

**ANNEX 1 to**  
**Veseli Defence Response to Prosecution Sur-Reply**  
**Public**

OSCE Mission to Serbia and Montenegro  
Legal Translation Unit

## **LAW ON ORGANISATION AND COMPETENCE OF GOVERNMENT AUTHORITIES IN WAR CRIMES PROCEEDINGS<sup>1</sup>**

### **I INTRODUCTORY PROVISIONS**

#### **Article 1**

This Law governs establishing, organisation, jurisdiction and powers of government bodies and their organisational units for detecting, prosecuting and trying for criminal offences stipulated under this Law.

#### **Article 2**

This Law shall apply in detecting, prosecuting and trying:

- 1) crimes against humanity and international law set forth in Chapter XVI of the Basic Criminal Code;
- 2) serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991, stipulated in the Statute of the International Criminal Tribunal for the former Yugoslavia

#### **Article 3**

The government authorities of the Republic of Serbia set out under this Law shall have jurisdiction in proceedings for criminal offences specified in Article 2 hereof, committed on the territory of the former Socialist Federative Republic of Yugoslavia, regardless of the citizenship of the perpetrator or victim.

### **II ESTABLISHMENT , JURISDICTION AND ORGANISATION OF GOVERNMENT AUTHORITIES**

#### **1. Prosecutor's Office for War Crimes**

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<sup>1</sup> As amended by the Parliament of Serbia in December 2004.

**Article 4**

A Prosecutor's Office for War Crimes for the territory of the Republic of Serbia, with seat in Belgrade, is hereby established to prosecute criminal offences specified in Article 2 hereof.

The Prosecutor's Office for War Crimes has the competence in proceedings for the criminal offences specified in Article 2 of this Law in first instance as well as in the proceedings upon legal remedies.

The Prosecutor's Office for War Crimes shall comprise of Prosecutor for War Crimes, deputy Prosecutors for War Crimes and staff.

The Prosecutor's Office for War Crimes is managed by the Prosecutor for War Crimes, who shall hold the status of Republic Public Prosecutor.

The Prosecutor for War Crimes and/or deputy shall have the rights and responsibilities of a public prosecutor and/or deputy.

The provisions of the Law on Public Prosecution shall accordingly apply to the Prosecutor's Office for War Crimes.

**Article 5**

The National Assembly elects the Prosecutor for War Crimes.

The prosecutor for War Crimes appoints and dismisses the Deputy Prosecutor for War Crimes.

A person may be elected Prosecutor for War Crimes or appointed as his/her Deputy who meet

the requirements for election as district public prosecutor and shall be of high moral character and impartiality, with considerable experience in criminal law. Priority in election and/or appointment shall be given to persons who have competence and experience in international humanitarian law and human rights law.

The Prosecutor for War Crimes is elected for a term of four years and may be re-elected.

The Deputy Prosecutor for War Crimes is appointed for a term of four years and may be re-appointed.

Upon termination of his/her office in the War Crimes Prosecution, the prosecutor and/or deputy shall return to his/her previous post in public prosecution.

**Article 6**

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

**Article 7**

At the request of the Prosecutor for War Crimes all government organs and organisations are required to:

- 1) enable use of any technical means at their disposal without delay,
- 2) ensure timely response of their member and/or employee, including superiors

of the bodies or organisations, to give information and for questioning as suspect or witness;

3) deliver any written document or other evidence in their possession without delay, or otherwise provide information that may help in investigating war crimes.

## **2. War Crimes Investigation Service**

### **Article 8**

A War Crimes Investigation Service (hereinafter the “Service”) is hereby established within the Ministry responsible for internal affairs to investigate criminal offences specified in Article 2 hereof.

The Service shall act on requests of the Prosecutor for War Crimes, in accordance with law.

The minister responsible for internal affairs shall appoint and dismiss the head of Service, following proposal obtained from the Prosecutor for War Crimes.

The functioning of the Service shall be regulated by the act passed by the Minister responsible for internal affairs, following opinion obtained from the Prosecutor for WarCrimes.

## **3. Jurisdiction and organisation of courts**

### **Article 9**

The District Court in Belgrade shall have first instance jurisdiction for criminal offences referred to in Article 2 hereof.

The directly higher court shall have second instance jurisdiction

### **Article 10**

A War Crimes Panel shall be established within the Courts having jurisdiction for criminal offences referred to in paragraph 2 hereof.

The President of the Court shall assign judges to the War Crimes Panel for a four- year term from amongst the judges of such court, with their consent.

The President of the Court may assign to the War Crimes Panel judges from other courts seconded to this court, with their consent.

### **Article 11**

A Special Department is hereby established in the District Court in Belgrade for

administrative-technical tasks, tasks related to witness and victim protection and facilitating conditions for the application of procedural provisions of this Law (hereinafter “Special Department”).

The functioning of the Special Department is regulated by an act passed by the President of the District Court in Belgrade, with approval of the minister responsible for the judiciary.

#### **4. Special Detention Unit**

##### **Article 12**

A Special Detention Unit shall be established in the District Prison in Belgrade, for detention imposed in the criminal proceedings for criminal offences referred to in Article 2 hereof (hereinafter “Special Detention Unit”).

The Minister responsible for judiciary shall specify the organisation, work and treatment of the detainees in the Special Detention Units, in accordance with the Criminal Procedure Code and the Law on Enforcement of Criminal Sanctions.

### **III**

#### **RULES OF PROCEDURE**

##### **Article 13**

Special provisions of the Criminal Procedure Code (Chapter XXIX a), governing the proceedings in organised crime criminal offences, shall apply in the proceedings for the criminal offences referred to in Article 2 hereof.

If provisions of the Chapter referred to in paragraph 1 of this Article fail to particularly specify, the other provisions of the Criminal Procedure Code shall accordingly apply.

##### **Article 14**

When the presence of a witness or victim at the main hearing cannot be ensured, their questioning may be conducted via video conference link.

Questioning of witness or victim in the manner specified in paragraph 1 of this Article may be conducted through international legal aid.

##### **Article 14 a**

In cases when the International Criminal Tribunal for the Former Yugoslavia in accordance with its Statute and Rules of Procedure and Evidence cedes a case to the Republic of Serbia, the Prosecutor shall undertake criminal prosecution based on the facts on which the indictment of the International Criminal Tribunal for the Former Yugoslavia was founded.

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

In the criminal proceedings conducted in the Republic of Serbia after the case has been ceded domestic law shall be applied.

The evidence collected and presented by the International Criminal Tribunal for the Former Yugoslavia may upon its transfer be used as evidence in the criminal proceedings before the local court, provided that it was collected and presented in a manner envisaged by the Statute and the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia. The existence or non-existence of the facts that this evidence seeks to prove the court shall judge in accordance with Article 18 of the Criminal Procedure Code.

The measures for the protection of witness or injured persons which were ordered when the case was ceded to a local court by the International Criminal Tribunal for the Former Yugoslavia shall remain in force.

A person residing abroad may not be arrested, detained or criminally prosecuted for a crime committed earlier while in the territory of the Republic of Serbia for the purposes of testifying in the capacity of an injured person, witness or expert witness in cases of the crimes set out in Article 2 hereof. The summons shall explicitly state that the injured person, witness or expert witness has the rights under this paragraph.

Representatives of the International Criminal Tribunal for the Former Yugoslavia shall have the right to attend all stages of criminal proceedings before a local court and to be informed of development of the proceedings.

## **Article 15**

The Court may rule, following a reasoned motion of an interested party, to protect personal information of the witness or victim.

## **Article 16**

Audio recording shall be made of all the proceedings at the main hearing, and written minutes kept to include all information on the beginning and conclusion of the hearing, parties present and evidence presented, as well as rulings of the court in managing the proceeding.

The audio record referred to paragraph 1 of this Article shall be transcribed within 72 hours and shall comprise an integral part of the written minutes. The audio recording and transcript are kept as written minutes.

## **IV**

### **SALARIES AND OTHER EMPLOYMENT RIGHTS**

## **Article 17**

Persons holding office and/or performing duties in the, War Crimes Prosecutor's Office

shall be entitled to a salary that may not be less than the salary of the District Public Prosecutor and/or employee engaged on respective tasks in the District Public Prosecution, nor shall it exceed the triple amount of salary of the District Public Prosecutor and/or employee engaged on respective tasks in the District public Prosecution

Persons holding office and/or performing duties in the War Crimes Panel, Special Department, the Service and Special Detention Unit are entitled to a salary that shall not exceed triple the amount of salary they would receive in their previous office or function..

The Government of the Republic of Serbia shall regulate the salaries of the person referred to in paragraph 1 and 2 of this Article.

### **Article 18**

A judge in the War Crimes Panel, War Crimes Prosecutor and his/her Deputy, shall be entitled to an accelerated pension scheme where 12 months spent at work in the War Crimes Counsel and War Crimes Prosecutor's Office are computed as 16 months of employment.

## **V**

### **MEANS FOR WORK**

### **Article 19**

The Ministry responsible for judiciary shall provide appropriate facilities and other technical conditions required for efficient and secure work of the War Crimes Prosecutor's Office, the War Crimes Panel, Special Department and the Special Detention Unit.

### **Article 20**

Funds for the work of the War Crimes Prosecutor's Office, the War Crimes Panel, Special Department, the Service and the Special Detention Unit shall be provided in the budget of the Republic of Serbia.

## **VI**

### **TRANSITIONAL AND FINAL PROVISIONS**

### **Article 21**

Criminal proceedings for the criminal offences referred to in Article 2 hereof where the indictment became effective prior to the day this Law came in force, shall be concluded before the courts which had subject- matter and territorial jurisdiction prior to coming into force of this Law.

### **Article 22**

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