

THE REPUBLIC OF GERMANY

Law on Cooperation with the International Tribunal in respect of the Former Yugoslavia (Law on the International Yugoslavia Tribunal)

of 10 April 1995

With the assent of the *Bundesrat*, the *Bundestag* has passed the following Law:

§ 1

Obligation to Cooperate

(1) Pursuant to this Law, the Federal Republic of Germany shall fulfil its obligations to cooperate as stated in Resolutions 808 (1993) and 827 (1993) adopted by the United Nations Security Council in accordance with Chapter VII of the United Nations Charter.

(2) For the purposes of this Law, the term "Tribunal" shall refer to 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 established by Resolution 827 (1993), and shall include its Trial and Appeal Chambers and prosecuting authorities and the members of that Tribunal and the prosecuting authorities.

§ 2

Status *vis-à-vis* criminal proceedings in the Federal Republic of Germany

(1) At the Tribunal's request, criminal proceedings involving offences which fall within its jurisdiction shall be transferred to the Tribunal at any stage. In the event that criminal proceedings which are so transferred have resulted in the imposition of a legally valid sentence, once the convicted party in question, pursuant to § 3, paragraph 1, has been remanded to the custody of the Tribunal, the further enforcement of this sentence shall cease.

(2) Should a request pursuant to paragraph 1, sentence 1 be submitted, no proceedings may be conducted against any person for an offence falling within the jurisdiction of the Tribunal for which they are standing or have stood trial before that Tribunal.

(3) Insofar as the conditions stipulated in paragraph 1, sentence 1 have been satisfied, the decision to transfer proceedings to the Tribunal shall be taken by the competent court. That court shall also submit to the Tribunal the available evidence and the records of the investigations and proceedings conducted up to that point, as well as any judicial decisions that have already been handed down. In the event that a single sentence has been imposed for a series of offences in respect of which only partial grounds obtain for ruling that they should fall within the jurisdiction of the Tribunal, following the transfer of the criminal proceedings to the Tribunal, the remaining sentences shall form a single reduced sentence. § 456a of the Code of Criminal Procedure shall apply *mutatis mutandis*.

(4) Subject to the proviso that the final decision shall be taken by the public prosecutor, where the proceedings in question are not yet pending before the court, paragraph 3, sentences 1 and 2 shall apply *mutatis mutandis*.

(5) § 154b of the Code of Criminal Procedure shall apply *mutatis mutandis*.

(6) In those cases specified in paragraph 3, sentence 1, the court shall not rule on the costs of the proceedings incurred prior to their transfer to the Tribunal until such time as the Tribunal has

brought the transferred proceedings in question to a legal conclusion. In this connection, the court shall predicate its decision upon the Tribunal's ruling on the issues of guilt and punishment. Following consultation with the parties involved, a decision shall be effected by a court order. Sentences 1 to 3 shall apply *mutatis mutandis* in respect of those decisions which are to be taken in accordance with the law on compensation for criminal proceedings.

§ 3

Transfer and conveyance of individuals

- (1) For the purpose of prosecuting an offence falling within the jurisdiction of the Tribunal, or for the purpose of enforcing a punishment imposed for such an offence, at the request of the Tribunal, any persons residing within the area where this law is in effect shall be placed in confinement and committed to the custody of either the Tribunal or the country which has assumed responsibility for enforcing a sentence imposed by the Tribunal.
- (2) § 10, paragraphs 1 and 3, §§ 12 to 15 and § 16, paragraphs 1 and 3, §§ 17 to 24, § 26 to 34, § 38 to 40 and § 41 paragraphs 1, 3 and 4, and § 42 of the Law on International Mutual Assistance in Criminal Matters shall apply *mutatis mutandis* to such proceedings.
- (3) For the purpose of prosecuting an offence falling within the jurisdiction of the Tribunal, or for the purpose of enforcing a sentence imposed for such an offence, at the request of the Tribunal, persons shall be conveyed through the area where this Law is in effect and held in custody for the purpose of ensuring their conveyance.
- (4) § 43, paragraph 3, point 2, sentence 2, §§ 44 and 45, paragraphs 2 to 7 and § 47, paragraphs 1 to 5 and paragraphs 7 and 8 of the Law on International Mutual Assistance in Criminal Matters shall apply *mutatis mutandis* to such proceedings.

