

THE REPUBLIC OF BOSNIA AND HERZEGOVINA

Pursuant to Amendment LI para. 5 section 3 to the Constitution of the Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina, acting on the proposal by the Government of the Republic of Bosnia and Herzegovina, issues the following

DECREE WITH FORCE OF LAW

ON EXTRADITION AT THE REQUEST OF THE INTERNATIONAL TRIBUNAL

I - GENERAL PROVISIONS

Article 1

This Decree regulates the procedure for the extradition of accused persons against whom criminal proceedings have been instituted by or are being conducted before the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia from 1 January 1991 (hereafter: the International Tribunal) for the crimes specified by the Statute of the International Tribunal.

Article 2

Where this Decree does not provide for a particular rule of procedure, the relevant provisions of the Law on Criminal Procedure (Official Gazette of the Republic of Bosnia and Herzegovina, no. 2/92, 9/92, 16/92) and the Law on the Application of the Law on Criminal Procedure (Official Gazette of the Republic of Bosnia and Herzegovina, no. 6/92 and 9/92) shall be applicable.

Article 3

An accused person in respect of whom there are reasonable grounds to suspect that he has committed a criminal act as specified by Article 1 of this Decree in the territory of the Republic of Bosnia and Herzegovina (hereafter: the Republic) found in the territory of the Republic shall be extradited to the International Tribunal, irrespective of his citizenship.

Article 4

Extradition may be granted on the basis of an indictment or warrant of arrest as provided for in the Statute of the International Tribunal (hereafter: the Statute) and the Rules of Procedure and Evidence established by the International Tribunal on 11 February 1994 (hereafter: the Rules).

Article 5

- (1) The accused shall have counsel during the extradition proceedings.
- (2) If the accused waives the right to counsel, the Court shall assign one *ex officio*.

Article 6

Under this Decree, the following shall be considered accused persons:

- (1) Persons in respect of whom there are reasonable grounds to believe that they have committed a criminal act as specified by the Statute, but against whom the International Tribunal has not yet confirmed the indictments;
- (2) Persons against whom indictments have been issued and confirmed by the International Tribunal;
- (3) Persons against whom criminal proceedings are being conducted before a court in the Republic for a criminal act punishable under both the laws of the Republic and the Statute;
- (4) Persons against whom a final sentence has been passed by a court in the Republic for a criminal act punishable under both the law of the Republic and the Statute.

II - EXTRADITION PROCEEDINGS

First Instance Proceedings

Article 7

- (1) The proceedings for extradition of an accused shall be initiated at the request of the Prosecutor, a judge or Trial Chamber of the International Tribunal.
- (2) A request for extradition shall be submitted through diplomatic channels.
- (3) A request for extradition shall be supported by:
 - 1) information for establishing the identity of the accused (exact description, photograph, etc.);
 - 2) the indictment, order or warrant of arrest with the name and surname of the person whose extradition has been requested, particulars necessary for establishing his identity, description and specification of the criminal act with evidence supporting the reasonable grounds to believe that the person has committed the said act;
- (4) A request for extradition and the supporting documentation are not required to be translated into Bosnian or Croatian.

Article 8*

The Ministry of Foreign Affairs shall forward the request for extradition to the competent court through the Ministry of Justice.

Article 9

Unless otherwise stipulated by this Decree, the request for extradition shall be considered by the Supreme Court of Bosnia and Herzegovina (hereafter: the Supreme Court) in a chamber composed of three judges.

Article 10

When the International Tribunal requests the extradition of a person as specified in Article 6 para. 4 of this Decree, in addition to the supporting documentation listed in Article 7 of this Decree, the request for extradition shall cite the special reasons specified in article 10 para. 2 of the Statute for

extradition of a person who has already been convicted by a final judgement of a court in the Republic for criminal acts referred to in Article 1 of this Decree.

Article 11

The accused shall be remanded in custody pending extradition during the extradition proceedings. If the accused is not accessible to the authorities of the Republic, the Court shall give an order for issuing a warrant of arrest regardless of whether the conditions for issuing a warrant of arrest as provided for in the Law on Criminal Procedure have been fulfilled.

Article 12

(1) In case of urgency, and when there is a danger that the accused might abscond or hide, the International Tribunal may request that he be remanded in temporary custody before submission of a formal request for extradition (temporary custody pending extradition). This temporary custody shall not exceed 45 days.

(2) The request for temporary custody shall indicate which of the documents referred to in Article 7 of this Decree the International Tribunal has in its possession and that the extradition of the accused is formally requested. The request shall contain a brief description of the criminal act, state where and when it was committed, and give exact particulars of the person to be extradited, including his citizenship and permanent or current address.

(3) Temporary custody shall cease if the request for extradition is not submitted within 30 days from the date the accused was taken into custody.

Article 13

(1) Decisions referred to in Articles 11 and 12 of this Decree shall be taken by a chamber of the Supreme Court composed of three judges.

(2) An appeal against the decision may be filed within 48 hours from the receipt of the decision. The appeal shall not postpone the implementation of the decision.

Article 14

(1) The parties in the extradition proceedings are the Public Prosecutor of the Republic and the accused.

(2) The Prosecutor of the International Tribunal or a person empowered by him may participate /in the proceedings/ on the side of the Public Prosecutor /of the Republic/.

Article 15

If the request for extradition does not contain the information referred to in Articles 7 and 10 of this Decree (thus hindering a decision on the request) the Supreme Court shall request a supplement from the International Tribunal through the Ministry of Justice.

