

Validity of Foreign Court Decisions in Turkey

Increase in international trade, people living abroad for various reasons and the disappearance of borders by time has resulted that the legal relationships and disputes not confined in one country or state. This situation has highlighted the difference between the national legal systems.

Therefore, a need on the applicability of the legal transactions and court orders at overseas increases. This need is provided with exequatur and recognition transactions made.

The effectiveness of foreign court decisions is subject to certain procedures and conditions in Turkish Law.

Exequatur & Recognition of foreign court decisions: Frequently applied cases in Turkey

A foreign court order shall not bear any effectiveness in Turkey, unless it is recognized or ratified by a Turkish Court. For instance, generally, a court decision regarding the existence and recovery of a debt may be

executed in the country where this decision has been made. However, the problem would arise if the debtor has assets in Turkey and attachment of such assets would come in question. In such a case, the decision of foreign court would not be valid in Turkey without fulfillment of exequatur and recognition procedures before Turkish Courts.

Another type of cases in which Exequatur & Recognition process comes into question are the divorce cases. Anyone who has been divorced in accordance with the foreign jurisdiction is not considered as divorced under Turkish Laws. Accordingly, in order to get divorced in Turkey, such court decisions shall also be subject to exequatur and recognition process in Turkey.

Accordingly, Exequatur & Recognition is the first step to carry out a debt recovery, to get married or such in Turkey.

Exequatur & Recognition of foreign arbitral awards: New York Convention

Not only court decisions, but also foreign arbitral awards are also subject to the exequatur & recognition processes. If the purpose and function of the arbitration is considered, it may be concluded that the exequatur and recognition of such decisions plays an essential role especially with regard to companies.

Regarding the exequatur and recognition of foreign arbitral awards, the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 comes into question, a party of which has also been Turkey since 1992. Accordingly, a foreign arbitral award may be executed provided that the defendant is a party of this Convention and fulfills the conditions regarding this Convention.

Other conventions and legislation concerning the Exequatur & Recognition in Turkish Law

Turkey is a contracting party of various conventions regarding the Exequatur & Recognition of court decisions which have been made by courts in contracting parties. Some of these conventions are as follows;

- Convention Concerning the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children dated 1958,
- Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations dated 1973,
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children dated 1980,
- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

Such conventions regarding the exequatur and recognition of foreign court decisions play an essential role especially with respect to the reciprocity principle in Turkish International Civil Law. In principle, the reciprocity is one of the conditions of exequatur of foreign court decisions. In the event that one of these conventions is applicable to a case, the reciprocity condition will be fulfilled ipso facto and existence of such condition will not be considered by Turkish courts.

Moreover, exequatur and recognition processes are subject to the conditions regulated in the Code on the International Civil and Procedural Law.

Conclusion

As mentioned above, the application of foreign court decisions and arbitral awards is subject to a certain procedure and certain conditions. If the importance of providing of an achieved status or right in another jurisdiction is considered, the necessity of knowledge about rules of exequatur and recognition procedure may be determined in order to provide the application of foreign court decisions in a short time.

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