

# CROATIAN PARLIAMENT

3086

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I am passing a

## DECISION

### ON THE PROCLAMATION OF THE LAW ON INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

I hereby proclaim the Law on International Legal Assistance in Criminal Matters,  
passed by the Croatian Parliament at its session held on 3 December 2004.

Number: 01-081-04-3763/2

Zagreb, 10 December 2004

President  
of the Republic of Croatia  
**Stjepan Mesic**, signed

## LAW

### ON INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

#### Chapter 1

#### GENERAL PROVISIONS

#### Article 1

(1) This Law shall regulate international legal assistance in criminal matters (hereinafter: international legal assistance), unless otherwise stipulated by an international agreement.

(2) International legal assistance shall be provided with regard to those criminal acts the penalizing of which at the time of forwarding a request for assistance lies within the competence of judicial bodies of the state requesting assistance.

(3) International legal assistance shall also be provided in misdemeanour proceedings conducted by administrative bodies, with regard to acts subject to a pecuniary penalty under the Croatian law, on grounds of representing a violation of the rule of law and if a decision by an administrative body involving those proceedings may lead to a trial before a court with subject-matter jurisdiction for criminal matters.

(4) International legal assistance shall also be provided in criminal proceedings as per Paragraph 2 of this Article, as well as in misdemeanour proceedings as per Paragraph 3 of this Article, which are being conducted against legal persons.

(5) International legal assistance shall also be provided in relation to the European Court of Human Rights and the European Court of Justice and, when so stipulated by an international agreement, also in relation to other international organisations and trans-national organisations whose member the Republic of Croatia may become.

### *Terminology in this Law*

#### Article 2

Expressions and terms contained in this Law shall have the following meanings:

1. *domestic competent body* – the Ministry of Justice of the Republic of Croatia and/or domestic judicial bodies which act upon requests for international legal assistance,
2. *domestic judicial body* – courts and state prosecutors' offices assigned under a special law for providing international legal assistance. In the sense of this Law, *domestic judicial body* shall also refer to an administrative body as per Article 1, Paragraph 3 of this Law,
3. *requesting country* – a foreign country whose competent body has filed a request for international legal assistance,
4. *foreign competent body* – the body of a foreign country, competent under the law of that country or under an international agreement for sending and receiving requests for international legal assistance and/or a foreign judicial body as per Item 5 of this Article,
5. *foreign judicial body* – foreign courts and other judicial bodies competent under the law of the relevant foreign country for conducting proceedings in criminal matters, including foreign administrative bodies competent for conducting misdemeanour proceedings under conditions stipulated in Article 1, Paragraph 3 of this Law,
6. *foreigner* – a person who is not a Croatian citizen,
7. *extraditee* – a defendant or convict in the process of extradition, from the moment of placement into detention for the purpose of extradition.

#### Article 3

(1) This Law shall in particular regulate:

1. international legal assistance in on-going criminal proceedings in the Republic of Croatia or in a foreign country (compilation and forwarding of cases which will be presented as evidence, delivery of court acts and decisions, appearance of persons before court for testifying and other actions necessary for the conduct of criminal proceedings),
2. procedures of extradition to the Republic of Croatia of persons accused or convicted on the basis of decisions by domestic courts,
3. procedures of extradition of foreigners accused or convicted on the basis of court decisions of the country requesting the extradition,
4. procedures of take-over and cession of criminal prosecution,
5. procedures of execution of foreign court decisions in criminal matters.

(2) This Law shall not be applied to arrests, execution of verdicts or acts subject to penalty under military laws which are not included among criminal acts of general criminal law.

#### Article 4

International legal assistance shall be provided in the broadest sense, in compliance with principles of the domestic legal order, principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Pact on Civil and Political Rights.

#### Article 5

The domestic competent body shall decide on the permissibility and manner of executing an action of international legal assistance which is the subject of request by a foreign judicial body, unless otherwise stipulated by the provisions of this Law or an international agreement.

### Chapter II

#### INTERNATIONAL LEGAL ASSISTANCE IN ON-GOING CRIMINAL PROCEEDINGS IN THE REPUBLIC OF CROATIA OR IN A FOREIGN COUNTRY

##### *Bodies competent for providing international legal assistance and the route of communication*

#### Article 6

(1) Requests for international legal assistance and information as per Article 18, Paragraph 1 of this Law shall be forwarded by domestic judicial bodies to foreign competent bodies through the Ministry of Justice.

(2) The Ministry of Justice shall be competent for receiving requests for international legal assistance by foreign competent bodies, which they shall forward without delay to domestic judicial bodies, unless it is evident that the request is to be denied,

(3) The Ministry of Justice may return a request to the foreign competent body for correction or supplementation and determine an adequate deadline for delivery of the corrected, that is, supplemented request. Upon the deadline's expiry, the request shall be resolved in accordance with the file situation.

(4) Exceptionally to Paragraph 1 of this Article, domestic judicial bodies may forward a request for international legal assistance directly to a foreign judicial body, when explicitly foreseen so under the provisions of this Law and under the condition of reciprocity, or when such a route is foreseen under an international agreement (direct communication).

(5) In cases of direct communication as per Paragraph 4 and Paragraph 7 of this Article, a domestic judicial body shall forward a copy of a request for international legal assistance to the Ministry of Justice.

(6) In urgent cases and if there is reciprocity, the Ministry of Justice may forward and receive requests for international legal assistance through Interpol.

(7) In cases of direct communication as per Paragraph 4 of this Article, domestic judicial bodies may, under the obligation as per Paragraph 5 of this Article, forward and receive requests for international legal assistance through Interpol.

(8) A foreign country with which the Republic of Croatia has not signed an international agreement, as well as when an international agreement explicitly foresees a diplomatic route of delivery, the Ministry of Justice shall forward and receive requests for international legal assistance through the Ministry of Foreign Affairs.

#### *Sending of acts by mail*

#### Article 7

(1) Domestic judicial bodies may, under the condition of reciprocity or when it is foreseen by an international agreement, directly mail procedural acts and court decisions to persons staying abroad.

(2) Procedural acts and court decisions as per Paragraph 1 of this Article shall be accompanied by a notification indicating that the recipient may receive information on his rights and obligations with regard to a delivery of documents.

