

Agreement on Social Security Between the Government of Canada and the Government of the Republic of Turkey

E102966

The Government of Canada and the Government of the Republic of Turkey, Hereinafter Referred to as “the Parties”,

RESOLVED to co-operate in the field of social security,

HAVE DECIDED to conclude an agreement for this purpose, and

HAVE AGREED as follows:

PART I - GENERAL PROVISIONS

Article I

Definitions

1. In the application of this Agreement:

“benefit” means, as regards a Party, any cash benefit, pension or allowance for which provision is made in the legislation of that Party and includes any supplements or increases applicable to such a cash benefit, pension or allowance;

“competent authority” means, as regards Canada, the Minister or Ministers responsible for the application of the legislation of Canada; and, as regards Turkey, the Ministry of Labour and Social Security, and other Ministries concerned;

“competent institution” means, as regards Canada, the competent authority; and, as regards Turkey, the institution or institutions responsible for the implementation of the legislation specified in Article II (1) (b);

“creditable period” means, as regards Canada, a period of contributions or residence used to acquire the right to a benefit under the legislation of Canada, and includes a period during which a disability pension is payable under the *Canada Pension Plan*; and, as regards Turkey, a period of contributions under the legislation of Turkey or a period recognized as a period of contributions;

“legislation” means, as regards a Party, the laws and regulations specified in Article II (1) with respect to that Party;

“territory” means, as regards Canada, the territory of Canada; and, as regards Turkey, the territory of the Republic of Turkey.

2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

Article II

Legislation to Which the Agreement Applies

1. This Agreement shall apply to the following legislation:
 1. with respect to Canada:
 1. the Old Age Security Act and the regulations made thereunder, and
 2. the *Canada Pension Plan* and the regulations made thereunder;
 2. with respect to Turkey:

to the extent that they apply to insurance schemes for industrial accidents, occupational diseases, invalidity, old age and survivors:

1. the *Social Insurance Act, No. 506 (506 Sayili Sosyal Sigortalar Kanunu)*;
 2. the *Pension Fund Act, No. 5434 (5434 Sayili T.C. Emekli Sandigi Kanunu)*;
 3. the *BAG-KUR Act, No. 1479 (1479 Sayili BAG-KUR Kanunu)*;
 4. *Act No. 2925* concerning agricultural workers and *Act No. 2926* concerning the self-employed in the field of agriculture;
 5. the legislative regulations concerning the above-mentioned Acts; and
 6. the legislation concerning the special funds subject to provisional Article 20 of the *Social Insurance Act, No. 506*.
 2. Subject to paragraph 3, this Agreement shall also apply to laws and regulations which amend, supplement, consolidate or supersede the legislation specified in paragraph 1.
 3. This Agreement shall apply to laws and regulations which extend the legislation of a Party to new categories of beneficiaries or to new benefits unless an objection on the part of that Party has been communicated to the other Party within 3 months following the entry into force of such laws and regulations.

Article III

Personal Scope of Application

This Agreement shall apply to any person who is or who has been subject to the legislation of Canada or Turkey, and to the dependants and survivors of such a person within the meaning of the applicable legislation of either Party.

Article IV

Equality of Treatment

Every person described in Article III shall be accorded equality of treatment regarding rights and obligations under the legislation of both Parties.

Article V

Export of Benefits

Unless otherwise provided in this Agreement:

1. benefits payable under the legislation of a Party to any person described in Article III, including benefits acquired by virtue of this Agreement, shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only of the fact that the person resides in the territory of the other Party, and these benefits shall be paid in the territory of the other Party;
2. benefits payable under this Agreement to a person who is or who has been subject to the legislation of both Parties, or to the dependants or survivors of such a person, shall be paid in the territory of a third State.

PART II - PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article VI

Rules Regarding Coverage

1. Subject to the following provisions of this Article
 1. an employed person who works in the territory of a Party shall, in respect of that work, be subject only to the legislation of that Party; and
 2. a self-employed person who ordinarily resides in the territory of a Party and who works for his or her own account in the territory of the other Party or in the territories of both Parties shall, in respect of that work, be subject only to the legislation of the Party in the territory of which that person ordinarily resides.
2. An employed person who is subject to the legislation of a Party and who performs services for a period not expected to exceed 24 months in the territory of the other Party for the same or a related employer shall, in respect of those services, be subject only to the legislation of the first Party as though those services were performed in its territory. With the prior consent of the competent authorities of both Parties, this period of 24 months may be extended for a period not to exceed 60 months in total.
3. A person who, but for this Agreement, would be subject to the legislation of both Parties in respect of employment as a member of the crew of a ship shall, in respect of that employment, be subject only to the legislation of Turkey if the ship flies the flag of Turkey and only to the legislation of Canada in any other case.
4. An employed person shall, in respect of the duties of a government employment for a Party performed in the territory of the other Party, be subject to the legislation of the other Party only if he or she is a citizen thereof or ordinarily resides in its territory. In the latter case, that person may, however, elect to be subject only to the legislation of the first Party if he or she is a citizen thereof.
5. The competent authorities of the Parties may, by common agreement, modify the application of the provisions of this Article with respect to any person or categories of persons.

