

NATIONAL ASSEMBLY
OF THE REPUBLIC OF SLOVENIA

No.: 212-05/04-32/1
Ljubljana, 26 March 2004

AT ITS SESSION OF 26 MARCH 2004, THE NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA ADOPTED THE EUROPEAN ARREST WARRANT AND SURRENDER PROCEDURES BETWEEN MEMBER STATES ACT (ZENPP), AS FOLLOWS

**EUROPEAN ARREST WARRANT AND SURRENDER PROCEDURES BETWEEN
MEMBER STATES ACT (ZENPP)**

I. INTRODUCTORY PROVISIONS

Article 1

(1) This Act regulates the procedure of issuing a European arrest and surrender warrant and the procedure of surrendering defendants and convicted persons between the Republic of Slovenia and other member states of the European Union, and the transit of defendants and convicted persons between member states of the European Union across the territory of the Republic of Slovenia.

(2) The act regulating the criminal procedure and the act regulating the enforcement of penal sentences shall be used *mutatis mutandis* for issues not specifically regulated by this Act.

(3) The Republic of Slovenia shall execute every arrest warrant pursuant to recognition of the decisions of foreign judicial authorities and in accordance with the provisions of this Act.

Article 2

The terms used in this Act shall have the following meanings assigned to them:

- (a) A European arrest and surrender warrant (hereinafter: warrant) is a decision issued by a judicial authority of a member state of the European Union calling upon another member state of the European Union to arrest and surrender a person against whom it intends to execute criminal proceedings or execute a custodial sentence.
- (b) An issuing judicial authority is an authority of a member state of the European Union competent to issue a warrant in accordance with the legislation of that member state.
- (c) An executing judicial authority is an authority of a member state of the European Union competent to execute surrender procedures in accordance with the legislation of that member state.
- (č) A central judicial authority is an authority of a member state administratively competent to send and receive warrants and to engage in all official correspondence connected with this, in accordance with the legislation of that member state.
- (d) A requested person is an individual for whom a warrant has been issued and who must be surrendered to the member state that issued the warrant.

- (e) Surrender means the surrender of a requested person by a member state to the member state that issued the warrant.
- (f) A third country is a country that is not a member state of the European Union.
- (g) A foreign person is a citizen of a country that is not a member state of the European Union.
- (h) The speciality rule means that a requested person surrendered to another member state may not be prosecuted, sentenced or surrendered to another member state for a criminal offence committed prior to his surrender other than that for which he was surrendered.

Article 3

(1) A court competent to deal with criminal cases is the issuing and executing judicial authority in the Republic of Slovenia.

(2) The ministry responsible for justice (hereinafter: the ministry) is competent to render assistance to courts and foreign judicial authorities in connection with the sending and receiving of warrants and to execute procedures for obtaining transit permits or procedures for the issuing of transit permits.

II. PROCEDURES FOR ISSUING WARRANTS

Article 4

(1) A warrant may be issued for offences punishable by domestic law *ex officio* and by a custodial sentence of at least one year or, where a sentence has already been passed, by a custodial sentence of at least four months.

(2) A warrant is a written order of the court before which criminal proceedings are taking place or of the court competent to execute the sentence.

(3) A warrant must contain the following:

- a) the name, surname, date and place of birth, uniform identification number (if the warrant applies to a citizen of the Republic of Slovenia), place of residence and nationality of the requested person;
- b) the name, address, telephone number, fax number and email address of the court that issued the warrant;
- c) evidence of an enforceable judgement, custody decision or other enforceable judicial decision with the same effect;
- č) the legal designation of the criminal offence;
- d) a description of the act from which the statutory definition of the criminal offence proceeds, including the time, place and form of participation of the requested person;
- e) information on the type and severity of the sentence passed, if a final judgement has been rendered, or information on the prescribed sentence;
- f) any other circumstances connected with the criminal offence;
- g) a description of items or property that must be seized.

(4) The warrant shall be set out in greater detail in a form prescribed by the minister responsible for justice.

Article 5

(1) If the permanent or temporary place of residence of a requested person is known, the court shall send the warrant directly to the executing judicial authority covering the area of residence of the requested person.

(2) The warrant shall be sent in its original form, as a certified copy or in another written form that allows the executing judicial authority to check its authenticity. The warrant may also be sent through Interpol or through a system that protects the secrecy of the data during transfer and allows the executing judicial authority to check the authenticity of the sender and the data.

(3) The original of the warrant must be translated into the official language or one of the official languages of the executing member state, or into a language determined by that member state.

Article 6

(1) If the competent executing judicial authority is not known, the court shall make enquiries at the ministry competent to make proper enquiries for this purpose with the central authorities of another member state or through contact points of the European Judicial Network.

(2) If the whereabouts of a requested person are not known, the court shall send the warrant to the police, who shall act in accordance with the act regulating the criminal procedure as it pertains to arrest warrants. A copy of the warrant shall be sent to the ministry.

