

REPUBLIC OF CROATIA
CONSTITUTIONAL ACT
ON THE COOPERATION OF THE REPUBLIC OF CROATIA
WITH THE INTERNATIONAL CRIMINAL TRIBUNAL

1. GENERAL PROVISIONS

Article 1

This Constitutional Act regulates the cooperation of the Republic of Croatia 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 the Tribunal, and the fulfilment of the commitments of the Republic of Croatia pursuant to the Security Council resolution 827 (1993), the Statute and the Rules of Procedure and Evidence of the Tribunal.

The Tribunal shall mean the Tribunal established by the Security Council resolution 827 (1993) to try the persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

Article 2

On behalf of the Republic of Croatia, the Government of the Republic of Croatia shall be the coordinator of the cooperation with the Tribunal.

The Government of the Republic of Croatia may by its decision establish special bodies to carry out the cooperation with the Tribunal. In the decision on establishing such a body its duties and obligations shall be defined in more detail.

Unless otherwise decided by the Government of the Republic of Croatia, the authorities of the Republic of Croatia shall communicate with the Tribunal through the Government of the Republic of Croatia. The communication with the Tribunal shall be conducted in the Croatian language and, exceptionally; in one of the official languages of the Tribunal.

Article 3

Requests for cooperation or enforcement of a decision of the Tribunal shall be forwarded to the Government of the Republic of Croatia.

The request for cooperation or enforcement of a decision of the Tribunal shall be granted by the Government of the Republic of Croatia if the request or decision is founded on appropriate provisions of the Statute and Rules of Procedure and Evidence of the Tribunal, and if it is not in contravention of the Constitution of the Republic of Croatia.

The request for cooperation and enforcement of a decision of the Tribunal meeting the requirements mentioned in para. 2 of this Article shall be forwarded by the Government of the Republic of Croatia to the competent authorities for enforcement.

Article 4

The authorities acting on the request by the Tribunal for cooperation shall undertake specific action to realise the cooperation in the manner provided by the Croatian law.

Jurisdiction and competence of courts and other authorities acting on the request by the Tribunal for cooperation shall be determined in accordance with the rules applicable to determining the jurisdiction in criminal proceedings i.e. in other proceedings within which the action to realise the cooperation is undertaken, unless provided otherwise by this Constitutional Act.

Article 5

The authority which in a particular case directly cooperates with, i.e. enforces a decision of the Tribunal, shall submit the Government of the Republic of Croatia detailed report on the cooperation activities completed, or on the enforcement of a decision, immediately or within three days.

At the Government of the Republic of Croatia's request or if needed, the authority from para. 1 of this Article shall keep the Government of the Republic of Croatia informed on the course of cooperation with or enforcement of a decision of the Tribunal.

The authority which in the course of cooperation with or enforcement of a decision of the Tribunal finds that the cooperation or enforcement of a decision is not possible due to legal or other impediments, shall inform the Government of the Republic of Croatia about it.

Courts and Public Prosecutor's Office of the Republic of Croatia from para. 3 of this Article shall inform the Government of the Republic of Croatia on the activities included in cooperation with or enforcement of a decision of the Tribunal through the Ministry of Justice of the Republic of Croatia.

II. OPERATION OF THE TRIBUNAL ON THE TERRITORY OF THE REPUBLIC OF CROATIA

Article 6

For efficient realisation of the cooperation between the Republic of Croatia and the Tribunal. the Government of the Republic of Croatia may grant the Tribunal an office on the territory of the Republic of Croatia.

The Government of the Republic of Croatia may in its decision granting the opening of an office or in a special agreement, set the conditions under which the office from para. 1 of this Article shall operate.

Article 7

The Tribunal and the Prosecutor may, with the approval of the Government of the Republic of Croatia, undertake specific actions on the territory of the Republic of Croatia in order to investigate the crimes under its jurisdiction, except the actions which require force or encroach upon the fundamental rights and freedoms of citizens.

Article 8

The Tribunal shall be granted presence at the court hearing in the Republic of Croatia in the proceedings pursuant to the crime from its jurisdiction; it shall also be allowed access to the court

records, and shall on its own request be delivered a copy of the judgement.

III. DEFERRAL OF CRIMINAL PROSECUTION AND PROCEEDINGS

Article 9

Criminal proceedings conducted before the courts of the Republic of Croatia shall be deferred to the competence of the Tribunal on its substantiated request, if according to the Statute of the Tribunal such crimes are under its jurisdiction.

