

Extradition Agreement between the Government of the Republic of India and the Government of the Republic of Turkey

UNION OF INDIA

India

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EXTRADITION-AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE- of 2004

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Extradition Agreement between the Government of the Republic of India and the Government of the Republic of Turkey Published vide Notification No. G.S.R. 174(E), dated 27th February, 2004 Ministry of External Affairs Order G.S.R. 174(E). - Whereas the Extradition Agreement between the Government of the Republic of India and the Government of the Republic of Turkey was signed at Ankara, Turkey on 29th June, 2001; and the instruments of ratification were also exchanged at Ankara, Turkey on 18th September, 2003 and which Agreement provides as follows :The Government of the Republic of India and the Government of the Republic of Turkey (hereinafter to be referred to as the "Contracting States"), Desiring to make more effective the co-operation between the two countries in the suppression of crime by concluding an agreement on extradition. Have agreed as follows :Article 1Duty to Extradite

1. Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Agreement, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Agreement.

2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.

3. When the offence has been committed outside the territory of the Requesting State, the Requested State shall grant extradition subject to the provisions described in this Agreement if either:

(a) the laws of the Requested State provide for the punishment of such an offence committed in similar circumstances; or (b) the offence has been committed by a national of the Requesting State, and that State has jurisdiction, according to laws, to try that person. Article 2 Extradition Offences

1. Extradition shall be granted in respect of offences punishable under the laws of the Requesting State and of the Requested State by deprivation of liberty for a period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred in the territory of the Requesting State, the punishment awarded must have been for a period of at least six months.

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the Requesting State and the Requested State by deprivation of liberty, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the Requested State shall also have the right to grant extradition for the latter offences.

Article 3 Extradition and Prosecution

1. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.

2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a

serious nature under the law of that State.

3. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Agreement.

Article 4 Grounds for Refusal of Extradition A person may not be extradited if:

1. he has been convicted of an extradition offence, unless he was sentenced to imprisonment or other form of detention for a period of six months or more;

2. he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction;

3. he has been previously convicted or acquitted in the territory of a third State in respect of the offence for which extradition is requested.

Article 5 Political Offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the Requested Party as a political offence.

2. For the purpose of this Agreement the following offences shall not be regarded as political offence:

(a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970; (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971; (c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 Dec 1973; (d) an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December 1979; (e) murder; (f) The taking or attempt to take the life of the Head of State or the Head of Government or a member of their families; (g) manslaughter or culpable homicide; (h) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise; (i) the causing of an explosion likely to endanger life or cause serious damage to property; (j) the making or possession of an explosive substance by a person who intends either himself or through another person to

endanger life or cause serious damage to property;(k)the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;(l)the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;(m)damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;(n)kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;(o)incitement to murder;(p)any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character;(q)an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

3. This Article shall not affect any obligations which the Contracting States may have undertaken or may undertake under any other international convention of a multilateral character.

Article 6 Military Offences Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Agreement. Article 7 Fiscal Offences Fiscal offences Extradition shall be granted in accordance with the provisions of this Agreement for offences of a fiscal character including taxes, duties, customs and foreign exchange. Article 8 Extradition of nationals

1. The nationals of a Contracting State shall not be extradited to the other Contracting State provided that the Requested State shall submit the case to its competent authorities for prosecution if the act committed is also considered as an offence under the laws of the Requested State.

2. If the Requested State does not extradite its national, it shall at the request of the Requesting State submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 14. The Requesting State shall be informed of the result of its request.

Article 9 Place of Commission When the offence for which extradition is requested has been committed outside the territory of the Requesting State, extradition may only be refused if the law of the Requested State does not allow prosecution for the same category of offence when committed outside the latter State's territory or does not allow extradition for the offence concerned, under the terms of this Agreement. Article 10 Pending Proceedings for the Same Offences The Requested State may refuse to extradite the person claimed if the competent authorities of that State are already proceeding against him in respect of the offence or offences for Which extradition is requested. Article 11 Non bis in idem Extradition shall not be granted if final judgement has been passed by the competent authorities of the requested State upon the person claimed in respect of the

offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the Requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences. Article 12 Lapse of time Extradition shall not be granted when the person claimed has, according to the law of Requesting State, become immune by reason of lapse of time from prosecution or Punishment. Article 13 Capital Punishment If the offence for which extradition is requested is punishable by death under the law of Requesting State, and if in respect of such offence the death-penalty is not provided for by the law of the Requested State or is not normally carried out, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death-penalty will not be carried out. Article 14 The Request and Supporting Documents

1. The request for extradition under this Agreement shall be made through the diplomatic channel. Other means of communication may also be used after mutual consultation between the two States.

