

**Second Supplementary Treaty on Extradition between
the United States of America and the Czech Republic**

As contemplated by Article 3(2) of the Agreement on Extradition between the United States of America and the European Union signed in Washington on 25 June 2003 (hereafter “the Agreement between the United States of America and the European Union”), the United States of America and the Czech Republic have agreed to amend the Treaty between the United States of America and the Czechoslovak Republic of 2 July 1925 concerning the mutual extradition of fugitive criminals, as amended by the Supplementary Treaty of 29 April 1935, (hereafter collectively “the Extradition Treaty”) under the following terms:

Article 1

Article I of the Extradition Treaty shall be replaced by the following:

“Article I

It is agreed that the United States and the Czech Republic shall, upon requisition duly made as herein provided, deliver up to justice any person, who may be charged with, or may have been convicted of any of the crimes or offenses specified in Article II of the present Treaty, and who shall be found within their respective territories; provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.”

Article 2

Article II of the Extradition Treaty shall be replaced by the following:

“Article II
Extraditable offenses

A crime or offense shall be an extraditable crime or offense if it is punishable under the laws of the Requesting and Requested States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. A crime or offense shall also be an extraditable crime or offense if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable crime or offense. Where the request is for enforcement of the sentence of a person convicted of an extraditable crime or offense, the deprivation of liberty remaining to be served must be at least four months.

If extradition is granted for an extraditable crime or offense, it shall also be granted for any other crime or offense specified in the request if the latter crime or offense is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

For purposes of this Article, a crime or offense shall be considered an extraditable crime or offense:

- (a) regardless of whether the laws in the Requesting and Requested States place the crime or offense within the same category of crimes or offenses or describe the crime or offense by the same terminology;
- (b) regardless of whether the crime or offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; and
- (c) in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, regardless of whether the laws of the Requesting and Requested States provide for the same kinds of taxes, customs duties, or controls on currency or on the import or export of the same kinds of commodities.

If the crime or offense has been committed outside the territory of the Requesting State, extradition shall be granted, subject to the other applicable requirements for extradition, if the laws of the Requested State provide for the punishment of a crime or offense committed outside its territory in similar circumstances. If the laws of the Requested State do not provide for the punishment of a crime or offense committed outside its territory in similar circumstances, the executive authority of the Requested State, at its discretion, may grant extradition provided that all other applicable requirements for extradition are met.”

Article 3

Article VI, paragraph 1, of the Extradition Treaty shall be replaced by the following:

“If the person claimed should be under examination or under punishment in the State applied to for other crime or offense, his extradition may be deferred until the conclusion of the trial, or in the case of his conviction, until the full execution of any punishment imposed upon him.”

Article 4

A new article shall be introduced after Article VI of the Extradition Treaty. It shall read as follows:

“Article VIa Temporary surrender

If a request for extradition is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution.

The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State at the conclusion of the proceedings against that person, in accordance with the conditions to be determined by mutual agreement of the Requesting and Requested States. The time spent in custody in the territory of the Requesting State pending prosecution in that State may be deducted from the time remaining to be served in the Requested State.”

Article 5

Article VII of the Extradition Treaty shall be replaced by the following:

“Article VII

Requests for extradition or surrender made by several States

If the Requested State receives requests from the Requesting State and from any other State or States for the extradition of the same person, either for the same crime or offense or for different crimes or offenses, the executive authority of the Requested State shall determine to which State, if any, it will surrender the person.

If the Czech Republic receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same crime or offense or for different crimes or offenses, the competent executive authority of the Czech Republic shall determine to which State, if any, it will surrender the person.

In making its decision under paragraphs 1 and 2, the Requested State shall consider all of the relevant factors, including, but not limited to, the following:

- (a) whether the requests were made pursuant to a treaty;
- (b) the places where each of the crimes or offenses was committed;
- (c) the respective interests of the Requesting States;
- (d) the seriousness of the crimes or offenses;
- (e) the nationality of the victim;
- (f) the possibility of any subsequent extradition between the Requesting States; and
- (g) the chronological order in which the requests were received from the Requesting States.”

Article 6

Article IX of the Extradition Treaty shall be replaced by the following:

“Article IX

“The Requesting State shall pay all the expenses related to the translation of extradition documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.”

