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**THE IMPLICATIONS FOR COUNCIL OF
EUROPE MEMBER STATES OF THE
RATIFICATION OF THE
ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

**LES IMPLICATIONS POUR LES ETATS
MEMBRES DU CONSEIL DE L'EUROPE
DE LA RATIFICATION DU STATUT DE
ROME DE LA COUR PENALE
INTERNATIONALE**

PROGRESS REPORT BY THE CZECH REPUBLIC

The Czech Republic signed the Rome Statute on 13 April 1999. Immediately afterwards an *ad hoc* group composed of experts from the Ministry of Foreign Affairs and the Ministry of Justice was created. The target of this group was to identify and analyse legal obstacles of the ratification of the Rome Statute and eventually initiate relevant legislative measures. The group identified three major obstacles: 1. the constitutional impediment to compel Czech citizens to leave the territory of the Czech Republic, 2. the immunities and exemptions of certain officials (the President, the Members of the Parliament, the Constitutional Court Justices, ...), and 3. the possibility of amnestying and pardoning by the President.

According to the Constitution of the Czech Republic the President of the Republic needs a prior consent of the Parliament to ratify certain international treaties. The Statute of the International Criminal Court falls into the category of such treaties. The first attempt to obtain the consent of the Parliament was made in 2001. The Statute was submitted to the Parliament together with a bill amending the Constitution and the Bill of Fundamental Rights and Freedoms. The debate in the Assembly of Deputies was, however, apparently leading to rejection of the proposal. The Statute and the amendments to the constitution were therefore withdrawn and it was decided to engage in a preparation of the political climate and to evaluate the discussion with a view to the possible reflection of some of the issues risen in the debate in a new draft.

In 2002 an amendment to the Constitution of the Czech Republic introduced an express obstacle for ratification of international treaties inconsistent with the constitutional order. Various provisions of the Statute of the International Criminal Court (irrelevance of official capacity, obligation to surrender Czech citizens, inadmissibility of pardoning and amnestying) would result in obligations contrary to the Constitution of the Czech Republic and to the Bill of Fundamental Rights and Freedoms. The Ministry of Justice therefore prepared draft amendments to them and submitted the draft to the Cabinet in July 2003.

Substantive Criminal Law needs to be revised as well. It will be done in the re-enacted Criminal Code, which is now being finalised by the Ministry of Justice and is anticipated to come into force on 1 January 2005. Deficiencies in Substantive Criminal Law nevertheless don't impede ratification of the Statute by the Czech Republic.

The Criminal Procedure Act, 1961 was also amended in 2001. A single provision extended the application of the whole Chapter Twenty-Five (Legal Relations with Foreign States) of the Criminal Procedure Act to cooperation with international courts and tribunals established under a promulgated international treaty binding the Czech Republic. Chapter Twenty-Five governs extraditions, transits, transfers of proceedings, transfers of sentenced persons (execution of judgements of foreign courts), and execution of letters rogatory. It's evidently insufficient for full compliance with the obligations resulting from the International Criminal Law. It's considered a temporary provision making execution of orders for legal assistance (except for surrenders of Czech citizens) of the *ad hoc* tribunals of the U. N. Security Council established under Chapter VII of the U. N. Charter possible.

In July 2003 the Ministry of Justice together with experts of the Supreme Prosecutor's Office prepared draft amendments to the Criminal Procedure Act, 1961 re-enacting the whole Chapter Twenty-Five (with main focus on implementation of obligations arising from the anticipated E. U. membership). The draft elaborates the provision on application of Chapter Twenty-Five with reference to a special act, which may provide for different regulation of

co-operation with international criminal courts and tribunals. Application of certain provision (e. g. requirement of double criminality, reasons for inadmissibility of extradition, reasons for refusal of extradition, reciprocity, protection of national interests, ...) is excluded. The draft was submitted to the Cabinet together with the draft amendments to the Constitution and to the Bill of Fundamental Rights and Freedoms.