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Tackling Criminal Aspects of Judicial Reform"

Transfer to Georgia of a Georgian national or a person domiciled in Georgia sentenced in a foreign state

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Introduction

These guidelines explain the legal provisions and circumstances upon which the Ministry of Justice of Georgia (hereinafter referred to as “the Ministry”) makes a decision when assessing the issue of transfer of a foreign national sentenced in Georgia to another state to further serve a sentence or of a transfer of a Georgian national or a person domiciled in Georgia which had been sentenced abroad to Georgia.

The guidelines are binding for the Ministry when making a decision whether to transfer a foreign national sentenced in Georgia to further serve a sentence or a Georgian national or a person domiciled in Georgia sentenced abroad to serve a sentence in Georgia takes into consideration and evaluates different circumstances.

Double purpose of a transfer of a sentenced person are furthering the ends of justice and the social rehabilitation of sentenced persons. It is commonly accepted that enabling prisoners to serve a sentence in their own country not only avoids the suffering and isolation inherent to a detention abroad due to differences in language, culture, customs and religion, and lack of family ties and contact with the outside world, but also increases their chances of a successful rehabilitation, which prepares the relevant ground for the reintegration process as a full and active member of the community. In deciding whether to transfer a sentenced person, the Ministry balances such factors as the interest of justice, the interest of the sentenced person, humanitarian factors, international cooperation and additional circumstances provided for by a specific international agreement.

The argument for encouraging the transfer of sentenced persons has a strong basis in international human rights law. Article 10 paragraph 3 of the International Covenant on Civil and Political Rights specifies that the essential aim of a penitentiary system is the reformation and social rehabilitation of prisoners. This is echoed within the European Prison Rules on managing detention. As a general rule detention shall “facilitate the reintegration into free society of persons who have been deprived of their liberty”.

The guidelines are composed of a general part, rules on requests for a transfer of a person sentenced in another state to Georgia and rules on requests for a transfer of a person sentenced in another state to Georgia.

The following terminology will be used:

"Sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;

"Judgment" means a decision or order of a court imposing a sentence;

"Sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred;

"Administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence.

"Sentenced person" is a person sentenced in the sentencing state which should be transferred to the administering state.

"Transfer" is the factual handover of a sentenced person from the sentencing state to the administering state with the purpose of continued enforcement of a final decision.

General rules

Legal basis

If there is relevant legal basis, a citizen of a foreign country sentenced in Georgia may be transferred to the state of which he or she is a citizen.

According to Article 2 paragraph 1 Law of Georgia on International Cooperation in Criminal Matters (LICCM), international cooperation shall be carried out on the basis of international agreements Georgia is a party to. Georgia had signed and ratified bilateral treaties on the transfer of prisoners with some countries.

Georgia is party to the multilateral Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 (ETS 112) and the Additional Protocol to the Convention on the Transfer of Sentenced Persons of 18 December 1997 (ETS 167). A list of states which have ratified the convention and the protocol too could be found at www.coe.int – explore – treaty office – full list.

If a bilateral or multilateral treaty does not cover all aspects of a transfer, especially procedural rules within Georgia, the LICCM is applicable. In case of a lack of an international treaty, the transfer of prisoners may be carried out on the principle of reciprocity, Article 2 paragraph 3 LICCM. Chapter V LICCM shall be applied.

Statistics

The Ministry of Justice shall keep a yearly statistics on incoming and outgoing requests, requesting and requested states and the results of proceedings.

Data protection

Personal data comprise all information relating to an identified or identifiable natural person. Such data shall only be transmitted if the Law of Georgia on the Personal Data Protection

allows transmission or there are reasons to assume that the legitimate interests of the data subject would be adversely affected by such transmission.

Accuracy of any personal data transmitted must be ensured. In the event that inaccurate data have been transmitted or data should not have been transmitted, the receiving agency shall be notified by this fact without delay.

Insofar as the Law of Georgia on the Personal Data Protection stipulates specific time limits for erasure or time limits for reviewing the need for continued storage, the receiving agency shall be informed accordingly. Time limits set by a transmitting agency in another state shall be taken into account.

Personal data transmitted shall be used only for the purposes set forth by the transmitting agency. With the prior consent of the transmitting agency the data may also be used for preventing and prosecuting criminal offenses of substantial significance and for averting serious threats to public security.

Personal data may only be transferred onward to another state or international organization with the prior consent of the agency that originally transmitted the data. If asked to permit such a transfer the Ministry of Justice shall specify terms that the receiving agency must respect in connection with any onward transfer.

Personal data received which are incorrect must be rectified without delay.

Personal data received must be erased without delay if the data are no longer needed for the purpose for which they were transmitted, the data should not have been transmitted and the transmitting agency has notified such fact, or the data are inaccurate and are not rectified. Instead of reassurance the processing of the data shall be restricted if there is reason to assume that erasure would adversely affect the legitimate interests of a data subject, if the data must be maintained for the purpose of evidence, or erasure is not possible or is only possible with disproportionate effort.

Personal data received must be effectively protected from accidental loss, accidental or unlawful destruction or alteration and unauthorized disclosure, access or processing.

Cooperation between national authorities

The Ministry of Justice may inform other authorities concerned as the Penitentiary Service, the Prosecutor's Office of Georgia, the Ministries of Internal Affairs and the State Security Service of Georgia on general current developments in the field of transfer of prisoners. If necessary it may organize meeting in order to further develop the legal practice in this field.

Cooperation with other states

The Ministry is in direct contact with counterparts in other states (Article 43 paragraph 5 LICCM). If possible it should communicate directly (Article 3 paragraph 2 LICCM) and shall make the widest possible use of electronic and other modern means of secure communication. In order to accelerate proceedings advance copies of requests and supporting documents may be sent on a secure electronic channel before sending the official request and documents through the official channel.

The Ministry may name contact points for individual cases or the cooperation with a specific case. Contact points are in charge of processing the request, to facilitate communication and to consult on difficulties with a request.

Transfer of a person sentenced in Georgia to another state

Procedure

The procedure starts if a written (Article 5 paragraph 1 Convention on the Transfer of Sentenced Persons) request is send to the Ministry of Justice by a competent authority of the state of nationality of the sentenced person (Article 43 paragraph 7 letter a LICCM), or an application of the sentenced person or of his/her defense lawyer, close relative or legal representative (Article 43 paragraph 7 letter b LICCM).

The Ministry shall communicate an application by a sentenced person to the state potentially involved and keep the sentenced person informed about developments in this regard.

The sentenced person is entitled to a legal representation by a lawyer during proceedings. The law does not provide for the possibility of legal aid.

The Ministry of Justice shall obtain the documents specified in Article 43 paragraph 8 letter a to j LICCM and Article 44 paragraph 1. In that respect it shall contact the Special Penitentiary Service (letter a to h), the Public Service Development Agency (letter i), the National Bureau of Enforcement (Article 44 paragraph 1 second part: certificate of compensation for the damage caused by the wrongful act of the sentenced person), the Prosecutor's Office, the Ministry of Interior and the State Security Service (letter j).

If necessary the Ministry requests assurances regarding e.g. the length of enforcement of the sentence, the rule of specialty or detention conditions from the administering state.

The Ministry prepares a motion for the Minister of Justice (Article 44 paragraph 3 LICCM), who then decides on the transfer of the sentenced person (Article 43 paragraph 4 LICCM).

The Minister decides on granting the transfer. There are no legal remedies against the decision. The European Court of Human Rights (ECtHR) stated that such a remedy is not necessary as

Article 6 of the European Convention on Human Rights (ECHR) does not apply (ECtHR Zhernin v. Poland, No.: 2669/13).

The Ministry notifies the requesting state of the decision (Article 44 paragraph 4 and 5 LICCM) and provides the necessary documentation to the requesting state. It informs the sentenced person and other interested parties.

If the foreign state accepts the transfer and states that the sentence will be executed and the remaining time of enforcement, which had been notified by the administering state, fulfills the expectations of the Ministry, the Minister of Justice orders the transfer (Article 44 paragraph 4 LICCM). If the expectations are not met the Ministry should contact the administering state before making a final decision and try to find a solution.

Information on any remission earned by the prisoner in Georgia and any factors relevant to the enforcement of the sentence based on the date of transfer shall be given to the administering state as soon as possible.

The Ministry shall provide the medical service of the prison authorities of the administering state with social and medical reports, whenever appropriate, including psychiatric assessments, information on medical treatment prescribed and possible recommendations on further treatment.

Within five days the Ministry of Justice informs the state of nationality of the sentenced person and applies to the Penitentiary Service to organize the transfer to the requesting state (Article 44 paragraph 6 LICCM).

After the transfer the judgment of the Georgian court shall not be enforced in Georgia if not specified otherwise in the law.

If the judgement forming the basis of the transfer has been modified, repealed or amnesty has been granted the Ministry informs without delay the state to which the sentenced person had been transferred (Article 44 paragraph 7 and 8).

Formal requirements

If the basis for a transfer is a bilateral or a multilateral treaty the documents specified therein shall be necessary to decide on a transfer. If the basis for a transfer is national law the documents specified in Article 43 paragraph 8 shall be obtained. The opinions detailed in Article 43 paragraph 8 letter j are necessary in any event.

	Document	LICCM	Convention on the Transfer of Sentenced Persons
3.2.1	A certified copy of the final judgment;	Article 43 paragraph 8 letter a	Article 6 paragraph 2 letter a
3.2.2	A document certifying the entry into force of the final judgment	Article 43 paragraph 8 letter b	
3.2.3	A certified copy (if any) of a decision of a higher court of the court that delivered the judgment	Article 43 paragraph 8 letter c	
3.2.4	A document concerning the part of the sentence served by the sentenced person	Article 43 paragraph 8 letter d	Article 6 paragraph 2 letter b
3.2.5	A document concerning the remaining part of the sentence	Article 43 paragraph 8 letter e	
3.2.6	The text of the article of the Criminal Code under which the person was sentenced	Article 43 paragraph 8 letter f	Article 6 paragraph 2 letter a
3.2.7	Written consent of the sentenced person to transfer, and where the sentenced person is unable to express his/her wish, the consent of his/her close relative or legal representative, unless otherwise provided for by an international or individual agreement of Georgia, or the conditions of reciprocity	Article 43 paragraph 8 letter g	Article 6 paragraph 2 letter c
3.2.8	A certificate of health of the sentenced person	Article 43 paragraph 8 letter h	
3.2.9	A document certifying citizenship of the receiving state	Article 43 paragraph 8 letter i	Article 6 paragraph 1 letter a
3.2.10	The opinion of the Prosecutor's Office of Georgia on the expediency of transferring of the sentenced person	Article 43 paragraph 8 letter j	

3.2.11	The opinion of the Ministry of Internal Affairs of Georgia on the expediency of transferring of the sentenced person	Article 43 paragraph 8 letter j	
3.2.12	The opinion of the State Security Service of Georgia on the expediency of transferring of the sentenced person	Article 43 paragraph 8 letter j	
3.2.13	A certificate of compensation for the damage caused by the wrongful act of the sentenced person	Article 44 paragraph 1	
3.2.14	If appropriate: Any medical or social reports on the sentenced person, information about his treatment in the sentencing state, and any recommendation for his further treatment in the administering state		Article 6 paragraph 2 letter d

3.2.1 The documents provided to the requested state shall be translated into the language of the requested state if an applicable treaty does not foresee otherwise.

In case a document is missing the Ministry requests additional information by the competent authority of the state of which the sentenced person is a national.

3.2.7 A written consent of the sentenced person is not necessary under the conditions of Article 3 Additional Protocol to the Convention on the Transfer of Sentenced Persons. A consent may not be necessary if the sentenced passed on the sentenced person, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing state once he or she is released from prison (see for further detail 3.3.3). The decision or order has to be provided by the sentencing state.

Material requirements

The material requirements for a transfer are described in the applicable international treaty or, if no treaty applies, in the national law. If the material requirements are not fulfilled a transfer could not be granted.

		LICCM	Convention on the Transfer of Sentenced Persons
3.3.1	The sentenced person is a national of the requesting state	Article 43 paragraph 2	Article 3 paragraph 1 letter a
3.3.2	The judgement is final.	Article 43 paragraph 8 letter b	Article 3 paragraph 1 letter b
3.3.3	The sentenced person consents to the transfer, if necessary.	Article 43 paragraph 9 letter b	Article 3 paragraph 1 letter d
3.3.4	The remaining term of the sentence to be served is not less than 6 months at the time of receiving the request for transfer	Article 43 paragraph 9 letter c	Article 3 paragraph 1 letter c
3.3.5	The act for which the person is sentenced is deemed to be a criminal offence or is punishable by imprisonment under the legislation of the requesting state	Article 43 paragraph 9 letter a	Article 3 paragraph 1 letter d
3.3.6	The requesting state agrees to the transfer	Article 43 paragraph 9 letter d	Article 3 paragraph 1 letter f
3.3.7	The enforcement of the sentence will not result in a violation of human rights.		Article 3 European Human Rights Convention
3.3.8	A financial penalty in conjunction with the prison sentence has not been paid.		
3.3.9	A likely additional period of detention under the law of the administering state is not disproportionate.		
3.3.10	The administering state is prohibited from trying the sentenced person for the same act for which he or she had been convicted and sentenced in Georgia.		

3.3.1 In cases of double nationality it is sufficient that the sentenced person has inter alia the nationality of the administering state and not the nationality of Georgia.

3.3.2 The term “final” should be understood as referring to the exhaustion of all normal appeal processes. Thus all available remedies must have been exhausted, or the time limits for such remedies must have expired without the parties having availed themselves of them.

3.3.3 A consent is not necessary under the conditions of the Additional Protocol to the Convention on the Transfer of Prisoners. When deciding whether to transfer without consent the interests of the sentenced person and the public interest have to be balanced. In the interest of social rehabilitation the further domicile of the sentenced person in Georgia or in the administering state, a deportation order or asylum granted by Georgian authorities, familial and social ties, language knowledge and detention conditions shall be taken into account.

The sentenced person should be informed about the legal consequences that the transfer would entail to ensure that the consent is given voluntarily. The information should be given in a language the sentenced person can understand. If necessary according to the law of the administering state, a possibility to verify the process of consent e.g. by the assistance of diplomatic or consular corps or any other official agreed upon between the states concerned should be given.

3.3.4 If the administering state sets the same prerequisite to a transfer, the usual time of proceedings in Georgia must be added to the 6 month mentioned in the LICCM or the Convention.

In exceptional cases, Georgia and the foreign state concerned may agree on transfer to a foreign state (or to Georgia) even if the remaining term of the sentence is less than 6 months, (Article 43 paragraph 9 letter c LICCM, Article 3 paragraph 2 Convention on the transfer of Sentenced Persons).

3.3.7 A transfer shall not be executed when there are objective reasons to believe that basic fundamental rights of the sentenced persons shall be enshrined.

Detention conditions in general must fulfil the minimum standards set out by the ECtHR (see Mursic ./ Croatia, No.: 7334/13). When assessing those conditions the individual situation of the sentenced person (e.g. age, gender, sexual orientation, physical or mental illness, ongoing drug therapy) shall be taken into account. Harsher conditions as such are no reason not to transfer (ECtHR Müller v. Germany, No.: 48058/09). The administering state could provide an assurance guaranteeing those standards for the transferred person.

The administering state must ensure the availability of an appropriate type of treatment of specific categories of sentenced persons prone to vulnerability regarding treatment, care and accommodation, such as minor offenders or offenders suffering from mental health issues. Before denying the transfer the Ministry shall consult with the administering state and try to find a solution.

In case of a risk of political persecution in the administering state a transfer cannot take place. In deciding whether such a risk exists a possible asylum status shall be taken into account.

3.3.8 Information on the enforcement of a financial penalty can be obtained by the National Bureau of Enforcement.

3.3.9 See ECtHR *Csozánzski v. Sweden*, No.: 22318/02: “The Convention does not require the Contracting Parties to impose its standards on third States or territories. To lay down a strict requirement that the sentence served in the administering country should not exceed the sentence that would have to be served in the sentencing country would also thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is reflected in the Transfer Convention and is in principle in the interests of the persons concerned. In view of this, the possibility of a longer period of imprisonment in the administering State does not in itself render the deprivation of liberty arbitrary as long as the sentence to be served does not exceed the sentence imposed in the original criminal proceedings. Nevertheless, the Court does not exclude the possibility that a flagrantly longer de facto term of imprisonment in the administering State could give rise to an issue under Article 5, and hence engage the responsibility of the sentencing State under that Article. However, the sentencing State could only be responsible for consequences which were foreseeable at the time when the transfer decisions were taken.

ECtHR *Veermae v. Finland*, No.: 38704/03: “The Court did not exclude the possibility that a flagrantly longer de facto sentence in the administering State could give rise to an issue under Article 5, and hence engage the responsibility of the sentencing State under that Article. For this to be the case, however, substantial grounds would have to be shown to exist for believing that the time to be served in the administering State would be flagrantly disproportionate to the time which would have had to be served in the sentencing State.”

3.3.10 The Ministry shall ask as for an assurance in that respect if it is not mandatory according to a bilateral or multilateral treaty applicable.

Grounds for refusal

Georgia is not obliged to transfer a sentenced person to a foreign state (see ECtHR *Passaris v. Greece*, No.: 53344/07). There is no subjective right of a sentenced person to be transferred (ECtHR *Plepi v. Albania and Greece*, No.: 11546/05, 33285/05 and 33288/05; *Palfreeman v. Bulgaria*, No.: 59779/14).

The social rehabilitation of the sentenced person and other human rights concerns must always be prominent when considering whether the requirements for a transfer have been met. However it should always be in mind that wider criminal justice and law enforcement policy concerns may legitimately play a role in the decision making process. Those concerns may be general, such as concerns for public sensibilities and the political climate, or individual, such as victim’s rights or a probable significant disparity between the sentence that would have been served in Georgia and that will be served in the administering state.

Grounds for refusal are not mandatory. The Ministry of Justice has a power of discretion. When deciding whether to transfer or not shall take into account the following aspects:

		LICCM	Convention on the Transfer of Sentenced Persons
3.4.1	The transfer of the accused person poses risk to public and/or state security interests	Article 43 paragraph 10 letter a	
3.4.2	The correctional facilities of Georgia are overcrowded	Article 43 paragraph 10 letter b	
3.4.3	The sentenced person has not served half of the sentence, unless otherwise agreed between the competent authorities of Georgia and the foreign state	Article 43 paragraph 10 letter c	
3.4.4	The interested persons refuse to cover the expenses related to transferring of the sentenced person	Article 43 paragraph 10 letter d LICCM	
3.4.5	The transfer will not contribute to the sentenced person's social rehabilitation.		
3.4.6	There are ongoing investigations or trials against the sentenced person in Georgia.		

3.4.3 It is in the interest of justice that a sentence will be enforced correctly. A person will be sentenced if he is guilty of a crime. Guilt shall be compensated. Victims are interested that the perpetrator is not only sentenced but that he also serves time in prison. It is in the interest of special and general prevention that sentences are enforced as foreseen in Georgian law. When deciding on a transfer the aim of a sufficient enforcement of the whole sentence shall be taken into account. Prisoners with a foreign nationality should be treated equally with Georgian prisoners. Transfer should not put them in a better nor a less favorable position as to the enforcement of the sentence.

Usually half of the nominal sentence should be enforced in Georgia. It should be taken into account how long the rest of the remaining sentence will be enforced in the administering state. In the event of transfer the issue of administration of the sentence shall fall entirely

within the jurisdiction of the administering state. Accordingly, in cases where as a result of conversion of the sentence there is substantial difference in the duration of punishment determined by receiving and extraditing states, the Ministry may take this into account in the assessment of the decision about transfer.

According to experiences in Turkey prison sentences will be enforced in average to 42 % of the nominal time. In Greece prison sentences under 5 years will be enforced up to 40 %, with respect to drug crimes up to 33 %. In Belgium the minimum enforcement time is 33 %.

In case of doubts on the enforcement in the administering state an assurance could be requested.

The main purpose of the international transfer to further serve a sentence, is the social rehabilitation of the sentenced person. Social rehabilitation should be understood in the sense that it is more appropriate for measures of rehabilitation to be taken in a state where the offender understands the language and to which the sentenced persons has close links. The opportunity for social contacts with relatives and friends helps preparing for a return to the community. Accordingly, transfer to another state must be conditioned by a number of factors that contribute to the process of social rehabilitation and reintegration of convicts. In view of the foregoing, the following circumstances shall be taken into account:

Ties of the sentenced person with the receiving state

The relationship of the convict with the receiving state is important to the extent that the opportunity for the convict to successfully undergo the rehabilitation process after serving a sentence is significantly higher in the environment to which a particular person belongs for the cultural or other characteristics. Such ties could be build up by

Family and other social connections

The ability of the sentenced person to maintain permanent contact with family members and other close relatives plays an important role in the process of social rehabilitation of the sentenced person (ECtHR Palfreeman v. Bulgaria, No.: 59779/14; Zhernin v. Poland, No.: 2669/13). The rate of social reintegration of prisoners is higher in an environment where they have the opportunity to see family members and be in culturally familiar environment. Nurturing the ties between prisoners and their children is also important for the development of the children. However, it is highly probable that having served the sentence, the prisoner would be willing to live in the area where his/her family members and close relatives live.

The length of time spent in the sentencing and administering state

It is important to evaluate the length of time spent by a convict in the sentencing and administering state. Since, in some cases, the time spent by the sentenced person in the sentencing state and the ties established during that time are so strong and high (e.g. marriage

and family) that with a high degree of probability, after release, the convict will inevitably seek to return to the sentencing state.

History of education and employment

In assessing the issue of transfer to another state for further serving a sentence, account shall be taken of the fact that the person concerned has received education in the sentencing state and the repetitive nature of the process. An indication of ties to the sentencing state could be an existing longtime employment which will be continued after release from prison.

Property ties

Real estate, business or any other business activity/share of the sentenced person in the sentencing state shall construct a certain tie between the sentenced person and the sentencing state, so this factor must also be taken into account when assessing the transfer case.

Information about deportation/expulsion, frequency and duration

For the purpose of further serving a sentence by the sentenced person, when transferring to another state, information on the nature of entering the sentencing state by the person, number of expulsions, deportations or voluntary departures from the state and time intervals should be taken into account. Where the fact of illegal border crossing is repeated within a short period, there is a high likelihood that the person concerned, after serving the sentence, will still attempt to enter the sentencing state by any means.

Nature/severity of the offense

The nature of the offense committed is crucial in the selection of the type and size of the punishment and is therefore taken into account when deciding whether to transfer the sentenced person to another state to further serve a sentence. The components of criminal offenses could create a clear picture for determination in which state and under what circumstances the goal of resocialization of the sentenced person will be more realistic.

