



VELEPOSLANIŠTVO REPUBLIKE SLOVENIJE  
EMBASSY OF THE REPUBLIC OF SLOVENIA  
THE HAGUE, THE NETHERLANDS

No. VHG/013/10

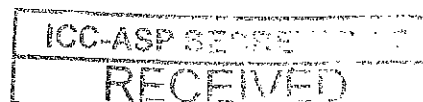
The Embassy of the Republic of Slovenia presents its compliments to the Secretariat of the Assembly of States Parties of the International Criminal Court and has, with reference to the latter's Note ICC-ASP/S/PA/07 of 9 April 2010 and the Assembly Resolution ICC-ASP/8/Res.9, adopted at its 10th plenary meeting on 25 March 2010, the honour to provide included herewith the replies by the Republic of Slovenia to the questionnaire regarding the measures undertaken in respect of implementing legislation of the Rome Statute of the International Criminal Court.

The Embassy of the Republic of Slovenia avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties the assurances of its highest consideration. *Len*

The Hague, 17 May 2010



Secretariat of the Assembly of States Parties  
International Criminal Court  
The Hague



18 MAY 2010

ASP/2010/232



## REPLY BY THE REPUBLIC OF SLOVENIA

The Republic of Slovenia ratified the Rome Statute on 22 November 2001. After depositing the Act of ratification with the Secretary General of the UN on 31 December 2001, it has become the 48th State party to the Statute and fifth state from the Group of Eastern European States to ratify the treaty.

### On question 1:

The Republic of Slovenia adopted relevant national legislation implementing the Rome Statute.

### On question 5:

Slovenia has adopted special implementing legislation in combination with incorporation of the articles of the Rome Statute into pre-existing law. It has also amended the constitutional provision regarding extradition (Article 47 of the Constitution).

The majority of the provisions of substantive criminal law set out in the Rome Statute of International Criminal Court had already been part of Slovenian Criminal Code. The Code was amended once after the entry into force of the Rome Statute (Official Journal of RS, No. 40/2004). On 20 May 2008 the Republic of Slovenia adopted a new Criminal Code, which is published in the Official Journal no. 55/2008).

On 25 October 2002, Slovenia adopted the Act on Cooperation of the Republic of Slovenia with the International Criminal Court in order to facilitate and enhance the cooperation with the ICC ("Act on Cooperation"; Official Gazette of RS, No. 96/2002). On 17 June 2004, Slovenia ratified the Agreement on the Privileges and Immunities of the International Criminal Court (Official Gazette of RS, No. 71/2004).

As previously mentioned Slovenia amended its constitutional provision on extradition. The original text of Article 47 of the Constitution dealing with extradition of Slovenian citizens and aliens read as follows:

*"No citizen of Slovenia may be extradited to a foreign country. The extradition of aliens shall only be permitted in cases covered by treaties that are binding on Slovenia."*

Article 47 of the Constitution was amended by the Constitutional Act Amending Chapter I and Articles 47 and 68 of the Constitution of the Republic of Slovenia, which was adopted on

27 February 2003, and entered into force on 7 March 2003 (Official Gazette of the Republic of Slovenia No. 24/03). The current text of Article 47 reads as follows:

*“No citizen of Slovenia may be extradited or surrendered unless such obligation to extradite or surrender arises from a treaty by which, in accordance with the provisions of the first paragraph of Article 3a, Slovenia has transferred the exercise of part of its sovereign right to an international organization.”*

Paragraph 1 of Article 3a referred to in Article 47 of the Constitution, which was added to the Constitution together with the revision of Article 47, reads as follows:

*“Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organizations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values.”*

In the amended Article 47 of the Constitution, the provision on extradition of aliens was omitted with the reasoning that the question of extradition of aliens is not a subject of constitutional regulation. The Constitution therefore does not preclude or restrict the extradition of aliens; the Statute and the Act on Cooperation therefore directly serve as a legal basis for their surrender to the ICC.

Slovenian citizens may be surrendered to the ICC on the basis of the Statute. By ratifying the Statute, Slovenia has transferred the exercise of part of its sovereign right to the ICC. Article 3a, which has been added to the Constitution primarily for the purpose of the accession to the EU and NATO, extends also to organizations such as the ICC.

On question 6:

The criminal offences over which the ICC has complementary jurisdiction and which are set out in Article 5 of the Rome Statute have been fully incorporated in the Criminal Code. They are included in Chapter Fourteen (of the Specific Part of the Code) in its Articles:

- Article 100 – Genocide
- Article 101 – Crimes against Humanity
- Article 102 – War crimes
- Article 103 – Aggression

Genocide

Article 100 defining the crime and sentence for the commission of the crime of genocide follows the definition in the Rome statute. It reads as follows:

*Genocide  
Article 100*

(1) *Whoever with the intention of destroying in whole or in part a national, ethnic, racial or religious group or gives the order:*

- *to kill members of the group*
- *to cause serious bodily or mental harm to members of the group*
- *to intentionally inflict on the group conditions of life calculated to bring about its physical destruction in whole or in part*
- *to impose measures intended to prevent births within the group*
- *to forcibly transfer children of the group to another group*

*shall be sentenced to imprisonment of not less than fifteen years.*

*(2) The same punishment shall be imposed on whoever commits any of the act under the previous paragraph against any group because of the reasons referred to in point 8 of Article 101.<sup>1</sup>*

### **Crimes against Humanity**

Article 101 which defines the crimes against humanity follows the structure and substance of Article 7 of the Rome Statute. The only difference is that the definitions of the individual crimes are described together with the crime itself. The Article also defines the sentence for the commission of the crime which is not less than fifteen years of imprisonment.