(3) Measures against requested persons may be announced in the Schengen Information System (SIS) in accordance with the provisions of Article 95 of the Agreement on the Gradual Abolition of Checks at Common Borders of 19 June 1985. A measure announced in the Schengen Information System and furnished with the information from Article 4 of this Act shall be equivalent to a warrant.

(4) Issues connected with the sending of documents and the checking of their authenticity shall be resolved by courts directly with foreign judicial authorities or through the ministry. Modern technical resources, in particular computer networks and instruments for sending pictures, sound and electronic impulses, may be deployed.

Article 7

(1) The court that issued the warrant shall communicate with the executing judicial authority directly or through the ministry.

(2) If a warrant is issued for the execution of criminal proceedings, the court that issued the warrant may put forward a request to the executing judicial authorities that the requested person either be heard by the executing judicial authority or be transferred temporarily to the Republic of Slovenia in order to be heard or to attend a main hearing. In the executing member state, the requested person shall be heard by the investigating judge. The state prosecutor and the requested person's legal counsel may be present at the hearing, unless this is not permitted by the legislation of the executing member state. The investigating judge

must inform the state prosecutor and the requested person's legal counsel in an appropriate manner of when and where the hearing of the requested person is to take place.

(3) Details relating to the hearing and the conditions and duration of temporary transfer shall be determined by the court before which criminal proceedings are taking place and the executing judicial authority in a mutual written agreement binding on all authorities in the Republic of Slovenia.

Article 8

(1) A person surrendered to the Republic of Slovenia may not be prosecuted, sentenced or surrendered to another member state for a criminal offence committed prior to his surrender other than that for which he was surrendered.

(2) The provisions of the preceding paragraph may not be applied in the following cases:

- a) if a person who had the opportunity of leaving the territory of the Republic of Slovenia did not do so within 45 days of his final release or if he returns to the Republic of Slovenia after his departure;
- b) if a fine only is prescribed for the criminal offence a person committed prior to his surrender other than that for which he was surrendered;
- c) if a person expressly renounces his entitlement to the speciality rule prior to or after his surrender;
- č) if the member state that surrendered the person consents to prosecution, an enforceable sentence or surrender to another member state for a criminal offence a person committed prior to his surrender other than that for which he was surrendered.

Article 9

(1) A person surrendered to the Republic of Slovenia shall consent to renunciation of entitlement to the speciality rule before the court before which criminal proceedings are taking place for a criminal offence that person committed prior to his surrender other than that for which he was surrendered, or before the investigating judge of the court competent to execute a sentence or the procedure of surrender for a criminal offence that person committed prior to his surrender other than that for which he was surrendered. The surrendered person shall be advised of the meaning of the speciality rule and the consequences of renouncing entitlement to the speciality rule, and that renunciation is voluntary and cannot be revoked. A surrendered person that does not have legal counsel shall be advised that he has the right to take legal counsel of his own choosing.

(2) The advice referred to in the preceding paragraph, renunciation of entitlement to the speciality rule and the statement that voluntary consent was given to renunciation shall be entered in the records. If the court did not advise the person as above or did not enter the advice in the records, the court may not base its decision on the statement of the surrendered person.

(3) If a person surrendered to the Republic of Slovenia does not renounce entitlement to the speciality rule, the court must request consent that the surrendered person be prosecuted, sentenced or surrendered to another member state for a criminal offence committed prior to his surrender other than that for which he was surrendered. The request

shall be put forward by the court before which criminal proceedings are taking place, the court competent to execute the sentence or the court before which surrender procedures are taking place. The request shall be sent to the executing judicial authority in the form and manner laid down in Articles 4, 5 and 6 of this Act.

Article 10

A person surrendered to the Republic of Slovenia may not be extradited to a third country without the consent of the member state that surrendered the person. A request for consent shall be put forward by the court in accordance with international treaties binding on the Republic of Slovenia.

III. PROCEDURES FOR SURRENDERING A REQUESTED PERSON

CONDITIONS FOR THE SURRENDER OF A REQUESTED PERSON

Article 11

(1) Surrender shall be permitted if the issued warrant is for a criminal offence punishable in the issuing member state by a custodial sentence of at least one year or, where a sentence has already been passed, by a custodial sentence of at least four months, and if the offence for which surrender is being requested is also punishable according to domestic criminal legislation (double criminality).

