

**Türkiye Cumhuriyeti
ile
İran İslam Cumhuriyeti
Arasında
Hukukî ve Cezai Konularda Adli
İşbirliği Anlaşması**

Türkiye Cumhuriyeti ve İran İslam Cumhuriyeti,
(İşbu sözleşmede bundan sonra Âkit Taraflar olarak geçecektir)

İki ülke arasındaki dostluk bağlarını pekiştirmek ve ulusal egemenlik, haklarda eşitlik ve içişlerine karışmama ilkelerine dayanarak, hukukî, ticari ve cezai konularda karşılıklı adli yardım, geri verme ve hükümlülerin naklini düzenlemek arzusuyla,

Bu Anlaşmanın akdedilmesine karar vermişler ve bu amaçla aşağıdaki hususlar üzerinde mutabık kalmışlardır:

KISIM I

GENEL HÜKÜMLER

Madde 1

1) Âkit Tarafların vatandaşları, iç hukuka uygun olarak, diğerinin ülkesinde şahıslarının, mallarının ve menfaatlerinin adli ve kanunî korunması hususlarında bu ülkenin vatandaşları ile, aynı haklara sahiptirler.

2) Âkit Tarafların vatandaşları, diğer Âkit Tarafın ülkesinde, hukukî, ticari ve cezai konularda hak ve menfaatlerinin korunması amacıyla mahkemelere ve diğer yetkili makamlara başvuruda bulunma ve Âkit Tarafın vatandaşlarının tabi olduğu aynı şart ve formalitelerle serbestçe erişim hakkına sahiptirler.

3) Âkit Taraflardan birinde merkezî olan ve bu Tarafın mevzuatına uygun biçimde kurulmuş tüzel kişiler işbu anlaşmanın hükümlerinden uygulanabilir olduğu ölçüde yararlanacaklardır.

Madde 2

İşbu Anlaşmanın uygulanması amacıyla Âkit Tarafların makamları, diplomatik kanalla haberleşeceklerdir.

Madde 3

Âkit Tarafların Adalet Bakanlıkları, talep üzerine, Âkit Tarafların ülkelerinde yürürlükteki hukuk ve işbu Anlaşmaya konu teşkil eden adli sorunlara ilişkin uygulamalar konularında birbirlerine karşılıklı olarak bilgi vereceklerdir.

KISIM II

BÖLÜM 1

HUKUKİ VE TİCARİ KONULARDA ADLİ YARDIMLAŞMA

Madde 4

1) Âkit Tarafların yetkili makamları birbirlerine karşılıklı olarak hukukî ve ticarî konularda adlî yardımlaşma sağlamayı taahhüt ederler.

2) Adlî yardımlaşma, özellikle, belgelerin tebliği, tarafların, tanıkların ve bilirkişilerin dinlenmesi ve keşif gibi usule ilişkin kararların yerine getirilmesini kapsar.

Madde 5

1) Adlî yardımlaşma talebi aşağıdaki hususları içerir:

- a- Talepte bulunan ve talep edilen makamların adları;
- b- Talep edilen adli yardımın amacı;
- c- Olayın niteliği ve olguların açıklanması;
- d- Tarafların ad ve soyad, daimi ve geçici adresleri (ikametgah veya mesken), uyrukları ve meslekleri;
- e- Tarafların temsilcilerinin ad, soyad ve adresleri;
- f- İlgili kanun madde metinleri ile talebin konusu ve yerine getirilmesi için gerekli bilgileri.

2) Adlî yardımlaşma talebi ve buna dayanak belgeler, imzalanmış olmalı ve talep eden makamın resmi mührünü taşımalıdır.

Madde 6

1) Talep edilen makam, adlî yardım talebinin yerine getirilmesi sırasında, kendi Devletinde yürürlükte olan kanun hükümlerini uygular. Bununla birlikte, talep edilen makam, talep eden tarafın talebi üzerine, kendi kanunlarına aykırı olmamak şartıyla diğer Âkit Tarafın usul hükümlerini uygulayabilir.

2) Talebin gönderildiği makam, adli yardım talebinin yerine getirilmesinde yetkili değilse, söz konusu talebi, Talep edilen Tarafın yetkili makamına iletir ve bu konuda Talep eden Tarafı bilgilendirir.

3) Talep edilen makam adli yardım talebinin yerine getirilmesinden sonra buna ilişkin belgeleri talepte bulunan makama iletir veya talebin yerine getirilememesi durumunda sebepleriyle birlikte bunu bildirir .

Madde 7

1) Talep eden Tarafın dilinde kaleme alınmış ve doğruluğu tasdik edilmiş bir tercümeyi havi tebligatlar, talep edilen makam tarafından kendi Devletinde bu konuyu düzenleyen hükümlere uygun olarak yerine getirilir. Aksi halde, talep edilen makam, ancak muhatap almayı kabul ettiği takdirde tebligatı yerine getirir.

2) Tebligat talebi, muhatabın tam adresini ve tebliğ edilecek evrakı içerir.

3) Belgeler, tebligat talebinde belirtilen adrese tebliğ edilemediği takdirde, talep edilen makam muhatabın doğru adresini tespiti için gerekli tedbirleri alır. Doğru adresin tespit edilmesinin mümkün olmaması halinde, Talep edilen Taraf Talep eden Tarafa bilgi verir ve tebliğ edeceği evrakı bu makama iade eder .

Madde 8

Tebliğat alındısı Talep edilen Tarafın yürürlükteki yasalarına göre düzenlenir. Tebligat alındısı, alıcının adını, teslim eden makamı, tebliğ tarihi ve yerini içerecektir..

Madde 9

1) Talep edilen Taraf, kendi ülkesinde adli yardımlaşma sebebiyle yapılan bütün masrafları üstlenecek ve bu masrafların ödenmesini talep etmeyecektir.

2) Adli yardımlaşma ağır veya olağan dışı masraflar gerektirdiği takdirde Akit Taraflar, yardımlaşmanın şartları ve masrafların ne şekilde ödeneceği hususunda önceden anlaşacaklardır.

Madde 10

Bir adli yardım talebi, Talep edilen Tarafın egemenliğine, güvenliğine veya kamu düzenine zarar vermesi veya diğer Tarafın Anayasasına aykırı olması halinde reddedilebilir.

Madde 11

1) Bu anlaşmanın 7. maddesinin 1. fıkrasında ve 13. maddesinde belirtilenler hariç, adli yardım talepleri ve buna dayanak belgeler Talep edilen Taraf dilinde yapılmış onaylı tercümeleriyle birlikte iletilmelidir.

2) Tercümenin tasdiki, Talep eden Taraf, yeminli bir tercüman, bir noter veya Akit Tarafların diplomatik temsilcisi veya konsolosluk memurları tarafından yapılabilir.

3) Adli yardım taleplerinin yerine getirilmesine ilişkin belgeler, Talep edilen Tarafın dilinde hazırlanır.

Madde 12

1) Hangi uyrukta olursa olsun, bir davet üzerine kendi arzusuyla Talep eden Tarafın adli makamları önüne çıkan tanık veya bilirkişi, bu Tarafın ülkesinde, ülkeye girişinden önce işlenen bir suç dolayısıyla kovuşturulamayacağı veya tutuklanamayacağı gibi daha önce verilen bir karar sebebiyle de cezalandırılmaz.

Tanık veya bilirkişi, daveti yapan makamca hazır bulunmasının artık gerekli olmadığı hususu kendisine bildirildiği tarihten itibaren 15 gün içinde Talep eden Taraf ülkesini terk etmediği takdirde işbu bağışıklığı kaybeder. Tanık veya bilirkişinin kendi kontrolünde olmayan sebeplerle Talep eden Taraf ülkesini serbest şekilde terk edemediği süre, bu paragraftaki süre kapsamı dışındadır.

Bu kişiler tanıklıkları veya bilirkişilikleri dolayısıyla da kovuşturulamaz yahut tutuklanamazlar.

2) Talep eden makam, davet edilen tanık veya bilirkişiyi, talep eden taraf mevzuatında öngörülen şartlar çerçevesinde yol ve ikamet giderlerinin ve bilirkişi ücretinin ödeneceği hususunda bilgilendirir. Bu kişinin talebi üzerine, yol ve ikamet giderlerinin karşılanması için sözü edilen makamca bir avans ödenecektir.

BÖLÜM 2

BELGELER

Madde 13

Âkit Tarafların mahkemeleri veya diğer yetkili makamlarının talebi üzerine, diğer Taraf, Talep eden Tarafın vatandaşlarının kişi hallerine ilişkin örnekleri, kişisel işlerine ve menfaatlerine ilişkin diğer belgeleri tercümesiz ve ücretsiz gönderecektir.

Madde 14

1) Âkit Tarafların birinin ülkesinde yetkili makamlar tarafından düzenlenmiş, verilmiş veya onaylanmış ve resmi mühür taşıyan belgeler veya bunların onaylı örneklerinin diğer Âkit Tarafın ülkesinde tasdike ihtiyacı yoktur.

2) Âkit Taraflardan birinin resmi makamlarınca düzenlenen resmi belgeler, diğerinin ülkesinde düzenlenen resmi belgelerle aynı ispat kuvvetine sahiptir

BÖLÜM 3

TEMİNAT AKÇESİNDEN (Judicatum Solvi) VE ADLİ MASRAFLARDAN MUAFİYET

Madde 15

Âkit Taraflardan birinin vatandaşları, salt yabancı olmalarından veya diğer Tarafın ülkesinde ikametgahları veya meskeni olmamalarından ötürül teminat akçesi (Judicatum Solvi) vermekle yükümlü tutulamazlar.

Madde 16

1) Âkit Taraflardan birinin vatandaşları, diğer Tarafın mahkemeleri önünde, aynı şartlar ve ölçüde adli harç ve masraftan muaf olmaktan ve ücretsiz adli müzaheretten faydalanırlar.

2) Bu adli yardım ve adli müzaheret, icra işlemleri dahil, davanın tüm işlemlerine uygulanır.

3) Âkit Taraflardan birinin yasal hükümleri uyarınca harç ve masraflardan muaf olmaktan yararlanan vatandaşlar, diğer Tarafın ülkesinde de aynı davanın usule ilişkin işlemleri dolayısıyla bu muafiyetten yararlanırlar.

Madde 17

1) 16. madde hükmünden faydalanmak için gerekli olan şahsi, ailevi ve malvarlığı durumuna ilişkin belge, talep edenin ikametgâhının veya meskeninin bulunduğu Âkit Tarafın yetkili makamları tarafından verilmelidir.

2) Şayet talep edenin Âkit Tarafların herhangi birinde ikametgâhı veya meskeni bulunmuyor ise, vatandaşı olduğu ülkenin diplomatik veya konsolosluk misyonu söz konusu belgeyi düzenleyebilir.

3) Adli harç ve masraflardan muafiyet talebini karara bağlayacak adli makam, işbu Anlaşmanın 2. maddesinde öngörülen yöntemi izleyerek, bu belgeyi vermiş olan makamdaki ilave bilgiler talep edebilir.

Madde 18

Âkit Taraflardan birinin mahkemesi, diğer Âkit Tarafın ülkesinde ikametgâhı veya meskeni bulunan bir şahsın belirli bir usul işlemini tamamlaması için bir müddet tespit ederse, bu süre, evrakın muhatabına tebliğ tarihinden itibaren işlemeye başlar.

BÖLÜM 4

HUKUKİ VE TİCARİ KONULARDAKİ KARARLARIN TANINMASI VE TENFİZİ

Madde 19

1) Âkit Taraflardan her biri, diğer Âkit Tarafın ülkesinde verilmiş aşağıdaki kararları, işbu Anlaşmada öngörülen hükümler altında tanıyacak ve tenfiz edecektir.

- a- Hukukî ve ticarî konularda verilmiş kararlar;
- b- Zararın tazminine ilişkin cezaî kararlar;
- c- Hukukî ve ticarî konularda verilmiş hakem kararları;

2) 1. paragrafın (a) bendi ile ilgili olarak kararlar ancak, bunlara ilişkin hukukî ilişkilerin işbu anlaşmanın yürürlüğe girmesinden sonra doğmuş olması halinde nazara alınacaktır.

3) Kişi hallerine ilişkin kararlar, işbu Anlaşmanın yürürlüğe girmesinden önce verilmiş olsalar dahi tanınacaktır.

Madde 20

İşbu anlaşmanın 19. maddesinde belirtilen kararlar, aşağıdaki şartları taşımaları halinde diğer Âkit Tarafın ülkesinde tanınır ve tenfiz edilir:

- a- Kararın, alındığı Âkit Tarafın ülkesindeki kanunlara göre kesinleşmiş ve icra edilebilir olması,
 - b- Kararı veren mahkemenin, tanıma veya tenfiz taleple edildiği Âkit Tarafın kanunlara göre yetkili olması,
 - c- Davayı kaybeden tarafın (davanın tarafı), Ülkesinde kararın verilmiş olduğu Âkit Tarafın Kanunlarına göre, usulüne uygun surette mahkemeye davet edilmiş olması,
 - d- Tarafların, savunma hakkından yoksun bırakılmamış, mahkemeye usulüne göre davet edilmiş ve davayı takip ve savunma imkanı bulamamaları halinde, taraflara kendilerini temsil etme haklarının verilmiş olması,
 - e- Kararın tanınacağı veya tenfiz edileceği Âkit Taraf ülkesinde, aynı yargılama usulü çerçevesinde ve aynı Taraflar arasında kesinleşmiş bir mahkeme kararı bulunmaması
 - f- Aynı taraflara ait, aynı sebebe ve aynı konuya ilişkin olarak bu Âkit Tarafın adli makamı önünde sürmekte olan bir dava bulunmaması
 - g- Kararın ülkesinde tanınacağı veya tenfiz edileceği Âkit Tarafın kanunlarının uygulanmasının gerektiği durumlarda karar ;
 - i) Bu kanunlar doğru bir şekilde uygulanmış ise,
 - ii) Tanıma veya tenfiz talep edilen Âkit Tarafın uygulanacak kanunları diğer Âkit Tarafın bu kanunlarından esas itibariyle farklı değilse,
- Tanınabilir ve tenfiz edilebilir.
- h- Kararın, ülkesinde tanınması ve tenfiz edilmesi talep edilen Âkit Tarafın hukuk ve kamu düzeninin temel prensiplerine aykırı olmaması.

