

THE REPUBLIC OF FRANCE

LAWS

Law no. 95-1 of 2 January 1995 on adapting French law to the provisions of United Nations Security Council resolution 827 establishing an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia since 1991<sup>1</sup>.

**NOR: JUSX9400074L**

The National Assembly and the Senate have adopted,

The President of the Republic has promulgated the law the contents of which follow:

**Article 1**

In application of United Nations Security resolution 827 of 25 May 1993 establishing an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia since 1 January 1991, France shall participate in punishing violations and shall cooperate with that court under the conditions set in this law.

The following provisions shall apply to any person prosecuted for crimes or offences defined by French law which, according to Articles 2 to 5 of the Statute of the International Tribunal, constitute grave breaches of the Geneva Conventions of 12 August 1949, violations of the laws or customs of war, genocide or crimes against humanity.

**TITLE I**

**JURISDICTION AND DEFERRAL OF THE FRENCH COURTS**

**Chapter 1**

*Jurisdiction of the French courts*

**Article 2.** - If they are in France, the perpetrators or accomplices of the violations mentioned in Article 1 may be prosecuted and tried by French courts. These provisions shall apply to attempted violations whenever the attempt is punishable.

Any person who claims that he was injured by one of the violations may, by making a complaint, become a *partie civile* under the conditions provided in Articles 85 and following of the Code of Criminal Procedure from the moment the French courts have jurisdiction pursuant to the provisions of the previous paragraph.

The International Tribunal shall be informed of any proceedings in progress dealing with acts which may be fall within its jurisdiction.

**Chapter 2**

*Deferral of the French courts*

**Article 3.** - The originals of the requests for the deferral of French investigating or trial courts presented by the International Tribunal shall be sent with all supporting materials to the Minister

of Justice who, after having verified that they comply with proper procedures, shall submit them to the Prosecutor General at the *Cour de cassation*.

The requests shall be served on the parties who shall have fifteen days to file a brief with the Registry of the *Cour de cassation*.

The case-file of the proceedings shall be submitted without delay to the Public Prosecutor's Office of the *Cour de cassation*.

**Article 4.** - When the criminal division of the *Cour de cassation* to which a case has been referred by the Prosecutor General has noted that the acts constituting the basis for the request for deferral of the French investigating or trial court fall within the purview of Article 1 of this law and that no obvious error has been committed, it shall order the deferral and return the case to the International Tribunal.

The criminal division shall hand down its ruling within one month from the date of the request.

**Article 5.** - When the deferral has been ordered, the case-file of the proceedings shall be sent by the Minister of Justice to the International Tribunal.

When the request for deferral is accompanied by a request for transfer, the deferral shall be considered the same as a decision to transfer the person concerned if that person is being detained because of acts falling within the purview of Article 1 of this law.

In that case, the warrants issued by the investigating or trial courts shall remain enforceable until the party concerned has actually been transferred.

The transfer shall take place within the period and under the conditions provided in paragraph two of Article 15.

**Article 6.** - The deferral of the court shall not prevent the *partie civile* from exercising his right to apply the provisions of Articles 4 and 5-1 of the Code of Criminal Procedure.

When the court which has deferred is a trial court, it shall retain competence, at the request of the victim who had declared himself to be a *partie civile* before the deferral, to rule on the civil action after the International Tribunal has definitively handed down its verdict on the criminal proceedings.

## **Title II**

### **JUDICIAL cooperation**

#### **Chapter I**

##### ***Judicial assistance***

**Article 7.** - The original and a true certified copy of the requests for assistance from the International Tribunal or its Prosecutor along with all supporting evidence shall be sent to the Minister of Justice.

These documents shall be submitted to the Prosecutor of the Republic in Paris who shall ensure all appropriate follow through.

In urgent cases, the documents may be addressed directly to that judge by any means. They shall then be submitted in the forms provided in the previous paragraphs.

**Article 8.** - The requests for judicial assistance shall be implemented, according to the cases, by the Prosecutor of the Republic or by the investigating judge in Paris acting everywhere in France

and, if so required, in the presence of the Prosecutor of the International Tribunal.

The transcripts drafted in implementation of the requests shall be sent to the International Tribunal by the Minister of Justice.

In urgent cases, the true certified copies of the transcripts may be addressed directly to the International Tribunal by any means.

## **Chapter II** ***Arrest and transfer***

**Article 9.** - The requests for arrest for the purposes of transfer which have been presented by the International Tribunal or its Prosecutor in an original copy along with all supporting documents shall be addressed to the Minister of Justice who, after having verified that proper procedures have been followed, shall transmit them to the Prosecutor General at the Court of Appeals of Paris and, at the same time, shall implement them throughout the territory of the Republic.

In urgent cases, the requests may also be addressed directly and by any means to the Prosecutor of the Republic having territorial jurisdiction.

