

TURKEY

Prisoner Transfer

*Treaty signed at Ankara June 7, 1979;
Transmitted by the President of the United States of America
to the Senate August 2, 1979 (S. Ex. BB, 96th Cong.,
1st Sess.);
Reported favorably by the Senate Committee on Foreign Relations
November 20, 1979 (S. Ex. Rep. No. 96-24, 96th Cong., 1st
Sess.);
Advice and consent to ratification by the Senate November 30, 1979;
Ratified by the President December 13, 1979;
Ratified by Turkey November 21, 1980;
Ratifications exchanged at Washington December 2, 1980;
Proclaimed by the President December 31, 1980;
Entered into force January 1, 1981.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty on the Enforcement of Penal Judgments between the United States of America and the Republic of Turkey, signed at Ankara on June 7, 1979, the text of which Treaty, in the English and Turkish languages, is hereto annexed;

The Senate of the United States of America by its resolution of November 30, 1979, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty;

The Treaty was ratified by the President of the United States of America on December 13, 1979, in pursuance of the advice and consent of the Senate, and was duly ratified on the part of the Republic of Turkey;

It is provided in Article XXIX of the Treaty that the Treaty shall enter into force thirty days after the exchange of the instruments of ratification;

The instruments of ratification of the Treaty were exchanged at Washington on December 2, 1980; and accordingly the Treaty will enter into force on January 1, 1981;

Now, THEREFORE, I, Jimmy Carter, President of the United States of America, proclaim and make public the Treaty, to the end that it shall be observed and fulfilled with good faith on and after January 1, 1981, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this thirty-first day of December in the year of our Lord one thousand nine hundred eighty [SEAL] and of the Independence of the United States of America the two hundred fifth.

JIMMY CARTER

By the President:
EDMUND S. MUSKIE
Secretary of State

TREATY ON THE ENFORCEMENT OF PENAL JUDGMENTS
BETWEEN
THE UNITED STATES OF AMERICA AND
THE REPUBLIC OF TURKEY

The United States of America and the Republic of Turkey,

Considering that mutual cooperation in combatting crime and the establishment of a mechanism promoting social rehabilitation of offenders based on the principles of mutual respect for each other's jurisdiction and of the mutual recognition of the validity of penal judgments as a basis for incarceration of an offender in his home country would also contribute to the development of friendly relations between their States have decided to conclude a Treaty on the Enforcement of Penal Judgments, and, to that end, have appointed as their plenipotentiaries:

Ronald I. Spiers, Ambassador of the United States of America
by the President of the United States of America,

İldeniz Divanlıoğlu, Director General of Consular Affairs of
the Ministry of Foreign Affairs

by the President of the Republic of Turkey,

Who, having communicated to each other their respective full powers, which were found in good and due form, have agreed as follows:

PART I
DEFINITIONS

ARTICLE I

For the purposes of this Treaty:

- (a) "Requesting State" or "Sentencing State" means the Party which requests the recognition of the validity and the enforcement of a penal judgment involving deprivation of liberty, confiscation, measures of supervision, or disqualification pronounced against the sentenced person and the party from which the sentenced person may be transferred to the requested state.
- (b) "Requested State" means the party which is asked to recognize the validity of and to enforce a penal judgment involving deprivation of liberty, confiscation, measures of supervision, or disqualification pronounced against a sentenced person by the requesting state.
- (c) "Penal Judgment" or "Judgment" means any final decision delivered by a criminal court of the requesting state as a result of criminal proceedings involving deprivation of liberty, confiscation, measures of supervision or disqualification.
- (d) "Sentenced Person" means any offender who, in the territory of one of the parties, has been sentenced either to a sanction involving deprivation of liberty, confiscation, measures of supervision, or disqualification, or an offender who has been conditionally released or whose sentence has been suspended.

(e) "Disqualification" means any loss or suspension of a right or any loss of legal capacity imposed by a penal judgment.

(f) "Domiciliary" means a national of one Party who has resided in the territory of the other Party for at least five years with an intention to remain therein.

(g) "Conditional Release" means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of the term, subject to conditions and supervision.

