

THE CONFEDERATION OF SWITZERLAND

Federal order on cooperation with the International Tribunals for the Prosecution of Serious violations of International Humanitarian Law

of 21 December 1995

The Federal Assembly of the Swiss Confederation,

pursuant to the jurisdiction of the Confederation over foreign relations;

pursuant to the message of the Federal Council of 18 October 1995¹,

orders:

Chapter 1: General Provisions

Section: Scope of Application

Article 1: Re

1 This order covers:

- a. cooperation with the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia since 1991, established by United Nations Security Council resolution 827 (1993) and organised according to its Statute attached to that resolution;
- b. cooperation with the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such acts or other violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, established by United Nations Security Council resolution 955 (1994) and organised according to its Statute annexed to that resolution.

2 The Federal Council may extend the scope of application of this order to cooperation with other international tribunals established by the United Nations Security Council for the prosecution of persons responsible for serious violations of international humanitarian law if those tribunals have a statute and jurisdiction analogous to that of the tribunals set up by resolutions 827 and 955.

Article 2: Relationship with the laws on international criminal assistance

Subject to provisions contrary to this order, the law on international assistance² and the order on international criminal assistance³ shall apply *mutatis mutandis* to the cooperation with the international tribunals.

Article 3: Extent of the cooperation

1 This order sets forth all the means for cooperation with the international tribunals including:

- a. voluntary transmission of information and evidence (Article 8);
- b. deferral by Swiss courts (Article 9);

- c. transfer of persons being prosecuted (Chapter 2);
- d. procedural action and other requests of international tribunals (other requests for assistance) (Chapter 3);
- e. enforcement of custodial sentences pronounced by the international tribunals (Chapter 4).

2 Article 2, paragraph 3 and 4, and Articles 2 to 4 of the law on international criminal assistance are not applicable.

Section 2: Procedure in Switzerland

Article 4: Federal Authorities

- 1 The Federal Office of Police ("Office") shall receive the requests from the international tribunals.
- 2 The Office shall handle the requests for transfer of persons being prosecuted and transmit the requests in respect of the other requests for assistance and enforcement of custodial sentences to the competent authorities for enforcement; Article 18, paragraph 2 shall remain unaffected.
- 3 It may assign partial or complete enforcement of a procedure to the federal authority which would have jurisdiction if the offence had been committed in Switzerland.
- 4 Article 17 of the law on international criminal assistance is not applicable.

Article 5: Cantonal authorities

- 1 The cantons shall collaborate on the execution of the procedure for transferring persons being prosecuted to the international tribunals.
- 2 They shall process the other requests for assistance from the international tribunals and enforce the custodial sentences which those tribunals have pronounced.
- 3 They shall carry out these responsibilities under the supervision of the Confederation.
- 4 They shall regulate the jurisdiction, organisation and management of their enforcement authorities.

Article 6: Remedy

- 1 Notwithstanding Article 98a of the law on judicial organisation (OJ)⁴ and provisions contrary to this order, administrative remedy from the decisions of the first instance enforcement authorities may be submitted directly to the federal Tribunal.
- 2 The Office may provide remedy from the decision of the cantonal enforcement authority.
- 3 The provisions of Article 34, paragraph 1 of the law on judicial organisation in respect of suspension of prescription periods do not apply to those provided by this order.
- 4 The federal Tribunal shall not be bound by the conclusions of the parties.
- 5 Articles 23 to 26 of the law on international criminal assistance⁵ are not applicable.

Article 7: Provisional Measures

1 At the express request of an international tribunal, provisional measures may be ordered by the competent authority in order to maintain an existing situation, to protect legal interests which have been threatened or to preserve evidence.

2 When urgent action is required and the information provided allows an examination of whether all the conditions have been met, the Office may also order those measures as soon as a request has been announced.

3 Remedy against decisions taken pursuant to paragraphs 1 and 2 have no suspensive effect.

4 Article 18 of the law on international criminal assistance⁶ is not applicable.

Section 3: Special Provisions

Article 8: Voluntary transmission of information and evidence to the international tribunals

1 Through the Office, the authority of criminal prosecution may voluntarily transmit to the international tribunal concerned information and evidence it has collected during its own investigation whenever it considers that the transmission may:

- a. permit the initiation of a criminal prosecution;
- b. facilitate the course of an investigation in progress; or
- c. permit the submission of a request for assistance to Switzerland.

2 The transmission indicated in the first paragraph has no incidence on the criminal proceedings in progress in Switzerland.

3 This article does not apply to the evidence concerning secret private property.

Article 9: Deferral to the international tribunals

1 When an international tribunal requests that a Swiss court defer to it, the Office shall transmit the request to the competent authority after reviewing the formal admissibility.

2 The Courts-Martial Appeals Court or the regular competent criminal court shall render a decision of deferral to the international tribunal if:

- a. the request covers the same acts as those which are the subject of the criminal proceedings initiated in Switzerland, and
- b. the offence falls within the jurisdiction of the international tribunal.

3 The deferral shall have the effects provided for in Article 89 of the law on international criminal assistance.⁷

Chapter 2: Transfer of persons being prosecuted to the international tribunals

Section 1: Conditions

Article 10

1 Any person may be transferred for criminal prosecution to the international tribunal concerned if the request and the attached documents show that the offence:

- a. falls within the jurisdiction of the international tribunal, and
- b. it is punishable under Swiss law.

2 A Swiss citizen may be transferred to the international tribunal concerned only if it guarantees that he will be returned to Switzerland after the proceedings.

3 Article 35, paragraph 1, and Articles 36 of 40 of the law on international criminal assistance⁸ are not applicable.

Section 2: Procedure

Article 11: Arrest

Any person may be arrested for transfer pursuant either to a request from an international tribunal or to the international distribution of a personal description which is part of the search proceedings.

Article 12: Warrant of arrest

1 The Office shall issue a warrant of arrest for the transfer of the person being prosecuted to the international tribunal concerned. Article 47, paragraph 1 of the law on international criminal assistance⁹ is not applicable.

2 Remedy may be sought from the Indictment Chamber of the federal Tribunal within ten days of the notification of the warrant of arrest. Articles 214 and following of the law on criminal procedure¹⁰ apply *mutatis mutandis*.

Article 13: Decision on Transfer

1 The Office shall rule on the transfer as soon as it has received the request from an international tribunal. Articles 53 and 55, paragraph 2, of the law on international criminal assistance¹¹ are not applicable.

2 Administrative remedy from the decision of the Office may be requested from the federal Tribunal.

3 Notwithstanding Article 111, paragraph 2 of the law on judicial organisation¹², remedy from a transfer decision shall have a suspensive effect.

Article 14: Decision on arrest and transfer

1 When the Office has received a warrant for arrest and transfer from an international tribunal, it shall issue a warrant of arrest and, in the same decision, shall rule on the transfer. Article 47,

paragraph 1, and Articles 53 and 55, paragraph 2, of the law on international criminal assistance¹³ are not applicable.

2 Administrative remedy from the decision of the Office may be requested from the federal Tribunal.

3 Notwithstanding Article 111, paragraph 2 of the law on judicial organisation¹⁴, remedy from a decision on arrest and transfer shall have a suspensive effect.

Article 15: Costs

1 The Confederation shall assume the costs of detention and transfer to the international tribunal.

2 The possessions of the person being prosecuted may be used to cover the costs indicated in paragraph 1 unless they are to be submitted to the international tribunal concerned.

Section 3: Transit

Article 16

1 At the request of a State or an international tribunal, the Office may authorise the transit of a detained person without having him appear.

2 This authorisation shall be final.

3 Article 71 of the law on international criminal assistance¹⁵ is not applicable.

Chapter 3: Other Requests for Assistance

Section 1: Conditions

Article 17

1 Excluding any other condition, assistance shall be granted if the request and the attached documents demonstrate that the offence:

- a. falls within the jurisdiction of the international tribunal and
- b. is punishable under Swiss law if the measures requested by an international tribunal are coercive as provided by the law of procedure.

2 Articles 66 and 67 of the law on international criminal assistance¹⁶ are not applicable.

Section 2: Processing of the request

Article 18: Powers of the Office

1 The Office shall review the request to ensure its formal admissibility and then transmit it to the competent enforcement authority.

2 It may itself rule as to the admissibility of the assistance or the enforcement:

- a. in complex or particularly important cases or

b. when the request requires investigations in several cantons.

3 If a request requires investigations in several cantons or also concerns a federal authority, the Office may assign execution to a single authority. This designation shall be final. Articles 352 to 355 of the criminal code¹⁷ shall apply *mutatis mutandis*.

Article 19: Powers of the enforcement authority

1 The enforcement authority shall make a summary ruling as to the admissibility of the request.

2 In the cases provided by Article 18, paragraph 2, the cantonal or federal authority shall take the measures ordered by the Office without drafting any procedural documents as to the substance. When the enforcement authority considers that it has processed the request, it shall transmit the relevant documents to the Office. The Office shall verify whether the request was completely executed in the proper form and, if necessary, shall return the case-file to the enforcement authority for completion.

