

Treaty
between
the
Democratic Socialist Republic of
Sri Lanka and Ukraine
on the
Transfer of Sentenced Persons

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between the Democratic Socialist Republic of Sri Lanka and Ukraine
on the Transfer of Sentenced Persons**

The Democratic Socialist Republic of Sri Lanka and Ukraine, hereinafter referred to as "Parties",

Recognizing the principles of state sovereignty, equality and mutual respect,

Considering the provisions of international law and desiring to develop bilateral co-operation in the field of criminal law,

Considering that the co-operation shall contribute to the aims of justice and social rehabilitation of the sentenced persons,

Considering that these objectives require that persons who are deprived of their liberty as a result of their commission of a crime should be given the opportunity to serve their sentences within their own society,

Considering that this aim can best be achieved by having them transferred to their own countries, and

Guided by the principles of humanity and respect to the human rights,

Have agreed as follows:

**Article 1
Definitions**

1. For the purposes of this Treaty:

a) "sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred;

b) "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve the sentence imposed;

c) "sentence" means any punishment or compulsory measure involving deprivation of liberty ordered by a judge or a court of the sentencing State for a limited or unlimited period of time on account of a crime;

d) "sentenced person" means the person, convicted by a judge or a court of the sentencing State to a deprivation of liberty on account of a crime;

e) "citizen" means the person to whom this quality is recognized by the domestic law of the respective Party;

f) "legal representative" means the person, determined as such according to the procedure, established by the law of each Party;

g) "competent authorities" means the authorities of the Parties, which enforce the decision on transfer of the sentenced person;

h) "Central authorities" means
 in the Democratic Socialist Republic of Sri Lanka: the Secretary to the Ministry charged with the subject of Justice.
 in Ukraine: the Ministry of Justice of Ukraine.

Article 2 **Channels of Communications**

In implementing this Treaty the competent authorities of the Parties shall communicate through their Central Authorities.

Article 3 **General Principles**

1. The Parties shall afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Treaty and their respective domestic laws.

2. A person sentenced in the territory of a Party may be transferred to the territory of the other Party, in accordance with the provisions of this Treaty, in order to serve the sentence imposed on him. To that end, he or his legal representative may apply to the sentencing State or to the administering State.

3. Transfer may be requested by either the sentencing State or the administering State.

Article 4 Conditions for Transfer

1. A sentenced person may be transferred under this Treaty on the following conditions:

- a) if the person is a citizen of the administering State;
- b) if the sentence entered into force and is final;
- c) if, at the time of receipt of the request for transfer, the sentenced person still has at least six (6) months of the sentence to serve;
- d) if the transfer is consented to by the sentenced person or, in view of his age or his physical or mental condition one of the **Parties** considers it necessary, by the sentenced person's legal representative;
- e) if the acts or omissions on account of which the sentence has been imposed constitute a crime according to the law of the administering State or would constitute a crime if committed on its territory;
- f) if both Parties agree to the transfer.

2. In exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than six (6) months.

Article 5 Obligation to Furnish Information

1. The Parties shall assume obligation:

- a) to inform each other, in writing, through the Central Authorities about the sentencing of citizens of the other Party to a deprivation of liberty, as well as about their location;
- b) to explain to the sentenced person or to his legal representative the possibility of addressing the competent authorities of any of the Parties with the application for transfer to the administering State and about the legal consequences thereof.

2. The sentenced person shall be informed by the sentencing State or by the administering State in writing of any action taken, as well as of any decision taken by either Party on a request for transfer through the Central or competent authorities of the Sentencing State.

Article 6

Necessary Documents

1. The sentencing State shall furnish the administering State with the following information and documents:

- a) the first name and surname, date and place of birth of the sentenced person;
- b) the last address of the sentenced person or of his close relatives, if any, in the administering State;
- c) the texts of the provisions of the criminal law upon which the person was sentenced;
- d) the written declaration of the sentenced person or his legal representative, containing the consent to the transfer;
- e) a copy of the final judicial decision in force;
- f) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, reduction, and any other factors relevant to the enforcement of the sentence;
- g) whenever appropriate, any medical or social reports on the sentenced person and his treatment in the sentencing State, and any recommendation for his further treatment in the administering State;

2. The administering State shall furnish the sentencing State with the following documents and information:

- a) a document or statement indicating that the sentenced person is a citizen of the administering State;

b) a copy of the relevant provisions of law which provide that the conduct on account of which the sentence has been imposed constitute a crime or would constitute a crime if committed in its territory.

3. If necessary, the Parties may request any additional documents and information.

Article 7 Consent and Its Verification

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with this Treaty does so voluntarily and with full knowledge of the legal consequences thereof.

2. The sentencing State shall afford an opportunity to the administering State to verify through a consul or other official, agreed upon by the Parties, that the consent has been given in accordance with the conditions set out in paragraph 1 of this Article.

Article 8 Decision on the Request for Transfer

1. The decision to grant or refuse the request on transfer shall be taken without delay after the receipt of the documents, provided for in Article 6 of this Treaty.

2. In case of refusal to grant the transfer of the sentenced person, reasons for such refusal shall be communicated to the other Party without delay.