The decision on deferral of the criminal prosecution and proceedings to the competence of the Tribunal shall be taken by a chamber of the competent county court, consisting of three judges. The chamber shall dismiss the request for deferral if the request does not refer to the same accused and the same crime, or if the accused has already been judged by a final judgement of a Croatian court. Exceptionally, the criminal proceedings completed by a final decision shall be deferred to the Tribunal if the request refers to repeating the proceedings before the Tribunal in accordance with Article 10, para. 2, of the Statute of the Tribunal.

The public prosecutor, the accused and his defence counsel shall be invited to the session of the chamber from para. 2, and may present their position and suggestions with regard to the Tribunal's request for deferral. The session of the chamber shall take place even if the invited do not appear. The session of the chamber shall take place even if the accused is fugitive or inaccessible to the court.

The public prosecutor, the accused and his defence counsel may, within eight days, appeal against the decision on deferral of the criminal prosecution and proceedings to the competence of the Tribunal. The enforcement of the decision is postponed until a decision on the appeal is reached.

The appeal from para. 4 shall be decided by the Supreme Court of the Republic of Croatia in a chamber consisting of five judges.

Deciding on the appeal the Supreme court chamber may in its decision confirm, repeal or alter the first-instance decision.

After the decision on deferral of the criminal prosecution or proceedings becomes final, it shall, together with the trial records, be delivered to the Tribunal by the Government of the Republic of Croatia through the Ministry of Justice.

Article 10

After the decision deferring the criminal proceedings has become final, no proceedings shall be instituted against the accused for the same crime, and any proceedings that have been instituted shall be stayed. If the verdict of a Croatian court has become final, it shall not be enforced, and if the enforcement has already begun, it shall be postponed as of the date the defendant is surrendered to the Tribunal.

Article 11

The criminal proceedings conducted before a Croatian court and stayed for deferral to the competence of the Tribunal can be resumed before the competent Croatian court, if the Tribunal has not by its judgement decided on the guilt of the accused for one or more crimes for which the criminal proceedings were instituted in the Republic of Croatia. In such case a final verdict may

be enforced or the enforcement of the verdict which was stayed may be continued, as well as prosecution instituted in the case when it was not instituted due to the proceedings having been conducted before the Tribunal.

When the judgement of the Tribunal includes only some of the crimes contained in a final verdict of a Croatian court, the Croatian court shall alter the sentence by appropriately applying the provisions of the Criminal Procedure Act related to the alteration of sentence under the rules on the renewed proceedings.

Article 12

The accused whose guilt has been decided on by the Tribunal cannot be tried for the same crime in the Republic of Croatia, nor can a previous verdict of a Croatian court relating to such crime be enforced.

At the request of the public prosecutor or the accused who has been tried by the Tribunal, the conviction by a Croatian court for the same crime, shall be altered by adequate application of the provisions of the Criminal Procedure Act related to the alteration of verdict in the renewed criminal proceedings.

IV. ARRESTING AND TAKING AN ACCUSED INTO CUSTODY, AND SURRENDERING HIM OR HER TO THE TRIBUNAL

Article 13

An investigative judge of the competent county court shall, by means of an order, decide on the Tribunal's warrant for arrest of an accused. The warrant of arrest shall be executed by the police authorities.

The investigative judge shall decide by a warrant on the ICTY Prosecutor's request to arrest a suspect on account of urgency referred to in Article 40 of the Rules of Procedure and Evidence of the Tribunal. In such case the arrested person may be detained for 48 hours at the most and shall be released after the expiry of this period unless the Tribunal requests his or her surrender.

The police shall arrest the accused even without the request of an investigative judge, if a wanted notice has been issued by the competent authority of the Republic of Croatia or the Tribunal.

The police shall immediately bring the arrested person before a competent investigative judge of the County court who shall decide on taking the person into custody or releasing him or her. The custody ordered by the investigative judge may last for not longer than two months, after which it can be extended only by a decision of a chamber of the County court.

Custody may also be ordered by a chamber of a county court in the course of the proceedings to decide on the request of the Tribunal for surrendering the accused or deferral of criminal prosecution or proceedings. On the basis of the chamber's decision, the custody may last for not longer than two months. It can, however, be extended in the procedure of verifying the justification of the custody under Article 14, para. 3, of this Constitutional Act.

