

AUSTRIA

Federal Law on Cooperation with the International Tribunals

Part I General Provisions

International Tribunal

Article 1

For this Federal Law, the term "International Tribunal" shall mean:

- (1) the International Tribunal for the former Yugoslavia established pursuant to United Nations Security Council resolution 827 (1993) of 25 May 1993, BGBl. [*Bundesgesetzblatt* = Federal Law Gazette] No. 37/1995, and
- (2) the International Tribunal for Rwanda established pursuant to United Nations Security Council resolution 955 (1994) of 8 November 1994, including the relevant chambers and prosecuting authorities established in accordance with the Statute and the members of the said chambers and prosecuting authorities.

General Principle

Article 2

- (1) The Austrian authorities, in particular the courts, the Public Prosecutor's Office, the penal authorities and the security services obliged to cooperate extensively with the International Tribunal in accordance with the provisions of this Federal Law and within the framework of the United Nations Security Council resolutions and the Statute and Rules of Procedure of the International Tribunal. In particular, this obligation to cooperate entails providing the International Tribunal with information and documents available in Austria relating to the suspicion of violations which fall within its jurisdictions, affording it judicial assistance, committing accused persons and accepting convicted persons for the execution of a sentence.
- (2) Insofar as this Federal Law makes no other provision, the Law on Extradition and Judicial Assistance (*Auslieferungs - und Rechtshilfegesetz* -ARHG) and the Code of Criminal Procedure 1975 (*Strafprozessordnung* - StPO) shall apply by analogy.

Jurisdiction of the International Tribunal

Article 3

- (1) Pursuant to Article 1 sub-paragraph 1, the International Tribunal has jurisdiction over the prosecution and punishment of persons accused of serious violations of international humanitarian law committed since 1 January 1991 in the territory of the former Socialist Federative Republic of Yugoslavia, including its airspace and territorial waters.
- (2) Pursuant to Article 1 sub-paragraph 2, the International Tribunal has jurisdiction over the prosecution and punishment of persons accused of having committed acts of

genocide and other serious violations of international humanitarian law in the territory of Rwanda, including its airspace, and for the prosecution and punishment of Rwandan citizens accused of having committed such acts and violations in the territory of the countries bordering upon Rwanda. Jurisdiction obtains for acts committed between 1 January 1994 and 31 December 1994.

(3) Serious violations of international humanitarian law which are to be prosecuted by the International Tribunal pursuant to Article 1 sub-paragraph 1 are deemed to be serious breaches of the Geneva Convention of 12 August 1949, BGBI. No. 155/1953, violations of the laws or customs of war, genocide and crimes against humanity as described in Articles 2 to 5 of the Statute of this Tribunal.

(4) Serious violations of international humanitarian law which are to be prosecuted by the International Tribunal pursuant to Article 1 sub-paragraph 2 are deemed to be the crimes against humanity and breaches of Article 3 of the Geneva Convention of 12 August 1949 on the protection of victims of war, BGBI.No. 155/1953, in the version of the Additional Protocol II of 8 June 1977, BGBI. No. 527/ 1982, as described in Articles 3 and 4 of the Statute of this Tribunal.

Austrian Jurisdiction

Article 4

(1) The jurisdiction of the International Tribunal shall not exclude the jurisdiction of the Austrian courts.

(2) However, Austrian jurisdiction shall not apply to offences in respect of which the suspected person has been convicted or acquitted by the International Tribunal.

(3) In the event that the International Tribunal should lodge a formal request for transfer of criminal proceedings due to punishable acts falling within its jurisdiction, the Austrian court shall take all steps necessary to detain the person concerned and secure the relevant evidence, and shall then provisionally stay the proceedings and submit a complete set of photocopies of the documentation to the Federal Ministry of Justice for forwarding to the International Tribunal. If exhibits are attached, it should be stated whether or not they are to be returned.

(4) Following a final decision by the International Tribunal, the Austrian criminal proceedings shall be stayed. However, at the request of the Public Prosecutor's Office, the proceedings shall be continued and a ruling reached if:

1. the Prosecutor at the International Tribunal decides not to bring an indictment or withdraws the indictment,
2. after review, the International Tribunal dismisses the indictment, or
3. the International Tribunal determines that it does not have jurisdiction.

Committal of Austrian Citizens

Article 5

(Constitutional provision) Austrian citizenship shall not preclude committal to the International Tribunal pursuant to Article 16 or through-transportation pursuant to

Article 18. This shall also apply to committal to another country for the purposes of executing a sentence imposed by the International Tribunal.

