



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

**DECREE ON RATIFICATION OF AN
INTERNATIONAL AGREEMENT**

Pursuant to Art. 18, item 2 of the Constitution of Republic of Kosovo and Art. 4, item 3 of the Law on Ministry of Foreign Affairs and Diplomatic Service, I hereby issue the following:

D e c r e e

On the Ratification of the Agreement on the Extradition of Convicted Persons reached between the Government of the Republic of Kosovo and the Government of the Kingdom of Belgium, signed on 18 June 2010 and received by the Office of President of Republic of Kosovo on 16 July 2010.

The ratified agreement shall be forwarded to the Assembly of Kosovo as a notification, pursuant to Art. 18, item 3 of the Constitution of Republic of Kosovo.

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

Decree No: DMN-026-2010

Pristina, 2 September 2010

Dr. Fatmir Sejdiu
President of Republic of Kosovo

CONVENTION

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KOSOVO

AND

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

ON

THE TRANSFER OF SENTENCED PERSONS

**CONVENTION
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF KOSOVO
AND
THE GOVERNMENT OF THE KINGDOM OF BELGIUM
ON
THE TRANSFER OF SENTENCED PERSONS**

THE GOVERNMENT OF THE REPUBLIC OF KOSOVO

AND

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

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;

CONSIDERING that these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence 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,

HAVE AGREED as follows:

ARTICLE 1

Definitions

For the purposes of this Convention:

1. "sentence" means any punishment or measure involving deprivation of liberty pronounced by a court for a limited or unlimited period of time on account of a criminal offence;
2. "judgment" means a decision or order of a court imposing a sentence;
3. "State" means the Government of the Republic of Kosovo or the Government of the Kingdom of Belgium;
4. "sentencing State" means the State that imposed the sentence on the person who may be, or has been, transferred;
5. "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
6. "Central Authority", in the case of the Kingdom of Belgium, means the Federal Department of Justice and, in the case of the Republic of Kosovo, the Ministry of Justice.

ARTICLE 2

General Principles

1. The States 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 Convention.
2. A person sentenced in the territory of a State may be transferred to the territory of the other State, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.
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 Convention 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 one year 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 age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative, except in the cases mentioned in Articles 8, 9 and 14;
 - 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 States 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.

ARTICLE 4

Obligation to furnish information

1. Any sentenced person to whom this Convention may apply shall be informed by the sentencing State of the substance of this Convention.
2. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Convention, 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 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 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 and in a language which he understands, 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 5

Requests and replies

1. Requests for transfer and replies shall be made in writing.

2. All communications between States may be made directly from one Central Authority to the other.
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

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 by 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. 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, such as credits for work performed or good behaviour;
 - c. other than the cases mentioned in Articles 8 and 14, a declaration containing the consent to the transfer as referred to in Article 3.1.d. or, if appropriate, the documents mentioned in Article 9.3;
 - d. whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the sentencing State, and any recommendation for his further treatment in the administering State. Such information shall include a report of the conduct of the sentenced person during his detention, relevant psychiatric, psychological or attempted suicide reports, information on any medical conditions, including substance abuse problems, information about past and present treatment, or disciplinary or incident reports during time spent in-custody, noting any special security concerns.
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 7
Consent and its verification

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 3.1.d does so voluntarily and with full knowledge of the legal consequences thereof upon consultation with independent legal counsel. The procedure for giving such consent shall be governed by the law of the sentencing State.
2. Prior to giving consent, the person required to give consent to the transfer shall be provided information concerning relevant prison conditions, available services and release programs in the administering State.
3. The sentencing State shall afford an opportunity to the administering State to verify through a consular or other official agreed upon with the administering State, that the consent is given in accordance with the conditions set out in this Article.

ARTICLE 8
Persons escaping from the custody of the sentencing State

1. Where a national of a Party who is the subject of a sentence imposed in the territory of another 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, 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 paragraph 3 of Article 4 of the Convention. 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 9
Sentenced persons under expulsion or deportation orders

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 authorizes: a request for authorization shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person; authorization 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.

ARTICLE 10

Effect of transfer for the 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. The sentencing State may no longer enforce the sentence once the administering State considers enforcement of the sentence to have been completed.

ARTICLE 11

Effect of transfer for the administering State

1. The competent authorities of the administering State shall:
 - a. continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 12, or

- b. convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 13.
2. The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.
3. 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 12
Continued enforcement

1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.
2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State 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 sentencing State, nor exceed the maximum prescribed by the law of the administering State.

ARTICLE 13
Conversion of sentence

1. In the case of conversion of sentence, the procedures provided for by the law of the administering State 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 sentencing State;
 - 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;
 - d. shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.
2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.

ARTICLE 14
Conditional release and probation

1. When a national of one State is subject to a decision ordering conditional suspension or conditional stay of the sentence or detention order or when he is conditionally sentenced or conditionally released on the territory of the other State, the latter can ask the former to take over supervision of these conditions.
2. This taking over of supervision of conditions does not request the consent of the interested party.
3. The requested State may, by court or administrative order, adapt to the needs of its own legislation the conditions associated with the sentencing, suspension, stay or release, by notifying the other Party. The nature and duration of these new conditions shall correspond as far as possible to the initial conditions. Their nature or duration shall not aggravate the situation of the interested party.
4. When the sentenced person breaches the conditions imposed on him, the requested State shall revoke the decision on conditional suspension, conditional stay of sentence or conditional release. The requested State shall then take over the enforcement of the sentence or the detention order passed by the sentencing State.

ARTICLE 15
Pardon, amnesty, commutation

Each State may grant amnesty or commutation of the sentence in accordance with its laws, provided such acts are of general applicability. Each 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
Language and costs

1. For the application of this Convention, the information shall be transmitted in one of the following languages:
 - a. Albanian, Serbian or English when addressed to the Republic of Kosovo;
 - b. French, Dutch or English when addressed to the Kingdom of Belgium.
2. Except as provided in Article 6.2.a., documents transmitted in application of this Convention do not need to be certified.
3. Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State and costs related to the transportation of the sentenced person until the border of the administering State or, in case of air transportation, until the airport of final destination, unless otherwise agreed by the States in a specific case.

ARTICLE 20
Final clauses

1. This Convention is subject to ratification and shall enter into force thirty days after the exchange of the instruments of ratification.
2. This Convention is applicable to the enforcement of sentences imposed either before or after its entry into force.

3. Either State may denounce this Convention at any time by sending written notice to the other Party through diplomatic channels. The denunciation shall take effect one year from the date of receipt of this notice. The present Convention shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Brussels, this 18th day of June 2010, in the French, Dutch, Albanian, Serbian and English languages, all texts being equally authentic. In case of a divergence in interpretation of the texts of this Convention, the English version shall prevail.

**FOR THE GOVERNMENT
OF THE REPUBLIC OF KOSOVO:**

**FOR THE GOVERNMENT
OF THE KINGDOM OF BELGIUM:**



Hashim THAÇI,
Prime Minister



Yves LETERME,
Prime Minister