PART II
RECOGNITION AND ENFORCEMENT OF PENAL JUDGMENTS

SECTION I
GENERAL PROVISIONS

ARTICLE II
RECOGNITION AND ENFORCEMENT

(1) Each Party in the cases and under the conditions provided for in this Treaty recognizes the validity and shall enforce against its national in its territory a penal judgment involving deprivation of liberty, confiscation, measures of supervision, or disqualification imposed by the other Party as if the judgment had been rendered by one of its courts.

(2) Such recognition and enforcement can be exercised only following an acceptance by the requested state of a request for enforcement under this Treaty.

ARTICLE III
CONDITIONS OF ENFORCEMENT

(1) A judgment shall not be enforced by the requested state unless under its laws the act for which the judgment was rendered would be an offense if committed on its territory and the person with respect to whom the judgment was rendered would be liable to punishment if the act had been committed there. This condition shall not be interpreted so as to require that the constituent elements and circumstances of the crimes described in the laws of the two states be in all respects identical.

(2) If the judgment relates to more than one offense not all of which fulfill the requirements of paragraph 1, the requesting state shall specify the portions of the judgment which apply to the offenses that satisfy those requirements.

(3) When a request for enforcement concerns the confiscation of a specific object, a measure of supervision, or disqualification, a court in the requested state may order such confiscation, measure of supervision, or disqualification only insofar as authorized by the law of the requested state for the same offense.

ARTICLE IV
CONDITIONS FOR REQUEST

The requesting state may request the other state to enforce the judgment only if the following conditions are fulfilled:

- (a) The sentenced person is at the time of the request present in the territory of either state;
- (b) The sentenced person is a national of the requested state;
- (c) The sentenced person is not a domiciliary of the requesting state;
- (d) At least six months of the offender's sentence remains to be served at the time of request;
- (e) The enforcement of the judgment in the requested state is likely to improve the prospects for the social rehabilitation of the sentenced person;
- (f) In case the sentenced person is in the territory of the requesting state, there is the consent of the sentenced person; or, if he is a minor or otherwise incompetent to express consent, the consent by his parent or guardian.

ARTICLE V
REFUSAL OF REQUEST

Enforcement requested in accordance with the foregoing provisions may not be refused, in whole or in part, save:

- (a) Where enforcement would run counter to the fundamental principles of the legal system of the requested state; or
- (b) Where the requested state considers the offense for which the sentence was passed to be of a political nature or connected with such an offense or a purely military one; or
- (c) Where the enforcement would be contrary to the international undertakings of the requested state; or

(d) Where the act is already the subject of proceedings in the requested state or where the requested state decides to institute proceedings in respect of the act; or

(e) Where the competent authorities in the requested state have decided not to take proceedings or to drop proceedings already begun, in respect of the same act; or

(f) Where the act was committed outside the territory of the requesting state; or

(g) Where the requested state is precluded from satisfying the requirements of its law relating to implementation of this Treaty or is otherwise unable to enforce the judgment; or

(h) Where under the law of the requested state the sanction imposed can no longer be enforced because of the lapse of time; or

(i) Where, at the time of offense, the age of the sentenced person was such that he could not have been proceeded against in the requested state; or

(j) Where the enforcement is contrary to the rule "Ne Bis in Idem".

SECTION II
CONDITIONS OF ENFORCEMENT

ARTICLE VI
RULE OF SPECIALITY

(1) With the exception of the enforcement of the sanction for which a sentenced person has been transferred under this Treaty, a requested state may not detain, try, or punish a sentenced person transferred under this Treaty except for:

(a) Those crimes committed by the sentenced person subsequent to transfer to the requested state; or

(b) Those crimes committed by the sentenced person, prior to transfer to the requested state, except with the consent of the requesting state. Such consent shall not be granted if the requesting state considers the offense to be of a political nature, or connected with such an offense, or a purely military one.

(c) Those crimes committed by the sentenced person prior to transfer to the requested state, for which the consent required by paragraph (b) is not granted, when the sentenced person, having had an unobstructed and unimpeded opportunity to leave the territory of the requested state, has not left such territory within 45 days of final discharge from custody or supervision or has returned to such territory after having left it.

(2) When a requesting state is asked to consent to a prosecution under paragraph 1(b), that state may ask for any document not included in the request that it deems necessary.

(3) The requested state may take any measure necessary under its law to prevent any legal effects of lapse of time.