When assessing the nature and severity of the offense, factors such as: the number of victims; the nature of the physical, psychological or financial damage caused; damage to the society; whether the conviction was based on a violent crime, including a particular focus on the type of weapon used, the violation of human life and security; whether the convict had direct contact with various gangs, terrorist groups or other organized crime groups; the role of the sentenced person in the criminal acts, etc.

Acknowledgment of responsibility

When assessing the chances of rehabilitation after serving a sentence, account shall also be taken of acceptance of responsibility by him/her, which may be expressed in various actions. In particular, cooperation of the sentenced person with relevant authorities, providing

comprehensive information on the criminal acts committed to law enforcement agencies, pleading guilty, etc.

Criminal past

It is important to know the nature and number of the offences committed by the sentenced person, the role of the sentenced person in the offences, the nature and type of the damage caused by the offence(s). Offences committed during the period of prior conviction and the repeated nature of this act, indicate to the fact that the sentenced person does not want to be fully rehabilitated in the society.

- Criminal ties in the administering state

During imprisonment, the sentenced person's involvement in criminal offenses in the administering state or association with other criminal groups has a significant influence on the decision-making process on the transfer of the said person to further serve a sentence, as there is a high likelihood that the sentenced person will again get involved in criminal activities after transfer. In assessing the circumstances, it is important to determine whether the sentenced person is a member of any criminal group; his/her role and function in this group; the validity and reliability of the evidence proving that tie during the conviction; the time interval during which the sentenced person had contact with the said criminal elements, etc.

- Information on behavior of the sentenced person during the imprisonment

The behavior of the sentenced person in the penitentiary institution and the fact that he/she obeys the rules of the institution, is an important indicator that the sentenced person is ready to reintegrate into the community. In contrast, the fact that a sentenced person commits a variety of offenses while in prison, including acts of violence, uses weapon, drugs and attempts to escape, has a significant negative impact on the decision-making process of transfer. Especially when such behavior of a sentenced person is of a repetitive nature and cannot be prevented using punishment.

The interest of justice

When making a decision to transfer the sentenced person to another state to further serve a sentence, the purpose of social rehabilitation may be outweighed by the interest of the judiciary. Accordingly, the following factors must be taken into account when making a decision on transfer:

Public order

In certain cases, the grounds for refusing to transfer the sentenced person to serve a sentence in another state may be that the transfer of the convict may endanger public order and security of the sentencing state. If the sentenced person returns after the end of the prison term at his own will, Georgia may have no control over the timing and the mode of the sentenced person's

arrival or over what the person will do. In order to protect public order the sentence could be enforced in total in Georgia and the person could be deported afterwards.

Danger of initiating new offenses in the receiving state

Where the information available to the relevant public authorities confirms that the sentenced person maintains ties with criminal groups and other criminal elements, this creates a high likelihood that the sentenced person will resume criminal activities if transferred. Accordingly, this circumstance adversely affects the decision on the transfer.

Humanitarian goals

When deciding to transfer a sentenced person to serve a sentence in another state, a positive decision may be taken with respect to a sentenced person who otherwise would not meet the conditions for transfer. This is based on the exceptional cases where humanitarian objectives make the transfer of the sentenced person necessary. Such circumstances may be due to the illness, pregnancy of the convict, etc.

Georgia is committed to the European Convention on Human Rights, especially Articles 3, 6, 8 ECHR, and the International Covenant on Civil and Political Rights, especially Articles 2, 10, 14 ICCPR. Georgia cannot transfer or otherwise remove persons if there is a threat to their life or if they are likely to be subject to torture or to inhuman or degrading treatment or punishment in the county to which they are being sent. The core of those fundamental rights even apply if the sentenced person agrees to the transfer voluntarily and in full knowledge of the circumstances in detention facilities in the administering state.

3.4.9 Current proceedings in the sentencing state

Where proceedings are pending in the sentencing state and the presence of the sentenced person in that state is related to the administration of justice, it may affect the decision-making process. If an extradition to face trial in the sentencing state is not easily possible a transfer should not take place before a final decision in the pending case. Litigation may be related to a variety of circumstances, including: the sentenced person's co-operation with the investigation and if his/her testimony is necessary to detain other members of an organized group, to reveal criminal elements, to conduct judicial practice; the offender has been charged with other criminal activity(s) and/or an investigation is ongoing for other offenses against the sentenced person.

Information of prisoners

The Special Penitentiary Service shall ensure that foreign prisoners are informed about the possibility to request a transit to their state of nationality (Article 43 paragraph 3 LICCM, Article 4 paragraph 1 Convention on the Transfer of Sentenced Persons). Such information should be given at the beginning of the enforcement of a prison sentence and be repeated if the prison is

of the opinion that a transfer could be possible and useful for the purpose of the resocialization of the prisoner.

The prisoner information sheet attached to these guidelines may be used to inform the prisoner.

If the prisoner is interested in a transfer the Ministry of Justice shall be informed. The name, date and place of birth, the last address if any in Georgia, the nature, duration and date of commencement of the sentence shall be included in this information.

The Ministry of Justice shall forward this information to the state of nationality and include a statement of the facts upon which the sentence was based (Article 4 paragraph 3 Convention on the Transfer of Prisoners).

Follow up after the transfer

After a transfer of the prisoner the sentence can no longer be enforced in Georgia (Article 8 Convention on the Transfer of Sentenced Persons). The information of the transfer has to be forwarded to the Special Penitentiary Service in order to prevent further enforcement and to enable the Ministry of Justice to inform the administering state about subsequent changes of the judgement or sentence (Article 44 paragraph 8 LICCM).

Transfer to Georgia of a Georgian national or a person domiciled in Georgia sentenced in a foreign state

4.1 Procedure

The procedure starts if a written (Article 5 paragraph 1 Convention on the Transfer of Sentenced Persons) application is sent to the Ministry of Justice by the sentenced person or of his/her defense lawyer, close relative or legal representative (Article 43 paragraph 1 and paragraph 7 letter b, Article 45 paragraph 1 LICCM) or by a competent authority of the sentencing state (Article 43 paragraph 7 letter a, Article 45 paragraph 1 LICCM).

The sentenced person is entitled to a legal representation by a lawyer during proceedings. The law does not provide for the possibility of legal aid.

The Ministry shall obtain the documents specified in Article 43 paragraph 8 letter a to j LICCM and Article 45 paragraph 2 LICCM.

The Ministry communicates in that respect with the sentencing state (Article 43 paragraph 5 LICCM) and provides if necessary additional documents or information (Article 43 paragraph 3 and 5 LICCM).

The Ministry prepares a motion for the Deputy Minister of Justice (Article 43 paragraph 5, Article 45 paragraph 7 LICCM, Minister's Order N213 (2018) and N184 (2018)). The Minister of Justice decides on the transfer of the sentenced person (Article 43 paragraph 4 LICCM).

In case of a negative decision the sentenced person (Article 45 paragraph 8 LICCM) and the sentencing state will be informed.

In case of a positive decision the case will be referred to the competent court (Article 45 paragraph 9). The court's involvement is limited to formally adapt the sentence adopted by the foreign court to the Georgian legislation.

After the court has decided the Ministry prepares an order of transfer (Article 45 paragraph 11 LICCM). The Minister of Justice finally decides on the transfer (Article 45 paragraph 12 LICCM).

In case of a negative decision the sentenced person and the sentencing state shall be informed within one week (Article 45 paragraph 8 LICCM). Reasons for a decision refusing the transfer shall be provided as far as possible.

In case of a positive decision a copy of the court's ruling is sent to the sentencing state (Article 45 paragraph 10).

The Penitentiary Service will be informed, so that it can take care of the transfer (Article 45 paragraph 12 LICCM). If applicable the written confirmation from an interested person on the coverage of the expenses related to transfer of the convicted person; the confirmation, together with other documents, shall be sent to the Penitentiary Service (Article 45 paragraph 6 LICCM).

In case the sentencing state requests specific assurances e.g. regarding the length of enforcement of a sentence or conditions of the enforcement of the sentence in a specific prison, those assurances will be given by the Ministry based on the converted judgment rendered by the court. The maximum length of enforcement of a sentence foreseen in Georgian law for the same crime could not be exceeded.

4.2 Formal requirements

If the basis for a transfer is a bilateral or a multilateral treaty the documents specified therein shall be necessary to decide on a transfer. If the basis for a transfer is national law the documents specified in Article 43 paragraph 8 and Article 45 paragraphs 2 and 6 shall be obtained.

	Document	LICCM	Convention on the Transfer of Sentenced Persons
4.2.1	A certified copy of the final judgment;	Article 43 paragraph 8 letter a	Article 6 paragraph 2 letter a

4.2.2	A document certifying the entry into force of the final judgment	Article 43 paragraph 8 letter b	
4.2.3	A certified copy (if any) of a decision of a higher court of the court that delivered the judgment	Article 43 paragraph 8 letter c	
4.2.4	A document concerning the part of the sentence served by the sentenced person	Article 43 paragraph 8 letter d	Article 6 paragraph 2 letter b
4.2.5	A document concerning the remaining part of the sentence	Article 43 paragraph 8 letter e	
4.2.6	The text of the article of the Criminal Code under which the person was sentenced	Article 43 paragraph 8 letter f	Article 6 paragraph 2 letter a
4.2.7	Written consent of the sentenced person to transfer, and where the sentenced person is unable to express his/her wish, the consent of his/her close relative or legal representative, unless otherwise provided for by an international or individual agreement of Georgia, or the conditions of reciprocity	Article 43 paragraph 8 letter g	Article 6 paragraph 2 letter c
4.2.8	A certificate of health of the sentenced person	Article 43 paragraph 8 letter h	
4.2.9	A document certifying citizenship of the receiving state	Article 43 paragraph 8 letter i; Article 45 paragraph 2 letter b	Article 6 paragraph 1 letter a
4.2.10	The opinion of the Prosecutor's Office of Georgia on the expediency of transferring of the sentenced person	Article 43 paragraph 8 letter j	
4.2.11	The opinion of the Ministry of Internal Affairs of Georgia on the expediency of transferring of the sentenced person	Article 43 paragraph 8 letter j	
4.2.12	The opinion of the State Security Service of Georgia on the	Article 43 paragraph 8 letter j	

	expediency of transferring of the sentenced person		
4.2.13	Complete identification details of the convicted person (name, surname, date and place of birth, identity document details and other information)	Article 45 paragraph 2 letter a	
4.2.14	In the case of Article 43 paragraph 7 letter b LICCM a document certifying the granting of authorization by the convicted person to the applicant, or if the applicant is a close relative, a document certifying kinship.	Article 45 paragraph 2 letter c	
4.2.15	If applicable a written confirmation from an interested person on the coverage of the expenses related to transfer of the convicted person.	Article 45 paragraph 6	
4.2.16	If appropriate: Any medical or social reports on the sentenced person, information about his treatment in the sentencing state, and any recommendation for his further treatment in the administering state		Article 6 paragraph 2 letter d

4.2.7 Georgian law decides whether a person has a right to represent a sentenced person in Georgia.

4.3 Material requirements

		LICCM	Convention on the Transfer of Sentenced Persons
4.3.1	The sentenced person is a national of Georgia or domiciled in Georgia	Article 43 paragraph 1	Article 3 paragraph 1 letter a
4.3.2	The judgement is final.	Article 43 paragraph 6 and 8 letter a	Article 3 paragraph 1 letter b
4.3.3	The sentenced person consents to the transfer, if necessary.	Article 43 paragraph 9 letter b	Article 3 paragraph 1 letter d

4.3.4	The remaining term of the sentence to be served is not less than 6 months at the time of receiving the request for transfer	Article 43 paragraph 9 letter c	Article 3 paragraph 1 letter c
4.3.5	The act for which the person is sentenced is deemed to be an offence or is punishable by imprisonment under the legislation of Georgia	Article 43 paragraph 9 letter a, Article 55 paragraph 1 letter a	Article 3 paragraph 1 letter d
4.3.6	The sentencing state agrees to the transfer	Article 43 paragraph 9 letter d	Article 3 paragraph 1 letter f
4.3.7	The enforcement of the judgment of the competent foreign court contravenes the fundamental principles of Georgian legal system	Article 43 paragraph 10	
4.3.8	The offence with respect to which the competent foreign court delivered the judgment is deemed a political or military crime in Georgia and therefore is not regarded as a crime in Georgia.	Article 43 paragraph 9 letter a	
4.3.9	There is a reasonable belief that the judgment of the competent foreign court was delivered or the person's condition was aggravated based on his/her race, nationality, ethnic origin, religion, political opinions and other similar circumstances (see for example Article 55 paragraph 1 letter d LICCM in cases of chapter VI).	Article 2 paragraph 1 International Covenant on Civil and Political Rights of 19 December 1966)	
4.3.10	With respect to the offence for which the enforcement of the judgment is sought there exists a judgment of a Georgian court or the relevant Georgian authorities have adopted a final decision to discontinue prosecution against the person.	Article 55 paragraph 1 letter g	
4.3.11	Relevant Georgian authorities have adopted a final decision on refusing to initiate a criminal prosecution for		

	the offence, for which the person's extradition has been requested.		
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4.3.1 In order to assume Georgian nationality dual nationality is sufficient.

Domicile is defined as habitual and legal residence on Georgian territory. Indications for a habitual residence are that Georgia has been for more than a year the center of living of the sentenced person and that the person had developed family, social or (legal) professional ties in Georgia.

4.3.3 A consent is not necessary in the cases described in the Articles 2 and 3 Additional Protocol to the Convention on the Transfer of Sentenced Persons. As prison conditions and legal provisions on early release differ from state to state a sentenced person may have reasons for not wishing to be transferred. It is usually the case that the social rehabilitation of a prisoner is better served by transferring those who consent to such transfer.

The sentenced person has to be informed properly about the meaning and the consequences of a transfer in a language which he or she could understand before deciding on the consent.

If necessary it could be verified whether the consent had been given in accordance with this condition. (Article 7 paragraph 1 Convention on the Transfer of Sentenced Persons). In case of doubt the sentencing state shall be requested to afford an opportunity to verify with the assistance of the diplomatic or consular corps or any other official agreed upon between the states concerned (Article 7 paragraph 2 Convention on the Transfer of Sentenced Persons). Such verification can be effected.

4.3.5 The facts which are described in the judgment must, if the act would have been committed in Georgia, constitute a crime according to Georgian law. Additional facts provided by the sentencing state or the sentenced person shall not be taken into account as the merits of the judgment will not be tested. Dual criminality is fulfilled irrespective of whether the laws of the two states place the offence within the same category of offences or use the same terminology, as long as the conduct underlying the offence is a criminal offence under the laws of both states.

4.3.7 Georgia cannot execute a sentence which is not known in Georgian law. The type and length of a sentence must be in compliance with the rules on sentencing in Georgian law.

4.3.9 The Ministry does not go into the merits of the judgment and will not assess whether the judgement contravenes the national criminal procedure law of the sentencing state or of Georgia. Nevertheless a judgment in breach of the fundamental human rights could not be enforced in Georgia.

Grounds for refusal

		LICCM	Convention on the Transfer of Sentenced Persons
4.4.1	The transfer of the accused person poses risk to public and/or state security interests	Article 43 paragraph 10 letter a	
4.4.2	The correctional facilities of Georgia are overcrowded	Article 43 paragraph 10 letter b	
4.4.3	The sentenced person has not served half of the sentence, unless otherwise agreed between the competent authorities of Georgia and the foreign state.	Article 43 paragraph 10 letter c	
4.4.4	The interested person refuses to cover the expenses related to transferring of the sentenced person.	Article 43 paragraph 10 letter d	
4.4.5	The transfer will not contribute to the sentenced person's social rehabilitation.		

Grounds for refusal are not mandatory and the Ministry has a power of discretion (see 3.4).

4.4.2 If correctional facilities in Georgia are overcrowded each additional inmate causes additional work and costs. Social rehabilitation of all prisoners could be endangered and detention standards may no longer be met if the number of prisoners exceeds the number of places foreseen in the correctional facility which shall take over the sentenced person.

4.4.3 It lays within the public interest and in the interest of victims that sentences are properly enforced. Taking into account possibilities of early release and amnesty in administering states many states take it as a general rule that half of the sentence should be enforced in the sentencing state. If an early transfer is envisioned because of Georgian public interests or a great personal interest of the sentenced person the Ministry should evaluate the possibility to give an assurance as to the minimum length of enforcement of the sentence in a correctional facility.

4.4.5 The sentencing state should itself enforce the sentence if social rehabilitation and reintegration could be better provided in that state. Circumstances to be taken into account when assessing the best place for social rehabilitation see 3.4.6.

There is a strong humanitarian argument for transfer if the prison conditions and regimes in the sentencing state are particularly poor or are not in line with international minimum standards. Such humanitarian concerns may be heightened by the particular circumstances of individual prisoners (e.g. pregnancy, mental or physical illness). Humanitarian factors may also be taken into account with respect of the needs of the family and dependents of a sentenced person who is held in a foreign prison while they remain in their country of origin. Those families may face challenges as the consequence of their family member's imprisonment as marital difficulties, financial and housing problems, social stigma and victimization, loneliness, anxiety and emotional hardships. Prisoner's children may experience psychological harm and develop behavioral problems.

The Ministry may also take into account whether the sentenced person will be deported after the end of the imprisonment as a transfer could be organized better and could take place at the expense of the sentenced person.

Follow up after the transfer

If after the transfer proceedings against the sentenced person shall be initiated or he shall be convicted for any other offence, committed before his/her transfer, other than the offence for which the person has been transferred to Georgia, the Ministry requests the sentencing state to agree to the proceedings (Article 50 paragraphs 15 letter a, 15 LICCM).

Upon receipt from the relevant foreign competent authority of information that the convicted person has been exempted from criminal liability and/or from serving the remaining part of the sentence on the basis of an act of amnesty or pardon, or a court decision or other legal grounds, the Ministry of Justice shall immediately request the Penitentiary Service to exempt the convicted person from serving the remaining part of the sentence (Article 45 paragraph 13 LICCM).

The sentencing state should be informed if the enforcement of the sentence had been completed or the sentenced person has escaped from the detention facility. This is not only an element of mutual cooperation but may also be of practical significance in cases where victims need to be informed about a possible return of the offender.

If the sentenced person has escaped custody and left the territory of Georgia the sentencing state shall be informed that the enforcement of the sentence cannot be completed.

Information of Georgian nationals in foreign prisons

Georgian nationals in foreign prisons could be informed upon request about the possibility of a transfer. The information should be provided as soon as possible in an easy and precise manner so as to ensure that the sentenced person could provide an informed consent or opinion (No. 3 of the Draft recommendation concerning the practical application of the Convention on the

Transfer of Sentenced Persons and Additional Protocol thereto, European Committee on Crime Problems, PC-OC (2018)07rev3).

Transit of convicted persons

Transit can be requested by a third state to or from which a person shall be transferred from another third state or from the Georgian Ministry of Justice to a third through which territory a person shall be transported from Georgia. Transit is governed by Art. 46 LICCM and Art. 16 Convention on the Transfer of Sentenced Persons.

Article 46 LICCM does not refer to Art. 36 LICCM in cases of transit for extradition proposes. Article 36 LICCM is not applicable mutatis mutandis.

The transfer of Georgian national is not permitted.

With respect to Art. 16 Convention on the Transfer of Sentenced Persons Georgia declared, that requests for transfer and supporting documents must be accompanied by a translation into the Georgian, English or Russian languages.

The Convention on the Transfer of Sentenced Persons is applicable, if either the requesting state, be it the sentencing state or the administering state, is party to the Convention, Art. 16 paragraph 1 Convention on the Transfer of Sentenced Persons.

The Ministry of Justice will decide on the transit through Georgia or request a transit through a third state, Art. 46 paragraph 2 and 3 LICCM. Unlike with respect to a transfer of prisoners a decision of the Minister is not necessary.

The requesting state shall be informed as soon as possible on the decision of the Ministry of Justice.

5.1 Transit through Georgia

		LICCM	Convention on the Transfer of Sentenced Persons
5.1.1	Request of a third state	Article 46 paragraph 2	Article 16 paragraph 1
5.1.2	Translation		
5.1.3	Agreement between sentencing and administering state on the transfer of the person		Article 16 paragraph 4

5.1.4	The sentenced person is Georgian national.		Article 16 paragraph 2 letter a
5.1.5	The offence for which the sentence was imposed is not an offence under Georgian law.		Article 16 paragraph 2 letter b
5.1.6	The transfer of the sentenced person poses risk to public and/or state security interests		
5.1.7	The enforcement of the sentence will not result in a violation of human rights.		Article 3 European Human Rights Convention

5.1.4 Optional ground for refusal in cases dealt with under the Convention on the Transfer of Sentenced Persons.

5.1.5 Optional ground for refusal in cases dealt with under the Convention on the Transfer of Sentenced Persons.

5.1.6 A risk to public security interests could be assumed if the sentenced person is of public interest and there might be violent demonstrations or attempts to free the person. A risk to public security could be assumed if for reasons of foreign policy imprisonment of the sentenced person shall not be supported.

5.1.7 In cases of transit the decision is taken in a summary proceeding. Nevertheless if it is obvious that the sentenced person will suffer from a breach of human rights in the administering state a transfer cannot be authorized, Art. 3 European Convention on Human Rights.

5.2 Transit through a third state

		LICCM	Convention on the Transfer of Sentenced Persons
5.2.1	Request to the third state	Article 46 paragraph 3	Article 16 paragraph 1
5.2.2	Translation if required by the third state		
5.2.3	Transmission to the Ministry of Justice of the third state		Article 16 paragraph 3 in conjunction

			with Article 5 paragraph 2
5.2.4	The enforcement of the sentence will not result in a violation of human rights.		Article 3 European Convention on Human Rights
5.2.5	The sentenced person will not be prosecuted, or, except for the purpose of the transit, detained, or otherwise subjected to any restriction on his liberty in the territory of the transit State for any offence committed or sentence imposed prior to his departure from the territory of the sentencing State.		Article 16 paragraph 6

5.2.4 A violation of human rights could be taken into account if the sentenced person will be held in custody in the third state longer than necessary (see Article 16 paragraph 5 Convention on the Transfer of Sentenced Persons) or if the detention conditions in the third state are not in conformity with Article 3 European Convention on Human Rights and can even not be accepted for a short period of time.

5.2.5 In case there is a risk of prosecution or detention in the transit state the Ministry shall apply for an assurance of the transit state not to prosecute or to detain other for the purpose of the transit.

Legal and factual information

Information on Council of Europe treaties and explanatory reports: www.coe.int – explore – treaty office

Information on the application and development of treaties of the Council of Europe: <https://www.coe.int/en/web/transnational-criminal-justice-pcoc>

Information on human rights standards in other states: European Committee for the Prevention of Torture; <https://www.coe.int/en/web/cpt/home>; Statistics on prison overcrowding <https://wp.unil.ch/space/>; Committee against Torture <https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>.