Article 14

The investigative judge or chamber of a county court shall issue an order for the arrest of the accused if there is an order by the Tribunal for his or her surrender and if one of the reasons justifying the custody is provided by the Criminal Procedure Act, Article 182, Paras 1 and 2 ("Narodne novine"/Official Gazette/Nos 34/93, 38/93, 25/94 and 28/96). Before ordering custody,

the investigative judge shall hear the accused, and may even ask for the opinion of the public prosecutor on whether to order the custody.

The custody under para. 1 shall last until the accused is surrendered to the Tribunal or until the decision is taken whereby the request for surrendering the accused or deferral of the criminal prosecution or proceedings is rejected, but it shall not exceed a total of six months.

Every two months, the county court chamber composed of three judges shall examine whether the justification of the custody is still provided, and shall issue a decision to this effect. The chamber shall *ex officio* release the accused as soon as the custody is no longer justified.

Unless provided otherwise by this Constitutional Act, the provisions of the Criminal Procedure Act shall be appropriately applied to the complaint against the decision on the custody and its execution.

Article 15

In the procedure pursuant to the request for surrendering the accused to the Tribunal, the provisions of the Criminal Procedure Act relating to the summoning and bringing the accused before the court, his or her commitment not to leave his or her place of abode, the bail bond and issuing of the wanted warrant shall be appropriately applied.

Article 16

A substantiated request for the surrender of the accused to the Tribunal shall be submitted to the Government of the Republic of Croatia. Along with the request, the Tribunal shall submit data required for establishing the identity of the accused and the certified indictment by the Tribunal.

The Government of the Republic of Croatia shall, through the Ministry of Justice, forward the request to the county court in the territory of which the accused is resident, and the court shall decide on the request in a chamber composed of three judges.

If the accused is not resident in the territory of the Republic of Croatia, if it is not possible to establish where he or she is resident, or if there are other important reasons, the president of the Supreme Court shall, by a decision, determine the county court before which the procedure pursuant to the request by the Tribunal shall be conducted.

No appeal against the decision from the above para. 2 shall be permitted.

Article 17

In the procedure to decide on the Tribunal's request for surrendering the accused, the court shall inform the accused about the request and the charges, and question him or her in connection with the charges and the circumstances for the decision on the Tribunal's request.

Article 18

In the procedure to decide on the Tribunal's request for surrendering the accused, the accused shall have a defence counsel. If the accused fails to obtain a counsel, the court shall assign a counsel to him or her.

The presence of defence counsel is also required during the questioning of the accused under Article 14, para. 1, of this Constitutional Act. If the accused fails to obtain a counsel within 6 hours, he or she shall be assigned a counsel.

Unless provided otherwise by this Constitutional Act, the provisions of the Criminal Procedure

Act shall be applied to the assignment and dismissal of a counsel.

Article 19

In the procedure pursuant to the Tribunal's request surrendering the accused, the court chamber shall hear the public prosecutor and establish the facts necessary to take a decision, applying the provisions of the Criminal Procedure Act accordingly.

Article 20

The court chamber shall decide to grant the request for surrendering the accused to the Tribunal if it finds that the request refers to a person against whom a procedure for surrendering is conducted and to a crime under the jurisdiction of the Tribunal according to its Statute. Otherwise, the chamber shall not grant the request to the Tribunal. The chamber shall, by its ruling, also dismiss the request if the accused has been judged for the same crime by a final decision of a Croatian court and the request for deferral has not been submitted for the purpose of renewing the proceedings before the Tribunal in accordance with Article 10, para. 2, of the Statute of the Tribunal.

Article 21

A decision not to grant the Tribunal's request for surrendering the accused shall, together with the entire file, be forwarded *ex officio* to the Supreme Court of the Republic of Croatia, which shall consider the request, as well as the first instance ruling, in a chamber composed of five judges, and by its decision confirm, repeal or alter the county court decision.

Article 22

The accused and his or her defence counsel and the public prosecutor are entitled, within 8 days, to appeal against the decision of the county court granting the Tribunal's request. The appeal shall withhold the enforcement of the decision, and the Supreme Court's chamber composed of five judges shall decide on the appeal.

The provisions of the Criminal Procedure Act relating to deciding on the appeal against a court decision shall *mutatis mutandis* apply to the Supreme Court's procedure for deciding on an appeal under para. 1 of this Article and under Article 21 of this Constitutional Act.

Article 23

The final court decision granting the Tribunal's request for surrendering the accused shall be executed.

