Slovenian Cooperation Legislation (English)

(Please note: this is an unofficial translation)

DECREE

On Promulgation of the Law on Cooperation Between the Republic of Slovenia and the International Criminal Court

I hereby promulgate the Law on Cooperation between the Republic of Slovenia and the International Criminal Court, which was adopted by the National Assembly of the Republic of Slovenia at session held on 25 October 2002.

No. 001-22-126/02
Ljubljana, 5 November 2002

President
of the Republic of Slovenia
Milan Kuèan

LAW ON COOPERATION BETWEEN THE REPUBLIC OF SLOVENIA AND THE INTERNATIONAL CRIMINAL COURT

I. INTRODUCTORY PROVISIONS

Article 1

This Law shall regulate the duty, conditions and methods of cooperation of the Republic of Slovenia with the International Criminal Court.

Article 2

(1) The meaning of terms contained in this Law:

a) "International Criminal Court" (hereinafter: the Court) shall mean the first international criminal court of universal character, established by the Rome Statute;

b) "Rome Statute" (hereinafter: the Statute) shall mean the statute of the Court which was adopted at the Diplomatic Codification Conference held in Rome on 17 July 1998, and which entered into force on 1 July 2002;

c) "The Prosecutor" shall mean the Court's prosecutor or a deputy who has the right to perform any work required under the Statute from the Prosecutor;

è) "The Registrar" shall mean the registrar of the Court, who is the main administrative officer of the Court, elected on the basis of Article 43 of the Statute;

d) "Person" shall mean an individual person suspected or accused by the Court of having committed a crime within its jurisdiction, who, in accordance with Article 26 of the Statute, was not younger than eighteen years at the time of the alleged commission of the crime;

e) "Surrender of a person" shall mean the surrender of a person to the Court by the Republic of Slovenia, whereby this is not classical extradition but a special procedure of surrender of the person to the Court;

f) "Domestic court" shall mean a court in the Republic of Slovenia with jurisdiction over criminal matters;

g) "Admissibility of a case" shall mean that the Court has jurisdiction for trying a perpetrator for a crime within its jurisdiction only if the state which would otherwise have had jurisdiction is unwilling or unable to carry out an investigation or prosecution, or proceedings before a domestic court were intended to shield the person from criminal responsibility for crimes within the jurisdiction of the Court;

h) "Judge" shall mean a judge of the Court;

i) "Notifications" shall mean requests for cooperation (request for arrest and surrender, request for transit, request for provisional arrest, request for assistance in investigation and prosecution) transmitted by the Court, and documentation, records and communications in connection with them, transmitted to the Court by the Republic of Slovenia;

j) "Pre-Trial Chamber" shall mean the organ of the Court that carries out the functions of a pre-trial division of the Court, and its functions are determined by Article 57 of the Statute;

k) "Rules of Procedure and Evidence" shall mean regulations adopted on the basis of Article 51 of the Statute.
(2) In the text of the Law the masculine form shall be used as neutral for the masculine and feminine gender.

II. OBLIGATION TO COOPERATE

Article 3

The Republic of Slovenia shall, in accordance with the provisions of the Statute and of the present Law, cooperate fully and without reservations with the Court in

investigation and prosecution of crimes within the jurisdiction of the Court.

Article 4

(1) The ministry competent for justice (hereinafter: the Ministry) shall be responsible for coordinated and fluent cooperation between the Republic of Slovenia and the Court; for this purpose it shall be responsible for the receipt and translation of all notifications of the Court in connection with procedures under this Law.

(2) The Ministry shall forward notifications referred to in the previous paragraph to the Supreme Court of the Republic of Slovenia, the Office of State Prosecutor of the Republic of Slovenia and the General Police Directorate, and as necessary also directly to other state prosecutors and courts and other national bodies.

(3) National bodies referred to in the previous paragraph shall have an obligation to ensure the mutual exchange of information in connection with received notifications.

(4) National bodies referred to in the second paragraph of this Article shall communicate with the Court through the Ministry, unless in individual cases the Statute expressly provides for direct communication or unless the special circumstances of the case call for immediate action.

(5) The Ministry shall have an obligation to confirm the identity and authenticity of the notifications referred to in the first paragraph of this Article before forwarding them to other competent bodies.

III. *MUTATIS MUTANDIS* APPLICATION OF LAWS

Article 5

(1) With regard to cooperation with the Court, matters not otherwise regulated by this Law shall be handled by *mutatis mutandis* application of law regulating criminal procedure, law regulating forfeiture of the proceeds of a crime and law regulating the enforcement of penal sanctions.