Madde 21

Yabancı Hakem Kararlarının Tanınması ve Tenfizi Hakkında (New York, 10 Haziran 1958) Birleşmiş Milletler Sözleşmesi'ne taraf olan Âkit Taraflardan birinin ülkesinde verilmiş hakem kararları, anılan Sözleşme hükümlerine uygun olarak tanınır ve tenfiz edilir.

Madde 22

1) Kararların tanınması ve tenfizine ilişkin başvuru, doğrudan doğruya talepte bulunulan ülkenin yetkili adli makamına yapılacaktır.

2) Talebe aşağıdaki belgeler eklenmelidir:

- a- Kararın aslına uygunluğu tasdik edilmiş örneği; kararın kendisinden kesinliği ve icra edilebilirliği anlaşılmadığı takdirde, kararın kesinleştiğini tasdik eden bir belge;
- b- Yokluğunda aleyhinde karar alınan tarafın, usulüne uygun surette mahkemeye davet edildiğini ve imkansızlık halinde mahkeme önünde geçerli şekilde temsil edildiğini kanıtlayan bir belge;
- c- Yukarıda (a) ve (b) fıkralarında belirtilen belgelerin kararın ülkesinde tanınması veya tenfizi talep edilen Âkit Tarafın diline yapılmış onaylı tercümesi,

Madde 23

1) Diğer Âkit Tarafça tanıma ve tenfiz konusundaki usule, kararın tanınacağı veya tenfiz edileceği Âkit Tarafın kanunu uygulanacaktır.

2) İşbu anlaşmanın uygulamasında, kararı tanıyacak veya tenfiz edecek olan adli makam kararın esasını incelemeksizin, sadece işbu Anlaşmada belirtilen şartların yerine getirilip getirilmediğini kontrol edecektir.

Madde 24

Bu Anlaşmanın kararların tanınması ve tenfizi hakkındaki hükümleri, Âkit Tarafların, adli bir icradan dolayı elde edilen paranın havalesine veya eşyaların ülke dışına çıkarılmasına ilişkin hükümlerini haleldar etmeyecektir.

KISIM III

BÖLÜM 1

CEZA ALANINDAKİ ADLİ YARDIMLAŞMA

Madde 25

1) Âkit Taraflar, ceza alanında birbirlerine karşılıklı olarak adli yardımda bulunmayı taahhüt ederler.

2) Ceza alanındaki adli yardımlaşma özellikle;

- a- Adli belgelerin tebliği,
- b- Delil teşkil eden belge ve eşyaların aranması, el konulması ve teslimi,
- c- Suçtan elde edilen gelirlerin aranması, elkonulması ve müsaderesi,
- d- Bilirkişi incelemesi,
- e- Şüpheli ve sanıkların ifadelerinin alınması,
- f- Tanıkların ve bilirkişilerin dinlenmesi,
- g- Eşya ve olay yeri incelemesini kapsar.

Madde 26

1) Ceza alanında adli yardım talebi aşağıdaki hususları ihtiva edecektir:

- a- Talepte bulunan ve talepte bulunulan makamların ismi,
- b- Soruşturmanın veya kovuşturmanın konusu,
- c- Şüphelilerin, sanıkların veya hükümlülerin soyadı ve adı, ikametgah veya meskenleri, uyrukluğu ve mesleği ve mümkün olduğu ölçüde, doğum yeri ve tarihi ile ebeveyninin isimleri,
- d- Yasal temsilcilerinin ad, soyad ve adresleri,
- e- Adli yardım talebinin amacı ve nedeni,
- f- İlgili kanun metinleri,
- g- Adli yardım talebinin yerine getirilmesi için gerekli diğer bilgilerle suç teşkil eden fiillerin niteliği ve olayların tanımlanması.

2) Talepler ve bunlara ekli belgeler, talep eden makamın imzasını ve resmi mührünü içerecektir.

Madde 27

1) Talep edilen makam, adli yardım talebini kendi mevzuatında yürürlükte bulunan hükümlere uygun olarak yerine getirecektir. Bununla birlikte, talep edilen makam, kendi kanununa aykırı olmamak şartıyla Talep eden Tarafın usul hükümlerini uygulayabilir.

2) Talep edilen makam adli yardım talebinin yerine getirilmesi konusunda yetkili bulunmadığı takdirde, adli yardım talebini talep edilen tarafın yetkili makamına iletecek ve keyfiyetten talep eden makamı haberdar edecektir.

3) Talep eden Tarafın talebi üzerine, Talep edilen Taraf adli yardım talebinin yerine getirileceği tarih ve yeri talep eden makama duyuracaktır. Talep edilen Tarafın yetkili makamı, talep eden makam temsilcilerinin adli yardım talebinin yerine getirilmesine iştirakine izin verebilir.

4) Talep edilen Taraf, talebin yerine getirilmesinden sonra, adli yardım talebinin yerine getirildiğini gösterir belgeleri Talep eden Tarafa gönderir veya talebin yerine getirilmemesi durumunda yerine getirilemeyeşini sebepleri ile birlikte bildirir.

Madde 28

1) Talep eden Tarafın adli makamınca bir tanık veya bilirkişinin hazır bulunması özellikle gerekli addediliyorsa, bu hususu davetin tebliği ile ilgili talebinde belirtir.

2) Birinci paragrafta öngörülen durumda davetname, davete icabet edilmemesi halinde para cezasını veya diğer müeyyideleri içermeyecektir.

3) Tanıkların ve bilirkişilerin yol ve ikamet giderleri ile kendilerine ödenecek tazminat Talep eden Tarafa aittir.

4) Hangi uyrukta olursa olsun, kendi arzusuyla Talep eden Tarafın yetkili makamı önüne çıkacak olan tanık veya bilirkişi, bu Devletin ülkesinde Talep edilen Tarafın ülkesinden ayrılmadan önce işlediği fiiller dolayısıyla ne kovuşturulabilir, ne tutuklanabilir, ne cezaya çarptırılabilir, ne de kişisel özgürlüğü kısıtlanabilir. Belirtilen kişiler, soruşturma veya kovuşturmanın konusunu teşkil eden usule ilişkin hususlarla bağlantılı fiilleri sebebiyle de söz konusu bağışıklıktan yararlanırlar.

5) Tanık veya bilirkişi, hazır bulunmasının gerekli olmadığını belirten bir tebliğ aldıktan sonra, bahse konu tebliğden tarihten itibaren onbeş gün içinde Talep eden Taraf ülkesini terketmediği takdirde 4. paragrafta öngörülen bağışıklıktan faydalanamaz.

Tanık veya bilirkişinin, kendi elinde olmayan sebeplerle Talep eden Taraf ülkesini terkedemediği süre, bu paragrafta belirtilen süre kapsamı dışındadır.

Madde 29

1) Tebliği istenilen belgelerin Talep edilen Taraf dilinde yapılmış ve resmen tasdik edilmiş tercümelerle birlikte gönderilmesi durumunda, Talep edilen Taraf, kendi kanununun öngördüğü şekilde tebligatı yapacaktır. Aksi takdirde Talep edilen Taraf bu belgeyi muhatabına ancak muvafakat etmesi halinde tebliğ edebilir.

2) Tebligat talebinde muhatabın doğru adresi ve tebliğ olunacak belgenin niteliği belirtilecektir.

3) Belgeler, tebligat talebinde belirtilen adreste tebliğ olunamadığı takdirde Talep edilen Taraf, muhatabın doğru adresinin tespiti için gerekli tedbirleri alacaktır. Bu adresin tespiti mümkün olmadığı takdirde Talep edilen Taraf, Talep eden Tarafı haberdar edecek ve tebliğ etmesi istenilen belgeleri iade edecektir.

Madde 30

Tebellüğ belgesi, Talep edilen Taraf ülkesinde yürürlükte bulunan hükümlere göre düzenlenecektir. Tebellüğ belgesi, alıcının adı, teslim eden makam, tebliğ tarihi ve yerini ihtiva edecektir.

Madde 31

1. 28. maddenin 3. paragrafına göre, Talep edilen Taraf adli yardım dolayısıyla kendi ülkesinde meydana gelen masrafları deruhte edecek ve bunların ödenmesini talep etmeyecektir.

2. Adli yardımlaşma ağır ve olağan dışı masraflar gerektirdiği takdirde, Akit Taraflar, şartlarını ve masrafların ne şekilde ödeneceği hususunda önceden anlaşacaklardır.

Madde 32

1) Adli yardımlaşma talepleri aşağıdaki hallerde reddedilebilir:

- a- Talep edilen Taraf, talebi ülkesinin egemenlik, güvenlik ve kamu düzenini haleldar edecek nitelikte görüyorsa;
- b- Talep edilen Taraf, talebi Anayasası veya iç mevzuatına aykırı nitelikte görüyor ise.

2) Adli yardımlaşma talebi işbu maddenin yukarıdaki paragrafında öngörülen hallerde reddedildiği takdirde gerekçesi belirtilir.

Madde 33

1) İşbu Anlaşmanın 68. maddesinde öngörülen hususlar hariç, adli yardım talepleri ve bunlara dayanak belgeler, Talep edilen Taraf lisanında onaylı tercümelerini de içerecektir.

2) Tercümenin tasdiki, Talep eden Taraf tarafından, yeminli bir mütercim, bir noter ya da Âkit Tarafların birisinin diplomatik temsilcisi veya konsolosluk görevlisi aracılığıyla yapılabilecektir.

3) Taleplerin yerine getirilmesine ilişkin belgeler, Talep edilen Taraf lisanında düzenlenecektir.

BÖLÜM 2

GERİ VERME

Madde 34

1) İşbu Anlaşma hükümleri çerçevesinde, Âkit Taraflar ülkelerinde bulunan kişileri, bir ceza soruşturması veya kovuşturması yapılması veya bir kararın infazı amacıyla, talep üzerine karşılıklı teslim etmeyi taahhüt ederler.

2) Bir ceza soruşturması veya kovuşturması için geri verme ancak, her iki Âkit Tarafın kanunlarına göre on iki aydan fazla hürriyeti bağlayıcı bir cezayı veya daha ağır bir cezayı gerektiren suçlar için yapılacaktır.

3) Bir kararın infazı için geri verme, ancak hürriyeti bağlayıcı cezayı gerektiren suçlar için ve söz konusu kişi, Âkit Tarafların hukukunda altı aydan fazla hürriyeti bağlayıcı bir cezaya veya daha ağır bir cezaya mahkûm edilmiş bulunduğu takdirde yapılacaktır.

4) Geri verme talebi, her iki Âkit Taraf kanunlarınca her biri hürriyeti bağlayıcı cezayı gerektiren birden fazla farklı suçtan oluşmakla birlikte, bunlardan bazıları işbu maddenin 2. ve 3. paragraflarında öngörülen şartlara uymasa bile, Talep edilen Taraf bu suçlar için de geri verme hakkına sahiptir.

Madde 35

1) Aşağıdaki durumlarda geri verme yapılmayacaktır:

- a- Geri verilmesi talep olunan kişi Talep edilen Taraf vatandaşı ise;
- b- İade talep edilen suç, Talep edilen Taraf tarafından, siyasi veya askeri bir suç olarak kabul ediliyorsa,
- c- Talep edilen Taraf iç mevzuatına göre geri verme talebi kabule şayan bulunmamakta veya karar zamanaşımı ya da kanunda öngörülen başka bir sebeple yerine getirilmeyecek ise;
- d- Geri verilmesi talep olunan şahıs, Talep edilen Taraf ülkesinde, aynı suç dolayısıyla kesinleşmiş bir mahkeme kararı veya men'i muhakeme kararına konu teşkil etmekte ise;
- e- Suç, Talep edilen Taraf ülkesinde işlenmişse veya bu suç, Talep edilen Taraf ülkesi sınırları dışında işlenmiş ve Talep edilen Taraf ülkesinde devam eden bir soruşturma bulunmakta ise.

2) Talep edilen Taraf, geri verilmesi talep olunan şahsı vatandaşı olması nedeniyle geri vermediği takdirde, Talep eden Tarafın talebi üzerine ceza kovuşturmasına tevessül edecektir. Suçla ilgili dosyalar, bilgiler ve diğer deliller Talep eden Tarafça gönderilecektir. Talep eden Taraf bu soruşturma ve kovuşturmanın sonucundan haberdar edilecektir.

Madde 36

1) Talep eden Tarafta bir suçtan dolayı soruşturulan veya kovuşturulan bir kişinin geri verilmesi talebine tutuklama kararının aslına uygun bulunduğu tasdik edilmiş bir sureti, suç teşkil eden fiillere ilişkin açıklama ve uygulanacak kanun hükmünün metni eklenecektir. Suçtan bir maddi zarar meydana geldiği takdirde, bunun miktarı mümkün olan ölçüde açıklanacaktır.

2) Bir kararın infazı amacıyla vaki geri verme talebine, kesinleşmiş mahkeme kararının aslına uygun bulunduğu tasdik edilmiş bir sureti ile suçun tavsifine göre uygulanan kanun hükmünün tam metni eklenecektir. Hükümlü cezanın bir kısmını çekmiş ise bu husus belirtilecektir.

3) Geri verme talebi geri verilmesi istenilen kişinin vatandaşlık durumunu ve mümkün olduğu ölçüde, eşkalini, kimliğine ilişkin bilgileri, ikametgahı, kişisel durumunu, fotoğrafını ve parmak izlerini ihtiva edecektir.

Talep edilen Taraf, sağlanan bilginin yeterli olmadığı kanaatinde ise, belirleyeceği makul bir süre içinde ek bilgi temin edilmesini talep edebilir.

4) Talep eden Taraf, geri verilmesi istenilen kişinin işlediği suçla ilişkin delillere ait belgeleri göndermek zorunda değildir. Ancak, bazı özel durumlarda Talep edilen Taraf bazı deliller isteyebilir.

Madde 37

Geri verme talebi gerekli tüm bilgileri ihtiva etmediği takdirde, Talep edilen Taraf bunun tamamlanmasını isteyebilir. Bu bilgi, Talep edilen Tarafa 30 gün içinde gönderilmelidir. Geçerli nedenler olması halinde bu süre 15 gün uzatılabilir. Talep edilen Taraf bu amaçla iki ayı geçmemek üzere bir süre belirleyebilir.

Madde 38

Geri verme talebinin alınmasını müteakip Talep edilen Taraf, talebe konu teşkil eden kişinin geri verme amacı ile tutuklanması dahil bütün gerekli tedbirleri gecikmeksizin alacaktır. İşbu Anlaşma hükümlerine göre iade zorunluluğu olmayan hususlarda bu hüküm uygulanmaz.

Madde 39

Acil hallerde, geri verme Talep eden Tarafın yetkili makamları geri verilmesi istenen kişinin geçici tutuklanmasını isteyebilirler. Talep edilen Tarafın yetkili makamları bu talep hakkında kendi mevzuatına göre karar verecektir.

Geçici tutuklama isteminde, 36. maddenin 1 veya 2. paragrafında bahsolunan belgelerden birinin varlığı ve geri verme talebinde bulunulmasının amaçlandığı belirtilecektir. Talebe, ayrıca, hangi suçlar için geri verme istenileceği, suçun ne zaman, nerede ve nasıl işlendiği ve olanaklar ölçüsünde geri verilmesi istenen kişinin eşkali açıklanacaktır.

Geçici tutuklama talebi, Talep edilen Tarafın yetkili makamlarına, gerek diplomatik kanaldan, gerek posta, telgraf veya faks veya Uluslararası Kriminal Polis Teşkilatı (INTERPOL) aracılığıyla veya yazıya dönüştürülebilen ve Talep edilen Tarafça kabul edilecek herhangi bir şekilde iletebilir.

Talep eden makam gecikmeksizin istemin sonucundan haberdar edilecektir.

Talep edilen Tarafa, geçici tutuklamayı takip eden 30 gün içinde geri verme talebi ve 36. maddede belirtilen belgeler iletilmez ise, geçici tutuklamaya son verilebilir. Bu süre, hiçbir ahvalde tutuklama tarihinden itibaren 45 günü geçmeyecektir. Geçici serbest bırakma olanağı her zaman mümkündür, ancak Talep edilen Taraf geri verilmesi istenen kişinin kaçmasını önlemek için tüm tedbirleri alacaktır.

Serbest bırakma, geri verme talebinin sonradan alınması halinde yeniden tutuklamaya ve geri vermeye engel oluşturmaz.

Madde 40

1) Talep edilen Taraf, geri verme talebi hakkında kararını verdikten sonra, talep edilen kişinin, geri verme talebine konu teşkil eden fiil dışında bir suç dolayısıyla soruşturulabilmesi, kovuşturulabilmesi veya hükümlü bulunduğu cezayı kendi ülkesinde çekmesi için teslimini erteleyebilir.

2) Talep edilen Taraf, teslimi erteleme yerine, istenen şahsı, Taraflar arasında müştereken tespit edilecek şartlar çerçevesinde, talep eden Tarafa geçici olarak teslim edebilecektir.

Madde 41

Birçok Devlet tarafından aynı fiilden veya değişik fiillerden dolayı aynı anda geri verme talep edildiği takdirde, Talep edilen Taraf, bütün koşulları ve özellikle suçların ağırlığı ve işlendikleri yeri, taleplerin tarihleri, istenen şahsın uyruğu ve başka bir Devlete geri verme imkanını gözönüne alarak karar verecektir.

Madde 42

1) Talep edilen Tarafın muvafakatı bulunmaksızın, bu Anlaşma hükümlerine göre geri verilen kişi geri vermeden evvel işlenen ve geri vermeye esas olandan başka bir suç dolayısıyla soruşturulamayacağı, kovuşturulamayacağı ve hakkında bir cezanın infazına geçilemeyeceği gibi teslim tarihinden önceki suçlar sebebiyle üçüncü bir Devlete de geri verilemez.

2) Aşağıdaki hallerde Talep edilen Tarafın muvafakatına gerek yoktur.

a- Geri verilen kişi, usul işleminin sonuçlanması veya mahkûmiyete karar verilmesi halinde, cezanın yerine getirilmesinden itibaren 15 gün içinde geri verildiği Talep eden taraf ülkesini terk etmemiş ise,

Serbest bırakılan kişinin kendi iradesi dışında sebeplerle Talep eden Taraf ülkesini terk etme imkansızlığı içinde olduğu müddet, bu sürenin dışındadır.

b- Geri verilen kişi Talep eden Taraf ülkesini terk ettikten sonra tekrar bu ülkeye dönmüş ise.

Madde 43

1) Talep edilen Taraf, geri verme konusundaki kararından Talep eden Tarafa bilgi verecektir.

2) Geri verme talebinin tamamen veya kısmen reddedilmesi halinde, red sebepleri Talep eden Tarafa iletilecektir.

3) Geri vermenin kabul edilmesi halinde, Talep edilen Taraf geri vermenin yapılacağı yeri ve tarihini Talep eden Tarafa bildirecektir. Talep eden Taraf, geri verme için tespit olunan günü takip eden 15 gün zarfında teslim almadığı takdirde geri verilmesine karar verilen kişi serbest bırakılacaktır.

4) Bir Taraf, geri verilecek şahsı elinde olmayan nedenlerden dolayı teslim veya kabul edememesi halinde diğer Tarafı haberdar edecektir. Taraflar birlikte yeni bir teslim tarihi kararlaştıracaktır.

Madde 44

Geri verilen kişi firar etmiş ve Talep edilen Taraf ülkesine dönmüş ise, Talep eden Tarafın yeni bir geri verme talebi dolayısıyla, işbu Anlaşmanın 36. maddesinde öngörülen belgelerin iletilmesine gerek bulunmayacaktır.

Madde 45

1) Âkit Taraflardan her biri diğer Tarafın talebi üzerine, üçüncü bir Devletçe talep eden Tarafa geri verilen kişilerin kendi ülkesinden transit olarak geçişine izin verecektir. Âkit Taraflar, İşbu Anlaşma hükümlerine göre geri vermeye elverişli bulunmayan suçlar dolayısıyla bu izni vermeye mecbur değildirler.

2) Âkit Tarafların yetkili makamları her olayda, transit geçişin şekli, güzergâhı ve diğer şartları konusunda mutabakat sağlayacaklardır.

Madde 46

Talep eden Taraf, teslimi müteakiben, geri verilen kişiler hakkında tevessül olunan ceza kovuşturmaları sonucunu Talep edilen Tarafa bildirecektir. Bundan başka, Talep edilen Tarafın talebi üzerine, Talep eden Taraf kesinleşmiş karar örneğini de iletecektir.

Madde 47

Geri verme ve geçici tutuklama prosedürü sadece Talep edilen Taraf kanununa tabi olacaktır.

Madde 48

Geri verme talebinde tevdi olunacak belgelere, Talep edilen Taraf dilinde aslına uygun olduğu tasdik edilmiş tercümeleri de eklenecektir.

Madde 49

1) Suçun işlenişine ilişkin olanlar ile ceza soruşturma ve kovuşturması sırasında delil teşkil edebilecek diğer tüm eşyalar, Talep eden Tarafa söz konusu kişinin ölümü veya başka sebeplerle iadesi gerçekleştirilemese dahi, teslim edilecektir.

2) Talep edilen Taraf, başka bir ceza soruşturma ve kovuşturması için gerekli görülmesi halinde söz konusu eşyanın teslimini geçici olarak erteleyebilir.

3) Teslim edilecek eşyalar üzerindeki üçüncü kişilerin hakları saklıdır. Ceza soruşturma ve kovuşturmasının sonuçlanmasını takiben bu eşyalar, ilgililere teslim edilmek üzere Talep edilen Tarafa iade olunacaktır.

Madde 50

Suçluların geri verilmesi ve eşyaların teslimi ile ilgili olarak münhasıran Talep edilen Taraf ülkesinde yapılanlar dışındaki masraflar Talep eden Tarafa karşılanacaktır.

BÖLÜM 3

HÜKÜMLÜLERİN NAKLİ

Madde 51

Anlaşmanın bu bölümünün hükümlerine göre;

- 1) "Hüküm Devleti", ülke sınırları içinde yer alan mahkemeler tarafından, nakil işlemine konu olmuş veya konu olabilecek kişi hakkında hapis veya diğer hürriyeti bağlayıcı cezaya ilişkin hükmün verildiği devlet anlamındadır.
- 2) "İnfaz Devleti", vatandaşı olan bir kişi hakkında verilmiş hapis veya diğer hürriyeti bağlayıcı cezaya ilişkin hükmü kendi ülke topraklarında infaz eden devlet anlamındadır.
- 3) "Hükümlü", işlediği suç nedeniyle Âkit Taraflardan birine ait mahkemelerce verilen hükümle hapis veya diğer hürriyeti bağlayıcı cezaya mahkûm olan kişi anlamındadır.
- 4) "Hükümlünün Yakınları" hükümlünün vatandaşı olduğu devlet hukukunda tanımlanan kişiler anlamındadır.
- 5) "Âkit Tarafların Yetkili Organları", kendi yasalarına göre, hükümlünün nakline herhangi bir şekilde müdahale yetkisine sahip organlar anlamındadır.

Madde 52

Diğer Âkit Taraf ülkesinde kesinleşmiş bir mahkeme kararıyla hürriyeti bağlayıcı bir cezaya hükümlülüğüne karar verilen Âkit Taraflardan birisinin vatandaşı, Âkit Taraflardan birinin talebi ve diğer Âkit Tarafın kabulü üzerine ve işbu Anlaşmada öngörülen şartlar çerçevesinde cezasının yerine getirilmesi için vatandaşı bulunduğu Âkit Taraf ülkesine nakil edilecektir.

Madde 53

52. maddede öngörülen prosedürün başlatılması amacıyla, hükümlü, hükümlü temsilcisi veya yakınları Âkit Taraflardan birinin yetkili makamlarına müracaat edebilirler. Hüküm Devletinin yetkili makamları, böyle bir müracaatta bulunabileceği konusunda hükümlüye bilgi vereceklerdir.

Madde 54

Hükümlünün nakli ancak, Hüküm Devletinde mahkûmiyetine neden olan fiil İnfaz Devletinin ceza mevzuatı açısından da bir suç teşkil etmesi halinde yapılacaktır.

Madde 55

- 1) Hükümlünün nakli ancak rızasıyla yapılabilecektir.
- 2) Hükümlü rızasını geçerli olarak beyan edecek durumda bulunmamakta ise, yasal temsilcisinin muvafakati alınacaktır.
- 3) Hüküm Devleti, bu maddenin 1. fıkrasında bahsedilen rızanın, herhangi bir zorlama olmaksızın özgürce ve sonuçları bilinerek verildiğinden emin olmalıdır.
- 4) İnfaz Devletinin, Hüküm Devleti tarafından bildirilen hükümlünün rızasını ve bu rızanın şartlarını, kendi konsolosluk görevlisi veya Hüküm Devleti ile anlaştığı diğer bir makam aracılığıyla öğrenme hakkı vardır.

Madde 56

- 1) İnfaz Devleti, hükümlünün naklini kabul edip etmediğini en kısa süre içerisinde Hüküm Devletine bildirecektir.
- 2) Hüküm Devleti, bu anlaşma gereğince, nakil istemiyle ilgili olarak İnfaz Devleti tarafından veya kendi tarafından yapılan girişimleri ve ayrıca konuyla ilgili her iki devlet tarafından alınan kararları yazılı olarak hükümlüye bildirecektir.
- 3) İnfaz Devleti, hükmün infazıyla ilgili aşağıdaki bilgileri Hüküm Devletine gönderecektir:
 - a) Hükümlü, İnfaz Devletinde mahkûmiyet süresini tamamlamadan firar ederse,
 - b) Hüküm Devleti, hükümlünün durumu hakkında özel bir rapor isterse.

Madde 57

- 1) Âkit Taraflar nakil üzerinde mutabık kaldıkları takdirde, İnfaz Devletinin yetkili makamları, nakle ilişkin kararda yeralan cezanın niteliği ve süresi ile bağlı olacaktır.
- 2) Cezanın niteliği veya süresi İnfaz Devletinin mevzuatı ile bağdaşmamakta veya bu Devletin mevzuatı gerektirmekte ise, İnfaz Devletinin yetkili makamı bu cezayı, aynı nitelikteki suçlar için kendi kanununda öngörülen cezaya dönüştürebilecektir. Bu ceza, mümkün olduğu ölçüde, niteliği itibarıyla Hüküm Devleti kararında verilen cezaya uygun olacaktır. Dönüştürülen ceza, niteliği ve süresi yönünden Hüküm Devletinde verilen cezadan ağır olamayacağı gibi İnfaz Devleti kanununda aynı nitelikte bir suç için öngörülen azami miktarı da geçmeyecektir.
- 3) İnfaz Devletinin yetkili makamı, Hüküm Devletinde kabul edilen olayların sübutu ile bağlı kalacak ve hürriyeti bağlayıcı bir ceza yerine başka nitelikte bir ceza ikame edemeyecektir.

Madde 58

Âkit Taraflar nakil üzerinde mutabık kaldıkları takdirde, Âkit Tarafların yetkili makamları mümkün olan en kısa süre içinde hükümlünün naklinin yerini, tarihini ve şartlarını tespit edeceklerdir. Hükümlünün nakli Hüküm Devletinin ülkesinde gerçekleşecektir.

