

Model Treaty on the Transfer of Supervision of Offenders Who Have Been Conditionally Sentenced or Conditionally Released

Adopted by General Assembly resolution 45/119 of 14 December 1990

The _____ and the _____

Desirous of further strengthening international cooperation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such cooperation should further the ends of justice, the social resettlement of sentenced persons and the interest of the victims of crime,

Bearing in mind that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

Aware that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

Have agreed as follows:

Article 1

Scope of application

1. The present Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

(a) Placed on probation without sentence having been pronounced; (b) Given a suspended sentence involving deprivation of liberty;

(c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

Article 2

Channels of communications

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

Article 3

Required documents

1. A request for the transfer of supervision shall contain all necessary information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in the preceding provision and a certificate that this decision is final.

2. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

Article 4

Certification and authentication

Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the supporting documents thereto, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.*

Article 5

Decision on the request

The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

Article 6

*Dual criminality***

A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

Article 7

*Grounds for refusal****

If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

- (a) The sentenced person is not ordinarily resident in the administering State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the administering State as being of a political nature;
- (e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

Article 8

The position of the sentenced person

Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under the present Treaty.

Article 9

The rights of the victim

The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

Article 10

The effects of the transfer of supervision on the sentencing State

The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

Article 11

The effects of the transfer of supervision on the administering State

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

Article 12

Review, pardon and amnesty

1. The sentencing State alone shall have the right to decide on any application to reopen the case.

2. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

Article 13

Information

1. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

Article 14

Costs

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

Article 15

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

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

----- DONE at ----- on ----- in the ----- and ----- languages [both/all] texts being equally authentic.

* The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

** When negotiating on the basis of the present Model Treaty. States may wish to waive the requirement of dual criminality.

*** When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.