(2) With regard to nominating candidates for election as judge, regulations governing the proposal of candidates from the Republic of Slovenia as judges of international courts shall be applied.

IV. EXERCISING THE JURISDICTION OF THE COURT

Article 6

The State Prosecutor's Office and domestic courts shall have primary jurisdiction for the prosecution and trial of perpetrators of crimes within the jurisdiction of the Court as determined in Articles 5 to 8 of the Statute (complementary jurisdiction of the Court).

Article 7

(1) The General Police Directorate or the state prosecutor's office of jurisdiction shall immediately forward notifications and possible documents about them that deal with one or more crimes alleged to have been committed on the territory of the Republic of Slovenia.

(2) The Ministry shall refer to the Prosecutor that one or more crimes within the jurisdiction of the Court appear to have been committed on the territory of the Republic of Slovenia:
- if it receives notification on the matter referred to in the previous paragraph, and
- if in view of information obtained from other national bodies there is an unwillingness or inability of the Republic of Slovenia to carry out an investigation or prosecution under the second and third paragraph of Article 17 of the Statute.

(3) If the Prosecutor decides that there is no reasonable basis for the initiation of proceedings in compliance with the referral, the Ministry may request that the Pre-Trial Chamber rules on the Prosecutor's decision.

Article 8

(1) After receiving an official notification from the Prosecutor that, on the basis of referral by the Security Council on crimes within the jurisdiction of the Court, or *proprio motu*, he has initiated an investigation, the Ministry, on the basis of information from the competent national bodies, within one month of receipt of such a notification shall inform the Court that the Republic of Slovenia is carrying out or has carried out an investigation against its own citizens or other persons within its jurisdiction and shall request the Prosecutor to defer the investigation to the competent bodies of the Republic of Slovenia.

(2) In a case in which the Prosecutor has deferred a matter to the competent bodies of the Republic of Slovenia, these must, upon his request, regularly inform him of the course of an investigation.

(3) If after receipt of notification that in compliance with the third paragraph of Article 20 of the Statute the Court has initiated a proceeding in the same matter and against the same persons as a domestic court, the Republic of Slovenia shall not challenge the admissibility of the matter or the jurisdiction of the Court in accordance with the provisions of Chapter V of this Law, and the domestic court shall issue a ruling by which it dismisses the charges and if a charge has not yet been brought, a ruling by which investigation is stayed.

V. CHALLENGES TO THE ADMISSIBILITY

Article 9

(1) The Republic of Slovenia may, for reasons referred to in Article 17 of the Statute, under the conditions referred to in Article 19 of the Statute, challenge the admissibility of a case or the jurisdiction of the Court.

(2) The admissibility of a case or the jurisdiction of the Court shall be challenged in cases in which the case is being investigated or prosecuted by the competent bodies of the Republic of Slovenia, or when the charge of the Court refers to a person who has been acquitted or convicted with a final judgement in the Republic of Slovenia, or the criminal proceedings against him have been stayed by final decision or the charge against him has been dismissed with a final decision, and it is not a case in which trial by the Court would be allowed under the third paragraph of Article 20 of the Statute.

(3) The Supreme Court of the Republic of Slovenia, in a chamber of five judges, is competent for challenges under the previous paragraph.

(4) With regard to arrest, detention and surrender of a person at the request of the Court following its decision on the admissibility of a matter, the Ministry, in cooperation with the competent national bodies, shall proceed in accordance with the provisions of this Law and the Law regulating criminal procedure.

VI. ARREST, DETENTION AND SURRENDER OF A PERSON TO THE INTERNATIONAL CRIMINAL COURT

Article 10

(1) In cases in which the Ministry receives from the Court a request for the provisional arrest of a person for whom surrender is requested, and this request is complete in terms of Article 92 of the Statute, the Ministry shall forward it to the district court, the district state prosecutor's office and the police authorities on whose territory the person is located, and in every case also to the Supreme Court of the Republic of Slovenia, the State Prosecutor's Office and the General Police Directorate.

(2) A request for provisional arrest shall be executed in accordance with provisions applicable in the Republic of Slovenia for the enforcement of detention and the treatment of detainees.

