

Ministry of Justice of the Czech Republic

Unofficial translations of certain criminal law provisions from:

- Criminal Procedure Code (Act No. 141/1961 Coll., as amended):

3. Code of Criminal Procedure

There is no a complete translation of this Code. Upon specified request, we provide translation of provisions related to freezing, securing (seizing), forfeiture, and access to bank and other records, as well as some common and interpretative provisions.

These provisions may be divided into several categories:

- joint provisions of Sections 2 to 12;
- provisions relating to securing of victim's claim (under certain circumstances a victim may claim damages in the framework of criminal proceedings, otherwise he/she must initiate civil proceedings) - Sections 47 to 49;
- provisions on production order and seizure - Sections 78 to 81;
- provisions on searches – Sections 82 to 85b;
- provisions on consignments - Sections 86 to 87c;
- provisions on wire-tapping – Sections 88 and 88a;
- provisions on special investigative means - Sections 158b to 158e;
- provisions on enforcement of punishments – Sections 341 to 358.

Section 2

Basic principles of criminal proceedings

(1) Nobody can be prosecuted otherwise than on legal grounds and in the manner specified hereby.

(2) Until the guilt has been declared by the court's final judgement of conviction, the one against whom the criminal proceedings has been conducted must not be viewed as a guilty one.

(3) The public prosecutor is obliged to prosecute all criminal acts he/she learns about unless any law or declared international agreement, by which the Czech Republic is bound, specify otherwise.

(4) Unless specified otherwise by this law, the authorities responsible for (active in) criminal prosecution proceed ex officio. Criminal matters must be heard as promptly as possible, while fully preserving the rights and freedoms guaranteed by Charter of Rights and Freedoms and international agreements on human rights and basic freedoms binding on the Czech Republic; when performing the acts of criminal proceedings, such rights of the persons concerned by the acts above may only be encroached in justified cases based on the law and to the extent necessary for securing the purpose of criminal proceedings. Authorities responsible for (active in) criminal proceedings do not take into consideration the contents of any petition interfering with the meeting of such obligations.

(5) Authorities responsible for (active in) criminal proceedings proceed in conformance with their rights and obligations specified herein and with co-ordination of the

parties in order to ascertain the matter of fact about which there are no reasonable doubts, within the scope necessary for decision of the authorities. Confession of the charged person does not discharge the authorities responsible for (active in) criminal proceedings from the obligation to review all substantial circumstances of the case. In pre-trial proceedings the authorities responsible for (active in) criminal proceedings carry out, with equal diligence, clarification of the circumstances witnessing both in favour and against the person against which the proceedings have been conducted, in the manner specified herein. In trial before the court, the prosecutor and the charged person may propose and produce proofs to support their opinions. The public prosecutor is obliged to prove the guilt of the accused. It does discharge the court from its obligation to produce additional evidence in the scope necessary for decision of the court.

(6) Authorities responsible for (active in) criminal proceedings assess the proofs according to their internal conviction based on careful consideration of all circumstances of the case, both individually and in total.

(7) All the authorities active in (responsible for) criminal proceedings co-operate with associations of citizens, using their educational influence.

(8) Criminal prosecution before courts is only possible based on indictment or motion for punishment lodged by the public prosecutor. Public action in trial before the court is conducted by the prosecutor.

(9) Either the panel of judges, or single judge makes decision in criminal proceedings; presiding judge or single judge makes decisions only where expressly specified by the law. If the first instance court makes decision in pre-trial proceedings, the decision is made by judge.

(10) Criminal matters are heard in open court so that the citizens may participate in the hearing and follow the proceedings. The public may only be excluded from the trial and open court in the events expressly specified herein.

(11) Acting before courts is oral; the proof by testimonies of witnesses, experts and the charged person is usually carried out by interrogating such persons.

(12) Upon decision-making both in the trial and open and closed session the court may take into consideration the proofs only that have been produced during such proceedings.

(13) The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence and about the fact that he/she may also choose the counsel; all the authorities responsible for criminal proceedings are obliged to enable the charged person to exercise his/her rights.

(14) Authorities active in (responsible for) criminal proceedings conduct the proceedings and make their decisions in Czech language. Anybody having declared that he/she cannot speak Czech is authorised to use their native language or any language he/she declares to speak before the authorities active in (responsible for) criminal proceedings.

Section 8

(1) State authorities, legal entities and natural persons are obliged without needless delay and also, unless stipulated otherwise in a special regulation, without payment, to comply with requests from law enforcement bodies in performance of their duties. State authorities are also obliged to notify a state prosecutor or police authorities promptly of a fact indicating that a criminal offence has been committed.

(2) If in the course of criminal proceedings or also in proceedings before a court for assessment of the circumstances of the accused or for enforcement of a decision there is a need for due clarification of circumstances indicating that a criminal offence has been committed, the state prosecutor and the presiding judge, after a criminal complaint or charges have been filed, may request data which are subject to bank secrecy and data from records of securities. In proceedings on a criminal offence under Section 178 of the Criminal Code a law enforcement body may request specific data acquired under a special Act for statistical purposes. The conditions under which a law enforcement body may request data acquired in tax administration are stipulated by a special Act. Data acquired under this provision may not be used for any purpose other than for the criminal proceedings for which it was requested.

(3) For the reasons specified in paragraph 2, a state prosecutor and the presiding judge, after a criminal complaint or charges have been filed, may order surveillance of a bank account or account at the Securities Centre, for a period of up to six months. If the purpose for which surveillance of the account was ordered continues beyond this period, surveillance may be extended for a further six months on the basis of an order of the body before which proceedings are being heard at that time, and also again thereafter. Data acquired under this provision may not be used for any purpose other than the criminal proceedings for which it was acquired.

