

LAW

ON THE ORGANISATION AND COMPETENCES OF THE GOVERNMENT AUTHORITEIS IN WAR CRIMES PROCEEDINGS

*(Official Gazette of the Republic of Serbia No 67/2003, 135/2004, 61/2005,
101/2007 and 104/2009)*

I INTRODUCTORY PROVISIONS

Article 1

This law regulates the establishment, organisation, competences and powers of government authorities and their organisational units for the purposes of detection, prosecution and trying of criminal offences specified in the present Law.

Article 2

This law shall apply to the detection, prosecution and trying of:

- 1) criminal offences referred to in Articles 370 through 384 and Art. 385 and 386 of the Criminal Code;
- 2) serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 specified in the Statute of the International Criminal Tribunal for the Former Yugoslavia;
- 3) the criminal offence of aiding and abetting an offender after the commission of a criminal offence referred to Article 333 of the Criminal Code, if committed in connection with criminal offences referred in sub –paragraphs 1) and 2) of this Article.

Article 3

The government authorities of the Republic of Serbia specified in this Law shall have the competent jurisdiction for conducting the proceedings for criminal offences referred to in Article 2 of the present Law which were committed in the territory of the former Socialist Federal Republic of Yugoslavia, regardless of the nationality of the perpetrator or victim.

II ORGANISATION AND COMPETENCES OF GOVERNMENT BODIES

1. The Office of the War Crimes Prosecutor

Article 4

The Office of the War Crimes Prosecutor shall have the competent jurisdiction to proceed in the cases involving criminal offences referred to in Article 2 of the present Law.

The work of the Office of the War Crimes Prosecutor shall be directed by the War Crimes Prosecutor.

Unless otherwise stipulated in the present Law, the provisions of the law regulating public prosecution shall apply to the Office of the War Crimes Prosecutor.

Article 5

In nominating candidates for the War Crimes Prosecutor or electing Deputy War Crimes Prosecutors, preference shall be given to the candidates with the required professional knowledge and experience in the field of criminal law, international humanitarian law and human rights.

The Republic Public Prosecutor may, upon the proposal of the War Crimes Prosecutor, second a deputy prosecutor to the Office of the War Crimes Prosecutor, with his written consent.

The secondment referred to in paragraph 1 of this Article shall last no longer than four years, but may be extended by the decision of the Republic Public Prosecutor, upon the proposal of the War Crimes Prosecutor, with the written consent of the seconded deputy public prosecutor.

Article 6

The War Crimes Prosecutor shall adopt an act on internal organisation and job classification in the Office of the War Crimes Prosecutor, with the consent of the minister responsible for the judiciary.

Article 7

All government authorities and organisations shall, upon the request of the War Crimes Prosecutor or War Crimes Investigation Unit:

- 1) promptly enable the use of any technical device available to them,
- 2) ensure timely response of any of their members or employees, including the heads of authorities or organisations, for the purposes of providing information and questioning or interrogation, in the capacity of a citizen, suspect or witness,
- 3) promptly submit any document or other evidence in their possession, or communicate by other means the information which can help detect war crime offenders.

2. War Crimes Investigation Unit

Article 8

For the purposes of detecting crimes referred to in Article 2 of the present Law, the ministry responsible for internal affairs shall form a war crimes investigation unit (hereinafter: the Unit).

The Unit shall proceed at the instance of the War Crimes Prosecutor, in accordance with the law.

The minister responsible for internal affairs shall appoint and dismiss the head of the unit after obtaining the opinion of the War Crimes Prosecutor.

The operations of the Unit shall be regulated by an act issued by the minister responsible for internal affairs after obtaining the opinion of the War Crimes Prosecutor.

3. Jurisdiction and organisation of courts

Article 9

The Higher Court in Belgrade shall have the competent jurisdiction to proceed in the cases involving criminal offences referred to in Article 2 of the present Law, as a court of first instance.