Communication with the International Tribunal

Article 6

(1) As a general principle, communications with the International Tribunal shall pass through the Ministry of Foreign Affairs. Official responses shall be forwarded to the International Tribunal through the Ministry of Foreign Affairs even if the letter of request from the International Tribunal reaches the Austrian legal or administrative authorities through other channels.

(2) The courts and Public Prosecutor's Office shall forward letters of request and communications directed to the International Tribunal as well as all other official responses to the Federal Ministry of Justice for forwarding to the Tribunal.

(3) In urgent cases and as part of official criminal police assistance, direct communication between the Austrian authorities and the International Tribunal or communication through the International Criminal Police Organisation INTERPOL shall be permitted.

(4) Letters of request and enclosures shall be accompanied by translations in English or French. Executions of requests and statements of facts in respect of an offer of committal shall be translated only at the request of the International Tribunal.

Privileges and Immunities

Article 7

(1) The Judges, the Director of the prosecuting authority and the Registrar of the International Tribunal shall be entitled to the privileges, immunities, exemptions and facilities granted to diplomats under international law.

(2) The staff of the Office of the Prosecutor and of the Registrar shall enjoy the privileges and immunities granted to employees of the United Nations in accordance with Articles V and VII of the Agreement of 13 February 1946 on the privileges and immunities of the United Nations, BGBl. No. 126/1957.

Safe Conduct

Article 8

(1) Persons summoned from abroad by the International Tribunal to appear before the Tribunal, or persons whose presence at the seat of the International Tribunal is required, shall be entitled to undisturbed passage through the territory of the Republic of Austria for this purpose. Inside Austria, they may not be prosecuted or punished and their liberty may not be restricted because of an offence committed prior to entering the country.

(2) However, the prosecution or punishment of a person or the restriction of his personal liberty because of an offence committed prior to entering the country shall be permissible if the person summoned remains in Federal territory for a period of

time longer than that which is appropriate for transit purposes, despite the fact that they were actually in a position to leave the territory of the Republic of Austria.

(3) Safe conduct shall not apply if the International Tribunal requests the arrest of the person summoned in accordance with Article 15 and Article 16.

Part 2 Special Provisions

Section One Investigations and Proceedings of the International Tribunal in Austria

Article 9

(1) The International Tribunal shall have the authority to hear independently witnesses and accused persons in Austria and to inspect localities and take other evidence, provided that the Federal Ministry of Foreign Affairs had been advised in advance of the time and subject of such investigations and that no measures of constraint have been taken or threatened by the International Tribunal during the conduct of the investigations. Special approval for the performance of service by members and investigative officers of the International Tribunal in Austria shall not be required in such cases.

(2) The International Tribunal shall have the authority to hold proceedings in Austria, unless the Federal Minister for Foreign Affairs objects to this because of serious misgivings related to the security of the Republic of Austria or of the International Tribunal.

(3) It shall be incumbent upon the Austrian authorities to assist the members and investigative officers of the International Tribunal with their independent activities in Austria. In this connection, they may take measures of constraint only if a written request for judicial assistance has been received and the desired judicial assistance has been granted by the Austrian court. The admissibility and enforcement of such measures of constraint shall conform with Austrian law.

Section Two Judicial Assistance

Procedural Provisions Relating to the Execution of Requests for Judicial Assistance

Article 10

(1) Judicial assistance to the International Tribunal shall be furnished in accordance with the applicable provisions relating to judicial assistance in criminal cases in Austria.

(2) A request by the International Tribunal to observe certain formal requirements shall be granted if it is consistent with the basic principles of Austrian law on

criminal procedure. The participation of the defence counsel in all acts of judicial assistance as well as the tape or video recording of such acts shall always be permitted, if the International Tribunal so desires.

(3) Upon request, the members and investigative officers of the International Tribunal shall be advised of the time and place of acts of judicial assistance. Furthermore, they may participate in and contribute to the execution of requests for judicial assistance without special authorisation.

(4) In accordance with Austrian law, the execution of a request from the International Tribunal for criminal investigations of police information may be dealt with by the Federal Ministry of the Interior without involvement of the court.

Summoning of Persons

Article 11

(1) The International Tribunal shall have the authority to forward a summons and other documents to persons in Austria directly by post.

(2) At the request of the International Tribunal, the Austrian court shall remit an appropriate travel advance to witnesses and experts summoned to appear before the Tribunal should such persons request this payment. The advance shall be reclaimed if the witness or expert fails to attend the hearing of the International Tribunal or in some other way fails to discharge the duties upon which their summons was predicated.

Inspection of Files and Transmission of Copies of Documents on File

Article 12

(1) (Constitutional provision) At the request of the International Tribunal, judicial assistance shall be furnished through the forwarding of objects, files or copies of files (photocopies) and the granting of permission to inspect files.

(2) In the event that the files are subject to special security provisions or bear upon national security, particularly in connection with military information, the Federal Minister for Foreign Affairs, after consulting the most relevant senior administrative authority, prior to the inspection of files or the transmission of copies of files shall examine whether the interests of secrecy substantially outweigh the interests of transmitting the exhibits for the purposes of international criminal prosecution. If this is the case, the International Tribunal shall be requested to guarantee that secrecy will be observed and to provide information as to how this will be ensured.

(3) The Federal Minister for Foreign Affairs, after consulting the competent senior administrative authority, shall examine whether the guarantee given for the observance of secrecy shall be regarded as satisfactory. Permission to inspect files or transmit copies of files shall be declined if secrecy cannot be guaranteed and if, in the event of disclosure, there are grounds for fearing that national security or other interests protected by special security provisions might be violated.

Section Three Searches

Article 13

(1) In the event of the International Tribunal requesting that a search be conducted for the purpose of arresting a person, or should the Austrian authorities otherwise become aware of a warrant of arrest issued by the International Tribunal, the Federal Minister of the Interior shall issue a warrant of arrest in Austria for the person sought with a view to committing them to the International Tribunal, subject to the proviso that the request or the arrest warrant contains the necessary information about the person sought and the crime with which he is charged. The involvement of the competent court pursuant to Article 26 paragraph 1 ARHG may be waived if the person sought is not an Austrian citizen and no grounds exist for suspecting that he is currently in Austria.

(2) In the event that a person sought by the International Tribunal is apprehended or arrested in Austria, the Federal Minister of the Interior shall so inform the International Tribunal through the International Criminal Police Organisation INTERPOL.

Section Four Detention, Transfer and Through-Transportation

Offer of Transfer

Article 14

(1) If sufficient grounds exist for suspecting that a person located in Austria has committed a criminal offence falling within the jurisdiction of the International Tribunal, the Public Prosecutor's Office shall, following questioning of the person by the investigating Judge, file an application with the investigating Judge for submission of a statement of the facts to the Federal Ministry of Justice.

(2) The Federal Minister of Justice shall ask the International Tribunal whether it requires transfer of the criminal prosecution and committal of the person concerned.

(3) This shall not affect the provisions relating to the offer of extradition to the country in which the criminal offence was committed pursuant to Article 28 paragraph 1 ARHG.

Provisional Detention Pending Transfer

Article 15

(1) In the event that a request has been received from the International Tribunal for provisional arrest, the investigating Judge shall, at the request of the Public Prosecutor's Office, order provisional detention; this is subject to the proviso that, in the light of the facts provided by the International Tribunal, sufficient grounds exist for suspecting that a person located in Austria has committed a criminal offence falling within the jurisdiction of the International Tribunal which would justify the order of detention (Article 180 Code of Criminal Procedure) if the said offence had been committed in Austria.

(2) Provisional detention may not be ordered or maintained if the purposes of custody could be achieved by means of simultaneous imprisonment, or detention

pending extradition. In such a case, the investigating Judge shall impose those exceptions from the execution of a prison sentence which are essential for the purposes of the provisional detention for the International Tribunal. It should further be noted that the provisions of the Code of Criminal Procedure relating to detention shall be applied to the provisional detention for the purposes of transfer.

(3) It is incumbent upon the investigating Judge to forward without delay copies of the rulings on the imposition, continuation or lifting of provisional detention to the security services, so that these may inform the International Tribunal through the International Criminal Police Organisation INTERPOL, and to the Federal Minister of Justice.

Detention and Transfer Order

Article 16

(1) If a warrant of arrest of the International Tribunal due to a previous indictment or a request by the Tribunal for the arrest and transfer of the accused already exists, the investigating Judge shall, at the request of the Public Prosecutor's Office, institute transfer proceedings, and, if the person sought is not already in custody, shall give instructions for his arrest, order his detention and order his transfer. It should further be noted that Articles 176, 178, 179 paragraphs 1 to 4 and Articles 183 to 189 of the provisions of the Code of Criminal Procedure relating to detention shall be applied by analogy to the provisional detention.

(2) Prior to reaching a decision, the investigating Judge shall advise the arrested person without delay of the indictment or charges brought by the International Tribunal. Should significant doubts arise as to whether the arrested person and the person sought are one and the same, appropriate enquiries shall be made or the International Tribunal shall be requested to submit additional documentation.

(3) A right of appeal against rulings on detention and transfer exists only under Article 1 paragraph 1 of the Law on the Constitutional Right of Appeal [*Grundrechts-beschwerdegesetz*], BGBl. No. 864/1992. The Public Prosecutor's Office shall have the right to appeal within three days to the appellate court against rulings which reject the institution of committal proceedings or the imposition of Detention and committal.

(4) The arrested person shall be surrendered to the International Tribunal within 14 days of the order of detention. Austrian criminal or extradition proceedings shall not preclude such surrender. The International Tribunal shall not be required to submit original documentation in respect of the detention.

(5) The investigating Judge shall lift the detention and revoke the transfer order without delay:

1. if the International Tribunal so requires or otherwise withdraws its request,
2. if it is ascertained that to all appearances the arrested person and the person sought are not one and the same, or
3. 14 days after the order of detention, if the arrested person has not been surrendered to the International Tribunal by this time.

Surrender to the International Tribunal

Article 17

- (1) The investigating Judge shall instruct the security services to surrender without delay to the International Tribunal the person to be committed. The person to be committed shall be transported by air escorted by Austrian officials, unless serious security concerns preclude this or the International Tribunal requests some other form of surrender.
- (2) With reference to the deadline for detention pursuant to Article 16 paragraph 4, the security services shall inform the International Tribunal and the Dutch authorities in good time of the date/time of surrender.
- (3) It is incumbent upon the investigating Judge to submit a copy of the ruling on the detention order to the Federal Ministry of Justice and to inform the latter of the date/time of surrender.
- (4) The Federal Minister of Justice shall advise the Federal Minister of the Interior of the investigating Judge's decision on detention so that the latter may inform the International Tribunal accordingly.

Through-Transportation

Article 18

- (1) At the request of the International Tribunal or of a country which has accepted persons for the execution of sentences imposed by the Tribunal, such persons shall be transported through Austria and detained in order to ensure the security of through-transportation.
- (2) The Federal Minister of Justice shall decide upon the authorisation of through-transportation in consultation with the Federal Minister of the Interior. No right of appeal shall be permitted against such authorisation.

Section Five

Acceptance of Persons for the Execution of a Sentence

General Provisions

Article 19

- (1) After consulting the Federal Minister of Justice, the Federal Minister for Foreign Affairs may indicate by means of a declaration to the United Nations Security Council that the Republic of Austria is prepared to accept persons for the execution of prison sentences imposed by the International Tribunal. The declaration may contain a deadline for the period of acceptance with regard to the execution of a sentence and may include restrictions on the number and type of persons to be accepted.
- (2) Prison sentences imposed by the International Tribunal shall be executed immediately. Within the framework of the instructions of the International Tribunal, the effective provisions under Austrian law for the execution of sentences shall be applied to the enforcement of such sentences.

Procedure for the Acceptance of a Person for the Execution of a Sentence

Article 20

(1) In the event of the International Tribunal decides that a convicted person should serve the prison sentence imposed upon him in Austria, and if the Tribunal requests that the convicted person be accepted for execution of the sentence, this notification shall be forwarded to the Federal Minister of Justice.

(2) The Federal Minister of Justice may only decline to accept execution of a sentence which is in accordance with the declaration under Article 19 paragraph 1 if such an acceptance would entail untenable disadvantages for the security and public order of the Republic of Austria. In the case of Austrian citizens, acceptance of a person for the execution of a sentence may not be declined. No right of appeal shall be permitted against the decision of the Federal Minister of Justice.

(3) The decision of the Federal Minister of Justice shall be communicated to the International Tribunal with the request that the Tribunal propose a time and place for acceptance of the convicted person by the Austrian authorities. The Austrian authorities engaged in handling the acceptance of the convicted person shall operate in concert with the organs of the International Tribunal and the relevant authorities abroad.

