

TREATY
ON THE TRANSFER OF SENTENCED PERSONS
BETWEEN
THE REPUBLIC OF LITHUANIA
AND
THE FEDERATIVE REPUBLIC OF BRAZIL

The Republic of Lithuania and the Federative Republic of Brazil, hereinafter referred to as "the Parties",

Desirous of strengthening cooperation and assistance in the field of criminal justice,

Wishing, by means of adopting appropriate measures, to facilitate the rehabilitation of sentenced persons,

Considering that this objective should be best achieved by granting to foreign nationals deprived of their liberty as a result of crimes committed the opportunity to serve their sentences within their own society,

Adhering to the principles of respect for human rights,

Have agreed as follows:

Article 1

Definitions

For the purposes of the present Treaty:

- a) “judgment” shall mean a final decision of competent judicial authority that imposes a sentence;
- b) “sentenced person” shall mean a person who is serving a definitive and executable sentence in the sentencing State;
- c) “receiving State” shall mean the Party to which the sentenced person may be or has been transferred to continue to serve a sentence or, for the purpose of Article 17, means the State to which the sentenced person has fled to or otherwise returned to in order to avoid the execution of the sentence in the sentencing State;
- d) “sentencing State” shall mean the Party in which a sentence has been imposed on the person who may be, or has been, transferred;
- e) “sentence” means the final judicial decision imposing, as a penalty for the commission of a criminal offense, imprisonment or other forms of deprivation of liberty.

Article 2

General Principles

1. The Parties agree to maintain greatest possible mutual cooperation in all matters related to the transfer of sentenced persons pursuant to the terms and provisions of the present Treaty.
2. A person convicted in the territory of one of the Parties may be transferred to serve the sentence in the territory of the other Party in due compliance with the provisions of the present Treaty and to that end may make manifest to the sentencing State or to the receiving State his or her wish to be transferred under the terms of the Treaty. Thereupon, that State shall inform this person of the Central Authorities of each Party.
3. The sentenced person, the person’s immediate family or the sentenced person’s

representative shall have the right 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.

4. Transfer may be requested by the sentencing State or by the receiving State through the Central Authorities.

Article 3

Conditions for Transfer

1. The present Treaty shall be applicable provided that:

- a) the sentenced person is, according to the national law of the receiving State, a national or a permanent resident of that State ;
- b) the sentence imposed is not the death penalty or life imprisonment. In such cases the transfer shall only be done if the sentencing State agrees that the sentenced person shall serve the maximum sentence foreseen by the legislation of the receiving State;
- c) at the time of receipt of the request for transfer the amount of the sentence yet to be served is at least one year;
- d) the sentence is final and definitive;
- e) the sentenced person, or the legal representative of the same when the person demonstrates mental or physical conditions that make representation for the purpose of consenting to transfer necessary, explicitly consents to the transfer, except as provided for in Article 17, paragraph 2;
- f) both the receiving State and the sentencing State approve the transfer;
- g) the act or omission for which the sentence has been imposed also constitutes a criminal offence according to the laws of receiving State or would constitute a criminal offence, if committed on its territory.

2. In exceptional cases, the sentencing State and the receiving State may agree to a transfer even if the time still to be served by the sentenced person is less than that specified

in paragraph 1 (c) of this Article.

3. By agreement between the Parties, this Treaty may be applied to persons whom the competent authority has pronounced unindictable, for purposes of treatment of such persons in the receiving State. The Parties shall, in accordance with their laws, agree on the type of treatment to be accorded to such individuals upon transfer. For the purpose of transfer, consent must be obtained from a person legally authorized to grant it.

Article 4

Obligatory Supply of Information

1. The Parties shall notify all sentenced persons to whom the present Treaty may be applicable of its terms and provisions.

2. The sentenced person shall be fully informed of the possibility and of the legal consequences of a transfer, in particular that he or she might be punished because of other offences committed before his or her transfer.

3. The sentenced person shall be informed in writing of any decision made by either of the Parties with regard to the request for transfer.

Article 5

Central Authorities

1. For 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 Federative Republic of Brazil – the Ministry of Justice;
- b) for the Republic of Lithuania – the Ministry of Justice.

2. The Central Authorities shall contact each other directly for the purposes of this Treaty.

3. The Parties shall, without delay, through diplomatic channels inform each other of the 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 6

Compliance with the Request

The Central Authority of the requested Party shall, within the shortest time possible, inform the central authority of the requesting Party of its consent or refusal to transfer the sentenced person in accordance with the conditions specified in this Treaty.

