

AGREEMENT ON THE TRANSFER OF SENTENCED PERSONS BETWEEN THE REPUBLIC OF PERU AND THE REPUBLIC OF LITHUANIA

Thee Republic of Peru and the Republic of Lithuania, hereinafter referred to as the Parties;

Inspired by the ties of friendship and cooperation that characterise relations between the two countries;

Desiring to extend that special relationship in the field of cooperation to areas of common interest;

Aware that such cooperation should, in the interests of the sound administration of justice, contribute to the social rehabilitation of the sentenced person;

Considering that to achieve this aim it would be advantageous for nationals of both States who are deprived of their liberty as a result of a court's decision for their commission of a criminal offence to be given an opportunity to serve their sentences in their social environments of origin;

Considering that this aim can best be achieved by facilitating the transfer of sentenced persons;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Agreement:

- (a) "sentence" shall mean any custodial sentence or any measure involving deprivation of liberty ordered by a court on account of the commission of a criminal offence;
- (b) "Coercive measures of medical nature" or "security measures" shall mean placement into and observation in mental health care institution of a special type ordered by a court;

- (c) "Decision", shall mean the final judgment issued by a judge or court of the Sentencing State, imposing a sentence or security measure, thus specifying the authority from which such measures may be issued or an order to subject the person to coercive measures of medical nature involving deprivation of liberty;
- (d) "Sentenced person" shall mean a person in respect of whom a decision to impose a sentence or an order to apply coercive measures of medical nature involving deprivation of liberty has been rendered;
- (e) "Sentencing State" shall mean the Party in which the decision has been delivered on the person who may be, or has been, transferred;
- (f) "Performing State" shall mean the Party to which the sentenced person may be, or has been, transferred in order to serve a sentence or in order to subject the person to coercive measures of medical nature or security measure involving deprivation of liberty.

Article 2

General Principles

1. The Parties shall commit themselves to cooperate with each other in order to facilitate the transfer of a person sentenced in the territory of one Party to the territory of the other Party, in order to serve the sentence or in order to subject the person to coercive measures of medical nature involving deprivation of liberty imposed by a final decision.
2. The transfer may be requested by either the Sentencing State or the Performing State.
3. The sentenced person, the person's immediate family or the sentenced person's representative shall have the right, under the national law, to address the request for transfer to either Party. The decisions of the Central Authorities of the Parties regarding the request for transfer of the sentenced person shall be communicated in writing to the person who has made such request.

Article 3

Conditions for Transfer

1. The transfer shall only take place if:
 - a. The person sentenced in the territory of a Party is a citizen or a permanent resident of that Party;
 - b. The decision is final and has entered into force;
 - c. At the time of the receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve;
 - d. The acts or omissions on account of which the sentence has been imposed, constitute a criminal offence according to the laws of both Parties;
 - e. The transfer is consented by the sentenced person, or where in view of his/her age or his/her physical or mental condition one of the two Parties considers it necessary, by the sentenced person's legal representative;
 - f. The Parties agree to the transfer;
 - g. The sentenced person has paid the fine and/or the compensation imposed by the decision, except in cases where the sentenced person gives proof of absolute insolvency.
2. In exceptional cases, the Parties may agree to a transfer even if the time left to be served by the sentenced person is less than six months.

Article 4

Grounds for Refusal to Transfer a Sentenced Person

The Transfer of a sentenced person shall be refused if:

- a. One of the conditions specified in Article 3 is not met;

- b. The person has served the sentence or been acquitted, or the proceedings have been terminated in the Sentencing State, also if the person has been released from the sentence by the court of the Sentencing State;
- c. The sentence cannot be enforced under the law of the Performing State;
- d. The act on account of which the person has been sentenced is considered an offence against the State sovereignty or a military offence under the law of Party.

