

SWEDEN

Act relating to the Establishment of an International Tribunal for Trial of Crimes Committed in Former Yugoslavia

The following is hereby prescribed.

General Provisions

Section 1

If the International Tribunal instituted by the United Nations Security Council for the trial of persons responsible for serious crimes against international humanitarian law committed on the territory of former Yugoslavia requests that a measure should be taken in Sweden relating to such crimes, the measure requested shall be taken in accordance with the provisions of this Act.

Section 2

A request for a measure referred to in Section 1 shall be made by one of the Tribunal's judicial instances or by its prosecutors. The request shall be submitted to the Ministry for Foreign Affairs.

Extradition

Section 3

Any person who is suspected, indicted or convicted for crimes which fall under the jurisdiction of the Tribunal and who is residing in Sweden may be surrendered to the Tribunal following a decision by the Government.

A detention order or a judgement duly pronounced by the Tribunal shall be accepted as grounds for a decision unless it is clear that the detention order or judgement is manifestly incorrect.

Section 4

A request for the surrender to the Tribunal of a person referred to in Section 3, paragraph one, shall be forwarded to the Prosecutor-General, who shall deliver a statement of opinion to the Government. As a basis for his opinion, the Prosecutor-General shall commission any necessary investigations in accordance with the provisions concerning preliminary investigations in criminal cases. When the investigation has been concluded, the Prosecutor-General shall submit the matter together with a statement of his opinion to the Government.

Before the Government takes a decision on the matter, it shall obtain a statement of opinion from the Supreme Court, if there are special reasons for so doing.

Section 5

Regarding the use of coercive measures in connection with extradition, the general provisions for criminal cases shall apply. A decision by the court applies until the case has been decided or, when extradition has been decided, until it has been executed. A decision on the use of coercive

measures may be pronounced even after extradition has been decided. Persons who are detained in connection with a case concerning extradition may, within three weeks of the date on which the decision was pronounced, request that a new hearing be held.

Section 6

A person who may be surrendered under this Act, at the request of the Tribunal or on the basis of a search warrant issued as a consequence of a decision by the Tribunal, may be immediately arrested or a travel prohibition or a duty to report may be imposed on the said person by a prosecutor in accordance with the general provisions applicable to criminal cases.

If the use of coercive measures has been decided in accordance with the first paragraph, Section 23 paragraphs two to four of the Extradition Act (1957:668) shall apply.

Comment: By virtue of this Section, coercive measures may be used against persons even if a request for their extradition has not yet been received. At the request of the Tribunal, or on the basis of a search warrant following a decision by the Tribunal, such persons may be arrested, prohibited to travel or required to report following a decision by the Prosecutor. Procedure when such a decision has been taken, shall be in accordance with the Extradition Act.

The Extradition Act provides, amongst other things, that any person who is subjected to the measure shall have the right to a court trial of the matter and that the coercive measure shall cease if a request for extradition has not been received at the latest 40 days after the decision to take the measure.

Section 7

Regarding surrender to the Tribunal, Section 25, Section 26, paragraph one, and Section 26a of the Extradition Act (1957:668) apply.

Comment: This Section contains references to Sections 25, 26 paragraph one, and Section 26a of the Extradition Act, Under Section 25, legal proceedings may not be instituted in Sweden for a crime if there has been a request for extradition unless the request has been refused. If extradition is granted for a crime after proceedings have been commenced, this circumstance shall be regarded as constituting an impediment to continued legal proceedings in Sweden. Under Section 26, the Minister of Justice is authorised to allow transit through Sweden of a person being extradited by a foreign state to another state. Section 26a contains provisions for cases where a person is extradited to Sweden on condition that he/she be surrendered after legal proceedings in this country. In this case it is for the police authority to ensure that surrender takes place.

Section 8

A decision to surrender a person to the Tribunal shall be executed by the police authorities. If the person who is to be surrendered is at liberty, the police authorities may apprehend him/her, however not for longer than twenty-four hours.

Seizure

Section 9

Regarding seizure, the provisions of Sections 1 and 2, Section 6 first sentence and Section 7 of the Act on the Use of Certain Coercive Measures at the Request of a Foreign State (1975:295) apply. After the investigation has been concluded, the Prosecutor-General shall submit the matter,

together with a statement of his opinion, to the Government. Seized property is submitted to the Tribunal following a decision by the Government.

If seizure has been enforced, the person subjected to the measure may request the court to adjudicate the seizure decision. The court shall hold a hearing on the matter as soon as possible. The provisions of Chapter 24 Section 17 paragraph two of the Code of Judicial Procedure apply to the hearing.

Comment: By virtue of the Act concerning the Use of Certain Coercive Measures at the Request of a Foreign State, it is possible to seize objects which are of importance for the investigation of a crime at the request of the Tribunal and to submit them to the Tribunal. In addition, property confiscated on criminal grounds can be submitted to the Tribunal.

The Taking of Evidence, etc. **Section 10**

Regarding the taking of evidence, the provisions of Section 1, paragraph one, sentence one, Section 2, Section 3, paragraphs one and two, and Sections 4-10 and Section 12 of the Act Concerning the Taking of Evidence for a Foreign Court (1946:816) apply.

Comment: Under the provisions of this Section, it is possible, at the request of the Tribunal, to bring before a Swedish court various forms of evidence such as the hearing of witnesses, the questioning of the injured party and the taking of blood samples. It is furthermore possible to question persons prosecuted for crime.

Section 11

At the request of the Tribunal, a hearing may be held in accordance with the provisions of Chapter 23 of the Code of Judicial Procedure.

A request for a hearing shall be submitted to the Prosecutor-General by the Ministry for Foreign Affairs for the measures required in the request. The matter shall subsequently be reported to the Ministry for Foreign Affairs.

Comment: This Section enables us to assist the Tribunal - in the first instance its prosecutor - with questioning at the preliminary investigation stage. The reference to Chapter 23 of the Code of Judicial Procedure means that questioning may take place both with persons suspected of crime and with persons who can provide information of importance for the investigation and that the same rules regarding coercive measures, time limits etc. apply as for questioning in connection with a Swedish preliminary investigation. Transfer of persons deprived of their liberty for testimony, etc.

Section 12

Following a decision by the Government, a person in Sweden who is deprived of his/her liberty may be transferred to the Tribunal for questioning or confrontation in connection with the preliminary investigation or in connection with a trial, if the questioning or confrontation refers to matters other than the crimes of the person deprived of liberty. Transfer may only take place if the person deprived of liberty has consented to the measure.

Regarding the transfer or transport to the Tribunal of a person deprived of liberty, the provisions of Section 3 paragraph two, Section 5 and Section 7 paragraph one of the Act containing certain provisions on international co-operation in criminal cases (1991:435) apply.

Comment: The references in paragraph 2 to certain sections of the law containing provisions on international co-operation in criminal cases mean on the one hand that certain provisions on procedure in Sweden are applicable, on the other that an opportunity is opened for transit through Sweden of a person from another country who is to be questioned by the Tribunal.

Other Provisions

Section 13

At the request of the Tribunal, legal proceedings in progress in Sweden shall be transferred to the Tribunal. If such a request is made, a prosecution for the crime may not be instituted. If legal proceedings are transferred after prosecution has been instituted, this constitutes a procedural hindrance in the criminal case.

If the question of liability for a certain criminal act has been tried at the Tribunal, prosecution for the same act may not be instituted in Sweden.

Section 14

If the Tribunal requests that a measure shall be taken regarding a person who is suspected or has been prosecuted or sentenced for a crime, the latter, if he/she so requests, shall be assisted by a public defence counsel. In this context, the provisions of the Code of Judicial Procedure apply.

If a measure is taken in accordance with Section 10 or Section 11 regarding an injured party, a special counsel shall be appointed for the injured party (counsel for the injured party), if it can be assumed that the injured party needs such counsel in connection with questioning or the taking of evidence. The provisions of Section 3, paragraph one, Sections 4 and 5 and Section 7, sentence one of the Act Concerning Counsel for the Injured Party (1988:609) apply.

Comment: References to the Act Concerning Counsel for the Injured Party regulate the assignment of the counsel for the injured party, how the latter is appointed and his/her entitlement to remuneration. A counsel for the injured party is appointed by a court at the request of the injured party or when there is otherwise reason for so doing. The counsel for the injured party shall protect the interests of the injured party and give support and assistance to the injured party.

Section 15

A witness or an injured party or an expert in Sweden who has been summoned to be questioned by the Tribunal is entitled to remuneration for his/her appearance in accordance with the provisions issued by the Government.

Section 16

Remuneration from public funds paid to a public defence counsel or other counsel and other costs incurred for measures taken under this Act shall be paid by the State.

Section 17

Provisions from other laws or statutes concerning legal assistance for a court or authority in a foreign state apply to requests from the Tribunal, providing they are not contrary to the provisions of this Act.

This Act enters into force on 1 July 1994.