Article 7

Supporting Documents

1. The receiving State shall communicate to the sentencing State the following information:

a) a document indicating that the sentenced person is a national or a permanent resident of the receiving State;

b) a copy of the relevant legal provisions which provide that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence in the receiving State or would constitute a criminal offence which would be punishable, if committed on its territory;

c) information about the procedure for enforcement of the sentence, including the text of the legal provisions which provide for the terms and procedure of conditional release;

d) other documents that may be relevant when making a decision on the request.

2. If a transfer is requested, the sentencing State shall provide the following documents to the receiving State, unless either State has already indicated that it will not agree to the transfer:

- a) a certified copy of the judgment, indicating that it is final, including the date the decision was issued and the date it has entered into force;
- b) the respective texts from the legislation of the sentencing State related to the offence, the sentence and the lapse period;
- c) a statement indicating how much of the sentence has already been served, including information on any factor relevant to the enforcement of the sentence;
- d) a statement about the sentenced person's behavior during detention;
- e) a document of a nature as foreseen in the laws of the sentencing State, containing the express consent of the sentenced person or representative if the mental or physical condition of the sentenced person make representation for the purpose of consenting to transfer necessary;
- f) whenever appropriate, a medical or social bulletin on the sentenced person, including information on treatment being undergone and recommendations for the continuing of the same in the receiving State;
- g) any other information that may be relevant when making a decision on the request.

3. 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.

4. Any documents transmitted via the Central Authorities in accordance with this Treaty shall not require any form of certification or authentication.

Article 8

Denial

1. Either one of the Parties may refuse to transfer the sentenced person.
2. If for any reason one of the Parties does not approve the transfer it shall immediately notify the other Party with due argument and justification.

Article 9

Means of Communication

The Central Authorities of the Parties may cooperate, within the limits of their respective possibilities, by making use of electronic or other means that allow for more rapid communication between them.

Article 10

Consent of the Sentenced Person for Transfer

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with the provisions of this Treaty does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving consent shall be governed by the laws of the sentencing State.
2. Before the transfer takes place, the sentencing State shall, if the receiving State so requests, afford the latter the opportunity to verify, through an official, appointed in accordance with the laws of the receiving State, that the consent of the sentenced person was given voluntarily and with full knowledge of the legal consequences inherent therein.

Article 11
Mechanism for Transfer

1. The receiving State shall be responsible for the custody and the transport of the sentenced person from the sentencing State to the receiving State. For that purpose, the competent authorities of the receiving State shall take over the sentenced person in a place in the sentencing State agreed between both States.

2. The receiving State shall bear the costs for the transfer of the sentenced person, except for the costs incurred in the territory of the sentencing State.

Article 12
Transit

1. Each Party shall grant a request of another Party to allow, through its territory, the transit of sentenced persons transferred to a requesting Party by a third State. To that end, the transit in the territory of one of the Parties shall be permitted, upon official request issued by the Central Authority, accompanied by the original document authorizing the transferring or a copy of the same, as well as information about the nationality of the sentenced person and an extract from the criminal law on account of which the person was convicted.

2. Requests for transit of sentenced persons will not be necessary when air transport is used and no landings in the territory of the transit State are foreseen, except in the case of the use of military aircraft.

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. The Party requested to grant transit may be asked to give an assurance that the

sentenced person will not be prosecuted, or, except as provided in the preceding paragraph, detained, or otherwise subjected to any restriction on his liberty in the territory of the transit State for any offence committed or sentence imposed prior to his or her departure from the territory of the sentencing State.

5. A Party may refuse to grant transit:

- a) if the sentenced person is one of its nationals; or
- b) if the offence for which the person was convicted is not an offence under its national law.

6. Should transit be refused, the refusal shall be duly motivated and justified.

7. In the event of an unscheduled landing, the Party in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 1 of this Article, and it may detain the person until the request for transit is received and the transit is effectuated, as long as the request is received within 48 (forty-eight) hours of the unscheduled landing.

Article 13

Information on the Execution of the Sentence

The receiving State shall inform the sentencing State on the execution of the sentence:

- a) when the sentencing State so requests or;
- b) when the sentence is considered to have been fully served; or
- c) when the sentenced person has escaped from custody before the enforcement of the sentence has been completed.

