

## PART XII

### Procedure in criminal cases in international relations

#### Chapter 61

#### **Immunities of persons on the staff of the diplomatic missions and consular offices of foreign states**

Article 578. The jurisdiction of Polish criminal courts shall not extend to:

- (1) the heads of diplomatic missions of foreign states accredited in the Republic of Poland,
- (2) persons on the diplomatic staff of such missions,
- (3) persons on the administrative and technical staff of such missions,
- (4) members of the families of the persons listed in subsections (1) through (3), if they are members of their households, and
- (5) other persons granted diplomatic immunity pursuant to statutes, agreements, or universally acknowledged international custom.

Article 579. § 1. The jurisdiction of the Polish criminal courts shall not extend to the following persons, to the extent of their actions in the conduct and performance of official duties:

- (1) the heads of consular offices and other consular officials of foreign states, and
- (2) other persons accorded similar status pursuant to agreements or universally acknowledged international custom.

§ 2. The head of a consular office and other consular officials of foreign states can be subject to arrest or preventive detention only if they are charged with the commission of a felony. In the event of such arrest or preventive detention the Minister of Foreign Affairs shall be promptly notified.

§ 3. In addition to the case specified in § 2 such persons may be deprived of their liberty only pursuant to a valid and final judgement of a Polish court.

Article 580. § 1. Articles 578 and 579 shall not be applied in the special case, in which the sending State explicitly waives the immunity granted to the person referred to in these provisions.

§ 2. As to officials of international organisations who had been granted immunity, the waiver described in § 1, must be effected by the appropriate international organisation.

Article 581. § 1. The persons listed in Article 578 shall not be obligated to testify as witnesses or to appear as experts or interpreters; they may, however, be requested to give their consent to testify or to appear in the capacity of experts or interpreters.

§ 2. In the event that the consent referred to in § 1, is given, the summons served on these persons shall not include the warning on measures of coercion; if they fail to appear when summoned or refuse to testify, these measures shall not be applied to them.

Article 582. § 1. Article 579 shall be applied accordingly to persons listed in Article 581, if the material circumstances which their testimony or opinions are to concern, are connected with the performance by these persons of their official or professional functions, and with other functions, on the principle of reciprocity.

§ 2. The persons listed in Articles 578 and 579 shall not be obligated to surrender correspondence or documents connected with such functions.

Article 583. § 1. The premises of a diplomatic mission may be searched only after consent has been obtained from the head of such a mission or from a person temporarily acting in his capacity.

§ 2. The consent of a consular office or of a person temporarily acting in his capacity, or of the head of the diplomatic mission shall be necessary to conduct a search of the premises of a consular office.

Article 584. Articles 578 through 583 shall not be applicable to persons listed therein, if such persons are Polish nationals or have their permanent residence in Poland.

## Chapter 62

### **Judicial assistance and service of documents in criminal cases**

Article 585. The actions necessary in criminal proceedings may be conducted by way of judicial assistance, particularly the following:

(1) service of documents on persons staying abroad or on agencies having their principal offices abroad,

(2) taking depositions of persons in their capacities as accused persons, witnesses, or experts,

(3) inspection and searches of dwellings and other places and persons, confiscation of material objects and their delivery abroad,

(4) summoning of persons staying abroad to make a personal voluntary appearance before the court or state prosecutor, in order to be examined as a witness or to be submitted to confrontation, and the bringing of persons under detention, for the same purposes, and

(5) giving access to records and documents, and information on the record of convictions of the accused.

(6) advising on the law.

Article 586. § 1. The request to have a document served upon a person who is a Polish national and is staying abroad, or to have such a person examined as an accused, witness or expert, shall be addressed by the court or state prosecutor to a Polish diplomatic mission or consular office.

§ 2. If this action cannot be performed as provided for in § 1, such a request may be addressed to a court, prosecutors' office or other appropriate agency of the foreign state. If this request is for a search, for confiscation and delivery of a material object, the request should contain a duplicate copy of the order issued by the court or state prosecutor concerning the performance of this action in the given case.

Article 587. The official records of inspections, examinations of persons as accused persons, witnesses or experts, or records of other evidentiary actions prepared upon a request from a Polish court or state prosecutor, by the courts or state prosecutors of foreign states or by agencies performing under their supervision, may be read aloud at the hearing according to the principles prescribed in Articles 389, 391 and 393. This may be done provided that the

manner of performing these actions, does not conflict with the principles of the legal order in the Republic of Poland.

