

Liechtenstein Law Gazette

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Law of 20 October 2004 on Cooperation with the International Criminal Court and other International Tribunals

The following decision by the Parliament meets with my approval:

I. General Provisions

Article 1

Terms and references

(1) For the purposes of this law:

(a) "International Criminal Court" refers to the International Criminal Court established by the Rome Statute of the International Criminal Court of 17 July 1998 (hereafter the "Rome Statute") including its Chambers and the Office of the Prosecutor, the members of these Chambers and of the Office of the Prosecutor, the Presidency and the Registry.

(b) "International Tribunal" refers to either:

1. the International Tribunal for the former Yugoslavia established by Resolution 827 (1993) of the Security Council of the United Nations of 25 May 1993; or

2. the International Tribunal for Rwanda established by Resolution 955 (1994) of the Security Council of the United Nations of 8 November 1994,

including their Chambers and Office of the Prosecutor as constituted in accordance with their respective Statutes, and the members of these Chambers and of the Office of the Prosecutor.

(2) The terms used in this law to refer to persons, functions and occupations are to be understood as relating to members of either gender.

Article 2

General principle

(1) The Liechtenstein authorities, in particular the courts, the public prosecutor, custodial authorities and security authorities have an obligation to cooperate fully with the International Criminal Court and the International Tribunals.

(2) The obligation in paragraph 1 above shall consist in particular:

(a) pursuant to this law and in accordance with the Rome Statute and the Rules of Procedure and Evidence of the International Criminal Court, in granting the Court access to information and documents concerning suspected crimes falling within its jurisdiction, providing it with judicial assistance, surrendering accused persons, accepting sentenced persons for enforcement of sentences, and enforcing fines and forfeitures;

(b) pursuant to this law and in accordance with the Resolutions of the Security Council of the United Nations and the Statute and Rules of Procedure and Evidence of the respective Tribunals, in granting the Tribunals access to information and

documents concerning suspected crimes falling within their jurisdiction, providing them with judicial assistance, surrendering accused persons, accepting sentenced persons for the enforcement of sentences, and enforcing fines and forfeitures;

(3) Unless stipulated otherwise in this law, the law on judicial assistance and the 1975 Code of Criminal Procedure shall apply.

Article 3

Competence of the International Criminal Court and International Tribunals

(1) The International Criminal Court, pursuant to the provisions of the Rome Statute relative to the exercise of its jurisdiction, is competent for the prosecution and punishment of persons responsible for crimes within the meaning of articles 5(1) (a) to (c), 6 to 8, and 25 of the Rome Statute (genocide, crimes against humanity and war crimes) committed after the entry into force of the Statute (articles 10 to 13 of the Statute).

(2) The International Tribunal in Article 1(1)(b)(1) above is competent for the prosecution and punishment of persons responsible for serious violations of international humanitarian law committed since 1 January 1991 in the territory of the former Socialist Federative Republic of Yugoslavia, including its airspace and territorial waters.

(3) The International Tribunal in Article 1(1)(b)(2) above is competent for the prosecution and punishment of persons responsible for genocide or other serious violations of international humanitarian law committed in the territory of Rwanda, including its airspace, and for the prosecution and punishment of Rwandan nationals responsible for committing such acts or violations in the territory of neighbouring States of Rwanda. It has jurisdiction for acts committed between 1 January 1994 and 31 December 1994.

(4) The serious violations against international humanitarian law to be prosecuted by the International Tribunal in Article 1(1)(b)(1) include grave breaches of the Geneva Convention of 12 August 1949 as referred to in articles 2 to 5 of the Statute of the said Tribunal, violations of the laws or customs of war, genocide and crimes against humanity.

(5) The serious violations of international humanitarian law to be prosecuted by the International Tribunal in Article 1(1)(b)(2) include crimes against humanity as referred to in articles 3 and 4 of the Statute of the said Tribunal, and breaches of Article 3 of the Geneva Convention of 12 August 1949 on the protection of civilians in armed conflicts, in the version of Additional Protocol II of 8 June 1977.

Article 4

Liechtenstein jurisdiction

(1) The competence of the International Criminal Court or of an International Tribunal does not preclude the competence of Liechtenstein courts.

(2) There is no Liechtenstein jurisdiction however in respect of crimes for which a person has been sentenced or found not guilty by the International Criminal Court or an International Tribunal in an enforceable judgement.

Article 5

Challenge of admissibility of proceedings before the International Criminal Court; deferral of proceedings to the International Criminal Court or an International Tribunal

(1) Should the International Criminal Court assert its jurisdiction in respect of a case, the Ministry of Justice may claim Liechtenstein jurisdiction within the meaning of Article 18 of the Rome Statute or challenge the admissibility of proceedings or the jurisdiction of the Court under Article 19 of the Rome Statute.

(2) Admissibility shall be challenged where:

(a) the person has been sentenced for or found not guilty of an act by a Liechtenstein court in an enforceable judgement in respect of the act;

(b) criminal proceedings are underway before the Liechtenstein public prosecutor or a Liechtenstein court either on account of an act committed in Liechtenstein or by a Liechtenstein national or of a request from the International Criminal Court for arrest and surrender or for the provision of judicial assistance, except where priority should be given to the pursuit of criminal proceedings by the International Criminal Court in consideration of particular circumstances, especially in order to establish the truth or the relation to other crimes giving rise to proceedings before the Court; or

(c) proceedings were already underway before the public prosecutor or a court in Liechtenstein on account of the act and were suspended on other than strictly procedural grounds.

