

Enforcement of Foreign Judgments

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GETTING THE
DEAL THROUGH

Turkey

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1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what if any amendments or reservations has your country made to such treaties?

Other than the multilateral treaties on family law, Turkey is not a signatory to multilateral treaties for the reciprocal recognition and enforcement of foreign judgments.

However, Turkey has entered into bilateral treaties with Albania, Algeria, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, China, Croatia, Egypt, Georgia, Iran, Iraq, Italy, Kazakhstan, Kuwait, Kyrgyzstan, Lithuania, Macedonia, Moldova, Mongolia, Oman, Poland, Republic of Turkish Northern Cyprus, Romania, Slovakia, Tajikistan, Tunisia, Turkmenistan, Ukraine and Uzbekistan for the reciprocal recognition and enforcement of foreign judgments and judicial assistance in respect of commercial and civil matters.

Other than these treaties, Turkish courts recognise and enforce the judgments of many countries such as Germany, the United Kingdom and the United States on the basis of de facto reciprocity between these countries and Turkey. Please note that the evaluation of de facto reciprocity is conducted on a state-by-state basis for the United States.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

There is uniformity in the law on the enforcement of foreign judgments among different jurisdictions in Turkey.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The Act on Private International Law and International Procedural Law (PIL) No. 5718 dated 27 November 2007 is the main legislation that regulates recognition and enforcement of foreign judgments.

Precedents of the court of appeals are also important. However, in principle the precedents of the court of appeals are not binding in Turkish law apart from the decisions on the unification of conflicting judgments.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Turkey is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

Under Turkish law, there is no specific limitation period for the enforcement of a foreign judgment. However, article 8 of the PIL regulates the statute of limitations for legal transactions and relationships that carry foreign elements. According to this article, the statute of limitations is subject to the law applicable to the legal transaction or relationship. The court of appeals in its various decisions has stated that limitation periods are not related to public order and provisions of foreign law should be applicable on this issue (Court of Appeals 4th Chamber, Merit No. 2003/10163, Decision No. 2004/1408 and Court of Appeals 11th Chamber, Merit No. 1998/383, Decision No. 1998/3945).

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Pursuant to article 50 of the PIL, foreign judgments regarding civil law matters are enforceable as long as they are final under the laws of the foreign country.

The bilateral treaties between Turkey and Italy as well as Turkey and Tunisia set forth that only foreign judgments that are unappealable and enforceable under the laws of a foreign country can be enforced.

In addition to the matters determined in article 50 of the PIL, it has been opined that not only judgments rendered by civil courts but also the decisions rendered by the administrative courts are enforceable provided that they are in relation to civil law matters.

The enforcement of interim injunctions is not regulated under the PIL. With reference to article 50 of the PIL, in Turkey there is a view that interim decisions will only be enforceable provided that the dispute is finally resolved by the foreign court with these interim decisions. However, there is also the opinion that, in practice, the interim injunctions are not enforceable under Turkish law since they are not final decisions.

Article 50 of the PIL further sets forth that foreign judgments that are rendered by criminal courts with regard to personal rights are enforceable as well.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Cases seeking enforcement of foreign judgments must be brought in a particular court. Article 51 of the PIL regulates the competent courts for enforcement of foreign judgments. According to this article, the civil courts of first instance are competent for the enforcement of foreign judgments. Nevertheless, there is no unity in practice, as some civil courts of first instance reject the applications due to lack of jurisdiction and send the file to the relevant commercial, intellectual property or labour courts.

Article 51 of the PIL also regulates the jurisdiction of the courts. Pursuant to this article, the case seeking enforcement of a foreign judgment must be filed before the court where the debtor is domiciled. If there is no domicile address for the debtor, then the case can be filed before the court where the debtor has his or her domicile. If none of these exist, the case can be filed before the courts at Ankara, Istanbul or Izmir.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

The process for obtaining judicial recognition for a foreign judgment is almost the same with the process for enforcement. However, contractual or de facto reciprocity is not required for the recognition of a foreign judgment (see below for detailed explanations on requirements of recognition and enforcement).

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

Under Turkish law, defendants cannot raise merits-based defences. Pursuant to article 55 of the PIL the defendant is limited to narrow grounds for challenging a foreign judgment.

Pursuant to articles 54 and 55 of the PIL the defendant may challenge the foreign judgment by alleging that:

- there is no contractual or de facto reciprocity;
- the judgment is on an issue subject to the exclusive jurisdiction of the courts;
- the foreign judgment is rendered by a court unrelated to the matter in dispute and the parties;
- the judgment violates Turkish public order;
- the foreign court did not respect the right of defence of the party against whom the judgment is requested to be enforced in Turkey;
- the foreign judgment is not final under the laws of the foreign country;
- there is a ground preventing the enforcement of the foreign judgment (eg, a reason for the restitution of the judgment (see the explanation under question 18); or
- the foreign judgment has been already wholly or partially executed.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

No, a party cannot obtain injunctive relief to prevent foreign judgment enforcement proceedings. The decisions that can be given by the enforcing court are regulated under article 56 of the PIL and, according to this article, the court can either accept or dismiss the enforcing of the foreign judgment. In this regard, the court cannot grant injunctive relief to prevent foreign judgment enforcement proceedings.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

The requirements for recognition of a foreign judgment are regulated under articles 54 to 58 of the PIL and can be summarised as follows:

- the foreign court must have respected the right of defence of the party against whom the judgment is requested to be enforced in Turkey;
- the foreign judgment must be final under the laws of the foreign country;
- the foreign judgment should not be on an issue subject to the exclusive jurisdiction of the Turkish courts; and
- the foreign judgment must be in compliance with Turkish public order.

If these conditions are met, the court will decide for the recognition of a foreign judgment.

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

There is no non-mandatory factor. As explained in question 11, the factors for recognition of a foreign judgment are explicitly regulated in articles 54 to 58 of the PIL.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

There is no other requirement of procedural equivalence. However, foreign judgments that violate Turkish public order cannot be recognised or enforced.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

Turkish law does not recognise the concept of personal jurisdiction and therefore the enforcing court does not conduct such an examination.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

According to article 54 of the PIL, upon the objection of the defendant, the Turkish court will examine the jurisdiction of the foreign court over the controversy. The court, upon the objection of the defendant, will examine whether or not the judgment was granted by the court of a country that considered it competent although it has no actual relation either with the matter in dispute or the parties. Thus, the Turkish court shall not ex officio examine the subject-matter jurisdiction of the foreign court except upon the objection of the defendant. If the foreign court has no jurisdiction over the defendant, the foreign judgment cannot be enforced.

According to the same article, the court will ex officio examine whether the judgment is given on an issue that is under the exclusive jurisdiction of Turkish courts.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Pursuant to article 54 of the PIL, the defendant must be properly served with the original action in the foreign jurisdiction. Also, there is an opinion that all procedures made during the action should be duly served since this is part of a fair trial. Therefore, the notice of the original action should also be formally served.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

The court will not conduct a fairness examination on the foreign judgment. The court's examination will be limited to the enforcement requirements determined in articles 54 and 55 of the PIL. However, intervention of the court will come into question if the judgment violates Turkish public order. As explained before, the foreign judgment must be in compliance with Turkish public order.

18 Vitiatio by fraud**Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?**

The vitiatio of the foreign judgment by fraud is not regulated under the PIL.

However, pursuant to the judgment of the Second Chamber of Court of Appeals dated 15 November 1984 (Merit No. 1984/9293 and Decision No. 1984/9484), the reasons for the restitution of the judgment constitute a breach of the public order.

The reasons for the restitution of the judgment are regulated under Turkish Procedural Code. According to the Procedural Code, if the judgment is affected because of the fraudulent acts of the winning party, this constitutes a reason for the restitution of a judgment. In this regard, it can be concluded that the court will ex officio examine the foreign judgment in terms of fraud.

