

**No. 31120**

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**AUSTRIA  
and  
THAILAND**

**Treaty on the transfer of offenders and on cooperation in the enforcement of penal sentences. Signed at Vienna on 8 September 1992**

*Authentic text: English.*

*Registered by Austria on 1 August 1994*

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**AUTRICHE  
et  
THAÏLANDE**

**Traité relatif au transfèrement des délinquants et à la coopération en matière d'exécution des sentences pénales. Signé à Vienne le 8 septembre 1992**

*Texte authentique : anglais.*

*Enregistré par l'Autriche le 1<sup>er</sup> août 1994.*

## TREATY<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF THAILAND ON THE TRANSFER OF OFFENDERS AND ON CO-OPERATION IN THE ENFORCEMENT OF PENAL SENTENCES

The Republic of Austria and the Kingdom of Thailand;

Desiring to co-operate in the enforcement of penal sentences and to facilitate the successful reintegration of offenders into society; and

Considering that these objectives should be fulfilled by giving foreigners who are deprived of their liberty as a result of their commission of a criminal offence the opportunity to serve their sentences within their own society;

Have agreed as follows:

### Article 1

#### Definitions

For the purposes of this Treaty:

- (a) "transferring State" means the Party from which the offender may be, or has been, transferred;
- (b) "receiving State" means the Party to which the offender may be, or has been, transferred in order to serve his sentence;
- (c) "offender" means a person who is required to be detained in a prison, a hospital or any other institution in the transferring State by virtue of a decision made by a court in the course of the exercise of its criminal jurisdiction;
- (d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction.

### Article 2

#### General Principles

A person sentenced in the territory of one Party may be transferred to the territory of the other Party

in accordance with the provisions of this Treaty in order to serve the sentence imposed on him.

### Article 3

#### Scope of Application

The application of this Treaty shall be subject to the following conditions, namely that:

- (a) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving State or would constitute a criminal offence if committed on its territory;
- (b) the offender is a national of the receiving State;
- (c) the offender was not sentenced in respect of an offence:
  - (i) against the internal or external security of the State;
  - (ii) against the Head of State or a member of his family; or
  - (iii) against legislation protecting national art treasures;
- (d) the sentence imposed on the offender is one of imprisonment, confinement or any other form of deprivation of liberty in any institution:
  - (i) for life;
  - (ii) for an indeterminate period; or
  - (iii) for a fixed period of which at least one year remains to be served at the time of the request for transfer;
- (e) an offender may not be transferred unless he has served in the transferring State any minimum period of imprisonment, confinement or deprivation of liberty stipulated by the law of the transferring State;

<sup>1</sup> Came into force on 1 August 1994, i.e., the first day of the third month following the month of the exchange of the instruments of ratification, which took place at Bangkok on 20 May 1994, in accordance with article 10 (1).

- (f) the decision is final and no further or other legal proceedings relating to the offence or any other offence are pending in the transferring State;
- (g) the transferring and receiving States and the offender all agree to the transfer: provided that, where in view of his age or physical or mental condition either Party considers it necessary, the offender's consent may be given by a person entitled to act on his behalf.

#### Article 4

##### Procedure for Transfer

(1) Both Parties shall endeavour to inform such persons as are within the scope of the present Treaty of the substance of the Treaty.

(2) Every transfer under this Treaty shall be commenced through diplomatic channels by a written request from the receiving State to the transferring State. To that end, the offender may present to the receiving State a request aiming at his transfer. If the transferring State approves the request, it shall so inform the receiving State through diplomatic channels and initiate procedures to effectuate the transfer.

(3) The transferring State shall provide the receiving State with the following information:

- (a) a statement relevant to the facts upon which the sentence was based; in particular the name, date and place of birth of the offender;
- (b) the termination date of the sentence, the length of time already served by the offender and any credits to which he is entitled on account of work done, good behaviour, pretrial confinement or other reasons;
- (c) a certified copy of all judgements and sentences concerning the offender from the date of his detention in the transferring State, and the law on which they are based;
- (d) any other additional information requested by the receiving State.

(4) Either Party shall, as far as possible, 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 or not to agree to the transfer.

(5) The transferring State shall afford an opportunity to the receiving State, if the receiving State so desires, to verify through an official designated by the receiving State, prior to the transfer, that the offender's consent to the transfer in accordance with Article 3 (g) of this Treaty is given voluntarily and with full knowledge of the consequences thereof.

(6) Delivery of the offender by the authorities of the transferring State to those of the receiving State shall occur on a date at a place within the transferring State agreed upon by both Parties.

#### Article 5

##### Retention of Jurisdiction

In respect of sentences to be enforced pursuant to this Treaty, the transferring State shall retain exclusive jurisdiction regarding the judgements of its courts, the sentences imposed by them, and any procedures for revision, modification or cancellation of those judgements and sentences.

#### Article 6

##### Procedure for Enforcement of Sentence

(1) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving State, 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.

(2) Subject to paragraph (3) of this Article, the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.

(3) No sentence of deprivation of liberty shall be enforced by the receiving State in such a way as to extend it beyond the period specified in the sentence of the court of the transferring State. Such enforcement shall as far as possible correspond with the sentence imposed in the transferring State.

(4) If the transferring State revises, modifies or cancels the judgement or sentence pursuant to Article 5 of this Treaty or otherwise reduces, commutes or terminates the sentence, the receiving State shall upon being notified of the decision give effect thereto in accordance with this Article.

(5) The receiving State may treat under its law relating to juveniles any offender so categorized under its law regardless of his status under the law of the transferring State.

(6) The receiving State shall provide information to the transferring State concerning the enforcement of the sentence:

- (a) if the offender is granted conditional release and when he is discharged on completion of the sentence;
- (b) if the offender has escaped from custody before enforcement of the sentence has been completed; or
- (c) if the transferring State requests a report.

#### Article 7

##### Transit of Offenders

If either Party transfers an offender from any third State, the other Party shall co-operate in facilitating the transit through its territory of such an offender. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

#### Article 8

##### Costs

Any costs incurred in the application of this Treaty shall be borne by the receiving State except

those incurred exclusively in the territory of the transferring State.

#### Article 9

##### Temporal Application

This Treaty shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

#### Article 10

##### Final Provisions

(1) This Treaty shall be subject to ratification. It shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged. This exchange of instruments shall take place at Bangkok as soon as possible.

(2) This Treaty may be terminated by either Party by giving notice to the other Party through diplomatic channels. The termination shall become effective six months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Treaty.

DONE at Vienna on this 8<sup>th</sup> day of September 1992 (B.E. 2535) in duplicate, in the English language.

For the Republic of Austria:  
WOLFGANG SCHALLENBERG

For the Kingdom of Thailand:  
SOMBOON SANGIAMBUT