(4) Fulfilment of obligations under paragraph 1 can be refused with reference to the obligation to preserve the secrecy of classified facts protected by a special Act or a non-disclosure obligation imposed or recognised by the state; this does not apply (a) if a person who has this obligation would otherwise run the risk of criminal prosecution for failure to report or failure to try to prevent a criminal offence, or (b) when dealing with a rogatory letter from a law enforcement body concerning a criminal offence, where the recipient of the rogatory letter is also the person who reported the criminal offence. A non-disclosure obligation the extent of which is not defined by law but derives from a legal action effected on the basis of the law is not regarded as a non-disclosure obligation recognised by the state under this Code.

(5) Unless a special Act stipulates the conditions under which classified facts protected under this Act or to which a non-disclosure obligation applies may be disclosed for the purposes of criminal proceedings, these facts may be requested for criminal proceedings with the previous consent of a judge. The non-disclosure obligation of a lawyer under the Legal Profession Act is not hereby affected.

(6) The provisions of paragraphs 1 and 5 do not affect the non-disclosure obligation imposed under a promulgated international agreement by which the Czech Republic is bound.

Section 12

Interpretation of some terms

(1) Authorities active in (responsible for) criminal proceedings mean the court, public prosecutor, and police body.

(2) Police bodies mean the division of the Police of the Czech Republic and the division of the Ministry of Interior for inspection activity in criminal proceedings on crimes committed by policemen. The same position in criminal proceedings have entrusted Bodies of Military Police regarding the members of armed forces, entrusted bodies of Prison Service of the Czech Republic in criminal proceedings regarding the members of the said Prison Service, and entrusted bodies of Security Information_Service in criminal proceedings regarding the members of Security Information Service. Entrusted Customs bodies have also the position of police bodies in criminal proceedings regarding the crimes committed by violation of customs regulations and regulations of import, export or transit of goods, even in the event that these

crimes are committed by members of armed forces or armed corps or services. If not specified otherwise hereinafter, the said bodies are authorised to carry out all the acts of the criminal proceedings belonging to the competence of the police body.

(3) Where this law refers to court, it shall mean the District Court, Regional Court, High Court, or Supreme Court of the Czech Republic (referred to as „Supreme Court“ hereinafter) depending on the nature of the matter.

(4) Where this law refers to District Court, it shall also mean the Borough Court, or any other court with the same competence; where this law refers to Regional Court, it shall also mean the City Court in Prague.

(5) Where this law refers to district public prosecutor, it shall also mean the borough public prosecutor, or any other prosecutor with the same competence; where this law refers to regional public prosecutor, it shall also mean the City Public Prosecutor in Prague.

(6) Party shall mean the person against whom the criminal proceedings is conducted, the participating person and the injured, and in trial before court also the public prosecutor and social representative; also any other person, based on proposal or request of whom the proceedings is kept or who has filed a remedial measure, has the same position as the party.

(7) Unless otherwise follows from the nature of the matter, the charged person shall also mean the accused and the convict.

(8) After the trial has been ordered, the charged person shall be designated as the accused.

(9) The convict is the person against whom the judgement of conviction has been issued, which already has become final and enforceable.

(10) Criminal proceedings means the proceedings hereunder, criminal prosecution means the section of the proceedings from initiation of the criminal prosecution up to the legal force of the judgement, respectively any other decision of the authority responsible for criminal proceedings in the matter itself, and pre-trial proceedings shall mean the section of the proceedings hereunder from making the record of initiation of the act of criminal proceedings or performing any urgent and unrepeatable acts immediately preceding the proceedings, and if no such acts have been performed, from initiation of the criminal prosecution to bringing the indictment, transfer of the matter to any other body, or discontinuation of criminal prosecution before bringing the indictment, and/or up to decision or occurrence of any other fact causing the discontinuation of the criminal prosecution including the clarification and verification of the facts indicating that a criminal act was committed, and the investigation.

(11) If the charged person continues the conduct for which he/she has been prosecuted after he/she had been notified of the charge, from the said act such a conduct shall be considered a new act.

(12) Act hereunder means also any partial attack within a continued criminal act unless expressly specified otherwise.

Securing a victim's claim

Section 47

(1) If there is a reasonable concern that satisfaction of a victim's claim for compensation of damage caused by the criminal offence will be obstructed or hampered, the claim may be secured from the accused person's assets up to the probable amount of damage.

(2) A decision on securing a claim under paragraph 1 is made by the court upon an application from the state prosecutor or the victim, and in pre-trial proceedings by the state prosecutor upon an application from the victim. In pre-trial proceedings, the state prosecutor may secure a claim even without an application from the victim, if protection of his/her interests so requires, particularly if there is a danger of delay.

(3) If the victim is aware that the accused is the owner of real estate or has some movable thing located outside the place of his/her permanent or other residence, he/she specifies as far as possible in the application for securing the claim for compensation of damage where this thing can be found.

(4) In its ruling on seizure of assets the court, and in pre-trial proceedings the state prosecutor, prohibits the accused from dealing with things specified in the ruling on seizure, or which will be listed in enforcement of this decision; it also forbids the accused after notification of the ruling to transfer an asset to another person or to encumber it and imposes on him/her the obligation to inform the court within 15 days from notification of the ruling whether there is and who has a first option on or other right to the asset and instructs the accused that otherwise he/she will be liable for any damage caused thereby.

(5) It is not possible to secure a claim which cannot be applied in criminal proceedings. A thing to which recourse cannot be made under civil law by enforcement of a court decision cannot be used to secure a claim. A claim cannot be secured from pecuniary social care benefits and state social support benefits paid to the accused as a lump sum under a special Act, and also

- a) amounts payable to the accused for remuneration from an employment contract or similar relationship
- b) amounts payable to the accused for maintenance and
- c) amounts payable for sickness and pension benefits

up to the amount of the subsistence minimum stipulated under special legal regulations for the person of the accused, his/her household and persons whom the accused is obliged to bring up and maintain until they have their own source of income.

