperation in combating crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - A	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Moldova, Republic of	Readmission agreement	Readmission/return		
Moldova, Republic of	Agreement between the Government of the Czech Republic and the Government of the Republic of Moldova on cooperation in combating organised crime, illicit trade in narcotics and psychotropic substances, terrorism and other forms of serious crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - A	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Montenegro	Agreement between the Czech Republic and Montenegro on cooperation in combating organised crime  Protocol between the Government of the Czech Republic and the Government of Montenegro Implementing the Agreement between <b>the European Community and the Republic of Montenegro on the Readmission of Persons Residing without Authorization</b>	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - A	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Poland	Agreement between the Czech Republic and the Republic of Poland on cooperation in combating crime, protection of public order and on cooperation in the border areas  Readmission agreement	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information Cross-border operations		
Romania	Readmission agreement	Readmission/return		

Romania	Agreement between the Government of the Czech Republic and the Government of the Republic of Romania on cooperation in combating organised crime, trafficking in narcotics, psychotropic substances and precursors, terrorism and other forms of serious crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Russia	Agreement between the government of the Czech Republic and the government of the Russian Federation on cooperation in combating organised crime  Implementing Protocol between the Government of the Czech Republic and the Government of the Russian Federation on the implementation of the Agreement between the European Community and the Russian Federation on readmission of 25 May 2006	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Serbia	Agreement between the Government of the Czech Republic and the Government of the Republic of Serbia on police cooperation in combating crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Slovakia	Agreement between the Czech Republic and the Slovak Republic on cooperation in combating crime, protection of the public order and protection of the borders	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information Joint operations	X - P	
Slovenia	Agreement between the Government of the Czech Republic and the Government of the Republic of Slovenia on cooperation in suppressing trafficking in narcotics and psychotropic substances and organised crime and in combating terrorism  Readmission agreement	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Swiss	Agreement between the Czech Republic and the Swiss Confederation on police cooperation in combating crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Tunisia	Agreement between the Czech Republic and Tunisia on cooperation	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Turkey	Agreement between the Ministry of the Interior of the Czech Republic and the Ministry of the Interior of Turkey on cooperation in combating international trafficking in narcotics and psychotropic	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - A	doc. 11996/14 “Update of the Compendium on law enforcement

	substances, international terrorism and organised crime			liaison officers (2014)”
Ukraine	Agreement between the Government of the Czech Republic and the Government of the Republic of Ukraine on cooperation in combating the organised crime, terrorism and trafficking in narcotics and psychotropic substances	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”
Uzbekistan	Agreement between the Government of the Czech Republic and the Government of Uzbekistan on cooperation in combating crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
UK	Arrangement between the Government of the Czech and Slovak Federal Republic and the Government of the United Kingdom of Great Britain and Northern Ireland on cooperation in the fight against terrorism, trafficking in narcotics and organised crime and general aspects of security practice	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
USA	Agreement between the Government of the Czech Republic and the Government of the United States of America on strengthening of cooperation with prevention and combating serious crime	Prevention/fight against smuggling of migrants, THB, other cross border crimes Exchange of information		
Vietnam	Readmission agreement	Readmission/return	X - P	doc. 11996/14 “Update of the Compendium on law enforcement liaison officers (2014)”

**(b) Observations on the implementation of the article**

The Czech Republic is a party to a number of multilateral and bilateral agreements and arrangements providing the legal basis for law enforcement cooperation. The Czech Republic also considers the Convention as the basis for such cooperation. The Czech Republic authorities cooperate frequently with other States’ law enforcement agencies, mostly with other EU States.

**Article 48 Law enforcement cooperation**

**Paragraph 3**

*3. States Parties shall endeavor to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic reported that it had created specialized units for combating cyber crime in the police in the most regions of the country. Additionally, the Police Forensic Institute gives expertise in all criminal cases, including cases of corruption.

The Czech Republic is a party to the Council of Europe Convention on Cybercrime (Budapest, 2001). Provisions concerning substantive law are in full compliance with this Convention as well as procedural measures. There is a trend to unify handling electronic evidence both in pre-trial proceedings and in trial and police and prosecution have elaborated instructions and methodologies for such a purpose.