Article VII

Definition of Certain Periods of Residence with Respect to the Legislation of Canada

1. For the purpose only of calculating the amount of benefits under the *Old Age Security Act*:
 1. if a person is subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during any period of presence or residence in the territory of Turkey, that period shall be considered as a period of residence in Canada for that person as well as for that person's spouse and dependants who reside with him or her and who are not subject to the legislation of Turkey by reason of employment or self-employment; and
 2. if a person is subject to the legislation of Turkey during any period of presence or residence in the territory of Canada, that period shall not be considered as a period of residence in Canada for that person and for that person's spouse and dependants who reside with him or her and who are not subject to the *Canada Pension Plan* or to the

- comprehensive pension plan of a province of Canada by reason of employment or self-employment.
2. In the application of paragraph 1:
 1. a person shall be considered to be subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during a period of presence or residence in the territory of Turkey only if that person makes contributions pursuant to the plan concerned during that period by reason of employment or self-employment;
 2. a person shall be considered to be subject to the legislation of Turkey during a period of presence or residence in the territory of Canada only if that person makes compulsory contributions pursuant to that legislation during that period by reason of employment or self-employment.

PART III - PROVISIONS CONCERNING BENEFITS

CHAPTER 1 - TOTALIZING

Article VIII

Periods under the Legislation of Canada and Turkey

1. If a person is not entitled to the payment of a benefit because he or she has not accumulated sufficient creditable periods under the legislation of a Party, the entitlement of that person to the payment of that benefit shall be determined by totalizing these periods and those specified in paragraphs 2 through 4, provided that the periods do not overlap.
2.
 1. For purposes of determining entitlement to the payment of a benefit under the *Old Age Security Act* of Canada, a creditable period under the legislation of Turkey shall be considered as a period of residence in the territory of Canada.
 2. For purposes of determining entitlement to the payment of a benefit under the *Canada Pension Plan*, a calendar year including at least 90 days which are creditable periods under the legislation of Turkey shall be considered as a year which is creditable under the *Canada Pension Plan*.
3. For purposes of determining entitlement to the payment of an old age benefit under the legislation of Turkey:
 1. a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as 360 days which are creditable under the legislation of Turkey; and
 2. a day which is a creditable period under the *Old Age Security Act* of Canada and which is not part of a creditable period under the *Canada Pension Plan* shall be considered as a day which is creditable under the legislation of Turkey.
4. For purposes of determining entitlement to the payment of an invalidity or death benefit under the legislation of Turkey, a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as 360 days which are creditable under the legislation of Turkey.
5. If a person has completed a creditable period under the legislation of Canada before the date of entrance into the Turkish insurance scheme, the date of the start of the creditable period under the legislation of Canada shall be considered as the entrance into the Turkish insurance scheme.

Article IX

Periods under the Legislation of a Third State

If a person is not entitled to the payment of a benefit on the basis of the creditable periods under the legislation of the Parties, totaled as provided in Article VIII, the entitlement of that person to the payment of that benefit shall be determined by totalizing these periods and creditable periods under the legislation of a third State with which both Parties are bound by social security agreements which provide for the totalizing of periods.

Article X

Minimum Period to be Totalized

Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods accumulated by a person under the legislation of a Party is less than one year and if, taking into account only those periods, no right to a benefit exists under that legislation, the competent institution of that Party shall not be required to award benefits to that person in respect of those periods by virtue of this Agreement. Those periods shall, however, be taken into account by the competent institution of the other Party in determining entitlement to benefits under the legislation which it administers.

CHAPTER 2 - BENEFITS UNDER THE LEGISLATION OF CANADA

Article XI

Benefits under the Old Age Security Act

1. If a person is entitled to the payment of a pension or a spouse's allowance solely through the application of the totalizing provisions of Chapter 1, the competent institution of Canada shall calculate the amount of the pension or spouse's allowance payable to that person in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.
2. Paragraph 1 shall also apply to a person who is entitled to the payment of a pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada.
3. Notwithstanding any other provision of this Agreement:
 1. an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, when totalized as provided in Chapter 1, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada; and
 2. a spouse's allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

Article XII

Benefits under the Canada Pension Plan

If a person is entitled to the payment of a benefit solely through the application of the totalizing provisions of Chapter 1, the competent institution of Canada shall calculate the amount of benefit payable to that person in the following manner:

1. the earnings-related portion of the benefit shall be determined in conformity with the provisions of the *Canada Pension Plan*, exclusively on the basis of the pensionable earnings under that Plan; and
2. the flat-rate portion of the benefit shall be determined by multiplying:

1. the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the *Canada Pension Plan* by
2. the fraction which represents the ratio of the periods of contributions to the *Canada Pension Plan* in relation to the minimum qualifying period required under that Plan to establish entitlement to that benefit, but in no case shall that fraction exceed the value of one.

CHAPTER 3 - BENEFITS UNDER THE LEGISLATION OF TURKEY

Article XIII

Calculating the Amount of Benefit Payable

1. If a person is not entitled to the payment of a pension on the basis of the Turkish creditable periods, but if he or she is entitled to the payment of a pension as a result of Article VIII or IX, the following provisions shall apply:
 1. The competent social security institution of Turkey shall determine entitlement to the payment of a pension by taking into account totalized creditable periods as if the periods had been completed under Turkish legislation.
 2. The competent Turkish social security institution shall determine the amount of the pension to be paid by calculating the fraction of the pension determined as described in subparagraph (a) which represents the ratio of the creditable periods under the legislation of both Parties to the creditable periods under Turkish legislation.
2. In the application of this Agreement, the provisions of the relevant Turkish legislation regarding the decreasing, suspension or withdrawing of the pension shall be taken into account.

PART IV - ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Article XIV

Administrative Arrangement

1. The competent authorities of the Parties shall establish, by means of an administrative arrangement, the measures necessary for the application of this Agreement.
2. The liaison agencies of the Parties shall be designated in that arrangement.

Article XV

Exchange of Information and Mutual Assistance

1. The competent authorities and institutions responsible for the application of this Agreement:
 1. shall, to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;
 2. (shall lend their good offices and furnish assistance to one another with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies, as if the matter involved the application of their own legislation; and
 3. shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement.

2. The assistance referred to in subparagraph 1(b) shall be provided free of charge, subject to any provision contained in an administrative arrangement concluded pursuant to Article XIV for the reimbursement of certain types of expenses. When the competent institution of one Party seeks reimbursement from a competent institution of the other Party, the first institution shall advise the latter institution of the amount due denoted in the currency of the first Party. Thereupon, the latter institution shall remit payment of that amount to the first institution in the currency of the first Party.
3. Unless disclosure is required under the laws of a Party, any information about a person which is transmitted in accordance with this Agreement to that Party by the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.

Article XVI

Exemption or Reduction of Taxes, Dues, Fees or Charges

1. Any exemption from or reduction of taxes, legal dues, consular fees or administrative charges for which provision is made in the legislation of a Party in connection with the issuing of any certificate or document required to be produced for the application of that legislation shall be extended to certificates or documents required to be produced for the application of the legislation of the other Party.
2. Any documents of an official nature required to be produced for the application of this Agreement shall be exempt from any authentication by diplomatic or consular authorities and similar formality.

Article XVII

Language of Communication

For the application of this Agreement, the competent authorities and institutions of the Parties may communicate directly with one another in any official language of either Party.

Article XVIII

Submitting Claims, Notices or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Party which should, for the purposes of that legislation, have been presented within a prescribed period to a competent authority or institution of that Party, but which is presented within the same period to an authority or institution of the other Party, shall be treated as if it had been presented to the competent authority or institution of the first Party.
2. Subject to the second sentence of this paragraph, a claim for benefit under the legislation of a Party made after the date of entry into force of this Agreement shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant at the time of application:
 1. requests that it be considered an application under the legislation of the other Party, or
 2. provides information indicating that creditable periods have been completed under the legislation of the other Party.

The preceding sentence shall not apply if the applicant requests that his or her claim to the benefit under the legislation of the other Party be delayed.

3. In any case to which paragraph 1 or 2 applies, the competent authority or institution to which the claim, notice or appeal has been submitted shall transmit it without delay to the competent authority or institution of the other Party.

Article XIX

Payment of Benefits

The competent institution of a Party may discharge its obligations under this Agreement in the currency of that Party.

Article XX

Resolution of Difficulties

1. Any dispute between the Parties relating to the interpretation or application of this Agreement shall be made the subject of direct negotiations between the competent authorities of the Parties.
2. If the dispute cannot be resolved in this manner within 6 months from the beginning of such negotiations, it shall be submitted, at the request of one or both of the Parties, to an arbitration commission, whose composition and rules of procedure shall be determined by agreement between the Parties.
3. The arbitration commission shall decide the dispute according to the spirit and fundamental principles of this Agreement. Its decisions shall be binding and final.

Article XXI

Understandings with a Province of Canada

The relevant authority of Turkey and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada in so far as those understandings are not inconsistent with the provisions of this Agreement.

PART V - TRANSITIONAL AND FINAL PROVISIONS

Article XXII

Transitional Provisions

1. Any creditable period completed before the date of entry into force of this Agreement shall be taken into account for the purpose of determining the right to a benefit under this Agreement.
2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.

3. subject to paragraph 2, a benefit, other than a lump sum payment, shall be paid under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

Article XXIII

Period of Duration and Termination

1. This Agreement shall remain in force without any limitation on its duration. It may be terminated at any time by either Party giving 12 months' notice in writing to the other Party.
2. In the event of the termination of this Agreement, any right acquired by a person in accordance with its provisions shall be maintained and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

Article XXIV

Entry into Force

This Agreement shall enter into force on the first day of the fourth month following the month in which each Party shall have received from the other Party written notification that it has complied with its internal requirements for the entry into force of this Agreement.

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

DONE in two copies at Ankara, this 19th day of June, 1998, in the English, French and Turkish languages, each text being equally authentic.

Michael Mace

FOR THE GOVERNMENT OF CANADA

Nami Cagan

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY