

The Procedure for Cooperation between States in the Execution of Penal Sentences Act, B.E 2527 (1984)

Translation

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is deemed appropriate to enact the law governing the procedure for cooperation between states in the execution of penal sentences:

Be it, therefore, enacted an Act by the King by and with the advice and consent of the Parliament, as follows:

Section 1

This legislation shall be called "The Procedure for Cooperation between States in the Execution of Penal Sentences Act, B.E 2527 (1984)"

Section 2

This Act shall enter into force on the date after its publication in the Government Gazette.

Section 3

All laws, rules, regulations, procedures and other announcements which are specified in this Act or which contravene or conflict with this Act shall be superseded by this Act.

Section 4

In this Act:

"The Transferring State" means the country which transfers the prisoner to the Receiving State.

"The Receiving State" means the country to which the prisoner is transferred from the Transferring State.

"Thai prisoner" means an individual holding Thai nationality, regardless whether such individual may hold any other nationality, who is subject to sentence or final court order of punishment and who is now serving such sentence abroad.

"Foreign Prisoner" means an individual not holding Thai nationality who is subject to sentence or final court order of punishment and who is now serving such sentence in the Kingdom.

"Punishment" means imprisonment or confinement and shall also inclusively mean security measures, probation, procedures for juvenile offenders, suspended sentence, suspended confinement and reduction in the length of sentence.

"Committee" means the Committee for Consideration of the Transfer of Prisoners.

"Responsible Officials" mean the persons appointed by the Minister to implement this Act.

Section 5

The Minister of Defense, the Minister of Foreign Affairs, the Minister of Interior, and the Minister of Justice shall be responsible for the implementation of this Act. The Minister of each Ministry is empowered to appoint responsible officials and to issue Ministerial Regulations for the Purpose of implementing this Act.

Particularly for those provisions which pertain to the respective Ministries.

The Ministerial Regulations shall enter into force upon publication in the Government Gazette.

CHAPTER 1

General

Section 6

The transfer of Thai prisoners in foreign countries to continue to serve their sentences in the Kingdom or the transfer of foreign prisoners in the Kingdom to continue to serve their sentences abroad shall be subject to the following provisions:

- (1) The Transferring State and the Receiving State shall enter into a bilateral treaty for cooperation between States in the execution of penal sentences.
- (2) The transfer of any prisoner shall take place with the consent of the Transferring State and the Receiving State and of the prisoner who shall be transferred.
- (3) The offense which has been committed by the Thai prisoner or by the foreign prisoner must be a criminal offense under the law of the Receiving State.
- (4) The prisoner to be transferred shall not be the subject of an outstanding criminal case on other charges or in the process of a retrial of a criminal case in the Transferring State.
- (5) The transfer must be either beneficial to or in the best interest of the prisoner to be transferred.
- (6) The transfer of any prisoner shall take into account the nature and severity of the crime and the effect of the criminal situation and the morale of the populace in the Transferring State and in the Receiving State.

The provisions of (3) shall not apply in the event that the international treaty executed between the Transferring State and the Receiving State does not stipulate such provisions or the provisions are stated otherwise.

Section 7

The various expenses associated with the transfer of prisoners shall be administered in accordance with the applicable Ministerial Regulations.

Section 8

The transfer of prisoners under this Act shall not serve to curtail the rights of such prisoners to subsequent pardon, commutation of sentence and reduction of sentence to be granted by the Transferring State after the transfer.

CHAPTER 2

The Committee for Consideration of the Transfer of Prisoners

Section 9

There shall be appointed a committee to be called "The Committee for Consideration of the Transfer of Prisoners" consisting of the Permanent Secretary of State for Justice as Chairman of the Committee and the Judge Advocate General, the Chief Justice of the Criminal Court, the Chief Justice of the Central Juvenile Court, the Director-General of the Department of Public Prosecution, the Director-General of Police Department, the Director General of the Corrections Department, and the Director-General of the Treaty and Legal Department shall serve concurrently as member and Assistant Secretary of the Committee.