(3) In order to enable challenges of jurisdiction, the public prosecutor shall notify the Ministry of Justice of any ongoing cases involving crimes within the jurisdiction of the International Criminal Court.

(4) A decision by the International Criminal Court on the admissibility of a case may be challenged within five days by the Ministry of Justice by application lodged with the Court.

(5) Where the admissibility of a case before the International Criminal Court or the Court's jurisdiction over it goes unchallenged, if the International Criminal Court definitively confirms that it has jurisdiction, or if an International Tribunal has made a formal request for the deferral of criminal proceedings for crimes within its jurisdiction, the princely court shall take all measures required to secure the person and evidence and shall temporarily suspend proceedings and provide the Ministry of Justice with a full photocopy of the case file for its transmission to the International Criminal Court or International Tribunal. When evidence is enclosed and there is no need to return it, this should be indicated.

(6) The Liechtenstein criminal proceedings shall be closed following a definitive decision by the International Criminal Court or International Tribunal. The case may be reopened however subsequent to an application by the public prosecutor following a court ruling, if:

(a) the Prosecutor of the International Criminal Court or International Tribunal decides not to proceed with an indictment or drops the charges;

(b) upon review, the International Criminal Court or International Tribunal rejects the indictment;

(c) the International Criminal Court determines it does not have jurisdiction or that the case is inadmissible, or the International Tribunal determines it does not have jurisdiction.

Article 6

Referral of a situation to the International Criminal Court

(1) The Government shall decide on any referral to the International Criminal Court of a situation within the meaning of Article 14 of the Rome Statute.

(2) There shall be no referral of any situation in the cases referred to in Article 5(2) above.

Article 7

Surrender of Liechtenstein nationals

Nothing precludes the surrender of Liechtenstein nationals to the International Criminal Court or an International Tribunal or their transit or transport or surrender to another State for the enforcement of a sentence passed by the International Criminal Court or an International Tribunal.

Article 8

Communications with the International Criminal Court and International Tribunals

(1) As a rule, communications with the International Criminal Court or International Tribunals shall take place via the Ministry of Foreign Affairs. Documents relating to the execution of requests shall also be conveyed to the Court or Tribunal via the Ministry of Foreign Affairs in cases where such requests reach the Liechtenstein judicial or administrative authorities through other channels.

(2) Courts and the public prosecutor shall address information and any documents relating to the execution of requests to the Ministry of Justice for onward transmission.

(3) In urgent cases, and in the context of judicial assistance in criminal matters, the Liechtenstein authorities may communicate directly with the International Criminal Court or International Tribunal or via the International Criminal Police Organisation (INTERPOL). Further, in urgent cases, any means of communication may be used which will allow the production of a written record such that the authenticity of the request may be verified. Requests thus transmitted require confirmation via the channel provided for in paragraph 1 above.

(4) Requests from the International Criminal Court or an International Tribunal shall be in writing. Written requests from the International Criminal Court and the supporting material shall be submitted in German or accompanied by a certified translation into German. Requests and supporting material from an International Tribunal shall be accompanied by translations into English or French. Executions of requests from the International Criminal Court and photocopies for the purpose of deferral of a case to it do not require translation.

Article 9

Privileges and Immunities

(1) The judges, the Prosecutor and the Registrar of the International Tribunals shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

(2) The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under Articles V and VII of the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations.

Article 10

Obligation to consult and rejection of requests from the International Criminal Court

(1) Matters arising shall be resolved through consultations with the International Criminal Court, in particular where the execution of a request from the International Criminal Court would:

- (a) run counter to a fundamental legal principle (article 93(3) of the Rome Statute);
- (b) prejudice national security (articles 72 and 93(4) of the Rome Statute);

- (c) violate the State immunity or diplomatic immunity of a person or property of another State (article 98(1) of the Rome Statute);
 - (d) conflict with international obligations whereby the consent of a sending State is required to surrender a person of that State to the Court (article 98(2) of the Rome Statute).
- (2) During the consultations, consideration shall be given to executing the request in other ways or under specific conditions.
- (3) If a matter cannot be resolved through consultations, the International Criminal Court shall be requested to amend its request. If such an amendment by the International Criminal Court cannot be considered, the request shall be rejected.
- (4) Any such refusal shall be decided on by the Government. The International Criminal Court shall be informed of any refusal of a request and the grounds.

Article 11

Costs

- (1) The costs of executing requests made by the International Criminal Court shall be borne by the Principality of Liechtenstein, with the exception of the following:
- (a) costs arising in connection with the surrender of persons in custody for the purposes of obtaining testimony under Article 93 of the Rome Statute;
 - (b) the cost of translation, interpretation and transcription;
 - (c) the cost of expert opinions or reports requested by the Court;
 - (d) costs associated with the transport of a person being surrendered to the Court;
 - (e) following consultations, extraordinary costs that may result from the execution of a request.
- (2) The Ministry of Justice may forgo claiming the costs in paragraph 1 above from the International Criminal Court where these are incidental or there are other valid grounds for so doing.
- (3) Paragraph 1 above shall apply to requests under Article 22 below on the understanding that the costs, without prejudice to the cases in paragraph 1(a) to (e) above, are to be borne by the International Criminal Court.
- (4) As a rule, requests made by an International Tribunal shall be executed free of charge.

Article 12

Confidentiality

Requests from the International Criminal Court or an International Tribunal and all documents supporting them shall be handled confidentially insofar as their execution does not require their disclosure.