The Appeals Court in Belgrade shall have the competent jurisdiction to proceed in the second instance.

Article 10

The Higher Court in Belgrade shall establish a War Crimes Department (hereinafter: the Higher Court Department) to proceed in the cases involving criminal offences referred to in Article 2 of the present Law.

The work of the Higher Court Department shall be directed by the President of the Higher Court Department.

The President of the Higher Court Department shall be appointed by the Chief Justice of the Higher Court in Belgrade, from among the judges assigned to the Higher Court Department, for a term of four years. The President of the Higher Court Department must have no less than 10 years of professional experience in the field of criminal law.

The judges shall be assigned to the Higher Court Department by the Chief Justice of the Higher Court in Belgrade, for a term of six years, with their written consent. A Higher Court Department judge must have no less than eight years of professional experience in the field of criminal law.

Notwithstanding the provisions of the Law on Judges, the High Judicial Council may second a judge from another court to the Higher Court Department, for a term of six years, with his written consent. The seconded judge must meet the requirements referred to in paragraph 4 of this Article.

In assigning or seconding judges to the Higher Court Department, preference shall be given to the judges with the required professional knowledge and experience in the field of international humanitarian law and human rights.

The Chief Justice of the Higher Court in Belgrade shall regulate the work of the Higher Court Department in more detail.

Article 10a

The Appeals Court in Belgrade shall establish a War Crimes Department (hereinafter: the Appeals Court Department) to proceed in the criminal cases referred to in Article 2 of the present Law.

The work of the Appeals Court Department shall be directed by the President of the Appeals Court Department.

The President of the Appeals Court Department shall be appointed by the Chief Justice of the Appeals Court in Belgrade, from among the judges assigned to the Appeals Court Department, for a term of four years. The President of the Appeals Court Department must have no less than 12 years of professional experience in the field of criminal law.

The judges shall be assigned to the Appeals Court Department by the Chief Justice of the Appeals Court in Belgrade, for a term of six years, with their written consent. An Appeals Court Department judge must have no less than eight years of professional experience in the field of criminal law.

Notwithstanding the provisions of the Law on Judges, the High Judicial Council may second a judge from another court to the Appeals Court Department, for a term of six years, with his written consent. The seconded judge must meet the requirements referred to in paragraph 4 of this Article.

In assigning or seconding judges to the Appeals Court Department, preference shall be given to the judges with the required professional knowledge and experience in the field of international humanitarian law and human rights.

The Chief Justice of the Appeals Court in Belgrade shall regulate the work of the Appeals Court Department in more detail.

Article 11

The Higher Court in Belgrade shall form a unit for injured party and witness assistance (hereinafter: Assistance and Support Unit), which shall perform administrative and technical tasks, tasks relating to the assistance and support to injured parties and witnesses, as well as tasks of providing conditions for the application of procedural provisions of the present Law.

The work of the Assistance and Support Unit shall be regulated by an act issued by the Chief Justice of the Higher Court in Belgrade, with the approval of the minister responsible for the judiciary.

4. Special detention unit

Article 12

The District Prison in Belgrade shall form a special detention unit for the detention on remand ordered in the criminal proceedings for the criminal offences referred to in Article 2 of the present Law (hereinafter: Special Detention Unit).

The minister responsible for the judiciary shall specify the organisation, operation and treatment of detainees in the Special Detention Unit, in accordance with the Criminal Procedure Code and Law on the Enforcement of Penal Sanctions.

III RULES OF PROCEDURE

Article 13

The special provisions on the procedure for the offences of organized crime (Chapter XXXIXa) of the Criminal Procedure Code shall apply in the proceedings for crimes referred to in Article 2 of the present Law, unless otherwise provided for by the present Law.

Unless specially provided for by this Law or provisions of the Chapter referred to in paragraph 1 of this Article, other provisions of the Criminal Procedure Code shall apply *mutatis mutandis*.

