Imputati (proċeduri kriminali)

Iċ-Ċekja

Dawn l-iskedi informattivi jispjegaw x'jiġri meta persuna tkun issuspettata jew akkużata b'delitt.

Skont il-Kostituzzjoni Ċeka, il-piena tista' tiġi imposta fuqek biss f'konformità mal-liġi u bil-mod stabbilit mil-liġijiet rilevanti. Dawk il-liġijiet huma l-Kodiċi Kriminali, l-Att dwar il-Ġustizzja għall-Minorenni, u l-Kodiċi tal-Proċedura Kriminali, li jistabbilixxu r-regoli għall-proċedimenti kriminali (inklużi kundizzjonijiet speċifiċi għall-eżerċitar u l-infurzar tad-drittijiet tiegħek).

Jekk inti vittma ta' delitt, tista' ssib l-informazzjoni kollha dwar drittijietek hawnhekk.

Sommarju tal-proċeduri kriminali

Dan li ġej huwa sommarju tal-istadji normali fil-proċeduri kriminali.

1) Proċedimenti preparatorji

Dawn huma l-ewwel stadju tal-proċeduri kriminali u jikkonsistu f'żewġ partijiet:

L-azzjonijiet tal-awtoritajiet responsabbli għall-proċeduri kriminali qabel il-bidu ta' prosekuzzjoni kriminali, magħrufa bħala l-fażi tal-eżami; u

L-istadju tal-investigazzjoni: il-parti ta' prosekuzzjoni kriminali minn meta tibda sakemm titressaq akkuża jew l-investigazzjoni tiġi konkluża b'xi mod ieħor.

2. Diskussjoni preliminari tal-akkuża

Matul id-diskussjoni preliminari tal-akkuża, il-qorti teżamina jekk il-każ ġiex iċċarat kif xieraq matul il-proċedimenti preparatorji u jekk l-akkuża tipprovdix bażi adegwata għal proċedimenti ulterjuri. Hija tiddetermina wkoll jekk tkunx kompetenti li tiddeċiedi l-każ.

3. Il-proċess innifsu

Din hija l-aktar parti importanti tal-proċeduri kriminali. Il-provi jiġu eżaminati u tittieħed deċiżjoni fil-każ. Matul dan l-istadju tal-proċeduri kriminali, l-imputat(i) u kwalunkwe xhud u l-parti leża jew partijiet leżi jiġu interrogati fil-qorti. Il-proċess huwa pubbliku u orali, u jsir biċ-Ċek. Jekk ma titkellimx biċ-Ċek, tkun intitolat għal interpretu.

4. Proċedimenti ta' appell

L-imputat, il-familja tiegħu, avukat, prosekutur pubbliku jew il-parti leża għandhom id-dritt li jappellaw fi żmien tmint ijiem. Jekk jiġi ppreżentat appell, il-qorti tal-appell tirrieżamina d-deċiżjoni mogħtija mill-qorti tal-ewwel istanza

Ir-Rwol tal-Kummissjoni Ewropea

Għandek tkun taf li l-Kummissjoni Ewropea ma għandha l-ebda rwol fil-proċedimenti kriminali fl-Istati Membri u ma tistax tgħinek jekk għandek ilment. F'dawn l-iskedi informattivi għandek issib informazzjoni dwar kif tressaq ilment u lil min tindirizzah.

Ikklikkja fuq il-links ta' hawn taħt sabiex issib it-tagħrif li teħtieġ

1 – Id-drittijiet tiegħi matul l-investigazzjoni

2 – Id-drittijiet tiegħi matul il-proċedimenti ġudizzjarji

3 – Id-drittijiet tiegħi wara l-proċedimenti ġudizzjarji

Links relatati

Il-Ministeru tal-Ġustizzja Ċek

Il-Ministeru tal-Affarijiet Interni Ċek

L-Assoċjazzjoni tal-Avukati Ċeki

Informazzjoni dwar id-Drittijiet tal-Bniedem

Informazzjoni legali għal kulħadd

L-aħħar aġġornament: 21/03/2023

1 – My rights during the investigation stage

A. Is the investigation affected by the fact that I am a foreign citizen?

Only persons enjoying privileges and immunities under the law or international law are excluded from the jurisdiction of law-enforcement authorities. Hence the fact that you are a foreign citizen does not *per se* affect the investigation.

Unless requested by the law-enforcement authority for a specific task where your presence is required (in particular, to give a witness statement), your presence in the course of the investigation is generally not necessary unless you wish to be present for the investigation. However, you must maintain contact with the law-enforcement authorities and indicate the address at which you will be receiving documents.

However, if criminal prosecution is brought for an intentional crime punishable by imprisonment with the upper range exceeding two years, or for a crime committed through negligence that is punishable by imprisonment with the upper range exceeding three years, the court – or the judge at the request of the public prosecutor in the preparatory process – may impose a restriction consisting in a ban on travelling abroad if this is necessary to achieve the purpose of the criminal proceedings. The restriction will be lifted by the chamber's president – and by the public prosecutor of its own motion in the preparatory process – if the grounds for imposing it no longer apply. If such a restriction has been imposed, you have the right to ask for it to be lifted at any time. Such a restriction may also be imposed on you as a substitute for remand in custody pending trial.

If you lack sufficient knowledge of the Czech language, you have the right to have certain important documents translated (e.g. order to start criminal prosecution, the charge, the judgment) and the proceedings before the law-enforcement authorities will be interpreted into the language of your nationality or into another language that you master. Any consultation of your defence counsel during or in direct connection with the criminal proceedings will also be interpreted at your request.

