

Treaty between the Republic of Kazakhstan and Turkmenistan relating to the extradition of persons sentenced to imprisonment to serve the rest of their sentences
(Astana, July 5, 2001)

A draft law of the Republic of Kazakhstan relating to the ratification of this Treaty was put to the Majlis, Parliament of the Republic of Kazakhstan, in conformity with a decision of the Government of the Republic of Kazakhstan, #70 of January 21, 2002

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The Republic of Kazakhstan and Turkmenistan, hereinafter referred to as the Contracting Parties,

guided by the principles of state sovereignty, equal rights and mutual respect, based on the rules of international law and desiring to develop interstate cooperation in criminal law,

considering that the practice whereby convicted persons serve their sentences in the state whose citizens they are helps more effectively to achieve the objective of punishment enforcement and restore the offenders to a normal life in society,

guided by the principles of humanity and respect for human rights,

Have agreed as follows:

Article 1

Definition of terms

For the purposes of this Treaty, the terms below mean:

a) "sentencing state" - a Contracting Party whose court of law has ruled to sentence a person to imprisonment;

b) "sentence enforcement state" – a Contracting Party to which a person who is sentenced to imprisonment and whose citizen he is, is extradited to serve the rest of his sentence;

c) "convicted person" – a person who is sentenced by a court of law in either of the Contracting Parties to imprisonment for having committed a crime;

d) "close relatives" – persons who are qualified as such in conformity with the national legislation of the Contracting Parties;

e) "legal representatives" – persons who are recognized as such within a procedure established by the national legislation of the each of the Contracting Parties;

f) "competent authority" – bodies in the Contracting Parties that decide to extradite convicted persons;

g) "penitentiary authority" – bodies in the Contracting Parties that enforce convict extradition decisions.

Article 2

General principles

1. Citizens of each of the Contracting Parties and stateless persons who permanently reside in its territory and who are sentenced to imprisonment in the other Contracting Party may be extradited to serve the rest of their sentences in the Contracting Party whose citizens they are or in whose territory they permanently reside.

2. A request to extradite a convicted person may originate both with the sentencing state and with the sentence enforcement state.

Article 3

Grounds for initiating a convict extradition procedure

Grounds for initiating a procedure to extradite a convicted person to the Contracting Party whose citizen he is, or a stateless person who permanently resides in its territory, may be an

application by such person or his close relatives, or his legal representative, which is filed with the competent authority of either of the Contracting Parties.

Article 4 Competent authority

The competent authorities of the Contracting Parties are the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of Turkmenistan, which will directly cooperate with each other on issues relating to the enforcement of this Treaty.

Article 5 Convict extradition request and relevant documents

1. A request to extradite a convicted person is made in writing, with attachments as follows:
 - a) information on the identity of the convicted person (family name, given name and patronymic, and date and place of birth);
 - b) proof of citizenship of the convicted person or his permanent residence;
 - c) text of the criminal law articles that are the basis of his conviction;
 - d) an application from the convicted person or his legal representative giving consent to his extradition to serve the rest of his sentence;
 - e) copies of the sentence and rulings by superior courts, and of documents confirming the entry into force of the sentence;
 - f) document describing the part of the sentence already served and the part of the sentence remaining to be served;
 - g) document relating to an extension of the sentence, if such has been appointed;
 - h) medical statement on the health of state and information on the behavior of the convicted person;
 - i) information on the payment of the damages caused by the crime for which the person was convicted.

If necessary, the competent authority of the Contracting Party whose citizen the convicted person is may request additional documents or information.

2. All the listed documents must be signed by an authorized person and stamped with the seal.

Article 6 Convict extradition conditions

1. A convicted person may be extradited under this Treaty, subject to the following conditions:
 - a) if he is a citizen or a stateless person who permanently resides in the sentence enforcement state;
 - b) if the sentence has entered into legal force;
 - c) if the extradition is agreed to by the convicted person or in the event of his mental incapacity on account of age and physical or mental condition, by his legal representative;
 - d) if the sentenced action is a crime according to the national legislation of the sentence enforcement state and is punishable by imprisonment;
 - e) if the sentencing state and the sentence enforcement state agree to the extradition of the convicted person.
2. Officials of the competent authority of the sentencing state must explain to the convicted person or his legal representative the possibility of an extradition and its legal consequences.

Article 7 Grounds for refusing a convict extradition

1. The extradition of a convicted person may be refused, if:
 - a) it may harm the interests of either of the Contracting Parties;
 - b) less than six months remains of the sentence to be served at the time the extradition request is received;
 - c) the damages caused by the crime have not been repaid; or,

d) the Contracting Party lodging the request has failed to properly fulfill the requirements of Article 6 herein.

2. In exceptional cases, the Contracting Parties may agree to the extradition of a convicted person even if less than six months remains of the sentence still to be served or if the damages caused by the crime have not been fully repaid.

Article 8

Decision relating to a convict extradition request

A decision granting consent or declining a request for the extradition of a convicted person is taken by the competent authority of the Contracting Party within 40 days from receipt of the documents listed in Article 5 herein. The decision taken is communicated in writing to the competent authority submitting the request, and to the person on whose behalf the request is made, or to the person who files an extradition application in the event of a refusal with the obligatory indication of the causes that prevent the extradition.

