

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 07/11/2017  
[PC-OC/DOCS2015/PC-OC(2015)15rev.4]  
<http://www.coe.int/tcj>

PC-OC(2015)15 rev.4 BIL.

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**

**(CDPC)**

**COMMITTEE OF EXPERTS**

**ON THE OPERATION OF EUROPEAN CONVENTIONS**

**ON CO-OPERATION IN CRIMINAL MATTERS**

**(PC-OC)**

**Measures of restriction in extradition cases**

**Replies to a question asked by Mr Vladimir ZIMIN (Federation of Russia)**

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**QUESTION FROM MR ZIMIN (RUSSIAN FEDERATION)**

Dear PC-OC Members,

The Prosecutor General's Office of the Russian Federation is examining the issue of introducing some amendments into the Russian legislation, aimed at enhancing the efficiency of international cooperation on extradition.

In this connection I would appreciate to get your national experience of applying measures of restriction not involving custody (for example, bail or using electronic strap) to persons pending the decision of their extradition. Please, indicate as far as possible, whether only one measure of restriction is applied in such case or some 2 or 3 appropriate measures may be applied jointly. If there are legal provisions regulating the procedure of applying such measures of restriction please provide them (preferably in English).

Sincerely yours,

Vladimir Zimin,

First Deputy Chief, the General Department of International Legal Cooperation,

The Prosecutor General's Office of the Russian Federation

## OVERVIEW OF REPLIES

- **Question on alternatives to detention pending extradition**

| States                     | Measures of restriction used in extradition cases                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Andorra</b>             | Provisional detention, but also other preventive measures (bail, electronic bracelet, etc...)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Armenia</b>             | Armenian legislation doesn't provide for any provision regulating application of measures of restriction not involving custody to persons pending the decision of their extradition.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Austria</b>             | Pre-trial detention, but also alternative means. In particular: <ol style="list-style-type: none"> <li>1. the formal pledge not to flee or to hide until the final sentence nor to change the place of domicile without consent of the public prosecutor;</li> <li>2. the formal pledge not to attempt to hinder the investigation;</li> <li>3. the order to take domicile in a specific location or with a specific family, to avoid a specific domicile, a specific location or a specific company, to refrain from alcohol or other intoxicating substances or to pursue a regular occupation;</li> <li>4. the order to notify every change of domicile or to report regularly to the police or another institution;</li> <li>5. the preliminary confiscation of identity documents, driving documents or other documents;</li> <li>6. the deposition of bail</li> </ol>                           |
| <b>Belgium<sup>1</sup></b> | Until the past 5 to 10 years, conditions and / or bail were rarely applied. Still today, the application of release under bail and or conditions is rather exceptional. <sup>2</sup> Prospective changes in the law, or rather the creation of a completely new Extradition Act encompass a proper regulation of the extradition procedure, including the detention. Under the new system, provisional release – as the exception to the rule – will be mandatory of a conditional kind and – sufficient – bail will be required.                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Cyprus</b>              | A. When the court's decision on extradition is pending, there are 2 options: <ol style="list-style-type: none"> <li>1. detention</li> <li>2. release on bail <sup>3</sup></li> </ol> B. When the court decides extradition, the custody is applicable.<br>C. When the court refuses to extradite, it can impose bail terms.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Estonia</b>             | No alternatives to detention are allowed in extradition cases.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Czech Republic</b>      | In the Czech Republic there are several alternatives to preliminary custody applicable in appropriate cases and if the conditions set by law are met (Article 94(2) of the Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters). Thus, preliminary custody may be replaced by: <ul style="list-style-type: none"> <li>- a guarantee provided by public interest group, or a trustworthy person, for the future behavior of the person to be extradited (the judge must deem the guarantee to be sufficient and acceptable)</li> <li>- a written pledge given by the person to be extradited to lead an orderly life, not commit any crime and comply with duties and restrictions imposed on him (the judge must deem the pledge to be sufficient and acceptable);</li> <li>- supervision by a probation officer ;</li> <li>- a financial guarantee (bail)-;</li> </ul> |

<sup>1</sup> Belgium considers detention for the purpose of extradition as a sui generis type of detention. Article 5.1(f) ECHR applies to the fullest extent. Given the very limited regulation of the extradition procedure and thus the detention for the sole purpose of extradition, some procedural aspects of the Remand (provisional arrest – in accordance with art. 5.1(c) ECHR) are applied *per analogiam*. These aspect deal with the competence of the investigating chambers of both the first instance court and the court of appeal, the possibilities to appeal – up to the Supreme court - and the applicable delays. The sole relevant criteria for provisional arrest and the subsequent detention is the risk of flight. At the later, second and following stages of the extradition proceedings, other criteria drawn from the relevant case law of the ECtHR and art. 5, esp. art. 5.4 ECHR, apply accordingly. Given the restrictive nature of the application of art. 8 ECHR to extradition and expulsion matters, family life coupled with legal residence etc. play a marginal role to consider provisional release – under bail and conditions.

<sup>2</sup> The reason is that (a) extradition detention is the rule, release the exception – see Sanchez Reisse v. Switzerland and (b) in case where the person sought was indeed released, even with conditions and after having paid bail, the persons absconded. In one case, that did not happen, in some cases the person sought could be re-arrested and in some other cases, the person sought was arrested in another state, where extradition proceedings re-started. Belgium has had (less) similar experiences as the requesting state as well.

<sup>3</sup> In this case, the fugitive's name can be put on the Stop List by Interpol, he may be requested to hand over his passports and identification documents, to deposit a sum of money, a bank guarantee or other security and to appear at a police station at prescribed times.

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | - a restriction involving a ban on travel abroad.<br>Individual measures may be combined in a single case. However, these measures cannot be used in cases of extradition custody pursuant Article 101(3) of the Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters.(see legislation in the reply )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Finland</b>             | Custody is the rule. There is only one alternative measure, the order not to leave the jurisdiction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Germany</b>             | Provisional extradition detention when the conditions are fulfilled or extradition detention. But there is a non-exhaustive list of alternative measures that can be taken. In particular:<br>1. an instruction to report at certain times to the judge, the criminal prosecuting authority, or to a specific office to be designated by them;<br>2. an instruction not to leave his place of residence, or wherever he happens to be, or a certain area without the permission of the judge or the criminal prosecuting authority;<br>3. an instruction not to leave his private premises except under the supervision of a designated person;<br>4. the furnishing of adequate security by the accused of another person <sup>4</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Greece</b>              | Greek legal framework (art. 449-452 of the Code of Criminal Procedure) allows replacing detention (imposed to persons pending extradition) with other alternative measures. In fact, the competent judicial body is authorized to examine whether detention is the only necessary and appropriate measure to ensure that the demanded person shall be made available to be extradited when relevant proceedings will have been finalized. Therefore, if detention is not considered as the only necessary and appropriate measure, alternative measures could be imposed: pecuniary bail, obligation to reside to a specific domicile/address/distinct, obligation not to abandon his/her place of residence without prior notification, obligation of appearance before a specific judicial body or a police station for a number of times per month, prohibition of exiting the country, monitoring by use of electronic strap etc. Other measures from the ones mentioned above could also be imposed. More alternative measures could jointly be imposed unlimitedly. In practise, regarding the majority of the cases, alternative measures are not judged sufficient; therefore detention remains, basically, the rule. |
| <b>Ireland</b>             | Custody is the rule. There is only one alternative measure, the release on bail.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Italy</b>               | Any preventive measure is applicable in extradition cases ( i.e. detention, house arrest, electronic bracelet, order to present oneself to a police station, order not to leave the State).Detention is considered the extrema ratio measure. <sup>5</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Republic of Moldova</b> | Custody, provisional detention, but also alternative measures are possible <sup>6</sup> . In particular:<br>1. an interdiction from leaving the locality;<br>2. an interdiction from leaving the country;<br>3. a personal guarantee <sup>7</sup> ;<br>4. the guarantee of an organization;<br>5. provisional release under judicial control;<br>6. provisional release on bail <sup>8</sup> .<br>It is not possible to apply them jointly.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Netherlands</b>         | According to the Dutch law on extradition, the application of detention is permitted only in case the court establishes a risk for the wanted person to flee from extradition proceedings. In practice, this test entails that persons without a registered address in the Netherlands are always placed in detention, assuming that there are no eminent grounds for refusal of the extradition. Persons with an address in the Netherlands will generally not be put in detention, or can be suspended from detention by judicial authorities.<br>As an alternative to detention the court can suspend detention under certain conditions aimed at preventing the risk of escape. These conditions can include; handing over of the passport to the public prosecutor, periodic reporting to the local police station, and payment of bail. In practice, for the Netherlands, the suspension of detention is applied in most cases, as an alternative to extradition. The relevant provision in the Dutch Extradition Act is article 56:                                                                                                                                                                                    |
| <b>Poland</b>              | Custody is the rule but if there is no risk of evasion alternative measures such as bail or police surveillance or, depending on the situation, a combination of these can be imposed instead.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

<sup>4</sup> Other, less intrusive, measures that can be taken are the blocking of a bank account, the delivery of the driving license, the identity card or passport. The combination of two or more different measures is permitted.

<sup>5</sup> However, detention is usually applied. According to Italian Court of Cassation, a satisfactory motivation is needed so as to justify why detention is the only possible measure (for example the danger that the person may flee, taking into consideration the heavy sentence and other elements).

<sup>6</sup> They are applicable when there is a reasonable suspicion about the commission of a crime for which the law provides more than 2 years for the deprivation of liberty.

<sup>7</sup> In the case of a personal guarantee, the number of guarantees should be between 2 and 5.

<sup>8</sup> When the provisional release under judicial control or on bail is applied, some obligations shall be imposed.