Madde 59

- 1) Şartla tahliye dahil cezanın infazı, İnfaz Devleti mevzuatına tabi olacaktır.
- 2) Genel af, Hüküm Devleti veya İnfaz Devleti mevzuatına göre uygulanacaktır.
- 3) Özel af, İnfaz Devletinin mevzuatına göre uygulanacaktır.
- 4) İnfaz Devletine nakil olunan hükümlü hakkında ittihaz edilen mahkumiyet kararının yeniden tetkiki için yapılacak herhangi bir başvuruda yalnızca Hüküm Devleti mahkemesi karar verme yetkisine haiz olacaktır.

Madde 60

- 1) Âkit Taraflar cezanın infazını etkileyebilecek tüm durumlardan ve özellikle genel af, özel af ve kararın yeniden tetkikine dair her başvurunun sonuçları ile ilgili olarak birbirlerine karşılıklı bilgi vereceklerdir.
- 2) İnfaz Devleti, cezanın yerine getirilmesi tamamlandığında Hüküm Devletine bilgi verecektir.

Madde 61

- 1) Hükümlünün nakline dair talep yazılı olarak yapılacaktır.
- 2) Talebe aşağıdaki belgeler eklenecektir:
 - a- Kesinleştiğine dair meşruhatı içeren kararın onaylanmış örneği;
 - b- Kararın dayandığı ilgili kanun hükümlerinin metni;
 - c- Hükümlünün kimliği, vatandaşlığı, oturduğu yer veya ikametgahına ilişkin ayrıntılı bilgileri içeren belgeler;
 - d- Hükümlünün cezasının Hüküm Devletinde infaz edilen miktarını belirleyen belgeler;
 - e- Hükümlünün muvafakatini içeren tutanak;
 - f- Hükümlü, hükümlünün temsilcisi veya hükümlünün yakınları tarafından yapılan nakil talebi,

- g- Hükümlünün fiziksel ve ruhsal durumuyla ilgili doktor raporu gibi talebin incelenmesi için önem arz edebilecek diğer tüm belgeler.

Madde 62

İnfaz Devleti, kendisine sağlanan bilgi ve belgelerin yetersiz olduğu kanaatinde ise, tamamlayıcı bilgi isteyebilir ve bu bilginin gönderilmesi için, geçerli talep üzerine uzatılması mümkün olmak kaydıyla, bir süre tespit edebilir. Tamamlayıcı bilginin gönderilmemesi halinde İnfaz Devleti, kendisine sağlanmış bulunan bilgi ve belgeleri esas alarak kararını verecektir.

Madde 63

Nakil talepleri ile ekindeki belgeler resmi tasdik işleminden muaf olacak ve İnfaz Devleti dilinde tercümeleriyle gönderilecektir.

Madde 64

Hükümlünün nakli ile ilgili olarak, münhasıran Hüküm Devleti ülkesinde yapılanlar dışındaki masraflar İnfaz Devleti tarafından karşılanacaktır.

BÖLÜM 4

CEZAİ KONULARDA İLGİLİ MUHTELİF HÜKÜMLER

Madde 65

Âkit Taraflar diğer Taraf ülkesinde suç işlemiş bulunan vatandaşları hakkında diğer Âkit Tarafın talebi üzerine, kendi mevzuatları hükümlerine uygun olarak soruşturma ve kovuşturma yapmayı taahhüt ederler.

Madde 66

1) 65. maddede öngörülen cezaî soruşturma ve kovuşturmayla tevessül edilebilmesi için, Âkit Tarafların birbirlerine gönderecekleri yazılı talepler aşağıdaki hususları içerecektir:

- a- İsteyen makamın adı;
- b- İşleniş tarihi ve yeri de muhtevi olmak üzere talebe konu teşkil eden suçla ilgili belgeler;
- c- Sanığın kimliği, vatandaşlığı ve mümkün olduğu ölçüde ikamet ettiği veya oturduğu yer hakkında bilgi;

2) Talepnameye aşağıdaki belgeler eklenecektir:

- a- Talep eden Taraf dilinde düzenlenmiş hazırlık soruşturması evrakı veya aslına uygun olduğu onaylanmış örnekleri;

- b- Ceza soruşturma ve kovuşturması sırasında delil teşkil edebilecek tüm eşyalar ve belgeler; bu konuda işbu Anlaşmanın 49. maddesi hükümleri uygulanacaktır.
- c- Suçun işlendiği yerde yürürlükte olan mevzuata göre uygulanması gereken kanun hükümleri metinleri;
- d- Gerektiğinde ve mümkün olduğu takdirde şüphelinin fotoğrafı ve parmak izleri.

3) Talep edilen Taraf kovuşturma sonucundan diğer Tarafa bilgi verecek ve kesinleşen kararın bir örneğini gönderecektir.

Madde 67

1) Diğer Tarafın ülkesinde tutuklu bulunan kişilerin tanık sıfatıyla dinlenilmeleri gerekiyorsa, Talep edilen Taraf bu kişilerin, tutukluluk hallerinin devamı ve dinlenildikten sonra en kısa süre içinde geri gönderilmeleri şartıyla, Talep eden Taraf ülkesine gönderilmelerine muvafakat edebilir.

2) Üçüncü bir Devlet ülkesinde tutuklu olan kişilerin tanık sıfatıyla dinlenmeleri gerektiği takdirde, Âkit Taraflar, bu kişilerin kendi ülkelerinden transit geçişlerine izin vereceklerdir.

3) Yukarıda 1 ve 2. paragraflarda öngörülen hususlarda, işbu Anlaşmanın 28. maddesi hükümleri mümkün olduğu ölçüde uygulanacaktır.

Madde 68

1) Âkit Taraflar talep üzerine, diğer Taraf vatandaşları hakkında verilen ve kesinleşen mahkûmiyet kararları ile ilgili bilgileri, yılda en az bir defa olmak üzere birbirlerine ileteceklerdir.

2) Âkit Taraflar talep üzerine, daha önce Talep edilen Taraf ülkesinde bir mahkûmiyet kararına konu teşkil eden ve Talep eden Taraf ülkesinde bir kovuşturmaya tabi tutulan kişiler hakkındaki adli sicil kayıtlarına ilişkin bilgiyi, birbirlerine ileteceklerdir.

3) Yukarıda 1 ve 2. paragraflarda öngörülen hallerde Âkit Taraflar, mümkün olduğu ölçüde mahkûm edilen kişilerin parmak izlerini birbirlerine göndereceklerdir.

Madde 69

İşbu Anlaşma hükümleri, Anlaşmanın yürürlüğe girmesinden önce meydana gelen olaylara ilişkin talepler konusunda da uygulanacaktır.

KISIM IV

NİHAİ HÜKÜMLER

Madde 70

İşbu Anlaşmanın uygulanmasından veya yorumundan doğabilecek her türlü sorunlar diplomatik yoldan çözümlenecektir.

Madde 71

İşbu Anlaşma onaylanacak ve onay belgeleri teati edilecektir.

İşbu Anlaşma, onay belgelerinin teatisinden 30 gün sonra yürürlüğe girecektir.

İşbu Anlaşmanın yürürlüğe girdiği tarihten itibaren Tahran'da 14 Mart 1937 (23 Esfand 1315 Hicri Şemsi) tarihinde iki ülke arasında imzalanan "İadei Mücrimin ve Cezai Mevadda Adli Müzaheret Muahedenamesi" ve "Hukuki ve Ticari Konularda Adli Yardımlaşma Anlaşması" yürürlükten kaldırılacaktır.

Madde 72

İşbu Anlaşma süresiz olarak yürürlükte kalacaktır. Bununla birlikte, Âkit Taraflardan her biri herhangi bir tarihte diğer Âkit tarafa bildirmek kaydıyla Anlaşmayı feshedebilir.

Fesih, diğer Tarafın böyle bir bildirimi almasından 6 ay sonra geçerlik kazanacaktır.

İşbu hükümlerin kanıtı olarak, Âkit Tarafların yetkili temsilcileri, Anlaşmayı imzalamış ve mühürlerini tatbik etmişlerdir.

İşbu Anlaşma Ankara'da 3 Şubat 2010 (14 Bahman 1388 Hicri Şemsi) tarihinde Türkçe, Farsça ve İngilizce dillerinden 3'er nüsha ve her biri esas metin olarak düzenlenmiştir. Metinlerin farklı yorumlanması halinde İngilizce metin esas alınacaktır.

TÜRKİYE CUMHURİYETİ

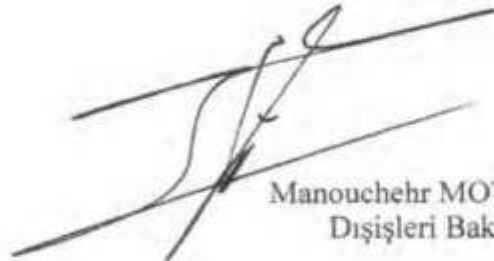
Adına



Sadullah ERGİN
Adalet Bakanı

İRAN İSLAM CUMHURİYETİ

Adına



Manouchehr MOTTAKI
Dışişleri Bakanı

**Agreement
On
Legal Cooperation
In
Civil and Criminal Matters
Between
The Republic of Turkey
And
The Islamic Republic of Iran**

The Republic of Turkey and the Islamic Republic of Iran,
hereinafter referred to as the Contracting Parties,

Desirous of further promoting friendly relations and arranging mutual assistance in civil, commercial and criminal matters, extradition and transfer of sentenced persons on the basis of the principals for national sovereignty, equality of rights and non-interference in the internal affairs of the Contracting Parties,

Have decided to conclude this agreement and for this purpose they agreed on the following:

**CHAPTER I
GENERAL PROVISIONS**

Article 1

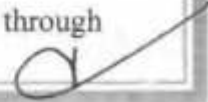
1. Nationals of the Contracting Parties shall, observing the domestic law, enjoy equal rights in the territory of the other Party as the nationals of the latter Party, for judicial and legal protection with respect to themselves, their property and interests.

2. Nationals of the Contracting Parties shall, in the territory of the other Party, be entitled to free access to courts and other competent authorities to lodge claims and to protect their rights and interests in respect of civil, commercial and criminal matters, in the same terms and conditions as nationals of the Latter Party.

3. Legal persons, whose headquarters is located in the territory of one of the Contracting Parties and have been set up in accordance with the Law of that Party, shall be entitled to enjoy the provisions of the present Agreement as much as they are applicable.

Article 2

The authorities of the Contracting Parties shall communicate through diplomatic channel for the implementation of the present Agreement.



Article 3

The Ministries of Justice of the Contracting Parties shall, upon a request, mutually give information to each other on their law and practices in that country in regard with legal problems that constitute subject to the present Agreement.

CHAPTER II SECTION 1 JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS

Article 4

1. The competent authorities of the Contracting Parties shall undertake to afford each other mutual judicial assistance in civil and commercial matters.

2. Mutual assistance includes especially enforcement of procedural decisions such as transmitting documents, hearing of parties, witnesses and experts and site examination.

Article 5

1. A request for judicial assistance shall cover:

- a) The names of the requesting and requested authorities,
- b) The objective of the requested assistance;
- c) The nature of the case and the description of its facts;
- d) The names, permanent and temporary addresses (domicile or residence), nationalities and professions of the parties;
- e) The names and addresses of the representatives of the parties;
- f) The texts of the relevant rules and information necessary for the subject matter and execution of the request.

2. A request for judicial assistance and its supporting documents shall be signed and officially sealed by the requesting authority.

Article 6

1. The requested authority shall apply the provisions of its own as for the execution of the request. However, it may upon the request of the requesting authority, follow the procedure of the latter unless this is incompatible with the law of the Requested Party.

2. If the authority to which the request has been sent is not competent to enforce it, such authority shall forward the request to the competent authority in the Requested Party and inform the Requesting Party thereof.

3. The requested authority shall send the documents establishing the execution of the request to the requesting authority or shall inform the latter where the request is not executed, with the reasons thereof.

Article 7

1. A request for service of documents shall be effected by the requested authority in compliance with the provisions of its law regulating such procedure, if such documents have been prepared in the language of Requesting Party and accompanied by translations certified as correct, otherwise, the requested authority shall effect the service of documents only if the addressee consents to receive it.

2. A request for service of documents shall state the full address of the addressee and the documents to be served.

3. If the document can not be served to the address stated in the request for service, the requested authority shall take necessary measures for establishment of the true address. If it has been impossible to establish the true address, the Requested Party shall inform the Requesting Party, and shall forward the document to the Latter.

Article 8

The receipt shall be prepared in accordance with the law of the Requested Party. The receipt shall contain the name of the recipient, the delivering authority, the date and place of such service.

Article 9

1. The Requested Party shall bear all of the costs incurred in its territory for the execution of judicial request and shall not claim the reimbursement thereof.

2. In case the costs of provision of the judicial assistance proves to be heavy or extra-ordinary, the Contracting Parties shall in advance agree on the terms thereto and the way of payment.

Article 10

A request for judicial assistance may be refused if it is deemed that granting such request would infringe sovereignty, security or public order of the Requested Party or it is in contrast with the Constitution of the Latter Party.

Article 11

1. Requests for judicial assistance and their supporting documents other than those provided for in paragraph 1 of Article 7 and, Article 13 of the present Agreement, shall be accompanied by certified translations in the language of the Requested Party.

2. Certification of translations may be effected by the Requesting Party, sworn translator, notary or diplomatic representative or counselor official of the Contracting Parties.

3. Documents obtained through execution of requests for judicial assistance shall be prepared in the language of the Requested Party.

Article 12

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the Requesting Party, shall not be prosecuted or detained or subjected to any punishment due to a judgment rendered previously in the territory of that Party in respect of any offense occurring before his arrival to that State.

A witness or expert, when informed by the authority invited him that his presence is no longer required, shall not leave the territory of the Requesting Party within 15 consecutive days following that notification, such immunity shall cease. The period that prevents a witness or expert leaving the territory of the Requesting Party freely for reasons out of his control shall be exempted from the period provided in this paragraph.

Such persons shall not be prosecuted or detained due to witness's testimony or expertise.

2. The requesting authority shall inform the witness or expert summoned that travel expenses, subsistence allowances and expertise fees will be refunded within the conditions provided by its law. Upon request of such person, an advance for traveling and subsistence expenses shall be granted by the requesting authority.

