Swedish Code of Statutes – SFS No. 2002:329

Ministry/authority: Ministry of Justice – Division for Criminal Cases and International Judicial Cooperation (BIRS)

Heading: Cooperation with the International Criminal Court Act (2002:329)

Issued: 8 May 2002

Including amendments: up to and including SFS 2002:448

/entered into force on 1 July 2002 in accordance with SFS 2002:448/

General provisions

Section 1

If the Court established under the Rome Statute of the International Criminal Court requests that a measure should be executed in Sweden based on the Statute, the provisions of this Act apply.

The provisions contained in Sections 3-20 apply if the investigation or prosecution relates to genocide, crimes against humanity or war crimes.

The provisions contained in Sections 21 and 22 apply if the investigation or prosecution relates to an offence against the administration of justice by the International Criminal Court.

Sections 23-32 contain provisions on enforcement of the rulings of the International Criminal Court and on the transit through Sweden of persons deprived of their liberty.

Section 2

An application referred to in Section 1 shall be submitted to the Ministry of Justice. Communications and reports on matters to the International Criminal Court shall be forwarded by the Ministry of Justice.

An application and appended documents under this Act shall be written in English or Swedish or be accompanied by a translation to one of these languages.

Surrender of suspects, accused and sentenced persons

Section 3

A person who is suspected, accused or sentenced by the International Criminal Court for genocide, crimes against humanity or war crimes and who is staying in Sweden may be surrendered to the Court following a decision by the Government.

A decision on detention or a judgment issued by the International Criminal Court shall be accepted as grounds for a decision on surrender to the Court.

Surrender may be postponed pending a decision by the International Criminal Court concerning whether the Court will entertain the matter for adjudication. Furthermore, surrender may be combined with conditions or, following agreement with the Court, be postponed if a preliminary investigation has been initiated or prosecution instituted in Sweden for another act than that to which the application relates.

Section 4

The provisions contained in Section 14 of the Act on Extradition of Offenders (1957:668) shall apply to applications for surrender to the International Criminal Court.

Before the Government issues a decision following a request, the Prosecutor-General shall state his or her views. As a basis for his or her views, the Prosecutor-General shall direct that the necessary investigation be conducted in accordance with the rules applicable in connection with preliminary investigations of criminal matters. If there are special reasons, the Government shall obtain the views of the Supreme Court before it determines decides the matter.

Section 5

In a matter concerning surrender to the International Criminal Court, compulsory measures may be used without a special investigation being submitted in support of the fact that the person subject to the application has committed the alleged crime. If the Court has requested that the person referred to in the application should be deprived of his or her liberty, such person shall be detained unless it is manifest that there is no reason for detention. A person who is detained may request that a new hearing is held within three weeks from when a decision was last made. Otherwise, that generally prescribed for criminal matters shall apply to matters of compulsory measures.

A decision concerning compulsory measures may also be made after the surrender has been decided. A decision by the Court applies, unless otherwise decided, until the matter has been determined or, when the surrender is has been decided, until it has been executed.

Section 6

A person who is suspected, accused or sentenced for a crime, which according to this Act may result in surrender to the International Criminal Court, may upon the request of the Court or where he or she is posted as sought owing to a decision of the Court, immediately be arrested or have a travel prohibition or a duty to report imposed upon him or her by a prosecutor in accordance with that generally applicable in criminal matters. Seizure may also take place in such cases. An arrest shall be made if it is not manifest that there is no reason for arrest.

Compulsory measures in accordance with the first paragraph may be used without a special investigation having been submitted in support of the fact that the person subject to the application has committed the alleged crime.

If compulsory measures are decided in accordance with the first paragraph, Section 23, second to fourth paragraphs of the Act on Extradition of Offenders (1957:668) shall apply. However, the time limit for the submission of an application for surrender shall be 60 days from the date when the person was arrested or a travel prohibition or a duty to report was notified imposed.

Section 7

The International Criminal Court shall be given an opportunity to state its views before the person who has been deprived of his or her liberty at the request of the Court in accordance with Section 5 or 6 is released or made subject to a travel prohibition or a duty to report.

