COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 24/08/2017
[PC-OC/DOCS2015/PC-OC(2015)15rev.3]
http://www.coe.int/tcj

PC-OC(2015)15 rev.3 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)

Contents

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

SUMMARY OF REPLIES

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

Member States	Measures of restriction used in extradition cases
Andorra	Provisional detention, but also other preventive measures (bail, electronic bracelet, etc…)
Austria	Pre-trial detention, but also alternative means. 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. 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; 4. the order to notify every change of domicile or to report regularly to the police or another institution; 5. the preliminary confiscation of identity documents, driving documents or other documents; 6. the deposition of bail
Belgium	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. 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.
Cyprus	A. When the court's decision on extradition is pending, there are 2 options: 1. detention 2.release on bail [1] B. When the court decides extradition, the custody is applicable. C. When the court refuses to extradite, it can impose bail terms.
Estonia	No alternatives to detention are allowed in extradition cases.
Finland	Custody is the rule. There is only one alternative measure, the order not to leave the jurisdiction.
Germany	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: 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 of another person [2]
Ireland	Custody is the rule. There is only one alternative measure, the release on bail.
Italy	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.[3]
Republic of Moldova	Custody, provisional detention, but also alternative measures are possible[4]. In particular: 1. an interdiction from leaving the locality; 2.an interdiction from leaving the country; 3. a personal guarantee[5]; 4. the guarantee of an organization; 5. provisional release under judicial control; 6.provisional release on bail[6].

[1] 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.

[2] 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.

[3] 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).

[4] 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.

[5] In the case of a personal guarantee, the number of guarantees should be between 2 and 5.

[6] When the provisional release under judicial control or on bail is applied, some obligations shall be imposed.

	It is not possible to apply them jointly.
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[7]. 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.
Poland	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.
Portugal	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.
Slovak Republic	Two types of custody in extradition procedures: 1.preliminary custody (within 48h after the submission of the detained person) 2.extradition custody Both of them, once they are imposed, they cannot be replaced. Replacement is possible only in extradition according to European arrest warrant. 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.
Slovenia	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).
Switzerland	Detention is the rule, but there is also a non-exhaustive list of alternative measures. In particular: a. the payment of money bail; b. the surrendering of a passport or identity papers; c. the requirement to stay or not to stay in a specific place or in a specific house; d. the requirement to report to a public office at regularly intervals; e. the requirement to do a regular job; f. the requirement to undergo medical treatment or a medical examination; g. the prohibition of making contact with specific persons.
United Kingdom	Detention, but it is at the discretionary power of the courts to decide if the conditions allow the extradition bail. [8]

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

Member States	Maximum duration of detention/application of measures of restriction in extradition cases
Austria	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.
Germany	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.
Italy	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.
Republic of Moldova	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.
Poland	The Polish Code of criminal procedure foresees the possibility to apply provisional detention in view of extradition for a maximum duration of 40 days.
Netherlands	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.
Slovak Republic	Preliminary custody may not last more than 40 days from the apprehension. 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.
Slovenia	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. [9]
Switzerland	No restriction as regards the duration of the measures imposed instead of detention pending extradition.

[7] 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 suspended from detention by judicial authorities.

[8] The conditions set out in section 3 relate to the duration of the measures imposed instead of detention pending extradition: 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.

[9] . 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.

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 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 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.

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 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 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.

(1^1) 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 investigation 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 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 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'information suivante :

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'y 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 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 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 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