B. What are the stages of investigation?

Rather than stages, we should refer to types of investigations, since the Criminal Procedure Code distinguishes between abbreviated preparatory process, standard investigation and extended investigation.
However, the investigation stage is preceded by the examination stage aimed at verifying and detecting whether or not a crime has been committed, and at identifying the perpetrator. At that stage the person against whom the criminal proceedings are being conducted does not yet have any formal designation, but the persons interrogated have the right to legal aid provided by a lawyer. If you are being interrogated as a suspect at that stage (i.e. on suspicion that you have committed a crime), you have the right to remain silent - a right of which you must be advised in advance.
During the investigation, the person against whom the criminal proceedings are being conducted already has a formalised status and has the right to be aided by a defence counsel. The purpose of this stage is to obtain and document evidence for the purposes of filing a charge and conducting proceedings before a court. This includes, for example, the taking of witness statements, examination of an item, provision of expert opinions and other acts.
In doing so, the police authority seeks both incriminating and exculpatory evidence.

Abbreviated preparatory process

The abbreviated preparatory process takes place in the case of less serious crimes (crimes tried
in the first instance by a district court, punishable by imprisonment with the upper range not exceeding five years) is quick and less formal. Such a process may take place unless this is prevented by some other obstacle (e.g. there are grounds for detention), provided that
you were caught in the act or immediately afterwards; or
during the examination of a criminal complaint or another petition to prosecute, facts have been found that otherwise justify the initiation of criminal prosecution and you may be expected to be brought to justice within two weeks of the date on which the police authority informed you of the act you are suspected to have committed and what specific crime the act is deemed to be.
The abbreviated preparatory process starts with the notification of a suspicion during the first interrogation.
In the abbreviated preparatory process you have the same rights as a defendant, including the right to a defence counsel. The main dissimilarity from standard investigation as regards your rights is that the abbreviated preparatory process is not initiated by a formal order to start criminal prosecution (which you could challenge by means of a complaint) and that you do not have the right to inspect the criminal file and to propose additional evidence at the end of the abbreviated preparatory process; this does not prejudice your right to inspect the criminal file (unless the police authority denies you this right for serious reasons) and your right to propose additional evidence in proceedings before the court.
Unless the abbreviated preparatory process is concluded otherwise, it ends with a motion to sentence
(in principle, a simplified charge without reasoning). The motion is lodged with the court by the public prosecutor.

Standard investigation

This type of investigation begins with the service of the order to start criminal prosecution against you; you have the right to challenge the order by means of a complaint. You have the right to a defence counsel in the investigation. Unlike in the abbreviated preparatory process, the investigation is carried out with regard to more serious crimes (however, standard investigation also takes place if there is an obstacle to conducting an abbreviated preparatory process or if that process is not completed within the prescribed time limit), and it is longer and more formal than an abbreviated preparatory process. As already mentioned, you and your defence counsel have the right to inspect the criminal file and submit additional evidence at the end of the investigation. Unless the investigation is concluded otherwise, it ends with filing a charge; the charge is filed with the court by the public prosecutor. Unlike a motion to sentence, a criminal charge contains reasoning.

Extended investigation

Extended investigation takes place in respect of the most serious crimes, which are tried before the competent regional court in the first instance (crimes punishable in accordance with the Criminal Code by imprisonment with the lower range of at least five years if they are punishable by an exceptional sentence, or certain listed crimes). This type of investigation is expected to be the longest and evidence is therefore gathered and taken to a wider extent than in standard investigation. This is the only aspect that sets extended investigation apart from standard investigation. Extended investigation is initiated by an order to start criminal prosecution and ends with the filing of a criminal charge unless it is concluded otherwise.

i. Evidence-gathering phase / Investigators' powers

This stage of criminal proceedings is conducted by a police authority under the supervision of a public prosecutor, who may give binding instructions to the police authority, participate in the acts performed, refer the case back to the police authority with instructions for supplementation, cancel the authority's unlawful or unjustified decisions
and measures, etc. You have the right to ask the public prosecutor to review the steps taken by the police authority (unless this is a decision against which you have the right to lodge a complaint).
Some acts may be carried out in the preparatory process only by the public prosecutor (e.g. discontinuation of the preparatory process) or subject to the public prosecutor's prior approval (e.g. seizure of assets unless there is a need for urgent action). The most serious interferences with fundamental rights and freedoms are then decided by a judge (e.g. remand in custody, issuance of an arrest warrant, a search warrant and interception).

ii. Detention by the police

If you have already been accused and there are grounds for remand in custody pending trial, the police authority may detain you. However, the police must immediately inform the public prosecutor about the detention and provide the prosecutor with written documents needed by the latter to file, if necessary, a motion for remand in custody. The motion must be filed so as to ensure that you can be turned over to a court within 48 hours of the detention; otherwise, you have to be released.
If you have not yet been accused but are suspected of having committed a crime, and if there exists any of the grounds for your remand in custody, the police authority may detain you in urgent cases, even if your criminal prosecution has yet to start (e.g. if it is impossible to serve you with the order to start criminal prosecution). Detention requires the public prosecutor's prior consent in these cases. Without such consent, detention is possible only if the matter is urgent and the prior consent cannot be obtained. You will be interrogated by the police authority that detained you. You have the right to ask for a defence counsel of your choice (if available) to be present at your interrogation and you have the right to consult the counsel without the presence of a third party. You have the right to have the consular post of the country of which you are a citizen notified of your detention.
The police authority will release you immediately if the suspicion that you might have committed a crime is dispelled. If you are not released, the police authority will submit a record on your interrogation to the public prosecutor (including the order to start criminal prosecution and further evidence), so that the public prosecutor can if necessary file a motion for remand in custody. The police authority must file the motion so that you can be turned over to the court no later than 48 hours after your detention; otherwise, you have to be released.
If there are grounds for taking you into custody and you are avoiding criminal proceedings, the judge may issue an arrest warrant. If you are arrested by the police, you have rights similar to those vested in detainees. The police authority must bring you to the court within 24 hours of the arrest. The judge will hear you
and make a decision on remand in custody; you must be notified of that decision within 24 hours after you were brought