(3) Procedural acts and court decisions forwarded to persons staying abroad shall be forwarded in the Croatian language.

(4) Should a domestic judicial body be aware of or have reasons to believe that the recipient only understands some other language, the document shall be accompanied by a translation into that language.

(5) The validity of delivery shall be subject to domestic regulations.

#### *The form and obligatory contents of a request*

#### Article 8

(1) A domestic judicial body shall act upon a request for international legal assistance by a foreign judicial body if the request was filed in writing. The request and the enclosed acts shall be accompanied by a translation into the Croatian language or, in case this is not possible, into the English language. Translations shall be officially verified.

(2) A domestic judicial body shall act upon a request for international legal assistance by a foreign judicial body also if the request was filed electronically or through some other telecommunications means which provides written records, if its authenticity can be verified, and the foreign competent body shall be ready to forward, upon request, a written notification on the manner of sending and the original request.

(3) Unless otherwise stipulated by an international agreement or provisions of this Law, a request for international legal assistance shall include:

1. place of issuance and the name of the foreign competent body forwarding the request,
2. legal grounds for providing international legal assistance,
3. exact description of the action of international legal assistance requested and the reason for requesting international legal assistance,

4. legal name, a short factual and legal description of the criminal act (except if the request pertains to delivery of court decisions, submissions, documents and similar),
5. exact data and citizenship of the person with regard to which international legal assistance is sought and the person's position in the proceeding,
6. in case of forwarding court acts, also the type of act being forwarded.

#### Article 9

(1) In the process of international legal assistance, the defendant may have a defence counsel.

(2) Third persons involved with measures or actions of international legal assistance may have authorised legal representatives in the process of international legal assistance.

(3) Decisions by domestic judicial bodies in the process of providing international legal assistance may be appealed against.

(4) Appeals against decisions passed pursuant to this Law shall not delay their execution, unless the involved decision:

1. has been passed by a county court of the Republic of Croatia, establishing the existence of legal preconditions for extradition, or
2. if it grants the return abroad of items or of an asset advantage.

#### *The specifics regarding the manner of resolving requests*

#### Article 10

(1) On the occasion of providing international legal assistance, a domestic judicial body shall comply with the formalities and procedures explicitly stated in the request as requisite under the law of the requesting country, unless foreseen otherwise by an international agreement, and under the condition that such formalities and procedures are not contrary to the principles of domestic legal order.

(2) A domestic judicial body shall act upon a request by a foreign judicial body without delay, taking into account the procedural deadlines and other specially determined deadlines explained in the request.

(3) If a domestic judicial body can foresee that it would not be able to meet a specially determined deadline for the resolution of a request, with an explanation as per Paragraph 2 of this Article explicitly stating that any delay would bring to a significant disruption of the proceeding before a foreign judicial body, the domestic judicial body shall without delay state an estimated time necessary for the execution of the request. The domestic and the foreign judicial body may afterwards agree on further actions it is necessary to undertake with regard to the request.

(4) If a request by a foreign judicial body cannot be executed, or cannot be executed in full compliance with the set conditions, a domestic judicial body shall without delay inform the foreign judicial body thereof, along with stating the conditions under which the request can be resolved.

## Article 11

(1) Upon explicit request by a foreign judicial body, a domestic judicial body shall forward a notification on the data and place of execution of a request for international legal assistance.

(2) Upon explicit request by a foreign judicial body, a domestic judicial body may grant the presence of a foreign official person at the execution of a request for international legal assistance.

(3) A request as per Paragraph 2 of this Article shall not be denied in case of a probability that the need for forwarding additional requests would thereby be avoided.

### *Denial of requests*

## Article 12

(1) A domestic competent body may deny a request for international legal assistance if:

1. the request pertains to an act considered a political criminal act, an act connected to a political criminal act,

2. the request pertains to a financial criminal act,

3. the fulfilment of request would cause a disruption of the sovereignty, security, legal order or other fundamental interests of the Republic of Croatia,

4. it can be justifiably assumed that a person whose extradition is sought would be criminally prosecuted upon extradition or punished because of his race, denomination, citizenship, affiliation with a certain social group or because of his political convictions, that is, that his position would be aggravated due to one of those reasons,

5. it involves an insignificant criminal act,

(2) Criminal acts or attempts at committing criminal acts against values protected under international law, and participation in the commission of such acts, cannot be the bases for denial of a request for international legal assistance in the sense of Paragraph 1, Item 1 of this Article.

(3) A request for international legal assistance over a financial criminal act as per Paragraph 1, Item 2 of this Article shall not be denied exclusively for the reason that it pertains to an act which is under domestic law considered a financial criminal act.

## Article 13

(1) A domestic judicial body shall deny a request for international legal assistance if:

1. the defendant was acquitted or the proceedings against him were suspended in the Republic of Croatia for the same criminal act for reasons based on the substantive law, or if he was relieved of penalty, or if the penalty was carried out or could not be carried out pursuant to the law of the country in which the verdict was passed,

2. criminal proceedings against the defendant are in progress in the Republic of Croatia for the same criminal act, unless the execution of the request could lead to a decision on the defendant's release

3. criminal prosecution, execution of a sanction or security or protection measures pursuant to domestic law would be excluded on grounds of absolute statute of limitations.

(2) The provisions of Paragraph 1, Items 1 and 3 of this Article shall not be applied in cases when an effective verdict has been revised in the requesting country.

#### Article 14

A decision on denial of a request for international legal assistance shall be explained, unless otherwise stipulated by an international agreement.

#### *Delayed provision of international legal assistance*

#### Article 15

A domestic judicial body may delay the provision of international legal assistance if this could affect the course of investigation, criminal prosecution or a proceeding, connected with the request, which is in progress before a domestic judicial body, whereof it shall inform the foreign judicial body which forwarded the request.

#### *Partial action upon a request*

#### Article 16

If a request for international legal assistance pertains to several facts which can fall under several domestic criminal provisions, while for some of them there are grounds for denial, requests shall be acted upon only with regard to those facts for which there are no grounds for denial.

