

TREATY

BETWEEN

THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE REPUBLIC OF KOREA

FOR THE TRANSFER OF SENTENCED PERSONS

111

**TREATY
BETWEEN
THE SOCIALIST REPUBLIC OF VIETNAM
AND
THE REPUBLIC OF KOREA
FOR THE TRANSFER OF SENTENCED PERSONS**

The Socialist Republic of Vietnam and the Republic of Korea (hereinafter referred to as "the Parties");

Desiring the facilitation of legal cooperation and the successful reintegration of sentenced persons into society; and

Considering that this objective should be fulfilled by giving nationals of the other country who are deprived of their liberty as a result of their commission of a criminal offence the opportunity to serve their sentences in their own country;

Have agreed as follows:

**ARTICLE 1
DEFINITIONS**

For the purposes of this Treaty:

(a) "transferring Party" means the Party from which the sentenced person may be, or has been, transferred;

(b) "receiving Party" means the Party to which the sentenced person may be, or has been, transferred;

(c) "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;

(d) "sentenced person" means any person who has been imposed a sentence by a court in the jurisdiction of the transferring Party within the definition of "sentence" stipulated in Paragraph (c) of this Article;

(e) "national" means a person who has the nationality of the transferring Party or the receiving Party.

ARTICLE 2
GENERAL PRINCIPLES

1. The Parties shall afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Treaty.

2. A sentenced person may be transferred from the jurisdiction of the transferring Party to the jurisdiction of the receiving Party in accordance with the provisions of this Treaty in order to serve the sentence imposed on him or her by the transferring Party.

3. The transfer of sentenced persons may be requested by either the transferring Party or the receiving Party.

ARTICLE 3
CENTRAL AUTHORITIES

1. Each Party shall designate a Central Authority to implement the provisions of this Treaty.

2. The Central Authority for the Socialist Republic of Vietnam shall be the Minister of Public Security or an official designated by that Minister. The Central Authority for the Republic of Korea shall be the Minister of Justice or an official designated by that Minister. Either Party may change its Central Authority, in which case it shall promptly notify the other Party of the change.

3. The Parties shall use diplomatic channels in communicating with each other except for in case of urgency or other extraordinary circumstances.

ARTICLE 4
CONDITIONS FOR TRANSFER

1. A sentenced person may be transferred only on the following conditions:

(a) the acts or omissions for which the sentence has been imposed would constitute a criminal offence under the laws of the receiving Party; however, this condition shall not be interpreted to require that the offence described in the

laws of both Parties be identical with respect to matters that do not affect the essential nature of the offence;

(b) the sentenced person is a national of the receiving Party;

(c) at the time the request for transfer is received, the sentenced person has still at least one year of the sentence to serve, or is serving an indeterminate or life sentence;

(d) the judgment is final, and no further proceedings relating to the offence are pending within the jurisdiction of the transferring Party;

(e) the transferring and receiving Parties all agree to the transfer, and

(f) the transfer is consented to by the sentenced person or, where in view of the person's age or physical or mental condition one of the Parties considers it necessary, by his or her legal representative.

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) of this Article.

ARTICLE 5

VERIFICATION OF CONSENT

1. Each Party shall ensure that the person who gives consent to the transfer as required by Article 4.1(f) does so voluntarily and with knowledge of the consequences thereof.

2. The transferring Party shall permit an official designated by the receiving Party personally to verify, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4.1(f) is given voluntarily and with knowledge of the consequences thereof.

ARTICLE 6

EFFECT OF TRANSFER FOR TRANSFERRING PARTY

1. The taking into charge of the sentenced person by the authorities of the receiving Party shall have the effect of suspending the enforcement of the sentence by the authorities in the transferring Party.

2. The transferring Party shall not enforce the sentence if the receiving Party considers enforcement of the sentence to have been completed.

ARTICLE 7

PROCEDURES FOR TRANSFER

1. The Parties shall inform sentenced persons of their right to transfer under this Treaty.

2. If a sentenced person wishes to be transferred, he or she may express such a wish to either Party which shall promptly so inform the other Party in writing.

3. A request for transfer may be made by either Party to the other Party. The requested Party shall promptly inform the requesting Party of its decision whether to agree to a request for transfer.

4. Requests for transfer shall be in writing and shall include the following information:

(a) the name, date and place of birth of the sentenced person;

(b) a statement indicating the nationality status of the sentenced person;
and

(c) the location of the sentenced person and permanent address, if available.

