

## Litigation - Turkey

### General assembly upholds enforcement of unreasoned foreign court decisions

Contributed by **Cerrahoğlu Law Firm**

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Facts  
Decision

On February 10 2012 the General Assembly for Unification of Conflicting Judgments of the Court of Appeals issued a decision on whether enforcing an unreasoned foreign court judgment in Turkey constitutes a breach of Turkish public policy.<sup>(1)</sup>

#### Facts

On November 24 2009 a petition was filed with the First Presidency of the Court of Appeals to resolve the discrepancies between six decisions of different chambers of the Court of Appeals regarding whether enforcement of unreasoned foreign court judgments is contrary to Turkish public policy. The decisions subject to the petition were as follows:

- The Second Chamber ruled<sup>(2)</sup> that an unreasoned foreign divorce judgment was contrary to Turkish public policy and thus could not be enforced in Turkey. In a separate decision<sup>(3)</sup> it ruled that a clear violation of public policy may occur only if the fundamental rights and freedoms stipulated by the Constitution, the basic principles acknowledged by international law (eg, the right to fair hearing and defence) or the general ethics and principles which form the basis of the Turkish legal system, and which are inalienable, have been violated. The Second Chamber further concluded that if a foreign court renders an unreasoned judgment, its enforcement could not be deemed a breach of public policy.
- In contrast, in two decisions<sup>(4)</sup> the Thirteenth Chamber ruled that an unreasoned judgment is a violation of the Constitution and public policy, and is therefore not enforceable in Turkey.

On November 29 2010 the first presidency decided that there was a conflict between the above decisions of the Second Chamber and the Thirteenth Chamber, which required resolution.

#### Decision

The general assembly was convened on February 10 2012 and decided as follows.

According to Article 54 of the International Private and Procedural Law, for a foreign court judgment to be enforced:

- there should be a treaty or *de facto* reciprocity on enforcement between Turkey and the state in which the foreign court judgment was rendered;
- it should relate to a matter that is not exclusively under the jurisdiction of the Turkish courts;
- the right to defence should not have been violated; and
- it should not be clearly contrary to Turkish public policy.

Therefore, any foreign court judgment that is clearly contrary to Turkish public policy is unenforceable in Turkey. In this context, 'Turkish public policy' should be understood as the rules arising from public or private laws with mandatory application.

Under the law, Turkish courts are prohibited from reviewing the merits of the case or the judgment's compliance with the laws when enforcing a foreign court judgment. This prohibition should also be taken into consideration when a foreign court judgment is reviewed in terms of Turkish public policy. Therefore, Turkish courts should not consider the laws applicable to the foreign court judgment and how they were applied, but only whether the consequences of enforcing the foreign court judgment would

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violate public policy.

The reasoning of a court judgment is itself related to public policy. The Constitution requires that all judgments be reasoned. Furthermore, failure to consider the claims and defences of the parties is a violation of the right to a defence. Reasoned court judgments are a direct indication that the claims and defences of the parties have been taken into account. However, other states' legal systems may have different approaches to court judgments regarding whether they should be reasoned. If a foreign court judgment is not reasoned, this does not automatically mean that its enforcement in Turkey is a violation of public policy.

The general assembly therefore concluded that an unreasoned final foreign court judgment is enforceable in Turkey and its enforcement does not constitute a violation of public policy under Article 54 of the law.

According to the Law on Court of Appeals, this decision is binding on all Turkish courts.

The judges from the Thirteenth Chamber have since disputed this decision, stating that the European Convention of Human Rights requires that court judgments be reasoned; therefore, enforcing an unreasoned foreign court judgment would violate public policy.

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#### Endnotes

- (1) 2010/1 E, 2012/1 K.
- (2) June 30 1999, 1999/5858 E, 1999/7609 K.
- (3) June 8 2006, 2006/2612 E, 2006/9147 K.
- (4) December 5 2001, 2001/9007 E, 2001/11406 K and October 2 2003, 2003/6226 E, 2003/11095 K.

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