#### *Reciprocity*

#### Article 17

(1) Domestic judicial bodies shall fulfil a request for international legal assistance by a judicial body of a country with which the Republic of Croatia has not signed an agreement on international legal assistance only if, on the basis of assurances provided by the requesting country, it can be expected that this country would fulfil a comparable request by a domestic judicial body.

(2) Assurances as per Paragraph 1 of this Article shall not be required for the forwarding of court decisions, submissions and other documents.

#### *Spontaneous exchange of information*

#### Article 18

(1) Without prior request, domestic judicial bodies may, while by no means affecting their own investigations or proceedings and under the conditions of reciprocity, forward information relating to criminal acts or to violations of the rule of law as per Article 1, Paragraph 3 of this Law, which they have compiled on their own, should they consider that forwarding of such information could help in the initiation or conduct of an investigation or court proceedings or if it could lead to the filing of a request for legal assistance.

(2) A domestic judicial body shall request from the foreign judicial body to which it has forwarded information as per Paragraph 1 of this Article information on every action undertaken based on such information, as well as the forwarding of transcriptions

of adopted decisions, while it can also put other conditions for the use of such information in the recipient country.

(3) Information as per Paragraph 1 of this Article shall be forwarded through the Ministry of Justice.

#### *Expenses*

#### Article 19

(1) Reimbursement of the expenses incurred in the course of providing international legal assistance shall not be required, except for:

1. the expenses of expert evaluation,
2. expenses of temporary transfers of persons deprived of liberty,
3. significant or extra expenditures.

(2) Compensations of expenditures as per Paragraph 1, Item 3 of this Article shall be made based on agreement between the Ministry of Justice and the competent body of the foreign country in each particular case.

#### *Special cases of providing information about criminal acts*

#### Article 20

(1) When the subject of a request for international legal assistance is a criminal act pertaining to trafficking in human beings and slavery, money laundering, forging of money, unauthorised production, processing and sale of narcotics and poisons, production and distribution of pornographic documents, criminal acts pertaining to organised crime and terrorism, and other criminal acts foreseen to be kept on a centralised database pursuant to an international agreement, the domestic judicial body conducting the criminal proceeding, that is, providing international legal assistance shall without delay forward to the Ministry of Interior data on those criminal acts and perpetrators, while the court of first instance [*shall also forward*] the effective verdict.

(2) If a request for legal assistance with regard to criminal acts as per Paragraph 1 of this Article has been forwarded or received directly in the sense of Article 8, Paragraph 2 of this Law, a domestic judicial body shall forward data as per Paragraph 1 of this Article to the Ministry of Justice without delay.

(3) The Ministry of Justice shall inform the foreign competent body on all criminal verdicts and measures pertaining to citizens of that foreign country which have been registered in court records at least once a year, unless otherwise stipulated by an international agreement.

(4) Upon request by a foreign competent body, the Ministry of Justice shall in each individual case forward a transcription of the verdict and measures about which it has forwarded information in the sense of Paragraph 3 of this Article, while it may also forward other information it regards possibly useful for further undertaking of measures in the requesting country.



### *Request for confidentiality*

#### Article 21

(1) Upon request by a foreign judicial body, the Ministry of Justice and the domestic judicial body shall keep a request for international legal [the word *assistance* is missing; transl. remark] and its contents confidential, except to the extent necessary for its execution.

(2) Should a request for confidentiality as per Paragraph 1 of this Article be impossible to fulfil, the Ministry of Justice, that is, the domestic judicial body shall inform the foreign judicial body thereof.

#### Article 22

Third persons who prove their legal interest may be present in the process of provision of international legal assistance and they shall have the right to examine the file, unless:

1. it is in the interest of the criminal proceeding being conducted abroad,
2. for the protection of fundamental interests of the foreign country, upon its request,
3. because of the nature or urgency of the measure being undertaken,
4. for the protection of justified interests of parties to the proceeding,
5. it is in the interest of the criminal proceeding being conducted in the Republic of Croatia.

### *Temporary measures*

#### Article 23

(1) Upon request by a foreign judicial body, the competent domestic judicial body may pass a decision on a temporary measure for the protection of evidence, protection of endangered interests and other measures in compliance with the domestic law.

(2) An appeal against a decision as per Paragraph 1 of this Article shall not delay its execution.

(3) The domestic judicial body may fulfil a request as per Paragraph 1 of this Article partly or it may condition the execution of such a request by a deadline.

#### Article 24

Upon request by a foreign judicial body, a domestic judicial body may determine measures of temporary restriction of certain constitutional rights, under the preconditions and requirements stipulated by the Law on Criminal Procedure.

### *The hearing of persons whose permanent residence is abroad*

#### Article 25

(1) A person with permanent residence abroad who comes to the Republic of Croatia in answer to summons by a domestic judicial body as a witness or expert witness

in a criminal proceeding shall not be criminally prosecuted nor shall his personal freedoms be restricted for reasons which occurred prior to his arrival.

(2) The protection as per Paragraph 1 of this Article shall cease if the person, after having left the state territory of the Republic of Croatia, returns again, or if the person does not leave the state territory of the Republic of Croatia upon the expiration of eight days from the day of the hearing.

*Temporary surrender for the purpose of hearing*

Article 26

(1) Upon request by a foreign judicial body, a person who has been deprived of liberty in the Republic of Croatia, including Croatian citizens, may be temporarily surrendered to a foreign judicial body for the purpose of being heard as a witness or for the purpose of confrontation, on condition that he is returned to the Republic of Croatia within the deadline determined by the domestic judicial body and provided that:

1. he agrees to be temporarily surrendered,
2. his presence is necessary in a criminal proceeding conducted in a foreign country,
3. due to temporary surrender, the deprivation of liberty will not be extended,
4. there are no other decisive reasons which run contrary to temporary surrender.

(2) A person as per Paragraph 1 of this Article, who has been temporarily surrendered to a foreign judicial body, shall remain in custody for the entire time of staying abroad, unless the domestic judicial body requests his release.

Article 27

When a person who has been deprived of liberty based on a decision by a foreign judicial body is surrendered to a domestic judicial body for the purpose of hearing in a criminal proceeding, the decision by the foreign judicial body on deprivation of liberty abroad shall be applied in the Republic of Croatia.