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Portugal</b>        | Any preventive measure is applicable on extradition cases; detention, bail, electronic bracelet, order to present oneself to a police, order not to leave the State.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Romania</b>         | According to the Romanian legislation, the extraditable person can be subject to different preventive measures - <i>garde a vue</i> for 24 hours (order by the prosecutor), arrest, home arrest (disposed by the judge) which cannot exceed 180 days, judicial control and bail. Home arrest, judicial control and bail are to be applied only in individual well-justified cases and only if the judge appreciates that the extraditable person will not try to abscond from the extradition proceedings.<br>The law does not define the notion of well-justified cases but gives the judge a wide margin of appreciation limited however by the second condition (of being assured that person will not flee)                                                                                                                                                                                                                                                                                                                                           |
| <b>Slovak Republic</b> | Two types of custody in extradition procedures:<br>1.preliminary custody (within 48h after the submission of the detained person)<br>2.extradition custody<br>Both of them, once they are imposed, they cannot be replaced. Replacement is possible only in extradition according to European arrest warrant.<br>There is also the possibility of detention when the extradition will be requested by foreign authorities or when the foreign authorities search the person for the purposes of extradition.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Slovenia</b>        | Detention, but only when it is absolutely necessary. Alternative measures may also be imposed (i.e. bail, house arrest, reporting to the police station, interdiction to leave the residence).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Sweden</b>          | Generally, a person arrested because of a red notice or an extradition request is detained in Sweden during the extradition proceedings. In exceptional cases detention can be replaced by other measures: According to chapter 25, section 1 of the Code of Criminal Procedure of Sweden, if a person is reasonably suspected of an offence that can lead to imprisonment, and if, in view of the nature of the offence, the circumstances of the suspect or some other fact, there is a risk that they will flee or evade legal proceedings or a penalty in some other way but there is no other reason to arrest or detain the suspect, they may, if it is sufficient, instead be<br>1) Issued with a ban on leaving a designated place of stay without permission (travel ban) or<br>2) Ordered to report to the Swedish Police Authority at a certain place and at certain times (reporting obligation)<br>According to chapter 25, section 2 of the Code of Criminal Procedure of Sweden, a travel ban may be combined with a reporting obligation. |
| <b>Switzerland</b>     | Detention is the rule, but there is also a non-exhaustive list of alternative measures. In particular:<br>a. the payment of money bail;<br>b. the surrendering of a passport or identity papers;<br>c. the requirement to stay or not to stay in a specific place or in a specific house;<br>d. the requirement to report to a public office at regularly intervals;<br>e. the requirement to do a regular job;<br>f. the requirement to undergo medical treatment or a medical examination;<br>g. the prohibition of making contact with specific persons.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Turkey</b>          | Under our legal system, alternative practices of detention are prohibition to travel outside of the country, to leave a certain region, obligation to regularly apply to places within prescribed periods that will be specified by the judge (such as the obligation to go to the police or gendarmerie stations each day, once or twice a week and give signature), bailing, prohibition to leave the residence and electronic bracelet. Still, considering the offence which is subjected to the extradition, the person who is requested to be extradited is kept under detention until the end of the process in the overwhelming majority of extradition cases.                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>United Kingdom</b>  | Detention, but it is at the discretionary power of the courts to decide if the conditions allow the extradition bail. <sup>9</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Canada</b>          | The provisions concerning provisional detention and liberty pending criminal proceedings in Canada apply to the Canadian extradition procedure ( Articles 515 etc. of the Criminal Code). In general it is the role of the prosecutor in charge of the procedure to demonstrate, by the evidence available, that detention of the person sought, or any other restrictive measure, is justified. Detention or conditions for release aim to ensure the presence of the person during proceedings, the protection of the society and the public confidence in the justice system. The conditions imposed by the court may vary and can be multiple including home arrest, curfew, electronic bracelet , withdrawal of passport , obligation to report , bail etc.. Whether the person is detained or conditionally released following provisional arrest in view of                                                                                                                                                                                        |

<sup>9</sup> The conditions set will be such to reflect the court's view on the necessity of ensuring that the person surrenders to custody, does not commit an offence while on bail, does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person, and make himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              | extradition, the requesting state should in all cases submit the official request for extradition within the delay foreseen, which is normally 60 days. The decision of detention or conditional release can be appealed.                                                                                                                                                                                                                                                                                                                        |
| <b>Korea</b> | According to the Extradition Act and Criminal Procedure Act of Republic of Korea, If the offender is in custody on a provisional arrest warrant, the court shall decide upon the extradition review within two months of the day when the offender was put into custody. [Extradition Act Article 14(2)]The court's decision cannot be appealed.<br>The detained criminal suspect can be released under the condition of payment of bail money. Thus, bail can be the alternative to detention pending extradition.(See reply for the procedure) |

- **Question on the maximum duration foreseen (if any) in the national legislations for the detention/application of measures of restrictions pending extradition**

| <b>States</b>              | <b>Maximum duration of detention/application of measures of restriction in extradition cases</b>                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Austria</b>             | Detention of up to a maximum of 6 months, until the decision of the Minister of Justice to grant extradition. Possibility to be extended to 1 year, if the offense is punishable under Austrian law by deprivation of liberty for more than 3 years.                                                                                                                                                                                                                                                                         |
| <b>Armenia</b>             | Armenian legislation only provides for detention period pending the extradition which is 8 months.                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Germany</b>             | In case of provisional extradition detention, the duration is 2 months. If a non-European State has requested the provisional extradition detention, the duration is 3 months.                                                                                                                                                                                                                                                                                                                                               |
| <b>Italy</b>               | Detention of up to 12 months before the decision of the competent court (court of appeal). Possibility to extend it for other 6 months in case of appeal at the court of cassation. Thus, the maximum duration of detention is 18 months.                                                                                                                                                                                                                                                                                    |
| <b>Republic of Moldova</b> | Provisional detention of up to a maximum of 6 months, until the transfer to the requesting party. In case of interdiction from leaving a locality or the country, the duration cannot exceed 30 days. There is the possibility to extend it for 30 more days, but only if there is a justification and order from the prosecutor.                                                                                                                                                                                            |
| <b>Netherlands</b>         | Detention in relation to extradition proceedings is in general open ended, there is no maximum duration specified. Prolongation of the detention is subject to judicial approval every 30 days whereby the risk of flight is reassessed. In practice, the court looks at ECHR case law on detention to determine whether prolongation of detention would be contrary to obligations imposed on the Netherlands under the ECHR. This situation could arise when proceedings are delayed without sufficient reason.            |
| <b>Poland</b>              | The Polish Code of criminal procedure foresees the possibility to apply provisional detention in view of extradition for a maximum duration of 40 days.                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Romania</b>             | According to the Romanian legislation, the extraditable person can be subject to different preventive measures - <i>garde a vue</i> for 24 hours (order by the prosecutor), arrest, home arrest (disposed by the judge) which cannot exceed 180 days, judicial control and bail.                                                                                                                                                                                                                                             |
| <b>Slovak Republic</b>     | Preliminary custody may not last more than 40 days from the apprehension.<br>Extradition custody is up to a maximum of 60 days after the decision of the Minister of Justice on the permission of the extradition to a foreign State.                                                                                                                                                                                                                                                                                        |
| <b>Slovenia</b>            | Detention may last until the extradition to a foreign country or the decision of the Minister of Justice refusing the extradition, but it cannot exceed 30 months. In case of extradition for the purposes of executing criminal sentence, the detention shall be lifted immediately when its length meets or exceeds the imposed criminal sanction of a foreign country or the maximum prescribed sentence that the law of the requesting state prescribes for the criminal offence for which the extradition is requested. |
| <b>Switzerland</b>         | No restriction as regards the duration of a measure imposed instead of detention pending extradition.                                                                                                                                                                                                                                                                                                                                                                                                                        |

### **RÉPONSE DE L'ANDORRE**

Pour ce qui concerne la Principauté d'Andorre, bien que notre Code de Procédure Pénale prévoit effectivement la possibilité d'adopter des mesures préventives telles que la caution ou bien le bracelet électronique, la réalité est que dans les cas de demandes d'extradition, normalement est toujours accordée la prison provisoire aux fins de garantir le correct aboutissement de la procédure d'extradition et donc la remise de la personne objet de la demande d'extradition.



**REPLY FROM ARMENIA**

Concerning to question from Mr. Zimin, I have to inform, that Armenian legislation doesn't provide for any provision regulating application of measures of restriction not involving custody to persons pending the decision of their extradition. Armenian legislation only provides for detention period pending the extradition which is 8 months.

### REPLY FROM AUSTRIA

According to Austrian law pre-trial detention may not be imposed or continued especially if its purpose can be achieved by alternative means. The rules on pre-trial detention apply *mutatis mutandis* in extradition proceedings. When deciding on the risk of absconding the court has to consider the (expected) sentence and all circumstances of the stay of the person sought in Austria (existing social, professional, family ties, etc).

Applicable alternative means according to Section 173 para 5 of the Code of Penal Procedure are in particular

1. the formal pledge not to flee or to hide until the final sentence nor to change the place of domicile without consent of the public prosecutor;
2. the formal pledge not to attempt to hinder the investigation;
3. ....;
4. the order to take domicile in a specific location or with a specific family, to avoid a specific domicile, a specific location or a specific company, to refrain from alcohol or other intoxicating substances or to pursue a regular occupation;
5. the order to notify every change of domicile or to report regularly to the police or another institution;
6. the preliminary confiscation of identity documents, driving documents or other documents;
7. ....;
8. the deposition of bail.

Maximum duration of the detention /application of measures of restriction pending extradition

The domestic law provides for a maximum duration of 6 months for the detention pending extradition until the decision of the Minister of Justice to grant extradition. In complex cases the time-limit may be extended to 1 year, if extradition is sought for an offence punishable under Austrian law by deprivation of liberty for more than 3 years. Strict time-limits do not apply for measures of restriction. Measures of restriction have to be lifted as soon as the necessary preconditions do not exist anymore.

## REPLY FROM BELGIUM

Belgium considers detention for the purpose of extradition as a *sui generis* type of detention. Article 5.1(f) ECHR applies to the fullest extent. Given the very limited regulation of the extradition procedure and thus the detention for the sole purpose of extradition, some procedural aspects of the Remand (provisional arrest – in accordance with art. 5.1(c) ECHR) are applied *per analogiam*. These aspects deal with the competence of the investigating chambers of both the first instance court and the court of appeal, the possibilities to appeal – up to the Supreme court - and the applicable delays.

The sole relevant criteria for provisional arrest and the subsequent detention is the risk of flight. At the later, second and following stages of the extradition proceedings, other criteria drawn from the relevant case law of the ECtHR and art. 5, esp. art. 5.4 ECHR, apply accordingly.

Given the restrictive nature of the application of art. 8 ECHR to extradition and expulsion matters, family life coupled with legal residence etc. play a marginal role to consider provisional release – under bail and conditions.

Until the past 5 to 10 years, conditions and / or bail were rarely applied. Still today, the application of release under bail and or conditions is rather exceptional. The reason is that (a) extradition detention is the rule, release the exception – see *Sanchez Reisse v. Switzerland* and (b) in case where the person sought was indeed released, even with conditions and after having paid bail, the persons absconded. In one case, that did not happen, in some cases the person sought could be re-arrested and in some other cases, the person sought was arrested in another state, where extradition proceedings re-started. Belgium has had (less) similar experiences as the requesting state as well.

Prospective changes in the law, or rather the creation of a completely new Extradition Act encompass a proper regulation of the extradition procedure, including the detention. Under the new system, provisional release – as the exception to the rule – will be mandatory of a conditional kind and – sufficient – bail will be required.