3 Article 79, paragraph 3, third sentence of the law on international criminal assistance¹⁸ is not applicable.

Article 20: Closing of the assistance procedure

1 When the enforcement authority has completed its processing of the request, it shall render a decision on the granting and the extent of the assistance. In cases provided by Article 18, paragraph 2, the decision shall be made by the Office.

2 Article 83 of the law on international criminal assistance¹⁹ is not applicable.

Article 21: Costs

1 The enforcement authority shall assume the costs of processing the request for assistance.

2 Article 84 of the law on international criminal assistance²⁰ is not applicable.

Section 3: Specific assistance

Article 22: Investigations on Swiss territory

1 Under the terms of Article 17, the Federal Department of Justice and Police may authorise the prosecutor of the international tribunal concerned, should he so request, to carry out investigations on Swiss territory.

2 This authorisation shall be granted after consultation with the cantonal authorities concerned.

Article 23: Direct notification

Procedural formalities and judicial decisions of the international tribunals may be served by mail directly to the addressee in Switzerland.

Section 4: Remedy

Article 24: Decisions for which remedy may sought

1 The decision of the cantonal or federal enforcement authority on the closing of the assistance procedure and, together with that decision, all interlocutory decisions may be the subject of administrative remedy from the federal Tribunal.

2 In cases of immediate and irreparable damage, administrative remedy from the interlocutory decisions may be sought from the federal Tribunal.

Article 25: Capacity to seek remedy

1 The following may seek remedy:

a. the Office;

b. anyone personally and directly affected by a measure of assistance with an interest meriting protection by the cancellation or modification of the measure.

2 Article 21, paragraph 3 of the law on international criminal assistance²¹ is not applicable.

Article 26: Reasons for remedy

1 Remedy may be requested because of a violation of federal law, including excessive or abusive power of assessment.

2 The reasons for remedy provided by cantonal procedural law shall remain unaffected.

Article 27: Time period for remedy

The time period for remedy from the decision on closing shall be 20 days from the written notification of the decision; if it is an interlocutory decision, as understood in Article 24, paragraph 2, the time period shall be ten days.

Article 28: Suspensive effect

1 Notwithstanding Article 111, paragraph 2 of the law on judicial organisation²², remedy from a decision on closing or any other decision authorising the transmission to the international tribunal concerned of information on secret private property or the transfer of valuables shall have a suspensive effect.

2 The interlocutory decisions shall be immediately enforceable.

3 The federal Tribunal may, however, grant a suspensive effect to the decisions indicated in paragraph 2 if the party entitled to this right demonstrates that the damage is immediate and irreparable.

Chapter 4: Enforcement of prison terms ordered by the international tribunals

Section 1: Conditions

Article 29

1 A final and enforceable decision of an international tribunal may be executed in Switzerland at its request if:

- a. the convicted person normally resides in Switzerland and
- b. the conviction is related to an offence which would be punishable if it was committed in Switzerland.

2 The final and enforceable decision of an international tribunal against a Swiss national shall be executed in Switzerland if the convicted person so requests.

3 Article 94, paragraphs 1, 3 and 4 and Articles 95 and 96, letters b and c, and Article 99 of the law on international criminal assistance²³ are not applicable.

Section 2: Procedure

Article 30: Decision on the request

1 After consultation with the enforcement authority, the Office shall rule on the request of the international tribunal concerned.

2 If the Office accepts the request, it transmits the case-file to the enforcement authority and informs the international tribunal thereof.

3 Article 104, paragraph 2 of the law on international criminal assistance²⁴ is not applicable.

Article 31: Enforcement of sentences

1 The sentence pronounced during the foreign proceedings by the judge whose competence is recognised in Article 348 of the criminal code²⁵ shall be executed in accordance with Swiss law.

2 At the request of the international tribunal concerned, the Office shall provide to it all information on the enforcement of the sentence.

Article 32: Applications for pardon

If the convicted person files an application for pardon, the competent authority shall transmit it with all relevant documents through the Office to the international tribunal concerned.

Article 33: Costs

The Confederation shall assume the costs of enforcement of the sentence.

Chapter 5: Final provisions

Article 34

1 This order is of general application.

2 It is declared urgent in accordance with Article 89 *bis*, paragraph 1 of the Constitution and shall enter into force on the day following its adoption.

3 It is subject to an optional referendum in accordance with Article 89 *bis*, paragraph 2 of the Constitution and shall remain in effect until 31 December 2003.