Article 13

Free passage

- (1) Persons summoned by the International Criminal Court or an International Tribunal from a foreign country to appear before the Court or Tribunal or persons whose presence is required at the seat of the International Criminal Court or International Tribunal shall for such purposes have a right of free passage through Liechtenstein, where they may not be prosecuted or punished or detained on account of any act engaged in prior to their entry.
- (2) Prosecution, punishment or detention on account of an act engaged in prior to entry is admissible if the person summoned overstays the time required for transit through Liechtenstein and could actually have left the territory.

(3) No safe passage shall be granted where the International Criminal Court or International Tribunal requests the arrest of the person summoned (Articles 25, 27 and 28 below).

II. Specific provisions

A. Investigations and proceedings by the International Criminal Court or an International Tribunal in Liechtenstein

Article 14

Investigations and proceedings

(1) The International Criminal Court or International Tribunal shall be authorised to question witnesses and accused persons independently in Liechtenstein and to inspect public places, without making any changes to them, and to collect further related evidence as long as the Ministry of Justice is given prior notice thereof and is informed of the time and purpose of the investigations and that they do not involve recourse to or the threat of recourse to coercive measures. In such cases, the members and investigators of the International Criminal Court or International Tribunal shall not require any special authorisation to carry out their work in Liechtenstein.

(2) The International Criminal Court or International Tribunal shall be authorised to hold trials, unless the Ministry of Justice refuses such a request owing to grave security concerns in respect of the Principality of Liechtenstein or of the Court or Tribunal.

(3) The Liechtenstein authorities shall support the members and investigators of the International Criminal Court or International Tribunal in their independent activities in Liechtenstein. In so doing, they may have recourse to coercive measures only where there is a written request for judicial assistance and such assistance has been ordered by a Liechtenstein court. The admissibility and enforcement of such coercive measures shall comply with Liechtenstein law.

B. Judicial assistance; procedural provisions

Article 15

Procedural provisions for the execution of requests for judicial assistance

(1) Judicial assistance shall be provided to the International Criminal Court or International Tribunal in accordance with the legislation in force governing judicial assistance in criminal matters.

(2) Requests from the International Criminal Court or International Tribunal for compliance with certain formal provisions shall be executed when these are compatible with the principles of Liechtenstein criminal procedure. Audio and video recording and transmission of the assistance process shall be permitted whenever sought by the International Criminal Court or International Tribunal.

(3) Members and investigators of the International Criminal Court or International Tribunal and others involved in the proceedings and their legal representatives may be authorised, at the request of the Court or Tribunal, to be present at and participate in the assistance process. To this end they shall be informed of the time and place of the execution of assistance activities.

(4) A request from the International Criminal Court or International Tribunal for criminal police investigations or information may also be executed without any referral to national courts via the Ministry of Justice pursuant to Liechtenstein law.

Article 16

Postponement of the execution of requests for assistance from the International Criminal Court

(1) The execution of a request for judicial assistance from the International Criminal Court may be postponed :

(a) until there is a decision concerning a challenge of admissibility under articles 17 to 19 of the Rome Statute, unless the International Criminal Court has ordered expressly that the Prosecutor may pursue the collection of evidence pursuant to article 18 or 19 of the Rome Statute;

(b) for a time period agreed upon with the International Criminal Court if the immediate execution of the request would interfere with ongoing investigations or proceedings in a case other than the one the request relates to.

(2) Any such postponement shall be decided upon by the Ministry of Justice.

(3) Prior to any decision of postponement pursuant to paragraph 1(b) above, it shall be ascertained whether the requested assistance could be provided immediately under certain conditions. A request from the International Criminal Court for measures to secure evidence shall still have to be executed in the event of a postponement.

Article 17

Summonses

(1) The International Criminal Court or International Tribunal shall be authorised to serve directly by post summonses and other documents on persons who are in Liechtenstein. This shall not preclude service via the Ministry of Justice.

(2) The person summoned is not obliged to acquiesce to the summons. At the request of the person summoned, of the accused or of their counsel, the Ministry of Justice shall obtain from the International Criminal Court or International Tribunal the assurance that the person shall not be subject to prosecution, arrest or detention on account of an act engaged in prior to the person's exit from the Principality of Liechtenstein.

(3) At the request of the International Criminal Court or International Tribunal, the Liechtenstein court shall transfer an appropriate advance for travel costs to witnesses and experts summoned by the Court or Tribunal who apply for it. Should the witness or expert fail to attend the trial at the Court or Tribunal or otherwise fail to fulfil the obligations arising from the summons, such an advance shall be recovered.

Article 18

Questioning of suspects pursuant to requests from the International Criminal Court

(1) Persons questioned pursuant to a request from the International Criminal Court on suspicion of having committed a crime within its jurisdiction shall, prior thereto, be informed of the crime they are suspected of and of their right to:

(a) remain silent without having to fear that such silence will be taken into consideration in the determination of their guilt or innocence;

(b) be represented by the counsel of their choice, and, where they have no counsel, to be assigned counsel pursuant to paragraph 26(2) of the Code of Criminal Procedure;

(c) be questioned in the presence of counsel, unless they waive this right expressly and voluntarily.

(2) Such reference to their rights and the corresponding statement by the persons to be questioned shall be noted in the record. Where the conditions of paragraph 26(2) are fulfilled and the person demands to be questioned in the presence of counsel, the suspect shall be assigned counsel even without applying for one, and shall not have to bear counsel's costs.

Article 19

Surrender of prisoners to the International Criminal Court for the purposes of evidence

(1) A person in custody, whether pending trial or serving a sentence, pursuant to the decision of a Liechtenstein court, shall at the request of the International Criminal Court be surrendered thereto for the purposes of identification, questioning or comparison or other investigative processes according to conditions to be agreed upon, if the person consents to the surrender.

(2) Should the person to be surrendered be in custody on the basis of a request from the International Criminal Court for the enforcement of a sentence pursuant to Article 35(1) below, his or her consent to the surrender is not required.

(3) The surrender shall not suspend the time spent in custody, whether pending trial or serving a sentence.

Article 20

Disclosure and transmission of photocopies and information

(1) At the request of the International Criminal Court or an International Tribunal, judicial assistance shall be provided through the transmission of objects, documents or photocopies or by granting access to records.

(2) Should the documents relate to national security, the International Criminal Court shall be consulted to ascertain whether the information could be provided by another source or in another form.

(3) Should the matter not be settled through the consultations in paragraph 2 above, the Government, prior to granting access to records or the transmission of photocopies, shall check whether the interests of confidentiality significantly outweigh the interests of providing evidence for an international prosecution. Should that be the case, the International Criminal Court shall be asked to ensure the maintenance of confidentiality and for details as to how it will be maintained. This manner of proceeding shall be followed *mutatis mutandis* for International Tribunals, when documents are subject to particular confidentiality restrictions or relate to national security.

(4) The Government shall check whether the assurance given as to maintaining confidentiality is to be deemed sufficient. Access to records or the transmission of photocopies is to be refused where confidentiality cannot be ensured and if there are concerns that disclosure could prejudice national security.

(5) Paragraphs 2 to 4 above shall also apply where a person who has been called upon to provide information or evidence refuses to do so on the grounds that disclosure would prejudice national security.

(6) Prior to being questioned on the basis of a request for judicial assistance from the International Criminal Court, a person shall be informed of his or her right to refuse to answer in order to prevent the disclosure of confidential information relating to national security. This shall be noted in the record. The admissibility of the request for judicial assistance in such cases shall be decided upon in the light of paragraphs 2 to 4 above.

Article 21

Transmission of photocopies or information from third parties to the International Criminal Court

Should the International Criminal Court seek judicial assistance such as the transmission of photocopies of documents or information which were given to Liechtenstein by another State or by an intergovernmental or international organisation subject to their confidentiality, such documents may only be transmitted to the International Criminal Court with their consent. The Court shall be informed of any refusal thereof.

Article 22

Judicial assistance from the International Criminal Court

(1) Should criminal proceedings arise before a Liechtenstein court on account of an act constituting a crime within the jurisdiction of the International Criminal Court or any other serious crime under Liechtenstein law, the Court may be asked for judicial assistance.

(2) Requests shall be in writing. Written requests and supporting material shall be in English or French or be accompanied by a certified translation in English or French.

(3) Courts and the public prosecutor shall submit requests addressed to the International Criminal Court to the Ministry of Justice for onward transmission.

C. Search

Article 23

(1) Should the International Criminal Court or an International Tribunal request a search for arrest or should the Liechtenstein authorities learn otherwise of an order for arrest from the Court or Tribunal, the princely court shall seek the arrest of the person for the purpose of surrender to the International Criminal Court or International Tribunal if the request or order for arrest contains the necessary details about the person sought and the alleged offence. Referral to the court competent pursuant to Article 27(1) of the law on judicial assistance is not required if the person sought is not a Liechtenstein national or if there is no reason to believe that the person is in Liechtenstein.

(2) Should a person sought by the International Criminal Court or International Tribunal be searched for or arrested in Liechtenstein, the Ministry of Justice shall inform the Court or Tribunal thereof through the International Criminal Police Organisation (INTERPOL).

D. Custody pending surrender, surrender and transit

Article 24

Offer of surrender

(1) Provided there are sufficient grounds to suspect a person thought to be in Liechtenstein of a crime within the jurisdiction of the International Criminal Court or an International Tribunal, the public prosecutor, after the person has been questioned by the judge of the princely court, shall apply to the latter for a report outlining the facts of the case to be submitted to the Ministry of Justice.

(2) The Ministry of Justice shall enquire whether the International Criminal Court or International Tribunal requires the proceedings to be transferred and the person to be surrendered. If the accused person is in custody, an appropriate deadline will be set for receipt of the request for surrender. Should the latter not arrive in time, the princely court should be informed promptly thereof.

(3) The above is without prejudice to the provisions concerning the offer of surrender to the State in which the crime was committed pursuant to paragraph 28(a) of the law on judicial assistance.

Article 25

Provisional custody pending surrender

(1) In the event of a request from the International Criminal Court or an International Tribunal for provisional arrest, on application by the public prosecutor, the judge of the princely court shall order the arrest of the person sought and order provisional custody pending surrender if, on the basis of the facts of the case as reported by the International Criminal Court or International Tribunal, there are sufficient grounds to believe that the person to be found in Liechtenstein committed a crime within the jurisdiction of the International Criminal Court or International Tribunal which would warrant pre-trial custody (paragraph 131 of the Code of Criminal Procedure) had the crime been committed in Liechtenstein.

(2) Provisional custody pending surrender may not be ordered or continued when the purposes of custody can be achieved through concurrent imprisonment, pre-trial custody or custody pending extradition. In such a case the Judge of the princely court shall order the amendments to the custodial order which, for the purposes of provisional custody pending surrender, are essential to the International Criminal Court or International Tribunal. In other respects, provisional custody pending surrender shall be subject to the provisions of the Code of Criminal Procedure governing pre-trial custody.

(3) Provisional custody pending surrender may be suspended if the request for surrender and the supporting material are not transmitted within 60 days of the arrest. Release does not preclude renewed arrest and surrender should the request for surrender and the supporting material be transmitted at a later time.

(4) The princely court shall promptly transmit to the Ministry of Justice copies of the orders for the imposition, extension or suspension of provisional custody pending surrender for the purpose of informing the International Criminal Court or International Tribunal through the International Criminal Police Organisation (INTERPOL).

Article 26

Simplified surrender to the International Criminal Court

(1) Should a person being held in provisional custody pending surrender on the basis of a request from the International Criminal Court pursuant to Article 25(1) above agree to surrender to the International Criminal Court before the end of the time period in Article 25(3), the princely court shall order the person's surrender, without prejudice to a challenge of admissibility pursuant to Article 5(2) above. In such a case the person shall be surrendered to the International Criminal Court as soon as possible.

(2) The judge of the princely court shall inform the person that his or her consent cannot be revoked. The judge's instruction shall be noted in the record.

(3) In the event of simplified surrender there is no need for the International Criminal Court to send a request for surrender and supporting material.

Custody pending surrender and orders for surrender
Article 27

(a) at the request of the International Criminal Court

(1) In the event of a request for the arrest and surrender of an accused person from the International Criminal Court, on application by the public prosecutor, the judge of the princely court shall initiate the surrender procedure and order the arrest of the accused person, his or her custody pending surrender and, in accordance with the following paragraphs, his or her surrender to the International Criminal Court. The judge of the princely court shall not have competence to consider the allegations giving rise to the arrest warrant or the grounds therefor.

(2) Should there be significant doubts as to the identity of the person arrested, the judge of the princely court shall order appropriate investigations or ask the International Criminal Court to submit additional information. In any event, the judge of the princely court shall inform the accused person of the grounds of the warrant of arrest issued against him or her by the International Criminal Court and about his or her rights to challenge the surrender on account of a violation of the principle of “ne bis in idem” in article 20 of the Rome Statute or of a lack of jurisdiction on the part of the International Criminal Court pursuant to articles 17 to 19 of the Rome Statute. In addition, the person shall be informed of his or her right, pending a surrender order, to apply for interim release. The accused person shall be provided with copies (photocopies) of the arrest warrant or of the relevant allegations and provisions of the Rome Statute together with the translations of them provided by the International Criminal Court.

(3) Should the accused person wish to challenge the surrender on account of a violation of article 20 of the Rome Statute or a lack of jurisdiction on the part of the International Criminal Court, the International Criminal Court shall be informed thereof and be provided with the requisite documents. Concurrently the Court shall be notified of whether the challenge has a suspensive effect.

(4) The decision on surrender shall be deferred only in the event of a challenge of admissibility pursuant to Article 5(2) above until the decision by the International Criminal Court. In the event of a challenge of jurisdiction pursuant to articles 17 to 19 of the Rome Statute by a third country, the procedure in Article 30 below shall apply.

(5) Until surrender is ordered the accused person has the right to apply for interim release. When deciding on such an application it shall be ascertained whether there are urgent and exceptional circumstances which justify interim release and whether the purpose of detention may be achieved by more lenient means (paragraph 131(5) of the Code of Criminal Procedure) regardless of the gravity of the alleged crimes. Such an application shall have no suspensive effect.

(6) An application pursuant to paragraph 5 shall be notified to the International Criminal Court, indicating that it has the right to submit a recommendation within seven days. The recommendation shall be taken into consideration in the decision on the application for release.

(7) Should the International Criminal Court in its recommendation or the public prosecutor plead against the release of the accused person, the President of the Court of Appeal shall promptly decide on the application in a custody hearing.

(8) A decision dismissing the application for interim release by the accused person may be appealed against by the latter within three days before the Court of Appeal. Such an appeal shall have no suspensive effect.

(9) Orders into custody pending surrender and orders for surrender may be appealed against solely pursuant to Article 15 of the Law on the Constitutional Court. The order initiating the surrender process is not open to appeal.

Article 28

(b) at the request of an International Tribunal

(1) In the event of a warrant of arrest from the International Tribunal on the basis of an existing indictment or a request from the Tribunal for the arrest and surrender of the accused person, on application by the public prosecutor, the judge of the princely court shall initiate the surrender procedure and, where the person sought is not yet in custody, order his or her arrest, custody pending surrender, and surrender. In other respects, among the provisions of the Code of Criminal Procedure relating to pre-trial custody, paragraphs 128, 129(2), 130, 131(8), and 133 to 137 shall apply mutatis mutandis to custody pending surrender.

(2) Prior to any decision, the judge of the princely court must promptly inform the person arrested of the indictment before the International Tribunal or of the charges against him or her. Should there be significant doubts as to the identity of the person arrested, appropriate investigations shall be ordered or the International Tribunal shall be asked to submit additional information.

(3) Orders into custody pending surrender and surrender orders may be appealed against solely pursuant to Article 15 of the Law on the Constitutional Court. A court decision rejecting the initiation of a surrender procedure, the imposition of custody pending surrender or surrender may be appealed against by the public prosecutor, who has three days to lodge an appeal before the Court of Appeal.

(4) The person arrested shall be transferred to the International Tribunal within 14 days of the order into custody pending surrender. Domestic criminal or extradition proceedings shall not impede the transfer. The International Tribunal shall not be required to submit original surrender documents.

(5) The judge of the princely court shall suspend custody pending surrender without delay and repeal the surrender order if:

- (a) the International Tribunal so requests or otherwise withdraws its request;
- (b) it is ascertained that the person arrested in all likelihood is not the person sought;
- (c) the person arrested has not been transferred to the International Tribunal within the 14-day time-limit from the order into custody pending surrender.

Article 29

Transfer to the International Criminal Court or International Tribunal

(1) Once the order for surrender to the International Criminal Court or International Tribunal is enforceable, the judge of the princely court shall instruct the national police to promptly transfer the person to be surrendered to the International Criminal Court or International Tribunal. Unless there are serious security concerns or the Court or Tribunal seeks another form of delivery, the person to be surrendered shall be conveyed by air under the escort of Liechtenstein officials.

(2) The time of surrender shall be agreed with the International Criminal Court. Should circumstances prevent the transfer of the person to be surrendered, a new time will be agreed for the surrender.

(3) The time of surrender to the International Tribunal shall be notified to it and to the Netherlands authorities in due time by the national police, and include a reference to the time-limit on custody pursuant to Article 28(4) above.

(4) The judge of the princely court shall submit a copy of the order for surrender to the Ministry of Justice for onward transmission to the International Criminal Court or International Tribunal and also inform it of the time of the transfer to the latter.

Article 30

Provisional transfer to the International Criminal Court and repeal of the order for surrender

(1) In the event of criminal proceedings against the accused person in Liechtenstein or if the latter is serving a sentence in Liechtenstein for matters other than those for which surrender to the International Criminal Court was ordered, the person may be transferred provisionally to the International Criminal Court under conditions to be agreed on with it.

(2) The judge of the princely court shall promptly suspend custody pending surrender and repeal the order for surrender if:

- (1) the International Criminal Court so requests or otherwise revokes its request for surrender;
- (2) it is ascertained that in all likelihood the person arrested is not the person sought;
or
- (3) the International Criminal Court determines its lack of jurisdiction or the inadmissibility of the proceedings before it.

Article 31

Competing requests from the International Criminal Court and a State

(1) Should the Principality of Liechtenstein receive a request for surrender from the International Criminal Court and a request for extradition from another State in respect of the same person, the Ministry of Justice shall decide which request is given priority pursuant to article 90 of the Rome Statute.

(2) Should the Ministry of Justice give priority to a request for extradition from another State over a request for surrender from the International Criminal Court and the request for extradition is subsequently rejected or withdrawn, the International Criminal Court shall be notified of this without delay.

Article 32

Speciality of surrender to the International Criminal Court

(1) A person surrendered to the International Criminal Court pursuant to this law may not be prosecuted, taken into custody or sentenced for any act committed prior to transfer other than that for which he or she is being surrendered.

(2) At the request of the International Criminal Court the person may be released from the restrictions in paragraph 1. Prior to a decision in respect of such a request, the International Criminal Court may be requested to transmit a record regarding the statements of the person surrendered and additional information.

(3) The decision on such a request shall be taken by the Ministry of Justice. Release from the said restrictions shall be granted if the offence in respect of which the request is made falls within the jurisdiction of the International Criminal Court and there are no grounds for challenging the admissibility of proceedings before the International Criminal Court pursuant to Article 5(2) above.

Article 33

Transit and transport

- (1) At the request of the International Criminal Court, persons may be transported through Liechtenstein and held in custody to secure such transit.
- (2) There is no need to apply for authorisation where the person is conveyed by air and no landing is scheduled on Liechtenstein territory.
- (3) In the event of an unscheduled landing, the person in transit shall be arrested and the International Criminal Court shall be requested to transmit a request for transit together with the documents referred to in article 89(3)(b) of the Rome Statute.
- (4) The person in transit shall be released if the request for transit has not been received within 96 hours. Such release shall not preclude a renewed arrest on the basis of a request pursuant to Article 25(1) or 27(1) above.
- (5) The decision on transit shall be taken by the Ministry of Justice. Such transit shall be approved unless it would impede or delay surrender. A domestic conviction for a criminal offence not within the jurisdiction of the International Criminal Court shall not prevent transit. The authorisation of transit is not open to appeal.
- (6) Paragraphs 1, 2, 3 and 5 shall apply at the request of the International Criminal Court or of a State that has agreed to enforce a sentence passed by the Court for the transit of persons through the territory of the Principality of Liechtenstein on the understanding that the International Criminal Court will be requested to transmit a request for transit together with a copy of the enforceable judgement in the event of an unscheduled landing.
- (7) Requests for transit from an International Tribunal or a State which has agreed to enforce a sentence passed by the Tribunal, shall be subject mutatis mutandis to paragraph 1 and to the first and fourth sentences of paragraph 5 above.

E. Enforcement of sentences of imprisonment in Liechtenstein

Article 34

General provisions

- (1) The Principality of Liechtenstein may agree to enforce a sentence of imprisonment passed by the International Criminal Court or an International Tribunal, if the sentenced person:
 - (a) is a Liechtenstein national; or
 - (b) usually resides in Liechtenstein.
- (2) The sentences of imprisonment passed by the International Criminal Court or International Tribunal shall be enforced directly. Sentences passed by the Court or a Tribunal may not be modified. In the light of instructions from the Court or Tribunal, enforcement shall be subject to the relevant provisions of Liechtenstein law on the understanding that the conditions of detention correspond to those of persons convicted of similar crimes in Liechtenstein.
- (3) The enforcement of sentences of imprisonment passed by the International Criminal Court shall be subject to the supervision of the Court. At the request of the International Criminal Court or International Tribunal, its members shall be granted access to prisons.
- (4) Should a person serving a sentence of imprisonment passed by the International Criminal Court in Liechtenstein be eligible under Liechtenstein law for more lenient treatment involving unguarded work outside the prison, the International Criminal Court shall be informed thereof before such work is allowed. Its opinion shall be taken into consideration in the decision.

(5) Sentenced persons within the meaning of this section are to be granted unimpeded and confidential written communication with the International Criminal Court or International Tribunal.

Article 35

Procedure for acceptance of enforcement of sentence

(1) Should the International Criminal Court or International Tribunal decide that a convicted person shall serve his or her sentence of imprisonment in Liechtenstein and seek transfer of the convicted person for the enforcement of his or her sentence, the sentence of imprisonment is to be served in Liechtenstein once the request has been accepted by the Ministry of Justice.

(2) The Ministry of Justice may only refuse to accept a person as referred to in paragraph 1 above for the enforcement of a sentence of imprisonment if it would give rise to unacceptable consequences for the security and public order of the Principality of Liechtenstein. The decision of the Ministry of Justice is not open to appeal.

(3) The decision by the Ministry of Justice shall be transmitted to the International Criminal Court or International Tribunal with a request to suggest a time and place for the transfer of the sentenced person to the Liechtenstein authorities. The Liechtenstein authorities involved in the transfer of convicted persons shall seek to comply with the wishes of the organs of the International Criminal Court or International Tribunal and of foreign authorities.

(4) Should the sentenced person escape from prison before the expiry of the sentence, the princely court (Article 38 of the law on enforcement of sentences) shall issue a warrant of arrest and initiate a search. Should the person sought subsequently be arrested abroad, the princely court shall, even without an application from the public prosecutor, seek extradition custody pursuant to Article 69 of the law on judicial assistance and transmit the documents required under Article 68 of the said law to the Ministry of Justice. The Ministry of Justice shall seek extradition if the requested State does not approve surrender without an extradition procedure, and the International Criminal Court or International Tribunal has not decided otherwise.

(5) The time spent in custody in the requested State or at the International Criminal Court or International Tribunal shall be deducted from the sentence to be served.

(6) Should persons who have escaped while serving a sentence passed by the International Criminal Court or International Tribunal be arrested in Liechtenstein, they shall be surrendered to the State ensuring the enforcement of their sentence according to the provisions which apply for the surrender of persons to the International Criminal Court or International Tribunal.

Article 36

Speciality of enforcement

(1) A convicted person transferred to Liechtenstein for the enforcement of a sentence passed by the International Criminal Court or International Tribunal may not be prosecuted, punished, detained or extradited to a third country on account of an act engaged in prior to the said transfer, which was not part of the judgement of the International Criminal Court or International Tribunal, without the consent of the Court or Tribunal.

(2) The speciality of enforcement shall not preclude such a measure if:

(a) following release from a sentence of imprisonment passed by the International Criminal Court, the person did not leave the territory of the Principality of Liechtenstein within 30 days, or following release from a sentence of imprisonment

passed by an International Tribunal within 45 days, even though he or she was able and free to do so;

(b) the person leaves the territory of the Principality of Liechtenstein, by whatever means, and returns voluntarily or is returned legally from a third country; or

(c) the International Criminal Court or International Tribunal forgoes applying the rule of speciality.

Article 37

Reports about enforcement

At least once a year, and on completion of the sentence, the prison at which the convicted person is serving the sentence of imprisonment passed by the International Criminal Court or International Tribunal shall submit a conduct and health report to the Ministry of Justice. The Ministry of Justice is to be notified at once if the convicted person escapes before the expiry of the sentence or if enforcement is no longer possible for other reasons. The International Criminal Court or International Tribunal shall promptly be acquainted with such reports.

Article 38

Conditional release and pardon

(1) Decisions regarding conditional release, pardon or a reduction of sentence in respect of a person sentenced by the International Criminal Court shall be taken by the International Criminal Court; decisions regarding conditional release, pardon or a modification of sentence in respect of a person sentenced by an International Tribunal shall be taken by the President of the International Tribunal.

(2) Should the convicted person make an application for conditional release, pardon or a reduction of sentence, it shall be submitted to the Ministry of Justice for onward transmission to the International Criminal Court. The same shall apply mutatis mutandis for the onward transmission of applications for conditional release, pardon or a modification of sentence to the International Tribunal on the understanding that the Ministry of Justice shall accompany them with an indication of the time requirements under paragraph 46 of the Criminal Code.

(3) The International Criminal Court or International Tribunal should be informed ex officio of any circumstances which are favourable for conditional release, pardon or a reduction or modification of sentence.

Article 39

Transfer of enforcement of sentences to another State

(1) At the request of another State, a sentence accepted for enforcement may be transferred to it, with the consent of the International Tribunal.

(2) Any request from the International Criminal Court or International Tribunal for the surrender of a sentenced person to another State for the continuation of the enforcement of a sentence shall be promptly complied with.

(3) Should a sentenced person ask to serve his or her sentence of imprisonment in another State, the request should be forwarded to the International Criminal Court or International Tribunal.

Article 40

Termination of sentences of imprisonment

(1) Should the International Criminal Court or International Tribunal indicate that the enforcement of a sentence of imprisonment should be terminated, the sentenced

person shall be released promptly, or be transferred to the authority responsible for the enforcement of foreign orders, unless Liechtenstein criminal proceedings or extradition proceedings are underway, or grounds exist to initiate such proceedings.

(2) Prosecution, punishment or extradition on account of an act engaged in prior to the acceptance of the enforcement of sentences may only proceed consistent with Article 36 above.

Article 41

Costs of enforcement of sentences

(1) The ordinary costs of enforcement of sentences shall be borne by the Principality of Liechtenstein.

(2) Other costs, including the cost of surrender of the sentenced person from or to the Court or from one State of enforcement to another and the cost of expert opinions or reports requested by the International Criminal Court shall be borne by the latter.

Article 42

Enforcement of sentences of imprisonment for offences against the administration of justice

Having regard to the enforcement of sentences of imprisonment passed by the International Criminal Court for offences against the administration of justice pursuant to article 70 of the Rome Statute, this law, with the exception of the provisions in Articles 34(1) and (5), 34(1) to (5), and 41 above, shall not apply. The procedure shall comply with paragraphs 65 to 67 of the law on judicial assistance.

F. Acceptance of enforcement of fines, forfeiture measures, and orders for reparations or the return of property

Article 43

Acceptance of enforcement of fines and forfeiture measures of the International Criminal Court

(1) Requests from the International Criminal Court for the enforcement of orders involving fines or forfeiture measures shall be complied with if it is likely the fine can be collected in Liechtenstein or if the objects or assets referred to in the order are to be found in Liechtenstein. Prior to approving such enforcement, the person ordered to pay the fine and persons claiming rights to the objects or assets shall be heard. The sentenced person need not be heard where he or she cannot be reached.

(2) The decision on a request for enforcement of a fine or forfeiture measure shall be taken by the princely court in a court decision. The fine or forfeiture measure ordered by the International Criminal Court may not be modified. The court decision may be appealed against by the public prosecutor or the person concerned within 14 days before the Court of Appeal.

(3) A fine imposed by the International Criminal Court shall be enforced in Swiss francs. The official exchange rate as of the day of the International Criminal Court's order shall be used should the amount of the fine to be enforced be stated in a currency other than Swiss francs.

(4) Any payment facilities granted by the International Criminal Court in respect of the date of payment of fines or their payment in instalments shall be taken into consideration.

(5) Should the enforcement of a fine imposed by the International Criminal Court prove to be partly or wholly impossible, the International Criminal Court shall be informed thereof.

(6) If the International Criminal Court cannot collect a fine but instead sentences the convicted person to imprisonment and requests the Principality of Liechtenstein to enforce the sentence, the provisions in Articles 34 to 41 above shall apply.

(7) Should the enforcement of a forfeiture measure ordered by the International Criminal Court prove impossible, the princely court shall decide on an alternative pecuniary sentence and take measures with a view to collecting amounts corresponding to the value of the assets or objects to be seized.

(8) The proceeds from the enforcement of fines and forfeiture measures are to be transferred to the International Criminal Court, subject to the provision in paragraph 9 below.

(9) Fines, objects and other assets may be retained in the Principality of Liechtenstein if:

(a) the injured person resides or usually lives in Liechtenstein and they are to be granted to him or her;

(b) an authority files a claim to them;

(c) a person not involved in the criminal offence claims rights thereto;

(d) they are required for legal proceedings in Liechtenstein.

(10) Should a person file a claim pursuant to paragraph 9 above, any consideration as to whether to grant the money or assets requires the consent of the International Criminal Court.

(11) The provisions of this section shall also apply to the enforcement of fines ordered by the International Criminal Court for offences against the administration of justice pursuant to article 70 of the Rome Statute.

Article 44

Acceptance of enforcement of orders for reparations or the return of property

(1) A request from the International Criminal Court for the enforcement of a binding order from the Court for reparations in the form of money shall be admissible if it is likely that it can be collected in Liechtenstein.

(2) Enforcement shall comply with Article 43 above.

(3) Enforceable orders of the International Criminal Court or an International Tribunal for the return of property or proceeds from criminal offences shall be regarded as determinations by foreign courts which fulfil the conditions in Article 52 of the execution order.

G. Effect of the orders of the International Criminal Court or International Tribunal

Article 45

Where evidence is taken in respect of reparations for victims in proceedings before the Liechtenstein courts from a sentenced person, an enforceable judgement of the International Criminal Court or an International Tribunal shall represent sufficient evidence of the determinations made. Proof of the inaccuracy of determinations shall be admissible.

H. Acceptance of prosecution of offences against the administration of justice

Article 46

- (1) At the request of the International Criminal Court, the offences listed in article 70(1) of the Rome Statute may be prosecuted in Liechtenstein where they have been committed on Liechtenstein territory or by Liechtenstein nationals.
- (2) In judging such offences, the International Criminal Court shall be regarded as if it were a Liechtenstein court and its officials as if they were Liechtenstein officials.
- (3) Article 60 of the law on judicial assistance shall be applied with the understanding that references therein to the requesting State relate to the International Criminal Court.

I. Trust fund

Article 47

- (1) A trust fund shall be established, and be administered by the Government.
- (2) Shall be transferred to the trust fund:
 - (a) proceeds from the enforcement of fines and forfeiture measures imposed by the International Criminal Court or an International Tribunal, where the Court or Tribunal forgoes the transfer thereof and files no claims pursuant to Article 43(9) above;
 - (b) proceeds from the enforcement of fines and forfeiture measures imposed by a domestic court, where these are on account of a conviction for genocide, crimes against humanity or war crimes;
 - (c) voluntary contributions.
- (3) Assets from the trust fund may be used at the Government's discretion:
 - (a) for the benefit of victims of genocide, crimes against humanity or war crimes and for the benefit of their family members;
 - (b) to cover the cost for the judiciary of a trial relative to any of the crimes referred to in paragraph a above; or
 - (c) as a voluntary contribution to the Trust Fund of the International Criminal Court.

III. Final provisions

Article 48

The Government shall adopt the ordinances necessary for the implementation of this law.

Article 49

Entry into force

This law shall enter into force on the day of its publication.

On behalf of the Reigning Prince:
signed *Alois*
Hereditary Prince