Article 588. § 1. Courts and state prosecutors' offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

Article 589. § 1. A witness or expert who is not a Polish national and who, when summoned from abroad, appears voluntarily before the court, cannot be prosecuted or arrested, or put under preventive detention either by reason of an offence relevant to the criminal proceedings, or of any other offence committed before he crossed the Polish border. The penalty imposed for such offence may not be executed with respect to him.

§ 2. Such a witness or expert shall forfeit the protection provided by § 1, if he fails to leave the territory of the Republic of Poland, although being able to do so within seven days from the day on which the court announces to him that his presence is no longer necessary.

§ 3. Witnesses or experts summoned from abroad shall be entitled to have the costs of their fare and stay reimbursed to them, and shall be compensated for lost wages; in addition, an expert shall be entitled to a fee for the opinion he has issued.

§ 4. The summons served on a witness or expert permanently residing abroad shall include a notice of the contents of § 1 through 3, and it shall not contain a warning on measures of coercion in the event of a failure to appear.

Article 589a. § 1. With respect to a person deprived of liberty within the territory of a foreign state, extradited temporarily in order to testify as witness or to conduct other procedural action with his participation before a Polish court or state prosecutor, the circuit court for the place of the performance of the action shall order placing the extradited person in a Polish penal establishment or detention facility for the period of his stay within the territory of the Republic of Poland, but not exceeding the term of deprivation of liberty specified in the state which extradited the person.

§ 2. The order of the court shall not be subject to interlocutory appeal.

Chapter 63

**Taking over or transferring the criminal prosecution**

Article 590. § 1. In the case of an offence committed abroad by:

(1) a Polish national,

(2) a person having his permanent residence within the territory of the Republic of Poland,

(3) a person who is serving or will serve a penalty of deprivation of liberty in the Republic of Poland,

(4) person against whom criminal proceedings have been instituted in Poland,

– the Minister of Justice shall, in the interest of the administration of justice, direct a request to a relevant agency of a foreign state for taking over the criminal prosecution or may accept such a request from an appropriate agency of a foreign state.

§ 2. Taking over the criminal prosecution shall be regarded as instituting criminal proceedings under Polish law.

§ 3. If taking over the criminal prosecution involves taking custody of a person under a preventive detention, Article 598 shall be applied.

§ 4. Article 587 shall be applied accordingly to the evidentiary material obtained abroad, even if the actions have not been undertaken upon a request from a Polish court or state prosecutor.

§ 5. The Minister of Justice shall notify the appropriate agency of the foreign state on the manner of the valid conclusion of the criminal proceedings.

Article 591. § 1. In the case of an offence committed by an alien within the territory of the Republic of Poland, the Minister of Justice, *ex officio*, or on the initiative of the court or state prosecutor shall, if the interest of the administration of justice so requires, direct to a relevant agency of a foreign state:

(1) of whom the prosecuted person is a national,

(2) in which the prosecuted person has his permanent residence,

(3) in which the prosecuted person is serving or will serve a penalty of deprivation of liberty, or

(4) in which criminal proceedings have been instituted against the prosecuted person,

– a request to take over the criminal prosecution, or may accept such a request from an appropriate agency of a foreign state.

§ 2. If the injured person is a Polish national, submitting the request for taking over the prosecution may be only be done with his consent, unless obtaining such consent is not possible.

§ 3. Before directing the request referred to in § 1 or before deciding on such a request directed by an agency of a foreign state, the appropriate agency shall give the prosecuted person staying in the territory of the Republic of Poland the opportunity to state his position, orally or in writing, on the subject of the transfer of prosecution.

§ 4. When the request for taking over the prosecution, regarding a person under preventive detention within the territory of the Republic of Poland is granted, the Minister of Justice shall request that the appropriate agency undertake actions leading to the extradition and transfer of such person to the agencies of a foreign state. The files of the case shall be transferred with the person unless they have been transferred earlier.

§ 5. The Minister of Justice shall request the appropriate agency of a foreign state, for information on the manner of a valid and final conclusion of the criminal proceedings.

