

TREATY WITH THE REPUBLIC OF TURKEY
ON THE ENFORCEMENT OF PENAL
JUDGMENTS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF TURKEY ON THE ENFORCEMENT OF
PENAL JUDGMENTS WHICH WAS SIGNED AT ANKARA ON
JUNE 7, 1979



AUGUST 2, 1979.—Treaty was read the first time and, together with the
accompanying papers, referred to the Committee on Foreign Relations
and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

39-118 O

WASHINGTON : 1979

LETTER OF TRANSMITTAL

THE WHITE HOUSE,
August 2, 1979.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Republic of Turkey on the Enforcement of Penal Judgments which was signed in Ankara on June 7, 1979.

I transmit also, for the information of the Senate, the Report of the Department of State with respect to the treaty.

The treaty would permit citizens of either nation who have been convicted in the courts of the other country to serve their sentences in their home country; in each case the consent of the offender would be required.

This treaty is significant because it represents an attempt to resolve a situation which has inflicted substantial hardships on a number of citizens of each country and has caused concern to both governments. It also represents a significant element in the modernization of our relations with Turkey in the field of international judicial cooperation.

I recommend that the Senate give early and favorable consideration to this treaty.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, D.C., July 27, 1979.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit a treaty between the United States and the Republic of Turkey on the Enforcement of Penal Judgments which was signed at Ankara on June 7, 1979. I recommend that the treaty be submitted to the Senate for its advice and consent to ratification.

The treaty is the fifth in a series of bilateral treaties that permit citizens of either Party who have been convicted in the courts of the other country to serve their sentences in their home country; in each case the consent of the offender is required.

The treaty is intended both to relieve the special hardships that fall upon prisoners incarcerated far from home and to make their rehabilitation more feasible. It also is designed to relieve diplomatic and law enforcement relations between the two countries of the strains that arise from the imprisonment of each country's nationals in the institutions of the other. It constitutes part of an ongoing effort to improve relations between the two countries.

In certain respects the treaty differs from those in force between the United States and Bolivia, Canada and Mexico on the Execution of Penal Sentences and in the treaty with Panama that is currently before the Senate for advice and consent. The reason for the differences was the desire of Turkey that, insofar as possible, the two countries take as a point of departure the European Convention on the International Validity of Criminal Judgments to which Turkey is a party. In order to insure that this approach would not impinge in any way on constitutional and legal requirements in the United States, it was necessary to modify the European Convention in a variety of ways. For example, an essential element for the United States is that a person being returned to the United States to serve a sentence imposed by a foreign country give his informed consent to the return. Thus, the Parties rejected the European Convention provisions for automatic return when the two countries agreed.

Part I of the Convention defines seven terms that are used throughout the text.

Part II, consisting of ten articles, deals with recognition and enforcement of penal judgments. General provisions dealing with the topic appear as Articles II, III, IV and V. Article II provides that each Party recognizes the validity and shall enforce against its national in its territory a penal judgment of the other Party as if the judgment had been rendered by one of its own courts. Such recognition and enforcement can be exercised only following an acceptance by

the Requested State of a request for enforcement under the treaty. Article III on conditions of enforcement adopts the principle that a judgment shall not be enforced unless the act for which the offender has been convicted would have been a crime under the law of both countries. Article IV and V, which deal with conditions for and refusal of a request, modify to some extent the principle in our existing bilaterals that specific consent of both governments is required in each case before a prisoner can be transferred. Article IV establishes six conditions that must exist before a Requesting State may ask the other State to enforce its judgment. The most fundamental of these is that the sentenced person must consent to the transfer. In most other respects the conditions parallel elements of our existing treaties in that the sentenced person must (a) be a national of the Requested State, (b) not be a domiciliary of the Requesting State, and (c) have at least six months of his sentence remaining at the time of the request. Article V provides the only grounds on which a Requested State may refuse to enforce a judgment. These ten grounds are sufficiently comprehensive to protect a Requested State from having to enforce a judgment that is inconsistent with the fundamental principles of its legal system or that is otherwise inappropriate for enforcement.

Articles VI through X deal with conditions of enforcement. The first borrows from the extradition treaty the concept of the rule of speciality under which a Requested State may not, except in certain specified circumstances, detain, try or punish a sentenced person transferred under the treaty for other offenses. Article VII deals with the right of enforcement. The Turkish negotiators informed us that under their system this article is necessary to preserve their right to continue to hold a sentenced person between the time that they request enforcement of their judgment and the time at which transfer takes place. They also need an express provision to resume the right of enforcement if the transfer does not take place or if the sentence is not executed and the person reappears in Turkey. While an article on this subject is not necessary under the law of the United States, it has been incorporated in the treaty in order to protect the ability of Turkey to continue to enforce its judgments in appropriate circumstances.