Article 5

Obligation to Furnish Information

- 1. Any sentenced person to whom this Agreement may apply shall be informed by the Parties of the substance of this Agreement and of the terms under which the transfer can take place and the legal consequences derived from the transfer.
- 2. The Party to which the sentenced person has expressed an interest in being transferred shall so inform the other Party as soon as practicable after the decision becomes final and enter into force.
- 3. The request for transfer of a sentenced person shall include the personal data of the sentenced person: the name, surname, date and place of birth of the sentenced person, also if known, passport or identity card number of the sentenced person.

In addition, the Sentencing State shall supplement the request with:

- a. An indication of the offence, commencement and duration of the sentence served or the coercive measure of medical nature or security measure applied, as well as the envisaged date of its expiry, including information on provisional detention and arrest and the possible dates of conditional release;
- b. A certified copy of the decision, indicating the date the decision was issued and the date it has entered into force, as well as the text of the legal provisions which provide that the acts or omissions on account of which the sentence has been imposed constitute a criminal offence;

- c. A declaration of the sentenced person indicating his or her consent to the transfer;
 - d. Whenever appropriate, any medical or social reports on the sentenced person, including information on the conduct of the sentenced person during his or her imprisonment, information about the treatment of this person in the Sentencing State, and any recommendation for further treatment in the Performing State;
 - e. Other documents or significance for the execution of the sentence.
4. The request by the Performing State shall be accompanied by:
- a. A document confirming that the sentenced person is a citizen of that State, or has a permanent residence in that Party;
 - b. The text of the legal provisions which provide that the acts or omissions on account of which the sentence has been imposed in the Sentencing State are considered to constitute a criminal offence which would be punishable in the Performing State, if committed on its territory;
 - c. The text of the legal provisions which provide for the terms and procedure of conditional release or the text of the legal provisions regarding the application of coercive measures of medical nature or security measures;
 - d. Other documents that may be relevant when making a decision on the request.
6. The Parties may request additional information, if the data supplied are insufficient for consideration of the request and agree on the deadline of submission of the data, if necessary. If such data are not supplied, the request shall be considered on the basis of the available information and documents.
7. The sentenced person shall be informed in writing of any decision taken by either Party on a request for transfer.

Article 6
Central Authorities

1. For the purposes of receipt and transmission of requests for transfer as well as for all communications thereto, the Parties shall designate the following as the Central Authorities:
 - a. For the Republic of Peru: the Public Ministry - Attorney General's Office;
 - b. For the Republic of Lithuania - the Ministry of Justice.
2. The Central Authorities shall contact each other directly, without prejudice to this, the diplomatic channel may be used.
3. The Parties shall, through diplomatic channels communicate to each other contact data as well as changes of the Central Authorities. The Central Authorities shall directly inform each other of any change relating to their contact data as soon as possible.

Article 7
Consent

1. The consent shall be given in accordance with the law of the Sentencing State.
2. The Sentencing State shall ensure that the person required to give consent to transfer does so voluntarily and with full knowledge of the legal consequences thereof. The Sentencing State shall offer an opportunity to the Performing State to verify through a consul or other official agreed upon with the Performing State, that the consent is given in accordance with the conditions set out in this paragraph.

Article 8
Transfer

1. The Performing State shall, within the shortest time possible, inform the Sentencing State of its consent or refusal to transfer the sentenced person in accordance with the conditions specified in this Agreement. The refusal to transfer the sentenced person shall be reasoned.

2. The Parties, upon taking decisions on the transfer of the sentenced person, shall, as soon as possible, reach a mutual agreement on the place, time and procedure of the transfer.

Article 9

Effect of Transfer

1. The transfer of the sentenced person shall have the effect of suspending the enforcement of the sentence or the application of coercive measures of medical nature in the Sentencing State.
2. The Sentencing State may no longer enforce the sentence if the Performing State considers enforcement of the sentence or application of coercive measures of medical nature or security measures to have been completed.
3. The Sentencing State shall have the right to enforce the remaining part of the sentence or apply coercive measures of medical nature or security measures if the sentenced person, in order to avoid serving the sentence in the Performing State, leaves the territory of that State. The Performing State shall immediately notify the Sentencing State of such circumstances.
4. The powers of the Sentencing State mentioned in paragraph 3 of this Article shall expire after the enforcement of the sentence or the application of coercive measures of medical nature or security measures are completed or after the sentenced person is released from serving the sentence or from the application of coercive measures of medical nature or security measures.