19 Public policy**Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?**

In principle, the court will not examine the foreign judgment for consistency with substantive laws. However, the foreign judgment should not be on an issue subjected to the exclusive jurisdiction of the Turkish courts, such as cases arising from immovables' right in rem as well as in cases arising from consumer or insurance agreements.

With regard to public policy, the Turkish court will ex officio examine whether enforcement of foreign judgment violates Turkish public order or not. The foreign judgment cannot be enforced if it violates the Turkish public order.

20 Conflicting decisions**What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?**

The enforcement of the conflicting decisions is not regulated under the PIL. However, there is an opinion that if the foreign judgment is in conflict with another final and conclusive judgment, the foreign judgment cannot be enforced by the Turkish court. It should be noted that, in order to speak of conflicting decisions, the parties and the subject matter of the foreign judgment must be the same with the final and conclusive judgment. The final and conclusive judgment can be either the Turkish court's judgment or another foreign judgment that had already been recognised or enforced by the Turkish court.

21 Enforcement against third parties**Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?**

No, the Turkish court cannot enforce a judgment against a party other than the named judgment debtor. As a general principle, the judgments are binding only for the parties in the dispute.

22 Alternative dispute resolution**What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?**

There is no explicit provision in the PIL on this issue. In the decision of Kadikoy, 4th Commercial Court dated 17 June 2008 (Merit No. 2007/1020 and Decision No. 2008/386) the court rejected the defendant's objections regarding alternative dispute resolution on the basis of following grounds:

There is no dispute that the Uzbekistan judgment becomes final and conclusive after the appeal process in Uzbekistan where the defendant submitted his arbitration objection. Thus the final and conclusive judgment containing no provisions which may violate the Turkish public order should be enforced since all requirements stated in article 54 of the PIL were met.

Although the Turkish court of appeals has not discussed this issue until now, provided that the conditions of the enforcement have been met, it is highly likely that they will accept enforcing the judgment disregarding the parties' objections as to an agreement on alternative dispute resolution on the basis that the foreign court should have evaluated the alternative dispute resolution matters.

23 Favourably treated jurisdictions**Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?**

Turkey does not give greater deference to some foreign jurisdictions. However, it should be noted that determination of de facto reciprocity may take longer since the courts sometimes prefer to confirm the reciprocity from the Turkish Ministry of Justice.

24 Alteration of awards**Will a court ever recognise only part of a judgment, or alter or limit the damage award?**

The Turkish court examines a foreign judgment in order to determine whether the requirements for enforcement are met or not. The court may decide to enforce the foreign judgment as a whole or in part as per article 56 of the PIL.

However, the court may not alter or limit the damage award as long as the award does not violate Turkish public order. It should be noted that there is an opinion that, due to their nature, punitive damages are considered incompatible with the principles of Turkish liability law and Turkish public order. Similarly, damages exceeding actual loss are considered incompatible with Turkish public order.

It should also be noted that, pursuant to opinion, if the claimant requests only a part of the judgment to be enforced, the said part will be enforced by the court.

25 Currency, interest, costs**In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?**

Turkish courts do not convert the damage award into local currency. However, during the collection process, the debtor may prefer to make the payment in Turkish liras. The court costs and the official attorneys' fees, which will be determined in favour of the successful party according to the annual tariff of the Turkish Bar Association, will be in local currency.

With regard to interest, it should be noted that the interest rate determined in the foreign judgment shall be applied until the collection procedure in Turkey.

26 Security**Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?**

Pursuant to article 57 of the PIL, court decisions regarding the recognition or enforcement of a foreign judgment can be appealed as per the general provisions of the Turkish Procedural Code.

Under Turkish law, the courts first render their short decisions. After two or three weeks reasoned decisions are issued. The civil court's decision can be appealed within 15 days of the notification of the reasoned decision before the court of appeals. The parties are also entitled to ask for a review of the appeal decision within 15 days of the notification of the court of appeals' decision. This procedure is called a correction of decision. The application for the revision of a decision is made to the same chamber of the court of appeals that evaluates the application for appeal. Therefore, it should be noted that in making an application for the revision of a decision, the chance of success is low.

