

ITALY

Provisions on Co-operation with the International Tribunal for the Prosecution of Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (Decree-Law No. 544 of 28 December 1993) 1

THE PRESIDENT OF THE REPUBLIC

Having seen Articles 77 and 87 of the Constitution;

Considering the extraordinary need and urgency of enforcing co-operation with the International Tribunal for the prosecution of serious violations of international humanitarian law committed in the territory of the former Yugoslavia;

Recalling the resolution adopted by the Council of Ministers at a meeting held on December 22, 1993;

On the proposal of the Prime Minister and of the Minister of Justice, in agreement with the Minister of Foreign Affairs;

hereby enacts the following decree-law

Article 1
Definitions

1. For the purposes of this Decree:

- a) "resolution" means Resolution No. 827 (1993) adopted by the Security Council of the United Nations on May 25, 1993 pursuant to Chapter VII of the Charter of the United Nations;
- b) "International Tribunal" means the international tribunal established by Resolution 827 (1993) for the prosecution of persons responsible for serious violations of international humanitarian law, committed in the territory of the former Yugoslavia since 1991;
- c) "statute" means the statute of the International Tribunal adopted by Security Council Resolution 827 (1993);

Article 2
Obligation to Co-operate

1. Italy shall co-operate with the International Tribunal in accordance with the provisions of the resolution, the statute and this decree.

2. The Minister of Justice shall be the authority competent to receive from the International Tribunal the requests for co-operation mentioned in the following articles and to give effect to such requests.

2 bis. Contribution (the Parliament decided for a contribution to the I.T. of 3 billion Italian liras

for the year 1994).

Article 3

Transfer of Criminal Proceedings

1. Whenever the International Tribunal, pursuant to Art. 9, para. 2 of the statute, requests the transfer of criminal proceedings pending before an Italian judicial authority, the judge shall issue a judgement declaring that the proceedings cannot be continued because of the primacy of the International Tribunal, provided the following conditions are met:

- a) the International Tribunal is proceeding on the same fact on which the Italian judge is proceeding; and
- b) the International Tribunal has territorial and temporal jurisdiction over that fact, under Article 8 of the statute.

2. The provisions of Article 127 of the code of penal procedure shall apply; however, an appeal to the Supreme Court of Cassation shall have a suspensive effect.

3. The judge shall send the documents of the proceedings to the Minister of Justice for further transmission to the International Tribunal.

4. In the case provided for in para. 1, the period of limitation shall be suspended for a period not exceeding three years. The period of limitation shall run again if proceedings are re-opened under Article 4.

Article 4

Re-opening of Domestic Proceedings

1. Criminal proceedings before an Italian judicial authority shall be re-opened in any of the following cases:

- a) if the Prosecutor of the International Tribunal decides, pursuant to Article 18 of the statute, not to issue an indictment;
- b) if the judge of the International Tribunal decides, pursuant to Article 19 of the statute, not to confirm the indictment; or
- c) if the International Tribunal declares its own lack of jurisdiction.

2. In any case indicated in para. 1, the judge for preliminary investigations shall, by means of a decree stating the reasons therefor, authorise the inquiry to be re-opened at the request of the prosecutor; in this case, the deadline for investigations shall run again. If prosecution has already been carried out, the judge for preliminary investigations, or the president, shall order that the act that started the stage or degree in which the transfer of the proceedings to the International Tribunal was decided be renewed.

Article 5

Non bis in idem

1. No person shall be tried in the national territory for acts for which he or she has already been judged by the International Tribunal with a final judgement.

2. If, however, new criminal proceedings are started, the judge shall, in any stage or degree thereof, render a judgement discharging the accused or declaring that no proceedings are to be carried out, stating the reason therefor.

Article 6

Communications and Transmission of Acts

1. The judicial authority shall, without undue delay, give the International Tribunal notice of the entry, in the register mentioned in Article 335 of the Code of Penal Procedure, of any informations about offences in respect to which, in the opinion of such authority, the International Tribunal has concurrent jurisdiction.

The communication shall also contain a brief statement of the facts.

2. If, in order to assess whether the transfer of the criminal proceedings should be requested, a request has been made by the Intentional Tribunal, the judicial authority shall supply a brief statement of the facts together with such acts and documents as are not covered by secrecy and with those whose publication has been consented to by the prosecutor in accordance with Article 329, 2nd para., of the Code of Penal Procedure.