(3) The person arrested must be immediately informed in his own language or a language that he understands that he has been arrested, and the reasons for the arrest. He must be immediately advised that he is under no obligation to make any statements, that he has the right to immediate legal aid through legal counsel of his own choice and that the competent authorities are obliged to inform his relatives of his arrest should he request them to do so. If the person is not a national of the

Republic of Slovenia, he must also be advised that he has the right to contact the diplomatic/consular representative office of the state of which he is a national.

(4) The police authorities must bring a person who has been arrested before the competent investigating judge without delay.

(5) The investigating judge shall establish the identity of the person produced, and shall again inform him of his rights referred to in the third paragraph of this article, and inform him that any statement he makes in the proceedings before the court may be used as evidence against him. The investigating judge shall also promptly inform the person that he has been arrested for the purpose of surrender to the Court.

(6) In a case in which the competent national bodies do not receive a request for surrender and the appurtenant documentation in the time limit determined by the Rules of Procedure and Evidence, the person who has been provisionally arrested shall be released, unless the person himself agrees to surrender prior to the time limit expiring. The release of a person in such a case shall not prevent his later arrest and surrender in compliance with a request and appurtenant documentation sent later.

(7) The release of a person referred to in the previous paragraph shall be ordered *ex officio* by the investigating judge who ordered the execution of the Court's request for provisional arrest.

Article 11

(1) The ministry shall send a request from the Court that is complete in terms of Article 91 of the Statute, together with appurtenant documentation, to the district court on whose territory the person is located and the Supreme Court of the Republic of Slovenia.

(2) The investigating judge of the district court of jurisdiction shall issue an order for the production of the person whose surrender is requested.

(3) If the permanent or temporary residence of the person is not known, or if the person cannot be found at the address at which he resides, the bodies referred to in the first and second paragraph of this article shall take all necessary steps within their competences to locate and arrest the person. Unsuccessful search and arrest attempts shall be immediately reported to the Registrar.

Article 12

(1) A person whose surrender is requested must be surrendered to the Court as soon as

possible.

(2) In order to secure the successful arrest and surrender of a person to the Court, the investigating judge of the district court of jurisdiction may order measures to be taken against the person whose surrender is requested to ensure the accused person's presence, to eliminate the danger of re-offending, and for the successful conduct of criminal proceedings, by applying *mutatis mutandis* the provisions of the law regulating criminal procedure.

(3) After the investigating judge has issued a ruling, the person whose surrender has been requested may be detained for a maximum of 30 days.

(4) The investigating judge shall serve the Court's request for arrest and surrender on the person.

(5) The detention referred to in the third paragraph of this article may be extended by means of a ruling of a chamber of the Supreme Court of the Republic of Slovenia, but it may not exceed a total of nine months. An appeal may be filed against a ruling of chamber of the Supreme Court of the Republic of Slovenia within 48 hours, to a chamber of five judges of the Supreme Court of the Republic of Slovenia; such an appeal, however, shall not stay enforcement of the ruling. The chamber of the Supreme Court of the Republic of Slovenia must rule on the appeal without delay.

(6) The Supreme Court of the Republic of Slovenia must *ex officio* confirm the existence of grounds for detention under this article every two months.

(7) The domestic court must immediately inform the Prosecutor and the Registrar of the arrest of a person under this article.

(8) The provisions of this article shall be applied *mutatis mutandis* for placement under house arrest.

Article 13

(1) A chamber of the Supreme Court of the Republic of Slovenia shall decide on the surrender of a person to the Court. An appeal may be filed against the decision of the chamber of the Supreme Court of the Republic of Slovenia within 48 hours, to a chamber of five judges of the same court, but an appeal shall not stay enforcement of the decision. The chamber of five judges of the Supreme Court of the Republic of Slovenia must rule on the appeal without delay.

(2) After receiving the ruling of the Supreme Court of the Republic of Slovenia, the surrender of the person shall be ordered without delay by the minister competent for justice, and be executed by authorised officers of the ministry competent for internal affairs, in cooperation with authorised officers of the Ministry. The method of surrender shall be agreed by the Ministry and the Registrar for each individual

case.

(3) It shall be considered that a person has been surrendered to the Court when the Court assumes actual (physical) authority over the person, regardless of whether this takes place on the territory of the Republic of Slovenia or other state.

(4) In a case in which authorised persons of the Court assume actual (physical) authority of a person on the territory of the Republic of Slovenia, the police authorities and authorised personnel of the Ministry must, pursuant to their own authority, provide all assistance required to perform the task of surrender of the person to the Court, and in particular, escorting, ensuring security, technical and logistical support etc.

