



REPUBLIKA E KOSOVËS – PRESIDENTI
REPUBLIC OF KOSOVO – THE PRESIDENT
REPUBLIKA KOSOVA – PREDSIEDNIK

DECREE FOR RATIFICATION OF THE INTERNATIONAL AGREEMENT

Pursuant to Article 18, paragraph 2 of the Constitution of the Republic of Kosovo, Article 10 paragraph 4 of the Law no. 04/L-052, on International Agreements and Article 4, item 3 of the Law No. 03/L-004 on the Ministry of Foreign Affairs and Diplomatic Service, I hereby issue the following;

Decree

The ratification of the Agreement on the Transfer of Sentenced Persons, between the Government of the Republic of Kosovo and the Swiss Confederation, signed in Prishtina on 14 May 2012, and received in the Office of the President of the Republic of Kosovo on 23 May 2012.

Pursuant to Article 18, item 3 of the Constitution of the Republic of Kosovo, the ratified agreement shall be forwarded to the Parliament of the Republic of Kosovo as a notification.

The ratified agreement shall enter into force on the day of its publication in the Official Gazette.

Decree No: DMN-004-2012

Prishtina, 01 June 2012

Atifete Jahjaga
President of the Republic of Kosovo

**TREATY
BETWEEN
THE REPUBLIC OF KOSOVO
AND
THE SWISS CONFEDERATION
ON THE
TRANSFER OF SENTENCED PERSONS**

The Republic of Kosovo

and

The Swiss Confederation,

hereinafter the "Parties"

Desirous of further developing international co-operation in the field of criminal law;

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;

Desirous to realise these objectives taking into account the commitment of both States with regard to the promotion and the protection of human rights;

Considering that these objectives can best be fulfilled by giving foreigners who are deprived of their liberty as a result of their commission of a criminal offence the opportunity to serve their sentences within their own society; and

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

Have agreed as follows:

PART ONE: GENERAL PROVISIONS

Article 1 - Definitions

For the purposes of this Treaty:

- a) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- b) "judgment" means a decision or order of a court imposing a sentence;
- c) "State" means the Republic of Kosovo, or the Swiss Confederation;
- d) "sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred; and
- e) "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his or her sentence.

Article 2 - General principles

1. The Parties undertake to 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.
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 or her. To that end, he or she may express his or her interest to the sentencing State or to the administering State in being transferred under this Treaty.
3. Transfer may be requested by either the sentencing State or the administering State.

Article 3 - Conditions for transfer

1. A sentenced person may be transferred under this Treaty only on the following conditions:
 - a) if that person is a national of the administering State;
 - b) if the judgment is final;
 - c) if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate;
 - d) if the transfer is consented to by the sentenced person or, where in view of his or her age or his or her physical or mental condition one of the two States 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 criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and
 - f) if the sentencing and administering States agree to the transfer.
2. In exceptional cases, the Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c.
3. The consent of the sentenced person as stated in paragraph 1.d is not required if the conditions laid down in Articles 23 and 24 of the Treaty are fulfilled.

Article 4 - Non-attachment clause

This Treaty shall be without prejudice to the rights, obligations and responsibilities of each Contracting Party arising from International Law or Conventions, directly or indirectly, and, in particular, from:

- the International Covenant on Civil and Political Rights of 16 December 1966;
- the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms;
- the Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 5 - Obligation to furnish information

1. Any sentenced person to whom this Treaty may apply shall be informed by the sentencing State of the substance of this Treaty.
2. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Treaty, that State shall so inform the administering State as soon as practicable after the judgment becomes final.
3. The information shall include:
 - a) the name, date and place of birth of the sentenced person;
 - b) his or her address, if any, in the territory of the administering State;
 - c) a statement of the facts upon which the sentence was based; and
 - d) the nature, duration and date of commencement of the sentence.
4. If the sentenced person has expressed his or her interest to the administering State, the sentencing State shall, on request, communicate to the administering State the information referred to in paragraph 3 above.
5. The sentenced person shall be informed, in writing, of any action taken by the sentencing State or by the administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer.

Article 6 - Central Authorities

For the purposes of this Treaty, the Central Authority for the Republic of Kosovo shall be the Ministry of Justice and for the Swiss Confederation shall be the Federal Office of Justice of the Federal Department of Justice and Police.

Article 7 - Requests and replies

1. Requests for transfer and replies shall be made in writing.
2. Requests shall be addressed by the Central Authority of the requesting State to the Central Authority of the requested State. Replies shall be communicated through the same channels.
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Article 8 - Supporting documentation

1. The administering State, if requested by the sentencing State, shall furnish it with:
 - a) a document or statement indicating that the sentenced person is a national of that State;
 - b) a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory.
2. If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer:
 - a) an original or a certified copy of the judgment and the law on which it is based;
 - b) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
 - c) a declaration containing the consent to the transfer as referred to in Article 3, paragraph 1.d; and
 - d) whenever appropriate, any medical or social reports on the sentenced person, information about his or her treatment in the sentencing State, and any recommendation for his or her further treatment in the administering State.

3. Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

Article 9 - Consent and its verification

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 3, paragraph 1.d, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.
2. The sentencing State shall afford an opportunity to the administering State to verify through a consul or other official agreed upon with the administering State that the consent is given in accordance with the conditions set out in paragraph 1 above.

Article 10 - Revocation of the consent

The consent of the sentenced person is irrevocable once the Parties have agreed on his or her transfer.

Article 11 - Effect of transfer for sentencing State

1. The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.
2. If the sentenced person flees after having been transferred, the sentencing State regains the right to enforce the part of the sentence this person would still have had to serve in the administering State.
3. The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed.

Article 12 - Effect of transfer for administering State

1. The competent authorities of the administering State shall:
 - a) in the case of the Republic of Kosovo, convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the Swiss Confederation a sanction prescribed by the law of the Republic of Kosovo for the same offence, under the conditions set out in Article 13, paragraph 1, or

- b) in the case of the Swiss Confederation, continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 13, paragraph 2.
2. The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions.

Article 13 - Continued enforcement and conversion of sentence

1. In the case of conversion of sentence according to Article 12, paragraph 1.a, the procedures provided for by the law of the Republic of Kosovo apply. When converting the sentence, the competent authority:
 - a) shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the Swiss Confederation;
 - b) may not convert a sanction involving deprivation of liberty to a pecuniary sanction;
 - c) shall deduct the full period of deprivation of liberty served by the sentenced person; and
 - d) shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the Republic of Kosovo may provide for the offence or offences committed.
2. In the case of continued enforcement according to Article 12, paragraph 1.b, the Swiss Confederation shall be bound by the legal nature and duration of the sentence as determined by the Republic of Kosovo.

If, however, this sentence is by its nature or duration incompatible with the law of the Swiss Confederation, or its law so requires, the Swiss Confederation may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the Republic of Kosovo, nor exceed the maximum prescribed by the law of the Swiss Confederation.

3. Prior to the transfer, the administering State shall submit the decision, indicating the sentence, to the sentencing State.

Article 14 - Consequences of the transfer

1. Any person transferred under this Treaty shall not be proceeded against or sentenced in the administering State for the offence for which he or she has been sentenced in the sentencing State.

2. The administering State can, however, detain, proceed against or sentence the transferred person for an offence for which he or she has not been sentenced in the sentencing State, provided that the offence is being prosecuted according to the law of the administering State.

Article 15 - Amnesty, Commutation or Pardon

Either State may grant amnesty or commutation of the sentence in accordance with its laws, provided such acts are of general applicability. The administering State may, with the consent of the sentencing State, grant a pardon in accordance with its laws.

Article 16 - Review of judgment

The sentencing State alone shall have the right to decide on any application for review of the judgment.

Article 17 - Termination of enforcement

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 18 - Information on enforcement

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

- a) when it considers enforcement of the sentence to have been completed;
- b) if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- c) if the sentencing State requests a special report.

Article 19 - Escort and costs

1. The sentencing State provides for the escort for the transfer and bears all costs relating to the transfer, unless the Central Authorities decide otherwise.
2. The administering State shall take the sentenced person into charge no later than 30 days after the agreement of the Parties on the transfer. If necessary, this time limit can be prolonged upon request.

Article 20 - Transit

1. If either Party transfers a sentenced person from any third State, the other Party shall cooperate in facilitating the transit of this person through its territory. The Party intending to make such a transit shall notify the other Party in advance of the transit.
2. Either Party may refuse to grant transit:
 - a) if the sentenced person is one of its nationals; or
 - b) if the offence for which the sentence was imposed is not an offence under its law.

