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THE RECOGNITION AND ENFORCEMENT OF THE FOREIGN COURT DECISIONS AND MARITAL BREAKDOWN BY FOREIGN COURT AND ADMINISTRATION DECISIONS

States, as a reflection of their sovereignty, use their judiciary powers independently. In order for the court decisions rendered as a result of the judicial activities carried out independently to be executed and/or to be definite judgment – conclusive evidence in other states, recognition or enforcement decisions are required to be obtained in the relevant country.

We will explain the issue briefly below in light of the recognition and enforcement of the decisions rendered by another state's court, made in accordance with International Private and Procedure Law ("IPPL"), international treaties that the Turkish Republic is a party of and the regulations in the extent of the directive published in Official Gazette dated February 7, 2018.

1. Recognition and Enforcement Terms:

Recognition; is acceptance of the definite judgment power, by a country in its sovereignty, of a final decision rendered by another country's court in private law.

Enforcement; is in the sovereignty of another country, enabling the compulsory execution of the decision rendered by a foreign court of the country and finalized.

2. The Conditions Required for Recognition:

- The decision shall be rendered by a foreign court,
- The decision must be final (as to the procedural law),
- Said decision must be related to private law,
- The foreign court decision, which is requested to be recognized, must not be contradicting with the public order,
- Decision must not be rendered in an area subject to the exclusive competence of the Turkish Courts or on condition of the defendant's appeal against the foreign court decision, the decision must not be rendered by a state's court that regards to itself as having jurisdiction even though it has no real relationship with case cause or parties,
- The decision must be rendered in accordance with the defendant's right of defense.

3. The Conditions Required for Enforcement:

In addition to the existence of the conditions listed under the part *“The Conditions Required for Recognition”* above, according to Article 54/1 of IPPL; a treaty based on **reciprocity principle** between Turkish Republic and the state where the decision was rendered or in that state, there must be a provision of law or actual practice enabling the enforcement of decisions rendered by the Turkish courts.

4. The Recognition and Enforcement Decision:

In principle, the court, which is competent to examining the requests for recognition and enforcement from the Court of First Instance, has no discretion to use to examine the content of the decision. Examinations - only in form and procedure; whether or not the conditions sought by law are provided for recognition or enforcement for the requests duly filed for recognition and enforcement of all foreign court decisions satisfying the conditions – are only made by the court. The court evaluating the application cannot conduct an examination in terms of the accuracy or suitability of the law and procedure applied by the court which gave the decision. The judge without discretion, must render the said recognition and/or enforcement decisions if the conditions sought by law are met.

In fact, Court of Cassation Assembly of Civil Chambers’ Decision of Joint Chambers 2010/1E., numbered 2012/1K. And dated 10.02.2012 also;

“The enforcement judge has no competency to examine and evaluate the accuracy of foreign court decision in terms of substantive law. In addition, in this frame of the prohibition, the enforcement judge has no competency to examine and evaluate the justification of the said decision. Availability of a justification cause is not important in the determination of a breach of public order by a provision of a decision. It is clear and unquestionable that the principles laid down by Article 141 of the Constitution in relation to the proceedings shall apply exclusively to the Turkish courts. If the implementation of the decision’s provisions will violate the public order, then it will not be enforced. It is decided that absence of justification of foreign court decisions shall not prevent the enforcement of the foreign courts’ final decisions and this is not an express breach of public order within the meaning of Article 54 / c of the Law on International Private Law and Procedural Law No. 5718.”

As stated above this decision sets forth that the Turkish courts evaluating the request for recognition and enforcement, shall not examine substantive part of the foreign court decision.

5. Procedure on Recognition and Enforcement Cases:

5.1. Proceeding Procedure

As per **Article 55/2 of IPPL** *“The petition related to request for enforcement and trial date are served to counter party. Recognition and enforcement of non-contentious court decisions are also subject to same provision also. In non-contentious court decisions, which do not include opponent, this communiqué provisions shall not be implemented. The request shall be examined and settled in accordance with the provisions of the simple proceeding procedure.”*, **recognition/enforcement cases can be filed by anyone who has legal interest and benefit from the concerned decision.** As specified in the Law, recognition/enforcement cases, according to the Article 316-322 of 6th Part of Code of Civil Procedure (“CCP”), are subject to simple jurisdictional procedure. In other words, in simple jurisdictional procedure, parties, submit their evidences that their claims and defenses are based on to the court by specifying which evidence explaining which fact. The judge may swiftly render a decision by evaluating all evidence before preliminary examination. Although the conditions for recognition and enforcement are mandatory, it shall not be considered as a cause of action or a preliminary objection. However, due to the speed and simplicity brought by the simple jurisdictional procedure, a decision can be rendered within a few sessions.