§ 6. The transfer of the criminal proceedings shall be regarded as the discontinuation of the criminal proceedings under Polish law; it shall not prevent new criminal proceedings in the event that prosecution abroad has been abandoned without proper grounds.

Article 592. § 1. If the criminal proceedings regarding the same act of the same person have been instituted in the Republic of Poland and in a foreign state, the Minister of Justice shall conduct consultations with an appropriate agency of a foreign state and, when the interest of the administration of justice so require, shall request the taking over (the person) or transferring of the criminal prosecution, then Article 590 §§ 2 through 5 and Article 591 § 2 through 6 shall be applied accordingly.

§ 2. If, pursuant to an international agreement to which the Republic of Poland is a party, criminal proceedings for an offence committed abroad have been instituted in the Republic of Poland, the Minister of Justice may request of an appropriate agency of a foreign state that the prosecution be taken over by agencies of that state, irrespective of whether the prosecution has been instituted in the foreign state for the same act. The provisions of Article 591 § § 2, 5 and 6 shall be applied accordingly.

§ 3. In the case for an offence committed abroad by a Polish national, when the interest of the administration of justice so require, the Minister of Justice may request of an appropriate agency of a foreign state that the prosecution be taken over by agencies of that state. The provisions of Article 591 § § 2, 5 and 6 shall be applied accordingly.

## Chapter 64

### **Petition for the extradition or transportation of prosecuted or sentenced persons staying abroad, and for the delivery of material objects**

Article 593. § 1. The petitions for extradition by a foreign state of a person against whom criminal proceedings have been instituted, for extradition in order to conduct judicial proceedings or enforce the imposition of the penalty of deprivation of liberty, for transportation of a prosecuted or sentenced person through the territory of a foreign State, or for transmitting from the territory of a foreign State, the material evidence or objects acquired by the perpetrator through his offence, shall be filed through the Attorney General by the courts and state prosecutors.

Article 594. § 1. A duplicate copy of the order on preventive detention and the statement of reasons thereof, explaining the factual situation and the legal grounds for the prosecution, shall be appended to the petition.

§ 2. If the accused is sentenced to deprivation of liberty by a valid and final judgement, a copy of this judgement shall be appended to the petition in place of the copy of the order referred to in § 1.

§ 3. Article 280 § 1 subsection (2) shall be applied accordingly.

Article 595. In exigent circumstances, the court or the state prosecutor may apply directly to the appropriate agency of the foreign State, requesting that the person whose extradition is to be sought, be put under preventive detention or arrested, whereupon a petition should be promptly filed pursuant to Articles 593 and 594.

Article 596. The person extradited cannot, without the consent of the state that extradited him, be sentenced or deprived of liberty in order to serve a penalty for any other offence committed before the date of extradition.

Article 597. In the event that upon extradition, the condition is imposed concerning the person extradited, that formerly imposed penalties will be executed only to the extent of the offences for which the extradition has been granted, the court which has validly decided the case, shall issue in session a judgement, if necessary, amending the prior decision so that the penalty shall be executed only as to the offences for which the extradition was granted. The state prosecutor and the extradited person shall have the right to participate in the session. The provision of Article 451 shall be applied accordingly.

Article 598. § 1. With respect to the extradited person, the time-limits prescribed in [Article 263](#) will run from the time of his being taken in custody by the appropriate agencies on the territory of the Republic of Poland.

§ 2. [Article 265](#) shall also be applicable when the arrest has occurred in a foreign state.

Article 599. If a person extradited by another State fails, without good cause, to leave the territory of the Republic of Poland within forty five days from the day on which the proceedings are validly concluded, or, in the event that he has been sentenced, within two months from the day on which he completes the serving of his sentence or the date of granting a remission of penalty, or if he returns after leaving the territory of the Republic of Poland, the restrictions provided in Articles 596 and 597 shall not apply.

Article 600. After a valid and final decision has been issued in a case against a person extradited from a foreign State, the court shall send a copy of the judgement to the Minister of Justice, and the latter will convey the same to the appropriate agency of that foreign State. Article 157 § 2 shall be applied accordingly.

Article 601. Material objects transmitted by a foreign State, acquired as a result of an offence shall be returned if such a condition was imposed on their transmission; this provision shall also apply to material evidence.

## Chapter 65

### **Requests by foreign states for the extradition or transportation of prosecuted or sentenced persons staying abroad, and for the delivery of material objects**

Article 602. If an authority of a foreign state submits a motion for the extradition of a prosecuted person in order to conduct criminal proceedings against him, or to execute a penalty or a preventive measure previously imposed, the state prosecutor shall examine this person and, if necessary, secure the material evidence in Poland, whereupon he shall file the case with a circuit court having territorial jurisdiction over the case.

Article 603. § 1. The circuit court shall issue in session an opinion on the motion of the foreign state. Before such an opinion is issued, the prosecuted person should be given the opportunity to submit explanations, orally or in writing. If extradition is sought in order to institute criminal proceedings, upon the well-founded request of such a person, evidence-taking proceedings should be conducted with respect to the evidence accessible in Poland.

§ 2. The defence counsel shall have the right to participate in the session.

§ 3. If the court has issued an order on the inadmissibility of extradition, the extradition may not take place.

§ 4. The order of the court regarding the extradition shall be subject to interlocutory appeal.

§ 5. The court shall refer the valid and final order together with the files of the case to the Minister of Justice who, having decided on the motion, shall notify the appropriate authority of the foreign state.

Article 603a. § 1. If an international agreement to which the Republic of Poland is a party so stipulates, the request by a foreign state for the application of a preventive detention replaces a request for extradition.

§ 2. In the case referred to in § 1, the state prosecutor shall, during the examination, inform the prosecuted person of the possibility of his consent to extradition combined with waiving the use of restrictions specified in Articles 596 and 597. If the prosecuted person agrees to submit such a statement, the state prosecutor shall refer the case to a circuit court for the area where the proceedings are pending.

§ 3. The court decides, in a session, on preventive detention of the prosecuted person, receives the statement of consent to extradition or to extradition combined with waiving the use of restrictions specified in Articles 596 and 597, and issues an order on the admissibility of extradition.

§ 4. The consent of the prosecuted person and the waiver, referred to in § 2 may be withdrawn, of which the prosecuted person shall be instructed.

§ 5. The court shall transfer, without delay, the valid and final order together with the files of the case, to the Minister of Justice, who decides on the extradition of the person.

§ 6. If the statement referred to in § 3 has not been submitted, or the court has found that a circumstance specified in Article 604 § 1 has occurred, or when the session has been adjourned for a period in excess of 7 days, the provisions of Articles 602, 603 and 605 shall be applied.

Article 604. § 1. The extradition is inadmissible if:

(1) the person to whom such a motion refers, is a Polish national or has been granted the right of asylum in the Republic of Poland,

(2) the act does not have the features of a prohibited act, or if the law stipulates that the act does not constitute an offence, or that a perpetrator of the act does not commit an offence or is not subject to penalty,

(3) the period of limitation has elapsed,

(4) the criminal proceedings have been validly concluded concerning the same act committed by the same person,

(5) the extradition would contravene Polish law,

(6) there are grounds for fearing that in the state moving for extradition, a death sentence may be issued for the extradited person or later executed,

(7) there are grounds for fearing that in the state moving for extradition, the extradited person may be subject to torture.

§ 2. In particular, extradition may be refused, if:

(1) the person to whom such a motion refers has permanent residence in Poland,

(2) the criminal offence was committed on the territory of the Republic of Poland, or on board a Polish vessel or aircraft,

(3) criminal proceedings are pending concerning the same act committed by the same person,

(4) the offence is subject to prosecution on a private charge,

(5) pursuant to the law of the State which has moved for extradition, the offence committed is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed,

(6) the nature of the offence with which the motion for extradition is connected is political, military or fiscal, or

(7) the State which has moved for extradition, does not guarantee reciprocity in this matter.

§ 3. In the event indicated in § 1 subsection (4) and § 2 subsection (3), the resolution of the motion for extradition may be adjourned, until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty.

Article 605. § 1. If the motion for extradition concerns an offence the perpetrator of which is subject to extradition, then the circuit court acting *ex officio* or upon a motion from the state prosecutor, may issue an order concerning the preventive detention to be imposed upon the prosecuted person; Article 263 shall be applied accordingly.

§ 2. The court, before a motion for extradition has been filed, may also order the preventive detention of the prosecuted person for a period not exceeding forty days, if so requested by the agency of a foreign State, which at the same time shall declare that the person concerned has been validly sentenced by a judgement, or a decision for preventive detention has been issued.