to the court. You have the right to have your defence counsel present at the hearing if the counsel is available within the time limit laid down for the court to issue a decision.

iii. Interrogation

Before you are interrogated for the first time as a defendant, the law-enforcement authorities must establish your identity, clarify the substance of the accusation and advise you of your rights and the criminal repercussions of a false accusation and defamation. If proceedings are pending for a crime in respect of which an agreement on guilt and punishment can be negotiated, you must also be advised of the fact that you may negotiate an agreement on guilt and punishment with the public prosecutor in the preparatory process (the agreement is subject to court approval) and of the consequences of negotiating such agreement.

You must not be pressured to testify or confess in any way during the interrogation. In the course of the interrogation, you must be given the opportunity to comment in detail on the accusation, in particular to provide a coherent statement concerning the facts that are the subject of the accusation, to state any circumstances that mitigate or refute the accusation, and to offer evidence regarding such circumstances. Questions may be asked to supplement the statement or to remove any incompleteness, ambiguities and contradictions. Questions must be asked in a clear and comprehensible manner, without presenting any misleading and false circumstances, and without indicating what the answer should be.

The record on the interrogation must be submitted to you for you to read it or, if you so request, it must be read out to you (in the case of interrogation by videoconference, the record will be read out to you). You have the right to ask for the record to be supplemented or for corrections to be made to it in accordance with your statement.

iv. Custody

You may be taken into custody only if you have been accused of a crime. It is up to the judge to decide whether or not you will be remanded in custody. The grounds for being taken into custody are as follows:

a well-founded concern that you will abscond or hide in order to avoid criminal prosecution or punishment;

a well-founded concern that you will obstruct the investigation, for example by encouraging witnesses to give false testimony; or

a well-founded concern that you will repeat the crime for which you are being prosecuted, that you will finish the crime that you have started to commit or that you will commit a crime that you have been preparing or threatening to commit.

If there are no grounds for your remand in custody, the court will not take you into custody; if the grounds have ceased to exist, you will be released. You must also be released upon the expiry of the statutory maximum period of custody. In the case of remand in custody to prevent potential influencing of witnesses, this period is three months (this does not apply, however, if it has been established that you have already obstructed the clarification of facts relevant to the criminal proceedings). Depending on the seriousness of the crime being prosecuted, the total duration of custody may be between one and four years. However, only one-third of the above period is allotted for the preparatory process and two-thirds are reserved for proceedings before the court.

The reasons for holding you in custody must be reviewed from time to time by the court and the custody must always be extended by the court after a certain period of time, if need be. You also have the right to request your release from custody. Remand in custody pending trial may be replaced by a measure not connected with deprivation of liberty (by imprisonment), e.g. by depositing a certain amount of money (bail), by ordering supervision by a probation officer, by imposing the requirement to stay in a certain dwelling during a set period of time, etc. You have the right to ask the court to replace custody with any such measure.

C. What are my rights during the investigation stage?

When exercising your rights of defence, you have the right to:

be advised by the law-enforcement authorities of your rights and be able to fully exercise those rights;

comment on the accusation against you and on the evidence produced;

refuse to testify;

inspect files, take extracts and notes from the files, and make copies of the files or parts thereof at your own expense (this right may for serious reasons be restricted during the investigation);

produce evidence for your defence;

submit motions and applications;

lodge appeals;

use your mother tongue or another language that you master before the law-enforcement authorities if you declare that you do not master the Czech language;

choose a defence counsel (if you do not choose a counsel yourself, your family member or somebody else may choose a counsel for you);

ask to be assigned a defence counsel free of charge or at a reduced fee if you lack sufficient funds to pay for your defence;

speak with your defence counsel without the presence of a third party;

ask to be interrogated in the presence of your defence counsel and ask for your counsel to participate in the preparatory process.

i. Have I the right to an interpreter and to translations? To what extent?

If you declare that you do not master the Czech language, you are entitled to use in your communication with the law-enforcement authorities your mother tongue or the language that you claim to master.

If there is a need in the proceedings to interpret the content of a document, testimony or any other procedural act, or if you declare that you do not master the Czech language, an interpreter will be appointed to interpret the acts carried out with you in the criminal proceedings. At your request, the appointed interpreter may also interpret your consultation with a defence counsel if the consultation is directly related to procedural acts; the interpreter may also interpret any consultation during procedural acts.

In such a case the law-enforcement authorities must provide a written translation of the documents defined by law (e.g. order to start criminal prosecution, remand order, order for you to be observed in a medical institute, charge, agreement on guilt and punishment and application for approval thereof, motion to sentence, decision to conditionally discontinue criminal prosecution, etc.) unless you waive this right. If you have been arrested or detained, you will also receive a written translation of the notice concerning your rights. You have the right to ask the law-enforcement authority to translate or interpret in addition any other document that is relevant in terms of the exercise of your right of defence.

ii. What are my rights regarding information and access to the file?

At the examination stage you have the right to inspect the criminal file if this is necessary for the exercise of your rights; this is subject merely to approval by the police authority.

If you are accused of having committed a crime, you have the right to inspect the criminal file, to take extracts and notes from the file, and make copies of the file or parts thereof at your own expense.

Nevertheless, the public prosecutor or the police authority may, for important reasons, deny your right to inspect the files and other above-mentioned rights associated therewith in the preparatory process. You cannot be denied these rights once you have been informed of the possibility of inspecting the files, and

when negotiating an agreement on guilt and punishment. You cannot be denied access to the order to start criminal prosecution and you have the right to acquaint yourself with the parts of the file relevant to the decision on remand in custody.

iii. Have I the right to access a defence counsel and to have a third party informed of my situation?

If you are accused of having committed a crime, you have the right to a defence counsel. If you do not choose a defence counsel yourself, a family member may choose a counsel for you or you may defend yourself on your own. In certain cases, however, you must have a defence counsel (this is known as 'mandatory defence'); in such a case, the judge will assign you a defence counsel unless you choose one of your own within a specified time limit. You must already have a defence counsel in the preparatory process in the following cases:

if you are remanded in custody, serving a prison sentence or subject to a preventive measure associated with deprivation of liberty, or under observation in a medical institute;

if your legal capacity has been restricted (e.g. owing to a mental disorder);

in proceedings against a fugitive (if you have absconded and the proceedings are being conducted in your absence);

if the proceedings concern a crime punishable by imprisonment with the upper range exceeding five years;

if the public prosecutor considers this necessary because, in the light of your current situation, the public prosecutor has doubts as to your capacity to defend yourself properly;

if you are a young offender (between 15 and 18 years of age).

In proceedings concerning a crime punishable by imprisonment with the upper range exceeding five years, you may waive the right to a defence counsel unless the crime is punishable by an exceptional sentence (life sentence or imprisonment exceeding 20 years and up to 30 years).

If you have been detained or remanded in custody, you have the right to have the consular post of the country of which you are a citizen, and also a family member or any other natural person you designate, informed of the situation. You have the right to communicate with your consular post; if you do not have enough money, you will be enabled to do so free of charge. You must be advised accordingly.

iv. Am I entitled to legal aid?

As part of the examination stage - i.e. before the start of criminal prosecution (investigation) - you have the right to legal aid provided by a lawyer during your interrogation (provision of explanation).

If you have been accused of a crime, you have the right to a defence counsel, who must provide you with the necessary legal aid. You have the right to choose a defence counsel; if you do not choose one, you will be assigned one if defence is 'mandatory'. If you do not have enough money to pay the defence counsel's fees, you can ask the judge to issue a decision that you are entitled to a defence counsel free of charge or at a reduced fee.

v. What there is to know about:

a. Presumption of innocence

The principle of the presumption of innocence applies at four basic levels in criminal proceedings:

your guilt has to be proved; until your guilt is proved, you must be regarded as innocent;

where there are doubts about your guilt, the case should be decided in your favour;

you cannot be designated as guilty before your guilt has been proclaimed through a final convicting judgment;

during the criminal proceedings, your rights may be restricted only to the strictly necessary extent.

b. Right to remain silent and not to incriminate oneself

You are not obliged to testify in criminal proceedings and you must not be compelled in any manner whatsoever to testify or confess. Nor are you obliged to produce any evidence against you. The law-enforcement authorities cannot fine you if refuse to hand over to them an incriminating document or other evidence.

c. Burden of proof

The law-enforcement authorities must clarify both incriminating and exculpatory circumstances to the same level of detail. The public prosecutor must prove your guilt before the court. You are not required to prove your innocence. However, this does not prevent you from exercising your right to present facts and produce evidence to defend yourself.

vi. Are there any special safeguards for children?

If you have committed an offence that has the elements of a crime and you are a child under the age of 15, you are not criminally liable for the offence, and measures aimed at your rehabilitation may only be imposed in civil proceedings by a specialised juvenile court. In such proceedings you must have a lawyer paid by the State unless, for special reasons, the State decides that you or your family should contribute to the lawyer's fees.

As a rule, the Act on Juvenile Justice will apply as a special law (*lex specialis*) if you have committed a crime as a young offender (aged 15 to 18). When investigating and hearing offences that you have committed, the law-enforcement authorities must take into account your age, health, and mental and moral maturity, so as to compromise your future development as little as possible. The law protects your personal data and your privacy, the public is excluded from the court hearing if you do not wish the public to be present, and the judgment is published without indicating your name and other information leading to your identification (e.g. address of residence). You have the right to a defence counsel starting from the first act taken against you in the criminal proceedings (i.e. as early as the examination stage). Your natural guardian (typically your parents) or legal guardian, the competent child social- and legal-protection authority, and the Probation and Mediation Service are informed without delay of the start of criminal prosecution against you, of your detention, arrest or remand in custody. The law-enforcement authorities cooperate with the child social- and legal-protection authority, the Probation and Mediation Service, and associations and institutions engaged in child protection.

vii. Are there any specific safeguards for vulnerable suspects?

If the court – and the public prosecutor in the preparatory process – considers it necessary (in particular, because it has doubts about your ability to defend yourself properly owing to your current physical or mental condition), it will assign you a defence counsel from the start of the criminal prosecution.