Article 9

Convict extradition procedure

The place, time and procedure of extraditing a convicted person are determined by the penitentiary authorities of the Contracting Parties.

Article 10

Costs

All costs relating to the extradition of a convicted person, except for costs incurred exclusively in the sentencing state, are borne by the sentence enforcement state.

Article 11

Sentence enforcement

1. The sentence enforcement state must ensure sentence enforcement in full, in conformity with its national legislation.

2. The sentence enforcement state ensures that the rest of the sentence is served in accordance with its national legislation without impairing the convicted person's status.

3. The punishment imposed on the convicted person is served based on the court sentence of the sentencing state. A court in the sentence enforcement state takes an enforcement decision based on the original sentence.

4. If the national legislation of the sentence enforcement state provides for a shorter maximum term of imprisonment for a given offense than the term determined by the sentence, a court of the sentence enforcement state imposes the maximum term of imprisonment envisaged in the national legislation of this state for the same crime.

5. If the sentence is for two or more actions, of which one action or several are not qualified as crimes in the sentence enforcement state, a court of the latter state determines which part of the punishment is applied to the action that is qualified as a crime.

6. A court in the sentence enforcement state decides to enforce additional punishment, if the national legislation of this state provides for punishing the action committed.

7. The competent authority of the sentence enforcement state notifies the competent authority of the sentencing state about the court decision relating to the enforcement of the sentence within six months.

Article 12

Pardon and amnesty

Each of the Contracting Parties has the right to apply a pardon or amnesty to an extradited convict.

Article 13

Competence of the courts

1. Only a court in the sentencing state has the legal authority to review the legitimacy of the sentence.
2. If the sentence is cancelled or a new inquiry or a court hearing is appointed in the sentencing state following the extradition of the convicted person, a copy of the relevant decision, criminal case materials and other materials resulting from the necessary procedural actions that are feasible in the convicted person's absence are provided to the sentence enforcement state for criminal prosecution under the national legislation of this state.
3. If the criminal case is dropped following an additional inquiry for rehabilitative reasons or if the court rules an acquittal, the state passing the unfounded sentence compensates the person for the damages resulting from the unfounded criminal proceedings.
4. If the sentencing state modifies the sentence following the extradition of the convicted person to serve the sentence, a certified copy of the relevant decision and other necessary materials are provided to the competent authority of the sentence enforcement state. A court in the sentence enforcement state decides to enforce such decisions according to the procedure established in Article 11 herein.

Article 14

Legal consequence of a convicted person's extradition

1. A person extradited to serve the sentence in the sentence enforcement state faces the same legal consequences of his conviction as are faced by persons convicted in this state for committing the same crimes.
2. A person extradited to serve a sentence passed by a court in the other Contracting Party may not be subjected to criminal proceedings in the sentence enforcement state for the action for which the effective sentence was passed.

Article 15

Transit

1. Each of the Contracting Parties at the request of the other Contracting Party allows the transit through its territory of convicted persons who are extradited by this Contracting Party to a third state. The necessary legal requirements relating to the custody of the convicted person must be ensured.
2. The present provision does not apply to the use of air transportation when no landing is planned in the other Contracting Party.
3. If an aircraft makes an unplanned landing, the Contracting Party over whose territory the flight takes place may keep the convicted person in custody for 72 hours at the request of the other Contracting Party's representatives accompanying the person until it receives a transit request submitted in accordance with Paragraph 1 of this article. Such request may be transmitted by technical means of communications, including telegraph, telex, fax and electronic mail.
4. The Contracting Party requesting such transit covers the costs incurred by the transit of the convicted person.

Article 16

Settlement of disputes

Disputes arising from the interpretation or application of this Treaty are settled through consultation and negotiation between the competent authorities of the Contracting Parties.

Article 17

Language of bilateral communication

1. In enforcing this Treaty, the Contracting Parties use their state languages or the Russian language.
2. Certified translations into the Russian language are affixed to documents written in the state languages of the Contracting Parties.

Article 18
Term of the Treaty

This Treaty also applies to persons that were convicted by courts in the Contracting Parties prior to the entry into force of the Treaty.

Article 19
Amendments and supplements

By mutual consent, the Contracting Parties may make the necessary amendments and supplements to this Treaty by separate protocols, which will be an integral part of this Treaty.

Article 20
Relationship to other international treaties

The provisions of this Treaty do not affect the rights and obligations of the Contracting Parties stemming from other international treaties to which they are parties.

Article 21
Final provisions

This Treaty enters into force on the date of receipt of the last written notice about the implementation by the Contracting Parties of the intrastate procedures needed for its enforcement, and remains effective for six months from the date one Contracting Parties receives a written notice from the other Contracting Party stating its intention to withdraw from it.

Done in the city of Astana on July 5, 2001 in two original copies, each in the Kazakh, Turkmen and Russian languages, with both texts equally authentic.

For the purposes of interpreting this Treaty, the text in the Russian language will be used.

For the Republic of Kazakhstan

Nursultan Nazarbayev
President
Republic of Kazakhstan

For Turkmenistan

Saparmurat Niyazov
President
Turkmenistan