(4) If the convicted person escapes from detention before execution of the prison sentence has been concluded, the enforcement court (Article 16 of the Law on the Treatment of Offenders [*Strafvollzugsgesetz*]) shall issue a warrant of arrest and initiate a search. If the person sought is subsequently arrested abroad, irrespective of whether a request has been received from the Public Prosecutor's Office, the court shall secure the imposition of detention pending extradition pursuant to Article 69 ARHG and forward the necessary documents in accordance with Article 68 ARHG to the Federal Minister of Justice. Unless the International Tribunal decides otherwise, it shall be incumbent upon the Federal Minister of Justice to secure extradition.

(5) In the event that persons who have escaped from the execution of a prison sentence imposed by the International Tribunal are arrested in Austria, the procedure to be adopted for committing such persons to the country which accepted them for execution of their sentences shall be in accordance with the provisions for committing persons to the International Tribunal.

Special Feature of the Execution of a Sentence

Article 21

(1) Without the consent of the International Tribunal, a person accepted for execution of a prison sentence imposed by the International Tribunal may not be prosecuted or punished in Austria for an offence committed prior to his acceptance, nor may he be restricted in his personal liberty or extradited to a third country, if the sentence passed by the International Tribunal does not pertain to the said offence.

(2) This special feature of the execution of a sentence shall not preclude such a measure if:

1. after his release, the person remains in the territory of the Republic of Austria for a period of more than 45 days, even though he was able and permitted to leave,
2. the person leaves and returns to the territory of the Republic of Austria, regardless of how this may occur, or is legally returned from a third country,
3. the International Tribunal waives observance of this special feature.

Reporting on the Execution of a Sentence

Article 22

The place of detention in which the prisoner serves the sentence imposed by the International Tribunal shall submit a report on the prisoner's conduct and health to the Federal Minister of Justice at least once a year and following conclusion of the execution of the sentence. The Federal Minister of Justice shall be informed immediately if the prisoner escapes from custody prior to conclusion of the execution of the sentence, or if the sentence can no longer be executed for any other reason.

Conditional Release and Pardon

Article 23

- (1) (Constitutional provision) The President of the International Tribunal shall decide upon a conditional release or pardon or on any modification of the sentence imposed on the convicted person by the International Tribunal.
- (2) All applications for a conditional release or pardon or a modification of the sentence shall be forwarded by the Federal Ministry of Justice to the International Tribunal with notice of the requisite time limits pursuant to Article 46 of the Penal Code [*Straf-gesetzbuch*].
- (3) The International Tribunal shall be officially informed of circumstances which would support a conditional release or pardon.

Transfer of the Execution of a Sentence to Another Country

Article 24

- (1) At the request of a third country, a person accepted for execution of a sentence may be transferred to the said country with the consent of the International Tribunal.
- (2) A request by the International Tribunal for committal of a prisoner to another country shall be complied with immediately.
- (3) If a prisoner requests that the sentence imposed upon him by the International Tribunal be executed in another country, the said request shall be forwarded to the International Tribunal.

Conclusion of the Execution of a Sentence

Article 25

(1) If the International Tribunal advises that a prison sentence has been fully served, the prisoner shall be released immediately or surrendered to the competent authority for the execution of provisions relating to aliens; this shall be subject to the proviso that no Austrian criminal proceedings or extradition proceedings are pending and that no grounds exist for instituting such proceedings.

(2) Prosecution, punishment or extradition due to an offence committed prior to acceptance of a person for execution of a sentence shall be permissible only within the framework of Article 21.

Section Six Provisions of Civil Law

Effects of Decisions of the International Tribunal

Article 26

In proceedings before the Austrian courts relating to legal action taken against the convicted person by the victim, a final judgement of the International Tribunal shall constitute full proof of that which was declared in the said final judgement on the basis of evidence. Proof of the incorrectness of declarations is admissible.

Executions of Decisions on Restoration

Article 27

Final decisions of the International Tribunal on the restoration of property or profit obtained through criminal offences shall be deemed to be findings of foreign courts, which satisfy the conditions of Article 79 paragraph 2 of the Rules on Impounding [*Exekutionsordnung*].

Effective Date and Final Provisions

Article 28

(1) This Federal Law shall take effect on 1 June 1996.

(2) References in this Federal Law to other legal provisions of the Federal Government shall be understood as references to the relevant applicable version of such provisions.

(3) The Federal Minister for Foreign Affairs, the Federal Minister of Justice and the Federal Minister of the Interior shall be charged with the execution of this Federal Law in accordance with their relevant areas of responsibility.