*Treatment of temporarily seized items*

Article 28

(1) Items, documents or an asset advantage which have been temporarily seized for the purpose of presenting evidence, as well as documents and decisions, shall be put at the disposal of a foreign judicial body at its request, upon the cessation of a procedure of international legal assistance in the Republic of Croatia.

(2) Should a third person, which obtained its right in good faith, a foreign body or a wronged person with permanent residence in the Republic of Croatia, claim to have right to items, documents or an asset advantage as per Paragraph 1 of this Article, those items, documents and an asset advantage shall only be forwarded if the foreign judicial body guarantees their free-of-charge return upon the completion of its proceedings.

(3) The forwarding may be postponed as long as the items, documents and an asset advantage are required for the purpose of a criminal proceeding in progress in the Republic of Croatia.

## Article 29

(1) Items or an asset advantage which have been temporarily seized for security purposes may be forwarded to a foreign judicial body upon its request after the completion of a proceeding of international legal assistance for the purpose of their seizure from or return to an authorised person.

(2) Items and an asset advantage as per Paragraph 1 of this Article shall include:

1. items with which a criminal act has been committed,
2. products of a criminal act or their equivalent value,
3. profits from a criminal act or their equivalent value,
4. gifts and other donations as an incentive or reward for a criminal act or their equivalent value.

(3) The delivery may ensue at any stage of a foreign criminal proceeding and it may be carried out only between the effective and executive decisions by a foreign judicial body.

(4) Items or an asset advantage may be permanently kept in the Republic of Croatia if:

1. the defendant has permanent residence in the Republic of Croatia, and they are to be returned to him,
2. a state body claims the right of the Republic of Croatia over them,
3. a person who is not a participant in the act, while his requests are not guaranteed by the requesting country, should prove that he obtained the right over those items or an asset advantage in good faith in the Republic of Croatia or abroad, while he has permanent residence in the Republic of Croatia.
4. if items or pecuniary advantage are required for the conduct of a criminal proceeding in progress in the Republic of Croatia or for the application of the measure of seizure in the Republic of Croatia.

(5) Should an authorised person put forward his requests over items or an asset advantage as per Paragraph 4 of this Article, their forwarding to the requesting country shall be postponed until legal issues have been resolved. Disputable items or an asset advantage may be forward to the authorised person if:

1. the requesting country agrees with it,
2. the state body in a case as per Paragraph 4, Item 2 of this Article agrees to it,
3. the domestic court has recognised the authorisation for filing a request.

## Article 30

If a domestic judicial body considers that international legal assistance has been provided in full or in part, it shall pass a decision with an explanation thereof.

## Article 31

(1) A domestic judicial body may condition the provision of international legal assistance entirely or in part by prior payment of particular costs (taxes, surtaxes, fees and similar).

(2) The Ministry of Justice shall determine an appropriate deadline for a foreign competent body to provide a statement on acceptance or refusal to pay costs as per Item 1 of this Article. In case of refusal to pay or irresponsiveness on the part of the foreign judicial body, international legal assistance shall be provided in relation to the part of the request not related to the costs.

## Chapter III

### EXTRADITION

#### Part One: PRECONDITIONS

##### *Extradition of a Croatian citizen*

## Article 32

(1) A Croatian citizen may not be extradited to a foreign country for criminal prosecution or the execution of a prison sentence, or transferred as a convict from the Republic of Croatia to a foreign country for the purpose of serving a prison sentence.

(2) The provision as per Paragraph 1 of this Article shall not be applied in cases of temporary surrender of a Croatian citizen to a domestic judicial body for the purpose of certain actions in a criminal proceeding in the Republic of Croatia.

##### *Extradition of a foreigner*

## Article 33

A foreigner may be extradited to another country for the purpose of criminal prosecution or execution of a sanction which includes deprivation of liberty, if that country has requested the extradition, or if it has taken over from the Republic of Croatia the criminal prosecution or execution of a criminal verdict.

## Article 34

(1) A foreigner indicted or convicted for criminal acts punishable under the law of that country, based on a decision by a foreign judicial body requesting the extradition, shall be extradited to that country for the purpose of conducting a criminal proceeding, that is, for the purpose of execution of the sanction which includes deprivation of liberty, if such acts contain fundamental characteristics of criminal acts also under the domestic law.

(2) Extradition for the purpose of conducting criminal proceedings may be granted only for criminal acts punishable under the domestic law by imprisonment or by a security measure comprising deprivation of liberty for a maximum of at least one year or through the application of a more severe penalty.

(3) Extradition for the purpose of execution of sanctions through deprivation of liberty may be granted when, in case of criminal acts as per Paragraph 1 of this Article,

an effective verdict of imprisonment or of a security measure comprising deprivation of liberty for a minimum of four months has been passed.

(4) Exceptionally, if a request for extradition includes several separate criminal acts some of which do not meet the criteria as per Paragraphs 1 and 2 of this Article with regard to the duration of sentence which may be pronounced or if it involves criminal acts subject only to pecuniary penalties, extradition may also be granted for those criminal acts.

(5) Extradition shall be granted if the requesting country guarantees it would grant the same kind of request by the Republic of Croatia.

#### *Refusal of extradition*

#### Article 35

(1) Extradition shall not be granted if:

1. the person whose extradition is requested is a citizen of the Republic of Croatia,
2. the act for which extradition is requested was committed in the territory of the Republic of Croatia, against it or against its citizen,
3. the act for which extradition is requested is not a criminal act both under the domestic law and under the law of the country in which it was committed,
4. the statute of limitations pertaining to criminal prosecution or the statute of limitations pertaining to the execution of sentence has run out under the domestic law before the foreign citizen has been detained or heard as a defendant,
5. the foreigner whose extradition is requested for the same act by a domestic court has already been convicted, or if he has been effectively acquitted by a domestic court for the same act, unless the conditions for renewal of criminal proceedings foreseen under the Law on Criminal Procedure have been fulfilled, or if criminal proceedings have been initiated in the Republic of Croatia against the foreigner for the same act committed against the Republic of Croatia, and if proceedings have been initiated for an act committed against a citizen of the Republic of Croatia – if no insurance has been deposited for the exercise of a proprietary request of a wronged person,
6. the identity of the person whose extradition is requested has not been established,
7. there is no sufficient evidence for reasonable doubt that the foreigner whose extradition is requested committed a particular criminal act or that there exists an effective verdict,

(2) Extradition may be denied if the Republic of Croatia can take over the prosecution of a criminal act or the execution of a foreign criminal verdict, while this seems appropriate taking into account the defendant's social rehabilitation.

#### Article 36

A foreigner subject to the judicial authority of the Republic of Croatia may exceptionally be extradited to a foreign country if this is justified by special circumstances, particularly possibilities of social rehabilitation.

#### *Principle of speciality*

#### Article 37

(1) Extradition shall be granted on condition that the requesting country does not treat the extraditee as follows:

1. does not prosecute or punish or extradite him to a third country for a certain act committed prior to the extradition, in relation to which act extradition was not granted,
2. does not limit him in his personal rights for reasons the occurrence of which is unrelated to the extradition,
3. does not bring him before an extraordinary court.

(2) Conditions as per Paragraphs 1 and 2 of this Article shall not be applied if:

1. the extraditee explicitly waves them, or
2. the extraditee, despite being warned about the consequences, does not leave the state territory of the requesting country within 45 days after the provisional or final release, although he could have done so, or if he returns to that territory after he has left it.

#### *Additional request for extradition*

#### Article 38

If the extraditee is charged with other criminal acts, the requesting country shall also be allowed to conduct criminal proceedings for those acts, under the conditions stipulated in Articles 34, 35 and 37 of this Law.

#### *Requests for extradition by several countries*

#### Article 39

(1) Should several countries file extradition requests for the same person over the same criminal act, the country in the territory of which the act was committed or in the territory of which a major part of the criminal activities in case of a prolonged or permanent criminal act was committed, or in the territory of which the organiser, in case of a criminal act of organised crime, has permanent residence, shall be granted extradition.

(2) Should several countries file extradition requests for the same person over different criminal acts, a decision shall be passed with regard to the circumstances of the specific case, particularly with regard to the gravity of the criminal act, the order in which requests were filed, the citizenship of the extraditee, the possibility of better social rehabilitation and the possibility of extradition to a third country.

(3) The decision referred to in the previous Paragraphs of this Article shall be explained.

*Conditions for extradition to the Republic of Croatia*

Article 40

(1) If criminal proceedings are in progress in the Republic of Croatia against a person who is in a foreign country or a domestic court has passed an effective verdict against such a person, the Minister of Justice may file a request for extradition upon the request by a domestic judicial body.

(2) If the sought person is extradited, he shall be criminally prosecuted, that is, only the sanction for the criminal act for which the extradition was granted shall be executed against him, unless he waves that right and the extraditing country has not put such a condition.

(3) Documents as per Article 43 of this Law shall be enclosed with a request as per Paragraph 1 of this Article.

Article 41

(1) If a foreign country has granted extradition under certain conditions with regard to the kind or severity of sentence which may be pronounced, that is, executed and the extradition is accepted under those conditions, the court shall be bound by those conditions when pronouncing the sentence, and if it involves the execution of an already pronounced sentence, the court which conducted the trial at the latest stage shall alter the verdict and adjust the pronounced sentence to the conditions on extradition.

(2) If the extraditee had been detained in a foreign country for the criminal act for which he was extradited, the time spent in detention shall be included into the sentence.

*Transport of the extraditee through the Republic of Croatia*

Article 42

(1) If a foreign country requests extradition from another foreign country and the extraditee is to be transported through the territory of the Republic of Croatia, the Minister of Justice may grant his transport to the foreign country which requested it in accordance with the conditions necessary for permitting the extradition as per Articles 34 and 35 of this Law.

(2) A request for transport of an extraditee through the state territory of the Republic of Croatia shall contain all data as per Article 43 of this Law.

(3) The expenses of an extraditee's transport through the territory of the Republic of Croatia shall be paid by the country requesting the extradition.

Part Two: EXTRADITION PROCEDURE

*Extradition Request*

Article 43

(1) An extradition request shall contain data as per Article 8, Paragraph 3 of this Law, and the following shall be enclosed with the request:

1. the means for establishing the extraditee's identity (exact description, photographs, fingerprints and similar),
2. an indictment or verdict or decision on detention or another act equal to that decision, in the original or a verified transcription, which shall specify the first and last names of the person whose extradition is requested and other data necessary for the establishment of his identity,
3. a description of the act, the legal term for the criminal act and evidence for reasonable doubt,
4. an excerpt from the text of the criminal code which is to be applied or has been applied against the extraditee for the act over which extradition is sought, and if the act was committed in the territory of a third country, also an excerpt from the text of the criminal code of that country.

(2) If documents as per Paragraph 1 of this Article have been drafted in a foreign language, a translation into the Croatian language shall be enclosed with the request.

*Request for temporary arrest for the purpose of extradition*

Article 44

A request for temporary arrest for the purpose of extradition, apart from the contents as per Article 8, Paragraph 3 of this Law, shall also contain:

1. data for the establishment of identity of the person whose arrest for the purpose of extradition is requested,
2. the factual and legal description of the criminal act,
3. a judicial body's statement on the existence of an effective conviction or decision on detention,
4. a statement that extradition of a person whose arrest for the purpose of extradition is sought shall be requested.

Article 45

An extradition request, that is, a request for temporary arrest for the purpose of extradition shall be forwarded by the Ministry of Justice to the competent court in the territory of which the person whose extradition is sought resides or is found.

Article 46

A person whose extradition is requested may be arrested for the purpose of extradition pursuant to the request by a foreign judicial body or, on condition of reciprocity, pursuant to an issued international warrant.

*Decision on detention for the purpose of extradition*

Article 47

(1) The competent court shall pass a decision on detention for the purpose of extradition, unless there is a probability that extradition would not be granted and the foreigner's remaining at liberty does not endanger the extradition procedure.



(2) If a foreigner is not capable of being in detention or if it is justified by other reasons, the competent court may determine other measures for securing his presence instead of detention.

#### *Termination of detention*

##### Article 48

(1) The investigating judge shall release a foreigner when the reasons for detention have ceased or if an extradition request is not filed within the deadline he determined taking into account all the circumstances contained in the extradition request, which [*deadline*] may not exceed 40 days from the day of detention. Detention determined pursuant to Article 44 of this Law may be terminated if an extradition request is not filed within 18 days from the day of detaining the foreigner.

(2) The Ministry of Justice shall inform the requesting country about the deadlines as per Paragraph 1 of this Article without delay, upon the request of which the competent judicial body may extend detention by a maximum of 30 days.

(3) If the extraditee is already in detention pursuant to another basis, the deadline as per Paragraph 1 of this Article shall start to run when the decision on detention for the purpose of extradition is passed.

#### *Extension and renewal of detention*

##### Article 49

(1) Upon receiving a request for extradition, the detention measure shall stay in force during the entire extradition procedure and until the expiry of deadline for execution of the decision on extradition as per Article 59 of this Law.

(2) If an extraditee is released from detention due to the expiry of the deadlines as per Article 48, Paragraphs 1 and 2 of this Law, should the requesting country again file a request for temporary arrest for the purpose of extradition or a request for extradition, the renewal of detention for the purpose of extradition shall be allowed.

#### *Temporary seizure of items*

##### Article 50

(1) Upon request by the requesting country, a domestic court may order a search of the arrested person and premises.

(2) Items and an asset advantage which can serve as evidence in a foreign criminal proceeding or which originate from the criminal act shall be temporarily seized in the process of arrest.

(3) Measures as per Paragraphs 1 and 2 of this Article may last until a decision on detention for the purpose of extradition is passed, but for a maximum of 48 hours after the arrest.

##### Article 51

A notification on the arrest and temporary seizure of items, that is, on search of arrested persons and premises, shall be forwarded to the Ministry of Justice without delay.

### *Right to a hearing*

#### Article 52

(1) In the process of passing a decision on detention for the purpose of extradition, the competent court shall establish whether the extraditee is the person indicated in the request, after which it shall inform him without delay why and based on which evidence his extradition is sought and invite him to present his defence. It shall explain to him the preconditions for extradition and inform him about the right to appeal and the right to a defence counsel, that is, it shall appoint an *ex officio* defence counsel for him in case it involves a criminal act for which defence is obligatory under the Law on Criminal Procedure. It shall also inform the extraditee on the possibility of granting his surrender to the requesting country by using a simplified extradition procedure and waiving the right as per Article 54, Paragraph 1 of this Law.

(2) An extraditee shall be briefly heard about personal circumstances, citizenship and relations towards the requesting country, as well as whether and for which reasons he opposes arrest or extradition. The extraditee's defence counsel may participate in the hearing.

(3) Minutes shall be taken of the hearing and the defence.

### *Inquest actions*

#### Article 53

(1) After the hearing pursuant to Article 52, Paragraph 2 of this Law, the investigating judge shall, if necessary, conduct inquest actions for the purpose of establishing the existence of preconditions for extradition.

(2) If a proceeding against the extraditee for the same or another criminal act is in progress in the Republic of Croatia, the investigating judge shall indicate it in the official notes.

### *Simplified extradition*

#### Article 54

(1) An extraditee may give his consent to be surrendered to the requesting country by using a simplified extradition procedure, as well as waive the right as per Article 40, Paragraph 2 of this Law, after which the competent court shall grant his extradition, unless there are reasons for passing a different decision.

(2) The consent and waiver as per Paragraph 1 of this Article shall be entered into the minutes before the competent court in compliance with the Law on Criminal Procedure, in a manner which proves that the extraditee acted voluntarily in the process and was completely aware of the consequences.

(3) The consent and waiver as per Paragraph 1 of this Article shall be irrevocable.

(4) The competent court shall inform the Ministry of Justice about the consent as per Paragraph 1 of this Article without delay, while [*the Ministry of Justice*] shall inform the requesting country within 10 days from the day of extraditee's detention at the latest, and [*the requesting country*] shall not be obliged to forward the extradition request in that case.

(5) If an extraditee has given his consent as per Paragraph 1 of this Article, the competent court shall conduct a simplified extradition procedure upon the expiration of the deadline as per Paragraph 4 of this Article if the extradition request has not been received yet.

(6) If an extraditee has given his consent as per Paragraph 1 after the expiration of the deadline as per Paragraph 4 of this Article, while the extradition request has been received in the meantime, the competent court may conduct a simplified extradition procedure.

(7) Simplified extradition shall have the effects of extradition and shall be subject to the same conditions. The requesting country shall be warned thereof.

*Decision on denial of an extradition request*

Article 55

(1) If the competent court has established that the legal preconditions for extradition are not fulfilled, it shall pass a decision on denial of the request for extradition and forward it without delay to the Supreme Court of the Republic of Croatia which shall, having heard the competent state prosecutor, confirm, repeal or alter the decision.

(2) The effective decision on denial of extradition shall be forwarded to the Ministry of Justice which shall inform the requesting country thereof.

*Decision granting extradition*

Article 56

(1) When the panel of the competent court has established that the legal preconditions for extradition are fulfilled, it shall pass a decision about it.

(2) Appeal against this decision shall be allowed within 3 days. The appeal shall be decided upon by the Supreme Court of the Republic of Croatia.

*Decision of the Minister of Justice*

Article 57

(1) An effective decision establishing the fulfilment of legal preconditions for extradition shall be forwarded to the Ministry of Justice together with the case file.

(2) The Minister of Justice shall pass a decision on granting or denying extradition.

(3) The Minister shall state the following in the decision on granting extradition:

1. that the extraditee may not be criminally prosecuted for another criminal act committed prior to the extradition, unless he waved that right in compliance with Article 40, Paragraph 2 of this Law,

2. that the punishment for another criminal act committed prior to the extradition may not be executed against the extraditee, unless he waved that right in compliance with Article 40, Paragraph 2 of this Law,

3. that the extraditee may not be extradited to a third country for criminal prosecution or execution of a prison sentence for an act committed prior to the extradition, without the consent of the Minister of Justice of the Republic of Croatia.

(4) Apart from the above-mentioned conditions, in the decision as per Paragraph 2 of this Article, the Minister of Justice may put other conditions for extradition before the requesting country.

