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## Extradition (Turkey) Regulations 2003

Statutory Rules 2003 No. *L*<sup>1</sup>

228

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Extradition Act 1988*.

Dated **27 AUG 2003** 2003

**P.M. Jeffery**  
Governor-General

By His Excellency's Command

**CHRISTOPHER MARTIN ELLISON**  
Minister for Justice and Customs

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**1 Name of Regulations**

These Regulations are the *Extradition (Turkey) Regulations 2003*.

**2 Commencement**

These Regulations commence on 16 November 2003.

**3 Declaration of Turkey as an extradition country**

Turkey is declared to be an extradition country.

**4 Application of Act**

The *Extradition Act 1988* applies to Turkey subject to the Treaty on Extradition between Australia and the Republic of Turkey (a copy of which is set out in Schedule 1), as corrected by, and interpreted in accordance with, the Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the Republic of Turkey (a copy of which is set out in Schedule 2).

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**Schedule 1      Treaty on Extradition between  
Australia and the Republic of  
Turkey**  
(regulation 4)

AUSTRALIA AND THE REPUBLIC OF TURKEY

Desiring to make more effective the co-operation between the two countries in the suppression of crime by concluding a treaty on extradition,

Have agreed as follows:

Article 1  
Obligation to extradite

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, all persons who are wanted for prosecution, trial, or the imposition or enforcement of a sentence, in the Requesting Party for an extraditable offence.

Article 2  
Extraditable offences

1. Extraditable offences are offences punishable only by imprisonment for a maximum period of at least one year or by a more severe deprivation of liberty under the laws of both the Contracting Parties.
2. Where a person is sought in order to enforce a sentence of imprisonment, extradition shall be granted only if the duration of the imprisonment still to be served amounts to at least six months.
3. For the purpose of extradition, it shall not matter whether the laws of the Contracting Parties place the offence within the same category of offences or describe an offence by the same terminology. The totality of

the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.

4. When a request for extradition comprises several separate offences and extradition has been granted for one of the offences, it may also be granted for other offences contained in the request which could not otherwise fulfil the requirements of paragraphs 1 and 2 above as for the duration of imprisonment.

5. For offences in connection with taxes, duties, customs, exchange or other revenue matters, extradition shall be granted in accordance with the provisions of this Treaty if the law of the Requested Party contains a similar offence. Extradition may not be refused on the ground that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting Party.

6. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide the Requested Party may, in its discretion, grant extradition.

### Article 3 Conditions of refusal

1. Extradition shall not be granted in any of the following circumstances:

- (a) if the offence for which extradition is sought is a political offence. However, the following shall not be considered as political offences:
  - (i) an attack on the life of a Head of State or a member of that person's family;

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- (ii) an offence relating to any law against genocide;
  - (iii) any offence in respect of which the Contracting Parties have assumed or will assume an obligation to establish jurisdiction or to extradite pursuant to an international agreement to which they are both parties; or
  - (iv) an offence constituted by taking or endangering, attempting to take or endanger or participating in the taking or endangering of, the life of a person, being an offence committed in circumstances in which such conduct creates a collective danger, whether direct or indirect, to the lives of other persons;
- (b) if the Requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his or her race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons;
  - (c) if the offence for which extradition is requested constitutes a purely military offence which is not an offence under ordinary criminal law of the Contracting Parties;
  - (d) if final judgement has been passed in the Requested Party or in a third state in respect of the offence for which the person's extradition is sought;
  - (e) if the person whose surrender is sought has, according to the law of either Contracting Party, become immune by reason of lapse of time from prosecution or punishment for the offence for which extradition is requested; or
  - (f) if the offence for which extradition is requested has been or is subject to amnesty or pardon by either of the Contracting Parties.