Article 10

Execution

1. The continued enforcement of the sentenced person's sentence shall be carried out in accordance with the laws and administrative or judicial proceedings of the Performing State.
2. The Performing State shall be bound by the legal nature and duration of the sentence, as determined by the Sentencing State, and shall execute, as appropriate, the sentence up to the maximum penalty stipulated by its law. The Performing State shall not aggravate the sentence, either by its nature or duration, imposed in the Sentencing State.

3. The Sentencing State shall deduct the full period of deprivation of liberty served by the sentenced person in the Sentencing State.

Article 11

Pardon, Amnesty and Commutation

The Parties may grant pardon, amnesty or commutation of the sentence in accordance with their internal law. The Central Authorities shall give prior notice of the intention to grant pardon, amnesty or commutation of the sentence.

Article 12

Review of Decision

1. The Sentencing State alone shall have the right to decide on any application for review of the decision.
2. The Sentencing State shall notify the Performing State of any reversal or amendment of the decision.
3. The Performing State shall implement the amendments introduced to the sentence or coercive measures of medical nature or security measures. The Performing State shall terminate enforcement of the sentence or application of coercive measures of medical nature or security measures 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 or the coercive measures of medical nature or security measures cease to be applicable.

Article 13

Transfer of Criminal Prosecution

1. Where the decision was reversed and a new investigation or a court examination was ordered in the Sentencing State after the transfer of the sentenced person to the Performing State, the Sentencing State may request the Performing State to take proceedings, if it cannot itself prosecute or sentence that person by having recourse to extradition.
2. The request for transfer of criminal prosecution shall be accompanied by the original, or a certified copy, of the criminal file, including the reversed decision,

the text of the applicable legal provisions of the Sentencing State and all other necessary documents. The Performing State may request additional information, if it considers that the information supplied by the Sentencing State is insufficient.

3. The Performing State shall examine the request for the transfer of criminal prosecution, in accordance with its national law.
4. The Performing State shall promptly communicate its decision on the request for transfer of criminal prosecution to the Sentencing State. In the same way, the Sentencing State shall inform of a waiver of proceedings and of the decision taken as a result or proceedings. A certified copy of any written decision shall be transmitted to the Sentencing State.
5. Upon receipt of a request for proceedings accompanied by the documents referred to in Article 13, paragraph 2, the Performing State shall have jurisdiction to apply such provisional measures as may be applied in accordance with its national law as if the offence for which proceedings are requested has been committed in its territory.

Article 14

Effects of the Transfer of Criminal Prosecution

1. When the Sentencing State has transferred the criminal prosecution, it can no longer prosecute the person for the offence in respect of which the proceedings have been requested.
2. The right of prosecution and of enforcement shall revert to the Transferring Party:
 - a. If the Performing State informs it of a decision not to take action on the request for transfer of the criminal prosecution;
 - b. If the Performing State informs it of a decision not to institute proceedings or discontinue it;
 - c. If it withdraws its request for transfer of the criminal prosecution before the Performing State has informed it of a decision to take action on the request.

Article 15

Information on Enforcement

The Performing State shall provide information to the Sentencing State concerning the enforcement of the sentence or the application of coercive measures of medical nature or security measures:

- a. When it considers the enforcement of the sentenced of the application of coercive measures of medical nature or security measures has been completed;
- b. If the sentenced person has escaped before the enforcement of the sentence of the application or coercive measures of medical nature or security measures has been completed;
- c. If the Sentencing State requests information concerning the execution of an individual sentence or the application of coercive measures of medical nature or security measures, including the release of the sentenced person.