SECTION 2 DOCUMENTS

Article 13

Upon a request of the courts or other competent authorities of the Contracting Parties, other Party shall forward the copies of personal status certificates, other documents relating to personal affairs and interests of the nationals of the Requesting Party, without translation and charge.

Article 14

1. Documents drawn up, issued or certified and officially sealed in the territory of either Contracting Party or their authenticated copies, shall not be subject to legalization in the territory of the other Contracting Party.

2. Documents issued by the official authorities of a Contracting Party shall have the same probative force in the territory of the other Party.

SECTION 3
EXEMPTION FROM PAYMENT OF SECURITY
(Judicatum Solvi) AND COSTS OF PROCEEDINGS

Article 15

Nationals of either Contracting Party shall not be required to give security (judicatum solvi) only for being a foreign citizen and, for not having domicile or residence in the territory of the other Party.

Article 16

1. Nationals of either Contracting Party shall be entitled to benefit exemption from judicial charges and costs, and be granted legal aid free of charge before the courts of the other Party on the same conditions and up to the extent as the Latter's nationals.

2. Such judicial assistance and legal aid shall apply to all proceedings of a case, including enforcement proceedings.

3. Nationals entitled to benefit from exemption from charges and costs in accordance with the law of either Contracting Party shall also enjoy such exemption in the territory of the other Contracting Party as for the proceedings of the same case.

Article 17

1. The certificate necessary to benefit from the provision of Article 16 and to prove personal, family and material status of the applicant, shall be issued by the competent authority of the Contracting Party in which such applicant has his domicile or residence.

2. If an applicant has no domicile or residence in the territory of either Contracting Party, diplomatic or consular mission of his country may issue such certificate.

3. The judicial authority which shall decide upon the application for exemption from judicial charges and costs, shall proceed on the method provided in Article 2 of the present Agreement and may ask for additional information from the authority issued such certificate.

Article 18

If the court of either Contracting Party sets a time limit for the completion of a specific proceeding for a person having residence or domicile in the territory of the other Contracting Party, such limitation shall start from the date of service of documents to the addressee.

SECTION 4
**RECOGNITION AND ENFORCEMENT OF DECISIONS IN CIVIL
AND COMMERCIAL MATTERS**

Article 19

1. Either Contracting Party shall recognize and enforce the following decisions rendered in the territory of the other Contracting Party in accordance with the provisions of the present Agreement:

- a) Decisions concerning civil or commercial matters;
- b) Criminal judgments with respect to compensation;
- c) Arbitral awards rendered in civil or commercial matters;

2. Decisions referred to in subparagraph (a) of paragraph 1 above will only be taken in the consideration if legal relationship in regard with those decisions acquired after entry into force of the present Agreement.

3. Decisions concerning personal status shall be recognized even if those decisions rendered before entry into force of this Agreement.

Article 20

Decisions mentioned in Article 19 of the present Agreement shall be entitled to recognition and enforcement in the other Contracting Party, if:

a) A decision rendered in either Contracting Party is final and enforceable in its territory,

b) The court rendered the decision has been considered to have jurisdiction on the matter by the law of the Contracting Party of which enforcement or recognition is sought.

c) The defeated litigant (party of the case) has been duly served of summons according to the law of the Contracting Party in which the decision rendered.

d) The parties of the proceedings have not been deprived of the right to defend and, have been duly served of notice to appear before court and given opportunity to be represented where they have been unable to lodge claim and defend.

e) There is not a finalized court decision rendered within the same procedure and for the same parties in the territory of the Contracting Party of which recognition or enforcement is sought.

f) There is not a proceeding pending based on the same facts and having the same purpose and with regard to the same parties before the judicial authority of such Contracting Party of which recognition or enforcement is sought.

g) Where it is necessary to apply, in issuing the decision, the law of the Contracting Party of which recognition or enforcement is sought, such decision may be recognized or enforced if:

- i) Such law has been applied rightfully.
- ii) The law of the Contracting Party of which recognition or enforcement is sought, is not, in principle different from the other Party.

h) Such a decision is compatible with the basic principles of the law and public order of the Contracting Party of which recognition or enforcement is sought.

Article 21

Arbitral awards issued in the territory of either Contracting Party, being a member of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) shall be recognized and enforced in accordance with the provisions of the said Convention.

Article 22

1. Application for recognition or enforcement shall be directly submitted to the competent judicial authority of the Contracting Party of which recognition or enforcement is sought.

2. Application shall be accompanied by the following documents:

a) A truly certified copy of the judgment, accompanied by a certificate on its finality, unless its finality and enforceability can be understood from the judgment itself.

b) A certificate proving that the defeated litigant, who failed to appear before court, is duly served of summons and that where he has been unable to defend himself he has been properly represented.

c) The documents mentioned in the above paragraphs (a) and (b) of this Article, shall be enclosed with the certified translations in the language of the Contracting Party of which recognition or enforcement is sought.

Article 23

1. The procedure for the recognition or enforcement of the judgments shall be governed by the law of the Contracting Party of which recognition and enforcement is sought.

2. In the implementation of the present Agreement, the authority of which recognition and enforcement is sought, shall be bound by the merits of the case and shall only examine whether or not the conditions provided in the present Agreement is fulfilled.

Article 24

The provisions of the present Agreement relating to recognition and enforcement of judgments shall not affect the domestic rules of the

Contracting Parties in regard with the transfer of money and property, obtained as a result of judicial execution procedures, to a foreign country.

CHAPTER III
SECTION 1
MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Article 25

1. The Contracting Parties shall undertake to afford each other mutual assistance in criminal matters.

2. Mutual assistance in criminal matters includes especially;

- a) Effecting service of judicial documents;
- b) Search, seizure and delivery of documents and property consisting evidence,
- c) Search, seizure and confiscation of the proceeds from crime,
- d) Expert examination,
- e) Interrogation of accused and suspect,
- f) Hearing of witnesses and experts,
- g) Object and site examination.

Article 26

1. A request for assistance in criminal matters shall include the following:

- a) The names of the requesting and requested authorities,
- b) The subject of the investigation or the case,
- c) The names of the suspects, accused or sentenced persons, their domicile or residence, nationality and profession and where possible, places and dates of birth and names of fathers and mothers,
- d) Names and addresses of their legal representatives,
- e) The object of and the reason for the request,
- f) The texts of the relevant laws,
- g) Other necessary information for the execution of the request with the description of the facts and the nature of the offense.

2. Requests and accompanying documents shall contain the signature and official seal of the requesting authority.

Article 27

1. The requested authority shall execute the request for judicial assistance in accordance with the provisions of its own law. However, the requested authority may apply the procedural law of the Requesting Party unless this is incompatible with its own law.



2. If the requested authority is not competent for the execution of the request, it shall transmit the request to its competent authority and shall inform the requesting authority thereof.

3. On the request of the Requesting Party, the Requested Party shall inform the date and place of execution of the request. The competent authority of the Requested Party may grant permission for the presence of the interested officers and persons of the Requesting Party during execution of the request.

4. The Requested Party, following the execution of the request, shall return the documents establishing the execution of the request to the Requesting Party or shall inform the latter why the request is not executed, with the reasons thereof.

Article 28

1. If the judicial authority of the Requesting Party considers the personal appearance of a witness or expert before it, that judicial authority shall so mention in its request for service of summons.

2. A request stated in the first paragraph shall not contain any fine or other sanction for not complying with the summons.

3. The allowances, travel and subsistence expenses of the witnesses and experts shall be borne by the Requesting Party.

4. A witness or expert, whatever his nationality, who voluntarily appears before a judicial authority in the Requesting Party, shall not be prosecuted, detained, convicted or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts committed before his departure from the territory of the Requested Party. Such persons shall benefit by the said criminal immunity also in respect of acts connected with the procedure constituting the subject matter of the investigation or proceeding.

5. If a witness or expert, after receiving a notification indicating that his presence is no longer required shall not leave the territory of the Requesting Party within 15 consecutive days following the said notification, the immunity provided in paragraph (4) of the present Article shall cease.

The period that a witness or expert has not been able to leave the territory of the Requesting Party for reasons beyond his/her control, shall be exempted from the period provided in this paragraph.

Article 29

1. The Requested Party shall effect service of documents accompanied by the translations prepared in the language of that Party and authenticated officially, in the manner provided for by its own law. Otherwise, the Requested Party may effect service of documents with the consent of the recipient.

2. The true address of the recipient and the nature of the document shall be indicated in a request for service of documents.

3. If the documents can not be served to the address indicated in the request, the Requested Party shall take necessary measures to determine the true address of the recipient. If it is not possible to do so, the Requested Party shall notify the Requesting Party thereof and return the documents to the Latter Party.

Article 30

The document for proof of service shall be prepared in a manner provided by the law of the Requested Party. The said document shall include the name of the recipient, the delivering authority, the date and the place of service.

Article 31

1. Subject to the provisions of paragraph 3 of Article 28, the Requested Party shall bear the costs of judicial requests incurred in its territory and shall not be entitled to reimbursement.

2. In case the costs of provision of the judicial assistance proves to be heavy or extra-ordinary, the Contracting Parties shall in advance agree on the terms thereto and the way of payment.

Article 32

1. Requests for the judicial assistance may be refused if:

a) The Requested Party is of the opinion that the request would prejudice its sovereignty, security and public order,

b) The execution of the request is regarded by the Requested Party as being incompatible with its Constitution or domestic law.

2. If a request for judicial assistance is refused in accordance with the provisions of the previous paragraph of the present Article, reasons thereof shall be given.

Article 33

1. Other than those provided for in Article 68, requests for mutual assistance and supporting documents shall be accompanied by translations into the language of Requested Party.

2. The certification of the translation may be effected by the Requesting Party through the sworn translator, notary or diplomatic representative or consular official of the Contracting Parties

3. Documents obtained through the execution of a request shall be in the language of the Requested Party.

SECTION 2 EXTRADITION

Article 34

1. The Contracting Parties shall agree to extradite persons found in their territory to the other in accordance with the provisions of present Agreement, for the prosecution, trial or enforcement of a sentence.

2. Extradition for prosecution or trial shall be granted only for offenses punishable by a term of imprisonment of more than 12 months or by a more severe penalty, under the laws of both Contracting Parties.

3. Extradition for enforcement of a sentence shall be granted only for offenses punishable by imprisonment and in case the person has been punished by imprisonment more than 6 months or by a more severe penalty under the laws of both Contracting Parties.

4. If the request for extradition comprises several separate offenses each of which is punishable by imprisonment under the laws of both Contracting Parties but of which some do not fulfill the conditions provided in paragraphs 2 and 3 of the present Article, the Requested Party shall also have the right to grant extradition for the latter offenses.

Article 35

1. Extradition shall not be granted if:

a) The person sought is a national of the Requested Party;

b) The offence for which the extradition has been requested is regarded by the Requested Party as an offence of a political or military nature.

c) The request is regarded not acceptable by the Requested Party due to its domestic law or if the punishment can no longer be enforced because of the lapse of time or another reason provided in its law;

d) The person sought is the subject of a finalized court decision or a non prosecution decision for the same offense for which extradition is sought in the Requested Party;

e) The offense has been committed in the territory of the Requested Party, or it has been committed outside of the territory of the said Party, with the proceedings taking place within the jurisdiction of the Requested Party.

2. Where the Requested Party does not extradite the person sought due to its own nationality, it shall, at the request of the Requesting Party, initiate criminal proceedings against him/her. The files, information and other evidence shall be submitted by the Requesting Party to the Requested Party. The Requesting Party shall be informed of the results of the said proceedings.

Article 36

1. A request for extradition relating to a person being prosecuted or tried for an offense in the Requesting Party shall be accompanied by a certified true copy of the arrest warrant, a statement defining commission of the offense and the texts of the applicable legal provisions to the offense. In case of a material damage occurred as a result of the offense, the cost of that damage shall, as accurate as possible, be mentioned.

2. A request relating to a person sought for the enforcement of a sentence shall be accompanied by certified true copy of the finalized judgment and full text of the applied provisions of the law describing the offense. If a sentence has already been partially served in the Requesting Party, it shall be specified.

3. Information shall contain the nationality, and as accurate as possible, the description, identity, location, personal status and, enclosed with photograph and finger-prints of the person sought.

If the Requested Party considers that the information provided is not sufficient, it may request that additional information is furnished within such reasonable time as it specifies.

4. Requesting Party is not obliged to transmit the documents of evidence relating to the offense attributed to the person sought. However, in some specific cases the Requested Party may ask some evidence.

Article 37

If a request of extradition does not include all of the necessary information, the Requested Party may ask for its completion. Such information shall be submitted to the Requested Party within 30 days. In the presence of valid reasons, this period may be prolonged for 15 days. For this purpose, the Requested Party may fix a time limit not exceeding two months.

Article 38

Upon receipt of a request for extradition, the Requested Party shall, without delay, take all necessary measures including provisional arrest of the person sought. This provision shall not apply to the cases where there is no obligation to grant extradition according to the provisions of the present Agreement.

Article 39

In case of urgency, the competent authorities of the Requesting Party may request the provisional arrest of the person sought. The competent authorities of the Requested Party shall decide the matter in accordance with its law.



The request for provisional arrest shall state that one of the documents mentioned in paragraphs 1 or 2 of the Article 36 exists and that it is intended to send a request for extradition. It shall also state offences for which extradition will be requested and when and where such offense was committed and shall so far as possible give a full description of the person sought.

A request for provisional arrest shall be sent to the competent authority of the Requested Party either through the diplomatic channel or directly by post, telegraph or fax or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing accepted by the Requested Party.

The requesting authority shall be informed of the result of its request without delay.

Provisional arrest may be terminated if, within a period of 30 days after arrest, the Requested Party has not received the request for extradition and the documents mentioned in Article 36. It shall not, in any event, exceed 45 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the Requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 40

1. The Requested Party may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person or to enforce a sentence imposed for an offense other than that for which extradition is sought.