Article 16

(1) The Court shall rule on the extradition request at a hearing.

(2) The hearing shall be convened within a period of no less than three and not more than eight days from the receipt of the extradition request. The parties shall be summoned to the hearing. In the summons, the accused shall be informed of his right

to counsel and that, if he does not have counsel or his counsel fails to appear in Court, the Court shall assign him counsel *ex officio*.

(3) Counsel may request a deferral of the hearing so that he can familiarise himself with the extradition request, in which case the Court shall convene the hearing within three days from the day the hearing is deferred.

Article 17

Extradition may be permitted in the absence of the accused in accordance with the conditions stipulated in Article 300 of the Law on Criminal Procedure.

Article 18

The deliberations at the hearing shall be limited in scope to determine whether the accused is the one in respect of whom the extradition request has been submitted and whether the extradition request pertains to criminal acts referred to in Article 1 of this Decree.

Article 19

(1) In the case of one or more criminal proceedings being conducted in the Republic against the same accused person for whom the extradition request has been submitted, the Supreme Court shall suspend the criminal proceedings for those acts in favour of the criminal acts referred to in Article 1 of this Decree.

(2) If the extradition is not granted, the Supreme Court shall inform thereon the Court which is conducting the aforementioned proceedings and the suspended proceedings shall be resumed.

Article 20

If the chamber of the Supreme Court referred to in Article 9 of this Decree finds that the conditions for the extradition of the accused person are not fulfilled, it shall pass a decision refusing the request. If it establishes that the conditions for extradition have been fulfilled, it shall grant the extradition of the accused person.

Article 21

(1) If extradition is requested for a person sentenced by final judgement of a competent court in the Republic for a criminal act which falls within the criminal acts referred to in Article 1 of this Decree, extradition may be granted regardless of the duration of the sentence imposed.

(2) The Supreme Court shall decide on the extradition under para. 1 of the present article in a chamber consisting of five judges. When deliberating the extradition request, the Supreme Court shall be guided by the principles of justice.

Article 22

(1) If the chamber of the Supreme Court under Article 21 para. 2 of this Decree agrees to the extradition of an accused person who has been sentenced to death, the execution of the sentence shall be suspended.

(2) If the accused person is serving a prison sentence, or if the case falls within para. 1 of this article, he shall remain in prison until extradited to the International Tribunal in accordance with the proceedings stipulated in this Decree, and until the

chamber of the Supreme Court as specified in article 21 of this Decree decides to suspend his sentence.

Article 23

An appeal against a decision on extradition can be filed within three days from the receipt of the decision.

Article 24

- (1) Decisions taken in the course of the extradition proceedings shall be set out in writing and shall consist of an introduction, determination and statement of reasons.
- (2) The determination of the decision shall contain particulars of the accused and the decision refusing or granting extradition of the accused person.
- (3) In the statement of reasons of its decision to grant extradition, the Court shall set out the reasons for opinion that the conditions for extradition stipulated in this Decree have been fulfilled. Likewise, in the statement of reasons of its decision refusing extradition, it shall set out the reasons for its opinion that the conditions for extradition provided in this Decree have not been fulfilled.

Article 25

In the statement of reasons of the decision on extradition of the accused as defined in article 21 of this Decree, the Supreme Court shall state the principles of justice by which it was guided in reaching such a decision.

Appeals Procedure

Article 26

Appeals against the chamber's decision as provided in Article 8* of this Decree shall be considered by a chamber of the Supreme Court consisting of five judges, unless appeals are filed against the chamber's decision as defined in article 21 of this Decree.

Article 27

Appeals against the chamber's decision defined in Article 21 of this Decree shall be considered at a general session of the Supreme Court.

III - SURRENDER OF PERSONS AND OBJECTS

Article 28

Final decisions on extradition shall be enforced by the Ministry of the Interior in accordance with regulations enacted jointly by the Minister of the Interior and Minister of Justice. The regulations shall be enacted within 15 days from the date that this Decree comes into force.

Article 29

- (1) If the International Tribunal so requests, objects which were used to commit the criminal act, and objects which can be used as evidence, shall be handed over to the International Tribunal in accordance with the rules stipulated in Article 28 of this Decree.

(2) If the objects under para. 1 of this Article are restored to their owner in a damaged condition or are not restored to him within 60 days of the final completion of the trial before the International Tribunal in which the objects were used as evidence, their owner shall be indemnified by the Republic. The owner of the objects may submit a compensation claim within three years of the final completion of the trial before the International Tribunal.

(3) The claim under para. 2 of the this Article shall be submitted through the Public Prosecutor. If the parties fail to reach an agreement on the extent of damage and the amount of compensation within 30 days of the submission of the claim, the owner may file a complaint with the competent court.

(4) Agreements reached pursuant to para. 3 of the this Article shall be binding.

IV - FINAL PROVISIONS

Article 30

The Supreme Court shall be requested to inform promptly the International Tribunal, through the Ministry of Justice, of the finality of its decision to grant or refuse extradition, as well as of all facts which impede the granting of the request by the International Tribunal.

Article 31

The Minister of the Interior shall inform the Supreme Court on the implementation of its final decision within 24 hours.

Article 32

This Decree shall come into force on the date of its publication in the Official Gazette of the Republic of Bosnia and Herzegovina.

PR number 1786/95

President of the Presidency of R B-H

6 April 1995, Sarajevo Alija Izetbegovic