§ 3. The order of the court regarding the preventive detention shall be subject to interlocutory appeal.

§ 4. The Minister of Justice and a diplomatic mission or a consular office or prosecuting agency of the foreign State shall be notified promptly, of the day on which the preventive detention commences.

§ 5. If the information contained in a motion for extradition is insufficient, and the court or the state prosecutor has required its completion, and the foreign State fails to send the necessary documents or information to the requesting agency, within one month from the day on which the request for the completion of the motion for extradition is served on it, the decision on preventive detention shall be quashed.

§ 6. In the event that extradition is refused, or the motion for extradition or preventive detention is withdrawn, or if the agency of a foreign State, though duly notified of when and where the requested person is to be surrendered, fails to take custody of him within seven days from the day established for extradition, then the person who was placed under preventive detention should be promptly released unless he is deprived of his liberty in another case.

Article 606. § 1. Permission for the transportation of a prosecuted person through the territory of the Republic of Poland shall be granted by the Minister of Justice. Articles 594, 604 and 605 shall be applied accordingly.

§ 2. If the transportation is by air and no landing is expected, it shall be sufficient to notify the Minister of Justice of the transportation of the prosecuted person over the territory of the Republic of Poland.

Article 607. § 1. Jurisdiction to resolve motions filed by a foreign State, seeking delivery of objects constituting material evidence or obtained by the offence, shall be vested in the state prosecutor or the court, depending on at whose disposal these objects have been deposited.

§ 2. The order on the delivery of objects should list the material objects subject to surrender to the foreign State, and indicate what objects shall be returned after the criminal proceedings conducted by the agencies of that foreign State have been concluded.



### **Taking over the sentenced persons or transferring decisions in order to execute**

Article 608. § 1. In the event that a Polish national, has been finally validly sentenced by a court of a foreign state to a penalty of deprivation of liberty subject to execution, or a measure involving deprivation of liberty has been validly and finally decided with respect to a Polish national, the Minister of Justice may direct a request to an appropriate authority of that foreign State, to take over custody of the sentenced person or the person on whom the imposition of the measure was decided, in order that the penalty of deprivation of liberty or the measure be executed in the Republic of Poland.

§ 2. In the event that a Polish national, a person permanently residing, having property or pursuing a professional activity within the territory of the Republic of Poland, has been validly and finally sentenced for a fine, or in the event that a prohibition against occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, a prohibition on driving vehicles, or forfeiture or a preventive measure not involving deprivation of liberty has been validly and finally decided with respect to such person, the Minister of Justice may direct a request to an appropriate authority of that foreign state for taking over the decision to be executed in the Republic of Poland.

§ 3. The Minister of Justice before making the request referred to in § § 1 or 2 shall motion the court having jurisdiction, to issue an order regarding the admissibility of taking over the decision to be executed in the Republic of Poland.

Article 609. § 1. In the event that a motion has been received, for execution of a validly and finally decided penalty of deprivation of liberty or a measure involving deprivation of liberty, with respect to a Polish national or a person permanently residing within the territory of the Republic of Poland, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of taking over the decision to be executed in the Republic of Poland.

§ 2. In the event that a request from a foreign state has been received for execution, with respect to a Polish national, a person permanently residing, having property or pursuing a professional activity within the territory of the Republic of Poland, of a validly and finally decided fine, prohibition from occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, prohibition on driving vehicles, or forfeiture or a preventive measure not involving deprivation of liberty, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of taking over the decision to be executed in the Republic of Poland.

§ 3. If the decision to which the request pertains is not valid and final or the person covered by the request specified in § 1 is not a Polish national or has no permanent residence within the territory of the Republic of Poland, the Minister of Justice shall return the request.

Article 610. § 1. In the event that a foreign national has been validly and finally sentenced by a Polish court, for a penalty of deprivation of liberty subject to execution or a measure involving deprivation of liberty has been validly and finally decided with respect to such person, the Minister of Justice may direct a request to an appropriate agency of the foreign state whose national is the sentenced person or a person with respect to whom the measure was decided for taking over the penalty or measure to be executed.

§ 2. The Minister of Justice before making the request referred to in § 1 shall motion the court having jurisdiction, to issue an order regarding the admissibility of transferring the decision to be executed abroad.