Section 8

When a person sought for surrender to the International Criminal Court consents to being surrendered, the issue of surrender may be considered by simplified proceedings, applying Sections 29-36 of the Act on Extradition of Offenders (1957:668). However, the provisions contained in Section 32, first paragraph, second sentence and third paragraph shall not apply. The following shall apply instead of Section 33, first paragraph. If consent has been given, the prosecutor shall expeditiously transfer the matter to the Prosecutor-General, who will report the matter together with his or her own views to the Government. A decision on surrender shall be made by the Government. The time limit referred to in Sections 35 and 36 shall be the time limit prescribed by Section 6, third paragraph.

Section 9

A decision on surrender to the International Criminal Court shall be enforced by the police authority. A person who is to be surrendered and is at liberty may be taken into the custody of the police authority, though for 24 hours at most.

Section 10

The Government may at the request of the International Criminal Court permit a person who has been surrendered to the Court to be prosecuted at the Court for another act that has been committed prior to the surrender than that for which the surrender took place.

The Government may also permit that a person who has been surrendered to the International Criminal Court to be transferred from the Court to another State for prosecution. Section 24 of the Act on Extradition of Offenders (1957:668) or Section 18 of the Extradition of Offenders to Denmark, Finland, Iceland and Norway Act (1959:254) shall apply to such transfer matters.

If consent is not given in accordance with the second paragraph, the Government shall request that the person surrendered to the International Criminal Court shall be returned to Sweden.

Section 11

If a person who has been transferred by the International Criminal Court to Sweden for trial in Sweden, should be returned to the Court, the provisions contained in Section 26 a of the Act on Extradition of Offenders (1957:668) shall apply.

Section 12

If a State requests extradition of a person whom the International Criminal Court has requested to be surrendered to the Court, the Government should decide whether the person shall be surrendered to the Court or extradited to the State.

Legal assistance

Section 13

On the application of the International Criminal Court, legal assistance shall be provided in accordance with the International Legal Assistance in Criminal Matters Act (2000:562) unless otherwise provided by this Act. Legal assistance may also be provided if the act to which the application refers does not correspond to an offence according to Swedish law.

The provisions contained in Chapter 2, Section 14, first paragraph of the International Legal Assistance in Criminal Matters Act do not apply if a rejection refusal would violate the obligations of Sweden in relation to the Court. The provisions contained in Chapter 2, Section 14, second paragraph, Chapter 4, Section 33 and Section 34, second paragraph of the same Act shall not apply.

The International Criminal Court shall be given an opportunity to state its views before legal assistance is combined with conditions as referred to in Chapter 5, Section 2 of the International Legal Assistance in Criminal Matters Act.

Section 14

Provisions of another acts or legislation statute or enactment concerning service and legal assistance for courts or authorities in another State apply to applications from the International Criminal Court, provided they do not conflict with the provisions of this Act.

Section 15

If, when processing an application for legal assistance in a criminal matter from the International Criminal Court, it transpires that the application conflicts with such an application for legal assistance in criminal matters from another State that is being dealt with in accordance with the International Legal Assistance in Criminal Matters Act

(2000:562), the issue shall be surrendered deferred to the Government, which will decide which of the applications shall have precedence.

Procedural impediments to trial

Section 16

Prosecution and criminal proceedings in Sweden for an act may not take place

1. if the issue of liability for the act has been considered by the International Criminal Court,

2. if the Court has decided that the issue of liability for the act should be considered by the Court although a Swedish preliminary investigation or prosecution is in progress, or

3. if the Court has applied for the person in question to be surrendered to the Court on the grounds of the act committed and the application has not been rejected refused.

Public defence counsel

Section 17

If the International Criminal Court requests that a measure that is based on the Statute should be executed in Sweden regarding a person who is suspected or has been charged or sentenced by the Court for a crime, that person shall, if he or she so requests, be assisted by public defence counsel. The provisions of the Code of Judicial Procedure apply to such issues except as provided by Section 19.