The appeal process prevents the execution of the Turkish court's decision regarding the enforcement of the foreign judgment. In other words, the foreign judgment cannot be executed until the Turkish court's

decision regarding the enforcement of a foreign judgment becomes final and unappealable.

It should also be noted that if the debtor does not comply with the Turkish court's decision regarding the enforcement of the foreign judgment, the claimant can have the decision enforced by application to the bailiff's office. The debtor must comply with the enforcement order within seven days of the notification. Otherwise, the claimant can apply for the attachment of the assets that the debtor may have.

27 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Under Turkish law, the recognition and enforcement of a foreign judgment are regulated separately. In principle, the enforceable judgments can be enforced whereas the determination judgments can be recognised. The party can request an enforceable judgment to be recognised as well. However, in such a case the party cannot enforce this judgment. The recognised judgment can be used as conclusive evidence and decision.

The process of enforcement of a foreign judgment is regulated under articles 50 to 57 of the PIL.

The claimant must file a case for enforcement of a foreign judgment before the civil court of first instance that has jurisdiction.

The plaint petition must include:

- the names and addresses of the parties and their attorneys if any;
- the country, court, date, number and the summary of the judgment; and
- the claimant's request of the said part if only a part of the judgment is to be enforced.

The original or the approved copy of the judgment, the approved letter that shows that the judgment is final and their approved translations must be attached to the plaint petition.

The requirements for the enforcement of a foreign judgment are as follows:

- contractual or de facto reciprocity;
- the foreign court must have respected the right of defence of the party against whom the judgment is requested to be enforced in Turkey;
- the foreign judgment court must be final under the laws of the foreign country;
- the foreign judgment should not be on an issue subjected to the exclusive jurisdiction of the Turkish courts; and
- the foreign judgment should not violate the Turkish public order.

If these conditions are met, the court will grant enforcement of the foreign judgment.

28 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

One of the most common pitfalls is the length of the proceedings. In practice, recognition or enforcement of a foreign judgment would take around three months to one year, excluding the appeal which takes around six to 18 months. The parties are also entitled to ask for a revision of the decision. The review of the court of appeal judgment takes a further six months.

Public order is another common pitfall since the laws do not regulate the definition of the public order. In principle, Turkish public order is and shall be interpreted narrowly by the courts and in this respect, only the judgments that contradict with indispensable and essential Turkish legal principles are considered as violating Turkish public order.

There have been court of appeal precedents stating that judgments, where there is no discussion of reasoning, cannot be enforced, since they do not enable the courts to assess the requirements for enforcement and therefore breach Turkish public order. For example, summary judgments under common law have been problematic with respect to recognition and enforcement. Nevertheless, the decision of the Joint Chambers of the Court of Appeals, dated 10 February 2012, merits No. 2010/1, decision No. 2012/1, stated that the mere fact that a foreign decision is lacking reasoning does not prevent that decision from being enforced. Decisions rendered by the Joint Chambers of the Court of Appeals are binding on other chambers of the appeal court as well as the local (ie, first instance) courts. Thus, the recognition or enforcement of a foreign judgment can no longer be denied due to the violation of Turkish public order only because the judgment does not include a discussion of reasoning.

Contractual or de facto reciprocity can be another pitfall for the enforcement of a foreign judgment. Although Turkey has signed bilateral treaties with 30 countries, there are still many countries whose decisions cannot be enforced in Turkey due to the principle of reciprocity.

Furthermore, the competent court issue is also one of the pitfalls. Although civil courts of first instance are competent for the enforcement of foreign judgments, there is no unity in practice as some civil courts of first instance reject the applications due to lack of jurisdiction and send the file to the relevant commercial, intellectual property or labour courts. There is also no unity in the precedents of the Court of Appeals and this fact affects the length of the proceedings. For instance, for disputes arising from intellectual property law, according to some precedents of the Court of Appeals, intellectual property courts are the competent courts whereas other precedents indicate commercial courts as the competent court. In those cases, there is a risk that the Court may reject the case due to lack of competence and the counterparty may appeal this decision to prolong the proceedings.

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