

No. 19505

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**MULTILATERAL**

**Convention on the transfer of persons sentenced to deprivation of liberty to serve their sentence in the State of which they are citizens. Concluded at Berlin on 19 May 1978**

*Authentic text: Russian.*

*Registered by the German Democratic Republic on 23 January 1981.*

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**MULTILATÉRAL**

**Convention relative au transfert dans l'État dont ils sont ressortissants, pour y subir leur peine, des condamnés à l'emprisonnement. Conclue à Berlin le 19 mai 1978**

*Texte authentique : russe.*

*Enregistrée par la République démocratique allemande le 23 janvier 1981.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> ON THE TRANSFER OF PERSONS SENTENCED TO DEPRIVATION OF LIBERTY TO SERVE THEIR SENTENCE IN THE STATE OF WHICH THEY ARE CITIZENS

The Contracting States,

Motivated by a desire to develop existing relations of mutual trust and co-operation,

Considering that the goals of correction and rehabilitation of offenders would be more effectively attained if convicted persons were to serve their sentence in the State of which they are citizens,

Proceeding from the principle of humanity,

Have agreed as follows:

*Article 1.* Citizens of any of the Contracting States who are sentenced to deprivation of liberty in another Contracting State shall, by mutual agreement between those States, be transferred to serve their sentence to the State of which they are citizens.

The citizenship of the convicted person shall be defined in accordance with the law of the States Parties to this Convention. A citizen of a Contracting State is defined as a person who, under the law of that State, enjoys the citizenship of the State in question.

*Article 2.* The transfer of a convicted person to serve his sentence to the State of which he is a citizen may take place after the entry into legal force of the judgement.

*Article 3.* A convicted person who is transferred to serve his sentence to the State of which he is a citizen may not again be held criminally responsible for the same action, except in the cases provided for by article 15 of this Convention.

<sup>1</sup> Came into force for the following States on 26 August 1979, i.e., the ninetieth day after the date of deposit with the Government of the German Democratic Republic of the third instrument of ratification, in accordance with article 20:

State	Date of deposit of the instrument of ratification	State	Date of deposit of the instrument of ratification
Bulgaria .....	19 April 1979	Union of Soviet Socialist Republics .....	28 May 1979
Hungary .....	3 November 1978		

Subsequently, the Convention came into force in respect of each of the following States on the ninetieth day after the date of the deposit of that State's instrument of ratification with the Government of the German Democratic Republic, in accordance with article 20:

State	Date of deposit of the instrument of ratification	State	Date of deposit of the instrument of ratification
Cuba .....	17 August 1979	German Democratic Republic .....	17 January 1980 (With effect from 16 April 1980.)
(With effect from 15 November 1979.)		Mongolia .....	20 March 1980 (With effect from 18 June 1980.)
Poland .....	17 December 1979	Czechoslovakia .....	27 June 1980 (With effect from 25 September 1980.)
(With effect from 16 March 1980.)			

*Article 4.* The transfer of a convicted person in the manner specified in this Convention shall not take place if:

- (a) According to the law of the State of which the convicted person is a citizen, the action for which he has been convicted is not considered to be an offence;
- (b) In the State of which the convicted person is a citizen, he has been punished or acquitted of responsibility for his action, or if the case has been dismissed, or also if the person has been released from his sentence by the competent authority of that State;
- (c) The sentence may not be executed in the State of which the convicted person is a citizen as a result of the lapse of time or for some other reason provided for by the law of that State;
- (d) The convicted person has a permanent place of residence in the territory of the State by a court of which the judgement was pronounced;
- (e) Agreement has not been reached concerning the transfer of the convicted person on the terms provided for by this Convention.

*Article 5.* The transfer of a convicted person to serve his sentence shall take place at the suggestion of the State by a court of which the judgement was pronounced, if the State of which the convicted person is a citizen agrees to accept him for execution of the judgement and to observe the conditions of this Convention.