2. The Requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the Requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

Article 41

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 42

1. A person extradited in accordance with provisions of this Agreement shall, without the consent of the Requested Party, neither be prosecuted, tried or subjected to enforcement of a sentence for an offense committed prior to his

surrender and other than that for which extradition is granted, nor be re-extradited to a third State in respect of an offense committed prior to his surrender.

2. The consent of the Requested Party is not required in the following cases:

a) If the person extradited has not left the territory of the Requesting Party within 15 consecutive days after the completion of proceedings or enforcement of sentence if rendered so.

This period excludes the time which the released person could not voluntarily leave the territory of the Requesting Party.

b) After leaving, if the extradited person has returned again to the territory of the Requesting Party.

Article 43

1. The Requested Party shall communicate to the Requesting Party the decision on the request for extradition.

2. In case of any complete or partial refusal of the request for extradition, reasons shall be communicated to the Requesting Party.

3. If the request for extradition is granted, the Requested Party shall inform the Requesting Party of the time and place of surrender. If the Requesting Party has not taken over the person sought within 15 days following the date determined, he or she shall be released.

4. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender.

Article 44

If the extradited person flees and returns to the territory of the Requested Party, it is not necessary to communicate the documents provided in Article 36 of the present Agreement for a new request for extradition.

Article 45

1. Each Contracting Party shall, at the request of the other Party, grant transit through its territory for a person surrendered to the latter by a third State. The Contracting Parties are not obliged to grant transit for offenses assumed non extraditable according to provisions of the present Agreement.

2. The competent authorities of the Contracting Parties shall agree on the form, route and other conditions of the transit in each case.

Article 46

The Requesting Party shall inform the Requested Party of the results of the criminal proceedings initiated against the extradited person following his

surrender. In addition to this obligation, upon the request of the Requested Party, the Requesting Party shall transmit a copy of the final decision to the Former.

Article 47

The procedure of extradition and provisional arrest shall be solely governed by the law of the Requested Party.

Article 48

Documents for a request of extradition shall be accompanied by authenticated certified translations into the language of the Requested Party.

Article 49

1. Any property in connection with commission of the offense or which might constitute evidence for criminal proceedings shall be delivered to the Requesting Party even if extradition can not be carried out owing to the absence of the person sought or because of other reasons.

2. The Requested Party may temporarily postpone delivery of the property if it considers that the property would be necessary for another criminal proceeding.

3. The rights of third persons in the said property are reserved. Such property shall be returned to the Requested Party to be delivered to the related persons.

Article 50

Costs incurred in regard with extradition and delivery of property shall be borne by the Requesting Party except costs incurred exclusively in the territory of the Requested Party.

SECTION 3

TRANSFER OF SENTENCED PERSONS

Article 51

For the purposes of this Section of Agreement:

1. "Sentencing State" shall mean the state that the courts in its territory have imposed a sentence of imprisonment or other freedom-depriving punishment on the person who may be, or has been, transferred.

2. "Administering State" shall mean the state that executes in its territory the judgment of the imprisonment or freedom-depriving punishment issued against a person of its nationality.

3. "Sentenced Person" shall mean a person who has been sentenced by the judgment of the courts of one of the Contracting Parties to imprisonment or deprivation of liberty for commitment of a crime.

4. "Relatives of the Sentenced Person" shall mean as defined in the law of the state of which the sentenced Person is a national.

5. "Competent Authorities of the Contracting Parties" are bodies that according to their respective laws are involved in any way in transfer of the sentenced Person.

Article 52

A national of each Contracting Party sentenced by deprivation of liberty in the territory of the other Party shall, upon the request of either Contracting Party, the approval of the other Contracting Party and according to the provisions stipulated in the present Agreement, be transferred to his/her respective State for enforcement of the sentence.

Article 53

The sentenced person, his/her legal representative or one of his/her relatives may apply to the competent authorities of one of the Contracting Parties in order to initiate the procedure stipulated in Article 52. The competent authorities of the Sentencing State shall inform the sentenced person of the possibility of such an application.

Article 54

The transfer of a sentenced person shall only be effected if the act subject of his/her conviction in the Sentencing State is also regarded as an offense according to the law of the Administering State.

Article 55

1. The transfer of sentenced persons shall only be effected by their consent.

2. If the sentenced person is not in a positive mental position to express his/her valid consent, the consent of his/her legal representative shall be taken.

3. The Sentencing State shall ensure that the consent referred to in the paragraph 1 of this Article has been declared freely, voluntarily and with full knowledge of consequence thereof.

4. The Administering State is entitled to ensure, through its consul or other official agreed upon with the Sentencing State, of the consent of the sentenced person to his/her transfer and the condition of this consent which has been declared by the Sentencing State.

Article 56

1. The Administering State shall, at the earliest convenience inform the Sentencing State of whether it has agreed to the transfer.

2. The Sentencing State shall inform the sentenced person in writing of actions done by itself or the Administering State under this Agreement as well as the decisions made by either of the two States concerning the request for transfer.

3. The Administering State shall provide following information to the Sentencing State concerning the enforcement of the sentences:

a) If the sentenced person has escaped from custody before completion of the enforcement of the sentence in the territory of the Administering State.

b) If the Sentencing State requests a special report on the status of the sentenced person.

Article 57

1. If the Contracting Parties agree upon the transfer, the competent authorities of the Administering State shall be bound by the nature and duration of the sentence determined by the judgment concerning the transfer.

2. If the sentence is, by its nature or duration, incompatible with the law of the Administering State or the law of that State requires so, the competent authority of the Administering State shall convert the sentence to a sanction provided for the same kind of offenses in its law. Such sanction shall, as far as possible, correspond by its nature with that imposed in the judgment of the Sentencing State. The sanction determined in the Administering State, must not be heavier by its nature and duration than that imposed by the Sentencing State and must not exceed the maximum limit prescribed by the law of Administering State for the same kind of offenses.

3. The competent authority of the Administering State shall be bound by the findings in the Sentencing State as to the facts and can not substitute any other sanction apart from the restriction of liberty.

Article 58

When the Contracting Parties agree upon a request for transfer, their competent authorities shall determine the place, date and conditions of transfer in the earliest convenience. The transfer of the sentenced person shall take effect in the territory of the Sentencing State.

Article 59

1. The enforcement of the sentence, including the conditional release, shall be governed by the law of the Administering State.

2. A transferred sentenced person shall benefit from amnesty granted in both States.

3. A transferred sentenced person may be granted pardon only in the Administering State.

4. Following the transfer and upon any application, only the Sentencing State has the right to review the judgment.

Article 60

1. The Contracting Parties shall mutually inform each other of all changes that might affect the enforcement of the sentence, in particular amnesty, pardon or any application for review of judgment.

2. The Administering State shall inform the Sentencing State upon the completion of the enforcement of the sentence.

Article 61

1. The request for transfer shall be made in writing.

2. The request shall be supported by the following documents:

a) A certified copy of the judgment furnished by information that it is a final decision.

b) Texts of the relevant laws on which the judgement is based.

c) The documents including detailed information regarding the identity, nationality, domicile and residence of the sentenced person.

d) The document specifying the amount of the sentence already served in the Sentencing State.

e) A declaration containing the consent of the sentenced person for transfer.

f) The request for transfer made by the sentenced person, his/her legal representative or his/her relatives.

g) Other documents which might be significant for examination of the request, such as medical certificate on physical and mental status of the sentenced person.

Article 62

If the Administering State considers that information and documents submitted to it are insufficient, it shall ask for additional information and may set a time-limit that can be prolonged upon a valid request, for the receipt of such information. If the additional information is not transmitted, the Administering

State shall decide upon the request by means of the information and documents supplied previously.

Article 63

Requests for transfer and supporting documents require no formal authentication and shall be accompanied by translations in the language of Administering State.

Article 64

Any costs incurred because of a transfer shall be borne by the Administering State, except costs incurred exclusively in the territory of the Sentencing State.

SECTION 4 ANCILLARY PROVISIONS RELATING THE CRIMINAL MATTERS

Article 65

The Contracting Parties undertake to initiate criminal proceedings in accordance with their own laws, against their nationals having committed an offense in the territory of the other Party upon the request.

Article 66

1. The Contracting Parties shall transmit to each other the following information to initiate criminal proceedings mentioned in Article 65:

- a) The name of the requesting authority;
- b) Documents in regard with the offense constituting subject to the request, including the time and place of the offense;
- c) Identity, nationality and as far as possible, information on the domicile or residence of the suspect;

2. Request shall be supported by the following documents:

- a) The minutes of the preparatory investigation or certified copies thereof prepared in the language of the Requesting Party.
- b) All of the documents and property which might constitute evidence for criminal proceeding; Article 49 of the present Agreement shall apply in this respect.
- c) The texts of the applicable provisions of law provided in the current legislation where the offense has been committed.

d) The photograph and finger-prints of the suspect, where necessary and when possible.

3. The Requested Party shall notify the other Party of the result of the proceedings and shall forward a copy of the final decision.

Article 67

1. If the appearance of the person held in custody in the territory of one of the Contracting Parties is needed by the Requesting Party as a witness, the Requested Party may consent for temporarily transfer of that person to the territory of the Requesting Party on the condition that he shall be kept in custody and be sent back at the earliest convenience.

2. If the appearance of a person held in custody in the territory of a third State is needed as a witness, the Contracting Parties shall grant permission for transit through their territory.

3. In cases mentioned in paragraphs 1 and 2 above, provisions of Article 28 shall, as far as possible, apply.

Article 68

1. The Contracting Parties shall, upon a request, transmit information to each other concerning the judgments rendered and finalized in respect of the nationals of the other Party at least once a year.

2. Upon a request, the Contracting Parties shall transmit information to each other in regard with judicial records of the persons who had been previously subjected to a sentence in the territory of the Requesting Party.

3. In the cases mentioned in the paragraphs 1 and 2 above, the Contracting Parties shall, as far as possible, send to each other finger- prints of the sentenced persons.

Article 69

The provisions of the present Agreement shall also be applicable for requests relating to the cases occurred before its entry into force.

CHAPTER IV FINAL PROVISIONS

Article 70

Any difficulties which may arise in connection with the application or interpretation of this Agreement shall be settled through diplomatic channel.

Article 71

The present Agreement shall be ratified and the instruments of ratification thereof shall be exchanged.

The present Agreement shall come into force 30 days after the exchange of the instruments of ratification.

On the date of entry into force of the present Agreement, 'The Convention on Extradition and on Legal Assistance in Criminal Matters' and 'The Convention on Assistance in Legal and Commercial Matters' between two countries signed in Tehran on 14 March 1937, corresponding to 23/12/1315 Hijri Shamsi, shall terminate.

Article 72

This Agreement shall remain in force for an indefinite period. However, each Contracting Party may denounce the Agreement at any time by giving a notice to the other Contracting Party.

Denunciation shall take effect six months after the date when the other Party has received such notification.

In Witness thereof, the respective Plenipotentiaries of the Contracting Parties have signed this Agreement.

Done at Ankara on 3 February 2010, (corresponding to 14 Bahman 1388 Hijri Shamsi) in duplicate, in Turkish, Persian and English languages, all three texts having the same force. In case of difference in interpretation, the English text shall prevail.

For
THE REPUBLIC OF TURKEY

Sadullah ERGİN
Minister of Justice



For
THE ISLAMIC REPUBLIC OF IRAN

Manouchehr MOTTAKI
Minister of Foreign Affairs



**Agreement
On
Legal Cooperation
In
Civil and Criminal Matters
Between
The Republic of Turkey
And
The Islamic Republic of Iran**

The Republic of Turkey and the Islamic Republic of Iran,
hereinafter referred to as the Contracting Parties,

Desirous of further promoting friendly relations and arranging mutual assistance in civil, commercial and criminal matters, extradition and transfer of sentenced persons on the basis of the principals for national sovereignty, equality of rights and non-interference in the internal affairs of the Contracting Parties,

Have decided to conclude this agreement and for this purpose they agreed on the following:

**CHAPTER I
GENERAL PROVISIONS**

Article 1

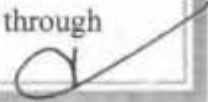
1. Nationals of the Contracting Parties shall, observing the domestic law, enjoy equal rights in the territory of the other Party as the nationals of the latter Party, for judicial and legal protection with respect to themselves, their property and interests.

2. Nationals of the Contracting Parties shall, in the territory of the other Party, be entitled to free access to courts and other competent authorities to lodge claims and to protect their rights and interests in respect of civil, commercial and criminal matters, in the same terms and conditions as nationals of the Latter Party.

3. Legal persons, whose headquarters is located in the territory of one of the Contracting Parties and have been set up in accordance with the Law of that Party, shall be entitled to enjoy the provisions of the present Agreement as much as they are applicable.

Article 2

The authorities of the Contracting Parties shall communicate through diplomatic channel for the implementation of the present Agreement.



Article 3

The Ministries of Justice of the Contracting Parties shall, upon a request, mutually give information to each other on their law and practices in that country in regard with legal problems that constitute subject to the present Agreement.

CHAPTER II SECTION 1 JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS

Article 4

1. The competent authorities of the Contracting Parties shall undertake to afford each other mutual judicial assistance in civil and commercial matters.

2. Mutual assistance includes especially enforcement of procedural decisions such as transmitting documents, hearing of parties, witnesses and experts and site examination.

Article 5

1. A request for judicial assistance shall cover:

- a) The names of the requesting and requested authorities,
- b) The objective of the requested assistance;
- c) The nature of the case and the description of its facts;
- d) The names, permanent and temporary addresses (domicile or residence), nationalities and professions of the parties;
- e) The names and addresses of the representatives of the parties;
- f) The texts of the relevant rules and information necessary for the subject matter and execution of the request.

2. A request for judicial assistance and its supporting documents shall be signed and officially sealed by the requesting authority.

Article 6

1. The requested authority shall apply the provisions of its own as for the execution of the request. However, it may upon the request of the requesting authority, follow the procedure of the latter unless this is incompatible with the law of the Requested Party.