(2) Surrender shall also be permitted even if the requirement of double criminality has not been met, if the issuing judicial authority has issued a warrant for a criminal offence punishable by a custodial sentence of at least three years and that offence is classified as one of the following types of criminal offence in the issuing member state:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- unlawful trade in illicit drugs;
- unlawful trade in weapons, ammunition and explosives;
- corruption;
- fraud, including fraud that threatens the financial interests of the European Union within the meaning of the Convention on the Protection of the Financial Interests of the European Union of 26 July 1995;
- laundering of the proceeds of crime;
- counterfeiting of currency, including the euro;
- computer-related crime;
- environment crime, including unlawful trade in threatened animal species and plant species and varieties;
- facilitation of unlawful crossing of the state border and residence within the state;
- murder and grievous bodily harm;
- unlawful trade in human organs and tissue;
- kidnapping, false imprisonment and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- unlawful trade in cultural goods, including antiques and works of art;

- extortion or racketeering committed as part of a group or using weapons or dangerous instruments;
- forgery of industrial products and the sale of such products;
- forgery of and trade in official documents;
- forgery of various forms of payment instrument;
- unlawful trade in hormonal substances and other growth promoters;
- unlawful trade in nuclear and radioactive substances;
- trade in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court, established by the Rome Statute;
- hijacking of an aircraft or ship;
- sabotage.

(3) The legal definition of the criminal offence and the prescribed sentences for the types of criminal offence listed in the preceding paragraph shall be in the exclusive jurisdiction of the issuing judicial authority.

GROUNDS FOR REFUSING TO SURRENDER A REQUESTED PERSON

Article 12

The surrender of a requested person shall be refused:

- a) if the warrant has been issued for a criminal offence covered by an amnesty in the Republic of Slovenia, if a domestic court be competent to prosecute;
- b) if the warrant has been issued for a criminal offence for which the requested person has already been finally acquitted or convicted in the Republic of Slovenia, in another member state or in a third country, on condition that, in the event that a sentence was passed, that sentence has been served or is being served, or that, according to the legislation of the country that passed the sentence, the sentence can no longer be executed;
- c) if the warrant has been issued for a criminal offence for which criminal proceedings against the requested person in the Republic of Slovenia were finally halted or the charge finally rejected, or if the competent state prosecutor has rejected the criminal charge because the suspect has met the agreed conditions in the settlement procedure or because he has fulfilled the tasks imposed to lessen or rectify the damaging consequences of the criminal offence in accordance with the instructions of the state prosecutor and with the provisions of the act regulating the criminal procedure;
- č) if the warrant has been issued for a criminal offence committed by a requested person who is under 14 years of age;
- d) if the warrant has been issued for a criminal offence for which prosecution or the execution of a sentence have become statute-barred, if a domestic court is competent to prosecute or to execute the sentence;
- e) if the warrant has been issued for a criminal offence that is not punishable in domestic criminal legislation and the exceptions from the second paragraph of Article 11 of this Act may not be applied. If the warrant has been issued for criminal offences linked to tax, duties, customs duties and currency exchange operations, surrender may not be refused because domestic legislation does not charge the same taxes or duties or have the same

regulations on customs duties and currency exchange operations as the issuing member state;

- f) if criminal proceedings are taking place against a requested person in the Republic of Slovenia for the same criminal offence for which the warrant was issued and that criminal offence was committed against the Republic of Slovenia or against a citizen of the Republic of Slovenia but no insurance has been given for enforcement of the pecuniary claim of the victim;
- g) if there are reasonable grounds for concluding that the warrant was issued for the purpose of instigating criminal prosecution against and sentencing the requested person because of their sex, race, faith, ethnic origin, nationality, language, political convictions or sexual orientation, or if their position would be made significantly worse for these reasons;
- h) if the issuing judicial authority has not given the assurances laid down in Article 14 of this Act.

Article 13

The surrender of a requested person may be refused:

- a) if criminal proceedings are taking place against the requested person in the Republic of Slovenia for the same criminal offence for which the warrant was issued, even if the grounds from point e) of the preceding Article have not been adduced and if it would clearly be easier for criminal proceedings to be held in the Republic of Slovenia;
- b) if a request for investigation has been rejected in the Republic of Slovenia in a final decision because no reasonable grounds were adduced for suspecting that the requested person had committed the criminal offence for which the warrant was issued;
- c) if the warrant has been issued for the execution of a custodial sentence and the requested person is a citizen of the Republic of Slovenia or of a member state of the European Union resident on the territory of the Republic of Slovenia, or a foreign person with a permit for permanent residence in the Republic of Slovenia, if the requested person so wishes and provided the domestic court undertakes to execute the judgement of the court of the issuing member state in accordance with domestic law;
- č) if the warrant has been issued for criminal offences that, according to domestic criminal law, are dealt with as if they had been committed wholly or in part in the Republic of Slovenia;
- d) if the warrant has been issued for criminal offences committed outside the territory of the issuing member state but domestic criminal law does not permit prosecution for the same offence when committed outside the territory of the Republic of Slovenia.