(6) During the period of seizure, all legal actions of the accused relating to an asset seized are null and void, with the exception of actions aimed at averting imminent threats of damage.

(7) Rights of third parties to an asset seized can be exercised under a special legal regulation.

(8) An injured party must always be informed of the securing of his/her claim and must be notified of the reasons why securing under Section 48 para. 1 has been annulled.

Section 47a

(1) The court and, in pre-trial proceedings, the state prosecutor withdraws from executing seizure or annuls seizure if the accused or another person with his/her consent deposits a pecuniary security in the account of the court at the bank of an amount corresponding to the probable claim of the victim for compensation of damage; the other person must be informed of the grounds for the accusation and of the facts which led or could lead to seizure. If the pecuniary security deposited is less, the court and, in pre-trial proceedings the state prosecutor,

executes seizure of the accused person's assets to the extent to which the probable claim of the victim for compensation of damage is not covered by the pecuniary security.

(2) The court, and in pre-trial proceedings the state prosecutor, cancels or limits the pecuniary security under paragraph 1 if the reasons for securing the victim's claim cease to apply or if it is clear that the victim's claim for compensation of damage cannot be granted in criminal proceedings or is substantially less.

(3) Unless the court decides otherwise, the pecuniary security pertains under paragraph 1 until a verdict of guilty comes into legal force. If the victim's claim for compensation of damage is granted in this verdict, the court will pay it from the pecuniary security.

(4) A complaint is permitted against a decision under paragraphs 1 and 2, and has deferral effect.

Section 48

(1) Seizure is annulled

a) if the reason for which it was ordered ceases to apply

b) if criminal prosecution is legally halted or is terminated by a legal verdict of acquittal, or

c) two months have elapsed since the day when the judgement by which the accused was found guilty came into legal force or from the day when a ruling by which the case was transferred to another authority came into legal force.

(2) Seizure can be restricted if it is shown that it is not necessary to the extent it was ordered. If things belonging to a person other than the accused have been seized, they shall be excluded from seizure.

Section 49

A complaint is permitted against a decision under Sections 47 and 48, and if seizure is annulled or restricted or an thing is exempted from seizure, this complaint has deferral effect.

Section 78

Liability to deliver a thing (production order)

(1) Anyone possessing a thing important for the criminal proceedings is obliged to submit the thing to the court, public prosecutor or police body based on call; if it is necessary to secure the thing for the purpose of criminal proceedings, the person is obliged to deliver the thing to the bodies on call. Upon the call it is necessary to notify the person that if he/she fails to meet the call the thing can be taken away from him/her as well as other consequences of the failure to meet the obligation (Section 66).

(2) The obligation under paragraph 1 does not apply to the written instrument the content of which relates to a circumstance for which prohibition of examination applies unless the release from the obligation to keep the matter confidential or release from the duty of non-disclosure has taken place (Section 99).

(3) The presiding judge is authorised to call for deliver of a thing; the public prosecutor or police body are authorised to do so in pre-trial proceedings.

Section 79

Taking away of a thing

- (1) If the thing necessary for criminal proceedings is not issued on call by the person possessing the thing, it can be taken away based on order of the presiding judge and in pre-trial proceedings based on order of the public prosecutor or police body. The police body needs a prior consent of the public prosecutor for the issue of such order.
- (2) If the body that issued the order to take away the thing does not execute the taking away itself, it shall be executed by the police body based on the order.
- (3) The police body may issue the order without prior consent specified in paragraph 1 provided only that the prior consent cannot be achieved and the act must be performed immediately.
- (4) A person not participating in the matter shall be eventually engaged in taking away of the thing.
- (5) The report on delivery and taking away of a thing must also include a sufficiently accurate description of the thing delivered or taken away to allow for identification thereof.
- (6) The person that delivered the thing or from which the thing was taken away shall be immediately given a written acknowledgement of acceptance of the thing or copy of the report by the body that carried out the act.

Section 79a

Judicial seizure (Securing) of a bank account

- (1) If the facts ascertained indicate that the financial means (funds) on a bank account are intended (determined, designated) for commission of a criminal offence or have been used to commit a criminal offence or they are proceeds of crime, the presiding judge and in pre-trial proceedings the public prosecutor or police body may decide to secure the bank account. The police body needs a prior consent of the public prosecutor for such decision. No prior consent of the public prosecutor is needed in urgent cases that must be performed immediately. In such event the police body shall be obliged to submit its decision to the public prosecutor within 48 hours; the public prosecutor shall either approve or cancel the decision.
- (2) Decision under paragraph 1 must be delivered to the bank keeping the account, and to the account holder after the bank has secured the account. The decision shall specify the bank details, which means the number of bank account and code of the bank, further the amount of money in relevant currency to which the securing applies. Unless the authority responsible for criminal proceedings mentioned in paragraph 1 specifies otherwise, any disposal of the financial means placed on the account up to the amount of securing shall be restricted from the moment of service of the decision, except for execution of the decision. The financial means not affected by the decision on securing shall be used preferentially to pay any claim being the subject of execution of a judicial or administrative decision. Financial means covered by decision on securing may only be disposed of within the execution of decision after prior consent of the judge, and in pre-trial proceedings after prior consent of the public prosecutor; this does not apply when the decision is executed in order to satisfy the claims of the state.
- (3) If securing of financial means on the account for the purpose of criminal proceedings is not necessary any longer or it is not necessary in the specified amount, the authority responsible for criminal proceedings specified in paragraph 1 shall cancel or reduce the securing. The police body needs a prior consent of the public prosecutor for such decision. The decision to cancel or reduce securing must be served on the bank and account holder.