### **War crimes**

The provision of Article 102 on War Crimes follows the structure and substance of Article 8 of the Statute. The chapeau of Article 102 states that “*Whoever orders or commits war crimes, especially if they are committed as part of and integral plan or policy, or as part of an extensive implementation of such crimes [...]*” Paragraph 1 includes grave breaches of the Geneva Conventions in the same manner as they are included in point (a) of paragraph 2 of Article 8 of the Statute. The rest of Article 8 follows in the same manner, i.e. points (namely paragraph 2, 3 and 4 correspond to points (b), (c) and (e) of Article 8 of the Statute. The sentence for the commission of these crimes is not less than fifteen years of imprisonment. Point (d) of paragraph 2, point (f) of paragraph 2 and paragraph 3 of Article 8 of the Rome Statute are omitted.

### **Aggression**

Notwithstanding the provision of paragraph 2 of Article 5 of the Rome Statute, Criminal Code of the Republic of Slovenia defines the crime of aggression, which is included into Chapter Fourteen under the heading of “Criminal Offences Against Humanity” and reads as follows:

*“Aggression*

*Article 103*

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<sup>1</sup> Point 8 of Article 101 corresponds to point h) of paragraph 1 of Article 7 of the Rome Statute)

*Any person who commits the act of Aggression, defined in accordance with international law, shall be sentenced to imprisonment of not less than fifteen years.”*

\* \* \*

Regarding the sentence of imprisonment for all four crimes, the life imprisonment is possible as stated in Article 46 which reads as follows:

*Article 46*

*“ Sentence of Imprisonment*

*Article 46*

*(1) A prison sentence may be imposed for a term not shorter than fifteen days and not longer than thirty years.*

*(2) A sentence of life imprisonment may be imposed for criminal offences of genocide, crimes against humanity, was crimes and aggression, and under conditions under point 1 of paragraph 2 of Article 53 of this Penal Code for two or more criminal offences, under paragraphs 5 of Article 108, Article 116, Article 352, paragraph 2 of Article 360, paragraph 4 of Article 371, and paragraph 3 of Article 373.*

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Relevant to the crimes is also the provision of Article 105 regarding association and incitement to Genocide, Crimes against Humanity or Aggression. Article 105 reads as follows:

*“Association and Incitement to Genocide, Crimes against Humanity or Aggression*

*Article 105*

*(1) Whoever establishes a criminal organization to commit criminal offences under Articles 100 to 103 of this Penal Code shall be sentenced to imprisonment between one and ten years.*

*(2) Any person who becomes a member of the organization referred to in the previous paragraph shall be sentenced to imprisonment between six months and five years.*

*(3) The perpetrator of the criminal offence under paragraphs 1 or 2 of this Article who prevents the committing of criminal offences specified in paragraph 1 or declared the offence in due time, shall be sentenced to imprisonment of up to three years or the sentence may be remitted.”*

On Question 7:

On 25 October 2002, Slovenia adopted the *Act on Cooperation of the Republic of Slovenia with the International Criminal Court* in order to facilitate and enhance the cooperation with the ICC ("Act on Cooperation"; (Official Gazette of RS, No. 96/2002). It sets obligations, conditions and means of cooperation with the ICC. Article 3 of the Act states that Slovenia shall, in accordance with the provisions of the Statute, cooperate fully and without any reservations with the ICC in its investigation and prosecution of crimes within the jurisdiction of the Court. Article 88 of the Statute is comprised in various articles of the Act, which set out the rules for domestic procedures from the receipt of the Court's request by Slovenia until the surrender of a person. Article 9 of the Act regulates the question of admissibility and challenges to it. Chapter VI of the Act regulates the questions of arrest and surrender of the accused, where Articles 10 to 12 cover the issue of arrest and Article 13 of surrender. For the issues of designated defense attorney and of proposals, legal means and declarations by the accused, the law regulating the criminal procedure is applied. Article 16 of the Act states that when deciding on arrest, the domestic competent authorities do not decide on substantive regularity of act and procedures, they are always in obligation to fulfill the request by the Court when the following conditions are met:

- that the request by the Court is complete in the sense of the provisions of the Statute
- that the identity of a person concerned has been established
- that the case is within the jurisdiction of the Court.

Article 17 of the Act regulates the transit of an accused from the third country through the territory of the Republic of Slovenia for their surrender to the Court; Article 18 of the Act regulates the obligation for the domestic courts and other relevant national organs to carry out all the requested investigations. Paragraph 2 of the same Article provides for the possibility of the Prosecutor of the ICC to carry out the investigation directly in the territory of Slovenia (in accordance with Article 99 of the Statute). Article 20 provides for the exception from general obligation to cooperate (rejection of cooperation and delay of the fulfillment of the request), while Chapter IX sets out a general rule on privileges and immunities of the judges, prosecutor, his deputies, registrar, his deputy and the Prosecutor's Office and Registrar's personnel when on duty in accordance with the Agreement on the Privileges and Immunities of the International Criminal Court.

On question 8:

Article 3 of the Law on Ratification of the Rome Statute of the International Criminal Court (Official Journal of Slovenia no. 101/2001) stipulates that pursuant to Article 87, paragraph 1 (a) of the Rome Statute the Republic of Slovenia designates the Ministry of Justice as channel to which the requests for cooperation made by the Court shall be addressed (see also: Depositary notification C.N.490.2006.TREATIES-2 of 27 June 2006).