Article 16

Transit

1. Each Party shall cooperate in facilitating the transit through its territory of sentenced persons transferred to a Requesting Party from a Third State.
2. A request for transit shall be accompanied by: an authenticated copy of the decision with an indication that it is enforceable and the text of the legal provisions on account of which the person was convicted, information about the citizenship of the sentenced person, if not indicated in the decision, the description, photo and fingerprints of the person.
3. The Party requested to grant transit of the sentenced person through its territory shall not prosecute such a person, detain him or her or otherwise restrict his or her freedom, unless when it is necessary to ensure the transit of the sentenced person through its territory.

4. No consent of the Party shall be required for the transit of sentenced persons through its territory, if transport is by air and no landing in the territory of this Party is scheduled.
5. A Party may refuse to grant transit:
 - a. If the sentenced person is one of its citizens;
 - b. If the offence for which the person was convicted is not an offence under its national law.

Article 17

Protection of Personal Data

1. The personal data transferred under this Agreement to a Party may be used by this Party:
 - a. In legal proceedings subject to this Agreement;
 - b. In other legal or administrative proceedings directly related to the legal proceedings referred to in paragraph (1) (a) of this Article;
 - c. For the purpose of preventing a direct and major threat to public safety;
 - d. For any other purpose, but only upon prior consent of the Transferring Party which transfers the data, if the other Party has not obtained the consent of the data subject.
2. (Paragraph 2 was eliminated)
3. This Article also covers the data that have not been transferred, but obtained in another way under this Agreement.
4. The Party, taking into account specific circumstances, may request one of the Parties, to which the data have been transferred, to supply information about the use thereof.

Article 18

Costs

Any expenses incurred in relation to the application of this Agreement shall be borne by the Performing State, except for the expenses incurred exclusively in the territory of the Sentencing State. However, the Performing State may request the sentenced person to pay all or part of the costs of the transfer.

Article 19

Temporal Application

This Agreement shall be applicable for requests submitted after its entry into force, even if the respective decision by the Sentencing State has been delivered prior to this date.

Article 20

Language

1. All requests and accompanying documents sent in accordance with this Agreement shall be furnished in the official state languages of the Parties. A translation of all the documents into the official state language of the other Party or into English shall be provided along with the documents.
2. All documents transmitted in application of this Agreement shall be exempt from all legalization formalities.

Article 21

Relation with other International Treaties

The provisions of this Agreement shall not prejudice the rights and obligations arising from other bilateral or multilateral agreements, concluded by either Party with third countries, as well as from conventions, to which both States are parties to.

Article 22

Settlement of Disputes

Any dispute arising from the interpretation or implementation of this Agreement shall be resolved through consultation between the Parties, through diplomatic channels.

Article 23

Amendments

1. Either Party may propose amendments to this Agreement, which shall form an integral part thereof and take the form of Protocols.
2. The amendments shall enter into force in accordance with Article 24 of this Agreement.

Article 24

Entry into Force

This Agreement shall enter into force thirty (30) days after the date of the last notification by which the Republic of Peru and the Republic of Lithuania notify each other in writing, through diplomatic channel, of the completion of their respective internal legal procedures for entry into force of this Agreement.

Article 25

Duration and Denunciation

1. This Agreement shall remain in force for an indefinite period.
2. Either Party may denounce this Agreement at any time.
3. The denunciation shall be notified to the other Party in writing, through diplomatic channel. The denunciation shall become effective six (6) months after the date of receipt of the respective notification.
4. Notwithstanding the denunciation, this Agreement shall continue to apply to the enforcement of sentences of persons who have been transferred under this Agreement.

Article 26

Registration

Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the Charter of the United Nations, shall be initiated immediately following its entry into force by the Party in whose territory this

Agreement was signed. Likewise, the other Party shall be notified of the completion of the registration procedure and of the UN registration number.

DONE at, on this day of 20...., in two original copies in the Spanish, Lithuanian and English languages, all texts being equally authentic and valid. In case of any divergence in interpretation, the text in English shall prevail.

On behalf of the Republic of Peru

On behalf of the Republic of Lithuania