

Agreement Between the Government of the Republic of India and the Government of the Republic of Italy on the Transfer of Sentenced Persons

TREATY

India

Agreement Between the Government of the Republic of India and the Government of the Republic of Italy on the Transfer of Sentenced Persons

Rule

AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-India-2012

- Published on 17 December 2012
- Commenced on 17 December 2012
- [This is the version of this document from 17 December 2012.]
- [Note: The original publication document is not available and this content could not be verified.]

Agreement Between the Government of the Republic of India and the Government of the Republic of Italy on the Transfer of Sentenced PersonsPublished vide Notification New Delhi, the 17th December, 2012Ministry of Home Affairs(CS Division)G.S.R. 897(E). - In exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Repatriation of Prisoners Act, 2003 (49 of 2003), the Central Government having ratified the Agreement on the 16th November, 2012, hereby directs that the provisions of the said Act shall apply to the Government of the Republic of Italy and notifies the text of the treaty entered into between the Government of the Republic of India and the Government of the Republic of Italy for the transfer of prisoners between that country and India as follows, namely : -Agreement Between the Government of the Republic of India and the Government of the Republic of Italy on the Transfer of Sentenced PersonsThe Government of the Republic of India and the Government of the Republic of Italy, hereinafter referred to as "The Contracting States",Desiring to develop their cooperation on the transfer of sentenced persons in order to facilitate their social rehabilitation;Have Agreed as follows:Article 1

1. Definitions

For the purpose of this Agreement:(a)"sentence" shall be any punishment or measure involving deprivation of personal liberty ordered by a court for the commitment of a criminal offence for a determinate period of time or for life imprisonment;(b)"judgment" shall be a decision of a court

imposing a sentence;(c)"Transferring State" shall be the State in which the sentence was imposed on the person who may be, or has been, transferred;(d)"sentenced person" means a person undergoing a sentence of imprisonment under a judgement passed by a criminal court;(e)"Receiving State" shall be the State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof.Article 2

2. General principles

(1)A person sentenced in the territory of one Contracting State may be transferred to the territory of the other, in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the Transferring or the Receiving State his willingness to be transferred under this Agreement.(2)Transfer may be requested by either the Transferring or the Receiving State.(3)Transfer may also be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State.(4)The present Agreement shall not apply if the sentenced person has been convicted for an offence under the military law.Article 3

3. Central Authorities

(1)Requests for transfer shall be sent through the Central Authorities of the Contracting States.(2)The Central Authority for the Government of the Republic of India shall be the Ministry of Home Affairs.The Central Authority for the Government of the Republic of Italy shall be the Ministero della Giustizia - Dipartimento per gli Affari di Giustizia - Direzione Generale della Giustizia Penale (Ministry of Justice - Department for Justice Affairs - Directorate General for Criminal Justice).(3)In case a Contracting State changes its Central Authorities, it shall notify the other through diplomatic channels.Article 4

4. Conditions for transfer

A sentenced person may be transferred under this Agreement on the following conditions:(a)the sentenced person is a national of the Receiving State;(b)the judgment is final;(c)no criminal proceedings are pending against the sentenced person in the Transferring State in which his presence is required.(d)at the time of receipt of the request for transfer, the sentence still to be served by the sentenced person is at least one year;(e)the transfer is consented to by the sentenced person or, where in view of his/her age or physical or mental condition, by any of her person entitled to act on his behalf;(f)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; and(g)The Transferring and Receiving States agree to the transfer.Article 5

5. Obligation to provide information

Any sentenced person to whom this Agreement may apply shall be informed by the Transferring

State of the substance of this Agreement and of the legal consequences of transfer. Article 6

6. Request and supporting documents

(1) Any sentenced person may request to be transferred under this Agreement submitting a written request to the authorities of either the Transferring or Receiving State. (2) If the request is submitted by the sentenced person to the Receiving State that State shall transmit it to the Transferring State. (3) The Transferring State shall transmit to the Receiving State the following: (a) in case the request is submitted to the Transferring State, a copy of that request; (b) name, date and place of birth and address in the Receiving State, if any, of the, sentenced person, along with a copy of his passport or any other personal identification documents and fingerprints, as possible; (c) information on the nature, duration and date of commencement of the sentence; (d) a statement of the facts upon which the sentence was based; (e) a certified true copy of the final judgment; (f) a copy of the law provisions on which the sentence is based; (g) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission of sentence or any other relevant element to the enforcement of the sentence; (h) whenever appropriate, any medical or social report on the sentenced person, any information on his/her treatment in the Transferring State and any recommendation for continuing his/her treatment in the Receiving State. (i) a statement from the Transferring State agreeing to the transfer of the sentenced person. (4) For the purpose of enabling a decision to be made on a request under this Agreement, the Receiving State shall send the following information and documents to the Transferring State unless either the Receiving or the Transferring State has already decided that it will not agree to the transfer: (a) a statement or document indicating that the sentenced person is a national of the Receiving State; (b) a copy of the relevant law of the Receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the Transferring State constitute a criminal offence according to the law of the Receiving State, or would constitute a criminal offence if committed on its territory; (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the Receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 3 of Article 9 of this Agreement on his transfer; (d) the willingness of the Receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence still to be served; (e) any other information or document which the Transferring State may consider necessary. (5) Any request and any reply shall be made in writing and addressed to the Central Authorities of the Contracting States. Article 7

7. Consent and its verification

(1) The Transferring State shall ensure that the person required to give consent to the transfer does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the Transferring State. (2) If the Receiving State makes express request, before the transfer is carried out, the Transferring State shall grant the other an opportunity to verify, through an official appointed in compliance with the law of the Receiving State, that the consent of the sentenced person is given voluntarily and with full knowledge of the legal consequences thereof. Article 8

8. Decision

The authorities of the Contracting States, before deciding on the transfer of a sentenced person in compliance with the aims of this Agreement, in order to favour and facilitate the social rehabilitation of the convicted person shall consider, among other factors, the sovereignty, security and any other essential interest of the State, as well as the seriousness of the offence committed, any previous conviction, the social and family bonds with the environment of origin and health conditions. Article 9

9. Continued enforcement of sentence

(1) Save as provided under Article 11 of this Agreement, the Authorities of the Receiving State shall continue to enforce the sentence complying with the nature and duration of the sentence inflicted by the judgment of the Transferring State. (2) The enforcement of the sentence shall be governed by the law of the Receiving State and that State alone shall be competent to take all appropriate decisions. (3) If the sentence is by its nature or duration or both, incompatible with the law of the Receiving State, that State may, with the prior consent of the Transferring State, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgement of the Transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the Transferring State. Article 10

10. Review of judgment

The Transferring State alone shall have the right to decide on any application for review of the judgment. Article 11

11. Pardon, Amnesty or Commutation

(1) Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its domestic law, giving immediate communication thereof to the other State. (2) The Receiving State, after being informed of one of the above measures of clemency, shall immediately enforce it in compliance with its own laws. Article 12

12. Termination of enforcement

The Receiving State shall terminate enforcement of the sentence as soon as it is informed by the Transferring State of any decision or measure as a result of which that sentence ceases to be enforceable. Article 13

13. Information on enforcement of sentence

The Receiving State shall inform the Transferring State:(a)when the enforcement of the sentence has been completed;(b)if the sentenced person has escaped from custody before enforcement of the sentence has been completed. In such cases, the Receiving State shall take measures to secure his arrest for the purpose of serving the remainder of his sentence and render him also liable for escaping from prison under the relevant law of the Receiving State.(c)if the Transferring State requests a special report.Article 14

14. Transit

(1)If either Contracting State enters into arrangements for the transfer of a sentenced person with any third State, the other shall cooperate in order to facilitate the transit of the said sentenced person through its territory. The State where the person transferred is directed shall submit to the other State a request for transit in advance.(2)A State may refuse to grant transit if the sentenced person is one of its nationals.(3)Requests for transit and relevant replies shall be communicated as per Article 3 of this Agreement.Article 15

15. Costs

(1)Any cost deriving from the enforcement of this Agreement shall be borne by the Receiving State, except for costs incurred exclusively on the territory of the Transferring State.(2)The Receiving State may, however, demand or seek to recover all or part of costs of transfer from the sentenced person or from any other source.Article 16

16. Language

Requests and supporting documents shall be in English or accompanied by a translation into English.Article 17

17. Scope of Application

This Agreement shall apply to the enforcement of sentences imposed before or after its entry into force,Article 18

18. Settlement of Disputes

(1)The Central Authorities shall endeavour to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.(2)If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.Article 19

19. Handing Over of Sentenced Persons

The handing over of the transferred person by the Transferring State to the Receiving State shall occur at a place to be agreed upon between the Transferring and Receiving States. The Receiving State shall be responsible for the transport of the prisoner from the Transferring State and shall also be responsible for custody of the sentenced person outside its territory. Article 20

20. Final Provisions

(1) This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its legal procedures required for the entry into force of this Agreement. The Agreement shall come into force on the first day of the second month of the date of the last notification. (2) Any amendment or modification to this Agreement agreed upon by the Contracting States shall come into force as the Agreement itself. (3) The Agreement shall remain in force for an indefinite period. It may, however, be terminated by either Contracting State by giving a written notice of termination to the other. The termination shall take effect after six months from the date of such notice. (4) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of persons who have been transferred under this Agreement before the date on which such termination takes effect. In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement. Done in duplicate at Rome (Italy) on the 10th day of August, 2012, in the Hindi, English and Italian languages, all texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

For the Government of the Republic of India For the Government of the Republic of Italy