Compensation and other costs

Section 18

A witness or an aggrieved party or expert in Sweden who has been summoned to be heard by the International Criminal Court is entitled to compensation from public funds for his or her attendance in accordance with provisions to be issued by the Government.

Section 19

Costs for compensation from public funds that are paid to public defence counsel or to another and other costs for measures that are executed under this Act shall be borne by the State unless otherwise prescribed by Section 20.

Section 20

The Government shall issues regulations providing that certain costs for measures that are executed under this Act can be reclaimed from the International Criminal Court.

Cooperation on matters concerning offences against the administration of justice by the International Criminal Court

Section 21

The provisions on extradition contained in the Act on Extradition of Offenders (1957:668) and on legal assistance contained in the International Legal Assistance in Criminal Matters Act (2000:562) or in another act or legislation statute or enactment, which apply for a corresponding request from another State, shall apply to matters concerning

extradition or legal assistance to the International Criminal Court by reason of the investigation or prosecution of an offence against the administration of justice by the Court. However, special provisions applicable to extradition or legal assistance to a State that is a member of the European Union or to Norway or Iceland shall not apply.

Section 22

If the International Criminal Court reports an offence referred to in Section 21 for prosecution in Sweden, the matter shall be transferred to the Prosecutor-General to be processed in accordance with the procedure applicable in connection with a Swedish preliminary investigation or a trial in a criminal matter.

Enforcement of penalty and forfeiture

Section 23

The Government may at the request of the International Criminal Court decide that a sentence of imprisonment imposed by the Court may be enforced in Sweden. The Government may issue the instructions necessary in the individual case for enforcement of the penalty here.

Section 24

A sentence of fines imposed by the International Criminal Court or a decision by the Court for the forfeiture of property or of the value of certain property may on the application by the Court be enforced in Sweden. The application shall be transferred to the National Tax Board for action. If the enforcement relates to forfeiture of the value of particular property, the National Tax Board decides on the forfeited value in Swedish kronor.

The decision of the National Tax Board may be appealed against to a general administrative court. A decision by the National Tax Board and the general administrative court shall apply immediately unless otherwise decided. Leave to appeal is required for an appeal to the Administrative Court of Appeal.

Section 25

Section 25 of the Act on International Co-operation in the Enforcement of Criminal Judgments (1972:260) applies to enforcement in accordance with Sections 23 and 24, unless otherwise provided by this Act.

Enforcement may no longer take place if the International Criminal Court has granted the person sentenced a pardon or revision of the penalty and if the reduced penalty has been fully enforced or the Court has made any other ruling whereby the sanction imposed may no longer be enforced. If an issue arises concerning an impediment to enforcement owing to a limitation period, after an application has been granted in accordance with Section 23 or Section 24, such issue shall be considered in accordance with the rules applicable to the International Criminal Court.

Issues concerning conditional release should be considered by the Government after the International Criminal Court has been given an opportunity to state its views. The Government may in such a case decide that conditional release shall take place at a latter date than prescribed by the Penal Code.

Decisions on transformation of fines into an alternative penalty may not be made.

Section 26

The rules on immunity contained in Section 23 of the Act on International Co-operation in the Enforcement of Criminal Judgments (1972:260) apply in connection with enforcement in accordance with Section 23.

Section 27

In connection with enforcement in accordance with Section 23, representatives of the International Criminal Court, or those appointed by the Court for investigation of the treatment of the person serving a penalty that has been imposed by the Court, are entitled to visit the place where the person is an inmate. All parties The party responsible for a person who is serving such a penalty shall provide those conducting the investigation with the assistance needed by them in order to be able to perform their assignment.

Section 28

When the enforcement of fines or forfeiture has been carried out in accordance with Section 24, the National Tax Board shall deliver the proceeds received upon enforcement to the International Criminal Court.

Admission and enforcement of rulings for reparations to victims of crime

Section 29

A ruling concerning reparations to victims of crime made by the International Criminal Court and which has entered into final force, applies in Sweden and shall upon application be enforced here, unless otherwise prescribed by the second paragraph.