Article 7

Article XI, paragraphs 2 through 4 of the Extradition Treaty shall be replaced by the following:

“Requests for extradition and supporting documents shall be transmitted through the diplomatic channel. If the person whose extradition is sought is held under provisional arrest by the Requested State, the Requesting State may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel by submitting the request and documents to the Embassy of the Requested State located in the Requesting State. In that case, the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the Requested State for purposes of applying the time limit that must be met under paragraph 4 of this Article to enable the person’s continued detention.

Requests for provisional arrest may be made directly between the United States Department of Justice and the Ministry of Justice of the Czech Republic, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organization (Interpol) may also be used to transmit such a request.

The person provisionally arrested shall be released, unless within two months from the date of commitment in the United States – or from the date of arrest in the Czech Republic, the formal requisition for surrender, with the documentary proofs hereinafter described, be made as aforesaid through the diplomatic channel.”

Article 8

A new paragraph shall be inserted after Article XI, paragraph 5, of the Extradition Treaty. It shall read as follows:

“Documents that bear the certificate or seal of the Ministry of Justice, or Ministry or Department responsible for foreign affairs, of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization. “Ministry of Justice” shall, for the United States of America, mean the United States Department of Justice and, for the Czech Republic, the Ministry of Justice of the Czech Republic.”

Article 9

A new article shall be introduced after Article XI of the Extradition Treaty. It shall read as follows:

“Article XIa Supplementary information

The Requested State may require the Requesting State to furnish supplementary information within such reasonable length of time as it specifies, if it considers that the information furnished in support of the request for extradition is not sufficient to fulfill the requirements of this Treaty.

Such supplementary information may be requested and furnished directly between the United States Department of Justice and the Ministry of Justice of the Czech Republic.”

Article 10

A new article shall be introduced after new Article XIa of the Extradition Treaty. It shall read as follows:

“Article XIb

Sensitive information in a request

Where the Requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted.”

Article 11

A new article shall be introduced after new Article XIb of the Extradition Treaty. It shall read as follows:

“Article XIc

Simplified extradition procedures

If the person sought consents to be surrendered to the Requesting State, the Requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of protection of the rule of specialty.”

Article 12

A new article shall be introduced after Article XII of the Extradition Treaty. It shall read as follows:

“Article XIIIa

Transit

The United States of America may authorize transportation through its territory of a person surrendered to the Czech Republic by a third State, or by the Czech Republic to a third State. The Czech Republic may authorize transportation through its territory of a person surrendered to the United States of America by a third State, or by the United States of America to a third State.

A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of the Czech Republic. The facilities of Interpol may also be used to transmit such a request. The request shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

Authorization is not required when air transportation is used and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 2. All measures necessary to prevent the person from absconding shall be taken until transit is effected, as long as the request for transit is received within 96 hours of the unscheduled landing.”

Article 13

A new article shall be introduced after new Article XIIIa of the Extradition Treaty. It shall read as follows:

“Article XIIb
Capital Punishment

Where the crime or offense for which extradition is sought is punishable by death under the laws in the Requesting State and not punishable by death under the laws in the Requested State, the Requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty if imposed shall not be carried out. If the Requesting State accepts extradition subject to conditions pursuant to this Article, it shall comply with the conditions. If the Requesting State does not accept the conditions, the request for extradition may be denied.”

Article 14

1. This Supplementary Treaty shall apply to offenses committed before as well as after it enters into force.

2. This Supplementary Treaty shall not apply to requests for extradition made prior to its entry into force; except that Articles 1 through 4 of this Supplementary Treaty shall be applicable to requests made prior to such entry into force.

Article 15

The United States Department of Justice and the Ministry of Justice of the Czech Republic may consult with each other, at times mutually agreed to by them, in connection with the processing of individual cases and in order to maintain and improve procedures for the implementation of the Extradition Treaty and this Supplementary Treaty.

Article 16

This Supplementary Treaty shall be interpreted consistent with the Agreement between the

Article 17

1. This Supplementary Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible. This Supplementary Treaty shall enter into force on the date the Agreement between the United States of America and the European Union enters into force.

2. This Supplementary Treaty shall terminate on the date of termination of the Agreement between the United States of America and the European Union and the Extradition Treaty shall be applied, unless the United States of America and the Czech Republic agree by exchange of diplomatic notes to continue to apply some or all of the provisions of this Supplementary Treaty.

3. When giving or receiving notice terminating the Agreement between the United States of America and the European Union, the United States of America shall at the same time inform the Czech Republic of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Supplementary Treaty.

DONE at Prague, this sixteenth day of May, 2006 in duplicate, in the English and Czech languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:



FOR THE CZECH REPUBLIC:

