

ENFORCEMENT OF A FOREIGN JUDGMENT IN TURKEY

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Concept

The principle of territoriality generally limits the power of a country of judicial enforcement of actions to be taken within its territory. Consequently, when a court decision is to be enforced out of property in another country, or requires some act to be done in that other country, the court decision must be brought to the court of that other country for implementation. This allows the court of the enforcing country to examine the decision to determine whether it should be recognized and enforced.

If the time to appeal in the court of origin has lapsed, and the court decision has become final, the holder of a foreign court decision, decree or order may file suit before a competent court in Turkey which will determine whether to give effect to the foreign court decision. For the enforcement of a foreign court judgment in Turkey, the “Rules of Simplified Procedure” apply. The Turkish court does not re-open the facts of the case.

Turkish Law provides that the Turkish courts must recognize foreign court judgments enforceable in Turkey further to a treaty or a statutory provision. In the absence of a treaty or a statutory provision providing for recognition and enforcement, Turkish court will in principle recognize a foreign court judgment if the requirements provided by the law are satisfied.

Conditions for the recognition and enforcement of a foreign court decision

The conditions for the recognition and enforcement of a foreign court judgment are provided in the International Private and Procedure Law 5718 ("IPPL 5718"). According to the IPPL 5718 conditions for the enforcement of a foreign court decision are:

1. Existence of a decision rendered by a foreign court regarding a civil law case.
2. The decision should be final under the law of the country where it was rendered.

"Final" means it cannot be re-opened in the court which made the decision (even though it may be subject to an appeal in a higher court although the Turkish court might stay enforcement proceedings pending the outcome of the appeal).

3. Existence of reciprocity between Republic of Turkey and the country where the decision was rendered for the recognition and enforcement of decisions (Article 54(1) of IPPL 5718 (a)).

The reciprocity is considered to have been realized in three ways under Turkish law. The first way is the existence of a treaty between Turkey and the state wherein the court decision or award has been rendered as final.

The second way is establishing the existence of a legal provision allowing the recognition and enforcement of a decision rendered by courts of the Republic of Turkey in the legislation of the state.

The third and the most widely enhancing way is to determine whether a de facto reciprocity exists in the state wherein the court

decision was rendered. If in practice, the courts in the country where the decision rendered enforce decisions of Turkish courts, the decisions of the courts of that country will be recognized and enforced in Turkey.

4. Non-existence of a Turkish Court's exclusive jurisdiction under Turkish law over the subject matter of the court decision (Article 54(1) of IPPL 5718 (b)).

The decision should have been rendered on a subject which does not fall under the exclusive jurisdiction of the courts of the Republic of Turkey or should not have been rendered by the court of a country that has no real connection with the disputing parties or the subject matter in dispute provided that the defendant has objected to the jurisdiction of the court.

5. Public order (Article 54(1) of IPPL 5718 (c))

A foreign court judgment shall not be enforced if it is explicitly incompatible with Turkish public order.

6. Service of process and defense (Article 54(1) of IPPL 5718 (ç))

The party against whom an enforcement is sought should have been duly served to appear or duly represented before the court according to the law of the country wherein the decision rendered in his absence in contrary to the said law and the defendant must not have lodged an objection to the enforcement seek based on these mentioned issues before the Turkish court.

7. Review of the merits of the foreign court decision

Turkish Court which decides on the recognition and/or enforcement of foreign court judgment shall not review the merits of the foreign decisions. It shall only take into consideration whether the requirements of Turkish Law are met or not.

8. Service of enforcement summons and objection

Service of the summons seeking the enforcement of the decision and the date of the court hearing shall be served to the defendant against whom the enforcement is sought.

Where to apply:

The court to apply for the enforcement of the foreign court decision is the district court of the place of domicile of the defendant. If the defendant is a company, the appointed court will be the one located where the company is registered. If the defendant does not reside in Turkey, the case can be submitted to any of the district court of Istanbul, Ankara and Izmir.

Time Limit:

According to the law, the time limit for the enforcement of a foreign court decision in Turkey is 10 years from the date the foreign court decision is final.

Timescale:

It is not possible to estimate the exact duration of the court proceedings, but in practice, the courts complete the decision of recognition and enforcement cases sooner than the cases with no foreign elements.