Such ruling does not apply in Sweden and may not be enforced here

1. if the admission recognition or enforcement of the ruling is manifestly incompatible with the fundamental principles of the Swedish legal system, or

2. if a ruling that has entered into final force concerning the same matter has been made in Sweden before such time.

An application in accordance with the first paragraph may be made by the person who has been awarded reparations by the ruling. The International Criminal Court may also make such an application if it has been decided that reparations to victims of crime should be paid out through a special trust fund for victims of crime.

Section 30

If an action for reparations has been instituted at a Swedish court in a matter that is already the subject of proceedings at the International Criminal Court and if the proceedings at the Court may result in a ruling that applies in Sweden according to Section 29, the action shall be dismissed or a stay of the proceedings declared pending the ruling of the International Criminal Court entering into final force.

Section 31

An application for enforcement in accordance with Section 29 shall be considered by Svea Court of Appeal. The application may relate to part of the ruling.

The original ruling or a certified copy, together with a certificate that the ruling has entered into final force, shall be appended to the application.

An application for enforcement may not be granted unless the person ordered to make reparations has been given an opportunity to state his or her views on the application.

Enforcement shall take place in the same way as applies to the issue of whether the a judgment of a Swedish court that has entered into final force.

Transit through Sweden of persons deprived of their liberty

Section 32

The Head of the Ministry of Justice may issue a permit for transit through Sweden of a person deprived of his or her liberty who, to be surrendered or extradited or for another purpose, shall be transferred between another State and the International Criminal Court. During such transit, the deprivation of liberty shall continue unless the Court requests that the person being transferred is released.

For transport by air without a scheduled intermediate landing in Sweden, permission according to the first paragraph is not required according to the first paragraph. If an unscheduled intermediate landing occurs, the police authority shall take the person being transferred into custody until an application is made for permission for the transit in accordance with the first paragraph and immediately notify the Head of the Ministry of Justice thereof. If no application is made within at the latest 96 hours of the unscheduled landing, the person shall be immediately released.

If permission has been granted in accordance with the first paragraph, the police authority may if necessary take the person being transferred into custody. The provisions of Section 5 apply as regards compulsory measures in a matter concerning transit.

Other provisions

Section 33

The Government shall issue more detailed regulations concerning the application of this Act.

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Swedish Code of Statutes – SFS No. 2003:69

Ministry/authority: Ministry of Justice – Division for Criminal Cases and International Judicial Cooperation (BIRS)

Heading: Cooperation with the International Criminal Court Ordinance (2003:69)

Issued: 2003-02-27

/Entered into force: 1 April 2003/

General provisions

Section 1

This Ordinance contains provisions on the application of the Cooperation with the International Criminal Court Act (2002:329).

Time limit for statement of views by the International Criminal Court

Section 2

Where a statement of views by the International Criminal Court is to be obtained in accordance with Section 7 of the Cooperation with the International Criminal Court Act (2002:329), the Court shall determine a time limit within which its statement of views shall be submitted. The time limit may not exceed five days from when the International Criminal Court has been notified of the possibility of submitting a statement of views.

Legal assistance in Sweden

Section 3

The International Criminal Court shall be notified of the time and place for the questioning by the prosecutor in accordance with the provisions on preliminary investigations in criminal matters, of a court hearing in accordance with Chapter 4, Section 2, 15 or 16 of the International Legal Assistance in Criminal Matters Act (2000:562) and about other measures for which a judge of the International Criminal Court or a representative of the parties has requested and been granted a right to attend.

Section 4

When the International Criminal Court requests that a questioning is held with anyone whom there is cause to assume are grounds to believe has committed a crime that can be prosecuted at the Court, the prosecutor shall notify the person to be heard that the questioning will take place at the request of the International Criminal Court and that he or she:

1. is suspected of a crime that can be prosecuted at that Court,

2. is entitled to remain silent without this being a consideration when the Court determines the issue of guilt,

3. is entitled to the assistance of defence counsel, and

4. is entitled to be heard in the presence of the defence counsel, unless the suspect voluntarily waives the right to the assistance of defence counsel.

The fact that notification according to the first paragraph has been given shall be noted in the record of the hearing questioning.