(5) In the case of surrender of a person to the Court under this Law, the provisions regarding the procedure for extradition of accused and convicted persons under the law regulating criminal procedure shall not be applied.

Article 14

(1) For a person arrested on the basis of the provisions of this Law, the provisions of the law regulating criminal procedure shall be applied *mutatis mutandis* with regard to legal counsel.

(2) Legal counsel appointed *ex officio* shall be dismissed immediately after the person's release or surrender to the Court.

Article 15

(1) The proposals, legal remedies, statements and communications of a person detained upon request by the Court shall be forwarded to the Registrar without delay. Domestic bodies shall handle them within their competence under this Law and the law regulating criminal procedure.

(2) All domestic bodies must decide on a priority basis and without delay on all proposals and legal remedies submitted by a person detained on the basis of this Law or whose surrender is requested by the Court.

Article 16

When ruling on a request for detention and on a request for arrest and surrender of a person to the Court, domestic bodies shall not judge the accuracy of the contents of the aforementioned documents and procedures. They shall always be obliged to act in compliance with the requests and tasks of the court when the following conditions are

fulfilled:

- that requests of the Court are complete in terms of the provisions of the Statute;
- that the identity of the person against whom the requested actions are to be taken has been confirmed;
- that the case is within the jurisdiction of the Court as acknowledged by the Republic of Slovenia under this Law.

Article 17

(1) On the basis of a request of the Court for transit, which is complete in terms of Article 89 of the Statute, the Ministry shall decide on the transportation of the person that another state is surrendering to the Court across the territory of the Republic of Slovenia.

(2) The transportation of a person whom another state is surrendering to the Court across the territory of the Republic of Slovenia shall be permitted unless transit across the territory of the Republic of Slovenia would in any way obstruct or delay surrender.

(3) Competent national bodies shall be obliged to ensure free passage to persons who are travelling across the territory of the Republic of Slovenia under the authorisation or at the request of the Court, on the basis of permission for transit from the Ministry. If necessary, passage shall be accompanied and protected by the police authorities.

VII. OTHER FORMS OF COOPERATION AND ASSISTANCE

Article 18

(1) Domestic courts, in cooperation with other national bodies, in response to a request from the Court for assistance in investigation and prosecution, shall be obliged to undertake all necessary investigative activities in accordance with the law regulating criminal procedure.

(2) Investigative activities referred to in the previous paragraph may also be undertaken on the territory of the Republic of Slovenia by the Prosecutor for the purpose of fulfilling the request, subject to the conditions referred to in Article 99 of the Statute being fulfilled.

(3) Permission for the requested investigative activities shall be issued on the substantiated request of the Prosecutor, by the investigating judge who would otherwise undertake the activities under the rules of territorial jurisdiction.

(4) The investigating judge or a person appointed by him must always be present during the carrying out of the investigative activities referred to in the second paragraph of this article, except exceptionally when the Prosecutor explicitly requests

his absence; the investigating judge shall also always invite the competent state prosecutor to be present. By means of the aforementioned, the investigating judge shall ensure that the relationship of other national bodies and organisations holding public authority towards the investigative activities undertaken by the Prosecutor remains the same as if the domestic court was performing the activities. Similarly, the investigating judge shall ensure that during the course of the investigative activities referred to in the second paragraph of this article, no person shall enjoy fewer rights than he is entitled to under the law regulating criminal procedure, unless otherwise determined by this Law.

Article 19

(1) All bodies of the Republic of Slovenia keeping data files, shall be obliged on the substantiated request of the Court to provide personal and other data about a person against whom a criminal proceeding is being conducted before the Court.

(2) Data referred to in the previous paragraph shall be submitted in accordance with its intended use. The Ministry shall decide on a request of the Court to provide data, and shall also decide the extent and type of data to be provided to the Court.

VIII. REFUSAL OF COOPERATION AND POSTPONEMENT OF EXECUTION OF A REQUEST FOR COOPERATION

Article 20

(1) The Republic of Slovenia may only for the reasons of protecting national security information and under conditions determined by the Statute, refuse to cooperate with the Court.

(2) Before refusal of cooperation or assistance, the Ministry, in cooperation with other national bodies of the Republic of Slovenia, must first attempt to resolve the matter by means of cooperation or consultation with the Court.

(3) If the Ministry, in cooperation with other national bodies, despite the adoption and implementation of measures to resolve the matter through cooperation, believes that in no way or under no conditions can it provide or reveal data or documents, without this being detrimental to the national security interests of the Republic of Slovenia, it shall be obliged to inform the Prosecutor or the Court of this, unless a detailed description of the reasons would in itself necessarily be detrimental to national security interests.