The State of which the convicted person is a citizen may submit to the State by a court of which the judgement was pronounced a request that it should consider the possibility of transferring the convicted person.

The convicted person and his relatives may submit a petition concerning his transfer to the competent authorities of the State by a court of which the person was convicted or of the State of which he is a citizen. The convicted person shall be informed that he is permitted to make such a submission.

*Article 6.* In matters relating to this Convention, the competent authorities of the Contracting States shall communicate with each other directly. Each Contracting State shall inform the depositary of the name of its competent authority.

*Article 7.* For the purposes of the transfer of the convicted person to serve his sentence, the competent authority of the State by a court of which the judgement was pronounced shall apply to the competent authority of the State of which the convicted person is a citizen.

The application shall be in written form, and shall be accompanied by:

- (a) Certified copies of the judgement and of the available decisions of higher courts on the case, and documents concerning the entry of the judgement into legal force;
- (b) A document showing the portion of the sentence served by the convicted person and that portion of the sentence which remains to be served, in accordance with the law of the State by a court of which the judgement was pronounced;
- (c) A document concerning execution of the additional sentence, if any;
- (d) The text of the article of the criminal law on the basis of which the person was convicted;
- (e) A document certifying the citizenship of the convicted person;

- (f) Other documents, if considered essential by the authorities of the State by a court of which the judgement was pronounced;
- (g) A certified translation of the application and the documents accompanying it.  
If necessary, the authorities of the State of which the convicted person is a citizen may request additional documents or information.

*Article 8.* The competent authority of the State of which the convicted person is a citizen shall, within the shortest possible time, inform the competent authority of the State by a court of which the judgement was pronounced either of its agreement or of its refusal to accept the convicted person on the terms provided for by this Convention.

*Article 9.* The place, time and procedure for the transfer of the convicted person shall be determined by means of an understanding between the competent authorities of the interested States.

*Article 10.* The sentence prescribed for the convicted person shall be served on the basis of the judgement of the court of the State in which he was convicted.

The court of the State of which the convicted person is a citizen shall, proceeding on the basis of the judgement pronounced, take a decision on its execution, specifying, in accordance with the law of that State, the same term of deprivation of liberty as was prescribed in the judgement.

If, in accordance with the law of the State of which the convicted person is a citizen, the longest term of deprivation of liberty for a given action is less than that prescribed in the judgement, the court shall specify the maximum term of deprivation of liberty provided for by the law of that State as punishment for the action in question.

In cases where the law of the State of which the convicted person is a citizen does not provide for any deprivation of liberty as punishment for a given action, the court shall specify, in accordance with the law of that State, the sentence which best corresponds to that prescribed in the judgement.

The portion of the sentence served by the convicted person in the State by a court of which the judgement was pronounced shall be included in the term of the sentence: in the determination of a sentence not involving deprivation of liberty, the portion of the sentence served shall be taken into account.

The additional sentence prescribed in the judgement, if not executed, shall be determined by the court of the State of which the convicted person is a citizen, if such a sentence is provided for by the law of that State as punishment for the action in question. The additional sentence shall be determined in the manner provided for by this article.

*Article 11.* Conviction shall have the same legal consequences for a person who is transferred to serve his sentence to the State of which he is a citizen as it has for persons who are convicted in that State for such an action.

*Article 12.* The competent authority of the Contracting State to which the convicted person is transferred in order to serve his sentence shall inform the competent authority of the State in which the judgement was pronounced of the decision of the court concerning execution of the sentence, taken in accordance with article 10 of this Convention.

*Article 13.* Execution of a sentence which has not been served prior to the transfer of the convicted person, as well as the full or partial release from sentence following adoption of a decision concerning execution of the sentence, shall be effected in accordance with the law of the State to which the convicted person is transferred.

Pardoning of the convicted person shall be carried out by the State to which he is transferred in order to serve his sentence.

Amnesty may be granted following the transfer of the convicted person in accordance with the enactments on amnesty promulgated in the State by a court of which the judgement was pronounced and the State of which the convicted person is a citizen.

