
Introduced by Senator Miriam Defensor Santiago

JOINT RESOLUTION
AUTHORIZING THE DEPARTMENT OF JUSTICE TO ISSUE THE
IMPLEMENTING RULES AND REGULATIONS ON THE TREATY ON THE
TRANSFER OF SENTENCED PERSONS BETWEEN THE REPUBLIC OF THE
PHILIPPINES AND THE KINGDOM OF SPAIN AND APPROPRIATING FUNDS
FOR ITS IMPLEMENTATION

WHEREAS, the Government of the Republic of the Philippines has concluded the Treaty on the Transfer of Sentenced Persons with the Kingdom of Spain;

WHEREAS, the Treaty aims to ensure the effective reformation and rehabilitation of Filipinos serving sentence in Spain, as they will be afforded the opportunity to serve their sentences in the Philippines;

WHEREAS, there is a need for rules and regulations to be issued for the effective implementation of the Treaty;

WHEREAS, as instructed by the Senate Committee on Foreign Relations, the Implementing Rules and Regulations shall provide for, among others:

- The definition of nationality, as to whether it refers to citizenship, habitual residents, or all of the above;
- Which state shall determine the duration of the penalty, when the sentence imposed is shorter in the administering State than in the sentencing State;
- The mechanism to be used so that if the sentencing State, after final judgment, rejects the case, the same person could be brought back to the sentencing State;
- The ground for granting or denying a request for transfer made under Article 6. This is necessary, because under Article 3 para. (4), there is no need to state the grounds when one state makes a decision in order to execute the treaty.
- Whether the request for transfer can only be initiated by the sentenced person, as provided by Article 6; or can be initiated by the requesting State, subject to the required consent at a later time;
- Whether standards and guarantees concerning treatment of prisoners under the Philippine Constitution, Penal Code, and other laws, have similar equivalents in Spanish law;

- Whether our Penal Code provision on evasion of service of sentence (Penal Code, Articles 157 and 158) and quasi-recidivism (Article 160) can be made applicable to sentenced persons;

- Whether requests for transfer shall be available to sentenced persons not undergoing imprisonment, but who are under probation or subject to the penalty of *destierro*, meaning exile. Your committee submits that Article 1 para. (c) indicates that the answer is in the affirmative, because it uses the phrase “deprivation of liberty.”

- Whether the Philippine Indeterminate Sentence Law (Act No. 4103, as amended) shall apply, in view of the provision in Article 7 on “the duration and dates of commencement and termination of the sentence;”

- Which state exercise authority over a sentenced person in a case where, after transfer, he or she is granted parole or conditional pardon;

- Whether a minor entitled to avail of a suspended sentence under Philippine law may avail of transfer;

- Whether the treaty allows for the option of so-called conversion of sentence, which occurs when the sanction is converted into a sanction of the administering state, with the result that the sentence enforced is no longer directly based on the sanction imposed in the sentencing State. This definition is provided by the Council of Europe’s Head of Division, Candido Conja, in his paper on the transfer of sentenced persons. We have to consider that Article 10 of the treaty allows only “continued enforcement” after the transfer;

- Whether a person can be forced to be transferred if he or she does not want to go back to the country of nationality;

- Whether one of the states parties has an option to refuse, if he does not want to receive the transfer;

- Whether the request for transfer should automatically be accompanied by advice to the sentenced person of the possibility of the application of the principle of specialty in criminal law. This principle provides that under certain conditions, he or she may be prosecuted for acts committed other than those resulting from his or her transfer by the administering State;

- The effect of the abolition of the penal law in the administering State, considering the maxim “*nullum crimen sine lege, nullum poena sine lege*,” meaning “no crime without law, no penalty without law.” Under Article 10 “the enforcement of the sentence shall be governed by the law of the administering state.” Will the Penal Code apply, for example, such that the maximum penalty to be served cannot extend beyond 40 years?

WHEREAS, the Department of Justice is the Central Authority in all the Treaties on the Sentenced Persons;

WHEREAS, Article 16, para. 2 of the treaty provide that the transit costs for the sentenced persons shall be borne by the administering State as of the time that the sentenced person is in its custody;

WHEREAS, an initial budget of P5 million is necessary for the implementation of the Treaty;

NOW, THEREFORE, be it –

RESOLVED, that the Department of Justice is hereby authorized to issue rules and regulations for the implementation of the Treaty on the Transfer of Sentenced Persons between the Republic of the Philippines and the Kingdom of Spain;

RESOLVED FURTHER, that an appropriation of P5 million be made for the implementation of the Treaty;

Adopted,

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO