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The Embassy of the Czech Republic to the Kingdom of the Netherlands presents its compliments to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and, in response to the esteemed Secretariat's call to States Parties No. ICC-ASP/13/PA/45 of July 7th, 2014 concerning the implementing legislation of the Rome Statute, has the honour to submit the enclosed updated information concerning the implementing of the Rome Statute in the Czech Republic as of October 20th, 2014.

The Embassy of the Czech Republic to the Kingdom of the Netherlands avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court the assurances of its highest consideration.



The Hague, October 24, 2014



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Secretariat of the Assembly of States Parties
International Criminal Court
The Hague



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**Information by the Czech Republic
to the Secretariat of the Assembly of States Parties to the Rome Statute
on the implementing legislation of the Rome Statute in the Czech Republic**

The Czech Republic would like to provide an update to the information regarding paragraph 6, sub-paragraph (h), of the Plan of action, which were contained in the reports submitted to the Secretariat of the Assembly of States Parties by the notes No. 630/2008 of 29 September 2008, No. 478/2009 of 18 August 2009, No. 663/2010 of 29 October 2010 and No. 565/2011 of 30 September 2011.

The purpose of this report is as follows: first, to update the Secretariat on the new legal provisions in the Czech law related to the Crimes under the Rome Statute, secondly, to inform about the contact details of new National contact point, and thirdly, to provide the answers by the Czech Republic to the questionnaire on the state of the implementation of the Rome Statute (Annex III to the ICC-ASP/13/PA/45).

I. Rome Statute Implementation in Czech Criminal Law

All the crimes under the provisions of Articles 6, 7 and 8 of the Rome Statute are criminal offences under the Czech criminal law in force – the Czech Criminal Code (Act No. 40/2009 Coll., as amended). The relevant provisions of the Criminal Code can be found in the reports submitted to the Secretariat of the Assembly of States Parties on September 29, 2008 (Note No. 630/2008) and on August 18, 2009 (Note No. 478/2009).

On 1st January 2014, new definition of the crime of aggression (implementing Kampala Amendment) has entered into force (Act No. 40/2009 Coll., the Czech Criminal Code, Section 405a).

***“Section 405a
Act of aggression***

Who in a position allowing for effective exercise of control over a State or directing the political or military action of a State, contrary to provisions of international law, plans, prepares, initiates or executes aggressive act that involves the use of armed force by such a State against the sovereignty, territorial integrity or political independence of another State, or in the use armed force by such State in any other manner inconsistent with the Charter of the United Nations and which by its character, gravity and scale constitutes a manifest violation of the Charter of the United Nations, shall be punished by imprisonment for twelve to twenty years or by an exceptional punishment.”

From the procedural aspect (cooperation), the new Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Sb., which came into force on 1st January 2014) includes detailed provisions on all types of cooperation with the Court (and other international criminal tribunals and courts). The ICC-relevant part of the Act is Part Four (ICC falls under the category of international courts under Section

145(1)(a) of the Act, i.e. it has the most preferential treatment). For further reference see part “*Answers of the Czech Republic to the Secretariat’s questionnaire*”.

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II. The answers of the Czech Republic to the Secretariat’s questionnaire

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?

The Rome Statute was fully implemented into the Czech law by adopting the Criminal Code (Act No. 40/2009 Coll.), which came into force on 1st January 2010, as well as the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Sb., which came into force on 1st January 2014. The Act on International Judicial Cooperation in Criminal Matters explicitly and in detail regulates cooperation with the ICC, as well as with other international criminal courts and tribunals. Certain changes have been introduced by accompanying law (No. 105/2013 Coll.), especially to the Police Act or Witness Protection Act.

2. In implementing the Statute, did your Government draft a stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

The Czech Republic adapted the substantive provisions of the Statute into the general Criminal Code and the procedure provisions of the Statute into the new Act on International Judicial Cooperation in Criminal Matters.

3. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

The crimes within the jurisdiction of the Court are defined in the Czech law without an express reference to the Statute and their definitions in the Czech law are not

simple copies of the wording of the relevant provisions of the Statute but have been adapted to suit the Czech legislative customs, traditions and practice. Some of these definitions are, as a matter of fact, even broader than those in the Statute (e. g. genocide, which has been extended to protect also groups defined by social class and other similar groups of people).

4. Does the implementing legislation incorporate the following aspects of cooperation with the Court and if yes, how?

Generally yes, all modes of cooperation under Part 9 of the Statute are incorporated in the Czech legislation. The ICC-relevant part of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.) is Part Four. Furthermore, the ICC falls under the category of international courts under Section 145 (1) (a) of the Act, i.e. it has the most preferential treatment.

The basic rules are (Section 146(1)) that the judicial authorities of the Czech Republic provide all necessary cooperation to international courts (including ICC) in relation to investigation and prosecution of acts falling under their competence, including acts against administration of justice by the international court, and in relation to execution of penalties imposed by international court for such acts. Also (Section 146(4)) requests and orders of international court are processed by (all) authorities of the Czech Republic as a matter of priority and urgency.

