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LAW ON THE TRANSFER OF CASES FROM THE ICTY TO THE PROSECUTOR'S OFFICE OF BIH AND THE USE OF EVIDENCE COLLECTED BY ICTY IN PROCEEDINGS BEFORE THE COURTS IN BOSNIA AND HERZEGOVINA

“Official Gazette of Bosnia and Herzegovina”, 61/04

[NOTE: The High Representative Decision, No. 16/06, Enacting the Law on Amendment to the Law on Transfer of Cases from the ICTY to the Prosecutor's Office Of Bosnia and Herzegovina and the use of Evidence Collected by ICTY in Proceedings Before the Courts in Bosnia and Herzegovina was published in the “Official Gazette of Bosnia and Herzegovina”, 46/06.](#)

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Article 1 Scope of application

- (1) The provisions set forth in this Law shall regulate the transfer of cases by the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY) to the Prosecutor's Office of BiH and the admissibility of evidence collected by the ICTY in proceedings before the courts in BiH.
- (2) In case the provisions set forth in this Law do not provide for special provisions for the matters referred to in paragraph 1 of this article, other relevant provisions of the BiH Criminal Procedure Code (hereinafter: BiH CPC), the criminal procedure codes of the Republika Srpska and the Federation of Bosnia and Herzegovina and the District of Brcko shall apply.

Article 2 Transfer of cases by ICTY

- (1) If the International Criminal Tribunal for the former Yugoslavia (ICTY) transfers a case with a confirmed indictment according to Rule 11 *bis* of the ICTY Rules of Procedure and Evidence (hereinafter: RoPE), the BiH Prosecutor shall initiate criminal prosecution according to the facts and charges laid out in the indictment of the ICTY. The BiH Prosecutor shall adapt the ICTY indictment in order to make it compliant with the BiH Criminal Procedure Code, following which the indictment shall be forwarded to the Court of BiH. The Court of BiH shall accept the indictment if it is ensured that the ICTY indictment has been adequately adapted and that the adapted indictment fulfils the formal requirements of the BiH CPC.
- (2) If the BiH Prosecutor adds charges or accused to the indictment, the Court of BiH shall confirm the indictment in accordance with the requirements of the BiH CPC, but only in relation to the additional charges or accused.
- (3) The deadlines for the submission of the preliminary objections prescribed in paragraph 4 of article 228 and paragraph 2 of article 233 of the BiH Criminal Procedure Code shall be 30 days.
- (4) The custody and detention of persons shall be regulated according to the BiH CPC. For the purpose of calculating the custody under the BiH CPC, the time that a person has spent in custody at the ICTY shall not be considered, but the time the person has spent in ICTY custody shall be considered for the calculation of the sentence pursuant to the provisions of the BiH Criminal Code.
- (5) If the Office of the Prosecutor of the ICTY transfers cases in which the indictment has not been confirmed by an ICTY Trial Chamber, the Prosecutor's Office of BiH shall undertake the criminal proceedings pursuant to the BiH CPC.

- (6) The ICTY shall be informed about any legally binding decision rendered in criminal proceedings.

Article 3
General Principle

- (1) Evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH.
- (2) The courts shall not base a conviction of a person solely or to a decisive extent on the prior statements of witnesses who did not give oral evidence at trial.

Article 4
Facts established by legally binding decisions by the ICTY

At the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.

Article 5
Evidence provided to ICTY by witnesses

- (1) Transcripts of testimony of witnesses given before the ICTY and records of depositions of witnesses made before the ICTY in accordance with Rule 71 of the ICTY RoPE, shall be admissible before the courts provided that that testimony or deposition is relevant to a fact in issue.
- (2) The courts may exclude evidence given by a witness with protective measures where its probative value is outweighed by its prejudicial value.
- (3) Nothing in this provision shall prejudice the defendant's right to request the attendance of witnesses as referred to in Paragraph 1 of this Article for the purpose of cross-examination. The decision on the request shall be made by the court.

Article 6
Statements by expert witnesses made before ICTY

- (1) The statement of an expert witness entered into evidence in any proceedings before a Trial Chamber of the ICTY shall be admissible as evidence in domestic criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.
- (2) The statement of an expert witness falling under paragraph 1 above, when admitted, shall be evidence of any fact or opinion of which the person making it could have given as oral evidence.
- (3) Pursuant to article 3 of this Law, the courts shall admit an expert witness' testimony by using the transcript of the testimony he/she gave before a Trial Chamber of the ICTY in any other

case, providing that he/she had been previously warned about his rights and obligations regarding his testimony, and providing the testimony relates to the existence or non-existence of facts which themselves relate to the case in question.

- (4) Nothing in this provision shall prejudice the defendant's right to request the attendance of an expert witness as referred to in Paragraph 1 of this Article for the purpose of cross-examination or to call an expert witness of his own to challenge the statement of an expert witness given before the ICTY. The decision on the request shall be made by the court.

Article 7 **Evidence provided to ICTY officials**

A transcript of the testimonies given during the investigation in terms of Article 273, paragraph 2 of the BiH CPC and the relevant provisions of the criminal procedure codes of the Republika Srpska, the Federation of BiH and the Brcko District can be read out. In addition, the relevant investigator of the ICTY may also be examined with regard to the circumstances of the conducted investigative activities and information obtained during those activities. The examination of the investigator is expressly subject to the Convention of Privileges and Immunities of the United Nations, which provides that UN staff are not subject to legal process unless the UN Secretary General has waived the immunity provided by the Convention.

Article 8 **Documents and Forensic Evidence collected by ICTY**

Original documents, certified copies and forensic evidence collected by the ICTY shall be used by the courts and shall be treated as if they were obtained by national authorities.

Article 9 **Agreement with ICTY**

The BiH Council of Ministers may conclude a separate agreement with the ICTY concerning certain technical assistance relevant to the transfer of cases by the ICTY to domestic authorities.

Article 10 **Entering into force**

This Law shall enter into force on the eighth day after its publication in the Official Gazette of Bosnia and Herzegovina.