2. Extradition may be refused in any of the following circumstances:
- (a) if the person whose extradition is sought is a national of the Requested Party. Where the Requested Party does not extradite its own national, it shall, at the request of the Requesting Party and if the laws of the Requested Party allow, submit the case to its competent authorities in order that proceedings may be taken in respect of the offences for which extradition has been sought;
  - (b) if the person whose extradition is sought is being prosecuted in the Requested Party for the same offence;
  - (c) if the Requested Party has decided either not to prosecute or to terminate prosecution for the same offence;
  - (d) if the offence for which extradition is sought is an offence which is punishable by torture or cruel, inhuman or degrading treatment; or
  - (e) if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought particularly because of his or her age or state of health.
3. This Article shall not affect any obligation of the Contracting Parties which has already been undertaken or subsequently may be undertaken by them under any multilateral agreement.

#### Article 4 Postponement of extradition

When the person whose extradition is sought is being prosecuted or is serving a sentence in the territory of the Requested Party for an offence other than that for which extradition has been requested, surrender of this person may be postponed by the Requested Party until the conclusion of the prosecution and the full execution of any punishment that may be or may have been awarded. In this case, the Requested Party shall inform the Requesting Party accordingly.

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Article 5  
Extradition procedure and required documents

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6.
2. The request for extradition shall be accompanied by:
  - (a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of 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 Party;
  - (b) a document stating the manner of commission, place and date of each offence, its legal description and a copy of relevant enactments or, where this is not possible, a statement of the relevant law, and, if possible, where the person sought may be found;
  - (c) as accurate a description of the person sought, together with any other information to establish that person's identity and nationality, and, if possible, that person's fingerprints and photo; and
  - (d) an explicit declaration of the requesting authority seeking extradition and, if need be, provisional arrest.
3. The request and its supporting documents shall be accompanied by certified translations into the language of the Requested Party.

Article 6  
Authentication of supporting documents

1. A document that, in accordance with Article 5, accompanies a request for extradition, shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested Party.

2. A document is authenticated for the purposes of this Treaty if it purports to be both signed by a Judge, Public Prosecutor or other competent authority and sealed with an official seal.

#### Article 7 Additional information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request additional information and may fix a time limit for the receipt thereof and, upon the Requesting Party's application, for which reason shall be given, may grant a reasonable extension of the time limit.

2. If the person whose extradition is sought has been arrested and the additional information is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be discharged. However, such discharge shall not preclude the Requesting Party from renewing its request for the extradition.

3. Where the person is discharged in accordance with paragraph 2 of this Article, the Requested Party shall notify the Requesting Party as soon as possible.

#### Article 8 Provisional arrest

1. In case of urgency the competent authorities of the Requesting Party may apply by means of the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The application shall, so far as possible, give a description of the person sought, together with any information to establish his or her identity and nationality and shall contain a statement of the existence of one of the documents mentioned in sub-paragraph 2 (a) of Article 5, a



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statement that extradition is to be requested through the diplomatic channel, a statement of the punishment that can be, or has been imposed for the offence, and a statement of how the offence has been committed (*modus operandi*). A copy of the document mentioned in sub-paragraph 2 (a) of Article 5 shall be attached in its original form to the application.

3. On receipt of such an application the Requested Party shall take the necessary steps to secure the arrest of the person sought and the Requesting Party shall be promptly notified of the result of its request.

4. A person arrested upon such an application may be set at liberty upon the expiration of 45 days from the date of that person's arrest if a request for extradition, supported by the documents specified in Article 5, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

#### Article 9 Conflicting requests

1. Where requests are received from two or more States for the extradition of the same person, the Requested Party shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all relevant circumstances and, in particular, to:

- (a) if the requests relate to different offences, the relative seriousness of the offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person; and

- (e) the ordinary place of residence of the person.

Article 10  
Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial rejection.
2. If the request is agreed to, the Requesting Party shall be informed of the place and date of surrender and of the length of time for which the person sought was detained for the purposes of extradition.
3. Subject to the provisions of paragraph 4 of this Article, if the person sought has not been taken over on the appointed date, that person may be released after the expiry of 30 days, and shall in any case be released after the expiry of 45 days. The Requested Party may refuse to extradite that person for the same offence.
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, and the provisions of paragraph 3 of this Article shall apply.

Article 11  
Surrender of property

1. Upon the request of the Requesting Party, the Requested Party, subject to its laws and interests of third parties, shall seize and surrender the following property and valuables:
  - (a) property which has been used in committing the crime or which may be required as evidence; and
  - (b) property and valuables which have been acquired as a result of the offence and were found in the possession of the person

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sought at the time of arrest or detention, or which are discovered subsequently.

2. If possible, the property specified in paragraph 1 of this Article shall be delivered to the Requesting Party at the same time as the surrender of the person extradited. Property and valuables seized under paragraph 1 shall be delivered even if extradition already granted cannot be carried out owing to the death or escape of the person sought.

3. The said property and valuables can be temporarily retained for proceedings pending in the territory of the Requested Party or they can be delivered under the condition of restitution.

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

#### Article 12 Rule of speciality

A person who has been extradited in accordance with the present Treaty shall not be prosecuted, punished or detained for the enforcement of a sentence or subjected to any other restriction on personal freedom or delivered to a third State for any offence committed prior to surrender from the territory of the Requested Party other than that for which extradition was granted, except in the following cases:

- (a) if the Party which surrendered the person consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 5 and a record established by a competent authority of the statement made by the extradited person in respect of the request for consent;
- (b) if the person extradited, having had for a period of 45 days from the date of final release, an opportunity to leave the territory of the Party to which the person has been surrendered still remains in the territory of that Party. This period does not include the time during which the released

person could not voluntarily leave the territory of that Party;  
or

- (c) if, after having left, the person has returned voluntarily to the territory of the Party to which surrender was granted.

### Article 13 Surrender to a third State

1. Where a person has been surrendered to the Requesting Party by the Requested Party, the Requesting Party shall not surrender that person to any third State for an offence committed before that person's surrender, unless:

- (a) the Requested Party consents to that surrender; or
- (b) the person has had an opportunity to leave the Requesting Party and has not done so within 45 days of final discharge in respect of the offence for which that person was surrendered by the Requested Party or has returned to the territory of the Requesting Party after leaving it.

2. Before acceding to a request pursuant to sub-paragraph 1 (a) of this Article, the Requested Party may request the production of the documents mentioned in Article 5.

### Article 14 Transit

1. The transit of a person, who is the subject of extradition from a third State through the territory of one of the Contracting Parties to the territory of the other Contracting Party, shall be granted upon submission of a request, provided the offence involved is an extraditable offence under Article 2 and that the Contracting Party requested to permit transit does not consider the offence to be one covered by Article 3.

2. The request for transit shall be accompanied by the copies of documents mentioned in sub-paragraphs 2 (a) and 2 (b) of Article 5.

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3. The Requested Party shall not be bound to permit the transit of its nationals, nor of a person who may be prosecuted or required to serve a sentence in its territory.
4. If air transport is to be used, the following provisions shall apply:
- (a) when no intermediate stop is scheduled, the Requesting Party shall notify the Requested Party that transit will occur, and that one of the documents described in paragraph 2 (a) of Article 5 exists and state the name and nationality of the person in transit;
  - (b) when an unscheduled landing occurs, notification as provided in the previous sub-paragraph shall have the effect of a request for provisional arrest as provided in Article 8. Thereupon, transit will be requested as provided for in paragraph 1 of this Article; or
  - (c) when an intermediate stop is required, the Requesting Party shall submit a request as provided in paragraph 1 of this Article.
5. If circumstances require the person to be held in custody during transit, the Requesting Party may be required to follow the provisions in paragraph 2 of Article 8.
6. Where a person is being held in custody for the purposes of transit, the Contracting Party in whose territory the person is being held, may direct that the person be released if transportation is not continued within a reasonable time.

Article 15  
Competent authorities

For the purposes of Articles 6 and 8 of this Treaty, competent authorities are:

- (a) for Turkey - a Judge, a Court or a Public Prosecutor; and

(b) for Australia - the Attorney-General, a Judge or a Magistrate.