A three judge panel in the first instance, and a five judge panel in the second instance shall try cases in the proceedings for the crimes referred to in Article 2 of the present Law.

Article 13a

The War Crimes Prosecutor may propose to the court to question, in the capacity of cooperating witness, a member of an armed unit, government body or a political organisation subject to criminal proceedings for a criminal offence referred to in Article 2 of the present Law, provided that he fully confessed to the commission of a criminal offence, and if the importance of his testimony for the detection or obtaining evidence of the participation of other perpetrators of such criminal offence or detection or obtaining evidence of other crimes referred to in Article 2 of the present Law outweighs the consequences of the criminal offence he committed.

Any member of an armed unit, government body, or political organisation for whom there is reasonable suspicion that he, having the primary responsibility in a hierarchy, ordered, planned, incited or in another way committed a crime referred to in Article 2 of the present Law, or a person who had a leading role in the perpetration of the crime may not be a cooperating witness referred to in paragraph 1 of this Article.

The provisions on cooperating witnesses of the Criminal Procedure Code shall apply *mutatis mutandis* to the cooperating witness referred to in paragraph 1 of this Article.

Article 13b

When the proceedings are conducted for a crime referred to in Article 2 of the present Law, the plea bargain agreement may be concluded without restrictions stipulated in Article 282a, paragraph 1 of the Criminal Procedure Code.

Article 14

If the presence of a witness, expert or injured party in the main hearing cannot be secured, their questioning may be conducted by way of video-conference link.

The questioning of a witness, expert or injured party in the manner referred to in paragraph 1 may also be conducted through international assistance in criminal matters.

Article 14a

In the event the International Criminal Tribunal for the Former Yugoslavia, in accordance with its Statutes and Rules of Procedure and Evidence, refers a case to the Republic of Serbia, the War Crimes Prosecutor shall undertake prosecution on the basis of the facts and evidence which were the basis of the indictment before the International Criminal Tribunal for the Former Yugoslavia.

The War Crimes Prosecutor may undertake criminal prosecution on the basis of the data and evidence collected by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia.

Domestic law shall apply in the criminal proceedings which conducted in the Republic of Serbia upon referral.

The evidence collected or adduced by the International Criminal Tribunal for the Former Yugoslavia may, upon referral, be used as evidence in the criminal proceedings before the domestic court, provided that they have been collected or adduced in the manner provided for by the Statutes and Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia. The existence or non-existence of the facts being proved by such evidence shall be considered by the court in accordance with the provisions of the Criminal Procedure Code.

The measures of witness or injured party protection and the degree of confidentiality of evidence determined by the International Criminal Tribunal for the Former Yugoslavia shall remain in force. The amendment or revocation of the protective measures or confidentiality of evidence may be decided by the domestic court, only upon obtaining consent of the International Criminal Tribunal for the Former Yugoslavia.

The person with permanent or temporary residence abroad may not be arrested, detained or prosecuted for a previously committed crime while in the territory of the Republic of Serbia for the purposes of giving testimony in the capacity of the injured party, witness or expert in the criminal cases referred to in Article 2 of the present Law. The summons shall specifically state that the injured party, witness or expert has the above rights

The representatives of the International Criminal Tribunal for the Former Yugoslavia shall have the right to be present in all phases of the criminal proceedings before a domestic court and to be notified about the course thereof.

Article 14b

The time spent in detention on remand during the proceeding before the International Criminal Tribunal for the Former Yugoslavia shall not be granted as credit against the period of detention ordered in the proceedings before the domestic court in accordance with the provisions of the Criminal Procedure Code.

The time spent in detention in the proceedings before the International Criminal Tribunal for the Former Yugoslavia shall be a credit granted towards serving a sentence imposed by the domestic court.

Article 14v

If the accused or a suspect does not obtain a defence counsel, the Chief Justice shall assign a court appointed counsel from the ranks of attorneys with no less than 10 years of professional experience in the field of criminal law and with the required knowledge and experience in the field of international humanitarian law and human rights

The Bar Association shall submit a list of attorneys deemed by it to meet the requirements referred to in paragraph 1 of this Article.

Article 15

The Court may decide on the protection of personal information of a witness or injured party upon the reasoned motion of the interested party.

Article 16

The main hearing shall be recorded by audio or, if possible, video recording, which shall contain the entire course of the proceeding, and in the form of a written record in which the information on the beginning and conclusion of the hearing, parties present and adduced evidence, as well as the decisions of the presiding judge regarding the management of the proceedings.

The audio recording referred to in paragraph 1 of this Article shall be transcribed within 72 hours and shall constitute an integral part of the written record of proceedings. The video recording shall be an integral part of the criminal case file.

The audio recording and the transcript shall be retained in the same manner as the written record of the proceedings.

The copy of the record of the proceedings may be issued in electronic form only.

Article 16a

The recording of the main hearing for the purposes of public broadcast may be approved by the Chief Justice upon obtaining the parties' opinions.

The recording referred to in paragraph 1 of this Article may be carried out by public media.

If the recording of the main hearing is approved, the panel may, for justified reasons, decide that certain parts of the main hearing shall not be recorded.

IV SALARIES AND OTHER EMPLOYMENT RIGHTS

Article 17

The persons performing jobs and tasks in the government bodies and special organisational units referred to in the present Law shall have the right to a salary that may not exceed double the amount of the salary of their counterparts in the Office of the War Crimes Prosecutor, Higher Court in Belgrade, Appeals Court in Belgrade, ministry responsible for internal affairs and District Prison in Belgrade.

The salaries referred to in paragraph 1 of this Article shall be regulated by the Government.

Article 18

The judges assigned to the Higher Court Department and the Appeals Court Department, the War Crimes Prosecutor and his deputies shall have the right to extra service credits, in such a manner that any 12 months spent working in the war crimes departments or the Office of the War Crimes Prosecutor shall be calculated as 16 months of service for the purposes of (pension) insurance.

V MEANS OF WORK

Article 19

The ministry responsible for the judiciary shall provide the appropriate premises and all other technical conditions required for the efficient and safe operation of the Office of the War Crimes Prosecutor, Higher Court Department, Appeals Court Department, Assistance and Support Unit, and Special Detention Unit.

Article 20

The funds for the operation of the Office of the War Crimes Prosecutor, Higher Court Department, Appeals Court Department, Assistance and Support Unit, and Special Detention Unit shall be provided in the Republic of Serbia budget.

VI TRANSITIONAL AND FINAL PROVISION

Article 21

The criminal proceedings for the crimes referred to in Article 2 of the present Law where the indictment has become effective prior to the effective date of the present Law shall be concluded before the courts with subject matter or territorial jurisdiction prior to the effective date of the present Law.

Article 22

This Law shall come into force on the eighth day of publication in the "Official Gazette of the Republic of Serbia".

A separate Article of the Amending Law on the Organisation and Competences of the Government Authorities in the War Crimes Proceedings

(Official Gazette of the Republic of Serbia No 61/2005)

Article 2

This Law shall come into force on the date of publication in the Official Gazette of the Republic of Serbia".

A separate Article of the Amending Law on the Organisation and Competences of the Government Authorities in the War Crimes Proceedings

(Official Gazette of the Republic of Serbia No 101/2007)

Article 3

This Law shall come into force on the eighth day of publication in the "Official Gazette of the Republic of Serbia".

A separate Article of the Amending Law on the Organisation and Competences of the Government Authorities in the War Crimes Proceedings

(Official Gazette of the Republic of Serbia No 104/2009)

Article 21

This Law shall come into force on the eighth day of publication in the "Official Gazette of the Republic of Serbia ", except for the provisions of Articles 2. and 3, Art. 5 through 8, and Art. 17 through 20 of the present Law, which shall come into force on 1 January 2010.