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Enforcement of Foreign Judgments

Fundamental Principles [Turkey]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Yes, final foreign civil and commercial judgments and arbitration awards can be enforced in Turkey in accordance with the terms of multilateral and bilateral treaties, or in the absence thereof, pursuant to the International Private and Civil Procedure Law numbered 5718 and Civil Procedure Law numbered 6100.

Besides that, according to Article 50/2 of International Private and Civil Procedure Law, criminal court decisions rendered against a Turkish citizen which cause a personal right of the convict to be restricted in Turkey can be enforced in Turkey by an exequatur.

2. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: Turkish Courts can recognise and enforce foreign judgments under the provisions of the International Private and Civil Procedure Law enacted on 12 December 2007. The requirements of granting exequatur for a foreign judgment or award are stipulated in Articles 50-63 of the Law numbered 5718.

After the enforcement decision is rendered by the component court in Turkey, the Enforcement and Bankruptcy Law numbered 2004 shall apply to execution proceedings.

B. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Turkey is party to:

- A number of bilateral treaties regarding enforcement of foreign judgements and arbitration awards with countries such as Azerbaijan, Albania, Algeria, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, China, Croatia, England, Georgia, Germany, Iran, Iraq, Italy, Lithuania and Switzerland.
- The New York Treaty regarding the Recognition and Enforcement of Foreign Arbitration Awards dated June 10, 1958.

- The European Treaty for International Commercial Arbitration, executed in Geneva on April 12, 1961.
- A number of multilateral treaties that provide for the exequatur and the enforcement of certain family-law related foreign judgments.
- Article 27/A of the Law on Civil Registration Services. Pursuant to this enactment, divorce, nullity and annulment of marriage decisions issued by the component authorities of a foreign country will be registered to the state register without an exequatur where both parties apply to the Turkish Consulate in that country for registration of the decision.

2. Does the European Union have a special procedure to enforce court judgments coming its member states?

Answer: As Turkey is not a member of the European Union, it is not possible to discuss a special procedure to enforce court judgments from European Union member states. In this regard, court judgments from European Union member states will be subjected to the same provisions and procedures as court judgments coming from other countries.

C. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: There is no explicitly specified time period for the enforcement of foreign judgments in Turkish Law. However, under the provisions of International Private and Civil Procedure Law, the request of exequatur is subject to simple trial proceedings.

Simple trial proceedings are stipulated under the Civil Procedure. According to relevant provisions, the defendant can submit a rebuttal petition within two weeks from the service of the lawsuit petition. Upon request of the defendant, the court may give a maximum of two weeks additional time for a rebuttal petition to be submitted. After the rebuttal petition is submitted, the court can finish trial proceedings without any hearing if it is not required. In practice, the courts generally conduct a hearing before ruling on a case.

If one of the parties does not have a residential address in Turkey, the proceedings may take longer due to the necessity to serve the relevant documents such as petitions and subpoenas abroad.

Besides that, according to provisions stipulated under Civil Procedure Law, a judgement of the first instance courts can be appealed before divisional courts and decisions of the divisional courts can be appealed before Court of Appeals. Appealing processes of an enforcement decision can take

approximately one and a half years together with the appeal process of the decisions of first instance courts and divisional courts.

Within this context, it could take approximately six months to two and a half years for an enforcement decision to be finalised.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: If there is an international treaty between Turkey and the country the judgement is rendered in, the conditions for application will be determined accordingly.

If the judgment is rendered by the authorities of a country which Turkey has no international agreement with, the lawsuit for enforcement requires a superficial examination (no re-examination of the merits of the case) on the basis of satisfaction of a limited number of criteria stipulated under Article 54 of International Private and Civil Law, as follows;

- I. Existence of reciprocity between the Republic of Turkey and the state where the judgement is rendered, whether by a treaty or statutory provision or in practice. Reciprocity stipulation can be satisfied with international agreements, statutory rules and de facto in Turkish Law.
- II. The judgment must have been given in relation to matters not falling within the exclusive jurisdiction of the Turkish courts, such as lawsuits regarding rights in properties placed in Turkey or guardianship matters etc. Where a judgement is contested by the defendant, the judgement must not have been given by a state authority which has accepted themselves as a component (even if there is not a real relationship between the authority and the subject and the parties of the lawsuit).
- III. The judgment should not be in explicit inconformity with Turkish public order.
- IV. If the person against whom the enforcement is sought was, under the laws of that country, not summoned properly to the court which rendered the judgment, or was not represented in court, or contrary to these laws a default judgment was rendered, the person against whom the enforcement is sought has not raised any of the above stated objections in the Turkish courts.