**(b) Observations on the implementation of the article**

The Czech Republic implemented the provision under review.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no.104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 71**

**Agreement on Joint Investigation Team**

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

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

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

e) the proposed place of operation of the Joint Investigation Team and manner of its operation, including the proposed leader of the Joint Investigation Team.

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

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

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

## **Section 72**

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

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

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

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

## **Section 73**

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

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

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

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

The Czech Republic indicated that it was a party to the following international agreements providing for the establishment of joint investigative teams (JITs).

**Multilateral agreements:** Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 2000); The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 2001), Convention on mutual assistance and cooperation between customs administrations (Naples II Convention, 2008), United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

**Bilateral agreements:** grounds for joint investigation, experts exchange, international team work can be found in agreements with: USA, Italy, Austria, Bulgaria, France, UK, Hungary, Germany, Ukraine, Uzbekistan, Kyrgyzstan, Kazakhstan.

The Czech Republic indicated that it entered into 50 JITs agreement between 2008 and November 2017. Most joint investigation teams were formed based on the EU 2000 Convention on Mutual Assistance in Criminal Matters between the Member States. Three of them concerned corruption (one with Slovakia, one with Austria and one with Switzerland). Joint investigation teams in all these cases were very useful.

The following concrete examples of cases were provided:

**1. Purchase of armored transporters:**

JIT within the PANDORA case was set up on 10th September, 2010, by signing the Agreement on the Establishment of SVT between the Czech Republic and Austria. Within the JIT, the Czech Republic used Eurojust's material and financial assistance in the order of hundreds of thousands of crowns (travel costs, interpreting, telephone and data international tariffs). Close cooperation have taken place at both police and prosecutorial levels. Several joint JIT working meetings were held in Vienna and Prague. JIT has fulfilled its role, accelerated and streamlined the necessary judicial cooperation, and saved the costs of criminal proceedings significantly on the Czech side. The case was successfully completed on March 31st, 2014 with a motion to file an indictment to VSZ Prague. The offender was finally convicted by the Supreme Court in Prague for the crime of fraud at the trial stage of imprisonment for 5 years of imprisonment and a fine of CZK 4,000,000. He was currently being summoned to serve a sentence. The case had a marked overall social impact and has been intensively mediated. It has helped to strengthen public confidence in the police's ability to detect high-level corruption cases.

**2. Corruption in football:**

In November 2011, the current Police Department, ÚOKFK SKPV received the information from the unnamed football team leader as well as the Security Manager of the Football Association of the Czech Republic that an unidentified junior team player has approached a bribe offering. In March 2013, a "Joint Investigation Team Agreement" was concluded between

the Czech Republic and the Slovak Republic. Later, this choice proved to be very effective, as the police body was found to have extensive corridor network of interconnected relationships among players, trainers, managers and other persons. During the screening, the information was provided between the Czech Republic and the Slovak Republic on remedial actions, police files have been investigated in both countries, joint monitoring of persons and things, coordination meetings were held between the members of the mutual investigation team, In the course of the investigation there was mutual cooperation taking place in the preparation of the resolution on the commencement of the trial prosecution (§ 160 (1) of the CC), when the positive effect of the upper team has come up, as the deeds had to correspond to the negotiations described both in the Czech and Slovak Criminal Code.

In the mentioned criminal case, 23 persons have been accused within the Czech Republic, these persons have been active in the I. League, the National Football League, the Junior League, the Czech Post Cup. 4 persons were accused in Slovakia, including other players separately within the Slovak proceedings. Additionally, long-term sanctions of banned activities have been issued by football associations.

### **3. JIT with the Swiss Confederation**

The JIT was established on 10.3. 2016 through Eurojust for one year period. On 10.3. 2017 the agreement was renewed for one year, cooperation has been conducted at a very good level. The file is kept in a secure mode with the direction of the State Prosecutor.

#### **(b) Observations on the implementation of the article**

During the country visit the Czech authorities explained that they had an extensive experience of using joint investigative teams for investigation of various criminal offences including corruption ones. The activities of the JITS are supervised by the Supreme Prosecutor's Office that is particularly focuses on the importance of securing and admissibility of evidence.

At least three cases where JITs were involved were related to corruption offences. It was also reported that the European Union's Judicial Cooperation Unit (EUROJUST) played a vital role in the capacity building of the personnel involved in JITs and also was providing a lot of expert support in that regard.

It was also notable that there was detailed regulation of the formation and operation of JITs in sections 71-73 of Act no.104/2013.

#### **(c) Successes and good practices**

The detailed regulation of joint investigations in sections 71-73 of Act no.104/2013 can be regarded as a good practice conducive to the effectiveness of international cooperation in transnational corruption cases.

## **Article 50 Special investigative techniques**

### **Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

Please use of the mentioned coercive measures and special investigative measures is regulated by the Code of Criminal Procedure, Chapter IX, and Chapter IV, Sub-divisions 5, 6 and 7.

**Act no.104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 65**

**Monitored Consignment**

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

(2) In the course of monitoring a consignment according to Sub-section (1) or in the course of monitoring a consignment conducted by a foreign authority in the territory of a foreign state on the basis of a request of the public prosecutor may the police authority make the necessary steps in order to bring under control of the customs authorities consignments of items referred to in Section 87 of the Code of Criminal Procedure or items that replace them on the way from the Czech Republic into the foreign state or vice versa or from the foreign state through the territory of the Czech Republic into a third state.

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

**Code of Criminal Procedure of the Czech Republic**

**SUBDIVISION SIX**

**Seizure and Opening of Consignments, their Replacement and Monitoring**

**Section 86**

**Seizure of Consignments**

(1) If it is necessary to determine the contents of undelivered mail, other shipments and telegrams for the clarification of facts relevant to criminal proceedings in a specific case, the presiding judge and in the preliminary hearing, the public prosecutor, will order the post office or a person responsible for their transportation to hand such over to them, or in the preliminary hearing either to the public prosecutor or the police authority.

(2) Without the order referred to in Subsection 1, the shipment of a consignment may be delayed upon the order of the police authority provided that it is an urgent matter and the court order cannot be obtained in advance. The police authority is obliged to notify the public prosecutor on the delay of the consignment within 24 hours. If the post office or the person

performing the transport of the consignments does not receive an order in accordance with Subsection 1 within three days, the shipment of consignments can be deferred no longer.

## **Section 87**

### **Opening of Consignments**

(1) The consignment released pursuant to Section 86 Subsection 1, may be opened only by the presiding judge, and in the preliminary hearing, the public prosecutor or the police authority with the authorisation of a judge.

(2) Opened consignments are referred to the addressee and if their residence is unknown and if the consignment is not intended into own hands, then to any of their family members; otherwise, the consignment is returned to the sender. However, if there is a concern that the handing over of the consignment could threaten to obstruct or complicate the purpose of the criminal prosecution, the consignment is attached to the case file; if appropriate, the contents are communicated to the addressee via a letter or telegram. If their address is not known and if the consignment is not intended for delivery into their own hands, it is then communicated to one of their family members.

(3) Consignments that are not considered necessary to open are immediately passed to the addressee or returned to the post office or to the sender.

## **Section 87a**

### **Replacement of Consignment**

(1) In the interest of identifying persons involved in the handling of a consignment containing narcotic substances, psychotropic substances, precursors, poisons, nuclear material or radioactive substance, counterfeit money and booked securities, firearms or weapons of mass destruction, ammunition and explosives, or other items that require special permissions for their possession, items intended to commit a criminal offence, or items of the committed criminal offence, the presiding judge and in the preliminary hearing, the public prosecutor may, with the consent of the judge, order the replacement of the contents of such consignment with a different one, and thus the altered consignment is then passed over to the next transport.

(2) The replacement is performed by the police authority that will make a written record of it and ensure the storage of the replaced items and materials. The replaced items are treated as objects removed.

## **Section 87b**

### **Monitored Delivery**

(1) The public prosecutor may, in the preliminary hearing, order for the delay of the consignment for which there is reason to suspect that it contains items referred to in Section 87a, if it is necessary to clarify the criminal offence or identify all offenders, and the determination of the necessary facts by other means would be ineffective or substantially more difficult. Monitoring of the consignment should be performed by the police authorities according to the instructions of the public prosecutor; against the persons who handle the monitored consignment, while they do not carry out any actions leading to the release or seizure of items. A transcript shall be written on the course of the monitoring of a consignment and, if necessary, photographs or other records should be made.

(2) The police authority may initiate the monitoring without the order referred to in Subsection 1, if the matter cannot be delayed and the order cannot be obtained in advance. They will notify the public prosecutor of this action without undue delay and follow their instructions.

(3) The police authority shall terminate the monitoring of the consignment on the order of the public prosecutor, and if it is clear that the handling of the consignment constitutes a serious

danger to life or health, serious damage to property, or if there is a serious risk that it will not be possible to further monitor the consignment, even without such an order. If necessary, simultaneously with the termination of the monitoring of a consignment, they will take further action against the possession of the items that make up the contents of the consignment.

## **Section 87c**

### **Common Provisions**

Pursuant to the provisions of Section 86 through 87c, a consignment is an article conveyed in any manner, whether using mail or any other persons, including hidden transport.

## **Section 88**

### **Interception and Recording of Telecommunications**

(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 defence 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 defence 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 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 and 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 one 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.

### **Section 158b**

#### **Means of Intelligence and Conditions of Use**

(1) Unless 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 is entitled to use means of intelligence in proceedings on an intentional criminal offence, which means

- a) sham transfers,
- b) surveillance of persons and items,
- c) use of an agent.

(2) The use of intelligence means may not pursue any interests other than obtaining the facts relevant to the criminal proceedings. These means can be used only if the reference purpose cannot be achieved in any other way or if it otherwise significantly reduced its achievement. The rights and freedoms of persons may be restricted only to the necessary extent.

(3) Audio, video and other records obtained by using intelligence means, in a manner in compliance with the provisions of this Act, may be used as evidence.

### **Section 158c**

#### **Sham Transfers**

(1) A sham transfer means pretending the performance of a purchase, sale or other transfer, including the transfer of items,

- a) the possession of which requires a special permit,
- b) the possession of which is prohibited,
- c) that originate from criminal offence, or
- d) which is intended to commit a criminal offence.

(2) The sham transfer may be made only upon the written authorisation of the public prosecutor.

(3) If the matter cannot be delayed, the sham transfer may be performed without authorisation. However, the police authority is obliged to additionally request the authorisation without undue delay and if it is not received within 48 hours they are required to cease the performance of the sham transfer and not to use any information found in this context.

(4) The police authority shall draw up a report on the sham transfer and deliver it to the public prosecutor within 48 hours.

## **Section 158d**

### **Surveillance of Persons and Items**

(1) The surveillance of persons and items (hereinafter referred to as "surveillance") means acquiring knowledge about persons and items performed in a classified manner by technical or other means. If the police authority finds during the surveillance that the accused communicates with their defence counsel, they are required to immediately destroy the records with the content of the communication, and the information that they learned in this context they are not allowed to use in any way.

(2) Surveillance during which audio, video or other records are to be obtained may be performed only upon the written authorisation of the public prosecutor.

(3) If the surveillance is to interfere with in the inviolability of residence, the confidentiality of correspondence, or finding the contents of other documents and records kept in private with the use of technology, then it may be performed only with the prior authorisation of a judge. When entering a residence, no actions other than those that lead to the planting of technical equipment can be performed.

(4) The authorisation referred to in Subsection 2 and 3 can only be issued upon written request. The request must be justified by a suspicion of specific criminal activity and, if known, with the information about the persons or items that are to be surveilled. The authorisation must state the period during which the surveillance will be carried out and this must not be longer than six months. This period may be extended by those who authorised it on the basis of a new written request, but still not exceeding six months.