5.2. Competent Court

Pursuant to Article 51 of IPPL, in recognition and enforcement cases, the competent court is the court of first instance. Even if work-sharing concept gives place to competency separation thanks to CCP, it is specified by the Supreme Court decisions that Court of First Instance having specific expertise, like the Labor Court, Family Court, Commercial Court, is competent for the recognition and enforcement of the foreign court decisions rendered in the areas like labor, business, family, commercial, consumer law due to investigation in terms of public interest, due to the fact that investigations of public interest, exclusivity and etc. can be made more practically and at the same time and due to the use of *“Court of First Instance”* as an umbrella term in the statement of law articles indicating the competent court for the recognition and enforcement cases.

5.3. Jurisdictional Court

The jurisdictional courts for hearing recognition and enforcement cases are determined by Article 51/2 of IPPL *“These decisions can be requested from the settlement or resident court of person that the decision will be enforced against him/her in Turkey, or if it is not available, one of the courts of Ankara, İstanbul or İzmir”*. The jurisdictional court is respectively,

- i. **The settlement or resident court of person that the decision will be enforced against him/her in Turkey.**
- ii. **If it is not available, one of the courts of Ankara, İstanbul or İzmir.**

- iii. If the conditions listed in i and ii, are not available, the courts of Ankara, İstanbul or İzmir is the jurisdictional court.

5.4. Ordinary Legal Avenues Against the Recognition and Enforcement Decisions

According to the Regulation *“Against the final decisions related to case and actions belonging to the competency area of the regional courts of justice, that the court of first instance can be appealed or can be appealed to Court of Cassation as specified in other law, can be appealed to the regional courts of justice.”* stated in Article 341/5 of CCP, against the recognition and enforcement decisions rendered as of the date 20.07.2016 and valuing TL 4.400 and above as of the year 2019, can be appealed to the regional courts of justice and after the regional courts of justice process, against the decisions which have a value of TL 47.530 at least as of the year 2019, can be appealed to Court of Cassation. As long as the decision of postponement of execution is not rendered, the appeal to the regional courts of justice shall not stop the execution, However, the process of appeal to the Court of Cassation stops the execution (Article 57/2 of IPPL).

6. Registration of Divorce Decisions Rendered by Foreign Judicial and Administrative Authorities, to the Turkish Register of Persons:

With the regulation specified in Article 4 of Decree Law Numbered 690 published in Official Gazette dated 29.04.2017 and numbered 30052, a regulation as to registration of decisions of foreign judiciary or administrative authorities related to divorce, voidness, annulment of marriage or determining of absence of marriage, to the register of persons, in accordance with Article 27/a of Law on the Civil Registration Services (CRS) Numbered 5490, without appealing judicial remedy, was issued. With the Directive on Registration of Decisions by Foreign Judicial and Administrative Authorities to the Register of Persons, the procedures and substances for the recognition process in the administrative authorities are regulated.

According to Article 27/A of CRS including the provision *“(1) decisions of foreign judiciary or administrative authorities related to divorce, voidness, annulment of marriage or determining of absence of marriage; are registered to the register of persons on the conditions that the parties must request together through personally or proxy, the decision should be final and be rendered by a competent judiciary or administrative authority as per the laws of the state that the decision rendered and the decision must be finalized in procedure law and the decision must not be in violation of the public order expressly.*

(2) Registration process to be made to register of persons, shall be made by in abroad, foreign representative offices where the decision was rendered and within country, civil registrations determined by the Ministry.

(3) According to the Article 27/A including the provision “In Turkey, the recognition of the decisions that the registration request was rejected due to the fact that the conditions

listed in this article are not met, shall be made in accordance with the International Private and Civil Procedure Law dated 27/11/2007 and numbered 5718.”

When there is no express violation of public order, the finalized decisions of foreign court and administrative authorities related to divorce, voidness, annulment or absence of marriage can be requested in Turkey from Civil Registrations and in abroad from Turkish Embassies, Consulate General and embassy agents where the decision was rendered, by the parties of the decision together through personally or proxy.

If the registration request was rejected, the recognition of the court decisions related to divorce, voidness, annulment or absence of marriage can be requested from Turkish courts by the recognition case that we stated above briefly.