### **REPLY FROM CYPRUS**

Under Cyprus law, after the arrest of a fugitive, during the court hearing and pending the court decision on an extradition application, the court has the power either to order the fugitive's detention or release him on bail. Bail always includes ordering that his name be put on the Stop List by Interpol, to prevent his escape from the country and handing over his passports and all Identification documents to the Police or the Registrar of the court. Other terms of bail may be depositing a sum of money, a bank guarantee or other Security to the Registrar and appearing at a police station at prescribed times every day or week.

After a court decision to extradite, under Cypriot law, the fugitive must be kept in custody until surrender is effected. In case the court refuses extradition, we have recently amended our law to enable the court to impose bail terms, instead of releasing the fugitive unconditionally, so that he does not flee the country while we appeal the decision.

## REPLY FROM CZECH REPUBLIC

In the Czech Republic there are several alternatives to preliminary custody applicable in appropriate cases and if the conditions set by law are met (Article 94(2) of the Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters). Thus, preliminary custody may be replaced by:

- a guarantee provided by public interest group, or a trustworthy person, for the future behavior of the person to be extradited (the judge must deem the guarantee to be sufficient and acceptable) - Article 73(1)(a) of the Act no. 141/1961 Coll., Criminal Procedure Code;
- a written pledge given by the person to be extradited to lead an orderly life, not commit any crime and comply with duties and restrictions imposed on him (the judge must deem the pledge to be sufficient and acceptable) - Article 73(1)(b) of the Act no. 141/1961 Coll., Criminal Procedure Code;
- supervision by a probation officer - Article 73(1)(c) of the Act no. 141/1961 Coll., Criminal Procedure Code;
- a financial guarantee (bail)- Article 73a of the Act no. 141/1961 Coll., Criminal Procedure Code;
- a restriction involving a ban on travel abroad- Article 77a of the Act no. 141/1961 Coll., Criminal Procedure Code.

Individual measures may be combined in a single case. However, these measures cannot be used in cases of extradition custody pursuant Article 101(3) of the Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters.

**The Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, sets out provisions on preliminary and extradition custody as follows:**

### 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.*

## SECTION 101

### Extradition Custody and Execution of Extradition

(1) *After the Minister of Justice decides to authorize extradition and in case of simplified extradition upon a petition of the public prosecutor will the presiding judge decide on taking the person into extradition custody or on conversion of preliminary custody into extradition custody, unless he decided on suspension of the extradition. Provision of Section 67 and 68 of the Code of Criminal Procedure will not apply. If the presence of the person concerned by the extradition in the course of deciding on the extradition custody cannot be secured otherwise and if it is not a case of simplified extradition, it will be proceeded pursuant to Section 69 of the Code of Criminal Procedure accordingly; in this case Section 79 (1) and Section 193 (1) will not apply. The presiding judge will immediately inform the Ministry about his decision.*

(2) *Procedure under Sub-section (1) will apply even if the person is placed in custody, serving an unsuspended sentence of imprisonment or protective measure associated with incarceration. In this case the person will be released from custody by the presiding judge of the court conducting the proceedings, in pre-trial proceedings the public prosecutor exercising supervision over maintaining of legality and from execution of an unsuspended sentence of imprisonment or protective measure associated with incarceration the presiding judge of the court, that decided the case, in which was such a sentence or protective measure imposed, in the first instance.*

(3) *Section 71(1) sentence two and three, Sub-section (2) (b), Section 72 to 74a of the Code of Criminal Procedure will not apply in further proceeding concerning the extradition custody Other provisions of Chapter four, Sub-division one of the Code of Criminal Procedure will apply accordingly. Petition of the person concerned by the extradition for release from extradition custody will be decided by the court. A complaint of the public prosecutor is admissible against the decision on the release from extradition custody, which has a dilatory effect. A complaint is admissible against the decision on dismissing the petition for a release from extradition custody.*

(4) *After the notification by court according to Sub-section (1) the Ministry will negotiate the date of extradition of the person with the competent authorities of the foreign state. Extradition of the person to the competent authorities of the foreign state and related release of the person from extradition custody will be secured by the presiding judge.*

(5) *Extradition custody may not last longer than 3 months. The person concerned by the extradition must be released from extradition custody on the last day of this time period at the latest. In case the extradition could not be realized due to unforeseeable circumstances, the presiding judge may decide, upon a petition of the Ministry, to extend the time limit before its expiration by up to 3 months. The total duration of extradition custody may not exceed 6 months; this does not preclude imposing extradition custody on the basis of a new request of the foreign state for extradition of the person for the same act.*

(6) *Into the longest permissible duration of extradition custody will not be counted the time*  
a) *the person concerned by the extradition was considered to be an applicant for granting international protection,*  
b) *for which the enforceability of the decision on authorization of extradition was suspended by the Constitutional Court,*  
c) *that passed from serving a request of the European Court for Human Rights to the Ministry for not executing the extradition before the European Court for Human Rights decides on the complaint of the person concerned by the extradition, until the time such a decision is made.*

*(7) The presiding judge will immediately release the person from extradition custody and terminate the proceedings, if a reason for termination of preliminary investigation referred to in Section 92 (7) (c), (e), (f) or (g) arises or if a reason for termination of preliminary investigation referred to Section 92 (7) (d) is ascertained. The presiding judge will proceed accordingly, if the Minister of Justice repealed his decision on authorization of extradition with regard to change of circumstances and did not authorize the extradition. The presiding judge will terminate the extradition proceedings also in case a reason for termination of preliminary investigation referred to in Section 92 (7) (f) arises.*

**The Act no. 141/1961 Coll., Criminal Procedure Code, sets out provisions on alternatives to custody as follows:**

### **Section 73**

#### *Substitution of Custody by Supervision, Preliminary Measure or Assurance*

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

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

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

*(3) The accused person, over whom was ordered supervision of a probation officer substituting custody, is obliged to meet the probation officer in stated terms, to change his place of residence only with a consent of the probation officer and to submit to further restrictions stated in the verdict of the decision that are aimed at preventing the person from further criminal activity and thwarting the course of the criminal proceedings. The authority deciding on custody may at the same time impose an obligation to the accused person to stay in the designated residence or a part thereof in the stated time, unless important reasons prevent it, in particular performing an occupation or provision of medical services at a medical services provider as a result of illness or injury of the accused person; determination of the time period will be governed by Section 60 (4) of the Code of Criminal Procedure. The accused person will be obliged to allow the probation officer to enter the designated residence or a part thereof.*

*(4) In connection to substitution of custody by some of measures referred to in sub-section (1) the authority deciding on custody may also decide on electronic control of compliance with the obligations imposed in relation to this measure by the means of an electronic control system enabling to monitor movement of the accused person, if the accused person undertakes to provide his full cooperation*

*during the performance of electronic control. Before that the authority deciding on custody will advise the accused person of the course of performance of electronic control.*

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

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

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

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

### **Section 73a**

#### *Financial Guarantee*

*(1) If there is a reason for custody referred to in Section 67 a) or c), the authority deciding on custody may let the accused person at liberty or set him free from custody also if this authority accepts a financial guarantee in an amount it has determined. However, if the accused person is prosecuted for a criminal offence of murder (Section 140 of the Criminal Code), grievous bodily harm (Section 145 of the Criminal Code), torture and other inhumane treatment according to Section 149 (3), (4) of the Criminal Code, trafficking in human beings (Section 168 of the Criminal Code), robbery according to Section 173 (4) of the Criminal Code, hostage taking according to Section 174 (3), (4) of the Criminal Code, rape according to Section 185 (3), (4) of the Criminal Code, sexual abuse according to Section 187 (3), (4) of the Criminal Code, general threat according to Section 272 (2), (3) of the Criminal Code, development, manufacture and possession of forbidden means of combat (Section 280 of the Criminal Code), unauthorized manufacture and other disposal with narcotic and psychotropic substances and poisons according to Section 283 (3), (4) of the Criminal Code, unlawful seizure of an aircraft, civil vessel and fixed platform (Section 290 of the Criminal Code), forcing an aircraft to abroad according to Section 292 (2), (3) of the Criminal Code, treason (Section 309 of the Criminal Code), subversion of republic (Section 310 of the Criminal Code), terrorist attack (Section 311 of the Criminal Code), terror (Section 312 of the Criminal Code), sabotage (Section 314 of the Criminal Code), espionage (Section 316 of the Criminal Code), cooperation with enemy (Section 319 of the Criminal Code), war treason (Section 320 of the Criminal Code), genocide (Section 400 of the Criminal Code), attack against humanity (Section 401 of the Criminal Code), apartheid and discrimination of group of*



people (Section 402 of the Criminal Code), aggression (Section 405a of the Criminal Code), preparation of offensive war (Section 406 of the Criminal Code), connections imperilling peace (Section 409 of the Criminal Code), use of forbidden means of combat and forbidden wage of combat (Section 411 of the Criminal Code), war cruelty (Section 412 of the Criminal Code), persecution of inhabitants (Section 413 of the Criminal Code), pillage in zones of military operations (Section 414 of the Criminal Code), abuse of internationally recognised State symbols (Section 415 of the Criminal Code), or abuse of flag and truce (Section 416 of the Criminal Code), and if there is a reason for custody referred to in Section 67 c), the financial guarantee may not be accepted. With consent of the accused person may the financial guarantee be deposited also by another person; however, prior to accepting the guarantee this person must be acquainted with the merits of the indictment and with matters that are found to constitute the reasons for custody.

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

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

(3) If the authority referred to in sub-section (1) decides that accepting the financial guarantee is admissible, it may also decide to impose a restriction consisting in prohibition of travelling abroad. Section 73 (5) to (7) will apply *mutatis mutandis* to cases according to the first sentence.

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

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

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

(6) Unless the court decides otherwise, the financial guarantee of the accused person, who was condemned to an unconditioned sentence of imprisonment or to a financial penalty, remains in effect to the day the accused person begins to serve the sentence of imprisonment, pays the financial penalty and the costs of proceedings; this is without prejudice to sub-section (7). If the accused person fails to pay the financial penalty or costs of proceedings in the determined time limit, remuneration thereof will be deducted from the amount of the financial guarantee.