The Committee shall exercise full authority under this Act.

Section 10

Not less than one half of the total membership of the Committee must be present at each meeting to form a quorum.

If the chairman of the Committee is absent from the meeting or is unable to perform his duty as chairman of the meeting, the meeting shall then elect any one member of the Committee presenting to assume the chair at the meeting.

Section 11

The Committee shall be empowered to appoint subcommittees to carry out such functions as shall be assigned by the Committee.

The provisions of Section 10 shall apply to the meeting of the sub-committees.

CHAPTER 3

The Transfer of Thai Prisoners

Section 12

A Thai prisoner who desires to be transferred to continue his sentence in the Kingdom shall be required to submit a petition, together with supporting documents as prescribed by the Committee, to the responsible official at the Royal Thai Embassy or Royal Thai Consulate having jurisdiction in the Transferring State or to the responsible official at the Ministry of Foreign Affairs as circumstances dictate.

Section 13

If the Thai prisoner is unable to submit the petition by himself or if the prisoner is a minor or youth under the jurisdiction of the Juvenile Court, then the spouse or relative or other interested party shall be empowered to submit the petition on behalf of the Thai Prisoner, in accordance with the provisions of Section 12.

Section 14

If the prisoner is unable to prepare the documents necessary to support a petition pursuant to Section 12 or Section 13, then the responsible official shall be authorized to prepare the documents on behalf of the prisoner.

Section 15

Upon the complete receipt of the petition with all supporting documents, the responsible official shall forward the petition and supporting documents to the Secretary of the Committee for submission to the Committee for consideration.

The Committee shall consider the petition and issue an order approving or disapproving the transfer of the Thai prisoner without delay and such order shall be made known to the petitioner through the Ministry of Foreign Affairs. Should the Committee disapprove the petition for noncompliance with the provisions of this Act, the Committee shall provide the reasons for such disapproval.

The order of the Committee shall be final.

Section 16

In the event the Committee has approved a petition for the transfer of a Thai prisoner, the Committee shall forward the case for action to the Ministry of Foreign Affairs to seek an approval for the transfer of the Thai prisoner from the Transferring State. When the Transferring State has informed the Ministry of Foreign Affairs of its decision, the Ministry of Foreign Affairs shall forward the decision to the Committee and the petitioner without delay.

Section 17

When the Committee receives notification from the Ministry of Foreign Affairs that the Transferring State has approved the petition for transfer of a Thai prisoner from the Transferring State, pursuant to Section 16, the Committee shall arrange for the transfer of the Thai prisoner without delay.

Upon arrival of a Thai prisoner in the Kingdom if a court of the Transferring State has imposed a sentence of incarceration or detention, the responsible officials shall issue a written order for the detention of the Thai prisoner at a facility provided for under the applicable laws.

If the Thai prisoner is subject to security controls, probation, the procedures for juveniles, or suspended sentence or confinement, the procedures provided for in the applicable laws currently in force in the Kingdom shall be applied as appropriate in each case.

Section 18

For purposes of the transfer of Thai prisoners to continue their sentences in the Kingdom under this Act, it shall be considered that the judgment or order of the Court of the Transferring State is the judgment or order of the Court having jurisdiction in the Kingdom.

An appeal to the Appeals Court, an appeal to the Supreme Court, or a request for retrial of a criminal case in the court having jurisdiction in the Kingdom for reconsideration of the judgment or an order of the Court pursuant to paragraph one shall not be permitted.

Section 19

When agreement to transfer the Thai prisoner has been reached, the Committee shall avail itself of the supporting documents concerning the sentence officially certified by the Transferring State, as a basis for consideration. If it appears that the sentence imposed by the judgment or order of the Court of the Transferring State is compatible with the sentence prescribed by the law currently in force in the Kingdom, then the Committee shall issue a written order to the prison officer or the responsible officials authorized to carry out procedures for security controls, probation, the procedures for juveniles, suspended sentence, and suspended detention as appropriate to fulfill the requirements of the applicable law.