(a) Arrest and surrender

Relevant provision on arrest and surrender are in Part Four, Chapter III, Section 164 - 170 of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.).

Requests for arrest and surrender of a person should be addressed to the Ministry of Justice of the Czech Republic. Upon such a request, the presiding judge of the chamber of the Regional Court in Prague will take the person to the preliminary custody (which is mandatory) and the preliminary investigation will commence. Its purpose is to confirm the identity of the person wanted and to ascertain that the arrest of the person was realized in compliance with the law. After the preliminary investigation the court (upon a petition of the state prosecutor) will order the surrender. There are no grounds for rejecting the surrender of the person usually used in the extradition proceedings (such as nationality of the person, asylum protection, immunities of the representatives of the state etc.).

The surrender shall be realized within 30 days since receiving the request of the ICC. The rule of specialty does not apply.

If the person sought is being under criminal proceedings or is serving a sentence in the Czech Republic for a crime different from that for which the Court has requested his/her surrender, the competent Czech court may request the ICC upon the surrender of the person to return him/her to the Czech Republic after his presence at the ICC ceases to be necessary for the purpose of criminal proceedings or for the purposes of execution of a sentence. Postponement of the surrender is not possible.

(b) Interim release and release of persons (acquittal, non-confirmation of charges, etc.)

Interim release (in the meaning of Art. 59 of the Rome Statute) is implemented by Section 166 of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.). The person arrested would be granted interim release if it was arrested without the ICC warrant of arrest and such a warrant has not been transmitted to the Czech Republic either in 60 days or in time stipulated in the Court rules. The Czech court must, through the Ministry of Justice, inform the ICC on any request for interim release and its reason, ask for its position and bring attention to deadline for decision. The position of ICC must be not only taken into account, but the person may be granted interim release only if there are urgent and exceptional circumstances and if one of other measures compensating custody (according to Criminal Procedure Code) has been taken. The ICC would, if so requested, be kept informed on interim release, residence of the person in the territory of the Czech Republic and whether the person avoids the surrender procedure.

Decisions of both States and the ICC, resulting in release of persons, such as acquittal, because they have the effect of liberating the person from the accusation (charges) or of the termination of prosecution, normally prevent or terminate prosecution in the Czech Republic for the same act (Section 11 of the Criminal Procedure Code, no. 141/1961 Coll., as amended).

There are several exceptions, most notably (a) the decision does not create prohibition of *res iudicata* according to the rules of ICC, (b) the decision was issued only because other State commenced its prosecution, (c) the decision was issued only because of lack of criminalization or jurisdiction of ICC, or (d) the decision was issued only because of amnesty or clemency, immunity against prosecution, lack of liability due to low age, declaration of death, lack of consent of victim with prosecution or due to requirement of international treaty. Also, if the decision concerns only certain attacks, the other attacks forming a continuous crime may still be prosecuted. Decisions of international courts based on their lack of competence (jurisdiction), insufficient gravity of the act (offence) or insufficient dangerousness of the offender also do not have this preventing effect.

(c) Cooperation with OTP investigations

Cooperation with the Office of the Prosecutor (OTP) regulates Section 155 – 163 of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.). The requests shall be addressed to the Supreme Public Prosecutor's Office of the Czech Republic (in the pre-trial proceedings) or to the Ministry of Justice of the Czech Republic (after the commencement of trial).

The authorities competent to proceed are Regional Public Prosecutor's Offices or Regional Courts, in case the request for cooperation (hereinafter "MLA request") concerns service of documents only, the competent authorities are District Public Prosecutor's Officer or District Courts. The territorial jurisdiction depends on the particular place where the MLA shall be conducted/obtained. The OTP may request to be present during execution of the request.

The ICC is allowed to serve its documents to addressees in the territory of the Czech Republic also directly through the provider of postal services.

Persons (witnesses or experts) may be interviewed under oath, wording of which shall be determined by the ICC. Representatives of the ICC may request to be present during the interview of the person and they may ask the person concerned supplementary questions. To interview a person is possible also by the means of video-conference device or telephone.

Execution of the MLA request may be refused only in exceptional cases when the protection of substantial national security interests is concerned. Such refusal would be very rare and could happen only after previous consultation with the ICC and upon decision of the Supreme Court of the Czech Republic. In case information classified according to the Act on Protection of Classified Information shall be transferred to the ICC, the competent authority would consult the ICC and the National Security Agency about the manner of protection of the information. Transfer of such information may be refused (also by the decision of the Supreme Court) only in case that it is impossible to secure adequate protection of the information.

In the extent that police cooperation may be relevant (e.g. mere provision of information not intended to be used as evidence), the Czech Police, when performing its tasks, cooperates (among other institutions) with international criminal courts, international criminal tribunals, or with similar international judicial bodies (Section 89 of the Police Act, no. 273/2008 Coll., as amended). To this effect, the Police may, inter alia, share information including personal data with the ICC (Section 80(1) of the Police Act in conjunction with Art. 87 of the Rome Statute).