*(7) In case a convicting judgment imposed an obligation to the accused person to compensate in monetary terms material damage or non-material harm incurred to the aggrieved person and the aggrieved person requests it within the set time limit, the financial guarantee will be used to cover the claim of the aggrieved person, after the convicted person fulfilled his obligations referred to in sub-section (6). In case the financial guarantee is not sufficient to cover all claims of all aggrieved persons, the claims will be covered proportionally.*

*(8) As soon as it is possible to use the financial guarantee to cover the claim of the aggrieved person according to sub-section (7), the court will notify the aggrieved person thereof. Unless the aggrieved person requests to use the financial guarantee to cover his claim within 3 months following this notification, the financial guarantee will be returned to the convicted person or the person who deposited the financial guarantee. The aggrieved person must be advised thereof.*

*(9) Reasons for forfeiture of the financial guarantee by the State, for using it for covering a financial penalty or costs of criminal proceedings, or for covering the claim of the aggrieved person, will be notified in advance to the accused person and the person who deposited the financial guarantee.*

### **Section 77a**

#### *Prohibition of Travel Abroad*

*(1) If there is a criminal prosecution for an intentional criminal offence for which the law prescribes a sentence of imprisonment, upper limit of which exceeds two years, or for a criminal offence committed out of negligence for which the law prescribes a sentence of imprisonment, upper limit of which exceeds three years, the court and in pre-trial proceedings the judge upon a motion of the public prosecutor may impose restrictions involving the prohibition of travel abroad, if it is necessary for reaching the purpose of criminal proceedings. A complaint is admissible against this decision.*

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

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

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

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

*(6) For important reasons the presiding judge and in pre-trial proceedings the public prosecutor authorize a travel abroad for a specifically determined time period, in particular for the purpose of a business trip.*

**REPLY FROM ESTONIA**

According to the Code of Criminal Procedure of the Republic of Estonia no alternatives to the detention allowed in the extradition proceedings.

**REPLY FROM FINLAND**

In the overwhelming majority of extradition cases the wanted person is taken into custody pending the proceedings. On those rare occasions when a court deems the flight risk as very low, (s)he may be allowed to stay in liberty under orders not to leave the jurisdiction.

Finland's response to Mr Zimin's question is that we have only one alternative to custody, the travel ban. In case of low risk of the person's absconding, he/she may be allowed to wait out the extradition proceedings in liberty under orders not to leave the jurisdiction.

### REPLY FROM GERMANY

In Germany, the Higher Regional Court (Oberlandesgericht) which has jurisdiction in extradition affairs, may suspend the execution of an extradition arrest warrant if less intrusive measure will ensure that the purpose of the provisional extradition detention or of the extradition detention is served (Sect. 25 para 1 of the Act on international cooperation in criminal matters-AICCM). The AICCM doesn't list itself the measures, but refers in Sect. 25 para 2 to Sect. 116 para 1 2. sentence of the Code of Criminal Procedure. There the following measures are listed:

- an instruction to report at certain times to the judge, the criminal prosecuting authority, or to a specific office to be designated by them;
- an instruction not to leave his place of residence, or wherever he happens to be, or a certain area without the permission of the judge or the criminal prosecuting authority;
- an instruction not to leave his private premises except under the supervision of a designated person;
- the furnishing of adequate security by the accused of another person.

This list of measures is not exclusive. The judge can order every measure that is suitable to serve as substitute to the execution of the arrest warrant. Other examples are the blocking of a bank account of the suspect, the delivery of the driving license, the identity card or the passport. The combination of two or more different measures is permitted. Often only the combination of measures allows the suspension of the execution of the arrest warrant. It's up to the judge to decide which measures are suitable.

The relevant legal provisions of the German law are:

Sect. 25 of the Act on international cooperation in criminal matters: Stay of execution of extradition arrest warrant

(1) The Oberlandesgericht may stay the execution of the extradition arrest warrant if less intrusive measures will ensure that the purpose of the provisional extradition detention or of the extradition detention is served.

(2) S. 116 (1) 2. Sentence, (4), ss. 116a, 123 and 124 (1), (2) 1. Sentence, (3) of the Strafprozessordnung as well as s. 72 (1), (4) 1. Sentence of the Jugendgerichtsgesetz shall apply mutatis mutandis.

Sect. 116 of the Code of criminal procedure

(1) ...

2. sentence: The following measures, in particular, may be considered:

Nr. 1: an instruction to report at certain times to the judge, the criminal prosecuting authority, or to a specific office to be designated by them;

Nr. 2: an instruction not to leave his place of residence, or wherever he happens to be, or a certain area without the permission of the judge or the criminal prosecuting authority;

Nr. 3: an instruction not to leave his private premises except under the supervision of a designated person;

Nr. 4: the furnishing of adequate security by the accused of another person.

According to sec. 25 para 1 German Law on International Cooperation in Criminal Matters the Oberlandesgericht (Higher Regional Court; competent for the decision on the admissibility of an extradition) may stay the execution of the extradition arrest warrant if less intrusive measures will ensure that the purpose of the provisional extradition detention or of the extradition detention is served.

The details are regulated in sec. 116, 116a German Code on Criminal Procedure:

#### Section 116

(1) (...) The following measures, in particular, may be considered:

1. an instruction to report at certain times to the judge, the criminal prosecuting authority, or to a specific office to be designated by them; 2. an instruction not to leave his place of residence, or wherever he happens to be, or a certain area, without the permission of the judge or the criminal prosecuting authority; 3. an instruction not to leave his private premises except under the supervision of a designated person; 4. the furnishing of adequate security by the accused or another person.

(...)

(4) In the cases referred to in subsections (1) to (3), the judge shall order execution of the warrant of arrest if 1. the accused grossly violates the duties and restrictions imposed upon him; 2. the accused makes preparations for flight, remains absent without sufficient excuse upon proper summons to appear, or shows in any other manner that the trust reposed in him was not justified; or 3. new circumstances have arisen which necessitate the arrest.

#### Section 116a

(1) Bail shall be furnished by depositing cash, shares or bonds, by pledging property, or in the form of a surety by suitable persons. Any diverging provisions in a statutory instrument issued under the Act on Payments to and from Courts and Judicial Authorities shall remain unaffected.

(2) The judge shall determine the amount and type of bail at his discretion.

(3) An accused person who is not resident within the territorial scope of this statute and applies for suspension of execution of the warrant of arrest upon furnishing bail shall authorize a person residing within the district of the competent court to receive service on his behalf.

**REPLY FROM GREECE**

Greek legal framework (art. 449-452 of the Code of Criminal Procedure) allows replacing detention (imposed to persons pending extradition) with other alternative measures. In fact, the competent judicial body is authorized to examine whether detention is the only necessary and appropriate measure to ensure that the demanded person shall be made available to be extradited when relevant proceedings will have been finalized. Therefore, if detention is not considered as the only necessary and appropriate measure, alternative measures could be imposed: pecuniary bail, obligation to reside to a specific domicile/address/distinct, obligation not to abandon his/her place of residence without prior notification, obligation of appearance before a specific judicial body or a police station for a number of times per month, prohibition of exiting the country, monitoring by use of electronic strap etc. Other measures from the ones mentioned above could also be imposed. More alternative measures could jointly be imposed unlimitedly. The main and only criterion is always the necessity and appropriateness of the detention or the alternative measures to guarantee that the wanted person will be and constantly remain available, at any time, for the judicial and law enforcement authorities. In practise, regarding the majority of the cases, alternative measures are not judged sufficient; therefore detention remains, basically, the rule.



**REPLY FROM IRELAND**

In Ireland, the only non-custodial option available to the Court is to remand an extradition subject on bail pending a decision on his/her case.

## REPLY FROM ITALY

To the best of my recollection the point was discussed at a certain point of time in the PC-OC (but I do not remember when). However, the following would be the answer from Italy. In principle any type of pretrial/preventive measure may be adopted in extradition cases just as in ordinary national cases, i.e. prison, house arrest, electronic bracelet, order to present oneself to a police station (daily, once a week, twice a week etc.), order not to leave the State. As to national cases detention is to be the extrema ratio measure.

But in extradition cases the problem is that the requested State has to ensure the surrender of the person requested. Hence, usually the person sought is placed into detention. However our court of cassation stated that there should be a satisfactory motivation on the reason why the court deems that the only measure possible is detention. Usually the court of appeal (which is competent for extradition procedures) would motivate that there is a danger that the person sought may flee from the country and therefore impede the possibility for the requested State to comply with the request for co-operation. Of course the Italian courts would not require that the person is on the way to leave the country (e.g. because was found with a return ticket with him) but they would however require some element such as, for instance, the heavy sentence, in case of extradition for execution purposes.

To a certain extent the requesting State might argue that surrender became impossible due to the fact the person sought and arrested was then given the electronic bracelet and could therefore emphasize that the requested State did not properly comply with the request, which aims at the surrender of the person.

It might be interesting to look at the question from the other side, i.e. when a request for extradition is based on an order which is not an arrest warrant but a house arrest order. In such a case I remember that the point was made years ago and the answer was that the negative reply did not reside on the fact that the convention says "arrest warrant" (also the house arrest is an arrest warrant) but rather on the fact that not all jurisdiction may have house arrest in their legislation, with the consequence that in such a case the person would be in jail in the requested State and he/she would be subjected to a worst condition that he/she would be subjected to in the State requesting extradition. As a matter of fact, for a long time (I do not know what is the situation presently) France used to replay: only requested based on arrest/prison warrant, while Germany was more open and replied that should a request have been made on the basis of an house arrest, they would have adopted the same measure.

Length of detention in view of extradition: according to Italian law the maximum term is the following: 12 months before the decision of the competent court (court of appeal) plus other 6 months in case of appeal lodged before the court of cassation; i.e. for a total of maximum 18 months.

Please, note that, according to ECJ, 28.7.2016, C-294/16, the European Court of Justice stated that the period of "restriction of liberty" suffered under the Europea Arrest Warrant regime is to be deducted from in the issuing Member State and that any restriction is to be counted to that extent, including electronic bracelet. [That of course is only for EU MS, but it is useful to mention]

## REPLY FROM REPUBLIC OF MOLDOVA

According to the Criminal Procedure Code of Republic of Moldova in our country is possible to apply and other measures of restriction not involving custody to persons pending the decision of their extradition. These are:

- 1) an interdiction from leaving the locality;
- 2) an interdiction from leaving the country;
- 3) a personal guarantee;
- 4) the guarantee of an organization;
- 5) provisional release under judicial control;
- 6) provisional release on bail.

Is not possible to apply them jointly.

### Extract from Criminal Procedure Code of Republic of Moldova

#### **Article 547. Arresting a Person in View of Extradition**

(1) Upon receipt of a request for extradition, the General Prosecutor's Office or, as the case may be, the Ministry of Justice will immediately undertake measures under the conditions of this Code for the preventive arrest of the person whose extradition is requested. The term of the person's preventive arrest may not exceed 180 days from the moment of detention until transfer to the requesting party.