(5) Appeal against the decision of the Minister of Justice as per Paragraph 2 of this Article shall not be allowed.

#### *Executability of decisions on extradition*

##### Article 58

An extradition decision shall be executable:

1. when the Minister of Justice has passed a decision as per Article 57, Paragraph 2 of this Law.
2. in the case referred to in Article 54 of this Law, when the extraditee explicitly consents to extradition.

#### *Execution of extradition*

##### Article 59

(1) The Ministry of Interior shall be responsible for the execution of decisions on extradition and it shall, together with the competent body of the authorities of the requesting country, arrange for the place and time of the extraditee's surrender.

(2) The extraditee's surrender shall be executed within a maximum of 2 months from the day the decision on extradition becomes executable.

(3) Should the requesting country not take over the extraditee within eight days from the arranged day of surrender as per Paragraph 1 of this Article, the extraditee shall be released. That deadline may be extended by a total of 30 days on the basis of a justified request by the requesting country.

#### *Delay of surrender and a temporary extradition*

##### Article 60

(1) The execution of extradition may be delayed until criminal proceedings against the extraditee in the Republic of Croatia for another criminal act have been completed, or until the extraditee has served a prison sentence or a security measure of deprivation of liberty in the Republic of Croatia.

(2) Temporary extradition may be granted if it would not damage the criminal proceeding in progress at a domestic court and if the requesting country guarantees to keep the extraditee in detention during his stay in that country and to return him to the Republic of Croatia within the deadline determined by the Ministry of Justice.

##### Article 61

The Republic of Croatia shall cover the expenses of transport of the extraditee from the requested country and in case of extradition abroad the Republic of Croatia shall

cover the expenses of detention and transport of the extraditee to the agreed place of surrender in the Republic of Croatia.

#### Chapter IV

### TAKE-OVER AND CESSION OF PROCEEDINGS

#### Part One: PRECONDITIONS

##### *Take-over of proceedings on the part of the Republic of Croatia*

#### Article 62

Upon request by a foreign judicial body, a domestic judicial body may take over the conduct of criminal proceedings for a criminal act committed abroad:

1. when extradition is not allowed,
2. if the foreign judicial body has stated that it would not criminally prosecute the defendant for the same act after the domestic judicial body has passed an effective decision.

#### Article 63

(1) A request by a foreign judicial body for the initiation of criminal prosecution against a Croatian citizen or a person with permanent residence in the Republic of Croatia for a criminal act committed abroad shall be forwarded, together with the criminal file, to the competent state prosecutor in whose territory that person has permanent residence.

(2) If a proprietary request is filed with the foreign judicial body in a criminal proceeding which has been taken over, the domestic judicial body shall act as if such a request has been filed in a proceeding before a domestic court.

(3) The foreign judicial body shall be informed through the Ministry of Justice about refusal to take over criminal prosecution, that is, about the effective decision passed in a criminal proceeding which has been taken over.

##### *Application of rights and in absentia trials*

#### Article 64

(1) The trial for a criminal act committed abroad shall be conducted as if it was committed in the Republic of Croatia.

(2) A foreign law shall be applied when it is more lenient on the defendant.

(3) *In absentia* trials shall not be permitted.

##### *Cession of criminal proceedings*

#### Article 65

(1) If a foreigner with permanent residence in a foreign country has committed a criminal act in the territory of the Republic of Croatia, criminal prosecution may be ceded to that country provided it does not object to it.

(2) Criminal prosecution may be ceded for criminal acts subject to imprisonment of up to ten years.

## Part Two: PROCEDURE

### Article 66

The criminal file and all compiled evidence shall be enclosed with the request for cession of criminal prosecution, compiled pursuant to Article 8, Paragraph 3 of this Law.

### Article 67

(1) Prior to the adoption of a decision on the conduct of investigation, the competent state prosecutor shall pass a decision on cession.

(2) In the course of the investigation, the decision as per Paragraph 1 of this Article shall be passed by the investigating judge upon the proposal of the competent state prosecutor, and in the period prior to the beginning of the main hearing [*it shall be passed*] by the court panel.

(3) If a wronged person is a citizen of the Republic of Croatia, cession shall not be permitted if he opposes it, unless guarantees for the exercise of his proprietary request have been provided.

(4) If a defendant is in detention, the foreign country shall be requested to respond within a maximum of fifteen days whether it will take over the criminal prosecution.

### Article 68

Any investigating action conducted by a foreign judicial body pursuant to the law of the requesting country shall be equalled in the criminal proceeding with the appropriate investigating action pursuant to the law of the Republic of Croatia, unless it is contrary to the provisions of Article 4 of this Law.

### Article 69

(1) Expenses incurred in a taken-over criminal proceeding which have been established by the foreign judicial body, shall be added to the expenses of the procedure incurred in the criminal proceeding before the domestic judicial body. The foreign judicial body shall be compensated for the expenses.

(2) In case of cession of criminal prosecution, the domestic judicial body shall inform the foreign judicial body about the expenses of the procedure incurred in the criminal proceeding before the domestic judicial body, which shall not request the compensation of those expenses.

## Chapter V

### TAKE-OVER OF EXECUTION OF FOREIGN CRIMINAL VERDICTS

#### *Take-over of execution on the part of the Republic of Croatia*

### Article 70

(1) A domestic court shall act upon request by the requesting country for the execution of a criminal verdict of a foreign court and it shall execute the effective verdict in relation to the sanction pronounced by the foreign court, in the manner of passing a verdict containing a sanction pursuant to the criminal legislation of the Republic of Croatia.

(2) In the assessment of culpability and possibility of criminal prosecution, a domestic court shall be bound by the facts determined in the verdict of the foreign court, unless it involves facts which run contrary to public morality and the legal system of the Republic of Croatia.

#### Article 71

(1) The domestic court shall enter the entire enacting clause and name of the court from the verdict of the foreign court into the enacting clause as per Article 70, Paragraph 1 of this Law and pronounce a sanction. In the statement of reasons for the verdict it shall state the reasons it took into account when pronouncing the sanction.

(2) The state prosecutor and the convict or his defence counsel may appeal against the verdict.