Articles VIII, IX and X deal with cessation of enforcement, pardon and review or appeal of sentence, and expenses. Article VIII specifies that the Requested State shall discontinue enforcement as soon as it has knowledge that the sanction ceases to be enforceable under the law of the Requesting State; it is designed principally to insure the effectiveness of a pardon or amnesty in the sentencing State that inures to the benefit of a transferred prisoner. Article IX articulates the fundamental jurisdictional principle that the sentencing State alone shall have the right to decide on applications for review of a sentence, appeals, and other proceedings seeking to challenge or set aside convictions or sentences rendered by one of its courts. It also specifies that the sentencing State shall exercise the right of amnesty or pardon. However, that right of the sentencing State does not limit the power of authorities in the Requested State to release the sentenced person on grounds of infirmity, old age or permanent illness. Article X restates the principle common to all treaties on the subject that 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, which consists of twelve articles, deals with requests for enforcement. Articles XI through XVII are basically concerned with mechanisms and procedures. Article XI specifies that the competent authorities for the purposes of the treaty are the Department of Justice of the United States and the Ministry of Justice of Turkey. The article also provides that where the approval of a state of one of the parties is required, as would be the case should Turkey be requested to enforce a judgment of a state court against a Turkish prisoner, that approval must also be obtained. Under Article XII, the initiation of a request is to be by either the Department of Justice or the Ministry of Justice. However, no sentenced person is prevented from asking that the authority of the sentencing State initiate such a request. Requests are to be made in writing through diplomatic channels (Article XIII). While according to Article XIV four specified documents must accompany a request, Article XV gives the Requested State the right to ask for additional information. Language of requests and documents is dealt with in Article XVI; notifications, in Article XVII.

Article XVIII through XXII deal with provisional measures. The first three parallel provisional measures in extradition treaties. Article XVIII provides that if a sentenced person is present in the territory of the Requesting State but not in custody, the Requesting State may take him into custody after the Requested State has undertaken to enforce the sentence if the Requesting State believes that such action is necessary in order to ensure enforcement. Article XIX deals with deprivation of liberty in the Requested State and is modeled on the provision of the extradition treaty on provisional arrest. Duration of custody in the Requested State is dealt with in Article XX. In the case analogous to provisional arrest, if the Requested State does not receive the request and the necessary supporting documents within 30 days of the date of such arrest, the sentenced person shall be released from custody. Articles XXI and XXII deal with provisional seizure of property and disposition of confiscated property. Under the former article the obligation provisionally to seize property arises only where seizure is provided for under the law of the Requested State in similar cases. Article XXII provides for disposition of confiscated property without prejudicing the right of third parties in respect of such property. Articles XX and XXII are based on more elaborate provisions contained in the European Convention; similar provisions do not appear in our existing treaties. The Turks explained that their requirement for some articles on the subject derived from the nature of their civil law penal judgments, which often contained sanctions in addition to the deprivation of liberty. While they viewed limiting the scope of the convention to enforcement solely of sanctions involving deprivation of liberty as denigrating from the basic nature of their judgments, when they were informed that U.S. penal judgments generally do not include seizure of property, they agreed that the obligation to enforce other aspects of the judgment might be limited by the laws of the Requested State.

Part IV deals with recognition and enforcement and consists of Articles XXIII through XXVI. Except for Article XXV, which is the standard article on court findings that appears in our other treaties,

the articles prescribe in detail the steps to be taken by the parties at three different stages.

Article XXIII deals with the initial stage; it provides that before agreement to enforce a penal judgment the Requested State must satisfy itself and specify in a decision that (a) the sanction whose enforcement is requested was imposed in a final criminal judgment; (b) the requirements of Articles III and IV of the treaty have been met; (c) the enforcement would not run counter to the fundamental principles of the legal system of the Requested State; (d) the person has not been previously acquitted, pardoned or granted amnesty for the offense specified in the judgment, and that the sanction therein has not been fully executed or its enforcement barred by the lapse of time; and (e) that the other conditions of enforcement provided for in the treaty are met.

Article XXIV specifies what is to be done to recognize the penal judgment after the Requested State has determined that the conditions specified in Article XXIII have been met. Article XXIV bridges a fundamental difference between the Turkish method of recognizing foreign penal judgments by an exequatur procedure and our practice of implicitly recognizing such judgments by the action of the Attorney General in accepting the transfer of one of our citizens from a foreign country and confining him in a penal institution on the basis of his foreign conviction and the treaty. Given our view that the Attorney General, acting under the authority conferred on him by Section 4102 of Title 18 of the U.S. Code, is the competent authority to recognize a foreign penal judgment on behalf of the United States and the Turkish view that under Turkish law the Ministry of Justice, which includes Turkish courts, would be the competent authority to recognize U.S. penal judgments in respect of Turkish citizens who would be transferred under the treaty, it was decided to provide that recognition in each country would be by the authority competent under its law to do so. Paragraph 2 of this article describes in considerable detail the formal mechanism by which the validity of the foreign penal judgment shall be affirmed. The Requesting State furnishes to the competent authority of the other State a copy of the penal judgment. Consistent with Article II, paragraph 1 of the treaty, the authority of the Requested State then affirms the validity of the judgment by attaching a certificate which attests to the recognition of the judgment. The Requesting State's copy with the certificate attached shall be returned to that State. A certified copy of the judgment and of the certification of recognition shall be filed with an appropriate court of the Requested State. Acting under the authority of Section 4102(4) of Title 18, the Attorney General will issue regulations providing for the filing of certified Turkish judgments with the United States District Court for the District of Columbia. Paragraph 3 of Article XXIV contains a provision that does not appear in our existing treaties but is consistent with their basic purpose. It deals with the enforcement of one state's criminal judgment in the other state when the sentenced person is at the time of the request for enforcement already in his home state. This provision does not override the fundamental element of the treaty that a sentenced person must consent to his confinement in his home country. However, if a citizen has escaped to his home country after conviction abroad in a trial at

which he was present it seems 'anomalous to require his physical transfer to the state in which he committed his offense as a precondition to the enforcement of its judgment in his home country. If the citizen might be liable to be returned to the other country under an extradition treaty to serve his sentence, he might well prefer to consent to enforcement of the sanction in his home country. On the other hand, if he ran no such risk, he would probably not consent and his home country would not be obligated to enforce the judgment.

Article XXVI provides the modalities of enforcement of sanctions involving deprivation of liberty once a prisoner has been transferred to his home country. The basic principle is that enforcement shall be governed by the law of the Requested State and that State alone shall be competent to make all appropriate decisions including those related to conditional release. The law of the United States provides that the Parole Commission has jurisdiction in respect of persons serving sentences in federal institutions. Turkish law provides that the competent authority for enforcement of sanctions involving deprivation of liberty in Turkey is the Ministry of Justice, which includes Turkish courts. Paragraph 2 of this Article makes clear that in computing the duration of the sanction to be enforced the competent authority under the legislation of the Requested State shall take as a basis the duration of the sanction imposed in the judgment. In carrying out enforcement of the sanction that authority may take into consideration four factors that are recited in the treaty. The only limitation is that the Requested State may not convert a sanction involving deprivation of liberty into a fine. Paragraphs 3 and 4 of Article XXVI are intended to protect the prisoner. The former specifies that the penal sanction of the sentenced person shall not be more onerous in the Requested State than the sanction imposed in the Requesting State. The latter provides that any period of provisional custody or sentence served in the Requesting State shall be deducted in full from the period that the sentenced person must serve in the Requested State.

Part V contains two articles dealing in a general way with implementation of the treaty. The first, Article XXVII, deals with the modalities of transfer after acceptance of the request. The sentenced person detained in the Requesting State is to be transferred to the Requested State upon (a) notification of acceptance of the request for recognition and enforcement; (b) confirmation of the offender's consent to the 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. The two countries then agree on the date of place of transfer.

Article XXVIII is a standard article under which a party to a treaty undertakes to establish all procedures deemed necessary to implement a treaty within its territory and to take adequate legislative measures to give legal effect to the obligations specified in the treaty. As suggested in the discussion of Article XXIV above, the Department of State and the Department of Justice consider that Public Law 95-144 provides a legal framework for the operation of the treaty; accordingly, there are no plans to seek additional legislation.

Part VI, which contains a provision on entry into force, specifies that the treaty will remain in force indefinitely unless either contract-

ing party gives written notice of its intention to terminate the treaty. Such notice shall take effect six months after its receipt.

The Department of Justice joins the Department of State in favoring approval of this treaty by the Senate at an early date.

Respectfully submitted,

CYRUS VANCE.

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.

(e) 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 XXII.—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

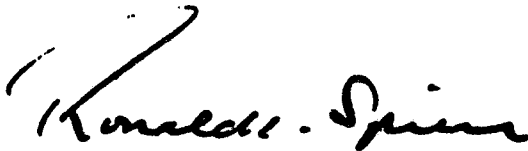
(1) This Treaty shall be subject to ratification. The exchange of ratifications shall take place in Washington.

(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.



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
THE REPUBLIC OF TURKEY:



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