(1<sup>1</sup>) The preventive arrest of the extraditable person may be replaced by any other preventive measure upon the request of the prosecutor or by the court ex officio in line with the procedural legislation in force if:

- a) the health of the person confirmed by a medical certificate prevents him/her from detention;
- b) the person and his/her family have their permanent domicile in the Republic of Moldova and there are no grounds to consider that he/she will evade extradition.

(2) In emergencies, the person whose extradition is requested may be arrested prior to receipt of the request for extradition based on an arrest warrant issued for a term of 18 days which may be extended for up to 40 days based on a motion of the General Prosecutor's Office or upon the request of a foreign state or international court, provided that the request contains data on the arrest warrant or on the final judgment issued with regard to this person and the assurance that the request for extradition will be subsequently sent. The request shall refer to the crime for which extradition will be requested, the date and place where it was committed and, to the extent possible, the distinctive features of the person sought. The request for arrest may be addressed by mail, telegraph, telex, fax, or any other means of conveying written messages. The requesting authority shall be informed as soon as possible about the results of the examination of its request.

(3) The person arrested under the conditions in para. (2) shall be released if within 18 days from arrest the court deciding on the admissibility of the person's arrest does not receive the request for extradition and the respective documents. This term may be extended upon the request of the foreign state or international court; however, it shall not exceed 40 days from arrest. Provisional release is possible any time, provided that other measures aimed at avoiding the person's whose extradition is requested from evading prosecution may be applied to him/her.

(4) The arrest of the person in view of extradition, the extension of the arrest term and the appeal against the respective judgments shall be performed in line with this Code.

(5) The decision on the admissibility of extradition shall be reasoned and include explanations of the manner and timeframe for appealing it. The Prosecutor General, the person whose extradition is requested and his/her defense counsel shall be sent a copy of the respective decision.

(6) The release of the person arrested under the conditions of this article shall not prevent a new arrest and extradition if the request for extradition is subsequently received.

#### **Article 176. Grounds for Preventive Measures**

(1) Preventive measures may be applied by the prosecutor ex officio or upon the proposal of the criminal investigative body or, as the case may be, by the court only when there are sufficient, reasonable grounds to assume that the suspect/accused/defendant could evade the criminal investigative body or the court, could impede finding the truth in a criminal proceeding or could

commit other crimes. Such measures may be also applied by the court to secure the enforcement of a sentence.

(2) Preventive arrest and the preventive measures that are alternatives to arrest shall be applied if there is a reasonable suspicion about the commission of a crime for which the law provides for the deprivation of liberty for more than two years. If there is a reasonable suspicion about the commission of a crime for which the law provides for the deprivation of liberty for fewer than two years, these preventive measures shall be applied if the accused/defendant committed at least one of the actions mentioned in para. (1).

(3) The criminal investigative body and the court shall consider the following complementary criteria when settling the issue on the need for a respective preventive measure:

- 1) the nature and prejudicial degree of the incriminating act;
- 2) the personality of the suspect/accused/defendant;
- 3) his/her age and health;
- 4) his/her occupation;
- 5) the family's status and persons supported;
- 6) his/her material condition;
- 7) the availability of a permanent domicile;
- 8) other essential circumstances.

(4) Should there be no grounds to apply a preventive measure to a suspect/accused/defendant, he/she shall submit a written obligation to appear when summoned by a criminal investigative body or the court and to inform them about any change in domicile.

#### **Article 177. The Act Imposing a Preventive Measure**

(1) The prosecutor managing or conducting the criminal investigation shall issue ex officio or at the request of the criminal investigative body a reasoned order for applying a preventive measure and the court shall issue a reasoned ruling referring to the crime the person is suspected or accused of and the grounds for the respective preventive measure indicating the specific data that substantiate this preventive measure. The order of the prosecutor or the ruling of the court shall refer to the fact that the accused/defendant was told about the consequences of violating the preventive measure applied.

(2) Preventive arrest, house arrest, the provisional release of a person on bail and the provisional release of a person under judicial control shall be applied only in line with a court judgment based on a motion of the prosecutor and ex officio and issued while hearing the respective case. House arrest, provisional release on bail and provisional release under judicial control shall be applied by the court as alternatives to preventive arrest based on a request of the criminal investigative body or of the defense.

(3) A copy of the order or the ruling on preventive measures shall be immediately handed over to the person to whom such measures are applied and shall explain the manner and the terms to appeal against such judgments set forth in art. 196.

#### **Article 178. Interdiction from Leaving a Locality or Interdiction from Leaving the Country**

(1) An interdiction from leaving a locality is an obligation imposed in writing on a suspect/accused/defendant by the prosecutor or the court to be at the disposal of a criminal investigative body or the court and not to leave the locality where he/she permanently or temporarily lives without the consent of the prosecutor or the court, not to hide from the prosecutor or the court, not to impede a criminal investigation and a case hearing, to appear when summoned by the criminal investigative body and the court and to inform them about any change of domicile.

(2) An interdiction from leaving the country is an obligation imposed on a suspect/accused/defendant by the prosecutor or the court not to leave the country without the consent of the body that ordered the application of this measure and other obligations set forth in para. (1).

(3) The duration of the preventive measures set forth in paras. (1) and (2) may not exceed 30 days and may be extended only with justification. An extension shall be ordered by the prosecutor and every extension may not exceed 30 days.

(4) A copy of the final judgment of the prosecutor or the court issued in line with this article shall be sent to the police in the territorial jurisdiction in which the accused/defendant lives, or as the case may be, to the border authorities to execute and to provisionally revoke the passport of the accused/defendant in the case set forth in para. (2).

#### **Article 179. Personal Guarantee**

(1) A personal guarantee is a written commitment undertaken by trustworthy persons that they by virtue of their authority and the money they have deposited guarantee the behavior of the suspect/

accused/defendant including keeping public order, appearing when summoned by a criminal investigative body or the court and meeting other procedural obligations. The number of guarantees may not be fewer than two or more than five.

(2) A personal guarantee as a preventive measure shall be admitted only upon the written request of the guarantors and with the consent of the person subject to the guarantee.

(3) Upon the written submission of a guarantee, every guarantor shall pay into the deposit account of the prosecutor's office or the court the amount of 50 to 300 conventional units.

(4) The rights and obligations of the guarantor and the manner for providing a guarantee are described in Art. 181.

#### **Article 180. Guarantee by an Organization**

(1) A guarantee by an organization is a written commitment undertaken by a trustworthy legal entity that it by virtue of its authority and the money it has deposited guarantees the behavior of the suspect/accused/defendant including keeping public order, appearing when summoned by a criminal investigative body or the court and meeting other procedural obligations.

(2) By assuming such a guarantee, the legal entity shall pay into the deposit account of the prosecutor's office or the court the amount of 300 to 500 conventional units.

(3) The rights and obligations of the guaranteeing organization and the manner for providing a guarantee are described in art. 181.

#### **Article 181. The Manner for Ordering and Providing a Guarantee by Individuals and Legal Entities**

(1) A personal guarantee and a guarantee by an organization shall be ordered by the prosecutor managing or conducting the criminal investigation or in a ruling issued by the court.

(2) The prosecutor or the court, upon establishing that the guarantor is trustworthy and that the suspect/accused/defendant may avail of a personal guarantee or a guarantee by an organization as set forth in arts. 179 and 180 shall decide on such preventive measures and the guarantor shall be notified of the nature of the case and of his/her obligations. The guarantor shall confirm his/her request or shall withdraw it and a note to that effect shall be included in the transcript.

(3) A guarantor shall have the right to waive a guarantee he/she/it has assumed at anytime during a criminal proceeding. Should the waiver of the guarantee occur as a result of a new charge being pressed, of new circumstances the guarantor was not aware of and could not have been aware of at the moment of the guarantee, of the failure of the guarantor to further secure the behavior of the accused/defendant due to departure to a different locality or to the serious illness of the guarantor, and of the liquidation of the legal entity, departure to a different locality or transfer to another organization of the accused/defendant, the amount deposited to secure the guarantee shall be refunded to the guarantor by the body that ordered the guarantee.

(4) The guarantor may also receive the amount deposited to secure the guarantee if:

1) the prosecutor or the court changes the preventive measure due to reasons unrelated to the behavior of the accused/defendant or revokes the preventive measure;

2) the guaranteeing legal entity loses its legal capacity and cannot secure the guarantee.

(5) The amount deposited by the guarantor to secure the guarantee shall accrue to the state based on a court judgment if the guarantor:

1) does not meet the obligation to ensure the behavior of the suspect/accused/defendant;

2) unjustifiably waives the guarantee he/she/it has assumed.

(6) A judgment issued in the manner set forth in para. (5) by which the amount deposited to secure a guarantee accrues to the state may be subject to cassation by a higher court.

#### **Article 190. Provisional Release of an Arrestee**

A person preventively arrested under the conditions in art. 185 may request during the entire course of a criminal proceeding to be temporarily released under judicial control or on bail.

#### **Article 191. Provisional Release of an Arrestee under Judicial Control**

(1) The provisional release under judicial control of a person under preventive arrest, of a detainee or of a person in whose case an arrest request was filed may be granted by the investigative judge or, as the case may be, the court and shall imply one or several of the obligations set forth in para. (3).

(2) Provisional release under judicial control shall not be granted to a suspect/accused/defendant if he/she has records of pending convictions for serious, especially serious or exceptionally serious

crimes or if there are indications that he/she will commit another crime, will try to influence witnesses, will destroy sources of evidence or will evade justice.

(3) The provisional release under judicial control of an arrestee shall imply one or several obligations as follow:

- 1) not to leave the place of his/her domicile other than under the conditions set by the investigative judge or, as the case may be, by the court;
- 2) to notify the criminal investigative body or, as the case may be, the court about any change of domicile;
- 3) not to appear in specifically determined places;
- 4) to appear whenever summoned by the criminal investigative body or, as the case may be, by the court;
- 5) not to contact specific persons;
- 6) not to commit any actions preventing the finding of the truth in a criminal proceeding;
- 7) not to drive vehicles or not to practice a profession used by him/her in the commission of the crime;
- 8) to leave his/her passport with the investigative judge or the court.

(4) The police in the territorial jurisdiction in which a suspect/accused/defendant temporarily released lives shall exert control over him/her meeting the obligations set by the court.

(5) Judiciary control over a temporarily released person may be canceled, integrally or partially, for justifiable reasons and in the manner set for this measure.

#### **Article 192. Provisional Release of an Arrestee on Bail**

(1) The provisional release on bail of a person under preventive arrest or of a detained person or of a person in whose case an arrest request was filed may be granted if the recovery of the damage caused by the crime is secured and if the bail set by the investigative judge or by the court has been deposited.

(2) A provisional release on bail shall not apply if one of the cases set forth in art. 191 para. (2) occurs.

(3) In the course of his/her provisional release on bail, the person shall be obliged to appear when summoned by the criminal investigative body or by the court and to notify them about any change of domicile. Other obligations set forth in art. 191 para. (3) may be applied to a person provisionally release on bail.

(4) The amount of bail shall be set by the investigative judge or by the court ranging from 300 to 100,000 conventional units depending on the financial condition of the respective person and the seriousness of the crime.

#### **Article 193. Revoking Provisional Release**

(1) Provisional release may be revoked if:

- 1) facts or circumstances are discovered that were unknown at the date the release request was accepted and that impede provisional release;
- 2) the accused/defendant maliciously does not meet the obligations set or commits a new crime with intent.

(2) If provisional release is revoked, the person shall be subject to preventive arrest.

#### **Article 194. Refunding Bail**

(1) Bail shall be refunded if:

- 1) provisional release is revoked on the grounds specified in art. 193 para. (1) point 1);
- 2) the investigative judge or the court state that there is an absence of grounds to justify preventive arrest;
- 3) the criminal proceeding terminates and a discharge or acquittal is ordered;
- 4) the court that tried the case in the first instance sets a punishment in a final judgment.

(2) Bail shall not be refunded if the provisional release is revoked on the grounds set forth in art. 193 para. (1) point 2) and shall accrue to the state budget through the investigative judge or, as the case may be, the court. The judgment on transferring bail to the state may be subject to cassation by interested persons.

#### **Article 195. Replacing, Revoking or Ceasing Preventive Measures on Legal Grounds**

(1) In order to ensure the normal course of a criminal proceeding and the enforcement of the sentence, a preventive measure may be replaced by a more severe one if the need for such a

measure is supported by evidence, or it may be replaced by a milder one if such a measure will ensure the personal behavior of the suspect/accused/defendant.

(2) A preventive measure shall be revoked by the body that ordered it if the grounds for it no longer exist.

(3) A preventive measure in the form of preventive arrest, house arrest, provisional release under judicial control, and provisional release on bail may be replaced or revoked by the investigative judge or, as the case may be, by the court.

(4) If detention or preventive arrest are replaced or revoked, the respective body shall send on the same day to the administration of the place of detention a copy of the judgment.

(5) A preventive measure shall cease on legal grounds:

1) upon the expiry of the terms provided by law or set by the criminal investigative body or by the court, provided that such terms were not extended in line with the law;

2) if the person is discharged, the criminal proceeding is discontinued or the person is acquitted;

3) if a conviction sentence is being enforced.

(6) A preventive measure that deprives liberty shall cease on legal grounds if a conviction sentence not depriving liberty is issued.

(7) In the case mentioned in para. (5) point 1) the administration of the place of detention or arrest shall be obliged to immediately release the detainee or arrestee.

(8) In the cases mentioned in para. (5) point 2) and para. (6), the prosecutor, the investigative judge or, as the case may be, the court shall be obliged to immediately send copies of the respective judgment to the place of arrest to be enforced.

#### **Article 196. Appeals against Judgments on Preventive Measures**

(1) The order of the prosecutor for the application, extension or replacement of a preventive measure may be appealed in a complaint addressed to the investigative judge by the suspect/accused or by their defense counsel or legal representative.

(2) The judgment of the investigative judge or the court applying, extending or replacing a preventive measure may be subject to cassation in a higher court.

### **REPLY FROM MONTENEGRO**

Ministry of Justice, as the Central Authority, upon receiving the Letter Rogatory, forward it to the investigating judge of the court within the jurisdiction of which the person claimed resides or within the jurisdiction of which the person claimed happens to be.

On the occasion of the request for extradition or deprivation of liberty on the basis of an international arrest warrant, the investigating judge shall issue the order to detain the person claimed, if there is a danger that the person shall avoid the procedure of extradition, or if other reasons referred to in the Criminal Procedure Code exist, and/or he shall undertake other measures to ensure his presence, unless it is obvious from the letter rogatory and delivered information and documents that the conditions for extradition have not been met.

Extradition detention referred above may last until the decision on extradition is enforced at latest but no longer than six months. Upon a reasoned request of the Requesting State, the panel of the competent court may extend the duration of detention in justified cases for additional two months.

In addition to the measure of detention, the Criminal Procedure Code provides that if circumstances exist that indicate that the accused person might flee, hide, go to an unknown place or abroad, or disrupt conducting of the criminal procedure, the court may, by virtue of an office or upon motion of prosecutor or injured party, impose one or more measures of supervision by a ruling containing a statement of reasons. Measures of supervision may be: prohibition to leave one's dwelling; prohibition to leave place of residence; duty to occasionally report to a certain public authority; provisional seizure of a travel document.

Having in mind the above practice, in most cases, detention is determined, and in rare cases, the pronouncement of a measure of security and/or measures the temporary seizure of a travel document in order to ensure the presence of the defendant and for the undisturbed conduct of the criminal proceedings.



## REPLY FROM THE NETHERLANDS

According to the Dutch law on extradition, the application of detention is permitted only in case the court establishes a risk for the wanted person to flee from extradition proceedings.

In practice, this test entails that persons without a registered address in the Netherlands are always placed in detention, assuming that there are no eminent grounds for refusal of the extradition. Persons with an address in the Netherlands will generally not be put in detention, or can be suspended from detention by judicial authorities.

Detention in relation to extradition proceedings is in general open ended, there is no maximum duration specified. Prolongation of the detention is subject to judicial approval every 30 days whereby the risk of flight is reassessed. In practice, the court looks at ECHR case law on detention to determine whether prolongation of detention would be contrary to obligations imposed on the Netherlands under the ECHR. This situation could arise when proceedings are delayed without sufficient reason.

As an alternative to detention the court can suspend detention under certain conditions aimed at preventing the risk of escape. These conditions can include; handing over of the passport to the public prosecutor, periodic reporting to the local police station, and payment of bail. In practice, for the Netherlands, the suspension of detention is applied in most cases, as an alternative to extradition. The relevant provision in the Dutch Extradition Act is article 56:

### Artikel 56

1 In gevallen waarin krachtens deze wet een beslissing omtrent de vrijheidsbeneming kan of moet worden genomen, kan worden bevolen dat die vrijheidsbeneming voorwaardelijk wordt opgeschort of geschorst totdat de officier van justitie overeenkomstig artikel 36 in kennis is gesteld van de beslissing van Onze Minister waarbij de uitlevering is toegestaan. De te stellen voorwaarden mogen alleen strekken ter voorkoming van vlucht.

2 Op bevelen krachtens het vorige lid gegeven door de rechtbank, dan wel door de rechter-commissaris, zijn de artikelen 80 - met uitzondering van het tweede lid - en 81-88 van het Wetboek van Strafvordering van overeenkomstige toepassing.

**REPLY FROM POLAND**

Suite à votre demande j'ai le plaisir de vous présenter l'informations suivantes :

Je voudrais indiquer que le Code de procédure pénale polonais prévoit la possibilité d'appliquer la détention provisoire (écrou extraditionnel) pour la durée de 40 jours au maximum.

S'il n'a pas de risque que l'individu s'évadera, il est possible d'appliquer des mesures alternatives, par exemple, la libération sous caution ou la surveillance de la police. Il est possible d'appliquer ces mesures simultanément ou séparément, selon le cas. Par principe, on applique la détention provisoire. »

### REPLY FROM PORTUGAL

In Portugal, like in Italy or Germany all coercive measures are applicable to an extraditable person, while the procedure concerning his or extradition is pending. Detention in view of the surrender but also bail, electronic bracelet, order to present oneself to a police station (daily, once a week, twice a week etc), order not to leave the State, are applicable according with our internal Law on international cooperation (article 38 nº6) (<http://www.gddc.pt/legislacao-lingua-estrangeira/english/lei144-99rev.html>).

When you read the Portuguese internal Law detention in view of extradition appears as exceptional (articles 38 and 39). However practice shows that, in order to keep conditions for a future extradition to be granted, many times the judicial decision is to deprive the extraditable person from his or her liberty. In such cases strict delays are established and that is why the requesting Court must confirm, in 18 days, that the request will be presented, this one must be presented until the 40th day. All other stages are very strictly ruled and the consequences, when a decision is not taken, are always the release of the person and, possibly, afterwards, the frustration of the extradition.

This is more or less our system.

A different question, which I'll probably raise during our next Plenary meeting, in order to have information on your practice is due to several recent decisions taken by the Court of Appeal of Lisboa. The reasoning is: when different measures are imposed, instead of a detention measure, that yet limit a person's liberty (like not to leave the Country or to appear in a Police station) are the delays established in article 16 of the COE 1957 Convention also applicable in such cases?

**REPLY FROM ROMANIA**

Legal framework on extradition from Romania - Title II, Section 2 of the Law no. 302/2004 on international judicial cooperation in criminal matters

According to the Romanian legislation, the extraditable person can be subject to different preventive measures - *garde a vue* for 24 hours (order by the prosecutor), arrest, home arrest (disposed by the judge) which cannot exceed 180 days, judicial control and bail.

Home arrest, judicial control and bail are to be applied only in individual well-justified cases and only if the judge appreciates that the extraditable person will not try to abscond from the extradition proceedings.

The law does not define the notion of well-justified cases but gives the judge a wide margin of appreciation limited however by the second condition (of being assured that person will not flee)

## REPLY FROM THE SLOVAK REPUBLIC

In our national legal system, the replacement of custody is regulated in the Code of Criminal Procedure of the Slovak republic.

Anyway, it is important to say that we have two types of custody in our national law. The first one is custody used in the typical national criminal procedure and we can replace it in two ways:

1. Replacement of Custody with Guarantees, Promises and Supervision
2. Bail

The second one is custody in extradition procedure. We also have two types of custody here which is:

- a) preliminary custody (the purpose of the preliminary custody is to provide the presence of the detained person in the territory of the Slovak Republic until the State that is interested in the extradition of such person submits a request for their extradition) and
- b) extradition custody

Preliminary and extradition custody in the extradition procedure is not obligatory but according to our national legal system, once it **was imposed it is not possible to replace it.**

The situation is different in extradition according to the european arrest warrant because according to our national implementation act, the relevant judicial authority can replace the detention by any appropriate measure that is, according to the Code of Criminal Procedure of the Slovak republic, replacement with guarantees, promises and supervision and bail. As I said, this replacement is possible only in extradition according to european arrest warrant.

In addition, I enclose the legal provisions about the types of custody I have mentioned above.