Request for enforcement of a foreign judgement shall be dismissed if the foreign judgment does not satisfy one of the conditions stipulated above.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: The plaintiff is obliged to deposit an annually fixed amount in legal fees which is a pre-requisite in Turkey for filling a valid lawsuit and court expenses for an expert and service of the documents etc. However, there is uncertainty surrounding whether the legal fees of an exequatur should be paid as a fixed fee or on a pro rata basis between different chambers of Court of Appeals. In this regard, the 19th Chambers of Court of Appeals is of the view that the exequatur should be considered as a debt action which is why it should be subjected to proportional fees whereas 11th Chambers is of the view that it has a declaratory nature which is why it should be subjected to a fixed fee. Separately, the plaintiff will also be obligated to pay a fixed amount in legal fees to the execution office for commencing execution of the court decision after the exequatur, in addition to expenses for execution proceedings to be conducted.

Furthermore, according to Article 48 of International Private and Civil Procedure Law and Civil Procedure Law, foreign plaintiffs and plaintiffs that are Turkish citizens but do not reside in Turkey are obligated to provide security (at the sole discretion of the court but in practice the courts usually adjudge 10% of the subject matter of the lawsuit) determined by the court to compensate the loss of the defendant in the event damage is caused to the defendant because of the lawsuit filed. However, if there is reciprocity between Turkey and the country where the plaintiff is a citizen, the court may decide that the plaintiff is exempted from providing security.

Turkey is a party to various international agreements and conventions ensuring reciprocity with different countries. The most important international convention Turkey is a party to regarding the security obligation is the Hague Convention dated 1954. The citizens of contracting states are not obligated to provide security before filing a lawsuit or commencing execution proceedings.

In the event that a preliminary attachment or interim injunction is requested, the court will request that the plaintiff deposit a collateral. As a note, interim measures and preliminary attachments rendered by foreign authorities cannot be enforced in Turkey due to the provisions of Civil Procedure Law. However, the plaintiff may request an interim measure or preliminary attachment to be rendered by Turkish courts before or during the filing of the underlying lawsuit or during the proceedings of the main claim.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: There is no time limit for filing an executor under Turkish laws. However, according to International Private and Civil Procedure Law, judgments of foreign courts that are recognised by Turkish courts will be subject to the same enforcement procedures as domestic judgments. The Enforcement and Bankruptcy Act dictates that a court ruling is subject to a statute of limitations of ten years from the final procedure. Therefore, the time limit to apply for enforcement on foreign rulings recognised by Turkish courts is ten years.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Turkey is party to various international agreements regarding the enforcement of a foreign court judgement. Within this context, if there is an international treaty with the country the judgement is rendered in, the conditions for enforcement will be determined accordingly.

If there are no bilateral agreements or conventions between Turkey and the country the judgement was rendered in, according to Article 50/1 of the International Private and Civil Procedure Law, the foreign court judgment has to be final and definitive under the laws of the state where the judgement was rendered in in order to be enforced in Turkey.

There are no special requirements to provisionally enforce a court judgment that is not final and definitive under the International Private and Civil Procedure Law.

Unlike the principle for court decisions, it is not mandatory for foreign arbitral awards to be final and definitive. Arbitral awards that have become binding on the parties are enforceable in Turkey.

C. Necessary Requirements

1. What necessary requirements must the foreign court Judgment fulfill to be recognised and enforced?

Answer:

Turkey is party to various international agreements regarding the enforcement of a foreign court judgement. Within this context, if there is an international treaty with the country the judgement is rendered in, the conditions for enforcement will be determined accordingly.