Article 16  
Expenses

1. All expenses incurred in the territory of the Requested Party for dealing with the extradition request shall be borne by that Party until surrender.
2. The expenses after surrender shall be borne by the Requesting Party.
3. The expenses incurred by reason of transit shall be borne by the Requesting Party.

Article 17  
Entry into force and denunciation

1. This Treaty shall enter into force thirty days after the Contracting Parties have notified each other in writing that their respective constitutional requirements for entry into force of this Treaty have been complied with.
2. Requests for extradition made after entry into force of this Treaty shall be governed by its provisions, including Article 2, whatever the date of the commission of the offence.
3. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

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DONE at Canberra on the third day of March, One Thousand, nine hundred and ninety-four in English and Turkish each text being equally authentic.

FOR THE GOVERNMENT OF  
AUSTRALIA:

Gareth Evans  
Minister for Foreign Affairs

FOR THE GOVERNMENT OF  
THE REPUBLIC OF TURKEY:

Hikmet Çetin  
Minister of Foreign Affairs

Schedule 2	Exchange of Notes in relation to the Treaty on Extradition, constituting an Agreement between the Government of Australia and the Government of the Republic of Turkey
Part 1	Note from the Australian Embassy in Ankara to the Ministry of Foreign Affairs of the Republic of Turkey

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## **Schedule 2**

# **Exchange of Notes in relation to the Treaty on Extradition, constituting an Agreement between the Government of Australia and the Government of the Republic of Turkey**

(regulation 4)

## **Part 1**

### **Note from the Australian Embassy in Ankara to the Ministry of Foreign Affairs of the Republic of Turkey**

NOTE NO: 028/95

The Australian Embassy presents its compliments to the Ministry of Foreign Affairs of the Republic of Turkey and has the honour to inform the Ministry of the existence of an error in the English language version of the Treaty on Extradition between Australia and the Republic of Turkey done at Canberra on 3 March 1994 (hereinafter referred to as “the Treaty”).

Article 2.1 of the Treaty reads in English as follows:

“extraditable offences are offences punishable only by imprisonment for a maximum period of at least one year or by a more severe deprivation of liberty under the Laws of both Contracting Parties.”

The Embassy has the honour to advise that this text contains an error in that the word “only” should not appear in Article 2.1. The Turkish language version of the Treaty does not contain this error and therefore needs no correction.



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In accordance with Article 79 (1) (b) of the Vienna Convention on the Law of Treaties the Embassy has the honour to propose that this error be corrected by the deletion of the word “only” from Article 2.1 of the English language version of the Treaty.

Article 2.1 of the Treaty shall thus read in the English language version as follows:

“extraditable offences are offences punishable by the imprisonment for a maximum period of at least one year or by a more severe deprivation of liberty under the Laws of both Contracting Parties.”

In view of the foregoing, the Embassy also has the honour to propose that the Contracting Parties to the Treaty agree to the following interpretations of the Treaty:

The Contracting Parties shall in their application of the Treaty interpret Article 2.1 to mean that offences shall be considered extraditable offences if they are punishable by imprisonment for a maximum period of at least one year or by a more severe deprivation of liberty under the Laws of the Contracting Parties even if another kind of punishment may also exist for that offence under the laws of one or other or both of the Contracting Parties.

The Contracting Parties shall in their application of the Treaty interpret the Treaty as corrected to mean that extradition may be refused if extradition is not permitted by the Law of the Requested Party by reason of the kind of punishment to which a person accused or convicted of an extraditable offence may be subject.

The Embassy of Australia has the honour to propose that, if the foregoing correction of the Treaty and the foregoing interpretations of the corrected version of the Treaty are acceptable to the Government of the Republic of Turkey, this Note and the Ministry of Foreign Affairs’ confirmatory reply shall constitute an Agreement between the Government of Australia and the Government of the Republic of Turkey which shall enter into force on the date on which the Treaty enters into force.

