

AGREEMENT BETWEEN
THE UNITED NATIONS
AND
UKRAINE
ON THE ENFORCEMENT OF SENTENCES
OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER
YUGOSLAVIA

The United Nations, acting through the International Criminal Tribunal for the former Yugoslavia, hereinafter called “the International Tribunal”, and
Ukraine,

RECALLING Article 27 of the Statute of the International Tribunal adopted by Security Council resolution 827 (1993) of 25 May 1993, according to which imprisonment of persons sentenced by the International Tribunal shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons;

NOTING the willingness of Ukraine to enforce sentences imposed by the International Tribunal;

RECALLING the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

IN ORDER to give effect to the judgements and sentences of the International Tribunal;

HAVE AGREED as follows:

Article 1

Purpose and Scope of the Agreement

This Agreement shall regulate matters relating to or arising out of all requests to Ukraine to enforce sentences imposed by the International Tribunal.

Article 2

Procedure

1. A request to Ukraine to enforce a sentence shall be made by the Registrar of the International Tribunal (hereinafter: “the Registrar”), with the approval of the President of the International Tribunal.

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2. The Registrar shall provide the following documents to Ukraine when making the request:

- a) a certified copy of the judgement;
- b) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention;
- c) when appropriate, any medical or psychological reports on the convicted person, any recommendation for his or her further treatment in the requested State and any other factor relevant to the enforcement of the sentence.

3. The Ukrainian national authority to receive requests of the Registrar referred to in this Agreement is the Ministry of Justice of Ukraine. The Registrar may submit the request or any other communication directly to the Ministry of Justice of Ukraine, or through diplomatic channels.

4. The decision upon the request of the Registrar shall be made according to the national law of Ukraine. The Ministry of Justice of Ukraine shall promptly inform the Registrar on the decision taken, or of any other matter concerning this Agreement, directly or through diplomatic channels.

Article 3

Enforcement

1. In enforcing the sentence pronounced by the International Tribunal, Ukraine shall be bound by the duration of the sentence. In the event the sentence pronounced exceeds the maximum sentence duration stipulated by Ukrainian national law, only the part of the sentence amounting to the maximum sentence duration envisaged under Ukrainian legislation shall be enforceable in Ukraine. The Ministry of Justice shall notify the Registrar, in writing, six months prior to the completion of the part of the sentence enforceable in Ukraine. In that case, Article 10 shall apply.
2. The conditions of imprisonment shall be governed by the law of Ukraine, subject to the supervision of the International Tribunal, as provided for in Articles 6 to 8 and paragraphs 2 and 3 of Article 9 below.
3. If, pursuant to the applicable national law of Ukraine, the convicted person is eligible for early release, including early release for the reason of illness, Ukraine shall notify the Registrar accordingly.
4. The President of the International Tribunal shall determine, in consultation with the Judges of the International Tribunal, whether any early release is appropriate. The Registrar shall inform Ukraine of the President's determination. If the President determines that an early release is not appropriate, Ukraine shall act accordingly.
5. The conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners

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Article 4

Transfer of the convicted person

1. The Registrar shall make appropriate arrangements for the transfer of the convicted person from the International Tribunal to the competent authorities of Ukraine.
2. Prior to his or her transfer, the convicted person will be informed by the Registrar of the contents of this Agreement.

Article 5

Non-bis-in-idem

The convicted person shall not be tried before a court of Ukraine for acts constituting serious violations of international humanitarian law under the Statute of the International Tribunal, for which he has already been tried by the International Tribunal.

Article 6

Inspection

1. The competent authorities of Ukraine shall allow the inspection of the conditions of detention and treatment of the prisoner(s) by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "CPT") at any time and on a periodic basis, the frequency of visits to be determined by the CPT. The CPT will submit a confidential report based on the findings of these inspections to Ukraine which will be responsible to forward it to the President of the International Tribunal.
2. Ukraine and the President of the International Tribunal shall consult each other on the findings of the reports referred to in paragraph 1. The President of the International Tribunal may thereafter request Ukraine to report to him or her any changes in the conditions of detention suggested by the CPT.

Article 7

Information

1. Ukraine shall immediately notify the Registrar:
 - a) two months prior to the completion of the sentence;

b) if the convicted person has escaped from custody before the sentence has been completed;

c) if the convicted person has deceased.

2. Notwithstanding the previous paragraph, the Registrar and the Ministry of Justice of Ukraine shall consult each other on all matters relating to the enforcement of the sentence upon the request of either Party.

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Article 8

Pardon and commutation of sentences

1. If, pursuant to the applicable national law of Ukraine the convicted person is eligible for pardon or commutation of the sentence, Ukraine shall notify the Registrar accordingly.

2. The President of the International Tribunal shall determine, in consultation with the Judges of the International Tribunal, whether pardon or commutation of the sentence is appropriate. The Registrar shall inform Ukraine of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, Ukraine shall act accordingly.

Article 9

Termination of enforcement

1. The enforcement of the sentence shall cease:

a) when the sentence has been completed;

b) upon the demise of the convicted;

c) upon the pardon of the convicted;

d) following a decision of the International Tribunal as referred to in paragraph 2.

2. The International Tribunal may at any time decide to request the termination of the enforcement in Ukraine and transfer the convicted person to another State or to the International Tribunal.

3. The competent authorities of Ukraine shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 10

Impossibility to enforce sentence

If, at any time after the decision has been taken to enforce the sentence, for any legal, medical or practical reasons, further enforcement has become impossible, Ukraine shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of Ukraine shall allow for at least sixty days following the notification of the Registrar before taking other measures on the matter.

Article 11

Costs

The International Tribunal shall bear the expenses related to the transfer of the convicted person to and from Ukraine, unless the Parties of this Agreement agree otherwise. Ukraine shall pay all other expenses incurred by the enforcement of the sentence.

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Article 12

Entry into force

This Agreement shall enter into force upon receipt of notification by Ukraine that the necessary national legal requirements have been met.

Article 13

Duration of the Agreement

1. This Agreement shall remain in force as long as sentences of the International

Tribunal are being enforced by Ukraine under the terms and conditions of this Agreement.

2. Upon consultation, either party may terminate this Agreement, with two months prior notice. This Agreement shall not be terminated before the sentences to which this Agreement applies have been completed or terminated and, if a sentence of the International Tribunal is still being enforced in Ukraine when the Agreement is terminated, this Agreement shall continue to apply with regard to the convicted person concerned until the moment of his/her transfer from Ukraine according to Article 10. IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

Done in The Hague this seventh day of August 2007, in duplicate, in the English and Ukrainian languages, both being equally valid. In case of discrepancies, the English version shall be authoritative.

FOR THE UNITED NATIONS FOR UKRAINE

Mr. Hans Holthuis HE

Registrar Mr. Oleksander Kupchyshyn

International Criminal Tribunal Ambassador to the Kingdom of

For the former Yugoslavia The Netherlands