Article 14

(1) Before making a decision on surrender, the court shall request the following assurances from the issuing judicial authority:

- a) if the warrant has been issued for the execution of a sentence, that a requested person convicted *in absentia* but not personally summoned nor informed in any other way of the place and date of the hearing will have the right to demand a retrial or a new trial in the issuing member state and to be present when the judgement is passed;
- b) if the warrant has been issued for a criminal offence for which a sentence of life imprisonment is prescribed in the issuing member state, that the legislation of the issuing member state contains the possibility of clemency or of a review of the sentence passed, either at the request of the convicted person or *ex officio*, within 20 years of the judgement becoming final;

- c) if the warrant has been issued for the execution of criminal proceedings and the requested person is a citizen of the Republic of Slovenia or of a member state of the European Union resident on the territory of the Republic of Slovenia, or a foreign person with a permit for permanent residence in the Republic of Slovenia, and if the domestic court undertakes in a written statement to execute the judgement of the court of the issuing member state in accordance with domestic law, that the requested person will return to the Republic of Slovenia after the completion of proceedings.

(2) Assurances must be given within the time limit determined by the court.

PROCEDURES FOR EXECUTING WARRANTS

Article 15

(1) An investigating judge from the district court covering the area in which the requested person resides or is located shall be competent to execute surrender procedures.

(2) If the investigating judge who receives the warrant does not have territorial jurisdiction, he shall immediately send the warrant to the court with jurisdiction and inform the issuing judicial authority that he has done so.

(3) If the warrant has not been drawn up in the Slovene language, the investigating judge shall inform the issuing judicial authority of this and grant it a reasonable time limit, which may not be shorter than 20 days, within which to submit a certified translation into the Slovene language. If the requested person is being detained, the investigating judge may order a translation of the warrant into the Slovene language.

(4) The requested person must have legal counsel for the entire duration of surrender procedures, from the time he is brought before the investigating judge, or from the first hearing to decide on surrender, to the surrender itself. If the requested person does not engage legal counsel, the president of the court shall appoint one *ex officio*.

(5) The requested person shall have the right to an interpreter in accordance with the provisions of the act regulating the criminal procedure. If he so requests, the requested person must be provided with a translation of the warrant into his native language or into a language he understands.

Article 16

(1) The warrant from the issuing judicial authority must contain at least the following information:

- a) name, surname, date and place of birth, place of residence and nationality of the requested person;
- b) evidence of an enforceable judgement, custody decision or other enforceable judicial decision with the same effect;
- c) legal designation of the criminal offence;
- č) a description of the act from which the statutory definition of the criminal offence proceeds, including the time, place and form of participation of the requested person;
- d) information on the type and severity of the sentence passed, if a final judgement has been rendered, or information on the prescribed sentence;

- e) a description of items or property that must be seized;
- f) the means of establishing the identity of the requested person.

(2) When the investigating judge receives the translation of the warrant, he shall check whether the warrant contains the required information from the preceding paragraph and meets the conditions from Article 11 of this Act.

(3) If all the conditions from the preceding paragraph have been met, the investigating judge shall schedule a hearing without delay to decide on surrender, and shall summon the requested person and the competent state prosecutor to attend. The warrant and the translation of the warrant shall be attached to the summons. If all conditions laid down in the act regulating the criminal procedure for the issuing of an order to bring the requested person before the investigating judge have been met, the investigating judge shall issue the order.

(4) If an arrest warrant has been issued, police officers may arrest the requested person without a prior order to bring the requested person before the investigating judge laid down in the preceding paragraph, if there is a risk that he will abscond or go into hiding.

Article 17

(1) Upon arresting him, the police must advise the requested person that they are detaining him pursuant to a warrant, and inform him of the country that is requesting his arrest and surrender and why it is doing so. He must be advised immediately that he is not obliged to make a statement, that he has the right to the immediate legal assistance of counsel freely chosen by him, and that the competent authority is obliged, if he so requests, to inform his next of kin of his detention. If the requested person is not a citizen of the Republic of Slovenia, he must also be advised that the competent authority is obliged, if he so requests, to inform his country's consulate of his detention.

(2) Police officers must take the arrested person immediately, or in the case from the fourth paragraph of the preceding Article within six hours, to the competent investigating judge. Upon bringing the arrested person before the investigating judge, the police officers must inform the investigating judge of why and when the person was detained. In the case from the fourth paragraph of the preceding Article, police officers must submit the warrant or a copy thereof to the investigating judge.

Article 18

(1) The investigating judge shall check the identity of the person brought before him and then advise him of his rights from the first paragraph of the preceding Article.

(2) The investigating judge must hear the person brought before him in relation to the conditions from Article 11 of this Act without delay, at the latest within 48 hours of his arrest, inform him of the contents of the warrant, and advise him that he may consent to surrender. The competent state prosecutor must be present at the hearing.

(3) The investigating judge may, where this is necessary in order to conduct the hearing from the preceding paragraph and in order to ensure or appoint counsel for him, order that the requested person be detained for the required period of time pursuant to a decision,

but for not longer than 48 hours from the time the person was brought before him. The provisions of the act regulating the criminal procedure shall be used *mutatis mutandis* for an appeal against this decision.

(4) Following the hearing from the second paragraph of this article, a hearing shall be held to decide on the surrender of the requested person. At the request of the requested person, his legal counsel, the competent state prosecutor, or pursuant to a decision of the investigating judge, the hearing to decide on surrender may be adjourned in order to allow a defence to be prepared, the case records to be examined, or translations and other required documents to be obtained.

Article 19

(1) The investigating judge must advise the requested person that consent to surrender is voluntary and that he cannot revoke consent once given, and warn him that in such a case a decision will be taken on surrender within ten days, using a summary procedure.

(2) The investigating judge shall advise the requested person that he may not be prosecuted, sentenced or surrendered to another member state by the issuing member state for a criminal offence committed prior to his surrender other than that for which he was surrendered (speciality rule) and that he may renounce entitlement to the speciality rule, and of the consequences of renunciation of entitlement to the speciality rule and of the fact that renunciation is voluntary and may not be revoked.

(3) If the requested person declares that he consents to his surrender, he shall give his consent and any renunciation of entitlement to the speciality rule before the investigating judge. The advice from the preceding paragraphs, consent, the renunciation of entitlement to the speciality rule and the statement of the person to the effect that consent or renunciation of entitlement to the speciality rule was given voluntarily and in the presence of the person's legal counsel shall be entered in the records.

(4) If the investigating judge did not give the advice from the first paragraph of Article 18 and the first and second paragraphs of this article, if this advice was not entered in the records or if the person gave a statement without the presence of his legal counsel, the court may not base its decision on the statement of the requested person.

Article 20

(1) If the requested person consents to his surrender, the investigating judge must, without delay and at the latest within 48 hours, make a decision on surrender.

(2) Surrender shall be permitted on the basis of a decision containing:

- a) the name, surname, date and place of birth and nationality of the requested person;
- b) the member state to which the requested person is being surrendered;
- c) the criminal offence for which the person is being surrendered;
- č) a statement to the effect that the requested person has consented to surrender;
- d) a statement to the effect that the requested person has consented to renunciation of his entitlement of the speciality rule;

- e) a decision that the requested person may not be extradited to a third country for a criminal offence committed prior to his surrender other than that for which he was surrendered.

(3) If the requested person has not renounced entitlement to the speciality rule, the decision must also state that the requested person may not be prosecuted, sentenced or surrendered to another member state for a criminal offence committed prior to his surrender other than that for which he was surrendered.

(4) The decision shall be submitted to the requested person, his legal counsel and the state prosecutor.

(5) The requested person and his legal counsel may appeal against the decision of the investigating judge to a panel of three district court judges within 24 hours of the decision being submitted to them. The panel must decide within 48 hours.

Article 21

(1) If the requested person does not consent to surrender, the investigating judge shall hear him immediately with regard to the reasons for refusing to consent to surrender. His legal counsel and the competent state prosecutor, who may adduce their own motions and standpoints, must be present at the hearing.

(2) The hearing shall be held by applying, *mutatis mutandis*, the provisions of the act regulating the criminal procedure as they pertain to the hearing of defendants.

(3) The investigating judge may request additional information or assurances from the issuing judicial authority, particularly with regard to the provisions of Articles 12, 13, 14 and 16 of this Act, and specify a time limit for receipt thereof; he may also perform other enquiries to establish whether the conditions for the surrender of the requested person have been met. If criminal proceedings are taking place in the Republic of Slovenia against the requested person for the same or any other criminal offence, the investigating judge shall mention this in the case records.

(4) The panel of three district court judges shall issue the decision on permitting or refusing surrender, after receiving a substantiated proposal from the investigating judge.

(5) The written decision permitting surrender shall contain:

- a) the name, surname, date and place of birth and nationality of the requested person;
- b) the member state to which the requested person is being surrendered;
- c) the criminal offence for which the person is being surrendered;
- č) a decision that he may not be prosecuted, sentenced or surrendered to another member state for a criminal offence committed prior to his surrender other than that for which he was surrendered.

(6) The decision shall be submitted to the requested person, his legal counsel and the state prosecutor.

(7) The requested person, his legal counsel and the state prosecutor may appeal against the decision of the panel within three days of decision being submitted to them. The high court shall decide on the appeal.

(8) Detailed grounds for every refusal of surrender must be given to the issuing judicial authority.

Article 22

(1) So that procedures for the surrender of a requested person might be executed smoothly and if circumstances exist that indicate that there is a risk of the requested person absconding, the investigating judge shall decide, *ex officio* and following a decision of the issuing judicial authority or at the proposal of the competent state prosecutor, either to order the detention of the requested person or any of the other measures for ensuring his presence by applying, *mutatis mutandis*, the provisions of the act regulating the criminal procedure.

(2) The decision on detention shall be submitted to the requested person, his legal counsel and the state prosecutor.

(3) The requested person and his legal counsel may appeal against the decision on detention to a panel of three district court judges within 24 hours of the decision being submitted to the requested person. The appeal shall not stay execution of the decision.

(4) The investigating judge shall inform the issuing judicial authority of the adopted measure without delay.

