

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS IN TURKEY

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A. Introduction

Turkey, as an outcome of its integration policy into the global business, has a liberal modern and international investor friendly judgement system. Turkish government has made fundamental changes on the judicial system to attract the foreign investors and investments as well as simplify to do local business in Turkey.

The most recent change on the judicial system is the new Court Procedures Law which entered into force in September 2010. Furthermore, new Turkish Commercial Code and Code of Obligations are enacted last year and these will take effect on July 1st, 2012. As a part of the European Union (“EU”) membership goal, Turkey does not only liberalize and modernize its laws but also simplifies the procedures in courts for local and international investors. Impartiality is also one of the most important principles for Turkish Courts and the recent changes have strengthened this principle and the other aforementioned policies. Therefore, it should be noted that the judicial procedures in Turkey is quite similar with any developed European country.

Turkey has been an associate member of the European Community (EC) since 1964, following the Ankara Agreement in 1963 (EEC-Turkey Association Agreement) with the EEC. One of the most significant agreements between Turkey and EU is Custom Union which came into force in December 31st, 1995 and provides free trade with Turkey. For the purpose of protecting the free trade environment, Turkey has been harmonising its laws with EU legislation since then.

In particular, Germany has probably the most important position for Turkey among other European Union countries. As it is well known a considerable number of Turkish people, which have either dual citizenship or sole German citizenship, are living in Germany and judgments given by German or Turkish courts naturally affect these people and their businesses. Therefore, the simplicity and speediness of recognition and enforcement has a significant importance for both countries.

B. Recognition and Enforcement of Foreign Judgements in Turkey

Final foreign civil and commercial judgements and arbitration awards can be enforced in Turkey in accordance with the terms of multilateral or bilateral treaties; or in the absence thereof, pursuant to the Rules for the Code of Procedural Private International Law (“Law No: 5718”) enacted 12 November 2007.¹

In order to enforce the final decisions of the foreign civil courts in Turkey, one shall apply to the Turkish court for recognition or enforcement decision. The process of recognition and enforcement of foreign court judgments in Turkey is regulated under the Law No: 5718.² Since there is an actual reciprocity between Turkey and German the judgments giving in one of these countries are met with the reciprocity requirement.

Application for recognition and enforcement should be made to the local court closest to the defendant's place of residence. If the defendant is a company, the appointed court will be the one located where the company is registered. Turkish Court which decides on the recognition and/or enforcement of foreign court judgment shall not review the merits of the foreign judgments. It shall only take into consideration whether the requirements of Turkish Private International Law Act No 5718 are met or not. It should be also noted that in practice, the courts complete the judgment of recognition and enforcement cases sooner than others. It is a common practise for Turkish courts that the judgement on recognition and enforcement may be given in the first or second hearing of the court.

C. Recognition and Enforcement of Judgements in European Union Countries

The procedure for recognition and enforcement in Turkey cannot be defined as slower or harder when it is compared with the recognition and enforcement of a judgement in an EU country which is given by another member's court. Below is the explanation of the procedure in the EU and this proves that even if the judgement is given in an EU member country there are still restrictions and rules to be met in order to recognise and enforce the judgement in another EU country.

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition

¹ <http://www.yarsuvat-law.com.tr/faq/index.asp>

² <http://international.lawsociety.org.uk/node/11503>

and enforcement of judgments in civil and commercial matters ("Brussels I") lays down rules governing the jurisdiction of courts and the recognition and enforcement of judgments in civil and commercial matters in European Union countries. "Judgment" means any judgment given by a court or tribunal of an EU country, whatever the judgment may be called, including a decree, order, decision or writ of execution.

A judgment will not be recognised if:

* such recognition is manifestly contrary to public policy in the EU country in which recognition is sought;

* the defendant was not served with the document that instituted the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his/her defence;

* it is irreconcilable with a judgment given in a dispute between the same parties in the EU country in which recognition is sought;

* it is irreconcilable with an earlier judgment given in another EU or non-EU country involving the same cause of action and the same parties.

A court in which recognition is sought of a judgment given in another EU country may stay the proceedings, if an ordinary appeal against the judgment has been lodged.

A judgment is to be enforced in another EU country when, on the application of any interested party, it has been declared enforceable there. The parties may appeal against a decision on an application for a declaration of enforceability.³

D. Conclusion

Considering the above explanations it is clear that an award given in an EU country can be easily recognised and enforced in Turkey providing the requirements stipulated in Law no.5718 are met. These requirements are similar with the EU legislation and do not impose more challenging obligations. In summary, there is no difference between seeking the recognition and

³ http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33054_en.htm

enforcement of a German court judgement in Turkey or Netherlands. There is no advantage for judgements given in Germany to be recognised and enforced in Netherlands; a German court decision will follow a similar procedure to be recognised and enforced in Turkey.