### **In the typical national criminal procedure:**

Replacement of Custody

Section 80

Replacement of Custody with Guarantees, Promises and Supervision

(1) If the reasons for custody under Section 71 Subsection 1 Paragraphs a) or c) are given, the court and, in the preliminary hearing, the judge for the preliminary hearing may leave the accused at liberty or release them to liberty, if

a) a public interest group or a trustworthy person offers to assume the guarantee for the future behaviour of the accused and for the fact that the accused shall be presented before the police officer, public prosecutor or a court upon a summons, and that they will always notify the police officer, public prosecutor or the court of their absence from their place of residence, and the court or, in the preliminary hearing, the judge for the preliminary hearing deems the guarantee, given the character of the accused and the nature of the heard case, sufficient and acceptable,

b) the accused gives a written promise to lead an orderly life, particularly not to commit criminal activities, and to fulfil the obligations and comply with the restrictions that are imposed upon them, and the court or, in the preliminary hearing, the judge for the preliminary hearing deems the promise, given the character of the accused and the nature of the heard case, sufficient and acceptable, or

c) with regards to the character of the accused and the nature of the heard case, the purpose of the custody may be achieved with the supervision of the probation and mediation officers over the accused.

(2) The court and, in the preliminary hearing, the judge for the preliminary hearing, shall notify the person who offers the assumption of guarantees under Subsection 1 Paragraph a) and fulfils the terms for its acceptance on the nature of the accusations and the facts justifying the custody; they shall instruct the accused on the guarantee. Simultaneously, the court and, in the preliminary hearing, the judge for the preliminary hearing, may impose the fulfilment of reasonable obligations and compliance with the restrictions upon the accused. If the accused is being prosecuted for a particularly serious crime, the reason for custody under Section 71 Subsection 2 Paragraph a)

through c) or e) is given, or the accused was remanded in custody under Subsection 3 or pursuant to Section 81 Subsection 4, they may accept the guarantee or promise or impose the supervision only if the exceptional circumstances of the case justify it. The accused shall always have an obligation imposed upon them to notify a police officer, public prosecutor, or the court that conducts the proceeding of any change of residence.

(3) If the accused was left at liberty or released to liberty under Subsection 1 and the public interest group or trustworthy person that offered the assumption of the guarantees justifiably deviates from the guarantee, the accused violates the given promise or fails to fulfil obligations, or violates the restrictions imposed to them by a court and, in the preliminary hearing, the judge for the preliminary hearing, or a probation and mediation officer announces that the supervision failed to fulfil its purpose, the court may, if there is a reason for custody under Section 71, remand the accused into custody and for that purpose, where appropriate, the presiding judge may even issue an arrest warrant; in the preliminary hearing, the police officer and the public prosecutor shall proceed under Section 86 and Section 87 Subsection 1 and the judge for the preliminary hearing shall proceed under Section 87 Subsection 2, or under Section 73. If the accused was remanded in custody after the previous release from custody to liberty, Section 78 shall apply to further custody.

(4) If the accused was remanded in custody in another case during supervision by the probation and mediation officer, the performance of the supervision shall be suspended. This does not concern the court or, upon the petition of the public prosecutor, the judge for the preliminary hearing under Subsection 3.

## Section 81

### Bail

(1) If the reason for the custody referred to in Section 71 Subsection 1 Paragraphs a) or c) is given, the court and, in the preliminary hearing, the judge for the preliminary hearing, may decide to leave the accused at liberty or release them from custody even if the accused paid the bail and the court or the judge for the preliminary hearing accepted it. If the accused is being prosecuted for a particularly serious crime, the reason for custody under Section 71 Subsection 2 Paragraphs a) through c) or e) is given, or the accused was remanded in custody under Subsection 4 or pursuant to Section 80 Subsection 3, they may only accept the bail if the exceptional circumstances of the case justify it. The accused shall always have an obligation imposed upon them to notify a police officer, public prosecutor, or the court of any change of residence. Another person may pay the bail with the consent of the accused but, prior to its acceptance, they must be instructed on the nature of the accusations and the facts for which there are reasons for custody. The accused and the person who paid the bail must be advised in advance on the reasons for which the bail may belong to the State.

(2) In regards to the character and the financial circumstances of the accused or those who offer to pay the bail for them, the nature of the act, its consequences and other circumstances of the case, the presiding judge or, in the preliminary hearing, the judge for the preliminary hearing, shall

a) determine the amount of bail and the manner of its payment and they shall serve the measure to those who are to pay the bail within the procedure under Section 72 Subsection 2 or Section 302 Subsection 2 through a measure, or

b) proceed under Section 72 Subsection 2 or Section 302 Subsection 2 without the issue of such measure.

(3) The court and, in the preliminary hearing upon the petition of the public prosecutor, the judge for the preliminary hearing shall decide that the bail belongs to the State, if the accused

a) flees, hides, or fails to notify on their change of residence, and thus prevents the delivery of the summons or other documents of the court, public prosecutor, or police officer,

b) affects the witnesses, experts, co-defendants or if they otherwise impede the clarification of facts important to the criminal prosecution,

c) deliberately fails to attend the summons for an act of the criminal proceedings, the performance of which is impossible without their presence,

d) continues in the criminal activity or attempts to complete a criminal offence which they initially failed to complete or which they premeditated or threatened to perform,

e) fails to fulfil the obligations or fails to comply with the restrictions which were imposed upon them by the court and, in the preliminary hearing, the judge for the preliminary hearing, or

f) avoids the enforcement of the imposed prison sentence or a monetary penalty or the execution of an alternative prison sentence for a monetary penalty.

(4) If the accused was left at liberty or released to liberty under Subsection 1 and any of the circumstances under Subsection 3 arise, the court may take the accused into custody if there are reasons for custody under Section 71 and for that purpose, the presiding judge, where appropriate, may even issue a warrant for arrest; the police officer and the public prosecutor proceed in the preliminary hearing under Section 86 and 87 Subsection 1 and the judge for the preliminary hearing proceeds under Section 87 Subsection 2, or under Section 73. If the accused was remanded in custody after their previous release from custody to liberty, for a further term of custody, Section 78 shall apply.

(5) The court and, in the preliminary hearing, the judge for the preliminary hearing that decided on the acceptance of bail, or if the reasons expired or changed that lead to its acceptance, shall revoke the bail upon a petition by the public prosecutor, the accused, or the person who paid it. If the accused was finally convicted to a prison sentence or a monetary penalty, or punishment by community service, the court may decide that the bail shall last to the date when the convicted person starts serving the prison sentence, or pays the monetary penalty, or performs the punishment by community service or pays the costs of the criminal proceedings. The accused, who was finally convicted to a monetary penalty, may also request that the guarantee which they paid be used for the payment of a monetary penalty or the satisfaction of the granted entitlement for damages.

(6) A complaint against the decision under Subsection 3, which has a suspensive effect, is admissible.

#### **In the extradition procedure:**

##### Section 504

##### Detention

(1) At the request of the foreign authorities, the public prosecutor who is competent to perform the preliminary investigation may give an order to a Police Force department to detain a person whose extradition will be requested by foreign authorities. Simultaneously, they are not bound by the reasons for custody under Section 71.

(2) After the prior consent of the public prosecutor, the Police Force department may detain a person for whom the foreign authorities declared a search, for the purposes of an extradition. Such person may be detained without such consent only if the matter does not allow any deferral and the consent may not be provided in advance.

(3) The public prosecutor shall be notified of the detention without undue delay. If the public prosecutor fails to release the detained person within 48 hours after the arrest, they shall submit to the court a petition for their remand into preliminary or extradition custody within this deadline.

##### Section 505

##### Preliminary Custody

(1) The presiding judge of the County Court shall decide on the petition of the public prosecutor for the remand of the detained person into preliminary custody within 48 hours after the submission of the detained person. Simultaneously, they are not bound by the reasons for detention under Section 71. If the presiding judge fails to remand the detained person into preliminary custody within the stated deadline, they shall release them to liberty.

(2) In the proceedings under Subsection 1, the competent court is the County Court in the jurisdiction of which the person was arrested or in which they reside.

(3) The purpose of the preliminary custody is to provide the presence of the detained person in the territory of the Slovak Republic until the State that is interested in the extradition of such person submits a request for their extradition under Section 498.

(4) Preliminary custody may not last more than 40 days from the date the person was apprehended. The presiding judge of the County Court, upon the petition of the public prosecutor performing the preliminary investigation, may decide on the release of the person from the preliminary custody.

(5) If during the duration of the preliminary custody a request for extradition from a foreign authority is delivered, the Ministry of Justice shall notify the public prosecutor performing the preliminary investigation. The presiding judge may remand such person into extradition custody upon their petition if the terms referred to in Section 506 Subsection 1 have been met.

(6) The release of such person from preliminary custody does not exclude their repeated remand into preliminary custody or their remand into extradition custody.

#### Extradition Custody

##### Section 506

(1) If it is necessary to ensure the presence of the requested person in the extradition proceedings in the territory of the Slovak Republic, or to prevent the obstruction of the purpose of such proceeding, the presiding judge of the County Court may remand them in extradition custody. They shall do so upon the petition of the public prosecutor performing the preliminary investigation.

(2) If the requested person consents to the extradition or if it was decided that the extradition abroad is admissible, the County Court shall remand such person in extradition custody, unless the presiding judge has already done so under Subsection 1.

(3) The presiding judge of the County Court shall order the release of the person from the extradition custody through an order on the day when the extradition of the person to the foreign authorities takes place, but no later than sixty days after the decision of the Minister of Justice on the permission of the extradition to a foreign State; in the case referred to in Section 507, it must be no later than sixty days after the day of the commencement of the enforcement of the extradition custody, provided the Minister of Justice decided on the permission of the extradition before such date. In addition, the presiding judge shall also order the release from extradition custody, if

a) the State that requested the extradition withdraws their request,

b) the Supreme Court decides that the extradition is inadmissible or the Minister of Justice did not authorise the extradition, or

c) the reasons for the extradition custody, release, or its implementation have expired.

##### Section 507

(1) If the requested person is in custody in connection with their criminal prosecution by the Slovak authorities, or is serving a prison sentence finally imposed by the Slovak court, the court shall remand the requested person in extradition custody, such custody shall remain.

(2) If the reasons for custody or the execution of punishment referred to in Subsection 1 have expired, the remaining term of the extradition custody shall expire and the requested person shall commence the execution of the extradition custody.



### REPLY FROM SLOVENIA

In accordance with Slovenian national legislation a detention in extradition procedure for the purposes of criminal prosecution may last until the extradition of a person to a foreign country and/or the decision of the minister responsible for justice refusing the extradition, but the total length of detention determined before receipt of the request for extradition and after its receipt shall not exceed 30 months.