If you are deaf or blind and deaf, the manner of communication is governed by Act No 155/1998

on communication systems for deaf and blind and persons. In criminal proceedings, you have the right to services providing interpreting in the communication system of your choice.

If your legal capacity has been restricted, you are represented in the criminal proceedings by a guardian, typically a family member, provided that his or her interests are not in conflict with your interests.

D. What are the legal deadlines during the investigation?

Criminal matters must be heard by the law-enforcement authorities speedily without any unnecessary delays; matters of remand and matters where property has been seized will be heard with the greatest urgency if this is required in view of the value and nature of the property seized.

As regards the examination stage (before criminal prosecution), the police authority must end the stage

within two months, for matters in the jurisdiction of a sole judge without the abbreviated preparatory process;

within three months, for other matters in the jurisdiction of a district court;

within six months, for matters in the jurisdiction of a regional court acting in the first instance.
The public prosecutor may also extend the deadline repeatedly upon a justified request.
The abbreviated preparatory process must be concluded within two weeks of the date on which the police authority informed you of the act that you are suspected of having committed and what specific crime the act is deemed to be. If the abbreviated preparatory process is not concluded within the set deadline, the public prosecutor may extend the deadline by no more than ten days or by no more than thirty days if an agreement on guilt and punishment is being negotiated.
The police authority must conclude standard investigation within
two months of the start of criminal prosecution if the matter is in the competence of a sole judge;
three months of the start of criminal prosecution if this is another matter, in the competence of a district court.
The public prosecutor may also extend the deadline repeatedly upon a justified request. The public prosecutor then must carry out a review of the case as part of supervision at least once a month.
Extended investigation must be concluded within six months of the start of criminal prosecution. The public prosecutor may also extend the deadline repeatedly upon a justified request. The public prosecutor then must carry out a review of the case as part of supervision at least once a month.
In relation to certain acts, the Criminal Procedure Code lays down further specific legal deadlines (the court must decide on remand in custody pending trial within 48 hours of your detention or 24 hours of your arrest, the maximum duration of remand in custody, the time limit for compulsory review of the justification for remand in custody, etc.).

E. What is the preparatory process (including an alternative to custody and possible transfer to the home country - the European Supervision Order)?

The preparatory process is the first stage of the criminal process. The purpose of this stage is to establish whether the suspicion that you might have committed a crime is justified to a degree that makes it possible to file a charge with the court. At this stage, incriminating evidence must be found and obtained, as must other evidence refuting your guilt.
The objective of the preparatory process is especially to:
provide the basis for a decision as to whether a charge should be filed and the case should be heard by a court, or whether further criminal prosecution should be waived;
identify all the circumstances relevant to the decision on the crime, its perpetrator, punishment or preventive measure, as well as to decide on the victim’s entitlement to damages and secure the necessary evidence;
identify the causes of criminal activity and the enabling or facilitating circumstances.
If one of the grounds for remand in custody is present, the judge deciding on the custody may refrain from taking you into custody or may release you if he or she adopts one of the following substitute measures:
where a special-interest civic association or a credible person offers a guarantee regarding your future conduct and regarding the fact that you appear in court, before the public prosecutor or at the police authority if so requested, and that you always report, in advance, your departure from the place of stay, and the authority deciding on the remand considers the guarantee sufficient in view of the defendant’s personal status and the nature of the case at hand and accepts it;
you promise in writing to lead an orderly life, especially to refrain from criminal activity, appear in court, before the public prosecutor or at the police authority if so requested, to always report, in advance, your departure from the place of stay and to comply with the duties and restrictions imposed on you, and the authority deciding on the remand considers the promise sufficient and accepts it;
if you are supervised by a probation officer;
if any of the provisional measures is imposed on you;
if the judge accepts bail (a specified amount of money); however, bail cannot be accepted if you have been accused of certain serious crimes.
In relation to replacing remand in custody by one of such measures, the authority deciding about the remand may decide to perform an electronic check on the fulfilment of the duties imposed in relation to this measure using an electronic ankle monitor if you promise to provide the necessary assistance. The authority deciding on remand in custody may also impose restrictions prohibiting you from travelling abroad.
If you are a citizen of or have some other relationship to one of the EU Member States, you have the right (in accordance with Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, which has been transposed by Act
No 104/2013 on international judicial cooperation in criminal matters) to ask to be allowed to comply with the measure replacing remand in custody in your country of habitual residence or in some other Member State specified by you (subject to the latter's agreement). It must be possible to supervise compliance with such substitute measures or ensure supervision in some other way in the Member State concerned. If you fail to comply with the substitute measure imposed, you will be transferred back to the Czech Republic.

Last update: 16/09/2020

2 – My rights during the judicial proceedings

A. Where will the judicial proceedings take place?

Depending on the seriousness of the crime, the judicial proceedings will take place either at a district court or at a regional court in whose circuit the crime was committed. If the place of the crime cannot be determined or if the crime was committed abroad, the proceedings will be held at the court in whose circuit you live, work or stay; if these places cannot be determined or are outside the territory of the Czech Republic, the proceedings will be conducted by the court in whose circuit the act came to light (was ascertained).