Article 7

Recognition of the Judgements of the International Tribunal

1. If, on the basis of the declaration of willingness made in accordance with Article 27 of the statute, the International Tribunal has designated the State as the place where the penalty is to be served, the Minister of Justice shall ask for the recognition of the judgement of the International Tribunal. For this purpose, the Minister shall transmit the relevant request to the "procuratore generale" attached to the Court of Appeal of Rome, together with an Italian translation and the enclosures, if any. The "procuratore generale" shall ask the Court of Appeal to recognise the judgement.

2. A judgement rendered by the International Tribunal shall not be recognised in any of the following cases:

- a) if the judgement has not become final according to the statute and the other provisions governing the activity of the International Tribunal;
- b) if the fact for which the judgement has been rendered is not regarded as an offence by Italian laws; or
- c) if for the same fact and in respect of the same person a final judgement has been rendered in the State.

3. The Court of Appeal shall decide on the recognition by means of a judgement, in accordance with Article 127 of the Code of Penal Procedure. Article 734, 2nd para. of the Code of Penal Procedure shall apply.

4. The Court of Appeal, on pronouncing its recognition, shall determine the sentence to be enforced in the State. For this purpose, the Court shall convert the term of imprisonment imposed by the International Tribunal into a term of "reclusione". The duration of the sentence (penalty) shall in no case exceed a term of "reclusione" of thirty years.

Article 8

Enforcement of the Sentence

1. In the case mentioned in Article 7, the enforcement of the sentence shall be governed by Italian law.

2. The control by the International Tribunal under Article 27 of the statute shall be carried out on

the basis of agreements with the Prison Administration, Department of the Ministry of Justice.

Article 9

Measures Relating to Pardon

1. In the case mentioned in Article 7, the Minister of Justice, if he deems that the person convicted deserves pardon, shall make a proposal accordingly to the President of the International Tribunal to make a decision pursuant to Article 28 of the statute, transmitting the relevant documents thereto.

Article 10

Judicial Co-operation

1. The Minister of Justice shall transmit requests made by the International Tribunal under Article 29 of the statute to the "procuratore generale" attached to the Court of Appeal of Rome for execution, except as provided for in paragraph 6.

2. When a request has been made for investigations or acquisition of proofs, the "procuratore generale" shall request the Court of Appeal to carry it out.

3. The Court of Appeal shall carry out the request through a decree delegating responsibility to the judge for preliminary investigations of the place where the acts are to be carried out.

4. For the carrying out of the acts requested, the provisions of the Code of Penal Procedure shall apply, subject to the observance of any formalities explicitly requested by the International Tribunal which are not contrary to the principles of the State's legal system.

5. The judicial authority to whom responsibility has been delegated shall, when requested by the International Tribunal, inform the International Tribunal of the date and the place where the acts requested are to be carried out. The prosecutor and the judges of the tribunal who have made a request shall be allowed to attend the carrying out of the acts in question, may propose questions and may suggest modalities of execution.

6. Summons and the other services of process requested by the International Tribunal shall be transmitted to the "procuratore della Repubblica" attached to the court of the place where they are to be carried out, who shall act without undue delay.

7. When the International Tribunal so requests, a witness, expert or technical consultant who has failed to appear, though regularly summoned, shall be coercively accompanied before it. The costs for the coercive accompaniment shall be paid by the State.

Article 11

Surrender of the Accused

1. When the request mentioned in Article 10, 1st para., concerns the surrender of an accused to the International Tribunal, the "procuratore generale", after receiving the documents of the proceedings, shall promptly submit his final requests to the Court of Appeal. Such final requests shall be deposited with the Clerk's Office of the Court of Appeal together with the documents of the proceedings. The parties shall be notified of such deposit and of the date of the hearing.

2. The Court of Appeal shall, in accordance with the provisions of Article 127 of the Code of Penal Procedure, decide the requests without undue delay by means of a judgement. However, appeals to the Supreme Court of Cassation, which can also be made on the merits of the decision, shall have a suspensive effect.

3. The Court of Appeal shall render judgement declaring that the conditions for the surrender of

the accused have not been met only in any one of the following cases:

- a) the International Tribunal has not issued an arrest warrant;
- b) there is no physical identity between the person requested and the person concerned by the surrender procedure;
- c) the fact for which the surrender is requested does not fall within the temporal and territorial jurisdiction of the International Tribunal;
- c-bis) the fact for which the surrender is requested is not covered as a Criminal offence by the Italian law; or
- c-ter) a final judgement was pronounced in the Italian State for the same fact and against the same person.

4. The Minister of Justice shall decide without undue delay on the request of surrender, after having been notified that the deadline for an appeal against the judgement of the Court of Appeal has expired or that the judgement of the Supreme Court of Cassation has been deposited on or after receiving the minutes mentioned in Article 12, 3rd para., and shall agree on the time, place and modalities of the surrender with the International Tribunal. Art. 709, 1st para., of the Code of Penal Procedure shall apply.

Article 12

Application of a Precautionary Measure for the Purposes of Surrender

1. The "procuratore generale", after receiving the documents of the proceedings pursuant to Article 10, 1st para., shall ask for the Court of Appeal to apply a coercive precautionary measure; if the International Tribunal has requested the custody in prison of the person under article 29, 2nd para., letter (d) of the statute or another specific measure, the "procuratore generale" shall request the Court of Appeal to apply exclusively such measure.
2. The Court of Appeal shall, by means of an "ordinanza", order the measure requested to be applied; it can order a less serious measure to be applied only when the "procuratore generale" has not explicitly requested it to make provision exclusively for the measure indicated. Article 719 of the Code of Penal Procedure shall apply.
3. The President of the Court of Appeal, as soon as possible and in any case within five days of the application of the measure, shall identify the person and receive his or her consent, if any, to the surrender, mentioning this in the relevant minutes. The minutes evidencing the consent shall be sent to the "procuratore generale" for further transmission to the Minister of Justice. Article 717, 2nd para., of the Code of Penal Procedure shall apply.
4. The measure of custody in prison can be substituted on serious medical grounds.
5. A precautionary measure shall be cancelled:
 - a) if, since the beginning of its enforcement or, in case of provisional application of a precautionary measure under Article 13, since the arrival of the request for surrender, twenty-five days have elapsed without the Court of Appeal having decided on the request for surrender;
 - b) if the Court of Appeal has rendered a decision contrary to the surrender;
 - c) if fifteen days from the expiry of the deadlines indicated in Article 11, 4th para. have elapsed without the Minister having issued a decree providing for the surrender; or

d) if thirty days from the day set for the surrender to the International Tribunal have elapsed without the surrender having taken place.

Article 13

Provisional Application of a Precautionary Measure

1. Provided the International Tribunal has made a request therefor, the application of a coercive precautionary measure can be provisionally ordered even before the request for surrender has been received if:

a) the International Tribunal has declared that an arrest warrant has been issued against the person and that it intends to request the surrender of such person;

b) the International Tribunal has supplied a description of the facts, the specification of the offence and sufficient evidence for the exact identification of the person.

2. For the purposes of the application of the measure, the provisions of Article 12 shall apply.

3. The Minister of Justice shall immediately notify the Tribunal that the precautionary measure has been applied. This shall be revoked, if within twenty days of the notification, the International Tribunal's request for surrender has not been received.

Article 14

Role of Non-governmental Organisations

1. Italy will enhance the co-operation of national and international non-governmental organisations with the International Tribunal, in particular as concerns the diffusion to the public of the objectives and activities of the International Tribunal and the collection and transmission of information pursuant to Article 18, 1st para., of the statute.

2. During the phase of preliminary investigations in any criminal proceeding before an Italian judicial authority for facts falling within the competence of the International Tribunal the organisations mentioned in paragraph 1 above may submit statements and indicate proofs or sources of proof.

Article 15

Entry Into Force

1. This decree shall enter into force on the day after the date of its publication in the Official Gazette of the Italian Republic, and shall be presented to the Chambers for it to be converted into law.

This Decree, bearing the seal of the State, shall be included in the official Collection of normative acts of the Italian Republic. All those concerned shall be under the obligation to comply with this Decree and to have it complied with.

Given in Rome this 28th day of December, 1993.

1 The Decree Law was later approved by the Italian Parliament with minor modifications. The changes made by the Parliament are incorporated in this text.