In the event it appears that the sentence imposed or the conditions for serving sentence under the law of the Transferring State are not compatible with the sentence or conditions of punishment as prescribed by the law currently in force in the Kingdom, the Committee shall forward the case to the Public Prosecutor for submission of a petition to the Criminal Court or to the central Juvenile Court for consideration of an adjustment to the sentence or conditions of sentence to have them common to the law currently in force in the Kingdom. For this purpose, the adjusted sentence or conditions of punishment shall not be more severe than the sentence or conditions of punishment imposed on the Thai prisoner in the Transferring State.

In the event that it appears that the offense for which the Thai prisoner has been sentenced according to the judgment or order of the Court of the Transferring State is not a chargeable offense under the laws currently in force in the Kingdom, the fact that the Thai prisoner has been sentenced by such judgment or order shall be considered the basis on which the Court is empowered to order security controls. The Court shall adjust the judgment or the order to apply such security controls as the Court shall deem appropriate but the security controls shall not be more severe than the sentence or conditions of sentence that the Thai prisoner would receive in the Transferring State. For this purpose, the provisions of paragraph two shall apply *mutatis mutandis*.

The order of the Criminal Court or the Central Juvenile court shall be final.

Section 20

It shall be considered that a Thai prisoner who has been transferred to continue a sentence in the Kingdom is a prisoner subject to final sentence or is a prisoner subject to security controls, probation, provisions for juveniles, suspended sentence, or suspended detention according to the applicable laws currently in force in the Kingdom.

Section 21

Pardon; amnesty, commutation of sentence, reduction of sentence, suspension of sentence, suspension of detention, and reduction of the length of sentence for the Thai

prisoner who continues a sentence in the Kingdom shall be subject to the law currently in force in the Kingdom, except as stipulated otherwise by treaty in which case the provisions of the treaty shall pertain.

Section 22

In continuing the sentence in the Kingdom, the Thai prisoner being transferred shall benefit from the following:

- (1) The reduction in the length of the sentence imposed on the Thai prisoner according to the law of the Transferring State until the date of transfer of the prisoner.
- (2) Pardon, commutation of sentence and reduction of the length of sentence granted by the Transferring State, particularly as such applies to the Thai prisoner.
- (3) The subsequent enactment of a law of the Transferring State which stipulates that the offense committed by the Thai prisoner for which he was sentenced is no longer an offense or which includes provisions beneficial to the Thai prisoner.
- (4) The amendment, revision or revocation of the judgment or order of the Court of the Transferring State.
- (5) The reduction of the length of sentence from the date of transfer of the Thai prisoner to the date the Thai prisoner has recommenced the sentence in the Kingdom.

When the provisions of paragraph one become known to the Committee or when the Thai prisoner or authorized person submitting the petition pursuant to Section 13 has so requested, the Committee shall be empowered to order that the Thai prisoner receives the appropriate benefit.

The order of the Committee shall be final.

CHAPTER 4

The Transfer of Foreign Prisoners

Section 23

The petition for the transfer of foreign prisoners to serve their sentence in the Receiving State shall be submitted by the Receiving State through diplomatic channels to the responsible officials of the Ministry of Foreign Affairs in accordance with the procedures and in the documentary format specified by the Committee.

Section 24

When the petition has been received completely with all prescribed documents, the responsible officials shall forward the petition and aforementioned documents to the Secretary of the Committee for submission to the Committee for consideration.

