

## **International Divorce in Turkey: Pending Cases in Different Countries**

It is not uncommon to imagine an international divorce case where one of the spouses is a Turkish Citizen, the other, an Italian Citizen, both residing in Germany; one party initiates divorce proceedings in Germany, while the other later files another divorce case in Turkey, believing that this action would be advantageous.

Lis pendens refers to pending lawsuits that deal with the same subject matter and which are filed between the same parties before the courts of different countries at approximately the same time. This circumstance could lead to conflicting judgments rendered by different courts. However, such conflicting judgments are generally prevented by giving preference to the court where proceedings are first initiated. A state may sometimes authorize several of its courts as competent courts to adjudicate certain disputes. In this situation, those courts would have jurisdiction over the same dispute and the plaintiff could choose either of those courts to file a lawsuit for the dispute. In the case where parties prefer to file their suits in different courts, there will be two pending cases pertaining to the same dispute, arising out of the same legal matter and between the same parties. When there are two separate proceedings pending before two competent courts, Turkish law entitles the party who has initiated the first proceedings, to raise a lis pendens objection. Where the court upholds a lis pendens objection, this means that second case is deemed as if it has never been established in the second court according to Turkish Civil Procedure Law.

In case of domestic disputes, conflicting cases are prevented by giving preference to the case which is first initiated. In the case of disputes which contain a foreign element, the rules concerning lis pendens are different from those applicable in domestic issues. In principle, there are no rules which require the dismissal of the second case on the ground that there is a pending case in a foreign country, with the result there may be competing judgments, rendered by a Turkish court and a foreign court, both of which concern the same dispute and the same legal matter. However, there are two exceptions provided under Turkish law which enable an objection to the jurisdiction of the Turkish court where the Turkish court is the subsequent court as outlined in the Act on Private International Law and International Civil Procedure Law No: 5718 (hereinafter referred to as MOHUK).

The first exception is about disputes related to the civil status of a Turkish Citizen that is regulated by article 41 of MOHUK. The second is laid down in article 47 of MOHUK, which addresses a choice of court agreement made by parties, which designates a foreign court as the competent court with regard to commercial disputes and removes the international jurisdiction of the Turkish court. In these two situations where Turkish courts are the subsequent courts, consequences of two pending cases will be very similar and the Turkish courts will not have jurisdiction with regard to both situations. Therefore the party concerned has to object to the international jurisdiction of the Turkish court in order to have the Turkish court dismiss the second case.

Article 41 of MÖHUK confers special international jurisdiction upon Turkish courts for disputes concerning the civil status of Turkish citizens. The main characteristic of the article is that it does not require any connection, such as domicile or residence, between Turkey and Turkish Citizens, which might be described as excessive or exorbitant jurisdiction. Normally, jurisdiction of Turkish courts originates from close connections such as domicile or residence of defendants (or sometimes plaintiffs) with regard to disputes concerning civil status of individuals.

Although one may classify article 41 as an exorbitant jurisdiction rule for Turkish courts, the intention

behind the article is certainly not to prevent Turkish citizens from filing lawsuits concerning their civil status in the countries where they live. The purpose of article 41 is to provide a competent court which has international jurisdiction over Turkish citizens in case that they do not or cannot file a lawsuit in foreign countries. However, where the case is initially brought before the courts of a foreign country by one of the parties to the dispute and the same lawsuit is subsequently filed before a Turkish court by the other party, then the Turkish court will not have jurisdiction over the dispute pursuant to article 41. As provided by article 41, the Turkish court will have to dismiss the second case, upon objection by defendant, since the existence of a pending lawsuit which is initiated first in a foreign country and removes the international jurisdiction of Turkish courts over the second case.

However, the Turkish court may dismiss the motion for lack of jurisdiction and continue on the merits of case if the requirements of article 41 are not satisfied. Accordingly, several consequences may occur depending on the Turkish court's decision about the objection to its jurisdiction. The first possibility is that the Turkish court, as the subsequent court, accepts that it lacks jurisdiction over the case by taking into consideration the pending case abroad, and accordingly dismisses the second case pursuant to article 41. If the foreign court renders its final decision on a divorce dispute, the prevailing party may have to request recognition of the judgment from a Turkish court. Upon recognition by the Turkish court, the foreign divorce judgment will constitute *res judicata* in Turkey. This means that the divorce case between the same parties can not be heard in Turkish courts at all.

The second possibility covers the situation that the Turkish court may continue on the merits of the second divorce case either because it dismisses the objection to its jurisdiction since the requirements of article 41 are not met or there is no objection to its jurisdiction by the original plaintiff. In either situation, the two divorce proceedings will be pending in two countries. The first court may render its final judgment while the Turkish court is hearing the merits of the second divorce case. The first court's judgment, although it is a final decision, will not have any effect to stop the second divorce case unless the Turkish court recognizes the foreign divorce judgment upon a request by one of the parties. However, in the event that the foreign judgment is not being recognized in Turkey, undesired consequences may occur since the Turkish court may make its divorce decision final. Therefore, there could be two competing final divorce decisions in Turkey and abroad. In this regard, being a second court's decision, Turkish court's final decision on the divorce will not be recognized in other countries, especially in the country where the first divorce judgment was rendered. On the other hand, the first court's divorce decision may not be recognized in Turkey since the Turkish court's divorce decision has acquired *res judicata* power in Turkey.

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