5. Where a request for transfer has been made, the transferring Party shall, to the extent practicable, provide the receiving Party with the following information in writing:

(a) a statement of the facts upon which the conviction and sentence were based;

(b) a copy of the relevant law which provides that the acts or omissions on account of which the sentence has been imposed in the transferring Party constitute an offence;

(c) the nature and duration of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which he or she is entitled on account of work done, good behavior, pre-trial confinement or other reasons;

(d) a copy of the certificate or record of conviction and sentence; and

(e) a declaration containing the consent to the transfer as referred in Article 4.1(f).

6. Either Party shall, to the extent practicable, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether to agree to the

transfer. In this regard, the receiving Party shall advise the transferring Party whether it intends to adapt the sentence in accordance with Article 8.3.

7. Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place within the jurisdiction of the transferring Party agreed upon by both Parties.

8. The Parties shall inform the sentenced person in writing of any action taken by the transferring Party or the receiving Party under the preceding paragraphs of this Article.

ARTICLE 8

CONTINUED ENFORCEMENT OF SENTENCE

1. The receiving Party shall enforce the sentence as if the sentence had been imposed in the receiving Party or adapt the sentence under the conditions set forth in paragraph 3 of this Article.

2. The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.

3. If the sentence is by its nature or duration incompatible with the law of the receiving Party, that Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration. When adapting the sentence, the competent authority of the receiving Party may, however, not convert a sanction involving deprivation of liberty to a pecuniary sanction.

4. The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party to pardon the sentenced person, or of any other decision or measure of the transferring Party that results in cancellation or reduction of the sentence.

5. The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence. Either Party may, at any time, request a special report on the status of the enforcement of an individual sentence.

ARTICLE 9
RETENTION OF JURISDICTION

The transferring Party shall retain exclusive jurisdiction for the review of convictions and sentences issued by its courts.

ARTICLE 10
TRANSIT OF SENTENCED PERSONS

If either Party enters into arrangements with any third State for the transfer of sentenced persons, the other Party shall cooperate in facilitating the transit through its territory of sentenced persons being transferred pursuant to such arrangements. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 11
LANGUAGE AND EXPENSES

1. Written communications between the Parties submitted in support of a request for the transfer of the sentenced person shall be certified and accompanied by a translation into the language of the transferring Party or into the English language.

2. Any expenses incurred in relation to the transfer of the sentenced person or the continued enforcement of the sentence after transfer shall be borne by the receiving Party, except costs incurred by the transferring Party exclusively within the jurisdiction of the transferring Party. The receiving Party may, however, seek to recover all or part of the costs of transfer from the sentenced person.

WJ

ARTICLE 12
SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application, or implementation of this Treaty shall be resolved through negotiations between the Central Authorities. If the Central Authorities are unable to reach an agreement, the dispute shall be resolved by the Parties through diplomatic channels.

ARTICLE 13
APPLICATION

This Treaty shall be applicable to the transfer of sentenced persons who have been sentenced either before or after the entry into force of this Treaty.

ARTICLE 14
OTHER AGREEMENTS

This Treaty shall not affect obligations subsisting between the Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 15
FINAL PROVISIONS

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged as soon as possible. This Treaty shall enter into force on the thirtieth (30th) day after the date of the exchange of the instruments of ratification.

2. Either Party may terminate this Treaty by notice in writing through diplomatic channels at any time. Termination shall take effect on the one hundred and eightieth (180th) day after the date on which the notice is given. Termination of this Treaty shall not affect the transfer proceedings commenced prior to the termination.

3. This Treaty applies to any requests presented after its entry into force even if the relevant offences occurred before the entry into force of this Treaty.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by the Socialist Republic of Vietnam and the Republic of Korea respectively, have signed the present Treaty.

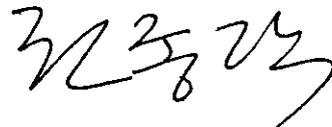
DONE at Seoul in duplicate, on this twenty-ninth day of May in the year of two thousand and nine, in the Vietnamese, Korean and English languages, each text being equally authentic. In case of any divergence of interpretation, the English Text shall prevail.

**FOR THE SOCIALIST REPUBLIC OF
VIETNAM**



Nguyen Van Huong
Senior Lieutenant-General
Vice Minister of Public Security

**FOR THE REPUBLIC
OF KOREA**



Kwon Jong-rak
Vice Minister of Foreign Affairs
and Trade

W/D