ARTICLE VII THE RIGHT OF ENFORCEMENT

(1) The sentencing state may continue enforcement of a sanction when the sentenced person is already detained within that state at the moment of the presentation of the request until the transfer takes place or the sentence is completed.

(2) The right of enforcement shall revert to the requesting state:

(a) If it withdraws its request before the requested state has informed it of an intention to take action on the request;

(b) If the requested state notifies a refusal to take action on the request;

(c) If the requested state expressly relinquishes its right of enforcement. Such relinquishment shall only be possible if both states agree. If enforcement is no longer possible in the requested state, a relinquishment demanded by the requesting state shall be compulsory.

(d) If it is decided by the courts of the requested state that the transfer was not in accordance with this Treaty or its laws;

(e) If the transfer of the sentenced person is not accomplished in accordance with Article XXVII;

(f) If the sentenced person escapes from custody or evades supervision and is found in the territory of a third state, and the requested state is unable to obtain by any means, including extradition, return of the sentenced person from the third state; or

(g) If the sentenced person is found in the territory of the requesting state prior to the completion of the enforcement of the judgment by the requested state.

ARTICLE VIII
CESSATION OF ENFORCEMENT

(1) The competent authorities of the requested state shall discontinue enforcement as soon as they have knowledge of any pardon, amnesty or any other decision of the requesting state by reason of which the sanction ceases to be enforceable.

(2) The requesting state shall without delay inform the requested state of any decision or procedural measure on its territory that causes the right of enforcement to lapse in accordance with the preceding paragraph.

ARTICLE IX
REVIEW OR APPEAL OF SENTENCE AND PARDON

(1) The sentencing state alone shall have the right to decide on any application for review of a sentence, all appeals or any other proceedings seeking to challenge, modify, set aside or otherwise invalidate conviction or sentences rendered by one of its courts.

(2) The sentencing state shall exercise the right of amnesty or pardon.

(3) Notwithstanding paragraph (2), collective pardons promulgated in the requested state shall be applicable to the sentenced person. Likewise, nothing in this Treaty shall be construed to limit the power of the appropriate authorities of the requested state to release the sentenced person on grounds of infirmity, old age or permanent illness.

ARTICLE X
EXPENSES

The requested state shall not be entitled to any reimbursement for the expenses incurred by it in the transfer of a sentenced person or the completion of the sentence.

PART III
REQUEST FOR ENFORCEMENT

SECTION I
PROCEDURE

ARTICLE XI
COMPETENT AUTHORITY

(1) The Department of Justice of the United States of America and the Ministry of Justice of the Republic of Turkey shall be the competent authorities for the purposes of this Treaty.

(2) Where the transfer of the enforcement of a judgment is, according to the law of one of the parties, subject to the approval of an authority other than the central government authority of that party, such approval also must be obtained.

ARTICLE XII
IMPLEMENTATION OF PROVISIONS

(1) Request for recognition and enforcement of a penal judgment shall be initiated by the competent authority of the requesting state.

(2) No provision of this Treaty shall prevent a sentenced person from asking that the sentencing state initiate such a request.

ARTICLE XIII
FORM OF REQUESTS

All requests specified in this Treaty shall be made in writing. All communications necessary for the application of this Treaty between the competent authorities of the parties shall be sent through diplomatic channels.

ARTICLE XIV
DOCUMENTS OF REQUEST

The request for recognition and enforcement shall be accompanied by:

- (a) The original, or a certified copy, of the judgment whose recognition and enforcement is requested;
- (b) A statement that the sanction is enforceable, and specifying the part of the sentence already served;
- (c) The original, or a certified copy, of all or part of the criminal file comprising information about the sentenced person's behavior in the penitentiary institution, including, in particular, all credits earned or accorded to the sentenced person by the requesting state; and,
- (d) If the sentenced person is in the territory of the requesting state, a statement verifying the sentenced person's or his parent's or guardian's express consent to the transfer for enforcement.

ARTICLE XV
ADDITIONAL INFORMATION

If the requested state considers that the information supplied by the requesting state is not adequate to enable it to apply the provisions of this Treaty, it shall ask for the necessary additional information. The requested state may prescribe a date for the receipt of such information.