B. Can the charge change? If so, have I a right of information in this regard?

The sole objective of the trial is to decide which act or deed forms the subject of the charge. Once the charge has been filed, the public prosecutor cannot change it; it may only be withdrawn.
If the results of the trial indicate a substantial change in the circumstances of the case or if further investigation is necessary to clarify the case, or if it turns out that you have committed another act or deed which constitutes a crime and the public prosecutor calls for the case to be referred back owing to the need for a joint hearing, the court will refer the case back to the preparatory process. The public prosecutor will then file a new charge, which will reflect the changes that have occurred. A new copy of the charge will always be served on you and your defence counsel, no later than with the summons or notification thereof. You will be served with a copy of the charge along with advice of the chamber’s president regarding your right to comment on the facts set out in the charge within the time limit set by the president, in particular:

whether you feel innocent or guilty of committing the act or any of the acts referred to in the charge and on what grounds;
whether you wish to enter into an agreement on guilt and punishment with the public prosecutor or whether you want to plead guilty at the trial;
whether you agree with the description of the act and the legal classification thereof, and with the proposed sentence or preventive measure; and
which facts you consider to be uncontested.
The chamber's president will also inform you of the consequences of such statements as well as of the fact that your defence counsel may also provide statements concerning the charge on your behalf, except for a confession or plea of guilt.
The president will also invite you to inform the court in due time of the requests for further evidence-taking at the trial, and indicate the circumstances to be clarified by that evidence.
However, the court is not bound by the legal classification of the act or deed as indicated in the charge and may classify the act as some other crime (less or more serious), or may conclude that the act does not constitute a crime, but rather a minor offence. If the court considers the act to be a crime more severely punishable than the one for which the charge was filed, the court must inform you of the change and ensure that you have the opportunity to respond in your defence to the change and have sufficient time to change your defence.

C. What rights have I during a court hearing?

You have the right to:
be advised by the law-enforcement authorities of your rights and be able to fully exercise those rights;
confess, plead guilty or submit a proposal for an agreement on guilt and punishment before evidence is taken;
comment on the accusations made against you;
refuse to testify;
inspect the files, take extracts and notes from the files, and make copies of the files or parts thereof at your own expense;
participate in the hearing of the case during the trial itself and during public hearings;
make a closing statement during the trial and at a public hearing of the appeal;
get the last word at the trial;
present facts and adduce evidence in your defence;
comment on each piece of evidence taken and object to the manner in which it is taken;
ask questions to the persons being examined;
make requests and proposals (as regards the taking of evidence and the manner in which the decision will be made);
seek judicial remedy both ordinary (i.e. complaints, appeals, statements of opposition) and extraordinary (i.e. applications for revision, applications for appellate review) or suggest that a complaint concerning infringement of the law should be filed;
choose a defence counsel (if you do not choose a counsel yourself, a defence counsel can be chosen for you, e.g. by a family member) and ask the counsel for advice also during the acts carried out by the law-enforcement authority itself;
speak with your defence counsel without the presence of a third party;
ask to be interrogated in the presence of your defence counsel and ask for your counsel to participate in each act of the criminal proceedings;
use your mother tongue or another language that you master before the law-enforcement authorities if you declare that you do not master the Czech language.

i. Must I appear in court? Under what conditions may I be absent from the court?

The trial itself can only take place in your absence if the court considers that the case can be reliably decided and the purpose of the criminal proceedings achieved even in your absence, and
you have been duly served with the charge and you have been summoned to the trial properly and in good time; and
you have already been interrogated by the law-enforcement authority in respect of the act or deed which is the subject of the charge, the legal provision on the start of criminal prosecution has been complied with, and you have been advised of the possibility of inspecting the file and propose motions to supplement the investigation.
The summons must contain advice on the consequences of not attending the trial.
The trial may therefore take place in your absence, but not if
you are in custody;
you are serving a custodial sentence;
the case concerns a crime punishable by imprisonment of more than five years.
However, even in such cases you need not be present at the trial if you expressly ask the court to hold the trial in your absence, unless your personal presence is deemed necessary by the court.
In cases of mandatory defence, the trial cannot be held without the presence of your defence counsel.

ii. Have I the right to an interpreter and to translations of documents? To what extent?

If you declare that you do not master the Czech language, you are entitled to use in your communication with the law-enforcement authorities your mother tongue or the language you claim to master.
If there is then a need to interpret the content of a document, testimony or any other procedural act, or if you declare that you do not master the Czech language, an interpreter will be appointed to interpret the acts of the criminal proceedings. At your request, the appointed interpreter may also interpret your consultation with a defence counsel if the consultation is directly related to procedural acts; the interpreter may also interpret any consultation during procedural acts.
In such a case, the law-enforcement authorities must provide written translation of the documents defined in law (e.g. remand order, judgment, penal order, decision on appeal, etc.); you can waive this right to translation.
You have the right to ask the court to translate or interpret in addition any other document that is relevant in terms of the exercise of your right of defence.

iii. Have I the right to a defence counsel?

If you are accused of having committed a crime, you have the right to a defence counsel. If you do not choose a defence counsel yourself, a family member may choose a counsel for you or you may defend yourself on your own. In certain cases, however, you must have a defence counsel (this is known as 'mandatory defence'); in such a case the judge will assign you a defence counsel unless you choose one of your own within a specified time limit. You must have a defence counsel in judicial proceedings until the decision with which the proceedings end becomes final:
if you are remanded in custody, serving a prison sentence or subject to a preventive measure associated with deprivation of liberty, or under observation in a medical institute;
if your legal capacity has been restricted (e.g. owing to a mental disorder);
in proceedings against a fugitive (if you have absconded and the proceedings are being conducted in your absence);

if the proceedings concern a crime punishable by imprisonment with the upper range exceeding five years;
if the court considers this necessary because, in the light of your current situation, the court has doubts as to your capacity to defend yourself properly;
if you are a young offender (between 15 and 18 years of age);
at the trial if you are detained;
in proceedings concerning the imposition or changing the terms of secure preventive detention, or imposition or changing the terms of forensic treatment, with the exception of institutional forensic treatment of alcoholism;
You must have a defence counsel in the enforcement procedure where the court decides in a public hearing if:
your legal capacity has been restricted;
you are in custody;
there are doubts about your ability to defend yourself properly.
In proceedings concerning extraordinary remedies (complaints regarding infringements of the law, applications for appellate review, applications for revision), you must have a defence counsel:
if you are remanded in custody, serving a prison sentence or subject to a preventive measure associated with deprivation of liberty, or under observation in a medical institute;
if your legal capacity has been restricted;
if this is a crime punishable by imprisonment with the upper range exceeding five years;
if there are doubts about your ability to defend yourself properly.
In proceedings concerning a crime punishable by imprisonment with the upper range exceeding five years, you may waive the right to a defence counsel unless the crime is punishable by an exceptional sentence (life sentence or imprisonment exceeding 20 years up to 30 years). You can also waive your right to a defence counsel if you are detained and the trial is due to take place.

iv. What other procedural rights should be known about (e.g. presentation of suspects before court)?

Everybody sits in their places throughout the trial. Questions and statements can only be asked/made with the chamber's president's (sole judge's) consent; you must stand up when you address the judge, even in the shortest of speeches (however, the president may allow persons whose age or health so require to remain seated in delivering both their speeches and testimonies). The chamber's president (the sole judge) will invite everybody present to hear the operative part of the judgment while standing up. In Czech, both the judicial persons and other persons present are to address each other by adding pane /paní/slečno ('Mr/Mrs/Miss') before the addressed person's function or position in the process (e.g. pane předsedo, pane přísedící, pane doktore, paní státní zástupkyně, pane znalče, pane svědku, etc. when addressing the chamber's president, the lay judge, the defence counsel, a lawyer/doctor, the public prosecutor, the expert, the witness, respectively). It is not permitted to speak in the courtroom without the chamber's president's (sole judge's) consent or to eat, drink or smoke, including during a break. The persons present in the courtroom must refrain from anything that could disrupt the course or dignity of the court hearing, including expressions of content or discontent about the course of the hearing, witness statements, the decisions pronounced, etc. All devices (especially mobile telephones) should also be switched off if they could disturb the course and dignity of the hearing.
Image or sound transmissions may be carried out and visual recordings may be made during a court hearing only with the chamber's president's (sole judge's) prior consent. Audio recordings may be made with the chamber's president's or the sole judge's knowledge; where the manner in which they are made could disturb the course or dignity of the hearing, the chamber's president or the sole judge may prohibit the recording.
Weapons are not allowed in the court room.

D. Possible penalties

house arrest;
community service;
forfeiture of assets;
fine;
forfeiture of a thing;
prohibition of activities;
ban on keeping and farming animals;
exclusion order;
ban on attending sports, cultural and other social events;
loss of titles of honours or awards;
loss of military rank;
removal.
Preventive measures are measures that are of preventive nature and, unlike punishments, can also be imposed e.g. for acts that would otherwise be punishable in the case of persons who are not criminally liable due to insanity or minor age. Preventive measures can be imposed either separately or in addition to a punishment, subject to fulfilment of all the conditions laid down by law. Protective measures include:
forensic treatment;
secure preventive detention;
confiscation of things;
confiscation of part of assets;
protective education.

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3 – My rights after the judicial proceedings

A. Have I the right to appeal against a court decision?

Yes, you can challenge a first-instance court decision by an appeal; the appeal has suspensory effect. An appeal may be lodged against a judgment by which the court has approved an agreement on guilt and punishment only if such judgment is inconsistent with the agreement presented by the public prosecutor to the court for approval.

In your appeal you may invoke that the sections of the operative part which directly affect you are incorrect unless this concerns a verdict on guilt to the extent that the court has accepted your plea of guilt. An appeal must be lodged with the court that issued the contested judgment within eight days of the service of a copy of the judgment.

B. What other remedies have I at my disposal?

In criminal proceedings you can avail yourself of ordinary remedies (appeals, complaints, statements of opposition) and extraordinary remedies (applications for appellate review, applications for revision) and you can also propose that a complaint concerning infringement of the law should be filed.

A complaint serves as a remedy against a court order (resolution) and must be submitted to the authority that issued the contested order (resolution) within three days of the latter's notification. Orders (resolutions) issued by the court (and by the public prosecutor) can be contested by means of a complaint only in legally prescribed cases. An order (resolution) may be contested on the grounds of an error in any of the sections of its operative part or a breach of a provision governing the proceedings preceding the order (resolution) if the breach could have led to an error in any of the sections of its operative part. A complaint has suspensory effect only if this is expressly laid down by law.

You may file a statement of opposition against a penal order with the court that issued it up to eight days after the order was served. If a statement of opposition has been filed against a penal order within the set time limit, the penal order is automatically cancelled and the sole judge will order a trial in the case.

An application for appellate review (appeal on a point of law; in Czech: *dovolání*) may be filed only against a final judgment *in rem* of a second-instance court in cases where this is permitted by the law. You may file an application for appellate review on the ground that a certain section of the operative part of the court decision which directly affects you is incorrect, but only if one of the grounds of appellate review laid down by law is present. You must always file such an application through a defence counsel – your lawyer. The application must be filed with the first-instance court which made the decision *in rem*, within two months of the service of the decision challenged by the application. An application for appellate review has no suspensory effect unless the Supreme Court rules otherwise.