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes

There is no special provision regulating cooperation on identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes. Therefore, the cooperation would proceed in the same way as with other types of cooperation – see above under c).

(e) Enforcement of sentences

Execution of sentence of imprisonment may be taken over in accordance with Section 171 – Section 177 of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.). The enforcement of the sentence of imprisonment is ordered by a court upon a petition of the Ministry of Justice of the Czech Republic. The Czech Republic may take over an execution of the sentence of imprisonment imposed by the ICC on a citizen of the Czech Republic (or a person with a permanent residence) as well as on another person (if the ICC undertakes to bear the costs of execution of that sentence). Possible agreement between the Czech Republic and the ICC on the enforcement of sentences might specify, or modify, the conditions contained in the Act.

Execution of a sentence related to property is regulated in Section 178 of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.). The financial amount collected by execution of the pecuniary sentence will belong to

the ICC and the competent Czech court will transfer it to the ICC or to whomever the ICC designates (i. e. the proceeds do not become the property of the State but directly of the ICC).

In case of execution a sentence of confiscation of property or confiscation of items or other asset values, the organizational unit of the Czech Republic to which pertains, according to the Act on the Property of the Czech Republic and its Representation in Legal Relations, to administer the property of the Czech Republic, will sell the property, item or asset value obtained by execution of the sentence and transfer the financial amount acquired by the sale to the ICC or to whomever the ICC designates.

If an item, which is a part of the national cultural heritage of the Czech Republic or another state, is concerned, and if the property, item or other asset value cannot be sold due to their nature, or for other reasons, further procedure will be consulted with the ICC.

(f) Witness protection

The authority competent for providing special protection of witnesses according to the Act on Special Protection of Witnesses and other Persons in relation to Criminal Proceedings (Act No. 137/2001 Coll.) is the Ministry of Interior of the Czech Republic in cooperation with the Police of the Czech Republic. This Act has been modified in 2013 to specifically enable the minister of interior to take into account requests by the International Criminal Court, or similar international judicial body.

According to Section 154 of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.), requests of an international court for securing protection of witness will be forwarded by the judicial authority to the Ministry of Interior. The decision to grant such protection is taken by the minister of interior (Section 4) and the Act explicitly confirms that there is no legal entitlement of witness (or other protected person, such as relative, expert, interpreter or accused) to such protection (Section 1). Possible future agreement between the Czech Republic and the ICC on the enforcement of sentences might specify the conditions contained in the Acts.

(g) Other forms of cooperation

Transit of persons

Authorization of transit of a person sought by the ICC through the territory of the Czech Republic is not required (it is only recommended to notify such transit to the Ministry of Justice of the Czech Republic).

Transfer of criminal proceedings

Upon request of the ICC, criminal proceedings will be transferred to the ICC by the public prosecutor through the Supreme Public Prosecutor's Office or by the court through the Ministry of Justice of the Czech Republic. The Supreme Public Prosecutor's Office, if criminal proceeding were transferred to the ICC before lodging

an indictment, and the Ministry of Justice, if criminal proceeding were transferred to the ICC after lodging an indictment, will be competent to appeal against the decision of the ICC on takeover of such proceeding and to related actions. This procedure is set up mainly for dealing with procedural aspects of a) Czech Republic's own referrals to the ICC, and b) cases in which the ICC decides to proceed while there are ongoing proceedings in the Czech Republic (it would not be practical to go on with the national and ICC proceedings at the same time).

Provision of information without a request (spontaneous information)

If a Czech public prosecutor or a Czech court believes that provision of information and evidence obtained in the criminal proceedings led in the Czech Republic could facilitate investigation and prosecution of offences conducted by the ICC in its jurisdiction or execution of sentences imposed by the ICC for such offences, the Supreme Public Prosecutor's Office upon a request of the public prosecutor and the Ministry of Justice upon a request of the court will transfer such information and evidence to the ICC even without its previous request.

Cooperation in relation to compensation of entitled persons

The Ministry of Justice of the Czech Republic will provide, upon request of the ICC, necessary cooperation in relation to compensation of entitled persons (e. g. searching for their whereabouts etc.).

Non-applicability of State-imposed duty not to disclose information

If a person heard by the ICC (e.g. a witness summoned to the Seat of the Court to give testimony) has, according to Czech legislation, duty not to disclose information, such duty does not apply in the ICC proceedings – i. e. the ICC does not need to request consent of Czech authorities with lifting the duty not to disclose.

5. Does the implementing legislation designate a channel of communication with the Court?

According to the declaration made by the Czech Republic under Article 87 (1) (a) of the Statute when depositing the instrument of ratification and Section 146 (3) together with Section 8 (2) of the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013 Coll.), the request for cooperation may be transmitted directly as well as through diplomatic channels. The requests shall be addressed to the Supreme Public Prosecutor's Office of the Czech Republic (in the pre-trial proceedings) or to the Ministry of Justice of the Czech Republic (surrender of persons, transit, other forms of international cooperation after the commencement of trial).