If a judgment is rendered in a country with which Turkey has no international agreement, the necessary requirements that the foreign court judgement must fulfill are stipulated under the International Private and Civil Procedure Law.

According to Article 50 of the International Private and Civil Procedure Law, a foreign court judgement has to be a civil action and the decision must be finalised. Furthermore, criminal court decisions rendered by a foreign court can be enforced in Turkey but are limited to the personal rights found in the penalty judgments.

Other necessary requirements for enforcement of a foreign court judgement are set forth in Article 54 of the International Private and Civil Procedure Law:

- I. There must be reciprocity between the Republic of Turkey and the state where the judgement is rendered, whether by a treaty or statutory provision or in practice. The reciprocity stipulation can be satisfied with international agreements, statutory rules and de facto in Turkish Law.
- II. The judgment must have been given on matters not falling within the exclusive jurisdiction of the Turkish courts, such as lawsuits regarding real rights in properties placed in Turkey or guardianship matters etc. In addition, where a judgement is being contested by the defendant, the judgement must not have been given by a state authority which has accepted itself as a component even if there is not a real relationship between the authority and the subject and the parties of the lawsuit.
- III. The judgment should not be in explicit inconformity with Turkish public order.
- IV. If the person against whom the enforcement is sought was, under the laws of that country, not summoned properly to the court which rendered the judgment, or was not represented in court, or contrary

to these laws a default judgment was rendered, the person against whom the enforcement is sought has not raised any of the above stated objections in the Turkish court.

The foreign court judgment must fulfill all the necessary requirements in the country of origin to be considered authentic and the requirements under Turkish law to be considered certain.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer:

Yes, the plaintiff is obliged to deposit an annually fixed amount in legal fees which is a pre-requisite in Turkey to filing a valid lawsuit. Court expenses to engage an expert, the service of the documents *etc* must also be paid. However, there is an uncertainty on whether the legal fees of an exequatur should be paid as a fixed fee or on a pro rata basis between different chambers of Court of Appeals. In this regard, the 19th Chamber of the Court of Appeals is of the view that the exequatur should be considered as an action of debt which is why it should be subjected to a proportional fee, whereas the 11th Chamber is of the view that it has a declaratory nature which is why it should be subjected to a fixed fee.

The plaintiff will also be obligated to pay a fixed amount in legal fees for commencing execution of the court decision after the exequatur, as well as expenses for the execution proceedings to be conducted.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: according to Article 48 of International Private and Civil Procedure Law and Civil Procedure Law, foreign plaintiffs and plaintiffs that are Turkish citizens but do not reside in Turkey are obligated to provide a security (usually amounting to 10% of the subject matter of the lawsuit) determined by the court to compensate any loss suffered by the defendant in the event that the defendant suffers damage as a result of the lawsuit filed. However, if there is reciprocity between Turkey and the country where the plaintiff is a citizen, the court may decide that the plaintiff is exempted from the providing security.

IV. PROCEDURE

A. Competent court

1. Which Court or courts are competent to decide an enforcement application?

Answer: According to Article 51 of the International Private and Civil Procedure Law, the competent court to decide an enforcement application is the Civil Court of First Instance or the Commercial Court of First Instance. These decisions shall be requested from the court at the place of habitual residence of the person against whom enforcement is requested if they do have a domicile in Turkey, or from one of the courts in Istanbul, Ankara, or Izmir if they do not have a domicile or habitual residence in Turkey.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: Pursuant to Article 52 of the International Private and Civil Procedure Law, the exequatur request should be written and anyone with legal interest in the exequatur of the foreign court judgment can apply to the Turkish Courts.

Copies of the petition in the number of opposing parties should be attached.

The following must be included in the application:

- I. The first name, family names and addresses of the parties and the statutory or contractual representatives, if any;
- II. The name of the state where the decision was rendered, the title of the court, the date and number of the court decision as well as a summary of the judgment; and
- III. If partial enforcement is requested, an indication as to which part of the decree is the subject of the request.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: Judgments from a country with which Turkey has an international agreement are governed by the terms of that agreement.