(5) Following the decision of the investigating judge, the requested person may be held in detention for a maximum of one month from the day he was brought into detention. After this period he may be kept in detention only on the basis of a decision to extend detention.

(6) Detention may be extended in accordance with a decision made by a panel of three district court judges, but may not last longer than nine months. The decision to extend detention shall be issued by the court, at the substantiated proposal of the investigating judge or the competent state prosecutor. The requested person and his legal counsel must be acquainted with the proposal at least three days before expiry of the time limit from this paragraph; they may make a statement before the decision. The court may extend detention for two-month periods.

(7) The requested person and his legal counsel may appeal against the decision extending detention within three days of the decision being submitted to them. The high court shall decide on the appeal.

DECISION IN THE EVENT OF MULTIPLE REQUESTS

Article 23

(1) If the judicial authorities of two or more member states have issued warrants for the same requested person, the panel of three district court judges shall decide to which of the

member states the requested person shall be surrendered, in accordance with the procedure laid down in this Act.

(2) If the investigating judge before whom surrender procedures are taking place is informed that multiple warrants have been issued for a requested person, and if a decision permitting surrender has not yet been issued, he shall halt the surrender procedures and, if the case is already awaiting a decision by the panel, he shall request that the panel return the case and, after receipt of the other warrant or warrants, conduct a single surrender procedure.

(4) When deciding to which member state the requested person is to be surrendered, the panel shall take proper account of all the circumstances of the case, in particular the severity of the criminal offence, the place of commission of the criminal offence, the dates of individual warrants and whether the warrants were issued in connection with the execution of criminal proceedings or the execution of a custodial sentence. Before the case is submitted for a decision, the investigating judge may seek the advice of Eurojust.

(5) The decision shall be submitted to the requested person, his legal counsel and the state prosecutor.

(6) The requested person, his legal counsel and the state prosecutor may appeal against the decision within three days of the decision being submitted to them. The high court shall decide on the appeal.

(7) The investigating judge shall inform all issuing judicial authorities of the final decision directly.

Article 24

(1) If a final decision has been taken against the same person to surrender him to a member state or extradite him to a third country, a panel of three Supreme Court judges shall decide whether the person is to be surrendered to the member state or extradited to a third country. When making its decision, the Supreme Court shall take proper account of all the circumstances of the case, particularly those from Article 23 of this Act and those determined in the appropriate international treaties binding on the Republic of Slovenia.

(2) The person who is to be surrendered or extradited, his legal counsel and the state prosecutor may appeal against the decision within three days of the decision being submitted to them. A panel of five Supreme Court judges shall decide on the appeal.

(3) The investigating judge shall inform the judicial authorities that issued the warrant or requested extradition of the decision of the Supreme Court.

(4) The provisions of this and the preceding Article shall not affect the obligations of the Republic of Slovenia towards the International Criminal Court established by the Rome Statute and towards other international criminal courts, in accordance with international treaties binding on the Republic of Slovenia.

TIME LIMITS FOR DECISIONS ON THE SURRENDER OF A REQUESTED PERSON

Article 25

(1) Surrender procedures must be executed as a matter of urgency.

(2) If the requested person consents to surrender, the final decision on surrender must be made within ten days of consent being given.

(3) If the requested person does not consent to surrender, the final decision on surrender must be made within 60 days of the arrest or first hearing of the requested person.

(4) If a decision cannot be made within the time limits from the second and third paragraphs of this article, the court shall immediately inform the issuing judicial authority and explain the reasons for the delay. In such a case, the time limit may be extended by a further 30 days.

(5) If exceptional circumstances mean that a decision on surrender cannot be made within the time limits from this article, the court shall immediately inform Eurojust and explain the reasons for the delay. If another member state repeatedly fails to observe the time limits for execution of an arrest warrant, the court shall inform the Council of the European Union of this.

(6) Until a final decision is adopted on surrender, the court must, using appropriate measures for ensuring the presence of the requested person, do everything in its power to ensure that the requested person is in a position to be surrendered.

HEARING OF A REQUESTED PERSON OR HIS TEMPORARY TRANSFER DURING A SURRENDER PROCEDURE

Article 26

(1) At the request of the issuing judicial authority and provided the warrant has been issued in connection with the execution of criminal proceedings, the investigating judge shall, in the period leading up to surrender:

- a) hear the requested person in relation to the criminal offence for which the warrant was issued;
- b) or permit the requested person to be transferred temporarily to the issuing member state.

(2) Detailed conditions regarding the hearing and the conditions and duration of the temporary transfer of the requested person shall be determined by the investigating judge and the issuing judicial authority by mutual written agreement; this agreement shall be binding on all authorities in the issuing member state.

(3) The investigating judge shall hear the requested person in accordance with the provisions of the act regulating the criminal procedure and with the agreement from the second paragraph of this article. The requested person's legal counsel and the state prosecutor must be present at the hearing; a person determined in accordance with the legislation of the issuing member state may also be present.

