

CZECH REPUBLIC

International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT) – applicable implementing legislation in the Czech Republic

The Czech Republic provides hereinafter information concerning applicable implementing legislation of the respective provisions of the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT).

The Convention is implemented in the Czech legal system through the Act No. 40/2009 Coll., Criminal Code, the Act No. 263/2016 Coll., Atomic Act, and its implementing legislation.

Article 2 + Article 5

Czech legal order addresses the requirements of Articles 2 and 5 of ICSANT primarily in provisions of Chapter VII of the Criminal Code and Chapter IX of the Criminal Code. Moreover, other criminal offences provided in the Criminal Code (such as Murder, Grievous Bodily Harm, Theft, Fraud etc.) are applicable as well (depending on the case by case basis).

Relevant provisions of Chapter VII of the Criminal Code include Sections 280 (Development, Manufacture and Possession of Prohibited Means of Combat), 281 (Unauthorised Production and Possession of Radioactive Substances and Highly Dangerous Substances) and 282 (Unauthorised Production and Possession of Nuclear Material).

Criminal offences contained in Chapter IX of the Criminal Code include Sections 311 (Terrorist Attack), 312 (Terror) and 312f of the Criminal Code (Threatening to Commit a Terrorist Offence). A legislative abbreviation for the term “terrorist group”, which is i.e. used in Section 312f of the Criminal Code, can be found in Section 129a of the Criminal Code.

All above-mentioned terrorist offences include also attempts covered by Section 21 of the Criminal Code. Offences in Sections 280, 281, 282, 311 and 312 of the Criminal Code include also preparation, which means early stage of activity when the offender may gather information, make plans, obtains tools, coordinates with others, provides instruction etc. Contributing to the commission of an offence as either an accomplice, organizer, instigator or aider is punishable as committing the offence itself. Sections 175 (Extortion) and 312f of the Criminal Code address the requirements of provision of Article 2 (2) of the Convention.

Terrorist offences contained in Chapter IX of the Criminal Code were amended in recent years in order to be fully complement with the Additional Protocol to the Council of Europe Convention on the prevention of terrorism and Directive of the European Parliament and the Council (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

Criminal Code

Section 20 Preparation

(1) Conduct that consists in intentional creation of conditions for the commission of an especially serious felony (Section 14 (3)), especially in its organization, acquisition or

adaptation of the means or instruments for its commission, in conspiracy, unlawful assembly, in inducing of or assisting with such a crime, will be considered as preparation only if the Criminal Code expressly stipulates it for a specific criminal offense and an attempt or completion of an especially serious felony did not occur.

(2) Preparation is criminal according to the term of sentence stipulated for an especially serious felony to which it led, unless the Criminal Code stipulates otherwise.

(3) Criminal liability for the preparation of an especially serious felony will expire if the offender voluntarily abandoned further conduct aimed towards the commission of the especially serious felony and

a) removed the threat to an interest protected by the Criminal Code which occurred due to the committed preparation, or

b) reported the preparation to commit an especially serious felony at a time the threat to an interest protected by the Criminal Code which occurred due to the committed preparation could still be removed; the report must be made to a public prosecutor or police authority. A soldier may report it to his superior officer.

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

(5) The provisions of sub-section (3) and (4) will have no effect on the criminal liability of an offender for any other completed criminal offense which they have committed by their conduct referred to in sub-section (1).

Section 21 Attempt

(1) A conduct imminently leading to completion of a criminal offense, which has been undertaken by the offender with the intent to commit such an offense, will be considered as an attempt to commit an offense, unless the offense was completed.

(2) Attempt to commit an offense will be punishable according to the term of sentence for the respective completed criminal offense.

(3) Criminal liability for an attempted criminal offense will expire if an offender voluntarily abandoned further conduct leading to the completion of the criminal offense and

a) removed the threat to an interest protected by the Criminal Code which occurred due to the committed attempt, or

b) reported the attempt to commit an especially serious felony at a time the threat to an interest protected by the Criminal Code which occurred due to the committed attempt could still be removed; the report must be made to a public prosecutor or police authority. A soldier may report it to his superior officer.

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

(5) The provisions of sub-section (3) and (4) will have no effect on the criminal liability of an offender for any other completed criminal offense which they have committed by their conduct referred to in sub-section (1).

Section 23 Accomplice

If a crime is committed by joint intentional conduct of two or more persons, each of them will be criminally liable as if they alone had committed the offense (accomplices).

Section 24 Participant

(1) A participant in a completed offense, or an attempt to commit an offense, is anyone who intentionally

- a) plotted or directed commission of a criminal offense (an organiser);*
- b) instigated another person to commit the criminal offense in (instigator), or*
- c) enabled or facilitated commission of a criminal offense by another person, in particular by providing the means, removing of barriers, eliciting the aggrieved person to the crime scene, keeping watch during commission of an act, providing advice, encouraging the resolve or promising to participate in a criminal offense (aider).*

(2) Criminal liability and criminality of an act of a participant will be governed by provisions on criminal liability of an offender and criminality of an act, unless this Code stipulates otherwise.

(3) Criminal liability of the participant will expire, if he voluntarily abandons any further participation in commission of a crime and

a) eliminates the threat to an interest protected by this Code arising from his participation in the offense; or

b) reports his attempt at a time when the threat to an interest protected by this Code arising from his participation in the offense could still be eliminated. The report must be made to a public prosecutor or police authority. A soldier may report it to his superior officer.

(4) If there are several persons involved in an act, expiration criminal liability for the participation is not precluded in case of a participant who acted in such manner, if the act is completed by the other offenders despite his timely reporting or earlier participation in such an act.

(5) The provisions of sub-section (3) and (4) will have no effect on the criminal liability of an offender for any other completed criminal offense which they have committed by their conduct referred to in sub-section (1).

Section 129a Terrorist Group

(1) A terrorist group is a community of at least three criminally liable persons of a permanent nature with division of activities among the individual members, its operation is characterized by planning and coordination and is aimed at commission of criminal offenses of High treason committed in the form of a Terrorist attack or Terror (Section 309), criminal offense of Terrorist attack (Section 311) or criminal offense of Terror (Section 312) (hereinafter referred to as "terrorist offense").

(2) Meeting the characteristics of terrorist group does not preclude application of the provisions of this Act and other laws on organized group and organized criminal group; Section 361 and 363 will not apply.

Section 175 Extortion

(1) Whoever forces another person by violence or by a threat of violence or another serious detriment to act, omit or to suffer something, will be sentenced to imprisonment for six months to four years, or to a pecuniary penalty.

(2) An offender will be sentenced to imprisonment for two to eight years, if he

a) commits the act referred to in sub-section (1) as a member of an organized group,

b) commits such an act with at least two persons,

c) commits such an act with a weapon,

d) causes substantial damage by such an act,

e) commits such an act on a witness, expert, or interpreter in connection to performance of their obligations, or

f) commits such an act on another for his true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his true or presupposed lack of religious faith.

(3) An offender will be sentenced to a sentence of imprisonment for five to twelve years, if he

a) causes grievous bodily harm by such an act,

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), or

c) causes extensive damage by such an act.

(4) An offender will be sentenced to imprisonment for eight to sixteen years, if he causes death by the act referred to in sub-section (1).

(5) Preparation is criminal.

Section 280

Development, Manufacture and Possession of Prohibited Means of Combat

(1) Whoever manufactures, imports, exports, transits, develops, handles or accumulates weapons, means of combat or explosives prohibited by the law or international treaty or otherwise disposes therewith, shall be sentenced to imprisonment for two to eight years or to confiscation of property.

(2) The same sentence shall be imposed to anyone who designs, builds or uses production units designated for development, manufacture or storing weapons, means of combat or explosives referred to in Sub-section (1)

(3) An offender shall be sentenced to imprisonment for five to twelve years or to confiscation of property, if he/she

a) commits the act referred to in Sub-section (1) or (2) as a member of an organised group,

b) commits such an act in larger extent, or

c) commits such an act in a state of national peril or a state of war.

(4) Preparation is criminal.

Section 281 Unauthorized Production and Possession of Radioactive Substances and Highly Dangerous Substances

(1) Whoever manufactures, imports, exports, transports, handles or obtains for another person highly radioactive substances or hazardous substances or objects intended for production thereof without an authorization, even out of gross negligence, will be sentenced to imprisonment for one year to five years, to a pecuniary penalty, or to prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for two to ten years or to confiscation of assets, if he

a) causes grievous bodily harm by the act referred to in sub-section (1),

b) commits such an act in an extensive extent, or

c) gains substantial profit for himself or for another by such an act

(3) An offender will be sentenced to imprisonment for eight to sixteen years or to confiscation of assets, if he

a) causes grievous bodily harm to at least two persons or death by the act referred to in sub-section (1),

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

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

d) commits such an act during a state of national peril or state of war.

(4) Preparation is criminal.

**Section 282 Unauthorized Production and Possession of Nuclear Material
and Special Fissionable Material**

(1) Whoever manufactures, imports, exports, transports, handles, or obtains for another person base nuclear material, or articles intended for production thereof without an authorization, even out of gross negligence, will be sentenced to imprisonment for two to ten years.

(2) Whoever manufactures, imports, exports, transports, handles, or obtains for another person special nuclear material, or articles intended for production thereof without an authorization, even out of gross negligence, will be sentenced to imprisonment for eight to fifteen years.

(3) Preparation is criminal.

Section 311 Terrorist Attack

1) Whoever with the intention to impair the constitutional system or defense capabilities of the Czech Republic, disrupt or destroy the base political, economic or social structure of the Czech Republic or an international organization, seriously terrify the population or illegally make the government or another public authority or an international organization to act, omit or tolerate something,

a) destroys or damages in larger extent a public area, property or a public facility, a transportation or telecommunication system, a fixed platform on continental shelf, an energetic, water-work, medical or other important facility, including computer system on functioning of which such facility, system or platform rely, with the intention to expose property to risk of extensive damage,

b) disrupts or interrupts supply of water, electricity or other fundamental natural resource with the intention to expose property to risk of extensive damage,

c) captures an aircraft, ship, other means of personal or cargo transportation or a fixed platform on continental shelf or exercises control over such means of transportation or fixed platform, or destroys or seriously damages navigation device or in larger extent interferes with its operation or communicates a false important information, by which he exposes property to risk of extensive damage,

d) exposes property of another to risk of extensive damage by causing fire or flood or detrimental effect of explosives, gas, electricity or other similarly dangerous substances or powers or commits other similarly dangerous conduct, or increases such risk or aggravates its aversion or mitigation,

e) by means of inserting data into a computer system or on an information carrier or by deleting, other destroying, damaging, altering or suppressing of data stored in a computer system or on an information carrier, decreasing its quality or rendering it inapplicable carries out an attack against a computer system disruption of which would have serious impact on functioning of the state, on health of persons, security, economy or on ensuring basic life needs of the inhabitants, an attack with impact on a larger number of computer systems with usage of a computer program created or adjusted for such attack or an attack which causes a substantial damage,

will be sentenced to imprisonment for three to twelve years, or as the case may be, in parallel to this sentence also to confiscation of assets.

(2) Whoever with the intention to impair the constitutional system or defense capabilities of the Czech Republic, disrupt or destroy the base political, economic or social structure of the Czech Republic or an international organization, seriously terrify the population or illegally

make the government or another public authority or an international organization to act, omit or tolerate something,

a) performs an attack threatening human life or health with the intention to cause death or grievous bodily harm,

b) seizes hostages or commits kidnapping,

c) destroys or damages in larger extent a public area, property or a public facility, a transportation or telecommunication system, a fixed platform on continental shelf, an energetic, water-work, medical or other important facility, including computer system on functioning of which such facility, system or platform rely, with the intention to jeopardize human lives or security of such area, facility, system or platform,

d) disrupts or interrupts supply of water, electricity or other fundamental natural resource with the intention to jeopardize human lives,

e) captures an aircraft, ship, other means of personal or cargo transportation or a fixed platform on continental shelf or exercises control over such means of transportation or fixed platform, or destroys or seriously damages navigation device or in larger extent interferes with its operation or communicates a false important information, by which he jeopardizes human lives or health or security of such means of transportation,

f) manufactures or otherwise obtains, handles, imports, transports, exports or otherwise supplies or uses explosives, nuclear, biological, chemical or other weapon or means of combat or similar material or conducts research and development of nuclear, biological, chemical or other weapons or combat equipment or explosives, or

g) exposes people to general risk of death or grievous bodily harm by causing fire or flood or detrimental effect of explosives, gas, electricity or other similarly dangerous substances or powers or commits other similarly dangerous conduct, or increases such risk or aggravates its aversion or mitigation,

will be sentenced to imprisonment for five to fifteen years, or as the case may be, in parallel to this sentence also to confiscation of assets.

(3) An offender will be sentenced to imprisonment for twelve to twenty years, or as the case may be, in parallel to this sentence also to confiscation of assets, or to an exceptional sentence of imprisonment, if he

a) commits the act referred to in sub-section (1) or (2) as a member of an organized group,

b) causes grievous bodily harm or death by such an act,

c) causes that a larger amount of people remained without shelter by such an act,

d) causes extensive damage by such an act,

e) gains for himself or for another extensive profit by such an act,

f) by such an act seriously jeopardizes the international position of the Czech Republic or position of an international organization which the Czech Republic is a member of, or

g) commits such an act in a state of national peril or state of war.

(4) Preparation is criminal.

Section 312 Terror

(1) Whoever kills another person with the intention to harm the constitutional order of the Czech Republic, will be sentenced to imprisonment for fifteen to twenty years, or in parallel to this sentence also to confiscation of assets, or to an exceptional sentence of imprisonment.

(2) Preparation is criminal.

Section 312f Threat to Commit a Terrorist Offence

(1) Whoever threatens by commission of a terrorist attack will be sentenced to imprisonment for three to twelve or in parallel to this sentence also to confiscation of assets.

(2) An offender will be sentenced to imprisonment for five to fifteen years, or in parallel to this sentence also to confiscation of assets, if he commits the act referred to in sub-section (1) a) as a member of an organized group,
b) via press, film, radio, television, publically accessible computer network or in a similarly effective manner,
c) with a weapon, or
d) in a state of national peril or a state of war.

Section 313 Common Provisions

Protection according to Section 311 and 312 will also be provided to a foreign state.

Moreover, abovementioned crimes are supplemented with administrative offences listed in the Act No. 263/2016 Coll., Atomic Act. A fine of up to CZK 100 000 000 may be imposed for the offences referred to in the Atomic Act. Offences under this Act shall be dealt with and fines shall be collected by the State Office for Nuclear Safety.

Atomic Act

Section 188

(1) Natural persons, legal persons or sole traders will commit an offence by
a) failing to prevent radiation extraordinary event or minimise its consequences under section 5(1)(a) when using a nuclear energy or performing activities in exposure situations,
b) failing to justify the activity under section 5(1)(b) or (e) when using a nuclear energy, managing a nuclear items or performing activities in exposure situations,
c) failing to proceed according to section 5(1)(c) when using a nuclear energy or performing activities in exposure situations,
d) failing to assess, to take measures or to ensure application of the assessment results according to section 5(5) when using a nuclear energy or performing activities in exposure situations,
e) failing to apply a feedback system under section 5(7),
f) failing to use a graded approach under section 5(8),
g) acting contrary to section 6(1) and breaching the prohibition of the use of nuclear energy and nuclear items for other than peaceful purposes,
h) failing to comply with any notification or information obligations under this Act,
i) carrying out any of the prohibited activities under sections 7 or 8,
j) breaching the obligation of confidentiality under section 28(4).

...

Article 8

Under the provision contained in the Article 8, the Convention lays down rules for the Parties that require to adopt measures in order to ensure the protection of radioactive material, while taking into account relevant recommendations and functions of the International Atomic Energy Agency. This protection is at national level ensured and regulated by the Act No. 263/2016 Coll., Atomic Act. Specifically, Sections 159 to 164 of the Atomic Act deal with the security of the nuclear materials, nuclear installations and radioactive sources. These provisions are further implemented by the Decree No. 361/2016 Coll., On Security of Nuclear Installation and Nuclear Material, and Decree No. 422/2016 Coll., On Radiation Protection and Security of a Radioactive Source. These provisions implement the Convention on Physical Protection of Nuclear Material and its Amendment (2006) and also recommendations of the International Atomic Energy Agency in the field of physical protection of nuclear

materials, nuclear facilities and radioactive sources (namely Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities - INFCIRC/225/Revision 5 and Code of Conduct on the Safety and Security of Radioactive Sources).

Article 9

Jurisdiction of the Czech Republic is established according to principles of territoriality, registration and personality. However, the principle of universality applies in case of all above-mentioned terrorist offences. It means that nationality or place of stay are not relevant either for Czech criminal jurisdiction or for opening of investigation. In cases of terrorism the Czech Criminal Code would apply to both citizens and non-citizens whether they committed terrorist offences on the Czech territory or abroad.

Criminal Code

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.

Section 5 Principle of Registration

The criminality of an act committed outside of the territory of the Czech Republic, aboard a ship or another vessel, aircraft or other means of air transport, which is registered in the Czech Republic, will also be assessed in accordance to the law of the Czech Republic. The place of commission of such an act will be assessed according to Section 4 (2) and (3).

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.

Section 7 Principle of Protection and Principle of Universality

(1) The law of the Czech Republic will apply to assessment of criminality of Torture and other cruel and inhumane treatment (Section 149), Forgery and alteration of money (Section 233), Uttering forged and altered money (Section 235), Manufacture and possession of forgery equipment (Section 236), Unauthorized production of money (Section 237), Subversion of the Republic (Section 310), Terrorist attack (Section 311), Terror (Section 312), Participation in

a terrorist group (Section 312a), Terrorism financing (Section 312d), Support and promotion terrorism (Section 312e), Threat by terrorist criminal act (Section 312f), Sabotage (Section 314), Espionage (Section 316), Violence against public authority (Section 323), Violence against a public official (Section 325), Forgery and alteration of public documents (Section 348), Genocide (Section 400), Attack against humanity (Section 401), Apartheid and discrimination against groups of people (Section 402), Preparation of offensive war (Section 406), Use of prohibited means and methods of combat (Section 411), War cruelty (Section 412), Persecution of population (Section 413), Pillage in the area of military operations (Section 414), Abuse of internationally and state recognized symbols (Section 415), Abuse of flag and armistice (Section 416) and Harming a conciliator (Section 417), even when such a criminal offense was committed abroad by a foreign national or a person with no nationality, who has not been granted permanent residence in the territory of the Czech Republic.

(2) The law of the Czech Republic will also apply to assessment of criminality of an act committed abroad against a Czech national or a person without a nationality, who has been granted permanent residence in the territory of the Czech Republic, if the act is criminal in the place of its commission, or if the place of its commission is not subject to any criminal jurisdiction.

Section 8 Subsidiary Principle of Universality

(1) The law of the Czech Republic will also apply to assessment of criminality of an act committed abroad by a foreign national or a person with no nationality, who has not been granted permanent residence in the territory of the Czech Republic, if

a) the act is criminal also under the law effective in the territory of its commission, and

b) the offender was apprehended in the territory of the Czech Republic, the extradition or surrender proceedings took place and the offender was not extradited or surrendered to another state or to another entitled authority for criminal prosecution or execution of a sentence, and

c) the foreign state or another entitled entity that requested the surrender or extradition of the offender for criminal prosecution or execution of a sentence has requested that the criminal prosecution of the offender was conducted 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.

Section 9 Jurisdiction Stipulated by International Treaty

(1) Criminality of an act will 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.

(2) The provisions of Section 4 to 8 will not apply if it is not admissible according to an international treaty.

Article 10

According to Section 2(3) of the Criminal Procedural Code, public prosecutors are obliged by law to investigate any crime that they gain knowledge of. The authorities involved in criminal

proceedings act ex officio. Criminal cases must be dealt with as soon as possible and without undue delay; with greatest speed will be handled especially custodial matters and matters where assets has been seized, if it is necessary due to the nature and value of the seized assets [Section 2(4) of the Criminal Procedural Code].

For the purpose of criminal prosecution, the presence of persons accused of committing an offence for which the reasons for detention are given and who cannot be summoned, demonstrated or detained may be combined by issuing an arrest warrant or detaining them by a police authority (Section 69 and Section 76a of the Criminal Procedural Code). It is also possible to issue the European Arrest Warrant as far as Member States of the European Union are concerned (Section 189 et seq. of the Act on International Judicial Cooperation). Ensuring the presence of persons for the purposes of extradition is covered by Section 93 - 94 of the Act on International Judicial Cooperation. The rights in accordance with paragraph 3 of this Article are contained in Section 33(5), Section 69, Section 70 and Section 76b of the Criminal Procedure Code. It is the right to communicate with the representative of the state of which the person is a citizen or in whose territory he/she has his/her habitual residence, if he/she is a stateless person, the right to be visited by this representative and to be informed of these two rights. According to Paragraph 4 of Article 10 of the Convention, these rights are exercised in accordance with the Czech law, if he/she still requires effective objectives for which the rights under Paragraph 3 are granted.

Criminal Procedural Code

Section 2 Basic principles of Criminal Procedure

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

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

Section 33 Rights of Accused Persons

(5) All law enforcement authorities are obligated to always instruct the accused person of his rights, that with focus on the ongoing stage of the criminal proceedings, and to provide him with the full possibility to exercise these rights. The accused person who has been arrested or apprehended or arrested must be advised on his right to urgent medical assistance, on the maximum time limit he may be detained before he is handed to the court and on his right to notify the consular authority and family member or another person for which he provides the necessary contact information.

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 will issue an arrest warrant for the accused person.

(2) The arrest warrant will, besides the data ensuring that the accused person will 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 will 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 will inform the judge of the court that issued the arrest warrant about the results of the questioning. After receiving the information this judge will 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 defense counsel present at the questioning, if he is reachable within the stated time period.

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

Section 70 Notification of Custody

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

Section 76a Apprehension Order

- (1) If there is any of the reasons for custody and if the person suspected of committing the criminal offense cannot be served a copy of the resolution on initiation of criminal prosecution and such person cannot be summoned, compelled to appear before the court or immediately apprehended, the judge will issue and order for his apprehension upon a motion of the public prosecutor.*
- (2) The apprehension order must contain, in addition to the information ensuring that the person that is to be apprehended is not confused with any other person, an accurate description of the reasons for his surrender. A copy of the resolution on the initiation of criminal prosecution will be attached thereto.*
- (3) The apprehension will be carried out on the basis of the order by the police authority, which will also be obliged to search the place of stay of the suspect, as necessary.*
- (4) The police authority who apprehended the suspect according to the order, is obliged to immediately serve a copy of the resolution to initiate the criminal proceedings to the suspect, interview the suspect and hand him over to the public prosecutor along with the protocol of the hearing and other evidence, so that public prosecutor may file a request for taking the suspect in custody within 48 hours from detention, if applicable; otherwise such person must be released.*
- (5) The judge, whom the apprehended person was delivered, will proceed accordingly pursuant to Section 77 (2).*

Section 76b Rights of Apprehended Person

An apprehended 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 apprehended 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 apprehended 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 apprehended foreigner does not have sufficient finances, communication with the consular office will be allowed free of charge. The apprehended person must be advised on these rights and provided with full possibility to exercise them.

Act on International Judicial Cooperation

Section 93 Apprehension

- (1) The public prosecutor, or with his consent the police authority, may apprehend the person concerned by extradition, if there is a reason for imposing preliminary custody and if information referred to in Section 92 (3) is known. The police authority will be entitled to perform apprehension of such person also without a previous consent of the public prosecutor, if the matter cannot be delayed and the consent of the public prosecutor cannot be obtained in advance. However, the police authority will be obliged to notify the public prosecutor immediately after performing the apprehension and to present him a copy of the protocol drawn up in the course of the apprehension and other documents that the public prosecutor needs in order to be able to eventually file a petition for imposing preliminary custody.*
- (2) The public prosecutor or police authority that performed the apprehension will interview the apprehended person and draw up a protocol, in which they will indicate the time, place*

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

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

(4) Procedure pursuant to Sub-sections (1) to (3) cannot apply after filing a petition for a decision according to Section 95 (1).

Section 94 Preliminary Custody

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

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

(3) The public prosecutor will release the person concerned by the extradition from preliminary custody, if the preliminary investigation has been initiated without receiving a request for extradition of a foreign state and this request was not delivered to the Ministry within 40 days following the day of imposing the preliminary custody; this does not apply in case of simplified extradition. Release from the preliminary custody does not preclude new imposing of preliminary custody, if the request for extradition is served subsequently. Delivering the request to the Supreme Public Prosecutor's Office, to a diplomatic office of the Czech Republic in the foreign state or Ministry of Foreign Affairs has also the effect of service.

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

Article 11

As mentioned above, the jurisdiction of the Czech Republic applies also in case that the offender was apprehended in the territory of the Czech Republic, the extradition or surrender proceedings took place and the offender was not extradited or surrendered to another state or to another entitled authority for criminal prosecution or execution of a sentence [Section 8(1)(b) of the Criminal Code].

Article 13

Section 90 of the Act on International Cooperation in Criminal Matters stipulates that extradition is admissible in case that the upper limit of imprisonment for the offence, which the extradition is requested for, is at least 1 year. All terrorist offences and other offences implementing Article 2 fulfil this condition.

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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.

Article 17

Extradition of persons is regulated in Sections 87 - 104 of the Act on International Judicial Cooperation.