Article 21 - Language

1. Documents transmitted according to this Treaty shall be accompanied by a translation into the language of the State to which it is addressed.
2. The language is to be specified in each case by the Central Authority:
 - a) in the case of the Republic of Kosovo, Albanian or Serbian;
 - b) in the case of the Swiss Confederation, German, French or Italian.

Article 22 - Exemption from legalisation, authentication and other formality requirements

Except as provided in Article 8, paragraph 2.a, documents transmitted in application of this Treaty shall be exempted from any legalisation, authentication and other formality requirements.

PART TWO: SPECIAL PROVISIONS CONCERNING THE TRANSFER AND THE TAKING OVER OF THE EXECUTION OF THE SENTENCE WITHOUT CONSENT OF THE SENTENCED PERSON

Article 23 - Persons having fled from the sentencing State

1. Where a national of a Party who is the subject of a sentence imposed in the territory of the other Party as a part of a final judgment seeks to avoid the execution or further execution of the sentence in the sentencing State by fleeing to the territory of the former Party before having served the sentence, the sentencing State may request the other Party to take over the execution of the sentence.
2. At the request of the sentencing State, the administering State may according to its internal law, prior to the arrival of the documents supporting the request, or prior to the decision on that request, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision on the request. Requests for provisional measures shall include

the information mentioned in Article 5, paragraph 3, of the Treaty. The penal position of the sentenced person shall not be aggravated as a result of any period spent in custody by reason of this paragraph.

3. The consent of the sentenced person shall not be required to the transfer of the execution of the sentence.

Article 24 - Sentenced persons subject to an expulsion or deportation order

1. Upon being requested by the sentencing State, the administering State may, subject to the provisions of this Article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.
2. The administering State shall not give its agreement for the purposes of paragraph 1 before having taken into consideration the opinion of the sentenced person.
3. For the purposes of the application of this Article, the sentencing State shall furnish the administering State with:
 - a) a declaration containing the opinion of the sentenced person as to his or her proposed transfer, and
 - b) a copy of the expulsion or deportation order or any other order having the effect that the sentenced person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.
4. Any person transferred under the provisions of this Article shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, for any offence committed prior to his or her transfer other than that for which the sentence to be enforced was imposed, nor shall he or she for any other reason be restricted in his or her personal freedom, except in the following cases:
 - a) when the sentencing State so authorises: a request for authorisation shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person; authorisation shall be given when the offence for which it is requested would itself be subject to extradition under the law of the sentencing State or when extradition would be excluded only by reason of the amount of punishment;
 - b) when the sentenced person, having had an opportunity to leave the territory of the administering State, has not done so within 45 days of his or her final discharge, or if he or she has returned to that territory after leaving it.

5. Notwithstanding the provisions of paragraph 4, the administering State may take any measures necessary under its law, including proceedings *in absentia*, to prevent any legal effects of lapse of time.

PART THREE: FINAL PROVISIONS

Article 25 - Consultation

Both Parties shall consult, at the request of either Party, concerning the interpretation, application or implementation of the present Treaty, generally or with respect to a specific case.

Article 26 - Temporal application

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

Article 27 - Entry into force

This Treaty shall enter into force 30 days after the receipt of the last diplomatic note by which the Parties inform each other on the accomplishment of conditions foreseen by the domestic legislation pertaining to the entry into force of this Treaty.

Article 28 - Denunciation

1. Either Party may terminate this Treaty at any time by giving notice in writing to the other Party. The termination shall take effect six months after the date of receipt of the notification.
2. The Treaty shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Treaty before the date on which such a denunciation takes effect.

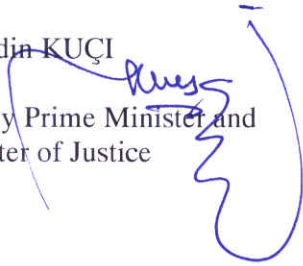
IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in Prishtina, this 14 day of May, 2012 in duplicate in the Albanian, Serbian, German and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Kosovo:

Hajredin KUÇI

Deputy Prime Minister and
Minister of Justice



For the Swiss Confederation:

Krystyna MARTY LANG

Ambassador