§ 4

Other mutual assistance

- (1) Upon request, other mutual assistance pursuant to § 67a of the Law on International Mutual Assistance in Criminal Matters shall be rendered to the Tribunal for the purpose of prosecuting offences which fall within its jurisdiction.
- (2) Should the Tribunal require the personal appearance of a person at liberty within the area where this Law is in effect as a witness for the purposes of cross examination, confrontation or investigation, the same legal means may be employed to ensure their appearance as would be permissible in the case of a summons to appear before a German court or a German public prosecutor. Should such a person be on remand or held in confinement pending a German hearing, or should they have been sentenced to a term of imprisonment for purposes of correction and protective detention, irrespective of whether the conditions of § 62, paragraph 1 points 1 and 2 of the Law on International Mutual Assistance in Criminal Matters obtain, they may be temporarily committed to the custody of the Tribunal.
- (3) Upon request, members and authorized officials of the Tribunal and any other persons involved in a particular case shall be permitted to be present during the performance of acts of mutual assistance within the area where this Law is in effect. They may raise questions or suggest the initiation of relevant measures. The members and authorized officials of the Tribunal shall be permitted to take notes and produce audio, visual or video recordings of acts of mutual assistance.
- (4) Upon special request, with the consent of the competent German authorities, members and authorized officials of the Tribunal may independently conduct cross-examinations and investigations and secure evidence by other similar means within the area where this Law is in effect. However, in these cases, also, the initiation and execution of coercive measures shall

remain the preserve of the competent German authorities and shall conform to German law.

§ 5

Mutual assistance by enforcement

(1) Mutual assistance may be rendered by the enforcement of a legally valid sentence of imprisonment imposed by the Tribunal.

(2) §§ 49 to 58 of the Law on International Mutual Assistance in Criminal Matters shall, with the exception of § 49, paragraph 2, apply *mutatis mutandis*. Where a ruling is pronounced in accordance with § 57, paragraph 2 of the Law on International Mutual Assistance in Criminal Matters, where the German enforcement authority deems the enforcement of a sentence to have been carried out, where a convicted prisoner escapes from custody prior to the conclusion of the enforcement of their sentence, where the enforcement of a sentence is no longer possible for other reasons, or in the event of the Tribunal's requesting a particular report, the competent authority, pursuant to § 74a of the Law on International Mutual Assistance in Criminal Matters shall advise and assist the Tribunal accordingly.

(3) Where, in the opinion of the relevant competent authority, a pardon should be considered, the competent authority, pursuant to § 74a of the Law on International Mutual Assistance in Criminal Matters, shall advise the Tribunal accordingly so that it may rule on the issue of granting a pardon to the convicted party in question.

§ 6

Privileges and immunities

The judges, the director of the prosecuting authority and the President of the Tribunal shall be entitled to the privileges, immunities, exemptions and facilities which are accorded to diplomats under international law. Insofar as the efficient performance of the tasks of the Tribunal necessitates such an arrangement, Article VI, Section 22 of the United Nations Convention on Privileges and Immunities of 13 February 1946 (Federal Law Gazette, 1980, II, p. 941) shall apply *mutatis mutandis* to other persons who, though not members of the Tribunal, are involved in proceedings conducted by that Tribunal.

§ 7

Amendment to the Law on International Mutual Assistance in Criminal Matters

The law on International Mutual Assistance in Criminal Matters as promulgated on 27 June 1994 (Federal Law Gazette, I, p. 1537) shall be amended as follows:

1. § 67a shall be inserted after § 67:

§ 7a

Mutual assistance for international and supranational institutions

The provisions contained in Section Five shall apply *mutatis mutandis* to requests from international and supranational institutions for other mutual assistance in criminal matters."

2. § 74a shall be inserted after § 74:

§ 74a

International and supranational institutions

§ 74 shall apply *mutatis mutandis* to rulings on requests from international and supranational institutions and the submission of requests to such institutions."

§ 8
Entry into force

This Law shall enter into force on the day following its promulgation.

This Law is hereby issued and shall be promulgated in the Federal Law Gazette.

Bonn, 10 April 1995

For the President of the Federal Republic of Germany

The President of the Federal Council

Johannes Rau

The Federal Chancellor

Dr Helmut Kohl

The Federal Minister of Justice

Leutheusser-Schnarrenberger

The Federal Minister for Foreign Affairs

Kinkel