Article 9 Procedure of the Transfer

Time, place and procedure of the transfer of the sentenced person shall be directly agreed by the Central Authorities of the Parties.

Article 10 Effects of Transfer for Administering State

1. The sentence shall be executed in the territory of the administering State according to its own laws, and the execution issues also shall be settled according to the law of this State.

2. The administering State may not aggravate the punishment of the sentenced person.

3. The decision on recognition and execution of the sentence shall be issued according to the law of the administering State.

4. Should the punishment in the administering State for the offence committed be less than the punishment specified in the sentence, the administering State shall according to its domestic laws establish the maximum penalty through its competent court.

5. If the court sentence of the sentencing State includes punishments for two or more criminal acts, and the law of the administering State does not consider one or more of them as an offence, the administering State shall proceed to fix a punishment for the sentenced person, through its competent courts.

Article 11 Pardon and Amnesty

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its domestic law.

Article 12 Competence of Courts

1. Only the sentencing State shall have the right to review the sentence concerning the transferred sentenced person.

2. In case of reviewing of the sentence the sentencing State shall send promptly the true copy of the judgment concerning cancellation or modification of the sentence to the administering State.

3. If after the transfer of the sentenced person the sentence was cancelled and new investigation or trial was prescribed, the sentencing State shall send the true copy of that decision, criminal records and other materials resulting from necessary procedure actions, with translation of all the criminal records into the language of the administering State, in order to carry out the criminal prosecution according to the law of the administering State.

4. The sentencing State shall decide according to its law the issue of damages incurred to the sentenced person in result of an unjust prosecution.

5. If, after the transfer of the sentenced person, the sentence was revised by the sentencing State, the copy of the judgment and other necessary documents shall be sent to the Central Authority of the administering State. Such sentence shall be executed according to the procedure provided for in Article 10 of this Treaty.

Article 13 Information on Enforcement

The administering State shall provide the sentencing State with the relevant information concerning the enforcement of the sentence:

- a) if the administering State considers enforcement of the sentence to have been completed;
- b) if the sentenced person has escaped from custody before the enforcement of the sentence has been completed;
- c) if the sentenced person has been pardoned, granted amnesty or the sentence has been commuted;
- d) upon the request of the sentencing State.

Article 14 Transit

1. If either Party desires the transfer of a sentenced person from any third State, the other Party shall, in accordance with its laws, cooperate in facilitating as soon as practicable the transit through its territory of the sentenced person. The Party intending to make such a transfer shall give advance notice and request the other Party to facilitate such transit.

2. No request for transit shall be required if transport is carried out by an aircraft over the territory of a Party and there is no landing scheduled.

3. A request for transit may not be allowed, if

- a) the sentenced person is a citizen of the Requested Party;
- b) the request may infringe upon the sovereignty, national security, public order or any other interest of the Requested Party; or
- c) the act for which the sentence was imposed does not constitute a criminal offence under the laws of the Requested Party.

Article 15 Language

- 1. The request and the documents provided under Article 10 of this Treaty shall be accompanied by a translation into the official language of the other Party or into English.
- 2. The general communication between the Central Authorities shall be in English.

Article 16 Validity of Documents

The request for transfer and any documents sent under this Treaty as well as translations shall be certified by the competent authorities or the Central Authorities for the purposes of this Treaty and no further legalization or other confirmation of validity shall be required.

Article 17 Costs

- 1. Any costs concerned to the transfer of the sentenced person, arisen till the moment of the surrender, shall be borne by the Party on which territory they incurred. The costs related to the execution of the transfer and continuance of the enforcement of the sentence after the transfer shall be borne by the administering State. However, the administering State may according to its domestic law or practices seek to recover all or part of the costs of transfer from the sentenced person or some other source.
- 2. The costs incurred with the transit shall be borne by the Party requesting for transit.

Article 18 Settlement of Disputes

Any dispute arising from implementation or interpretation of this Treaty shall be settled by consultations between the Central Authorities of the Parties or through diplomatic channels.

Article 19 Temporal Application

This Treaty shall be applicable to sentences imposed either before or after its entry into force.

Article 20 Relationship to Other International Treaties

The provisions of this Treaty do not affect the rights and obligations of the Parties derived from other international treaties, the parties to which they are.

Article 21 Entry into Force and Termination

1. This Treaty is concluded for an indefinite period.
2. This Treaty is subject to ratification and shall enter into force on the fifteenth (15) day after the date of the exchange of the instruments of ratification.
3. This Treaty may be amended through the mutual written consent of the Parties. Such amendments shall enter into force according to the procedure set out in paragraph 2 of this Article.
4. Either Party may terminate this Treaty by giving written notice through diplomatic channels at any time. Termination shall take effect six (6) months after the date on which the notice is given. Notwithstanding its termination, the provisions of this Treaty shall continue to apply to the

enforcement of the sentences of the persons who have been transferred under this Treaty before the date on which its termination takes effect.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective States therefor, have signed this Treaty.

25th

Done at Kyiv on this 24th day of the month of June 2016 in duplicate, each in Sinhala, Ukrainian and English languages, all texts being equally authentic. In the event of any divergence of interpretation of this Treaty the English text shall prevail.

X (Signature)

For the Democratic Socialist
Republic of Sri Lanka

(Signature)

For Ukraine

X