(5) If the matter cannot be delayed and it is not a case referred to in Subsection 3, the surveillance may be initiated even without prior authorisation. However, the police authority is obliged to additionally request the authorisation without undue delay and if it is not received within 48 hours they are required to cease the surveillance, destroy any records, and not to use any information found in this context.

(6) Without compliance with the conditions referred to in Subsection 2 and 3, the surveillance may be performed only if the person whose rights and freedoms are to be interfered with by surveillance gives their express consent. If such consent is subsequently withdrawn, surveillance shall immediately terminate.

(7) If the record of the surveillance is to be used as evidence, it is required that the transcript is attached with the particulars referred to in Section 55 and 55a.

(8) If no facts important to the criminal proceedings were found, it is necessary to destroy the records in the prescribed manner.

(9) Operators of telecommunications activity, their employees, and other persons who participate in the operation of telecommunications activity, as well as the post office or the person performing the transport of the consignments are obligated to provide the police authority performing the surveillance with the necessary assistance free of charge and in accordance with their instructions. At the same time, they may not claim the obligation of professional confidentiality imposed by special Acts.

(10) In a criminal matter other than that which the surveillance was performed for under the conditions referred to in Subsection 2, the records obtained through surveillance and the

attached transcript may be used as evidence only if there is, in this case, a pending criminal proceeding on an intentional criminal offence or if the person whose rights and freedoms the surveillance interfered with, gives their consent.

## **Section 158e**

### **Use of an Agent**

(1) If criminal proceedings are conducted for a crime for which the law stipulates a prison sentence with an upper penalty limit of at least eight years, for a criminal offence committed in favour of an organised criminal group, for a criminal offence of machinations in insolvency proceedings under Section 226 of the Penal Code, violation of regulations on rules of competition under Section 248 Subsection 1 Paragraph e) and Subsection 2 through 4 of the Penal Code, negotiating advantages during public procurement, tender and auction under Section 256 of the Penal Code, machinations during public procurement and tenders under Section 257 of the Penal Code, machinations at a public auction under Section 258 of the Penal Code, misuse of powers of an official person under Section 329 of the Penal Code, accepting bribes under Section 331 of the Penal Code, bribery under Section 332 of the Penal Code, indirect corruption under Section 333 of the Penal Code or for any other intentional criminal offence for which prosecution is stipulated in a declared international treaty binding on the Czech Republic, the police authority, if it is a department of the Police of the Czech Republic or the General Inspection of Security Forces, is entitled to use an agent.

(2) An agent is a member of the Police of the Czech Republic, or the General Inspection of Security Forces performing tasks assigned to them by the police authority, usually acting while concealing the real purpose of their activities. If it is necessary for the use of an agent, their preparation or their protection, it is possible to conceal their identity by

- a) establishing a history of personal existence and other personal data resulting from their history which is introduced into the information systems operated under special Acts,
- b) carrying out economic activities for the performance of which they need a special license, permit or registration,
- c) concealing their association to the Police of the Czech Republic or to the General Inspection of Security Forces.

(3) Public authorities are obliged to provide the Police of the Czech Republic and the General Inspection of Security Forces with the necessary assistance in carrying out the authorisation referred to in Subsection 2 without undue delay.

(4) The judge of the High Court allows the use of an agent, upon the petition of the public prosecutor of the Attorney General's Office, in whose jurisdiction the public prosecutor lodging the petition is active. The authorisation must state the intended use and period during which the agent is used and the data for identifying the agent. Under the new petition, which contains the assessment of the current activity of the agent, the duration of an authorisation may be extended even repeatedly.

(5) To survey persons and items to the extent set out in Section 158d Subsection 2 and to implement the sham transfer under Section 158c, the agent does not need any further authorisation.

(6) The agent is obliged to choose such means during their activity that have the capacity necessary for the completion of their mission and which shall not cause any injury to other persons or to their rights beyond which is absolutely necessary. They do not have any other obligations under the special Act regulating the status of the members of the Police of the Czech Republic or under the special Act regulating the status of members of the General Inspection of Security Forces.

