AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF ITALY
AND
THE GOVERNMENT OF THE REPUBLIC OF KOSOVO
ON
THE TRANSFER OF SENTENCED PERSONS

PREAMBLE

Desiring of further developing international co-operation in the field of criminal law;

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;

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

Considering that this aim can best be achieved by having them transferred to their own countries,

Have agreed as follows:
ARTICLE 1
Definitions

For the purposes of this Agreement:

1. “sentence” means any punishment or measure involving deprivation of liberty pronounced by a court for a limited or unlimited period of time on account of a criminal offence;

2. “judgment” means a decision or order of a court imposing a sentence;

3. “State” means the Government of the Republic of Kosovo or the Government of the Republic of Italy;

4. “sentencing State” means the State that imposed the sentence on the person who may be, or has been, transferred;

5. “administering State” means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence.

ARTICLE 2
Central Authorities

1. For the purposes of this Agreement, the Central Authorities designated by the Contracting Parties shall transmit the requests for transfer of sentenced persons and communicate directly with each other.

2. The Central Authority for the Republic of Kosovo shall be the Ministria e Drejtësitë/Ministry of Justice and for the Republic of Italy shall be the Ministero della Giustizia/Ministry of Justice.

3. Each Contracting State shall notify the other, through diplomatic channels, of any change of its Central Authority.

ARTICLE 3
General Principles

1. The States undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Agreement.

2. A person sentenced in the territory of a State may be transferred to the territory of the other State, in accordance with the provisions of this Agreement, in order
to serve the sentence imposed on her/him. To that end, she/he may express her/ his interest to the sentencing State or to the administering State in being transferred under this Agreement.

3. Transfer may be requested by either the sentencing State or the administering State.

ARTICLE 4
Conditions for Transfer

1. A sentenced person may be transferred under this Agreement only on the following conditions:

   a. if that person is a national of the administering State;

   b. if the judgment is final;

   c. if, at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve or if the sentence is indeterminate;

   d. if the transfer is consented to by the sentenced person or, where in view of her/his age or physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative, except in the cases mentioned in articles 11 and 12;

   e. if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and

   f. if the sentencing and administering States agree to the transfer.

2. In exceptional cases, the States may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c.
ARTICLE 5
Obligation to Provide Information

1. Any sentenced person to whom this Agreement may apply shall be informed by the sentencing State of the substance of this Agreement and of the legal consequences resulting from the transfer.

2. The sentenced person, if she/he so requests, must be informed in writing of every step taken by the sentencing State or by the administering State with respect to her/his request for transfer, whereas she/he shall always be informed of the decision taken by either State.

ARTICLE 6
Request for Transfer

1. Transfer may be requested:
   a. by the sentencing State;
   b. by the administering State;
   c. by the sentenced person, or by third parties who are entitled under the law of either State to act on behalf of the sentenced person, by means of a written statement addressed to the sentencing State or to the administering State expressing the sentenced person’s will to be transferred pursuant to this Agreement.

2. Requests and replies shall be made in writing and addressed to the Central Authorities designated pursuant to article 2 of this Agreement.

ARTICLE 7
Exchange of Information and Supporting Documents

1. Each State, without delay, shall transmit any request for transfer made or received to the other State and shall also forward the information and documents specified below.

2. The sentencing State shall transmit:
   a. information on the personal details of the sentenced person (name, date and place of birth) and, whenever possible, a copy of a valid identity document of such person and her/his fingerprints;
   b. information on the place of residence or address of the sentenced person in the administering State, if known;

4/13
c. a statement of the facts upon which the sentence was based;

d. information on the nature, duration and date of commencement of enforcement of the sentence;

e. information on any pre-trial detention, remission or reduction of sentence, or any other factor relevant to the enforcement of the sentence;

f. a duly authenticated copy of the final judgment of conviction;

g. a copy of the law provisions on which the sentence is based;

h. if appropriate, a medical/social report on the sentenced person, information about the detention and medical treatment carried out in the sentencing State and any recommendation for her/his further treatment in the administering State;

i. a statement by which the sentenced person expresses its consent to her/his transfer in compliance with letter d) paragraph 1 of article 4 of this Agreement;

j. a statement by which the sentencing State indicates its consent to the transfer of the sentenced person;

k. any other further information or document that the administering State deems necessary for the decision.

3. The administering State, on request, shall send:

a. a statement or document indicating that the sentenced person is a national of the administering State;

b. a copy of the law provisions of the administering State indicating that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence also according to the law of the administering State;

c. a statement containing the information on the consequences of the transfer;

d. a statement by which the administering State indicates its consent to the transfer of the sentenced person and its commitment to enforce the remaining part of the sentence;

e. any other information or document which shall be deemed necessary by the sentencing State for the decision.

4. The exchange of information and supporting documents referred to in the above provisions shall not be made if either State immediately indicates that it does not consent to the transfer.
ARTICLE 8
Consent and its Verification

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with article 4.1.d does so voluntarily and with full knowledge of the legal consequences thereof upon consultation with independent legal counsel. The procedure for giving such consent shall be governed by the law of the sentencing State.