You are also entitled to file an application for revision. In general, revision of proceedings that ended with a final judgment or penal order will be allowed if facts or evidence previously unknown to the court come to light and those facts or evidence – either alone or in conjunction with the facts and evidence already known – could justify a different decision on guilt, or the punishment originally imposed would obviously be disproportionate to the nature and seriousness of the crime or to your personal, family or financial and other circumstances, or if the type of punishment does not fit the purpose of the punishment. An application for revision of proceedings that ended with a final judgment or a penal order will be heard and decided by the court which ruled on the case at first instance. The law does not set any time limit for filing an application for revision in your favour.

Moreover, you may propose that a complaint concerning infringement of the law should be filed; however, this extraordinary remedy is available only to the Minister of Justice and it is for him to decide whether or not such a complaint is to be filed. A complaint concerning infringement of the law may be filed against any final court decision (other than Supreme Court decisions) or any decision issued by the public prosecutor if the decision infringed the law or was made on the basis of a procedure vitiated by a defect. The law does not set any time limit for filing such a complaint.

C. What are the consequences of conviction?

The enforcement procedure begins once the conviction for a crime enters into legal force; at this stage, the sentence or the preventive measure is enforced and the related acts are performed.

If you have been convicted of a crime by a final judgment, you cannot be tried again for the same crime (not even in another Member State) unless revision is allowed.

The conviction is recorded in the criminal register and appears in any extract from the criminal register until the conviction is spent. This may affect your ability to pursue a particular profession, obtain a certain permit or licence, or be permitted to possess a weapon, etc.

Once your conviction has been spent, you will be regarded as if you have never been convicted. However, the law-enforcement authorities and some other authorities have access to what is known as a ‘copy’ of the criminal register; your conviction is recorded in the copy even after it has been spent.

i. Having a criminal record

Once the conviction judgment becomes final, an entry will be made in the criminal register where records are kept of convictions and of other facts relevant to criminal proceedings. Such information is kept for 100 years from the date of your birth, regardless of whether you agree to this or not. If your conviction has been spent, the information will no longer appear in your extract from the criminal register but will continue to show in a copy of the criminal register as described above. A conviction may be spent within the time limits laid down by the Criminal Code, depending on the seriousness of the conviction. These time limits range from one to fifteen years from the date of when your sentence is served; for some sentences, you are deemed not to have been convicted at all once you have served them.

If you are a national of another EU Member State, the information concerning your conviction will be made available to the competent authority of the EU Member State of which you are a citizen.

v. Serving a sentence, transfer of prisoners, probation and alternative penalties

Once a conviction judgment has become final, the president of the chamber will order it to be enforced.

If you have been sentenced with legal force to an unconditional custodial sentence, the president will send a sentence-enforcement order to the relevant prison and, if you have not been detained, you will be asked to come to the prison within the set time limit. Should you try to evade the service of your sentence, the Czech Police may transport you to the prison.

If the statutory conditions are met, the court may decide to postpone the service of your sentence, change the manner in which it is served, suspend the service of your sentence, decide on your parole, etc. The court may also waive the sentence of imprisonment or the remaining part thereof if you are to be extradited to a foreign country or removed (expelled).

A similar procedure then applies if court-ordered medical treatment or secure preventive detention has been imposed on you, i.e. once the decision under which the court-ordered medical treatment or secure preventive detention is to be carried out has become enforceable, the president of the chamber will send an enforcement order regarding the decision to the relevant medical institution or to the relevant secure preventive detention institute where the preventive measure is to be enforced, and will ask you to report to that institute/institution. Should you try to evade the preventive measure, the Czech Police may transport you to the relevant institution.

If the statutory conditions or the conditions laid down in an international treaty are met, you may be transferred to your home country or to another state to serve an unconditional custodial sentence or preventive measure if you so request and the state concerned agrees. An alternative sentence may also be imposed in a convicting judgment. Any punishment not involving immediate imprisonment may be deemed an alternative sentence. You may also be placed under the supervision of a probation officer for the purpose of monitoring fulfilment of the obligations imposed on you and helping you to return to the community and lead an orderly life. If supervision has been imposed on you, you must:

cooperate with the probation officer in a manner determined by him

and implement the supervisory probation plan;

appear before the probation officer at times set by him;
inform the probation officer regarding your whereabouts, employment and means of subsistence, your compliance with the restrictions and obligations imposed by the court, and any other significant circumstances relevant to supervision by the probation officer;
allow the probation officer to enter your dwelling.
If a reasonable obligation to undergo an appropriate social training and re-education programme or to undergo appropriate psychological counselling programmes has been imposed on you as a result of a court decision, you may be included in a probation and resocialisation programme. You may also be included in such a programme if you meet the inclusion criteria set by the programme provider, without any court-imposed obligation to undergo the programme; in such a case, an agreement on participation in the programme may be made with the probation officer under the terms of supervision and the agreement may be included in the supervisory probation plan. If the programme is implemented as part of the prison sentence, your participation in the programme can be agreed with a specialist working with the Czech Prison Service.
You may also serve some of those alternative sentences in your home country or in another state with which you have ties, provided that the statutory conditions and conditions laid down by an international treaty are met and enforcement of such sentences can be supervised or otherwise checked. The scope of this option differs depending on whether the country concerned is an EU Member State or a non-EU Member State (the options being more limited in the latter case).
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