Schedule 2	Exchange of Notes in relation to the Treaty on Extradition, constituting an Agreement between the Government of Australia and the Government of the Republic of Turkey
Part 2	Note from the Ministry of Foreign Affairs of the Republic of Turkey to the Australian Embassy in Ankara

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This exchange of Notes shall not be interpreted as Turkey's accession to the Vienna Convention on the Law of Treaties of 23 May 1969.

The Australian Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Turkey the assurances of its highest consideration.

ANKARA  
27 March 1995

**Part 2      Note from the Ministry of Foreign Affairs  
of the Republic of Turkey to the  
Australian Embassy in Ankara**

KKVM-I/AVUSTRALYA (GN) – 2753

The Ministry of Foreign Affairs of the Republic of Turkey presents its compliments to the Embassy of Australia and has the honour to acknowledge receipt of the Embassy's Note No. 028/95 dated 27 March 1995 which reads as follows:

“The Australian Embassy presents its compliments to the Ministry of Foreign Affairs of the Republic of Turkey and has the honour to inform the Ministry of the existence of an error in the English language version of the Treaty on Extradition between Australia and the Republic of Turkey done at Canberra on 3 March 1994 (hereinafter referred to as “the Treaty”).

Article 2.1 of the Treaty reads in English as follows:

“extraditable offences are offences punishable only by imprisonment for a maximum period of at least one year or by a more severe deprivation of liberty under the Laws of both Contracting Parties.”

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The Embassy has the honour to advise that this text contains an error in that the word “only” should not appear in Article 2.1. The Turkish language version of the Treaty does not contain this error and therefore needs no correction.

In accordance with Article 79 (1) (b) of the Vienna Convention on the Law of Treaties the Embassy has the honour to propose that this error be corrected by the deletion of the word “only” from Article 2.1 of the English language version of the Treaty.

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“extraditable offences are offences punishable by the imprisonment for a maximum period of at least one year or by a more severe deprivation of liberty under the Laws of both Contracting Parties.”

In view of the foregoing, the Embassy also has the honour to propose that the Contracting Parties to the Treaty agree to the following interpretations of the Treaty:

The Contracting Parties shall in their application of the Treaty interpret Article 2.1 to mean that offences shall be considered extraditable offences if they are punishable by imprisonment for a maximum period of at least one year or by a more severe deprivation of liberty under the Laws of the Contracting Parties even if another kind of punishment may also exist for that offence under the laws of one or other or both of the Contracting Parties.

The Contracting Parties shall in their application of the Treaty interpret the Treaty as corrected to mean that extradition may be refused if extradition is not permitted by the Law of the Requested Party by reason of the kind of punishment to which a person accused or convicted of an extraditable offence may be subject.

The Embassy of Australia has the honour to propose that, if the foregoing correction of the Treaty and the foregoing interpretations of the

Schedule 2	Exchange of Notes in relation to the Treaty on Extradition, constituting an Agreement between the Government of Australia and the Government of the Republic of Turkey
Part 2	Note from the Ministry of Foreign Affairs of the Republic of Turkey to the Australian Embassy in Ankara

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corrected version of the Treaty are acceptable to the Government of the Republic of Turkey, this Note and the Ministry of Foreign Affairs' confirmatory reply shall constitute an Agreement between the Government of Australia and the Government of the Republic of Turkey which shall enter into force on the date on which the Treaty enters into force.

This exchange of Notes shall not be interpreted as Turkey's accession to the Vienna Convention on the Law of Treaties of 23 May 1969.

The Australian Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Turkey the assurances of its highest consideration."

The Ministry of Foreign Affairs has the honour to confirm that the foregoing is acceptable to the Government of the Republic of Turkey and the Embassy of Australia's Note and this reply shall together constitute an Agreement between the Government of the Republic of Turkey and the Government of Australia which shall enter into force on the date of entry into force of the Treaty on Extradition between the Republic of Turkey and Australia.

The Ministry of Foreign Affairs of the Republic of Turkey avails itself of this opportunity to renew to the Embassy of Australia the assurances of its highest consideration.

Ankara 28 March 1995

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**Note**

1. Notified in the *Commonwealth of Australia Gazette* on 2003.

3 September