2. Prior to giving consent, the person required to give consent to the transfer shall be provided with information concerning relevant prison conditions, available services and release programs in the administering State.

3. The sentencing State shall afford an opportunity to the administering State to verify through a consular or other official agreed upon with the administering State, that the consent is given in accordance with the conditions set out in this article.

ARTICLE 9
Decision

1. Before making the decision concerning the transfer of a sentenced person in compliance with the purposes of this Agreement, the Authorities of each State shall consider, among other factors, the seriousness and the consequences of the offence, any previous criminal convictions or pending criminal proceedings against the sentenced person, as well as any social and family ties that said person has maintained in her/his society of origin, her/his state of health and any security requirement or other interests of the State.

2. Where the judgment of conviction has also sentenced to the payment of a fine, of the costs of the proceedings or of any other financial sanction, or to compensation – in whole or in part - for the damage caused to the victim of the offence, or has imposed any other requirement, the sentencing State may subject its decision to the payment of such sanctions or to the provision of a suitable guarantee. In its assessment the sentencing State shall take into account the financial situation of the sentenced person and her/his actual possibility to make the above-mentioned payments and comply with the above-mentioned requirements; on the sentenced person lies the burden to prove the impossibility to make said payments and comply with said requirements in the forms prescribed by the law of the sentencing State.
3. Each State shall promptly inform the other State of its decision as to whether it accepts, postpones or refuses the requested transfer, giving reasons in case of refusal.

ARTICLE 10
Delivery of the Sentenced Person

1. If the transfer of a sentenced person is granted, the States shall promptly agree on the time, place and all other details concerning the execution of the transfer.

2. The administering State shall be in charge of the custody of the sentenced person and of her/his transportation from the sentencing State.

ARTICLE 11
Persons escaping from the Sentencing State

1. Where a national of a contracting State who is the subject of a sentence imposed in the territory of the other State as a consequence of a final judgment, seeks to avoid the execution or further execution of the sentence in the sentencing State by fleeing to the territory of the former State before having served the sentence, the sentencing State may request the other State to take over the execution of the sentence.

2. At the request of the sentencing State, the administering State may, prior to the arrival of the documents supporting the request, or prior to the decision on that request, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision on the request. Requests for provisional measures shall include the information mentioned in article 7 paragraph 2 lett. a), b), c), d) of the Agreement. The penal position of the sentenced person shall not be aggravated as a result of any period spent in custody by reason of this paragraph.

3. The consent of the sentenced person shall not be required to the transfer of the execution of the sentence.

ARTICLE 12
Sentenced persons under Expulsion or Deportation Orders.

1. Upon being requested by the sentencing State, the administering State may, subject to the provisions of this article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision, includes an expulsion or deportation order or any
other measure as the result of which that person will no longer be allowed to
remain in the territory of the sentencing State once she or he is released from
prison.

2. The administering State shall not give its agreement for the purposes of
paragraph 1 before having taken into consideration the opinion of the sentenced
person.

3. For the purposes of the application of this Article, the sentencing State shall
provide the administering State with:

a. a declaration containing the opinion of the sentenced person as to her/his
   proposed transfer, and

b. a copy of the expulsion or deportation order or any other order having the
effect that the sentenced person will no longer be allowed to remain in the
territory of the sentencing State once she or he is released from prison.

4. Any person transferred under the provisions of this article shall not be
proceeded against, sentenced or detained with a view to the carrying out of a
sentence or detention order, for any offence committed prior to his or her
transfer other than that for which the sentence to be enforced was imposed, nor
shall he or she for any other reason be restricted in his or her personal freedom,
except in the following cases:

a. when the sentencing State so authorizes: a request for authorization shall be
   submitted, accompanied by all relevant documents and a legal record of any
   statement made by the convicted person; authorization shall be given when
   the offence for which it is requested would itself be subject to extradition
   under the law of the sentencing State or when extradition would be excluded
   only by reason of the amount of punishment;

b. when the sentenced person, having had an opportunity to leave the territory
   of the administering State, has not done so within 45 days of his or her final
discharge, or if he or she has returned to that territory after leaving it.

5. Notwithstanding the provisions of paragraph 4, the administering State may
take any measures necessary under its law to prevent any legal effects of lapse
of time.
ARTICLE 13
Effect of Transfer for the Sentencing State

1. The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.

2. The sentencing State may no longer enforce the sentence once the administering State considers enforcement of the sentence to have been completed.

ARTICLE 14
Effect of Transfer for the Administering State

The competent authorities of the administering State shall continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in article 15.

ARTICLE 15
Enforcement of Sentence

1. The Authorities of the administering State shall continue the enforcement of the sentence complying with the legal nature and duration of the punishment or measure involving deprivation of personal liberty as determined in the judgment of the sentencing State.