(4) If the immediate execution of a request of the Court in the Republic of Slovenia would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the Ministry, on the proposal by the Supreme Court of the Republic of Slovenia or the State Prosecutor's Office of the Republic of Slovenia shall agree with the Court on the postponement of execution.

(5) The Supreme Court of the Republic of Slovenia, in a chamber of five judges, shall decide to postpone execution of a request of the Court in a case relating to challenging admissibility, until the Court has made a ruling. The Supreme Court of the Republic of Slovenia may only adopt such a decision if this is not in conflict with an express order of the Court to the Prosecutor in connection with the further collection of evidence.

(6) The Supreme Court of the Republic of Slovenia may decide on a postponement of execution of a request of the Court at the same time as deciding on challenging the admissibility of a matter or the jurisdiction of the Court is taking place.

IX. IMMUNITY AND FREE PASSAGE ACROSS THE TERRITORY OF THE REPUBLIC OF SLOVENIA

Article 21

(1) Competent national bodies shall be obliged to ensure free passage to persons travelling across the territory of the Republic of Slovenia by authorisation or at the request of the Court or the Prosecutor.

(2) An order by which passage across the territory of the Republic of Slovenia is allowed shall be issued to persons referred to in the previous paragraph by the Ministry. If necessary, such passage shall be accompanied and protected by the police.

Article 22

(1) Judges, the Prosecutor, Deputy Prosecutor, the Registrar, Deputy Registrar, staff of the Prosecutor's office and the Registrar's office of the Court who are cooperating in the work of the Court or in connection with its work and are located on the territory of the Republic of Slovenia or work on it under the provisions of this Law, shall enjoy privileges, immunities and advantages necessary for performing their tasks, as determined in the Agreement on the Privileges and Immunities of the International Criminal Court.

X. COSTS

Article 23

(1) The provisions of Article 100 of the Statute shall apply for covering the costs of cooperation with the Court under the provisions of this Law.

(2) Costs covered in accordance with the Statute by the Republic of Slovenia shall be provided in the budget of the Republic of Slovenia.

Article 24

(1) The financial contribution of the Republic of Slovenia, as part of one of the sources for covering the expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the budget of the Republic of Slovenia.

(2) The contribution referred to in the previous paragraph shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget.

XI. EXECUTION OF FINES, FORFEITURE OF PROCEEDS AND MEASURES FOR COMPENSATING VICTIMS

Article 25

(1) In a case of a request from the Court for the execution of a fine or forfeiture of proceeds passed by the Court, the competent court in the Republic of Slovenia shall allow execution of a judgement on the basis of the provisions of the law regulating enforcement and guarantee or the law regulating criminal procedure.

(2) In a case in which forfeiture of proceeds, assets and funds deriving directly or indirectly from the criminal offence is not possible, the competent court of the Republic of Slovenia for the purpose of restitution of the value of proceeds, assets or funds for which the Court has ordered forfeiture, shall act in accordance with the provisions of the law regulating criminal procedure.

(3) The competent court of the Republic of Slovenia shall also act according to the same procedure as determined in the first paragraph of this article when executing a decision of the Court in connection with the compensation of victims or for them.

(4) Competent bodies shall be obliged to transfer to the Court the assets or proceeds from the sale of real estate or from the sale of other assets which the Republic of Slovenia obtains from the execution of a judgement of the Court within the terms of the first, second and third paragraph of this article.

(5) If the competent court finds that execution of a request of the Court within the terms of the previous paragraph will affect the rights of *bona fide* third parties, it shall inform the Ministry of this, which shall return the matter to the Court with a suitable explanation.

XII. APPOINTING THE REPRESENTATIVE OF THE REPUBLIC OF SLOVENIA TO THE ASSEMBLY OF STATES PARTIES

Article 26

The Government of the Republic of Slovenia shall appoint the representative of the Republic of Slovenia to the Assembly of States Parties to the Statute and shall inform the standing committee of the National Assembly of the Republic of Slovenia competent for foreign affairs about the appointment.

XIII. FINAL PROVISION

Article 27

This Law shall enter into force on the fifteenth day after its publication in the Official gazette of the Republic of Slovenia.

No. 700-01/02-69/1
Ljubljana, 25 October 2002

President of the
National Assembly of the
Republic of Slovenia
Borut Pahor