Article 14

Effect of Transfer for the Receiving State

1. A sentenced person who is transferred pursuant to the provisions of the present Treaty may not be detained, charged or convicted again in the receiving State for the same facts that were the basis of the conviction determined in the sentencing State.
2. The enforcement of the sentence, including conditions for parole, shall be governed in accordance with the laws of the receiving State.
3. The receiving State must respect the legal nature and length of the sentence imposed by the sentencing State. If, however, that sentence is by its nature or duration incompatible with the law of the receiving State, this State may adapt the sentence to the punishment or measure prescribed by its own law for a corresponding offence.
4. The receiving State shall neither aggravate, by its nature or duration, the sanction imposed, nor exceed the maximum period of time allowed by its law for the execution of a sentence.
5. The receiving State shall deduct the full period of deprivation of liberty served by the sentenced person in the sentencing State.
6. The receiving State shall be bound by the findings as to the facts insofar as they appear from the judgment imposed over the sentenced person.

Article 15

Effects of Enforcement

1. The receiving State shall bear the cost for the enforcement of the sentence after the transfer.

2. When the receiving State enforces a sentence, the sentencing State shall not take any further actions of enforcement.

3. The sentencing State shall have the right to enforce the remaining part of the sentence if the sentenced person, in order to avoid serving the sentence, leaves the territory of the receiving State. The receiving State shall immediately notify the sentencing State of such circumstances.

4. The powers of the sentencing State mentioned in paragraph 2 of this Article shall expire after the enforcement of the sentence or after the sentenced person is released from serving the sentence.

Article 16

Revision of the Sentence

1. The sentencing State shall retain full jurisdiction over revision of the sentences handed down by its courts.

2. Each Party may grant a reprieve, amnesty or pardon or substitute the sentence in accordance with its Constitution and relevant legislation. On being notified, upon notification of any changes in the sentence, the receiving State shall immediately adopt the necessary measures to put them into effect.

Article 17

Transfer of the Execution of the Sentence

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 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.

3. For the purposes of paragraph 1 of this Article, the relevant provisions of this Treaty may apply, nevertheless, the consent of the sentenced person shall not be required.

Article 18

Protection of Personal Data

1. The personal data transferred under this Treaty to a Party may be used by this Party:

- a) in legal proceedings subject to this Treaty;
- 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 data transferring Party, if the other Party has not obtained the consent of the data subject.

2. This Article also covers the data that have not been transferred, but obtained in another way under this Treaty.

3. The Party, taking into account specific circumstances, may request the Party, to which the data have been transferred, to supply information about the use thereof.

Article 19

Language

1. Requests and supporting documents made pursuant to this Treaty shall be

submitted in a language of the sentencing State accompanied by a translation into an official language of the receiving State.

2. For the purpose of informal communication, including an initial request and approval as provided in paragraph 1 (f) of Article 3 of the Treaty, the Central Authorities of the Parties may communicate in English.

Article 20

Temporal Applicability

The present Treaty shall be applicable to the execution of sentences imposed before and after its coming into force.

Article 21

Relation with other International Treaties

The provisions of this Treaty 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.

Article 22

Settlement of Disagreements

Disagreements concerning the application and interpretation of the present Treaty shall be settled by means of negotiation between the Parties.

Article 23

Entering into Force, Amendments and Termination

1. Each Party shall notify the other Party in writing, through diplomatic channels, upon completion of its respective internal legal procedures required to allow this Treaty to enter into force. This Treaty shall enter into force 30 (thirty) days after the date of the receipt of the last notification.

2. The present Treaty shall remain in force for an indefinite period and may be terminated by either Party at any moment by means of a written notice to the other Party sent through the diplomatic channels. The termination shall take effect 6 (six) months after the date on which the other Party received the respective notification. Requests made prior to this written notice, or received during the six month notification period shall be dealt with in accordance with this Treaty.

3. This Treaty may be amended by written agreement of the Parties. These amendments shall enter into force in accordance with the procedure laid down in paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Treaty.

DONE in duplicate in New York, on 26 September 2018 in the Lithuanian, Portuguese and English languages each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**FOR THE REPUBLIC OF
LITHUANIA**



Linas Linkevičius
Minister of Foreign Affairs

**FOR THE FEDERATIVE REPUBLIC
OF BRAZIL**



Aloysio Nunes Ferreira
Minister of Foreign Affairs