Legal assistance from the International Criminal Court

Section 5

An application by a Swedish prosecutor or court for legal assistance shall, in accordance with that stated in Chapter 3, Section 1, first paragraph of the International Legal Assistance in Criminal Matters Act (2000:562) contain details of information concerning

1. the judge or prosecutor or judge who is dealing with the case or matter, or some other person at the authority who may be contacted,

2. address, telephone and telefax numbers and, in appropriate cases, e-mail address, and

3. the case or reference matter reference number.

The application may also contain details of the procedure or conditions that the International Criminal Court should observe when the requested measure is executed and also the reasons for this.

The application shall be submitted to the Ministry of Justice to be forwarded to the Registrar of the International Criminal Court.

Translations

Section 6

The prosecutor or court that is dealing with an application by the International Criminal Court for a measure referred to in Section 1 of the Cooperation with the International Criminal Court Act (2002:329) may if necessary refer to the Ministry of Justice for translation into Swedish of the application and appended documents.

Section 7

The Ministry of Justice shall ensure that the application to the International Criminal Court for legal assistance is translated into English or French.

Compensation

Section 8

The Government or the Ministry of Justice shall decide on compensation from public funds to public defence counsel for work in a matter for surrender to the International Criminal Court, except on issues concerning compensation for work that shall be decided by a court.

Section 9

On issues concerning compensation in accordance with Section 18 of the Cooperation with the International Criminal Court Act (2002:329), Section 1, second and third paragraphs, Sections 2-5, 8 and 10 together with as well as Section 11, first paragraph of the Compensation from Public Funds to Witnesses, etc. Ordinance (1982:805) shall apply. However, subsistence costs may be fixed at 350 kr per day at most.

Section 10

An application for compensation or an advance on compensation as referred to in Section 9 shall be made to the district court in the district where the person summoned to attend is staying. Otherwise, the provisions contained in the Public Proclamation on Payment of Certain Compensation in Cases or Matters at Court, etc. (1973:261) shall apply.

Recovery demands for Reimbursement of costs

Section 11

Reimbursement of the following costs shall be sought from the International Criminal Court.

1. Costs of translation, interpretation and transcription.

2. Costs associated with the travel and security arrangements for witnesses.

3. Costs associated with the transport in connection with the transfer of a person deprived of his or her liberty in Sweden.

4. Costs of travel and security arrangements for experts and costs of expert opinions and reports requested by the Court.

5. Costs of transport for the person to be surrendered to the Court.

Section 12

Reimbursement of extraordinary costs may be recovered sought from the International Criminal Court. If during the handling of the matter it appears that execution of the request it transpires during the processing that the enforcement of an application will involve extraordinary costs, the prosecutor or court shall notify the Ministry of Justice thereof.

The Ministry of Justice shall, in consultation with the International Criminal Court, determine what costs the Court shall bear.

Section 13

The authority that has incurred such costs as are referred to in Section 11 or Section 12 seeks reimbursement of may recover the cost from the International Criminal Court. The application for recovery of costs shall request should be submitted to the Ministry of Justice to be forwarded to the International Criminal Court.

Enforcement of penalty

Section 14

If a sentence of imprisonment that has been imposed by the International Criminal Court is to be enforced in Sweden, the National Prison and Probation Administration shall notify the Court when the sanction has been fully enforced. Notification shall also be given if the person sentenced has absconded from a prison before the sanction has been fully enforced.

Section 15

A request for the consent of the International Criminal Court for a measure in accordance with Section 23 of the Act on International Co-operation in the Enforcement of Criminal Judgments (1972:260), shall contain

1. details of the or those crimes to which the measure relates,

2. a copy of the penal provisions and provisions on sanctions and limitation period that apply for the offences in question,

3. a copy of the judgment, arrest decision and detention decision , and

4. information about the views of the sentenced person on the measure for which the consent of the Court is sought.

If a request for consent in accordance with the first paragraph is based on a request for extradition for a crime to another State, the request shall instead contain

1. a copy of the request for extradition and appended documents,
and also

2. information about the views of the sentenced person on the request for extradition.