

Key developments in Czech criminal law related to cross-border investigation

Within the legal context of the Czech Republic, the issue of cross-border investigation is governed by Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, effective from 01/01/2014. The Act on International Judicial Cooperation in Criminal Matters comprehensively defines the collaboration between judicial authorities of the Czech Republic and foreign authorities, international criminal courts and tribunals, as well as other institutions. At the same time, the Act implements legislation of the European Union governing tools of cooperation in the field of criminal law based upon the principle of mutual recognition.

From the point of view of international law, judicial cooperation in criminal matters is based upon bilateral and multilateral international treaties. This, however, does not mean that an absence of an international treaty with a specific state rules out the possibility of judicial cooperation in criminal matters. The reason is that such cooperation can be also based upon other than contractual grounds, as long as the Czech Republic grants such other state a so-called reciprocity assurance, i.e. an assurance that the Czech Republic will treat requests by judicial authorities of such state, in similar cases and under similar circumstances, in a similar way. The Czech Republic does not provide international judicial cooperation to foreign authorities if such cooperation would contradict the constitution of the Czech Republic or if such cooperation would be prejudicial to other significant protected interests of the Czech Republic.

As far as cross-border investigation is concerned, valid law allows judicial authorities to enter into an agreement on a joint investigation team with the competent authorities of one or more Member States. Such joint investigation team can be established especially in case of criminal proceedings in the Czech Republic or another Member State requiring difficult and demanding tasks in other Member States or in case of criminal proceedings in the Czech Republic and one or more other Member States if circumstances of the case require coordinated course of action in all the relevant Member States.

The undisputed goal of cross-border investigation is gathering of evidence for the purposes of criminal proceedings. Evidence obtained by a joint investigation team can be used in criminal proceedings in the Czech Republic, as long as it is procured in compliance with law of the state of its procurement or in compliance with the law of the Czech Republic. Such evidence is used for the purpose specified in the relevant request for international cooperation. This means that Czech authorities cannot use any evidence obtained from international judicial cooperation for any purposes other than those for which the evidence is provided without an explicit approval by the foreign authority – as long as the applicable international treaty stipulates so or if such limitation of potential use is stated as a condition, upon which such evidence is provided. Using any evidence provided to a foreign state for a purpose other than originally stated is only possible with the explicit consent of the authority providing such

evidence. Such foreign authority must, however, be specifically informed about such limitation. The same procedure applies in case of information or evidence procured or provided by authorities in the Czech Republic without a request for international cooperation. This means that the same mode applies to evidence provided spontaneously, i.e. without specific request.

Using any information procured within the cooperation of police authorities from *another* Member State or Associated State is only possible based upon a consent given by the competent authority of such state. Such consent can be requested by a public prosecutor or a court after an indictment is filed.

Using any information provided as a part of cooperation of police authorities *in another* Member State or Associated State as evidence in criminal proceedings is only possible based upon a consent issued by a regional court. In case of pre-trial proceedings in a foreign state, consent of a regional public prosecutor determined according to the seat of the police authority procuring the information is sufficient. Such consent, however, cannot be given in two cases, namely when using such information as evidence in criminal proceedings is not possible in the Czech Republic or if using such information as evidence might thwart criminal proceedings in the Czech Republic or if other vital interests would be materially threatened.

The Act on International Judicial Cooperation in Criminal Matters also defines the individual forms of the cooperation. Such forms, discussed here for its relevance to the topic at hand, include also legal assistance, which can be requested in a foreign state solely based upon a request from a public prosecutor or court after an indictment is filed. Such legal assistance can have the form of delivering summons to a person residing in a foreign state, whose presence is required for criminal proceedings in the Czech Republic, monitoring mail, telephone tapping and recording, conducting undercover investigation etc.

Evidence procured by foreign authorities in relation to legal assistance can be used in criminal proceedings in the Czech Republic as long as it is procured in compliance with law of the relevant foreign state or in compliance with law of the Czech Republic. Within Czech criminal proceedings, however, evidence may be provided to a foreign authority even without a request for legal assistance, as long as the domestic authority believes that such evidence may be used in criminal proceedings in the foreign state. No such information, however, may be provided if it would endanger the purpose of criminal proceedings in the Czech Republic.

The International Department for Criminal Matters, being a part of the section of international relations of the Ministry of Justice, is the central authority of the Czech Republic in the field of judicial cooperation in criminal matters. It especially operates as a sort of intermediary between Czech and foreign judicial authorities in matters with a foreign element, resulting in its high importance in the field of international cooperation. The Department also drafts and negotiates international treaties in the field of international judicial cooperation in criminal matters and unifies and evaluates its results. The Department also negotiates European regulation within the competent committees and EU work bodies. The International Department for Criminal Matters also provides courts with methodical assistance when dealing with criminal cases with international element.

To sum up, international judicial cooperation within the European Union is based upon the principle of mutual trust among the Member States. Vast legislation was adopted on the European level in this field, gradually replacing the existing system of cooperation based especially upon international treaties. Such European regulation must first be reflected (implemented) in the applicable Czech laws.

Before the Act on International Judicial Cooperation in Criminal Matters was passed, the legal framework of cross-border investigation, or the international cooperation in criminal matters as a whole, was defined solely by the Rules of Criminal Procedure, as far as criminal law was concerned. Such framework became difficult to apply, lacking and confusing especially after the Czech Republic joined the European Union. In light of the development of international judicial cooperation in criminal matters, the existing framework proved to be mostly obsolete. It was therefore necessary to prepare a new comprehensive framework for the issue, reflecting the new trends in the field. This goal was achieved by introducing the new legislation. Legal norms especially became more precise and detailed, several gaps in earlier legislation were overcome and other beneficial changes took place. In conclusion, cross-border investigation and using evidence procured by cross-border investigation, or international cooperation in criminal matters as such, became smoother and more comfortable for the Czech Republic after introducing the new Act on International Judicial Cooperation in Criminal Matters, at least as far as European Union Member States are concerned.