(4) If the investigating judge assesses that the hearing of the requested person would clearly be more easily and effectively executed in the issuing member state or if due cause is adduced for this, he shall permit the temporary transfer of the requested person in a

written order. At the request of the requested person, the issuing member state must permit his return to the Republic of Slovenia so that he might take part in procedural acts that form part of the surrender procedure.

IMMUNITY

Article 27

(1) If the requested person enjoys immunity, the investigating judge may request that the competent authorities commence a procedure to revoke that immunity.

(2) If a requested person that enjoys immunity is a citizen of another country or a member of an international organisation, the procedure to revoke immunity must be requested by the issuing judicial authority.

(3) The time limits from Article 25 of this Act shall not begin to run until the day the investigating judge receives written notification that immunity has been revoked.

(4) If the requested person's immunity is revoked, the court must, using appropriate measures for ensuring the presence of the requested person, do everything in its power to ensure that the requested person is in a position to be surrendered.

PROCEDURE FOR SURRENDERING AN EXTRADITED PERSON

Article 28

(1) If the surrender of a person extradited to the Republic of Slovenia by a third country is requested on condition that he may not be prosecuted, sentenced or extradited to another country to face prosecution, the court must, notwithstanding the provisions of this Act, respect this condition. The investigating judge must request that the competent authority of the third country that extradited the person consent without delay to the surrender of this person to the issuing judicial authority, in accordance with international treaties binding on the Republic of Slovenia.

(2) The time limits from Article 25 of this Act shall begin to run when the investigating judge receives the consent from the preceding paragraph.

(3) Until the country that extradited the requested person receives the decision, the court must, using appropriate measures for ensuring the presence of the requested person, do everything in its power to ensure that the requested person is in a position to be surrendered.

IV. EXECUTION OF THE SURRENDER OF A REQUESTED PERSON

Article 29

(1) The investigating judge must inform the issuing judicial authority of the final decision on the surrender of the requested person immediately.

(2) Upon the surrender of the requested person, all information connected with the duration and type of detention must be submitted to the issuing judicial authority.

SURRENDER OF A REQUESTED PERSON

Article 30

(1) After the final decision on surrender, the investigating judge shall order the surrender of the requested person without delay. The written order shall be sent to the police for execution. The police shall agree with the competent authorities of the issuing member state on the method, time and place of the surrender of the requested person, which must take place as soon as possible, or within ten days of the decision on surrender becoming final at the latest.

(2) If circumstances beyond the control of the member states prevent the surrender of the requested person within the time limit from the preceding paragraph, the investigating judge or the police shall immediately contact the issuing judicial authority and agree with it on a new date for surrender, which must be executed within the next ten days.

(3) The surrender of a requested person may exceptionally be postponed for serious humanitarian reasons, in particular if there is a likelihood that surrender would clearly seriously threaten the life or health of the requested person. Surrender shall be executed as soon as these reasons are no longer in place. The investigating judge shall inform the issuing judicial authority of this and they shall agree on a new date for surrender, which must be executed within the next ten days.

(4) Police officers shall execute the surrender of a requested person by taking him to the border and surrendering him to the competent authorities of the issuing member state.

(5) If the requested person is still in detention after expiry of the time limits from the second and third paragraphs of this article, the investigating judge shall release him from detention. The release of the requested person shall not prevent surrender at a later date.

POSTPONED OR TEMPORARY SURRENDER OF A REQUESTED PERSON

Article 31

(1) The surrender of a requested person may be postponed if criminal proceedings are being conducted against him before a domestic court or if he is serving a sentence passed for a criminal offence that is different to that referred to in the warrant.

(2) In the case from the preceding paragraph, the requested person may be transferred temporarily to the issuing member state under conditions laid down in a mutual written agreement by the court before which criminal proceedings are being conducted or the court competent to execute the sentence, and the issuing judicial authority. The conditions laid down in the agreement must be binding on all authorities in the issuing member state.

V. TRANSIT

Article 32

(1) The ministry is competent to receive requests for the transit of a requested person surrendered by one member state to another across the territory of the Republic of Slovenia.

(2) An application for transit must contain the following information:

- a) the name, surname, date and place of birth, place of residence and nationality of the requested person;
- b) a statement to the effect that a warrant has been issued;
- c) the legal designation of the criminal offence;
- č) a description of the criminal offence, including the date and place of commission.

(3) If the requested person is a citizen of the Republic of Slovenia, a citizen of a member state of the European Union resident on the territory of the Republic of Slovenia or a foreign person with a permit for permanent residence in the Republic of Slovenia and the warrant was issued in connection with the execution of criminal proceedings, transit shall be permitted on condition that the requested person returns to the Republic of Slovenia after the end of the trial, if he so requests, to serve his sentence in accordance with the judgement of the court of the issuing member state, in accordance with domestic law.