Section 25

The transfer of foreign prisoners shall not take place under any of the following circumstances:

- (1) When the sentence received by the foreign prisoner, whether in whole or in part, involves an offense against the person of the Monarch, the Queen, or the Monarch's son or daughter, an offense against national security from within the Kingdom; an offense against national security from outside the Kingdom; or an offense against the laws governing national art treasures.
- (2) (a) A foreign prisoner who has served a prison sentence in the Kingdom less than one third of the total sentence imposed or ordered or less than four years, whichever period is less.

(b) A foreign prisoner who has served a prison sentence in the Kingdom less than eight years for charges of production, distribution, import for distribution or possession for distribution of narcotics, as proscribed by the Narcotics Act, and the sentence imposed to him is life imprisonment.

Section 26

The Committee may disapprove the transfer of a foreign prisoner when it appears that the transfer would threaten the national security or stability of the Kingdom or domestic civil order.

Section 27

In any case in which a foreign prisoner is required to pay a fine, make restitution of property, or pay compensation for the cost of damages according to a Court's judgment in a criminal case or according to the order of a competent authority, then the foreign prisoner shall be required to make full payment of the fine, restitution of the property, or compensation for the damages before the Committee shall issue the order approving the transfer.

Section 28

The Committee shall issue an order approving or disapproving the transfer of a foreign prisoner and the Receiving State shall be informed of the order through the Ministry of Foreign Affairs.

The order of the Committee shall be final and the approval order of the Committee shall be considered as the authorization for the transfer of a foreign prisoner to the Receiving State.

CHAPTER 5

Procedures for the Receipt and Delivery of Prisoners

Section 29

The receipt and delivery of the Thai and foreign prisoners to be transferred shall be conducted through diplomatic channels according to the procedures prescribed by the Committee.

Section 30

When a Thai prisoner has been received in the Transferring State, the responsible official shall arrange for the Thai prisoner to travel from the Transferring State to the Kingdom without delay and except in the case of extraordinary circumstances, within not more than three days from the date of receipt. Upon arrival in the Kingdom, the Thai prisoner shall recommence the sentence immediately.

Section 31

When a foreign prisoner has been delivered, the foreign prisoner must depart the Kingdom within 24 hours from the time the delivery of the prisoner is completed, except that the Committee or a party authorized by the Committee may extend this period as necessary.

CHAPTER 6

Penalty clause

Section 32

Any Thai prisoner who shall escape from custody in the course of travel from the Transferring State to the Kingdom or any foreign prisoner who shall escape in the course of travel out of the Kingdom shall be punishable by not more than five years imprisonment or fine of not more than fifty thousand Baht.

If the offense cited in paragraph one has been committed by force or threat of force; or has involved three or more accomplices, the offender shall be punishable by not more than seven years imprisonment or fine of not more than seventy thousand Baht or both imprisonment and fine.

If an offense under this Section has been committed by the possession of or with the use of weapons or explosives, the offender shall be punishable by a penalty more severe by half than that prescribed in the preceding two paragraphs.

Section 33

Any Thai prisoner who shall resist or fail to comply with the arrangements made by the responsible official pursuant to Section 17 or Section 30 or any foreign prisoner who shall resist or fail to comply with the provisions of Section 31 shall be punishable by not more than one year imprisonment or fine of not more than ten thousand Baht.

Section 34

With respect to a Thai prisoner, an offense against Section 32 or Section 33, albeit committed outside the Kingdom, shall be considered an offense committed within the Kingdom.

Section 35

The Committee shall be empowered to settle an offense under Section 33 and for this purpose the Committee shall be empowered to authorize responsible officials or investigators to settle the offense, by prescribing to the authorized officials the criteria and provisions and provisions of settlement, as appropriate.

When the offender has paid a fine prescribed by the settlement, the case shall be considered closed in accordance with the Criminal Procedures Code and the transfer of the prisoner shall proceed accordingly.

If the offender does not pay the fine prescribed by the settlement, the Committee or the authorized official shall deliver the offender to the investigators for further legal proceedings.

Countersigned by

General Prem Tinnasulanont

Prime Minister

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