

**LAW ON COOPERATION OF SERBIA AND MONTENEGRO WITH THE
INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS
RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL
HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE
FORMER YUGOSLAVIA SINCE 1991**

*(Official Gazette of the FRY /Federal Republic of Yugoslavia/, No. 18/2002 and
Official Gazette of the SCG /Serbia and Montenegro/, No. 16/2003)*

I GENERAL PROVISIONS

Article 1

(1) This Law regulates the cooperation of Serbia and Montenegro with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter: International Criminal Tribunal) and the fulfilment of the obligations of Serbia and Montenegro arising from UN Security Council Resolution 827 (1993) and the Statute of the International Criminal Tribunal on the basis of which the authorities of the member republics shall decide on the deferral of criminal proceedings and the surrender of the accused to this Tribunal.

(2) Serbia and Montenegro shall abide by and implement the judicial decisions of the International Criminal Tribunal and shall render legal assistance to its investigating and judicial organs.

Article 2

(1) The International Criminal Tribunal is a court established by the United Nations Security Council and therefore the general rules and regulations governing cooperation with foreign states in the field of justice shall not apply to the cooperation of the Federal Republic of Yugoslavia with this Tribunal.

(2) The provisions of the Statute of the International Criminal Tribunal are the generally accepted rules of international law.

Article 3

(1) Requests for cooperation or enforcement of individual decisions of the International Criminal Tribunal shall be submitted to the Ministry of Foreign Affairs.

(2) After establishing the formal validity of the request, the Federal Ministry of Foreign Affairs shall forward it to the competent organ for action stipulated by this Law.

(3) Cooperation with the International Criminal Tribunal shall be conducted in the Serbian language or in one of the languages of the International Criminal Tribunal with translation into the Serbian language.

Article 4

(1) Any request for cooperation or enforcement of a decision of the International Criminal Tribunal shall be granted if it is based on the provisions of the Statute and the Rules of Procedure and Evidence of the International Criminal Tribunal.

(2) If the competent organ assesses that a particular procedure for cooperation might threaten the sovereignty or security interests of the State Union, it shall so inform the Council of Ministers or the government of the member state.

(3) If the Council of Ministers or the government of a member state determines that the implementation of a request would threaten the sovereignty or security interests of the State Union, it shall order the Ministry of Foreign Affairs or the ministry responsible for justice in the member state to communicate this to the International Criminal Tribunal and submit an objection in accordance with the Rules of Procedure and Evidence.

Article 5

(1) The territorial jurisdiction of courts in the process of cooperation with the International Criminal Tribunal has been delegated by the Belgrade District Court for the territory of the member state, the state of Serbia, and by the Podgorica High Court for the territory of the member state, the state of Montenegro (hereinafter: competent court).

(2) The territorial jurisdiction of other State organs acting in response to a request for cooperation from the International Criminal Tribunal shall be determined in accordance with the rules governing the determination of jurisdiction in the procedure within which activities are undertaken to realise this cooperation.

Article 6

(1) Acting pursuant to this Law is urgent.

(2) Courts, public prosecution offices and other State organs shall inform the Ministry of Foreign Affairs immediately and no later than within three days of the actions taken or the execution of a request from the International Criminal Tribunal, and of any difficulties that may have arisen in the course of action.

Article 7

(1) By decision of the Council of Ministers and governments of the member states, a National Council of the Federal Republic of Yugoslavia for Cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious

Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter: National Council) shall be established.

(2) The decision establishing the National Council shall define its composition, tasks and authority, in accordance with the UN Security Council Resolution 827 and the Statute of the International Criminal Tribunal and, in particular, with regard to the status of the accused, assistance to their families, the status of witnesses, access to archive materials and other issues of significance for this cooperation.

(3) The Council of Ministers may appoint an observer from Serbia and Montenegro to the International Criminal Tribunal.

Article 8

(1) The International Criminal Tribunal may have an office in the territory of Serbia and Montenegro.

(2) The legal status of the Office of the International Criminal Tribunal shall be regulated by a separate agreement.

II POWERS OF THE INTERNATIONAL CRIMINAL TRIBUNAL TO CONDUCT INVESTIGATIONS IN SERBIA AND MONTENEGRO

Article 9

(1) For the purpose of uncovering crimes within its jurisdiction, the investigating organs and the Prosecutor of the International Criminal Tribunal may take the following actions in the territory of Serbia and Montenegro:

- 1) collecting information from citizens;
- 2) examining suspects, the accused, injured parties, witnesses and experts including autopsies and exhumations;
- 3) collecting physical evidence;
- 4) examining and copying documents, including those drafted or collected by the judicial organs of Serbia and Montenegro in connection with violations of international humanitarian law.

Article 10

(1) In carrying out the activities referred to in the preceding article, representatives of the International Criminal Tribunal may not apply coercive measures restricting the rights and freedoms of citizens of Serbia and Montenegro and other persons in its territory, or act in contravention of the standards of international law.

(2) If the need should arise for application of measures restricting the rights and freedoms of citizens, the investigating organs of the International Criminal Tribunal shall submit a request for their application to the competent organ of Serbia and Montenegro.

(3) In carrying out the activities from Article 9, organs of the International Criminal Tribunal may not act in contravention of the regulations of Serbia and Montenegro or in a manner that may harm its sovereignty or its national security interests.

Article 11

(1) The Council of Ministers or the government of a member state shall decide on releasing a witness or suspect from the obligation to keep a state, military or official secret and on the submission or inspection of documents relating to a state, military or official secret.

III DEFERRAL OF CRIMINAL PROCEEDINGS CONDUCTED BEFORE A DOMESTIC COURT

Article 12

(1) The provisions of this Section establish the procedure in deferring criminal proceedings to the International Criminal Tribunal.

(2) The competent organs of the republics shall decide on deferring criminal proceedings to the International Criminal Tribunal.

Article 13

(1) A request from the International Criminal Tribunal for deferral of criminal proceedings against a person who is prosecuted by a competent court in Serbia and Montenegro must contain a statement of reasons and a confirmed indictment.

(2) A chamber consisting of three judges of the competent district court or high court shall rule on the deferral of criminal proceedings. The chamber shall dismiss the request for deferral of criminal proceedings if it does not refer to the same person and the same crime, if the crime does not fall within the jurisdiction of the International Criminal Tribunal or if the accused has already been convicted of this crime by a final judgement of a competent court in Serbia and Montenegro.

(3) In exceptional circumstances, criminal proceedings completed by a final judgement shall be deferred to the International Criminal Tribunal if the request indicates that the proceedings shall be repeated before the International Criminal Tribunal pursuant to Article 10, paragraph 2 of its Statute.

(4) The competent public or State prosecutor, the accused and his defence counsel shall be invited to the session of the Chamber referred to in paragraph 2 of this Article, where they may present their reasons and proposals with regard to the request of the International Criminal Tribunal for deferral of criminal proceedings. The Chamber shall meet even if the parties invited fail to attend or if the accused is a fugitive or otherwise outside the reach of the court.

Article 14

(1) The competent public or State prosecutor, the accused and his defence counsel may appeal against a ruling on the deferral of criminal proceedings to the International Criminal Tribunal within eight days. The appeal shall stay execution of the ruling.

(2) A chamber consisting of five judges of the supreme court of a member state shall decide on the appeal referred to in paragraph 1 of this Article within fifteen days from the day the case file is received.

(3) The supreme court chamber may dismiss the appeal as groundless or uphold it and annul or reverse the first-instance ruling.

(4) After the final ruling on the deferral of criminal proceedings has been delivered, the ruling, accompanied with the case file, shall be forwarded to the ministry of a member state responsible for justice.

(5) If obstacles described in Article 3, paragraphs 1 and 2 of this Law do not exist, the ministry of a member state responsible for justice shall forward the case file to the International Criminal Tribunal.

Article 15

(1) Criminal proceedings conducted before a domestic court shall be discontinued if permission is granted for their deferral to the International Criminal Tribunal.

(2) If permission is granted for deferral to the International Criminal Tribunal and the proceedings before a domestic court are being conducted for a crime that does not fall within the jurisdiction of the International Criminal Tribunal, the proceedings before the domestic court shall be suspended pending completion of the proceedings before the International Criminal Tribunal.

(3) If a judgement of a court has become final in Serbia and Montenegro for a crime for which deferral has been granted, such judgement shall not be enforced and, should the enforcement be in progress, it shall be terminated on the day the accused is surrendered to the International Criminal Tribunal.

Article 16

(1) If the International Criminal Tribunal has ruled on the guilt of an accused, he may not be tried for the same crime in Serbia and Montenegro.

Article 17

(1) The final and enforceable decision confirming that the preconditions for the deferral of criminal proceedings to the International Criminal Tribunal have been met shall be forwarded to the Ministry of Foreign Affairs.

(2) The Ministry of Foreign shall issue a decision on the deferral of criminal proceedings to the International Criminal Tribunal.

IV PROCEDURE FOR THE SURRENDER OF ACCUSED PERSONS

Article 18

(1) The provisions of this Section determine the procedure for the surrender of accused persons to the International Criminal Tribunal and refer to all persons indicted by the International Criminal Tribunal who are in the territory of Serbia and Montenegro, irrespective of the rights and privileges arising from their state, political, public or official duties.

(2) The competent organs of the member states shall decide on the surrender of the accused to the International Criminal Tribunal.

Article 19

(1) A request for surrender along with a confirmed indictment and an arrest warrant shall be submitted to the Ministry of Foreign Affairs, which shall forward them to the competent court for processing.

Article 20

(1) The accused must have a defence counsel in the surrender procedure.

(2) If the accused does not choose his own defence counsel, the court shall appoint a defence counsel for him *ex officio*.

Article 21

(1) The investigating judge of the competent court shall order the detention of the accused whose surrender is requested or take other measures to ensure his presence.

(2) The investigating judge's arrest warrant shall be executed by organs of the interior.

Article 22

(1) In urgent cases, when there is danger that the accused will flee or go into hiding, the investigating judge of the competent court may order his detention before the request for surrender is submitted.

(2) If a request and a confirmed indictment are not submitted within 48 hours, the detainee shall be released.

Article 23

(1) Organs of the interior shall arrest the accused without an order by an investigating judge if a wanted notice has been issued by a competent domestic organ or by the International Criminal Tribunal. The organ of the interior must immediately take the accused before an authorised investigating judge, who shall order detention or release the arrested person.

Article 24

(1) Detention may also be ordered by a chamber of the competent court during the procedure conducted pursuant to a request from the International Criminal Tribunal for the deferral of criminal proceedings (Article 12, paragraph 2).

Article 25

(1) Before issuing a detention order, the court shall hear the accused.

Article 26

(1) A detention order pursuant to Articles 18 and 21 of this Law may last until the accused is surrendered to the International Criminal Tribunal or until the decision to dismiss the request for his surrender has become final.

Article 27

(1) The accused and his defence counsel may lodge an appeal against a detention order with the chamber of the competent court within three days from the day the order is received. The appeal shall not stay the execution of the order.

Article 28

(1) In the procedure pursuant to a request for the surrender of the accused, the investigating judge of the competent court shall inform the accused of the request and of the charges brought against him, and shall examine him about all the circumstances relevant to deciding on the request of the International Criminal Tribunal.

Article 29

(1) If the investigating judge of the competent court finds that the conditions for surrender of the accused have been fulfilled, he shall affirm so in a decision within three days from the day the accused is taken into custody.

(2) Conditions for surrender shall be deemed fulfilled if it is determined that the request refers to a person against whom proceedings are being conducted, that the indictment against the person whose surrender is being requested has been confirmed in accordance with Article 19 of the Statute of the International Criminal Tribunal, that the crime is punishable under domestic law and that the crime in question falls within the jurisdiction of the International Criminal Tribunal (Articles 2, 3, 4 and 5 of the Statute).

(3) The accused, his defence counsel and the authorised public or State prosecutor have the right to appeal against the decision referred to in paragraph 1 of this Article to a chamber consisting of three judges of the competent court within three days from the day the decision is received.

(4) The chamber of the competent court mentioned in paragraph 3 of this Article must rule on the appeal within three days from the day the case file is received.

Article 30

(1) If the investigating judge of the competent court rules that conditions for the surrender of the accused have not been fulfilled, he shall *ex officio* forward this ruling and the case file to a chamber consisting of three judges of the competent court.

(2) A chamber consisting of three judges of the competent court shall consider the first-instance ruling and shall issue a ruling confirming, annulling or amending the ruling of the investigating judge of the competent court within three days.