If the judgment is from a country that does not have an international agreement with Turkey, then pursuant to Article 53 of the International

Private and Civil Procedure Law, the following documents should be attached to the application for enforcement:

- I. An original copy of the foreign court decision properly authenticated by the authorities of that country, or a copy of the judgement and a translation of the same authenticated by the judiciary that the judgement is rendered by.
- II. A statement or document properly authenticated by the authorities of that country noting that the decision is final and an authenticated translation of this statement.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer:

The plaintiff shall file a lawsuit for the exequatur of the decision. An exequatur law suit is subjected to simple trial proceedings as mentioned in question C.1. The phases of the exequatur are:

- I. Exequatur application;
- II. Notification of the application for exequatur;
- III. Opposition by the defendant (if there is one);
- IV. Court decision granting exequatur; and
- V. Appeal (if there is one).

After the decision of recognition is rendered by the component court, the foreign court decision can be enforced through enforcement offices in Turkey just like a decision given by a Turkish court. The enforcement proceedings involve:

- I. A notification of the execution order to the defendant;
- II. Seizing and selling the assets of the defendant if the decision is in respect to a pecuniary debt; and
- III. If the subject of the decision to be executed is a debt other than money or collateral, the enforcement proceedings stipulated under Articles 24-31/A of the Enforcement and Bankruptcy Law, which varies in accordance with the subject of the foreign decision, will be conducted.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes, the defendant can oppose the enforcement application.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer:

If the judgment is from a country that does not have an international Treaty with Turkey, then pursuant to Article 55, the defendant may only oppose the enforcement of the court judgment by claiming that the conditions of enforcement are not present, or that the foreign court judgment has been enforced partially or completely, or a reason hindering the enforcement thereof has arisen.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?

Answer:

Yes, it is possible to appeal a court decision to recognise and enforce a foreign court decision. According to Article 57 of International Private Law and Procedure, an appeal against decisions rendered in respect of the acceptance or dismissal of the request for exequatur is subject to the general provisions of the Civil Procedure Law. There are no restrictions regarding the appeal of decisions regarding recognition and enforcement of foreign court judgements stipulated under the aforementioned provisions.

2. Can this appeal suspend the enforcement?

Answer: Article 57/2 of International Private and Civil Procedure Law sets forth that appealing an exequatur decision to Court of Appeals suspends the execution of the decision.

However, divisional courts established on 20 July 2016 (enacted by the Civil Procedure Law numbered 6100 in 2011) act as primary appealing authorities before Court of Appeals. In this regard, the component authority on exequatur decisions granted after 20 July 2016 became divisional courts before Court of Appeals. The wording of Article 57/2 does not contain "appealing to divisional courts". Within this context, there has been uncertainty regarding whether the appeal of an exequatur decision to

divisional courts suspends the execution, or the execution of the decision continues.

We are of the opinion that the “appeal” word used in Article 52/7 comprises appealing decisions to both Court of Appeals and the divisional courts. Thus, filing for an appeal will suspend the execution until the appealing process is done and the decision finalised.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: There are no special rules regarding recovery of costs related to the enforcement of Court Judgments, so the general rule stipulated under Article 326 of Civil Procedure Law is applicable - the party who the court judgment is rendered against shall be obliged to compensate the judicial costs and expenses incurred as a result of the enforcement application unless his appeal or opposition is accepted by the Court. If there is more than one party who the court judgment is rendered against then the court may distribute the expenses or determine a joint liability.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court’s judgment?

Answer: Claims for enforcement of recognised foreign court judgments will be satisfied through the sale value of any kind of cash, movable and immovable property.

According to Article 85 of Enforcement and Bankruptcy Law, a sufficient amount of movable and immovable assets and rights and receivables of the debtor will be seized to cover the debt, regardless of whether the assets are under the possession of the debtor or a third party. Every kind of asset and right of the debtor can be seized in principle. However, assets and rights which cannot be seized (partially or wholly) are set out in the Enforcement and Bankruptcy Law. Every kind of asset and right of the debtor other than the ones indicated as non-seizable under the Enforcement and Bankruptcy Law, and other laws, can be seized.

However, seizure of some of the assets and rights of the debtor cannot be conducted even though they are not identified under the Enforcement and Bankruptcy Law. In this regard, assets and rights which cannot be transferred to another person or entity regarding material law cannot be

seized. Additionally, the asset or right being seized must have a material value and the value must have a legal basis.

According to Article 82 of the Enforcement and Bankruptcy Law, the following may not be subjected to enforcement under any circumstances:

- Assets that in themselves have no property value;
- Personal rights;
- Secondary rights that cannot be alienated separately from the main right cannot be seized, for instance, an indemnity arising from a penalty clause, interest receivables and possessory liens;
- Government property;
- The debtor's necessary belongings for exercising his profession, art, or business, if exercising them necessitates physical labour more than capital;
- Essential objects used by the debtor and his family except for money, valuable papers, golden or silver objects, jewels, antiques or ornaments;
- Essential household furniture and kitchen equipment. If the debtor is a farmer, then farm and livestock animals, means of conveyance and other accessories and agricultural equipment essential as a source of income for the debtor and their family. Furthermore, any equipment, instruments, books, and a small means of transportation essential for the practice and exercise of the debtor's craft.
- A lactiferous cow or water ox (determined by the debtor) or three goats or sheep and feed for them and the material which is used by the animals to sleep on for three months. The debtor and his family's food and fuel stock for two months and if the debtor is a farmer, then the necessary seed stock for the next season's harvest;
- Vineyards and orchardist essential for the debtor and his family and essential equipment for practice of this if the debtor is an orchardist;
- Essential animals for the debtor and his family and feed and a place for the animals to sleep for three months (if the debtor is earning their livelihood only by animal breeding).
- Retiree pay assigned to military men and police officers who are disabled because of their duties and salaries assigned to their families because of their duty. Flight and diving indemnities payed to

- members of air forces and submarine forces and promotion increases paid to disabled military men and children of the martyrs;
- Salaries assigned by a provident fund or organisation in case of disease, state of necessity or death;
 - Student loans;
 - A debtor's house suitable with his condition (if the price of the house is high, then the house may be subjected to enforcement provided that an amount sufficient enough to buy a house suitable with their condition is reserved. In evaluating the debtor's conditions, monthly income, social status, and number of family members will be considered); and
 - Wages, compensation, and benefits with regard to disabilities will not be subjected to enforcement.

Pursuant to Article 83 of the Enforcement and Bankruptcy Law, the following amounts may be enforced partially:

- The salaries, wages, pensions, remuneration or equivalent payments, right of usufruct and revenues in relation to the same. Every type of salary is included in the scope of this Article. In this regard, revenues of those self-employed and professional activities will also be subjected to enforcement.
- The enforcement will proceed from the remainder of the salary when a necessary amount for living expenses of the debtor and his family is deducted. The debt enforcement officer will evaluate the necessary amount for living expenses of the debtor and his family.
- On the other hand, Article 83/II stipulates that a quarter of the salary may be subjected to enforcement under any condition. This being said, a quarter of the debtor's salary may be enforced even though the whole salary is not sufficient to meet the debtor and his family's living expenses.
- It must be mentioned that under the provisions of Labor Law Article 35, if the debtor is a labourer then a maximum of one quarter of his salary may be subjected for enforcement.

If there are more than one enforcement judgements being enforced against the debtor's salary then the enforcements will be dealt with in order of date. The enforcement next in line will not proceed before the previous is fully satisfied.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: International Private and Civil Procedure Law underwent major amendments in 2007. The previous Act did not respond to currently encountered problems and was out of date in scope and language. These amendments generally did not relate to fundamental principles as explained hereinabove but mostly concerned the rules for conflict of law.

Turkey

Submitted by

E. Benan Arseven

Moroglu Arseven

barseven@morogluarseven.com

Tel: +90 212 252 77 93

www.morogluarseven.com