(4) The account holder whose financial means have been secured has the right to ask at any time for cancellation or reduction of the securing. Public prosecutor and in trial before court the presiding judge must decide about such application immediately. If the application has been dismissed, the account holder may repeat the application only upon expiry of fourteen days from legal force of the decision unless he/she specifies new reasons in the application.

(5) A complaint is admissible to be lodged against the decision under paragraphs 1, 3 and 4.

Section 79b

For the reasons for which the bank account can be secured it is possible to decide on securing the financial means on the account with a savings and credit co-operative or other entities keeping accounts for third persons, on blockage of financial means of an contributory pension scheme with state benefit, blockage of drawing financial credit, and blockage of financial lease. Provisions of Section 79a shall be used reasonably to carry on the decision-making to secure and cancel or reduce the seizure.

Section 79c

Securing the booked (immaterialised) securities

(1) If the presiding judge or in pre-trial proceedings the public prosecutor decide to secure the booked securities, the person authorised to keep records of investment tools under special Act or the Czech National Bank shall open a special account for the holder of such securities, on which the securities shall be kept.

(2) The police body may also decide to secure the booked securities in exigent cases that must be performed immediately. The police body shall be obliged to submit its decision to the public prosecutor within 48 hours; the public prosecutor shall either approve or cancel the decision.

(3) Disposal of the securities covered by the securing is restricted from the moment of service of the decision on securing. The authority responsible for criminal proceedings mentioned in paragraphs 1 a 2 may specify in the decision, depending on the nature and circumstances of the crime, that no other rights may be executed in consequence of securing the book securities.

(4) Provisions of Section 79a shall be used as appropriate for the reasons for securing the book securities and procedure on making the decision to secure and cancel or reduce the securing.

Return of thing

Section 80

(1) If an thing which has been delivered under Section 78 or seized under Section 79 is no longer required for further proceedings and forfeiture or seizure of it is no longer under consideration, it is returned to the person who delivered it or from whom it was seized. If another person claims a right to it, it is delivered to the person whose right to the thing is not in doubt. In cases of doubt the thing is placed in custody and the person who claims a right to the thing is advised to apply for it in civil proceedings. If the person who has a right to the thing does not claim it despite repeated calls to do so, the thing will be sold and the amount received for it will be placed in the custody of the court. The regulations on judicial sale of seized movable things are used as appropriate for the sale.

(2) If there is a danger that an thing which could not be returned or delivered under paragraph 1 will deteriorate, it is sold and the amount received for it is placed in the custody of the court. The regulations on judicial sale of seized movable things are used as appropriate for the sale.

(3) Decisions under paragraphs 1 and 2 are issued by the presiding judge and in pre-trial proceedings by the state prosecutor or the police authority. A complaint is permitted against a decision to return and deliver an thing, and also to place it in custody, and has deferral effect.

Section 81

(1) If an thing which the accused acquired or probably acquired by means of a criminal act has been delivered by the accused or seized from him/her, and either it is not known to whom the thing belongs or it is not known where the injured party lives, a description of the thing is published. This is published in the manner that is most effective for finding the injured party, and together with a call for the injured party to claim it within six months from the announcement.

(2) If someone other than the accused has claimed an thing within the time limit specified in paragraph 1, the procedure is that under Section 80 para. 1. If no other person has claimed the thing, it is delivered or, if it has already been sold because of the danger of deterioration, the amount received for it is delivered to the accused at his/her request, unless it is an thing which he/she acquired by means of a criminal act. If it is an thing which the accused acquired by means of a criminal act, or the accused did not request that the thing be returned and some other person has not claimed a right to the thing within a period of six months from expiry of the time limit specified in sentence two of paragraph 1, the thing becomes state property; this does not affect the right of the owner to request delivery of the thing or delivery of the amount received from its sale.

(3) If the thing is of no value, it can also be destroyed without previous publication of a description.

(4) The measures and decisions specified in paragraphs 1 to 3 are issued by the presiding judge and in pre-trial proceedings by the state prosecutor or the police authority. A complaint is permitted against a ruling to surrender an thing or destroy it, and has deferral effect.

SECTION FOUR

House and personal searches, searches of other premises and plots of land, entry to dwellings,
other premises and plots of land

Section 82

Reasons for house searches and personal searches and searches of other premises and plots of land

(1) A house search may be carried out if there are grounds for suspicion that an thing or person important for criminal proceedings is in a flat or other premises used for residence or in premises belonging to them (residence).

(2) A search of non-residential premises (other premises) and plots of land may also be carried out for the reasons specified in paragraph 1, if they are not accessible to the public.

(3) A personal search may be carried out if there are grounds for suspicion that the person has an thing important for criminal proceedings on his/her person.

(4) A personal search may also be carried out on a person detained and on a person who has been arrested or who is being taken into custody if it is suspected that he/she is carrying a weapon or other thing which could endanger his/her own or another person's life or health.

Section 83

Search warrant

- (1) Presiding judge and in pre-trial proceedings the judge based on motion of the public prosecutor are authorised to order the search of close premises. In exigent cases this can be done by the presiding judge or the judge, in the district of whom the search is to be carried out, instead of the appropriate presiding judge or judge (Section 18). The search warrant must be issued in writing and justified. It shall be served on the person, in the premise of whom the search is to be carried out, during the search, and if this is not possible, within 24 hours at the latest from elimination of the obstacle preventing from the service.
- (2) A search warrant shall be executed upon order of presiding judge or judge by a police body.