2. The request shall be supported by :

(a) the original or an authenticated copy of the order of conviction and sentence or the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the Requesting State; (b) a statement of the offence(s) for which extradition is requested, the time and place of their commission, their legal description and a reference to the relevant legal provisions; (c) a copy of the relevant legal provisions applied to the offence(s); (d) as accurate a description as possible of the person claimed, together with any other available information such as his photograph, fingerprints, passport details, etc., which will help to establish his identity and nationality.

3. If the information communicated by the Requesting State is found to be insufficient to allow the Requested State to make a decision the Requested State may request for the necessary supplementary information, which shall be supplied by the Requesting State within one month. This time limit may by mutual consent, be extended for valid reasons.

Article 15 Evidence

1. The authorities of the Requested State shall admit as evidence, in any proceedings for extradition, any evidence taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of, a conviction, if it is authenticated:

(a) (i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting State; and (ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting

State; or(b)In such other manner as may be permitted by the law of the Requested State.

2. The evidence described in paragraph (1) shall be admissible in extradition proceedings in the Requested State whether sworn or affirmed in the Requesting State or in some third State.

Article 16Rule of Speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

(a)When the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 14 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Agreement;(b)when that person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.(c)any lesser extradition offence disclosed by the facts proved for the purposes of securing his extradition.

2. When the description of the offence charged is altered in the course of trial proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 17Re-extradition to a Third StateExcept as provided for in Article 16, paragraph 1 (b), the Requesting State shall not, without the consent of the Requested State, surrender to a third State a person surrendered to the Requesting State and sought by the said third State in respect of offences committed before his surrender. The Requested State may request the production of the documents mentioned in Article 14.Article 18Provisional arrest

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

2. The request for provisional arrest shall state that one of the documents mentioned in paragraph 2(a) Article 14, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.

3. A request for provisional arrest shall be sent to the competent authorities of the Requested State either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing or accepted by the Contracting States.

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

5. Provisional arrest may be terminated if, within a period of 60 days after arrest, the Requested State has not received the request for extradition and the documents mentioned in Article 14. It shall not, in any event, exceed 90 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested State shall take any measures which it considers necessary to prevent the escape of the person sought.

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

Article 19 Conflicting requests If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested State 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 20 Surrender

1. The Requested State shall inform the Requesting State by the means mentioned in Article 14, paragraph 1, of its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the request is agreed to, the Requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.

4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 30 days. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a State from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree to a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

Article 21 Postponed or conditional surrender

1. The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that State or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.

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

Article 22 Handing Over of property

1. The Requested State shall, in so far as its law permits and at the request of the Requesting State, seize and hand over property: (a) which may be required as evidence, or (b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2. The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.

3. When the said property is liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Any rights which the Requested State or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial.

Article 23 Transit

1. Transit through the territory of one of the Contracting States shall be granted on submission of a request by the means mentioned in Article 14, provided that the offence concerned is not considered by the State requested to grant transit as an offence of a political or purely military character having regard to provisions of this Agreement.

2. Transit of a national, within the meaning of Article 8, of a country requested to grant transit may be refused.

3. Subject to the provisions of paragraph 4 of this Article, it shall be necessary to produce the documents mentioned in Article 14.

4. If air transport is used, the following provisions shall apply:

(a) when it is not intended to land, the requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 14, exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 18, and the requesting State shall submit a formal request for transit; (b) when it is intended to land, the Requesting State shall submit a formal request for transit. Article 24 Applicable Laws The procedure with regard to extradition and provisional arrest shall be governed solely by the laws of the Requested State. Article 25 Mutual Legal Assistance in Extradition Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested. Article 26 Language While complying with the present Agreement, the Contracting States shall use their national language(s), attaching therewith authenticated translated version of the documents into English language. Article 27 Expenses

1. Expenses incurred in the territory of the Requested State by reason of extradition shall be borne by that State.

2. Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the Requesting State.

Article 28 International Obligations The present Agreement shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties. Article 29 Ratification and Entry into Force

1. This Agreement shall be subject to ratification and shall enter into force 30 days after the exchange of instruments of ratification.

2. Either of the Contracting States may terminate this Agreement at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Agreement shall cease to have effect six months after the receipt of the notice.

3. In witness whereof, the respective plenipotentiaries of the Contracting States have signed this Agreement and have affixed hereto their seals.

Done at Ankara on this 29th day of June 2001 in triplicate, in Hindi, Turkish and English languages, all three texts having the same force. In case of divergence in interpretation, the English text shall prevail. Now, therefore, in exercise of the powers conferred by Sub-Section (2) of Section 12 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter II, would apply to the Republic of Turkey with effect from the date of publication of this notification.