In case of extradition for the purposes of executing criminal sentence, the detention shall be lifted immediately when its length meets or exceeds the imposed criminal sanction of a foreign country or the maximum prescribed sentence that the law of the requesting state prescribes for the criminal offence for which the extradition is requested.

In Slovenian national law a detention (also in extradition procedure) is not mandatory and it may only be imposed if a reasonable suspicion exists that a person has committed a criminal offence; when is absolutely necessary for the course of criminal proceedings or for reasons of public safety and when one of the following grounds exist:

a) a person is in hiding, his identity cannot be established or if other circumstances exist which point to the danger of his attempting to flee (risk of flight);  
b) there is a reasonable ground for concern that he will destroy the traces of crime or if specific circumstances indicate that he will obstruct the progress of the criminal procedure by influencing witnesses, accomplices or concealers (spoliation of evidence) or  
c) if the seriousness of the offence, or the manner or circumstances in which the criminal offence was committed and his personal characteristics, history, the environment and conditions in which he lives or some other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he has threatened (risk of repeat of criminal offence).

As alternative to the extradition detention also other measures for the insurance of the presence of the accused may be imposed, such as bail, house arrest, reporting to the police station, promise of the accused that he would not leave the residence, etc. These measures are prescribed for domestic criminal procedures but are also applicable in extradition procedures. The national law stipulates that the court in deciding on which of the measures to apply, shall take account of the conditions stipulated for individual measures. In practice the courts order one of the possible individual measures. In selecting the measure, the court shall also ensure that it does not apply a stricter measure if a less strict measure would suffice for the purpose. These measures shall also be abolished *ex officio* when reasons which necessitated them disappear, or shall be replaced by more lenient measures if the relevant conditions are satisfied.

Nevertheless it should be also pointed out that in practice in great majority of extradition cases an extradition detention is ordered.

### REPLY FROM SWEDEN

Generally, a person arrested because of a red notice or an extradition request is detained in Sweden during the extradition proceedings.

In exceptional cases detention can be replaced by other measures:

According to chapter 25, section 1 of the Code of Criminal Procedure of Sweden, if a person is reasonably suspected of an offence that can lead to imprisonment, and if, in view of the nature of the offence, the circumstances of the suspect or some other fact, there is a risk that they will flee or evade legal proceedings or a penalty in some other way but there is no other reason to arrest or detain the suspect, they may, if it is sufficient, instead be

- 3) Issued with a ban on leaving a designated place of stay without permission (travel ban) or
- 4) Ordered to report to the Swedish Police Authority at a certain place and at certain times (reporting obligation)

According to chapter 25, section 2 of the Code of Criminal Procedure of Sweden, a travel ban may be combined with a reporting obligation.

– Translation from Swedish –

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## Chapter 25 On travel bans and reporting obligations

### Section 1

If a person is reasonably suspected of an offence that can lead to imprisonment and if, in view of the nature of the offence, the circumstances of the suspect or some other fact, there is a risk that they will flee or evade legal proceedings or a penalty in some other way but there is no other reason to arrest or detain the suspect, they may, if it is sufficient, instead be

1. issued with a ban on leaving a designated place of stay without permission (travel ban) or
2. ordered to report to the Swedish Police Authority at a certain place and at certain times (reporting obligation).

Irrespective of the nature of the offence a travel ban or reporting obligation may also be ordered if there is a risk that the suspect will evade legal proceedings or a penalty by leaving the country.

If there is reason to arrest or detain a person but it can be assumed that the purpose of doing so can be satisfied through a travel ban or reporting obligation, an order to that effect may also be issued in cases other than those referred to in the first paragraph.

A travel ban or reporting obligation may be only imposed if the reasons for the measure outweigh the intrusion or other detriment that the measure entails for the suspect or for any other opposing interest.  
*Act 2014:649.*

### Section 2

In connection with a travel ban or reporting obligation the suspect may be required to be available in their home or at their place of work at certain times. Other conditions needed to supervise the suspect may also be set. A travel ban may also be combined with a reporting obligation.

When applying the rest of this code, provisions on a travel ban apply to a reporting obligation. *Act 1981:1294.*

### Section 2

A travel ban is issued by the prosecutor or the court.

The question of a travel ban may be considered by the court at the request of the prosecutor or when the court has to make an order concerning the detention of the suspect or on their continued detention. After the prosecution has been brought, the court may also consider the question at the request of the injured party or on its own initiative.

[Page footer showing date 24/08/2017]



Translated from Swedish by Ian MacArthur, public translator authorised by the Swedish Legal, Financial and Administrative Services Agency for translation from Swedish to English (Stamp no 393).  
*[Signature]*  
Stockholm, 26 August 2017

## REPLY FROM SWITZERLAND

As a general rule, the person arrested with a view to extradition is detained in Switzerland during the extradition proceedings. However, according to the Swiss Act on International Mutual Assistance in Criminal matters of 20 March 1981 (IMAC), detention can be replaced by other measures, namely:

If the person is unfit to remain in detention or if there are other valid reasons, the Federal Office of Justice (competent Swiss authority in extradition matters) may order measures other than detention to ensure his presence (art. 47, para. 2 IMAC). The Swiss Criminal Procedure Code of 3 October 2007 contains in Article 237 a non-exhaustive list of possible substitute measures, including bail and technical monitoring and supervision.

By way of exception, the person concerned may be released from detention with a view to extradition at any stage of the proceedings if this is appropriate in the circumstances. The person may lodge a petition for release at any time (art. 50, para. 3 IMAC). The Swiss Criminal Procedure Code, especially Article 238–240, apply by analogy to release from detention.

Below you will find the link to the Swiss Act on International Mutual Assistance in Criminal matters of 20 March 1981 and to the Swiss Criminal Procedure Code of 5 October 2007 (the English translation has no legal force).

<http://www.admin.ch/opc/en/classified-compilation/19810037/index.html>

<http://www.admin.ch/opc/en/classified-compilation/20052319/index.html>

(Translation)

Swiss law doesn't foresee any restriction as regards the duration of a measure imposed instead of detention pending extradition.

However, the alternative measure maybe revoked at all times and replaced by another measure or by provisional detention or by detention for reasons of security and safety if this is required by new facts or if the person does not respect the conditions imposed to him (art. 237, par. 5 Swiss Criminal Procedure Code).

[Original reply ]

Le droit suisse ne connaît pas de restriction en ce qui concerne la durée de la mesure ordonnée en lieu et place de la détention aux fins d'extradition.

Toutefois, la mesure de substitution peut en tout temps être révoquée et remplacée par une autre mesure ou par la détention provisoire ou la détention pour des motifs de sûreté si des faits nouveaux l'exigent ou si le prévenu ne respecte pas les obligations qui lui ont été imposées (art. 237, par. 5 du Code de procédure pénale suisse / Swiss Criminal Procedure Code).

### **REPLY FROM TURKEY**

Under our legal system, alternative practices of detention are prohibition to travel outside of the country, to leave a certain region, obligation to regularly apply to places within prescribed periods that will be specified by the judge (such as the obligation to go to the police or gendarmerie stations each day, once or twice a week and give signature), bailing, prohibition to leave the residence and electronic bracelet.

Still, considering the offence which is subjected to the extradition, the person who is requested to be extradited is kept under detention until the end of the process in the overwhelming majority of extradition cases.

### REPLY FROM UNITED KINGDOM

In the United Kingdom there are no separate provisions for Extradition Bail. The decision whether to grant bail is purely a matter for the courts who may set any conditions they see fit including reporting conditions, surrender of passport and or tagging. The conditions set will be such to reflect the court's view on the necessity of ensuring

- The person surrenders to custody,
- They do not commit an offence while on bail,
- They do not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person,
- They make themselves available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

The law governing Bail in England Wales and Northern Ireland is

The Bail Act 1976

<http://www.legislation.gov.uk/ukpga/1976/63>

For Scotland

Criminal Procedures (Scotland) Act 1995

<http://www.legislation.gov.uk/ukpga/1995/46/contents>

## RÉPONSE DU CANADA

### Extradition et détention provisoire

Les dispositions concernant la détention provisoire et la remise en liberté durant les procédures criminelles – au sens large – au Canada s'appliquent lors de la procédure d'extradition canadienne. Ces dispositions apparaissent aux articles 515 et suivants du Code criminel. Sauf exception, il appartient aux procureurs canadiens ayant la conduite de la procédure de démontrer par prépondérance des preuves qu'il est justifié de détenir la personne recherchée ou toute mesure restreignant sa liberté. La détention ou les conditions de remise en liberté ont pour objectif d'assurer la présence de la personne durant les procédures, assurer la protection du public et éviter que soit minée la confiance du public envers l'administration de la justice. Les conditions imposées par le tribunal varieront selon le cas, pourront être multiples et inclure l'assignation à résidence ou un couvre feu de même que le recours au bracelet électronique ou autre mesure semblable, le dépôt du passeport ou document semblable, diverses interdictions ou obligations dont celle de se présenter aux autorités de même que le dépôt de sommes/ espèces ou l'engagement financier par la personne visée par la demande ou une tierce personne. Qu'il y ait détention ou remise en liberté suite à l'arrestation provisoire effectuée aux fins d'extradition, la documentation d'extradition doit, dans tous les cas, être soumise par l'état requérant dans le délai prescrit qui est généralement de 60 jours. La décision concernant la détention ou la remise en liberté provisoire peut faire l'objet de recours.

## REPLY FROM KOREA

According to the Extradition Act and Criminal Procedure Act of Republic of Korea,

**If the offender is in custody on a provisional arrest warrant**, the court shall decide upon the **extradition review within two months** of the day when the offender was put into custody. [Extradition Act Article 14(2)]

The court's decision **cannot be appealed**.

The detained criminal suspect can be **released under the condition of payment of bail money**. Thus, **bail can be the alternative to detention pending extradition**.

Following is the procedure regarding bail:

### 1. Requesting the review on the legality of the request

Any offender arrested on an extradition arrest warrant or his/her counsel, legal representatives, spouse, lineal relatives, brothers, sisters, family members, persons living together, or employer may **request the court to conduct the review on the legality of the arrest**. [Extradition Act Article 22(1)]

### 2. Review on the legality of the arrest

Upon receiving the request for the review of legality of arrest, the court shall examine the criminal suspect arrested, relevant documents, and evidence within 48 hours from the time on which the request is filed, and shall order the release of the arrested suspect by its ruling if there is a valid ground for the request. [Extradition Act Article 22(2), Criminal Procedure Act Article 214-2(4)]

### 3. Release under the condition of payment of bail money

The court may order the **release** of the detained criminal suspect by its ruling **under the condition of payment of bail money** to guarantee appearance of the criminal suspect. [Extradition Act Article 22(2), Criminal Procedure Act Article 214-2(5)]