ARTICLE XVI
LANGUAGE OF REQUESTS AND DOCUMENTS

(1) No translation of requests for recognition and enforcement or of supporting documents related thereto shall be required.

(2) Translations of the decision of the requested state on the request of the requesting state, and of the supporting documents, shall be transmitted to the requesting state.

(3) In case the sentenced person is in the territory of the requested state, the documents prepared according to this Treaty shall be forwarded to the requested state together with their translated copies in the language of the requested state.

ARTICLE XVII
NOTIFICATIONS

(1) The authorities of the requested state shall promptly inform those of the requesting state of the action taken on a request for enforcement.

(2) If the requested state decides that it is unable to enforce the request, the requesting state shall be informed of the provision of this Treaty under which the request is refused.

(3) The authorities of each Party shall periodically provide the other Party with reports indicating the status of all sentenced persons transferred under this Treaty, including, in particular, the parole or release of any such person. Either Party may, at any time, request a special report on the status of the execution of an individual sentence.

SECTION II
PROVISIONAL MEASURES

ARTICLE XVIII
DEPRIVATION OF LIBERTY IN THE REQUESTING STATE

If the sentenced person is present in the territory of the requesting state, and not in custody after notification of the acceptance of its request for enforcement of a sentence involving deprivation of liberty is received, that state may, if it deems it necessary in order to ensure enforcement, detain him with a view to his transfer.

ARTICLE XIX
DEPRIVATION OF LIBERTY IN THE REQUESTED STATE

(1) When the requesting state has requested enforcement, the requested state may arrest the sentenced person:

(a) If, under the law of the requested state, the offense is one which justifies remand in custody; and

(b) If there is a danger of abscondence.

(2) When the requesting state announces its intention to request enforcement, the requested state may, on application by the requesting state, arrest the sentenced person, provided that requirements under (a) and (b) of the preceding paragraph are satisfied. The application shall state the offense which led to the judgment and the time and place of its perpetration, and contain as accurate a description as possible of the sentenced person. It shall also contain a brief statement of the facts on which the judgment is based.

ARTICLE XX
DURATION OF CUSTODY IN THE REQUESTED STATE

(1) The sentenced person shall be held in custody in accordance with the law of the requested state; the law of that state shall also determine the conditions on which he may be released.

(2) The sentenced person in custody shall in any event be released;

(a) After a period equal to the period of deprivation of liberty imposed in the judgment, except in cases in which such offender's parole or conditional release has been revoked in accordance with the laws of the requested state; or,

(b) If he was arrested pursuant to Article XIX(2), and the requested state does not receive, within 30 days from the date of such arrest, the request together with the documents specified in Article XIV.

ARTICLE XXI
SEIZURE UPON REQUEST

(1) If the requesting state has requested the requested state to provisionally seize property, the requested state may do so, on condition that its own law provides for seizure in similar cases.

(2) Provisional seizure shall be carried out in accordance with the law of the requested state. That law shall also determine the conditions on which the seizure may be lifted.

ARTICLE XXIII
DISPOSITION OF CONFISCATED PROPERTY

(1) Objects confiscated in accordance with this Treaty shall be the property of the requested state, without prejudice to any rights of third parties.

(2) Property confiscated which is of a special interest may be remitted to the requesting state if it so requests.

PART IV
RECOGNITION AND ENFORCEMENT

SECTION I
GENERAL CLAUSES

ARTICLE XXIII
CONDITIONS TO BE DETERMINED BY THE REQUESTED STATE

The requested state shall before accepting enforcement satisfy itself and specify in a decision by the competent authority of that state:

(a) That the sanction whose enforcement is requested was imposed in a final criminal judgment,

(b) That the requirements of Articles 3 and 4 are met,

(c) That the enforcement would not run counter to the fundamental principles of the legal system of the requested state,

(d) That, in respect of the offense which is dealt with in the judgment, the person has not been previously acquitted, pardoned or granted amnesty and that the sanction has not been fully executed or its enforcement barred by the lapse of time,

(e) That the other conditions of enforcement provided for in this Treaty are met.

ARTICLE XXIV
ACTION BY THE REQUESTED STATE

(1) A sanction imposed in the requesting state shall be enforced in the requested state only after recognition of the validity of the judgment imposing the sanction by the competent authority empowered to do so under the law of the requested state.