2. If the authority to which the request has been sent is not competent to enforce it, such authority shall forward the request to the competent authority in the Requested Party and inform the Requesting Party thereof.

3. The requested authority shall send the documents establishing the execution of the request to the requesting authority or shall inform the latter where the request is not executed, with the reasons thereof.

Article 7

1. A request for service of documents shall be effected by the requested authority in compliance with the provisions of its law regulating such procedure, if such documents have been prepared in the language of Requesting Party and accompanied by translations certified as correct, otherwise, the requested authority shall effect the service of documents only if the addressee consents to receive it.

2. A request for service of documents shall state the full address of the addressee and the documents to be served.

3. If the document can not be served to the address stated in the request for service, the requested authority shall take necessary measures for establishment of the true address. If it has been impossible to establish the true address, the Requested Party shall inform the Requesting Party, and shall forward the document to the Latter.

Article 8

The receipt shall be prepared in accordance with the law of the Requested Party. The receipt shall contain the name of the recipient, the delivering authority, the date and place of such service.

Article 9

1. The Requested Party shall bear all of the costs incurred in its territory for the execution of judicial request and shall not claim the reimbursement thereof.

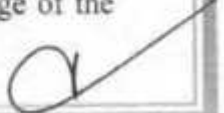
2. In case the costs of provision of the judicial assistance proves to be heavy or extra-ordinary, the Contracting Parties shall in advance agree on the terms thereto and the way of payment.

Article 10

A request for judicial assistance may be refused if it is deemed that granting such request would infringe sovereignty, security or public order of the Requested Party or it is in contrast with the Constitution of the Latter Party.

Article 11

1. Requests for judicial assistance and their supporting documents other than those provided for in paragraph 1 of Article 7 and, Article 13 of the present Agreement, shall be accompanied by certified translations in the language of the Requested Party.



2. Certification of translations may be effected by the Requesting Party, sworn translator, notary or diplomatic representative or counselor official of the Contracting Parties.

3. Documents obtained through execution of requests for judicial assistance shall be prepared in the language of the Requested Party.

Article 12

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the Requesting Party, shall not be prosecuted or detained or subjected to any punishment due to a judgment rendered previously in the territory of that Party in respect of any offense occurring before his arrival to that State.

A witness or expert, when informed by the authority invited him that his presence is no longer required, shall not leave the territory of the Requesting Party within 15 consecutive days following that notification, such immunity shall cease. The period that prevents a witness or expert leaving the territory of the Requesting Party freely for reasons out of his control shall be exempted from the period provided in this paragraph.

Such persons shall not be prosecuted or detained due to witness's testimony or expertise.

2. The requesting authority shall inform the witness or expert summoned that travel expenses, subsistence allowances and expertise fees will be refunded within the conditions provided by its law. Upon request of such person, an advance for traveling and subsistence expenses shall be granted by the requesting authority.

SECTION 2 DOCUMENTS

Article 13

Upon a request of the courts or other competent authorities of the Contracting Parties, other Party shall forward the copies of personal status certificates, other documents relating to personal affairs and interests of the nationals of the Requesting Party, without translation and charge.

Article 14

1. Documents drawn up, issued or certified and officially sealed in the territory of either Contracting Party or their authenticated copies, shall not be subject to legalization in the territory of the other Contracting Party.

2. Documents issued by the official authorities of a Contracting Party shall have the same probative force in the territory of the other Party.

SECTION 3
EXEMPTION FROM PAYMENT OF SECURITY
(Judicatum Solvi) AND COSTS OF PROCEEDINGS

Article 15

Nationals of either Contracting Party shall not be required to give security (judicatum solvi) only for being a foreign citizen and, for not having domicile or residence in the territory of the other Party.

Article 16

1. Nationals of either Contracting Party shall be entitled to benefit exemption from judicial charges and costs, and be granted legal aid free of charge before the courts of the other Party on the same conditions and up to the extent as the Latter's nationals.

2. Such judicial assistance and legal aid shall apply to all proceedings of a case, including enforcement proceedings.

3. Nationals entitled to benefit from exemption from charges and costs in accordance with the law of either Contracting Party shall also enjoy such exemption in the territory of the other Contracting Party as for the proceedings of the same case.

Article 17

1. The certificate necessary to benefit from the provision of Article 16 and to prove personal, family and material status of the applicant, shall be issued by the competent authority of the Contracting Party in which such applicant has his domicile or residence.

2. If an applicant has no domicile or residence in the territory of either Contracting Party, diplomatic or consular mission of his country may issue such certificate.

3. The judicial authority which shall decide upon the application for exemption from judicial charges and costs, shall proceed on the method provided in Article 2 of the present Agreement and may ask for additional information from the authority issued such certificate.

Article 18

If the court of either Contracting Party sets a time limit for the completion of a specific proceeding for a person having residence or domicile in the territory of the other Contracting Party, such limitation shall start from the date of service of documents to the addressee.

SECTION 4
RECOGNITION AND ENFORCEMENT OF DECISIONS IN CIVIL
AND COMMERCIAL MATTERS

Article 19

1. Either Contracting Party shall recognize and enforce the following decisions rendered in the territory of the other Contracting Party in accordance with the provisions of the present Agreement:

- a) Decisions concerning civil or commercial matters;
- b) Criminal judgments with respect to compensation;
- c) Arbitral awards rendered in civil or commercial matters;

2. Decisions referred to in subparagraph (a) of paragraph 1 above will only be taken in the consideration if legal relationship in regard with those decisions acquired after entry into force of the present Agreement.

3. Decisions concerning personal status shall be recognized even if those decisions rendered before entry into force of this Agreement.

Article 20

Decisions mentioned in Article 19 of the present Agreement shall be entitled to recognition and enforcement in the other Contracting Party, if:

a) A decision rendered in either Contracting Party is final and enforceable in its territory,

b) The court rendered the decision has been considered to have jurisdiction on the matter by the law of the Contracting Party of which enforcement or recognition is sought.

c) The defeated litigant (party of the case) has been duly served of summons according to the law of the Contracting Party in which the decision rendered.

d) The parties of the proceedings have not been deprived of the right to defend and, have been duly served of notice to appear before court and given opportunity to be represented where they have been unable to lodge claim and defend.

e) There is not a finalized court decision rendered within the same procedure and for the same parties in the territory of the Contracting Party of which recognition or enforcement is sought.

f) There is not a proceeding pending based on the same facts and having the same purpose and with regard to the same parties before the judicial authority of such Contracting Party of which recognition or enforcement is sought.

g) Where it is necessary to apply, in issuing the decision, the law of the Contracting Party of which recognition or enforcement is sought, such decision may be recognized or enforced if:

- i) Such law has been applied rightfully.
- ii) The law of the Contracting Party of which recognition or enforcement is sought, is not, in principle different from the other Party.

h) Such a decision is compatible with the basic principles of the law and public order of the Contracting Party of which recognition or enforcement is sought.

Article 21

Arbitral awards issued in the territory of either Contracting Party, being a member of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) shall be recognized and enforced in accordance with the provisions of the said Convention.

Article 22

1. Application for recognition or enforcement shall be directly submitted to the competent judicial authority of the Contracting Party of which recognition or enforcement is sought.

2. Application shall be accompanied by the following documents:

a) A truly certified copy of the judgment, accompanied by a certificate on its finality, unless its finality and enforceability can be understood from the judgment itself.

b) A certificate proving that the defeated litigant, who failed to appear before court, is duly served of summons and that where he has been unable to defend himself he has been properly represented.

c) The documents mentioned in the above paragraphs (a) and (b) of this Article, shall be enclosed with the certified translations in the language of the Contracting Party of which recognition or enforcement is sought.

Article 23

1. The procedure for the recognition or enforcement of the judgments shall be governed by the law of the Contracting Party of which recognition and enforcement is sought.

2. In the implementation of the present Agreement, the authority of which recognition and enforcement is sought, shall be bound by the merits of the case and shall only examine whether or not the conditions provided in the present Agreement is fulfilled.

Article 24

The provisions of the present Agreement relating to recognition and enforcement of judgments shall not affect the domestic rules of the

Contracting Parties in regard with the transfer of money and property, obtained as a result of judicial execution procedures, to a foreign country.

CHAPTER III
SECTION 1
MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Article 25

1. The Contracting Parties shall undertake to afford each other mutual assistance in criminal matters.

2. Mutual assistance in criminal matters includes especially;

- a) Effecting service of judicial documents;
- b) Search, seizure and delivery of documents and property consisting evidence,
- c) Search, seizure and confiscation of the proceeds from crime,
- d) Expert examination,
- e) Interrogation of accused and suspect,
- f) Hearing of witnesses and experts,
- g) Object and site examination.

Article 26

1. A request for assistance in criminal matters shall include the following:

- a) The names of the requesting and requested authorities,
- b) The subject of the investigation or the case,
- c) The names of the suspects, accused or sentenced persons, their domicile or residence, nationality and profession and where possible, places and dates of birth and names of fathers and mothers,
- d) Names and addresses of their legal representatives,
- e) The object of and the reason for the request,
- f) The texts of the relevant laws,
- g) Other necessary information for the execution of the request with the description of the facts and the nature of the offense.

2. Requests and accompanying documents shall contain the signature and official seal of the requesting authority.

Article 27

1. The requested authority shall execute the request for judicial assistance in accordance with the provisions of its own law. However, the requested authority may apply the procedural law of the Requesting Party unless this is incompatible with its own law.

2. If the requested authority is not competent for the execution of the request, it shall transmit the request to its competent authority and shall inform the requesting authority thereof.

3. On the request of the Requesting Party, the Requested Party shall inform the date and place of execution of the request. The competent authority of the Requested Party may grant permission for the presence of the interested officers and persons of the Requesting Party during execution of the request.

4. The Requested Party, following the execution of the request, shall return the documents establishing the execution of the request to the Requesting Party or shall inform the latter why the request is not executed, with the reasons thereof.

Article 28

1. If the judicial authority of the Requesting Party considers the personal appearance of a witness or expert before it, that judicial authority shall so mention in its request for service of summons.

2. A request stated in the first paragraph shall not contain any fine or other sanction for not complying with the summons.

3. The allowances, travel and subsistence expenses of the witnesses and experts shall be borne by the Requesting Party.

4. A witness or expert, whatever his nationality, who voluntarily appears before a judicial authority in the Requesting Party, shall not be prosecuted, detained, convicted or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts committed before his departure from the territory of the Requested Party. Such persons shall benefit by the said criminal immunity also in respect of acts connected with the procedure constituting the subject matter of the investigation or proceeding.

5. If a witness or expert, after receiving a notification indicating that his presence is no longer required shall not leave the territory of the Requesting Party within 15 consecutive days following the said notification, the immunity provided in paragraph (4) of the present Article shall cease.

The period that a witness or expert has not been able to leave the territory of the Requesting Party for reasons beyond his/her control, shall be exempted from the period provided in this paragraph.

Article 29

1. The Requested Party shall effect service of documents accompanied by the translations prepared in the language of that Party and authenticated officially, in the manner provided for by its own law. Otherwise, the Requested Party may effect service of documents with the consent of the recipient.

2. The true address of the recipient and the nature of the document shall be indicated in a request for service of documents.

3. If the documents can not be served to the address indicated in the request, the Requested Party shall take necessary measures to determine the true address of the recipient. If it is not possible to do so, the Requested Party shall notify the Requesting Party thereof and return the documents to the Latter Party.

Article 30

The document for proof of service shall be prepared in a manner provided by the law of the Requested Party. The said document shall include the name of the recipient, the delivering authority, the date and the place of service.

Article 31

1. Subject to the provisions of paragraph 3 of Article 28, the Requested Party shall bear the costs of judicial requests incurred in its territory and shall not be entitled to reimbursement.

2. In case the costs of provision of the judicial assistance proves to be heavy or extra-ordinary, the Contracting Parties shall in advance agree on the terms thereto and the way of payment.

Article 32

1. Requests for the judicial assistance may be refused if:

a) The Requested Party is of the opinion that the request would prejudice its sovereignty, security and public order,

b) The execution of the request is regarded by the Requested Party as being incompatible with its Constitution or domestic law.

2. If a request for judicial assistance is refused in accordance with the provisions of the previous paragraph of the present Article, reasons thereof shall be given.

Article 33

1. Other than those provided for in Article 68, requests for mutual assistance and supporting documents shall be accompanied by translations into the language of Requested Party.

2. The certification of the translation may be effected by the Requesting Party through the sworn translator, notary or diplomatic representative or consular official of the Contracting Parties

3. Documents obtained through the execution of a request shall be in the language of the Requested Party.

SECTION 2 EXTRADITION

Article 34

1. The Contracting Parties shall agree to extradite persons found in their territory to the other in accordance with the provisions of present Agreement, for the prosecution, trial or enforcement of a sentence.

2. Extradition for prosecution or trial shall be granted only for offenses punishable by a term of imprisonment of more than 12 months or by a more severe penalty, under the laws of both Contracting Parties.

3. Extradition for enforcement of a sentence shall be granted only for offenses punishable by imprisonment and in case the person has been punished by imprisonment more than 6 months or by a more severe penalty under the laws of both Contracting Parties.

4. If the request for extradition comprises several separate offenses each of which is punishable by imprisonment under the laws of both Contracting Parties but of which some do not fulfill the conditions provided in paragraphs 2 and 3 of the present Article, the Requested Party shall also have the right to grant extradition for the latter offenses.

Article 35

1. Extradition shall not be granted if:

a) The person sought is a national of the Requested Party;

b) The offence for which the extradition has been requested is regarded by the Requested Party as an offence of a political or military nature.

c) The request is regarded not acceptable by the Requested Party due to its domestic law or if the punishment can no longer be enforced because of the lapse of time or another reason provided in its law;

d) The person sought is the subject of a finalized court decision or a non prosecution decision for the same offense for which extradition is sought in the Requested Party;

e) The offense has been committed in the territory of the Requested Party, or it has been committed outside of the territory of the said Party, with the proceedings taking place within the jurisdiction of the Requested Party.