Against the final court decision granting the Tribunal's request for surrendering the accused, the Constitutional Complaint may be filed to the Constitutional Court of the Republic of Croatia.

The Minister of Justice may temporarily postpone the surrender due to an illness or the accused or other justified reason.

Article 24

The final decision on the Tribunal's request for surrendering the accused shall through the Ministry of Justice, be forwarded to the Government of the Republic of Croatia which shall then forward it to the Tribunal.

V. LEGAL ASSISTANCE TO THE TRIBUNAL

Article 25

At the Tribunal's request, the competent authorities of the Republic of Croatia shall undertake investigative measures, collect the necessary information on the crime and its perpetrator and other facts relevant to the criminal proceedings, issue a wanted warrant of arrest, deliver the summons and other documents sent by the Tribunal to persons resident in the Republic of Croatia, and carry out other measures relevant to the proceedings before the Tribunal.

Representatives of the Tribunal may at their request be enabled to be present when measures from para. 1 are carried out and ask questions, make motions and, if it does not hinder the carrying out of these measures, record them by audio-visual means.

Article 26

At the Tribunal's request, the Government of the Republic of Croatia shall allow the transport of the accused, the witnesses and other persons through the territory of the Republic of Croatia.

The competent authorities of the Republic of Croatia shall undertake the measures necessary for the safe transport of persons from para. 1, including the measures for restricting the freedom of movement of the persons transported.

Article 27

In providing legal assistance to the Tribunal, Articles 3, 4 and 5 of this Constitutional Act shall apply *mutatis mutandis*.

VI. ENFORCEMENT OF THE JUDGEMENT OF THE TRIBUNAL

Article 28

The final decision of Tribunal can be executed in the Republic of Croatia. The Government of the Republic of Croatia shall inform the Tribunal on the readiness of the Republic of Croatia to admit the convicted persons to serving their prison sentence.

Article 29

A prison sentence shall be executed in accordance with the Croatian regulations on the execution of penal sanctions.

It shall be made possible for the Tribunal to supervise the serving of the sentence.

Article 30

When the conditions for amnesty, commutation of sentence or release on parole are fulfilled, the Tribunal shall be informed about it for the purpose of adopting an appropriate decision.

Article 31

A competent Croatian court shall execute the decision of the Tribunal on seizing the benefits gained from the crime, the return of property to persons unlawfully deprived of it by the crime, i.e., the remuneration of persons unlawfully deprived of their property by the crime when the

return of such property is not possible.

The Croatian court shall, in compliance with Article 12 of the Civil Procedure Act ("Narodne novine"/official gazette/Nos. 53/91 and 91/92), be bound by the decision of the Tribunal with regard to the crime and criminal responsibility.

VII. FINAL PROVISIONS: COSTS, IMMUNITIES AND OTHER ISSUES

Article 32

The Government of the Republic of Croatia may require the Tribunal to compensate the costs the Republic of Croatia has due to the performance of duties within the cooperation with the Tribunal which was conducted at the Tribunal's request.

When costs expected for the performance of duties at the request of the Tribunal exceed the amount specified by the Government of the Republic of Croatia, the Tribunal may be requested to pay such costs in advance.

Article 33

If the Republic of Croatia has deferred the criminal prosecution to the competence of the Tribunal and the proceedings before the Croatian court have therefore been stayed, the competent court shall decide on the costs of the proceedings subsequently, depending on the decision adopted by the Tribunal.

Article 34

Judges, the Prosecutor and Registrar of the Tribunal enjoy in the Republic of Croatia privileges and immunity provided for diplomatic agents by international law.

Employees of the Office of the Tribunal in the Republic of Croatia and other employees of the Tribunal who are not citizens of the Republic of Croatia enjoy immunity and privileges in accordance with Article VI, point 22, of the UN Convention on Privilege and Immunities of 13 February 1946, unless the issue of immunity and privileges is settled otherwise in an agreement between the Republic of Croatia and the Tribunal.

Immunity from para. 2 is enjoyed by the employees of the Tribunal if it is necessary for unimpeded fulfilment of the Tribunal's task.

Article 35

Representatives of the Republic of Croatia before the Tribunal may have diplomatic status and the Government of the Republic of Croatia may regulate immunity and other privileges of Croatian representatives in an agreement concluded with the Tribunal.

Article 36

This Constitutional Act shall enter into force on the day of its publication in "Narodne novine".