§ 3. In the event that a motion has been received for taking over a foreign national validly and finally sentenced by a Polish court, for a penalty of deprivation of liberty subject to execution or for whom a measure involving deprivation of liberty has been validly and finally decided, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of transferring the decision to be executed abroad.

§ 4. In the event that a foreign national or a person permanently residing or having property or pursuing a professional activity abroad, has been validly and finally sentenced by a Polish court for a fine, or in the event that a prohibition from occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, prohibition on driving of vehicles, or forfeiture or a preventive measure not involving deprivation of liberty has been validly and finally decided with respect to such person, the court having jurisdiction to execute the penalty may request, through the Minister of Justice, that an appropriate authority of that foreign state where the convicted person or a person for whom the measure has been decided resides permanently or pursues the activity, execute the decision.

§ 5. In the event that a request from a foreign state has been received for transfer, for execution of a valid and final sentence of a Polish court with respect to a person permanently residing, having property or pursuing a professional activity within the territory of that state for a fine, or for transfer for execution of a valid and final decision on a prohibition from occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, as well as prohibition on driving vehicles, forfeiture or a preventive measure not involving deprivation of liberty, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of transferring the decision to be executed abroad.

Article 611. § 1. The circuit court in whose area the sentenced person has recently resided permanently or stayed temporarily, shall have the jurisdiction to examine cases specified in Article 608 § 3 in connection with § 1 and Article 609 § 1.

§ 2. The district court in whose area the sentenced person has resided permanently or stayed temporarily, or if this has not been established, where the property suitable for execution is located or where the sentenced person pursues the prohibited activity, shall have the jurisdiction to examine cases specified in Article 608 § 3 in connection with § 2, Article 609 § 2 and Article 610 § 5.

§ 3. The circuit court in whose circuit the decision pertained to in the request has been issued, shall have the jurisdiction to examine the cases specified in Article 610 § 2 and 3.

§ 4. If the jurisdiction cannot be established according to the principles specified in § 1, the case shall be examined by the Circuit Court in Warsaw.

§ 5. If the jurisdiction cannot be established according to the principles specified in § 2, the case shall be examined by the court having jurisdiction over the Śródmieście (“City Centre”) quarter of the municipality Warszawa-Centrum.

Article 611a. § 1. The court shall examine the admissibility of taking over or transferring the decision to be executed, in session where the state prosecutor and the sentenced person, if he stays within the territory of the Republic of Poland, as well as the defence counsel for the sentenced person if he appears, shall have the right to participate. When the sentenced person who is not staying within the territory of the Republic of Poland

has no defence counsel, the president of the court having jurisdiction to examine the case may designate a defence counsel *ex officio*.

§ 2. When the data contained in the request are not sufficient, the court may order their supplementation. The court may adjourn examination of the case for this purpose.

§ 3. If the court has issued an order regarding the inadmissibility of taking over or transferring the decision to be executed, the taking over or transfer shall not occur.

§ 4. In the event specified in Article 610 § 4, the court shall issue an order on making a request to an agency of a foreign state to take over the decision to be executed.

§ 5. The order of the court regarding taking over or transferring the decision to be executed shall be subject to interlocutory appeal.

§ 6. If the proceedings concern taking over the decision to be executed, the court may decide on a preventive measure.

Article 611b. § 1. Taking over the decision to be executed in the Republic of Poland shall be inadmissible if:

- 1) the decision is not valid and final or is not subject to execution,
  - 2) the execution of the decision would constitute an infringement of the sovereignty, security or legal order of the Republic of Poland.
  - 3) the person sentenced to deprivation of liberty, or the person with regard to whom a measure involving deprivation of liberty has been decided, does not consent to the taking over,
  - 4) the person sentenced to fine or a person not residing permanently in Poland with regard to whom forfeiture has been decided, has no property on its territory,
  - 5) the act indicated in the request does not constitute a prohibited act under Polish law,
  - 6) circumstances referred to in Article 604 § 1 subsections 2, 3 and 5 have occurred.
- § 2. Transferring the decision to be executed in a foreign state shall be inadmissible if:
- 1) the decision is not valid and final or is not subject to execution,
  - 2) the person sentenced to deprivation of liberty, or the person with regard to whom a measure involving deprivation of liberty has been decided, does not consent to the transfer,
  - 3) the person sentenced to deprivation of liberty, or the person with regard to whom a measure involving deprivation of liberty has been decided, is a person specified in Article 604 § 1 subsection 1,
  - 4) the circumstances referred to in Article 604 § 1 subsections 3 and 5 have occurred.