Section 83a

Warrant for a search of other premises and plots of land

- (1) A search warrant for other premises or plots of land is authorised by the presiding judge, and in pre-trial proceedings the state prosecutor or the police authority. The police authority requires previous consent of the state prosecutor. The warrant must be issued in writing and reasons must be given. It is delivered to the user of the premises or plots of land concerned, and, if he/she is not found in the search, immediately after the impediment which prevents delivery is removed.
- (2) A search of other premises or plots of land is carried out by the authority which ordered it or the police authority at its order.
- (3) The police may only carry out a search of other premises or plots of land without a warrant or the consent specified in paragraph 1 if the warrant or consent could not be obtained in advance and the matter cannot be delayed, or if the user of the premises or plots of land concerned declares in writing that he/she consents to the search and delivers its declaration to the police authority. The authority which is authorised to issue the warrant or consent specified in paragraph 1 must be informed of this action promptly.

Section 83b

Personal search warrant

- (1) A personal search warrant is authorised by the presiding judge and in pre-trial proceedings by the state prosecutor or with his/her consent the police authority.
- (2) If the personal search is not carried out by the authority which ordered it, it is carried out by the police authority at its order.
- (3) A personal search is always carried out by a person of the same sex.
- (4) The police may only carry out a personal search without a warrant or consent specified in paragraph 1 if the warrant or consent could not be obtained in advance and the matter could not be delayed, or if it involves a person caught in the act or a person for whom an arrest warrant has been issued. A personal search may also be carried out without a warrant or consent in the cases specified in Section 82 para. 4.

Section 83c

Entry to dwellings, other premises and plots of land

- (1) The police may only enter dwellings, other premises or plots of land if the matter cannot be delayed and entry is necessary to protect persons' lives or health or protect other rights and freedoms or avert serious danger to public security and order.
- (2) They may also enter places specified in paragraph 1 if an arrest warrant or a writ of attachment or a committal warrant for a person living there has been issued.
- (3) No actions other than those serving to eliminate an imminent danger or to deliver a person may be carried out during entry to places specified above.

Section 84

Previous questioning

A house search or personal search or search of other premises and plots of land may only be carried out after previous questioning of the person on whose premises or against whom this action is to be carried out, only if voluntary delivery of an thing sought or elimination of another reason which led to this action has not been achieved by questioning. Previous questioning is not required if the matter cannot be delayed and questioning cannot take place immediately.

Carrying out searches and entry to dwellings, other premises and plots of land

Section 85

- (1) The authority carrying out a house search or search of other premises is obliged to enable the person at whose premises this action is carried out or any adult member of his/her household, or in the case of a search of other premises also employees, to participate in the search. It is obliged to instruct these persons of their right to participate in the search.
- (2) For carrying out a house and a personal search it is necessary to co-opt a person who is not involved in the matter. The authority carrying out the search shows its authorisation.
- (3) In the search protocol it is also necessary to state whether the provisions on previous questioning have been observed, or to give the reasons why they were not observed. If a thing has been delivered or seized in a search, it is also necessary to incorporate data specified in Section 79 para. 5 in the protocol.
- (4) The authority which executed this action provides the person on whose premises the search was carried out with a written confirmation of the result of the action, and also take-over of things which were delivered or seized in it, immediately, and if this is not possible, within 24 hours at the latest, or provides a copy of the protocol.
- (5) In entry to dwellings, other premises and plots of land, the provisions of paragraphs 1 to 4 are used as appropriate. However, participation of persons specified in paragraph 1 in entry to dwellings and co-opting of a person specified in paragraph 2 can be refused, if this could lead to endangering his/her life or health.

Section 85a

- (1) The person on whose premises a house search, a search of other premises and plots of land, a personal search or entry to dwellings is to be carried out is obliged to bear with this search.

(2) If the person against whom an action specified in paragraph 1 is aimed does not enable this action to be carried out, the authorities carrying out the action are authorised, when a previous appeal has proved fruitless, to override this person's opposition or the impediment created by him/her. This is recorded in the protocol (Section 85 para. 3).

Section 85b

Provision of evidence in a flat, dwelling, other premises and on plots of land

The provisions of Section 83, 83a, 84, 85 and 85a are also applied if it is necessary to carry out a reconstruction, recognition, on-site check or attempt to investigate in places specified in these provisions and it is evident from the nature of the action that it cannot be carried out elsewhere and the person on whose premises the action is to be carried out has not given his/her consent to it.

Intercepting and opening of consignments, replacing them and keeping them under surveillance

SECTION FIVE

Section 86

Intercepting consignments

(1) If, for clarification of facts important for criminal proceedings in a specific case, it is necessary to identify the contents of undelivered mail, other consignments or telegrams, the presiding judge and in pre-trial proceedings the state prosecutor orders the post office or person providing their transport to deliver them to the presiding judge and in pre-trial proceedings either the state prosecutor or the police authority.

(2) Transport of a consignment may be delayed at the order of the police without the order specified in paragraph 1 if the matter cannot be delayed and an order cannot be obtained in advance. The police are obliged to inform the state prosecutor within 24 hours that a consignment has been intercepted. If the post office or the person providing transport of the consignment in this case does not receive an order under paragraph 1 within three days, transport of the consignment cannot be delayed further.

Section 87

Opening consignments

(1) Only the presiding judge and in pre-trial proceedings with the judge's consent the state prosecutor or the police may open a consignment surrendered under Section 86 para. 1.

(2) The opened consignment is delivered to the addressee and, if his/her whereabouts are not known and the consignment is not marked for personal delivery, to one of the members of his/her family; otherwise the consignment is returned to the sender. If, however, there are concerns that delivery could lead to frustration or substantial hampering of the purpose of a criminal prosecution, the consignment is attached to the file; if appropriate, the addressee is notified of the content of a letter or telegram. If his/her whereabouts are not known and the consignment is not marked for personal delivery, one of the family members is notified.

(3) A consignment which it is not deemed necessary to open is delivered immediately to the addressee or returned to the post office or the person who delivered it.

Section 87a

Substitution of a consignment

(1) In the interests of identifying persons involved in handling consignments containing narcotic substances, psychotropic substances, precursors, poisons, radioactive material, counterfeit money and forged securities, firearms or weapons of mass destruction, ammunition and explosives or other thing for the possession of which a special permit is required, or things designated for (determined for) commission of a criminal act, or things acquired by means of a criminal act, the presiding judge and in pre-trial proceedings with the consent of a judge the state prosecutor may order the contents of such a consignment to be substituted by others and the consignment so modified to be delivered for forwarding.

(2) Substitution is carried out by the police authority, which draws up a record of this and provides for the things and materials substituted to be deposited in custody. Substituted things are dealt with as things seized.

Section 87b

Consignments kept under surveillance

(1) A state prosecutor may in pre-trial proceedings order surveillance of a consignment where there are grounds for suspicion that it contains things specified in Section 87a, if this is required to clear up a criminal offence or to detect all the offenders if identification of the required facts would be ineffective or considerably hampered by using any other method. Surveillance of a consignment is carried out by the police following the instructions of the state prosecutor; in this process no actions aimed at delivery or seizure of an thing are carried out against persons handling the consignment under surveillance. A protocol is drawn up on the process of keeping the consignment under surveillance and, where required, a video or other recording is also provided.

(2) The police may commence surveillance of a consignment without an order under paragraph 1 if the matter cannot be delayed and an order cannot be obtained in advance. They inform the state prosecutor of this action promptly and then proceed in accordance with his/her instructions.

(3) The police may in the course of keeping the consignment under surveillance take the required measures for a consignment with things specified in Section 87a para. 1 or things replacing them to move from the Czech Republic to another country and vice versa, or from another country through the Czech Republic to a third country with the knowledge of the customs authorities and under their control.

(4) The police terminate surveillance of a consignment at the order of the state prosecutor, and if it is clear that serious danger to life or health or considerable damage to property arises in handling the consignment, or there is a serious threat that this consignment cannot continue to be kept under surveillance, also without such order. Where required, together with termination of the consignment's surveillance, action is taken directed against further holding of things which form the contents of the consignment; this does not apply if the consignment under surveillance crosses the state border and surveillance of it is taken over by the competent authority of a foreign country under international cooperation.

Section 87c

Common provisions

A consignment under Sections 86 to 87c means an item transported in any manner, whether using the post office or another person, including transport in an undercover manner.

SECTION SIX

Intercepting and recording the telecommunication operation

Section 88

- (1) If criminal proceedings are conducted for an especially serious intentional crime or for any other intentional crime the prosecution of which is an obligation resulting from a promulgated international treaty, the presiding judge and in pre-trial proceedings the judge based on motion of the public prosecutor may order to intercept and record the telecommunication operation (traffic, transmissions) provided that there is a justified assumption that any fact significant for the criminal proceedings would be communicated through it. It is not allowed to execute any interception or record of telecommunication operation between (defence) counsel and the charged person. If the police body ascertains from the interception and records of the telecommunication operation that the charged person communicates with his/her counsel, the police body is obliged to discontinue the intercepting immediately, destroy the record of the contents, and abstain from using in any way the information it has gained in this connection.
- (2) An order to intercept and record telecommunication traffic shall be issued in written form and justified. At the same time the period of interception and recording of telecommunication traffic must be stipulated, which can not be longer than 6 months with possibility of (repeated) prolongation for another 6 months by judge. Judge immediately forwards the copy of an order to a public prosecutor. The Police of the Czech Republic carries out interceptions and recordings of the telecommunication operations (traffic) for the purposes (needs) of all bodies active in (responsible for) the criminal proceedings.
- (3) Without an order under the subsection 1 of this provision the agency can order an interception and recording of the telecommunication operations or carry out it itself even in the cases not mentioned in the subsection 1, if a user of tapped telecommunication station agrees.
- (4) If the tapping and registration of telecommunication traffic is to be used as an evidence, it is necessary to attach to it the protocol with the data on the place, time, ways and content of registration, and about the person who made the recording as well. Other records shall be marked and reliably archived; it is necessary to write down in the protocol attached to file where the record is archived. It is possible to use as an evidence the record of telecommunication traffic in another criminal case than in the case in relation to which the record has been made if a prosecution in this another case is conducted also for criminal offence mentioned in subsection 1 of this provision or if user of tapped telecommunication station agrees.
- (5) If during the interception and recording of telecommunication traffic no facts important for criminal proceedings were find out, it is necessary to destroy the records in prescribed way.

Provision 88a

- (1) If it is necessary, for the purposes of clarification of the circumstances significant for the criminal proceedings, to identify the data of the telecommunication traffic (transmissions) made, which are subject to the telecommunication secrecy or to which the protection of personal and mediation data applies, the chairman of panel (presiding judge), and the judge in the preparatory proceedings, shall order that the legal entities or natural persons

performing the telecommunications services disclose these information to him, or to a public prosecutor or police agency in the preliminary proceedings. The order to identify the data of the telecommunication traffic must be issued in writing including its grounds (justification).

- (2) No order in accordance with subsection 1 is required if the user of the telecommunication device, which the data of the telecommunication traffic are to apply to, gives the consent to disclose the data.

Operative investigative means and conditions of their usage

Section 158b

(1) Unless stipulated otherwise below, the police body, if authorised by the Minister concerned, in the case of a unit of the Czech Police by the president of the police, and in the case of a unit of the Security Information Service by its director, and in the case of a unit of the Office for Foreign Relations and Information by its director, are entitled in proceedings on an intentional criminal act to use operative investigative means, which is understood to mean

- (a) simulated transfer,
- (b) surveillance of persons and things,
- (c) use of an agent.

(2) The application of operative investigative means may not pursue any interest other than acquisition of facts important for criminal proceedings. These means may only be used if the desired aim cannot be achieved otherwise or if its achievement would be substantially hampered otherwise. Persons' rights and freedoms may only be restricted to the degree absolutely necessary.

(3) Audio, visual and other records obtained by the application of operative investigative means in a manner compliant with the provisions of this Code may be used as evidence.

Section 158c

Simulated transfer

(1) A simulated transfer means the simulation of purchase, sale or any other method of transfer of the subject of performance including the transfer of a thing

- a) for possession of which a special permit is necessary,
- b) the possession of which is impermissible,
- c) that originates from a criminal offence, or
- d) that is intended (designated, determined) for committing a criminal offence.

(2) A undercover transfer may be carried out only upon written permit of the public prosecutor.

(3) If the matter cannot be delayed and if it is not a case specified in paragraph 3, surveillance may also be commenced without permission. The police body is, however, obliged to apply without delay for permission thereafter, and if this is not obtained within 48 hours, is obliged to terminate simulated transfer and in no way use the information learned in connection to it.

(4) Police body shall make a report on simulated transfer, and submit it to public prosecutor in 48 hours.

Section 158d

Surveillance of persons and things

- (1) Surveillance of persons and things (hereafter "surveillance") is understood to mean obtaining information on persons and things in a secret manner by technical or other means. If, during surveillance, the police body finds that an accused person is communicating with his/her defence counsel, it is obliged to destroy the record containing this communication and in no way use the information learned in connection with it.
- (2) Surveillance in which audio, visual or other records are to be made can be undertaken only on the basis of permission in writing from public prosecutor.
- (3) If surveillance involves intruding upon the privacy of a dwelling, secrecy of correspondence or the content of other documents and records kept in private by means of technical devices, this may be effected only on the basis of previous permission by a judge. No actions may be carried out in entry to a dwelling other than those which are aimed at placing technical devices.
- (4) Permission under paragraphs 2 and 3 can be issued only on the basis of an application in writing. The application must be justified by suspicion of specific criminal activity and also, if it is known, data on the persons or items which are to be placed under surveillance. The time for which surveillance will be carried out and which may not exceed six months must be stipulated in the permission. The person who has allowed surveillance may, on the basis of a new application in writing, extend this period always for at most six months.
- (5) If the matter cannot be delayed and if it is not a case specified in paragraph 3, surveillance may also be commenced without permission. The police body is, however, obliged to apply without delay for permission thereafter, and if this is not obtained within 48 hours, is obliged to terminate surveillance, destroy any record and in no way use the information learned in connection with it.
- (6) Surveillance may be carried out without satisfying the conditions under paragraphs 2 and 3 if the person whose rights and freedoms are to be affected by surveillance expressly consents to it. If this consent is subsequently withdrawn, surveillance shall be halted immediately.
- (7) If a record made during surveillance is to be used as evidence, a protocol has to be attached to it with the requirements specified in Sections 55 and 55a.
- (8) If facts important for criminal proceedings have not been ascertained in surveillance, records have to be destroyed in the prescribed manner.
- (9) Telecommunications operators, their employees and other persons who take part in telecommunications operations, and also the post office or a person providing transport of consignments are obliged to provide the police authority carrying out surveillance with the required cooperation in accordance with its instructions free of charge. In this regard it is not possible to invoke a non-disclosure obligation stipulated in special Acts.
- (10) In a criminal matter other than that in which surveillance has been carried out under the conditions specified in paragraph 2, a record provided in surveillance and the attached protocol can only be used in evidence if proceedings on an intentional criminal offence are being conducted in this matter or if the person whose rights and freedoms have been affected by surveillance consents to this.

Section 158e

Use of an agent

(1) If criminal proceedings are being conducted for especially serious intentional criminal offence, for a criminal offence committed for the benefit of a criminal conspiracy or for another intentional criminal offence prosecution of which is obligatory under promulgated international treaty binding on the Czech Republic, the police authority, if it is a unit of the Czech Police, is entitled to use an agent.

(2) An agent is an officer of the Czech Police carrying out tasks assigned to him/her by the police authority, usually involving concealment of the actual purpose of his/her activity. If required for the use of an agent, his/her preparation or protection, it is possible, in order to conceal his/her identity

(a) to create a cover story about another personal existence and to introduce personal data created for this cover story into information systems operated under special Acts,

(b) to carry out economic activity for the execution of which special authorisation, permission or registration is required,

(c) to conceal the fact that he/she is an officer of the Czech Police.

(3) Public administration authorities are obliged to cooperate with the Czech Police without delay in performance of the entitlements specified in points (a) to (c) above.

(4) Use of an agent is authorised on the proposal of public prosecutor from the high public prosecutor's office by the high court judge in whose district the state prosecutor submitting the proposal operates. The authorisation must state the purpose of his/her use and the period for which the agent will be used, and data enabling identification of the agent. The period of authorisation can be extended on the basis of a new motion containing evaluation of the agent's activities to date, and may be repeatedly extended.

(5) An agent does not require additional permission for surveillance of persons and items to the extent specified in Section 158d para. 2.

(6) An agent is obliged in his/her activities to select those means which are effective for carrying out his/her service assignment and which do not cause detriment to the rights of other persons. He/she has no other obligations under the special Act regulating the status of the Czech Police.

(7) Public prosecutor has the obligation to request the police authority to furnish the data required to assess whether the reasons for using an agent still apply and whether his/her activities are in accordance with the law. He/she is obliged to assess this data at regular intervals, at least once every three months, and if the reasons for using the agent cease to apply issues an instruction to the police authority to terminate the activities of the agent forthwith. The police authority is obliged to submit a record of the results of using the agent to public prosecutor.

(8) An agent may also carry out his/her assignments on the territory of another country. The decision to send him/her abroad is made by the president of the police following the previous consent of the authorities of the state in whose territory the agent is to operate, and on the basis of the authorisation by a judge specified in paragraph 4, unless stipulated otherwise in a promulgated international treaty binding on the Czech Republic; in other respects the provisions of paragraphs 1 to 7 apply.

SECTION FOUR

Enforcement of some other sentences

Enforcement of a pecuniary punishment

Section 341

As soon as a judgement has become enforceable, under which the convicted person is obliged to pay a pecuniary punishment, the presiding judge calls upon the convicted person to pay it within fifteen days and advises him/her that serving of an alternative sentence of imprisonment will be ordered.

Section 342

- (1) At the request of the convicted person, the presiding judge may for important reasons
 - a) defer enforcement of the pecuniary punishment, for a period of a maximum of three months from the day the judgement came into legal force, or
 - b) to allow payment of the pecuniary punishment in instalments in such a manner that the whole of the pecuniary punishment is paid within one year at the latest from the day the judgement came into legal force.
- (2) If the reasons for which enforcement of the pecuniary punishment was deferred cease to apply, or if the convicted person does not keep up payment of instalments without serious reasons, the presiding judge may revoke authorisation of deferment and instalments.

Section 344

- (1) The court waives enforcement of a pecuniary punishment or what remains of it if the convicted person as a result of circumstances beyond his/her control becomes, over a long period of time, incapable of paying the pecuniary punishment or if enforcement of the sentence would seriously endanger the maintenance or upbringing of a person whose maintenance or upbringing the convicted person is obliged by law to provide for.
- (2) If a pecuniary punishment is not paid, and if the procedure under paragraph 1 or Section 342 para. 1 cannot be applied, the court orders an alternative sentence of imprisonment or a proportionate part of it to be served; in this case it decides on how the alternative sentence is to be served.
- (3) A convicted person may at any time avert enforcement of an alternative sentence or the relative part of it by paying the pecuniary punishment or a proportionate part of it. Which part of the alternative sentence has to be served is decided by the presiding judge.
- (4) A complaint is permitted against a decision under paragraphs 1 to 3, and has deferral effect.

Enforcement of a sentence of forfeiture of property

Section 345

If a judgement under which a sentence of forfeiture of all or part of property is imposed has become enforceable, the presiding judge sends a copy of the judgement without reasoning for enforcement of this sentence to the state agency which is responsible for management of state assets under a special Act.

Section 346

- (1) If questions arise in enforcement of a sentence of forfeiture of property as to whether this sentence relates to particular financial or material assets in view of the fact that they are necessary to meet the subsistence needs of the convicted person or persons whose maintenance or upbringing the convicted person is obliged by law to provide for, the presiding judge adjudicates on these on the proposal of the government department which is

responsible for management of state assets under a special Act or at the request of the convicted person or a person whose maintenance or upbringing is affected. Such a request may only be submitted up to three months from the day when the judgement came into legal force and, if it concerns financial or material assets which were only later affected by enforcement of the sentence of forfeiture of property, within one month from the time they became affected.

(2) A complaint is permitted against a decision under paragraph 1, and has deferral effect.

(3) The presiding judge sends a copy of an enforceable judgement specified in paragraph 1 to the state agency which is responsible for management of state assets under a special Act.

(4) Ownership title of a third party to financial and material assets affected by enforcement of a sentence of forfeiture of property cannot be claimed under paragraph 1, but only under civil law.

Ensuring enforcement of a sentence of forfeiture of property

Section 347

(1) If an accused person is being prosecuted for a criminal offence for which, in view of the nature and seriousness of the offence and the circumstances of the accused, imposition of a sentence of forfeiture of property can be expected, and there are concerns that enforcement of this sentence will be obstructed or hampered, the court, and in pre-trial proceedings public prosecutor, may seize the assets of the accused. The court always seizes the assets of the accused if it has imposed a sentence of assets forfeiture in a judgement which has not yet come into legal force.

(2) A complaint is permitted against a decision on seizure.

Section 348

(1) Seizure applies to all property of the accused, and accruals and gains from assets seized, and also assets (property) the accused acquires after seizure. This does not, however, extend to financial and material means and things to which forfeiture does not apply under the law.

(2) For issuing decisions on seizure of property under paragraph 1, application is otherwise made of Section 47 paras 4 to 7.

Section 349

Enforcement of a decision to seize property and the procedure for administration of such property are stipulated in a special legal regulation.

Section 349b

Ensuring enforcement of a sentence of forfeiture of a thing

The presiding judge sends a copy of a judgement containing a sentence of forfeiture of a thing to the state agency which is responsible for management of state assets under a special Act. If an item to which the sentence of forfeiture of a thing relates is seized, the presiding judge takes measures for it to be delivered to this state agency.

Section 350

Execution of sentence of prohibition of (ban on) activity

(1) The presiding judge decides, immediately after the coming into force of a judgement imposing a sentence of prohibition of (ban on) activity on the convicted person, on including into the time stipulated for enforcement of the ban on activity the period during which, prior to the judgement coming into legal force, authorisation of the convicted person to perform activity which is the subject of the ban was withdrawn under special regulations in connection with the criminal offence or, on the basis of a measure taken by state authority, he/she was no longer allowed to perform this activity. A complaint is permitted against this decision.

(2) In proceedings on conditional waiving of the enforcement of the rest of a ban on activity, and also in proceedings on ordering enforcement of the rest of this sentence, application is made as appropriate of the provisions of Sections 331 to 333. All decisions are, however, issued by the court which decided on the case in the first instance (Section 315 para. 2).

Section 358

Enforcement of seizure of a thing

For enforcement of seizure of a thing, Section 349b is applied as appropriate (*mutatis mutandis*).