(3) The ruling of the chamber of the competent court shall be final and enforceable. No extraordinary remedy can be sought against this ruling nor may a stay of execution be requested.

Article 31

(1) The final and enforceable ruling determining that conditions for the surrender of an accused person to the International Criminal Tribunal have been met shall be forwarded to the Ministry for Human and Minority Rights.

(2) The Ministry of Human and Minority Rights shall make the decision on the surrender of the accused to the International Criminal Tribunal, and the ministry of the interior of the member state shall implement the decision.

(3) No administrative litigations may be conducted against the decision mentioned in the preceding paragraph of this Article.

V RENDERING LEGAL ASSISTANCE TO THE INTERNATIONAL CRIMINAL TRIBUNAL

Article 32

(1) At the request of the International Criminal Tribunal, the competent State organs of Serbia and Montenegro shall conduct certain investigations, collect necessary information on crimes, their perpetrators and other facts relevant to criminal proceedings, issue wanted notices, take measures to protect witnesses, deliver summonses and other documents addressed to persons residing in Serbia and Montenegro by the International Criminal Tribunal and conduct other activities relevant to proceedings before the International Criminal Tribunal.

(2) Representatives of the International Criminal Tribunal shall be granted presence in the execution of the activities mentioned in paragraph 1 of this Article, during which they may ask questions, offer proposals and conduct other activities relating to the proceedings.

Article 33

(1) At the request of the International Criminal Tribunal, the Ministry of Foreign Affairs shall approve the transit of the accused, witnesses and other persons through the territory of Serbia and Montenegro.

(2) The competent State organs of Serbia and Montenegro shall take necessary actions for the safe transit of the persons referred to in paragraph 1 of this Article, including measures aimed at restricting the freedom of the persons who are being moved.

VI ENFORCEMENT OF JUDGEMENTS OF THE INTERNATIONAL CRIMINAL TRIBUNAL IN THE TERRITORY OF SERBIA AND MONTENEGRO

Article 34

(1) Final judgements of the International Criminal Tribunal may be enforced in Serbia and Montenegro. The Ministry of Foreign Affairs shall inform the International Criminal Tribunal of the readiness of Serbia and Montenegro to receive convicted persons to serve their prison sentences.

(2) Prison sentences shall be served in accordance with the regulations of Serbia and Montenegro.

(3) The International Criminal Tribunal shall be allowed to supervise the serving of sentences.

Article 35

(1) When the conditions for pardon, commutation of sentence or release on probation are fulfilled in accordance with the regulations of Serbia and Montenegro, the International Criminal Tribunal shall be notified in order to adopt an appropriate decision.

VII OTHER PROVISIONS

Article 36

(1) The Council of Ministers and the government of the member state of which the person voluntarily surrendering to the International Criminal Tribunal is a citizen shall give the necessary guarantees to the International Criminal Tribunal for the person's release to stand trial while free.

Article 37

(1) The Ministry of Foreign Affairs may request the International Criminal Tribunal to reimburse Serbia and Montenegro for expenses relating to cooperation with the International Criminal Tribunal conducted at its request.

Article 38

(1) The judges, the Prosecutor and the Registrar of the International Criminal Tribunal shall enjoy the immunities and privileges accorded to diplomatic representatives.

(2) The staff of the Office and other representatives of the International Criminal Tribunal shall enjoy immunities and privileges recognised by international law.

Article 39

(deleted)

Article 40

(1) The provisions of the Law on Criminal Procedure shall be applied to issues not regulated by this Law (e.g. summoning, bringing in, pledges by an accused that he will not leave his place of residence, guarantees, issuing wanted notices, detention procedures and so on).

Article 41

(1) This Law shall enter into force on the day after its publication in the *Official Gazette of the FRY*.

***Independent Article of the Law on Amendments
to the Law on Cooperation of the Federal Republic of Yugoslavia with the
International Tribunal for the Prosecution of Persons Responsible for Serious
Violations of International Humanitarian Law Committed in the Territory of the
former Yugoslavia since 1991***

(Official Gazette of the SCG, No. 16/2003)

Article 28

(1) This Law shall enter into force on the day following its publication in the *Official Gazette of Serbia and Montenegro*.