(4) If the requested person is a citizen of the Republic of Slovenia, a citizen of a member state of the European Union resident on the territory of the Republic of Slovenia or a foreign person with a permit for permanent residence in the Republic of Slovenia and the warrant was issued in connection with the execution of a custodial sentence, transit shall be refused. Transit shall be permitted if the requested person who is not a citizen of the Republic of Slovenia explicitly states that he wishes to serve his sentence in the issuing member state.

(5) A transit request and information from the second paragraph of this article may be sent by any means that permits the sending of written documents. The member state that decides on the permissibility of transit shall send official notification of its decision using the same procedure.

(6) The ministry shall decide on the transit of the requested person in a written decision and shall send a copy of this decision to the police. The ministry shall also issue a permit determining which official person of a state authority of the Republic of Slovenia is to form an additional part of the escort for this person.

(7) The provisions of this article shall not be used in the case of transport by air without a scheduled stopover. In the case of an unscheduled stopover, the ministry shall request that the issuing member state send the information from the second paragraph of this article.

VI. CONSENT TO PROSECUTION OR EXTRADITION FOR ANOTHER CRIMINAL OFFENCE

Article 33

(1) The investigating judge of the court that permitted surrender shall decide on a request from the judicial authority of a member state to consent to a person who has been surrendered by the Republic of Slovenia being prosecuted, sentenced or surrendered to another member state for a criminal offence committed prior to his surrender other than that

for which he was surrendered. The request must contain the information laid down in the first paragraph of Article 16 of this Act. The investigating judge shall decide whether to consent in a written order, without hearing the surrendered person. Consent shall be given if the conditions from Article 11 of this Act are met. Consent shall only not be given for the reasons from Articles 12, 13 and 14 of this Act. The decision must be adopted within 30 days of receipt of the request at the latest. Consent shall be communicated in the form and manner laid down in the first and second paragraphs of Article 5 of this Act.

(2) A decision shall be made on a request from a judicial authority of a member state to consent to a person surrendered by the Republic of Slovenia being extradited to a third country in accordance with international treaties binding on the Republic of Slovenia.

VII. SEIZURE AND HANDING-OVER OF ITEMS AND PROPERTY

Article 34

(1) If the issuing judicial authority so orders in a warrant, the investigating judge shall seize and hand over items that might serve as evidence in criminal proceedings or that must be seized pursuant to domestic law.

(2) If a warrant from the issuing judicial authority orders the seizure of a pecuniary benefit, the seizure of the pecuniary benefit shall be ordered pursuant to legal provisions regulating the seizure of pecuniary benefits, the act regulating civil matters and the insurance of claims, and the act regulating the criminal procedure, as they pertain to the seizure of pecuniary benefits.

(3) Items or a pecuniary benefit from the preceding paragraphs shall also be seized and handed over if surrender cannot be executed because the requested person has died or absconded.

(4) If the domestic court seized items or property from the first and second paragraphs of this article in criminal proceedings that are underway, it shall retain the items or hand them over temporarily to the issuing member state, on condition that they are returned.

(5) The issuing state shall return items from the first and second paragraphs of this article if the executing state or a third person is entitled to them. The costs of the seizure, storage and return of items shall be borne by the issuing member state.

VIII. COSTS

Article 35

(1) Costs that arise on the territory of the Republic of Slovenia on account of procedures executed pursuant to this Act shall be costs of criminal proceedings.

(2) Other costs shall be covered by the issuing member state.

IX. TRANSITIONAL AND FINAL PROVISIONS

Article 36

(1) Extradition requests from member states received by the court before 1 May 2004 shall be handled in accordance with the extradition procedures laid down in the act regulating the criminal procedure and in international treaties binding on the Republic of Slovenia.

(2) Extradition requests from member states received after 1 May 2004 shall be handled in accordance with this Act.

(3) Notwithstanding the preceding paragraph, extradition or surrender requests from member states that relate to criminal offences committed before 7 August 2002 shall not be handled in accordance with the provisions of this Act but in accordance with the extradition procedures laid down in the act regulating the criminal procedure and in international treaties binding on the Republic of Slovenia.

(4) The valid international extradition treaties binding on the Republic of Slovenia shall be used in relation to member states that have not transposed Framework Decision 2002/585/JHA of the Council of the European Union of 13 June 2002 on the European Arrest Warrant and Surrender Procedures Between Member States into their domestic legislation.

Article 37

Upon the entry into force of this Act and in accordance with the provisions of Framework Decision 2002/585/JHA of the Council of the European Union of 13 June 2002 on the European Arrest Warrant and Surrender Procedures Between Member States, the minister responsible for justice shall inform the General Secretariat of the Council of the European Union of the contents of the statement that ensues from the provisions of this Act.

Article 38

(1) The provision of the third paragraph of Article 6 of this Act shall enter into force at the same time as the provisions of the Agreement on the Gradual Abolition of Checks at Common Borders of 19 June 1985 enters into force in the Republic of Slovenia.

(2) This Act shall enter into force on 1 May 2004.