2. The enforcement of the sentence shall be governed by the law of the administering State which is solely competent to adopt any relevant decision, including granting the transferred person any benefit or particular modality of enforcement of her/his sentence.

3. If the sentence is by its nature or duration incompatible with the law of the administering State, such State may, with the consent of the sentencing State, adapt it to the punishment prescribed by its own law for the same offence or an offence of the same nature. The sentence so adapted shall correspond, as much as possible, as to its nature and duration, to the one imposed in the judgment of the sentencing State. However, the adapted punishment shall not:
   a. aggravate, by its nature or duration, the sentence imposed in the sentencing State;
   b. exceed the maximum prescribed by the law of the administering State for the same offence or an offence of the same nature;
   c. be contrary to the fundamental principles of the sentencing State.
4. When the law of the administering State does not allow to enforce a particular measure imposed on a person who, for reasons of mental condition, has been held in the sentencing State to be not criminally responsible for the commission of the offence, the two States shall consult each other and agree the measure or treatment to be applied to that specific case in the administering State.

5. If the sentenced person escapes from custody before the enforcement of the sentence has been completed, the administering State shall take any appropriate measure to trace and arrest such a person so as to ensure that the remainder of the sentence be served and that the person be prosecuted for the offence of escape if such an offence is provided for in the law of the administering State. If the person returns to the sentencing State and is traced in its territory, such State is authorized to enforce the remainder of the sentence which the sentenced person should have served in the administering State.

ARTICLE 16
Pardon, Amnesty, Commutation

1. Each State may grant pardon, amnesty, or commutation of the sentence in accordance with its Constitution and laws.

2. The administering State shall inform the sentencing State of any decision adopted in accordance with paragraph 1 of this article.

ARTICLE 17
Review of Judgment

The sentencing State shall solely have the right to decide on any application for review of the judgment.

ARTICLE 18
Termination of Enforcement

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.
ARTICLE 19
Information on Enforcement

The administering State shall provide information to the sentencing State concerning the enforcement of the sentence:

a. when it considers the enforcement of the sentence to have been completed;

b. if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or

c. if the sentencing State requests a special report.

ARTICLE 20
Transit

1. If either State has entered into arrangements with any third State for the transfer of sentenced persons, the other State shall cooperate by permitting the transit through its territory, provided that no reasons of public order prevent it.

2. The State requesting transit shall forward to the State transit, through the Central Authorities, a request indicating who is the sentenced person in transit. The request for transit shall be accompanied by a copy of the decision granting the transfer of the sentenced person.

3. The State of transit shall hold the person in transit in custody while she/he is in its territory.

4. No request for transit shall be required if transport is by air and no landing is scheduled in the territory of the transit State.

5. Either State may refuse to grant transit if:
   a. the sentenced person is a national of that State;
   b. the act on account of which the sentence has been imposed does not constitute an offence pursuant to its law.

ARTICLE 21
Language and Costs

1. For the application of this Agreement, the information shall be transmitted in one of the following languages:
a. Albanian, Serbian or English when addressed to the Republic of Kosovo;

b. Italian or English when addressed to the Republic of Italy.

2. Except as provided for in article 7.2.f documents transmitted in application of this Agreement do not need to be certified, legalized or other formality requirements.

3. Any costs incurred in the application of this Agreement shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State, and costs related to the transportation of the sentenced person until the border of the administering State, or in case of air transportation until the final destination of the journey. The States may agree in a specific case.

ARTICLE 22
Relationship with other International Agreements

This Agreement shall not prevent the States from cooperating in respect of the transfer of sentenced persons in compliance with other international agreements to which both States are parties.

ARTICLE 23
Settlement of Disputes

1. Any dispute on the interpretation or application of this Agreement shall be resolved by consultation between the Central Authorities.

2. If they do not reach an agreement, the dispute shall be resolved by consultation through diplomatic channels.

ARTICLE 24
Entry into Force, Amendment and Termination

1. This Agreement shall enter into force 30 days after the receipt of the second of the two notifications by which the contracting States officially inform each other that their domestic ratification procedures have been carried out.

2. This Agreement may be amended at any time by means of a written agreement between the contracting States. Any amendment shall enter into force in compliance with the same procedure provided for in paragraph 1 of this article and shall be part of this Agreement.
3. This Agreement shall be of unlimited duration. Either contracting State may withdraw from this Agreement at any time by giving written notice to the other Party through diplomatic channels. Termination shall be effective on the one hundred and eightieth day following the date of the reception of such notice. The termination of effectiveness shall not prejudice any procedure started prior to said termination.

Done at ROMA, on this 44 day of APRIL in the year 2019, in two originals, each in Albanian, Serbian, Italian and English language, both texts being equally authentic.

In case of any divergence in interpretation, the English text shall prevail.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

For the Government of Italy

Abelard Tahir
Minister
Ministry of Justice
Republic of Kosovo

For the Government of Kosovo

Alfonso Bonafede
Minister
Ministry of Justice
Republic of Italy