A review of the judgement relating to a convicted person who is transferred to the State of which he is a citizen may be carried out only by a court of the State in which the judgement was pronounced.

*Article 14.* If, following the transfer of the convicted person to serve his sentence, the judgement is altered in the State where it was pronounced, a copy of the decision on this matter and other necessary documents shall be sent to the competent authority of the State to which the convicted person was transferred. A court of that State shall settle the question of execution of such a decision in the manner provided for by article 10 of this Convention.

If, following the transfer of the convicted person to serve his sentence, the judgement is rescinded through dismissal of the criminal case in the State where it was pronounced, a copy of the decision on this matter and its certified translation shall immediately be sent for execution to the competent authority of the State to which the convicted person was transferred.

*Article 15.* If, following the transfer of the convicted person to serve his sentence, the judgement is rescinded in the State where it was pronounced and a new investigation or trial is provided for, a copy of the decision on this matter and other materials necessary for the new investigation of the case shall be sent to the competent authority of the State to which the convicted person was transferred, for settlement of the question whether he may be held responsible in accordance with the law of that State.

*Article 16.* Each Contracting State shall permit the conveyance in transit across its territory of convicted persons who are transferred in accordance with this Convention to a third Contracting State. Such conveyance shall be permitted at the request of the State of which the convicted person is a citizen.

*Article 17.* Expenses connected with the transfer of the convicted person which have arisen prior to his transfer shall be borne by the Contracting State in whose territory they arose. Other expenses connected with the transfer of the convicted person, including those related to his conveyance in transit, shall be borne by the State of which the convicted person is a citizen.

*Article 18.* Questions which arise in the application of this Convention shall be settled by agreement between the competent authorities of the Contracting States.

*Article 19.* This Convention shall not affect the provisions of other international treaties to which the Contracting States are parties.

*Article 20.* This Convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited with the Government of the German Democratic Republic, which shall act as depositary of this Convention.

This Convention shall enter into force on the ninetieth day after the date of deposit of the third instrument of ratification. In respect of a State whose instrument of ratification is deposited after the entry into force of this Convention, it shall enter into force on the ninetieth day after the date of the deposit of that State's instrument of ratification.

*Article 21.* This Convention shall be valid for five years from the date of its entry into force. Upon the expiry of this period, the Convention shall be automatically renewed for further periods of five years.

Any Contracting State may denounce this Convention by giving written notice of its intention to do so to the depositary 12 months prior to the expiry of the current five-year period.

*Article 22.* Other States may accede to this Convention following its entry into force, with the agreement of all Contracting States, by transmitting to the depositary the documents concerning such accession. The accession shall be considered as having entered into force 90 days from the date of the receipt by the depositary of the last notification of agreement to such accession.

*Article 23.* The depositary shall immediately notify all the States which have signed this Convention and acceded thereto of the date of deposit of each instrument of ratification or document concerning accession, the date of entry into force of the Convention, and the receipt by it of other notifications arising from this Convention.

*Article 24.* The depositary of this Convention shall take the appropriate steps to register this Convention with the United Nations in accordance with its Charter.

*Article 25.* This Convention shall be deposited with the depositary, which shall circulate certified copies of the Convention in the appropriate manner to the States which have signed the Convention and acceded thereto.

DONE at Berlin on 19 May 1978 in a single copy in the Russian language.

For the People's Republic of Bulgaria:

[SVETLANA DASKALOVA]

For the Hungarian People's Republic:

[IMRE MARKOJA]

For the German Democratic Republic:

[HANS-JOACHIM HEUSINGER]

For the Republic of Cuba:

[ARMANDO TORRES SANTRAYLL]

For the Mongolian People's Republic:

[DONOIN PUREV]

For the Polish People's Republic:

[JERZY BAFIA]

For the Union of Soviet Socialist Republics:

[VLADIMIR IVANOVITCH TEREBILOV]

For the Czechoslovak Socialist Republic:

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