#### Article 72

(1) The territorial jurisdiction of the court as per Article 70 of this Law shall be determined according to the latest permanent residence of the person convicted in the Republic of Croatia and, if the convicted person has not had permanent residence in the Republic of Croatia, then according to the place of his birth. If the convicted person has not had permanent residence nor was born in the Republic of Croatia, the Supreme Court of the Republic of Croatia shall determine one of the courts with subject-matter jurisdiction to conduct the proceedings.

(2) The subject-matter jurisdiction of courts shall be stipulated by a special law.

(3) The competent court shall pass the verdict in a panel, without the parties' presence.

#### *Execution of a foreign sanction*

#### Article 73

(1) The sanction pronounced by a foreign judicial body shall be executed pursuant to domestic regulations on the execution of criminal sanctions.

(2) The execution shall be stayed if the statute of limitations has run out or the execution has been repealed in the requesting country.

(3) If only the decision on expenses is being executed, the requesting country shall be forwarded the amount left over upon deduction of the incurred expenses, under the condition of reciprocity.

(4) The decision on expenses by the foreign judicial body shall be taken over and executed if those expenses are being paid in the requesting country.

#### Article 74

The court verdict of a foreign court shall not be executed if:

1. the statute of limitations pertaining to the execution of punishment has run out under the Croatian law,
2. the perpetrator is also subject to the judicial authority of Croatia and a criminal sanction may not be pronounced against the perpetrator for other reasons under the Croatian law,

3. the foreign sanction was not pronounced by the competent judicial body, and in case of a pecuniary penalty, if it was pronounced by the administrative body against whose decision it is permitted to lodge an appeal before a court with jurisdiction over criminal matters,
4. the person convicted in the proceeding on which the foreign decision is based was not heard, that is, did not have an opportunity to defend himself.

#### Article 75

Upon request by a domestic judicial body, the Ministry of Justice may request a foreign country to take over the execution of the criminal verdict passed by a domestic court if:

1. the Republic of Croatia cannot ensure the execution of the criminal verdict by the domestic court,
2. better social rehabilitation of the convict is expected due to the transfer of execution.

#### Article 76

The following shall be enclosed with the request for take-over of a court verdict, drafted in compliance with Article 8, Paragraph 3 of this Law:

1. the original or a verified transcription of the court verdict with a certificate of its executability,
2. if necessary, a certificate on the duration of the prison sentence served in the requesting country,
3. the original or a verified transcription of the criminal file, if so requested by the executing country.

#### Article 77

(1) Agreement with the conditions put by the convicting country in the process of take-over of the execution of a criminal verdict shall be provided by the Minister of Justice of the Republic of Croatia.

(2) In case the Republic of Croatia has the judicial authority and a sanction has been pronounced in a foreign country which is more severe than the one foreseen under the domestic law, it shall also be possible to take over the execution of such a sanction, if the foreign country has explicitly requested so, that is, refused to comply with the execution of the criminal verdict of its court in the manner referred to in Article 70 of this Law.

#### Article 78

(1) Should a foreign country take over the execution of a criminal verdict of a domestic court, the competent judicial body shall withdraw from the execution, unless the requested foreign country informs it that it will not carry out the execution.

(2) A convict may be detained for the purpose of ensuring the take-over of execution of a criminal verdict.



## Article 79

A convict in detention in the Republic of Croatia may be subjected to the take-over of execution of the criminal verdict only if he agrees to it and if it can be expected that the requested country will respect the conditions determined by the domestic competent body.

### *Transfer of convicts*

## Article 80

(1) A convict serving a prison sentence in the Republic of Croatia based on a verdict by a domestic court may file a request for serving the sentence in the country of his citizenship, that is, permanent residence. The request may be filed with the administration of the penitentiary in which he is serving the sentence, with a court of first instance or the Ministry of Justice.

(2) The request shall be forwarded to the Ministry of Justice which shall inform the country to which the convict wants to be transferred for the continuation of serving the sentence and conduct the procedure of the convict's transfer pursuant to an international agreement or on the basis of reciprocity.

(3) The competent court or the administration of the penitentiary in which the convict is serving the sentence shall inform the convict about the possibility to serve the sentence in the country of his citizenship, that is, permanent residence.

(4) The request may also be submitted by the country whose citizen the convict is, or in which he has permanent residence. The request shall be taken into consideration if the convict agrees with the transfer.

(5) The convict may be transferred if he has at least 6 more months of the pronounced sentence to serve at the time when the transfer has been requested.

(6) The consent to a convict's transfer shall be provided by the Minister of Justice of the Republic of Croatia, having obtained a previous opinion of the State Prosecutor's Office.

(7) A Croatian citizen serving a prison sentence in a foreign country may be transferred to the Republic of Croatia to continue serving the prison sentence with the consent of the convicting country and the Minister of Justice of the Republic of Croatia, based on the request he forwarded to the competent body of the convicting country or the Ministry of Justice of the Republic of Croatia, under the condition as per Paragraph 5 of this Article.

## Chapter VI

### FINAL PROVISIONS

## Article 81

The provisions of the Law on Criminal Procedure, the Law on Misdemeanours, the Law on the Office for Suppression of Corruption and Organised Crime and the Law on Courts shall be appropriately applied to the extent to which this Law does not contain special rules of procedure.

## Article 82

The provisions of Sub-paragraphs 1 and 2 of Article 523 of the Law on Criminal Procedure (“Official Gazette”, No. 110/97, 27/98, 58/99, 112/99, 58/02, 143/02 and 62/03 – consolidated text) shall cease to be valid by the entry into force of this Law.

### *Interim provisions*

## Article 83

The extradition procedures ongoing on the day of entry into force of this Law shall be completed pursuant to the provision of Article 523 of the Law on Criminal Procedure (“Official Gazette”, No. No. 110/97, 27/98, 58/99, 112/99, 58/02, 143/02 and 62/03 – consolidated text). The same shall apply to the take-over of criminal proceedings and execution of a foreign criminal verdict.

### *Entry into force*

## Article 84

This Law shall be published in the “Official Gazette” and it shall enter into force on 1 July 2005.

Class: 720-02/04-01/01

Zagreb, 3 December 2004

CROATIAN PARLIAMENT

Speaker of the Croatian Parliament

**Vladimir Šeks**, signed