Article 611c § 1. After the decision is taken over to be executed, the court shall determine the legal qualification of the act under Polish law and the penalty or the measure subject to execution.

§ 2. In the determination of a penalty or measure, the court shall apply accordingly the provision of Article 114 § 4 of the Penal Code.

§ 3. In the determination of the amount of a fine, the court shall convert the fine so decided, as an amount or the level of the daily rate, specified in a foreign currency, according to the average exchange rates of currencies announced by the National Bank of Poland for the date of the issuance of the decision in a foreign state. If the fine was imposed as an amount, this amount cannot exceed the product of the daily rate and a number of daily rates.

§ 4. The court examines the case in session. The provisions of Article 352 and 611a § § 1 and 5 shall be applied accordingly.

Article 611d. § 1. If, in the course of proceedings, circumstances have occurred justifying the issuance of a decision on security on property because of threatened forfeiture of objects or property constituting benefits obtained from committing an offence, and these

objects or elements of this property are located in the territory of a foreign state, the court, and in preparatory proceedings – the state prosecutor, may request, through the Minister of Justice, an appropriate agency of the foreign state to secure the objects or property threatened with forfeiture.

§ 2. If an agency of a foreign state requests the execution of a valid and final decision on securing property, when the property subject to the security is located in the territory of the Republic of Poland, the district court or state prosecutor for the area where the property is located, has the jurisdiction to execute the decision.

Article 611e. If the validly sentenced person leaves the territory of the state where he has been sentenced and arrives in the territory of the State of which he is a national, before serving the penalty of deprivation of liberty decided with respect to him, or before the execution of the measure decided with respect to him, the provisions of this Chapter shall be applied accordingly. The provisions of Article 611b § 1 subsection 3 and § 2 subsection 2 shall not be applied.

Article 611f. The provisions of this Chapter shall be applied accordingly to taking over or transferring for execution the decisions on pecuniary penalties.

## Chapter 67

### **Closing provisions**

Article 612. § 1. Whenever an alien is subjected to preventive detention, the consular office of that foreign State having territorial jurisdiction or, if there is no such office, the diplomatic mission of such state should be promptly notified.

§ 2. If an alien has been placed under preventive detention, such a detainee should be given the opportunity to contact, in the form available, the relevant consular office or diplomatic mission.

Article 613. § 1. With the exception of the case specified in Article 595, the courts and the state prosecutors shall communicate with the agencies of foreign states having their offices abroad, and with the persons referred to in Articles 578 and 579, in every case, including the service of procedural documents, through the Minister of Justice, who, when necessary, shall do so through the Ministry of Foreign Affairs.

§ 2. The courts and the state prosecutors, in cases prescribed by the Minister of Justice, may communicate directly with the consular offices of a foreign State in Poland.

Article 614. The costs which have been incurred in connection with the actions described in this Chapter, shall be paid by the foreign State which filed the motion for conducting the action. The agencies of the Polish State may waive the request to reimburse the costs incurred, if the foreign State guarantees reciprocity.

Art. 615 § 1. In relations with international criminal courts and their bodies operating subject to international agreements to which the Republic of Poland is a party, or appointed by international organizations established by means of an agreement ratified by the Republic of Poland, the provisions of this Part shall apply respectively.

§ 2. The provisions of this Part shall not apply if an international agreement to which the Republic of Poland is a party or a legal act regulating the operation of an international criminal tribunal provides otherwise.

§ 3. The provisions of this Part need not be applied to a foreign state with which the Republic of Poland has no relevant agreement in this respect, and which does not guarantee reciprocity.

§ 4. If an international agreement or a legal act regulating the operation of an international criminal court so requires, the Minister of Justice shall notify the international criminal court of the institution of proceedings against a person for the commitment of an offence which is subject to prosecution by the said court.

§ 5. If, with regard to the same conduct of the same person, penal proceedings are instituted in the Republic of Poland and before an international criminal court, the Minister of Justice shall transfer the prosecution to the said court if this is required by legal acts regulating the operation of the court.