(2) In every case of enforcement under this Treaty the requesting state shall furnish to the competent authority of the requested state a copy of the penal judgment. The authority empowered by the law of the requested state to recognize the penal judgment imposed by the requesting state shall affirm the validity of the penal judgment consistent with the provisions of Article IX(1) and shall attach therein a certificate which attests to the recognition of the said judgment. A certified copy of the judgment and of the certificate of recognition shall be filed with an appropriate court of the requested state.

(3) The penal judgment for the sentenced person who is actually in the territory of the requested state at the time of the request shall be enforced in that state under the provisions of this Treaty.

ARTICLE XXV
COURT FINDINGS

The requested state shall be bound by the findings as to the facts insofar as they are stated in the sentence of the requesting state or insofar as the sentence is impliedly based on them.

SECTION II
ENFORCEMENT OF SANCTIONS INVOLVING DEPRIVATION OF LIBERTY

ARTICLE XXVI
ENFORCEMENT OF SANCTIONS

(1) The enforcement shall be governed by the law of the requested state and that state shall alone be competent to make all appropriate decisions including those related to conditional release.

(2) The authority competent under the legislation of the requested state, in computing the duration of the sanction to be enforced, shall take as a basis the duration of the sanction as imposed in the judgment. In executing the enforcement of the sanction, the following may be taken into consideration:

(a) The sanction prescribed by its own law for the same offense,

(b) The minimum duration prescribed by the law of the requesting state for the offense,

(c) Facts and legal causes specified in the judgment as mitigating or aggravating circumstances and any additional information accompanying the request. Nevertheless, the requested state may not convert a sanction involving deprivation of liberty into a fine.

(d) Any other facts and circumstances, particularly those occurring subsequent to conviction which may have a bearing on the manner in which the sentences should be executed.

(3) In enforcing the sanction, the authority competent under the legislation of the requested state shall not aggravate the penal situation of the person sentenced as it results from the decision delivered in the requesting state.

(4) Any form of provisional custody and sentence imposed in the requesting state, served by the sentenced person subsequent to the sentence, shall be deducted in full. The same shall apply in respect of any period during which the person sentenced was in custody with respect to the offense in the requesting state before being sentenced.

PART V
IMPLEMENTATION

ARTICLE XXVII
TRANSFER AFTER THE ACCEPTANCE OF REQUEST

(1) The sentenced person detained in the requesting state shall be transferred to the requested state upon:

- (a) Notification of acceptance of the request for recognition and enforcement;
- (b) Confirmation of the continuance of the offender's consent to transfer; and
- (c) Payment of the fine, in cases where the penal judgment comprises such a fine for the same offense along with the sanction involving deprivation of liberty.

(2) The date and place of transfer of the sentenced person shall be determined by the Parties on mutual agreement.

ARTICLE XXVIII
IMPLEMENTATION

Each Party shall establish all procedures deemed necessary to give due implementation to this Treaty within its territory and shall take adequate legislative measures to give, for the purposes of this Treaty, legal effect to the recognition of the validity of penal judgments imposed in the requesting state and to designate the competent authority to be empowered with such attributions.

PART VI
FINAL PROVISIONS

ARTICLE XXIX
ENTRY INTO FORCE

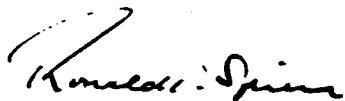
(1) This Treaty shall be subject to ratification. The exchange of ratifications shall take place in Washington.

(2) This Treaty shall enter into force thirty days after the exchange of ratifications and shall remain in force indefinitely.

(3) Either contracting Party may denounce that Treaty by giving prior written notice to the other contracting Party. Such denunciation shall take effect six months after the receipt of the notification.

IN WITNESS WHEREOF, the respective Plenipotentiaries of the contracting Parties have signed the present Treaty and have affixed thereto their seals.

DONE at Ankara in duplicate, this seventh day of June, 1979, in the English and Turkish languages, both texts being equally authentic.

 [1]

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

 [2]

FOR THE GOVERNMENT OF THE
REPUBLIC OF TURKEY:

¹ Ronald I. Spiers.
² I. Divanlioğlu.