(7) The public prosecutor is obliged to request the information necessary to assess whether the grounds for the use of an agent remain and whether their activities are in accordance with the law from the police authority. They are obligated to assess this information on a regular basis, at least once every three months, and if the reasons for the use of an agent expire, they shall order the police authority to immediately terminate the activity of the agent. The police authority is obliged to submit the record on the outcome of the use of an agent to the public prosecutor.

### **Section 158f**

If there is reason to use means of intelligence after the commencement of the criminal prosecution, it shall proceed under Section 158b through 158e; after the submission of an indictment regarding its use is decided by the presiding judge of the court in the first instance even without the petition of the public prosecutor.

With regard to the examples of implementation, the Czech Republic reported that there had been 1861 court orders for interceptions of telecommunications and surveillance in 2014. The Czech Republic does not have data relating to other measures.

### **(b) Observations on the implementation of the article**

Provisions on the use of special investigative techniques are contained in section 65 Act no 104/2013 specifically with regard to controlled deliver (monitored consignment). The Code of Criminal Procedure (CCP) also contains a number of detailed provisions on special investigative techniques specifying their use and admissibility in court as evidence. In particular, CCP contains the provisions on controlled delivery (sections 86-87, 87a, 87b), sham transfers (section 158c), interception and recording of telecommunications (section 88, 88a), surveillance of persons and items (s. 158d), use of an agent (section 158e). Section 158b(3) specifically stipulates that audio, video and other records obtained by using intelligence means in compliance with the CCP may be used as evidence. These provisions apply to all UNCAC offences since such are the offences contained in a promulgated international treaty of the Czech Republic.

## **Article 50 Special investigative techniques**

### **Paragraph 2**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic indicated that the use of special investigative techniques in the context of cooperation at the international level is possible based on the CoE Convention on Mutual Assistance in Criminal Matters and the Convention on Mutual Assistance in Criminal Matters

between the Member States of the EU, which is the most frequent grounds taken for such kind of requests.

The Czech Republic reported that in general it acts as both requested and requesting State (especially) for interception of electronic communication and there are many past, recent and ongoing cases in which this measure has either been executed or requested abroad.

**(b) Observations on the implementation of the article**

The Czech Republic indicated that the use of special investigative techniques in the context of cooperation at the international level is possible based on the CoE Convention on Mutual Assistance in Criminal Matters and the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU. The Czech Republic would also be ready to conclude additional bilateral arrangements with other States Parties when necessary.

**Article 50 Special investigative techniques**

**Paragraph 3**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic indicated that it would be able to cooperate in the use of special investigative techniques at the international level on case-by-case basis based on the principle of reciprocity.

The Czech Republic cited the following applicable measures.

**Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 4**

**Guarantee of Reciprocity**

(1) Unless the international judicial cooperation between the Czech Republic and a foreign state is regulated by an international treaty, the competent judicial authority will grant the request of the foreign state authority for international judicial cooperation only in case the foreign state provides a guarantee of reciprocity, which the Minister of Justice will accept, or in case the foreign state has formerly accepted a guarantee of reciprocity from the part of the Czech Republic in a similar case. The Ministry will secure the request for guarantee of reciprocity from the foreign state.

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

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

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

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

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

**(b) Observations on the implementation of the article**

The Czech Republic will be able to provide assistance involving the use of special investigative techniques on a case-by-case basis based on the principle of reciprocity and as part of MLA process.

**Article 50 Special investigative techniques**

**Paragraph 4**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Czech Republic cited the following applicable measures.

**Act no.104/2013 Coll., on International Judicial Cooperation in Criminal Matters**

**Section 65**

**Monitored Consignment**

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

(2) In the course of monitoring a consignment according to Sub-section (1) or in the course of monitoring a consignment conducted by a foreign authority in the territory of a foreign state on

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

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

The Czech Republic further clarified that the most controlled deliveries take place in cases of drug related crime.

**(b) Observations on the implementation of the article**

The Czech Republic is able to use controlled delivery at the international level based on Section 65 of Act no. 104/2013.