**Article 10.**- Any person apprehended pursuant to a request for arrest for the purposes of transfer shall, within twenty-four hours, be brought before the Prosecutor of the Republic having territorial jurisdiction. During this time, the provisions of Articles 63-1 to 63-4 of the Code of Criminal Procedure shall be applicable.

After having verified the identify of the person, the judge shall inform him in a language he understands that a request for his arrest and transfer for an appearance before the Prosecutor General of the Court of Appeals of Paris within a maximum period of five days has been received. The Prosecutor of the Republic shall also inform him that he shall be assisted by counsel of his choice or, failing which, by counsel appointed by the president of the bar who shall have been informed without delay and by any means. The judge shall also advise him that he may consult with the appointed counsel immediately.

This information shall be recorded in the transcript which shall be transmitted immediately to the Prosecutor General at the Court of Appeals of Paris.

The Prosecutor of the Republic shall order the incarceration in the detention centre of the person whose transfer is being sought.

**Article 11.** - The person whose transfer is being sought shall be transferred, if so required, and imprisoned in the house of detention in the jurisdiction of the Court of Appeals of Paris. The transfer shall take place within a maximum period of five days from his having been presented to the Prosecutor of the Republic, failing which, he shall be released immediately at the decision of the presiding judge of the indictment chamber of the Court of Appeals of Paris, unless the transfer has been delayed by unavoidable circumstances.

The Prosecutor General at the said court shall notify him in a language he understands of the request for arrest for the purposes of transfer and of the counts in the indictment against him.

When the person whose transfer is being sought has already requested the assistance of counsel and counsel has been duly called, the Prosecutor General shall hear his statements.

In the other cases, the judge shall remind him of his right to choose counsel or to request that counsel be assigned to him. The counsel chosen or, in the case of a request for appointment, the president of the bar shall be informed by any means and without delay. The counsel may consult

the case-file immediately and communicate freely with the person whose transfer is being sought. The Prosecutor General shall hear the statements of the said person after having notified him that he is free not to give any statement. Such notification shall be recorded in the transcript.

**Article 12.** - The proceedings shall be brought before the indictment chamber immediately. The person whose transfer is being sought shall appear before it within eight days of his presentation to the Prosecutor General. At the request of the Prosecutor General or of the person whose transfer is being sought, an additional eight days may be granted before the hearing. Questioning shall follow and a transcript of the proceedings shall be prepared.

The hearing shall take place and the decision rendered in a public hearing unless the publicity is likely to prejudice the proper conduct of the proceedings in progress, the interests of a third party, public order or morality. In such a case, the indictment chamber, at the request of the Public Prosecutor, the person whose transfer is being sought or the appointed counsel, shall decide in a decision rendered in the chambers of the counsel which may be appealed on points of law to the *Cour de cassation* only at the same time as the decision on the transfer provided in Article 13.

The Public Prosecutor and the person whose transfer is being sought shall be heard; the latter shall be assisted, if necessary, by his counsel and an interpreter, if so required.

**Article 13.** - When the indictment chamber has noted that the acts which are the subject of the request for arrest for the purposes of transfer fall within the scope of Article 1 and that no obvious error has been committed, it shall order the transfer of the person whose transfer is being sought and, if that person is at liberty, his incarceration to that end.

The indictment chamber shall rule within fifteen days of the appearance before it of the person whose transfer is being sought.

In case of appeal, the criminal division of the *Cour de cassation* shall hand down its ruling within one month of the receipt of the case-file at the *Cour de cassation*.

**Article 14.** - The indictment chamber of the Court of Appeals of Paris may be asked at any time to order the release of the person whose transfer is being sought and shall proceed in accordance with the terms of Articles 148-1 and following of the Code of Criminal Procedure.

The indictment chamber shall rule in a decision rendered in public which shall include the statement of the legal and substantive considerations which constitute the basis of the decision by reference to the provisions of Article 144 of the Code of Criminal Procedure.

**Article 15.**- The decision of the indictment chamber and, if necessary, the place and date of the transfer of the person whose transfer is being sought, as well as the length of time spent in detention for the purposes of the transfer, shall be brought to the attention of the International Tribunal by any means by the Minister of Justice.

The person whose transfer is being sought shall be transferred within a period of one month from the day the decision has become final, failing which, he shall be released immediately by decision of the presiding judge of the indictment chamber, unless his transfer was delayed because of unavoidable circumstances.

**Article 16.** - The provisions of Articles 9 to 15 shall also be applicable if the person whose transfer is being sought has been convicted in France on charges other than those indicated in the request of the International Tribunal. However, the person detained under those conditions may not benefit from release under Article 11, 14 and 15, paragraph two.

The proceedings before the International Tribunal shall stop the time running for the purposes of

prescription of the criminal proceedings and the sentence pronounced against that person.

This law shall be implemented as a law of the State.

Done in Paris, 2 January 1995

**By the President of the Republic:**

François Mitterrand

*The Prime Minister*

Edouard Balladur

*The Minister of Justice*

Pierre Méhaignerie