2. Where the Requested Party does not extradite the person sought due to its own nationality, it shall, at the request of the Requesting Party, initiate criminal proceedings against him/her. The files, information and other evidence shall be submitted by the Requesting Party to the Requested Party. The Requesting Party shall be informed of the results of the said proceedings.

Article 36

1. A request for extradition relating to a person being prosecuted or tried for an offense in the Requesting Party shall be accompanied by a certified true copy of the arrest warrant, a statement defining commission of the offense and the texts of the applicable legal provisions to the offense. In case of a material damage occurred as a result of the offense, the cost of that damage shall, as accurate as possible, be mentioned.

2. A request relating to a person sought for the enforcement of a sentence shall be accompanied by certified true copy of the finalized judgment and full text of the applied provisions of the law describing the offense. If a sentence has already been partially served in the Requesting Party, it shall be specified.

3. Information shall contain the nationality, and as accurate as possible, the description, identity, location, personal status and, enclosed with photograph and finger-prints of the person sought.

If the Requested Party considers that the information provided is not sufficient, it may request that additional information is furnished within such reasonable time as it specifies.

4. Requesting Party is not obliged to transmit the documents of evidence relating to the offense attributed to the person sought. However, in some specific cases the Requested Party may ask some evidence.

Article 37

If a request of extradition does not include all of the necessary information, the Requested Party may ask for its completion. Such information shall be submitted to the Requested Party within 30 days. In the presence of valid reasons, this period may be prolonged for 15 days. For this purpose, the Requested Party may fix a time limit not exceeding two months.

Article 38

Upon receipt of a request for extradition, the Requested Party shall, without delay, take all necessary measures including provisional arrest of the person sought. This provision shall not apply to the cases where there is no obligation to grant extradition according to the provisions of the present Agreement.

Article 39

In case of urgency, the competent authorities of the Requesting Party may request the provisional arrest of the person sought. The competent authorities of the Requested Party shall decide the matter in accordance with its law.



The request for provisional arrest shall state that one of the documents mentioned in paragraphs 1 or 2 of the Article 36 exists and that it is intended to send a request for extradition. It shall also state offences for which extradition will be requested and when and where such offense was committed and shall so far as possible give a full description of the person sought.

A request for provisional arrest shall be sent to the competent authority of the Requested Party either through the diplomatic channel or directly by post, telegraph or fax or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing accepted by the Requested Party.

The requesting authority shall be informed of the result of its request without delay.

Provisional arrest may be terminated if, within a period of 30 days after arrest, the Requested Party has not received the request for extradition and the documents mentioned in Article 36. It shall not, in any event, exceed 45 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the Requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 40

1. The Requested Party may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person or to enforce a sentence imposed for an offense other than that for which extradition is sought.

2. The Requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the Requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

Article 41

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 42

1. A person extradited in accordance with provisions of this Agreement shall, without the consent of the Requested Party, neither be prosecuted, tried or subjected to enforcement of a sentence for an offense committed prior to his

surrender and other than that for which extradition is granted, nor be re-extradited to a third State in respect of an offense committed prior to his surrender.

2. The consent of the Requested Party is not required in the following cases:

a) If the person extradited has not left the territory of the Requesting Party within 15 consecutive days after the completion of proceedings or enforcement of sentence if rendered so.

This period excludes the time which the released person could not voluntarily leave the territory of the Requesting Party.

b) After leaving, if the extradited person has returned again to the territory of the Requesting Party.

Article 43

1. The Requested Party shall communicate to the Requesting Party the decision on the request for extradition.

2. In case of any complete or partial refusal of the request for extradition, reasons shall be communicated to the Requesting Party.

3. If the request for extradition is granted, the Requested Party shall inform the Requesting Party of the time and place of surrender. If the Requesting Party has not taken over the person sought within 15 days following the date determined, he or she shall be released.

4. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender.

Article 44

If the extradited person flees and returns to the territory of the Requested Party, it is not necessary to communicate the documents provided in Article 36 of the present Agreement for a new request for extradition.

Article 45

1. Each Contracting Party shall, at the request of the other Party, grant transit through its territory for a person surrendered to the latter by a third State. The Contracting Parties are not obliged to grant transit for offenses assumed non extraditable according to provisions of the present Agreement.

2. The competent authorities of the Contracting Parties shall agree on the form, route and other conditions of the transit in each case.

Article 46

The Requesting Party shall inform the Requested Party of the results of the criminal proceedings initiated against the extradited person following his

surrender. In addition to this obligation, upon the request of the Requested Party, the Requesting Party shall transmit a copy of the final decision to the Former.

Article 47

The procedure of extradition and provisional arrest shall be solely governed by the law of the Requested Party.

Article 48

Documents for a request of extradition shall be accompanied by authenticated certified translations into the language of the Requested Party.

Article 49

1. Any property in connection with commission of the offense or which might constitute evidence for criminal proceedings shall be delivered to the Requesting Party even if extradition can not be carried out owing to the absence of the person sought or because of other reasons.

2. The Requested Party may temporarily postpone delivery of the property if it considers that the property would be necessary for another criminal proceeding.

3. The rights of third persons in the said property are reserved. Such property shall be returned to the Requested Party to be delivered to the related persons.

Article 50

Costs incurred in regard with extradition and delivery of property shall be borne by the Requesting Party except costs incurred exclusively in the territory of the Requested Party.

SECTION 3

TRANSFER OF SENTENCED PERSONS

Article 51

For the purposes of this Section of Agreement:

1. "Sentencing State" shall mean the state that the courts in its territory have imposed a sentence of imprisonment or other freedom-depriving punishment on the person who may be, or has been, transferred.

2. "Administering State" shall mean the state that executes in its territory the judgment of the imprisonment or freedom-depriving punishment issued against a person of its nationality.

3. "Sentenced Person" shall mean a person who has been sentenced by the judgment of the courts of one of the Contracting Parties to imprisonment or deprivation of liberty for commitment of a crime.

4. "Relatives of the Sentenced Person" shall mean as defined in the law of the state of which the sentenced Person is a national.

5. "Competent Authorities of the Contracting Parties" are bodies that according to their respective laws are involved in any way in transfer of the sentenced Person.

Article 52

A national of each Contracting Party sentenced by deprivation of liberty in the territory of the other Party shall, upon the request of either Contracting Party, the approval of the other Contracting Party and according to the provisions stipulated in the present Agreement, be transferred to his/her respective State for enforcement of the sentence.

Article 53

The sentenced person, his/her legal representative or one of his/her relatives may apply to the competent authorities of one of the Contracting Parties in order to initiate the procedure stipulated in Article 52. The competent authorities of the Sentencing State shall inform the sentenced person of the possibility of such an application.

Article 54

The transfer of a sentenced person shall only be effected if the act subject of his/her conviction in the Sentencing State is also regarded as an offense according to the law of the Administering State.

Article 55

1. The transfer of sentenced persons shall only be effected by their consent.

2. If the sentenced person is not in a positive mental position to express his/her valid consent, the consent of his/her legal representative shall be taken.

3. The Sentencing State shall ensure that the consent referred to in the paragraph 1 of this Article has been declared freely, voluntarily and with full knowledge of consequence thereof.

4. The Administering State is entitled to ensure, through its consul or other official agreed upon with the Sentencing State, of the consent of the sentenced person to his/her transfer and the condition of this consent which has been declared by the Sentencing State.

Article 56

1. The Administering State shall, at the earliest convenience inform the Sentencing State of whether it has agreed to the transfer.

2. The Sentencing State shall inform the sentenced person in writing of actions done by itself or the Administering State under this Agreement as well as the decisions made by either of the two States concerning the request for transfer.

3. The Administering State shall provide following information to the Sentencing State concerning the enforcement of the sentences:

a) If the sentenced person has escaped from custody before completion of the enforcement of the sentence in the territory of the Administering State.

b) If the Sentencing State requests a special report on the status of the sentenced person.

Article 57

1. If the Contracting Parties agree upon the transfer, the competent authorities of the Administering State shall be bound by the nature and duration of the sentence determined by the judgment concerning the transfer.

2. If the sentence is, by its nature or duration, incompatible with the law of the Administering State or the law of that State requires so, the competent authority of the Administering State shall convert the sentence to a sanction provided for the same kind of offenses in its law. Such sanction shall, as far as possible, correspond by its nature with that imposed in the judgment of the Sentencing State. The sanction determined in the Administering State, must not be heavier by its nature and duration than that imposed by the Sentencing State and must not exceed the maximum limit prescribed by the law of Administering State for the same kind of offenses.

3. The competent authority of the Administering State shall be bound by the findings in the Sentencing State as to the facts and can not substitute any other sanction apart from the restriction of liberty.

Article 58

When the Contracting Parties agree upon a request for transfer, their competent authorities shall determine the place, date and conditions of transfer in the earliest convenience. The transfer of the sentenced person shall take effect in the territory of the Sentencing State.

Article 59

1. The enforcement of the sentence, including the conditional release, shall be governed by the law of the Administering State.

2. A transferred sentenced person shall benefit from amnesty granted in both States.

3. A transferred sentenced person may be granted pardon only in the Administering State.

4. Following the transfer and upon any application, only the Sentencing State has the right to review the judgment.

Article 60

1. The Contracting Parties shall mutually inform each other of all changes that might affect the enforcement of the sentence, in particular amnesty, pardon or any application for review of judgment.

2. The Administering State shall inform the Sentencing State upon the completion of the enforcement of the sentence.

Article 61

1. The request for transfer shall be made in writing.

2. The request shall be supported by the following documents:

a) A certified copy of the judgment furnished by information that it is a final decision.

b) Texts of the relevant laws on which the judgement is based.

c) The documents including detailed information regarding the identity, nationality, domicile and residence of the sentenced person.

d) The document specifying the amount of the sentence already served in the Sentencing State.

e) A declaration containing the consent of the sentenced person for transfer.

f) The request for transfer made by the sentenced person, his/her legal representative or his/her relatives.

g) Other documents which might be significant for examination of the request, such as medical certificate on physical and mental status of the sentenced person.

Article 62

If the Administering State considers that information and documents submitted to it are insufficient, it shall ask for additional information and may set a time-limit that can be prolonged upon a valid request, for the receipt of such information. If the additional information is not transmitted, the Administering

State shall decide upon the request by means of the information and documents supplied previously.

Article 63

Requests for transfer and supporting documents require no formal authentication and shall be accompanied by translations in the language of Administering State.

Article 64

Any costs incurred because of a transfer shall be borne by the Administering State, except costs incurred exclusively in the territory of the Sentencing State.

SECTION 4 ANCILLARY PROVISIONS RELATING THE CRIMINAL MATTERS

Article 65

The Contracting Parties undertake to initiate criminal proceedings in accordance with their own laws, against their nationals having committed an offense in the territory of the other Party upon the request.

Article 66

1. The Contracting Parties shall transmit to each other the following information to initiate criminal proceedings mentioned in Article 65:

- a) The name of the requesting authority;
- b) Documents in regard with the offense constituting subject to the request, including the time and place of the offense;
- c) Identity, nationality and as far as possible, information on the domicile or residence of the suspect;

2. Request shall be supported by the following documents:

- a) The minutes of the preparatory investigation or certified copies thereof prepared in the language of the Requesting Party.
- b) All of the documents and property which might constitute evidence for criminal proceeding; Article 49 of the present Agreement shall apply in this respect.
- c) The texts of the applicable provisions of law provided in the current legislation where the offense has been committed.

d) The photograph and finger-prints of the suspect, where necessary and when possible.

3. The Requested Party shall notify the other Party of the result of the proceedings and shall forward a copy of the final decision.

Article 67

1. If the appearance of the person held in custody in the territory of one of the Contracting Parties is needed by the Requesting Party as a witness, the Requested Party may consent for temporarily transfer of that person to the territory of the Requesting Party on the condition that he shall be kept in custody and be sent back at the earliest convenience.

2. If the appearance of a person held in custody in the territory of a third State is needed as a witness, the Contracting Parties shall grant permission for transit through their territory.

3. In cases mentioned in paragraphs 1 and 2 above, provisions of Article 28 shall, as far as possible, apply.

Article 68

1. The Contracting Parties shall, upon a request, transmit information to each other concerning the judgments rendered and finalized in respect of the nationals of the other Party at least once a year.

2. Upon a request, the Contracting Parties shall transmit information to each other in regard with judicial records of the persons who had been previously subjected to a sentence in the territory of the Requesting Party.

3. In the cases mentioned in the paragraphs 1 and 2 above, the Contracting Parties shall, as far as possible, send to each other finger- prints of the sentenced persons.

Article 69

The provisions of the present Agreement shall also be applicable for requests relating to the cases occurred before its entry into force.

CHAPTER IV FINAL PROVISIONS

Article 70

Any difficulties which may arise in connection with the application or interpretation of this Agreement shall be settled through diplomatic channel.

Article 71

The present Agreement shall be ratified and the instruments of ratification thereof shall be exchanged.

The present Agreement shall come into force 30 days after the exchange of the instruments of ratification.

On the date of entry into force of the present Agreement, 'The Convention on Extradition and on Legal Assistance in Criminal Matters' and 'The Convention on Assistance in Legal and Commercial Matters' between two countries signed in Tehran on 14 March 1937, corresponding to 23/12/1315 Hijri Shamsi, shall terminate.

Article 72

This Agreement shall remain in force for an indefinite period. However, each Contracting Party may denounce the Agreement at any time by giving a notice to the other Contracting Party.

Denunciation shall take effect six months after the date when the other Party has received such notification.

In Witness thereof, the respective Plenipotentiaries of the Contracting Parties have signed this Agreement.

Done at Ankara on 3 February 2010, (corresponding to 14 Bahman 1388 Hijri Shamsi) in duplicate, in Turkish, Persian and English languages, all three texts having the same force. In case of difference in interpretation, the English text shall prevail.

For
THE REPUBLIC OF TURKEY

Sadullah ERGİN
Minister of Justice



For
THE ISLAMIC REPUBLIC OF IRAN

Manouchehr MOTTAKI
Minister of Foreign Affairs

