

In principle, a court order rendered in a country has its legal effects and consequences only within the same country. For a foreign court decision to create legal effects and consequences in Turkey, this decision needs to be legally recognised and enforced by Turkish courts. The regulations regarding the recognition and/or enforcement of foreign court decisions are stipulated between Article 50 and 59 of the International Private and Civil Procedure Code (IPCPC) numbered 5718 which sets the legal conditions for the recognition and enforcement of foreign court decisions.

Recognition means that foreign court decisions regarding finalised civil cases have the same effect as a final judgment and have the power of evidence in Turkey without any change in content. Enforcement ensures that foreign court decisions regarding finalised civil cases can be executed in Turkey without any change in content, as if the decision was rendered by Turkish courts in addition to having the same effect as a final judgment and having the power of evidence. The most important difference between the concepts of recognition and enforcement is that an enforcement decision rendered by a Turkish court is necessary for foreign court decisions, with enforcement ability and obligation, to be executed based on a court decision in Turkey, while it is sufficient to apply recognition provisions to other foreign court decisions.

As per Article 50 of the IPCPC, the conditions for the Turkish courts to render an enforcement decision are as follows: 1) there should be a decision rendered by a foreign court; 2) this decision should be related to a civil case; and 3) it should be a finalised decision according to the laws of the country in which that decision was made.

In this respect, the 19th Civil Chamber of the Court of Cassation said in a case, that even though it is finalised and issued by a foreign court, the payment order sent by a foreign court was not an enforceable decision with the following grounds in its decision numbered 2018/96 E. and 2018/4151 K.: "In order for an enforcement decision to be made, first of all, there must be a final decision from foreign courts regarding civil cases. In this case, on the other hand, the party requesting enforcement applied to the court with the documents showing the receivables, the judge of the ... Department of the Milan General Court ... issued a payment order and sent it to the defendant with the notice that he can file an objection within sixty days. The request for enforcement is also based on the claim that the payment order issued by the judge was finalised due to lack of objection within sixty days. In this context, the fact that the payment order issued by the judge of the ... Department of the Milan General Court was finalised is not enough to qualify this decision as a technically enforceable (judgment)."

It should be noted that an enforcement decision can also be requested regarding the provisions on personal rights contained in criminal sentences of foreign courts. For example, compensation amounts awarded in criminal cases may be subject to a request for enforcement, along with other conditions in the IPCPC being fulfilled.

IP rights, as a rule, are protected under the laws of the country in which they are protected and limited to that country, and thus can be claimed against third parties under these circumstances. For this reason, recognition and enforcement of foreign court decisions on issues such as registration, cancellation, invalidity of IP rights as well as determination and prevention of infringement of IP rights are not possible. For instance, since a foreign court decision on the cancellation or infringement of a trademark concerns the rights on the trademark registered in that country, the cancellation of a local trademark registration in France will not have the same effect on cancellation of the local registration in Turkey for the same trademark. Similarly, an act creating trademark infringement in France will not also be accepted as an infringing act in terms of the present uses in Turkey. These issues fall exclusively within the jurisdiction of Turkish courts and require examination on the merits of the case by Turkish courts.

However, if, for example, as a result of the proceedings based on trademark infringement and unfair competition claims, the foreign court orders payment of compensation, the foreign court decision can be subject to an enforcement request in terms of the judgment for payment of compensation. Enforcement, at this point, ensures that the compensation awarded by the foreign court against the real persons or

legal entities having assets in Turkey will be executed in Turkey as if it is a final judgment awarded by the Turkish court.

Before filing a court action for enforcement of a foreign court decision, it is also possible to initiate an execution proceeding in Turkey for the awarded compensation as per Article 42 of the Execution and Bankruptcy Code (EBC) and then continue with a general seizure process to collect the amount if the debtor does not file an objection against the payment order within seven days from the notification. The objection of the debtor is a very simple process and it does not need to be based on detailed evidence. If the debtor files an objection against the payment order, the execution proceeding will stop, and the claimant will need to file a court action before the court for cancellation of the debtor's objection. In this case, it will be necessary to receive an enforcement decision from the Turkish Court for the enforcement of the foreign court decision. In this respect, considering that the execution proceeding can be stopped by a simple objection, the surest and most effective way is to apply to the Turkish Court for the enforcement of the foreign court decision first.

Other issues that need to be discussed are whether a mandatory mediation application should be made before filing the enforcement action for the compensation amount awarded in the foreign court decision related to IP rights. It should be mentioned that there is no clear regulation regarding this matter at the moment.

Article 5/A of the Turkish Commercial Code (TCC) numbered 6102, which is included in the TCC in the Code of Commencement of Execution Proceedings in Monetary Receivables Arising from Subscription Agreements numbered 7155 published in the Official Gazette, reads: *"Applying for mediation for claims regarding receivables in which compensation for damages or payment of a certain amount is sought is a pre-condition before filing a case which is defined as a commercial action regulated under Article 4 of the Code and also in other codes."* It entered into force on January 1 2019. Accordingly, the TCC requires mediation for claims regarding commercial receivables in which compensation for damages or payment of a certain amount is sought. In such cases, mediation is a pre-condition to bringing a court action. The original report of the last meeting, stating that an agreement could not be reached at the end of the mediation process or its copy approved by the mediator must be attached to the plaint petition. Otherwise, the plaintiff will be given a one week definite period for the submission of the minutes and in case of failure of submission, the case will be dismissed on procedural grounds.

Pursuant to Article 4 of the TCC, each and every case related to IP rights is accepted as a commercial action and accordingly, enforcement actions for compensation amounts awarded in foreign court decisions related to IP rights fall under the mandatory mediation process. Even though the enforcement action itself is not a compensation action, the enforcement is related to the compensation amount awarded in the foreign court decision. Therefore, even indirectly, it can be considered that a mediation process should be initiated before filing the enforcement action.

Against this background, for enforcement of foreign court decisions related to IP rights, the conditions below must be considered.

Authorised and competent court

According to Article 51 of the IPCPC, the authorised court is the first instance court and the competent court is determined as the court competent at the defendant's residing address in Turkey. If the defendant does not have a residing address in Turkey then the court selects the address where the defendant is temporarily residing. If the defendant does not have a permanent or temporary residing address in Turkey then either of the courts in Ankara, Istanbul or Izmir are chosen.

However, the determination of the authorised court in the enforcement of foreign court decisions related to the IP rights should be carefully made. This is because Article 5/3 of the TCC reads: "The relationship between the Commercial Court of First Instance and the Civil Court of First Instance and other civil courts

is a duty relationship, in which case the procedural provisions regarding duty are applied.” In accordance with the rule of division of labour among courts which are at the level of first instance, it is accepted that all cases concerning IP rights should be filed before the specialised IP courts. The courts authorised to enforce foreign court decisions regarding IP rights are the IP courts in terms of cases filed in Istanbul, Ankara and Izmir, but in other provinces which do not have specialised IP courts, the civil courts of first instance will deal with such cases acting in the capacity of an IP court.

In the decision of the 11th Civil Chamber of the Court of Cassation dated October 12 2015 and numbered 2015/3651 E and 2015/10305 K, it is also accepted that “considering that the decision subject to enforcement request is related to IP rights, Bakırköy 2st Civil IP Court is authorized to see the case. “Similarly, in a case subject to the decision of the 11th Civil Chamber of the Court of Cassation dated December 1 2014 and numbered 2014/15778 E and 2014/18740 K, the first instance court decided that “There are agreements dated 16.3.2010 and 16.5.2010 on licensed use. Considering that the subjects of the recognition and enforcement request fall within the scope of Civil IP Courts, the case file needs to be sent to the Civil IP Court based on lack of jurisdiction.” This decision was approved by the Court of Cassation on the grounds that the decision subject to enforcement request was related to the Code on Intellectual and Artistic Works.

Enforcement requirements

The requirements are regulated in Article 54 of the IPCPC. Four conditions must be fulfilled for a foreign court decision to be enforced.

1) There should be reciprocity between Turkey and the country where the decision subject to enforcement request has been rendered

In order for a foreign court decision to be enforced in Turkey, there should be an agreement on reciprocity or de facto practice regarding reciprocity between Turkey and the country where the decision has been rendered, a provision that allows the enforcement of the decision of the Turkish court or an actual practice in that country in this direction.

For instance, in a case, the 11th Civil Chamber of the Court of Cassation decided that the requirement of reciprocity is fulfilled in its decision numbered 2007/1335 E and 2007/3808 K as follows: “Although there is not an agreement or an actual practice on the mutual recognition and enforcement of court decisions between England and Turkey, it was understood from the response letter of the Ministry of Justice General Directorate of International Law and Foreign Relations dated 14.09.2004 and numbered 63457 that in England it is possible to file a new court action on the basis of a foreign court decision. In this case the basis of the dispute was not examined and proof of the fact that the decision of the Turkish court was notified to the parties and that the opportunity for defence was given is sought. On the other hand, the claims can only be on procedural deficiencies and not the merits of the dispute, thus it has been accepted that there is legal reciprocity between England and Turkey.”

2) The decision should not fall under the exclusive jurisdiction of Turkish courts

The subject of the foreign court decision should not fall under the exclusive jurisdiction of Turkish courts. The enforcement and execution of the decisions rendered on subject matters within the exclusive jurisdiction of Turkish courts is not possible. Due to the nature of IP rights, all issues such as registration, cancellation, invalidity and cancellation of these rights are within the exclusive jurisdiction of Turkish courts and are not capable of enforcement.

In the same direction, the foreign court decisions rendered on the determination and prevention of IP right infringement are not also capable of enforcement in Turkey. In order to accept the infringement of an IP right, such right should be registered in Turkey and the infringement claims require an examination on the merits of the case by Turkish courts and fall under the exclusive jurisdiction of Turkish courts.

3) The decision should not be against public order

If the foreign court decision creates a clear contradiction with public order, it is not capable of enforcement in Turkey. The meaning of this regulation is that the enforcement and execution of the foreign court decision in Turkey should not have results which are clearly against public order.

In this regard, the most controversial issue in Turkish law is whether it is clearly against public order if the foreign court decision does not have concrete reasoning. The General Assembly of the Court of Cassation on the Unification of Judgments accepted in its decision numbered 2010/1 E and 2012/1 K that unjustified decisions do not create a clear violation of public order on the following grounds: "The existence or absence of a reasoning in the decision is not important in determination of contradiction with public order. It is clear and indisputable that the principles regulated under Article 141 of the Constitution regarding the judgment proceedings will apply exclusively to the Turkish Courts. It is not possible to enforce foreign court decisions that will result in contradiction with public order. The absence of reasoning of the foreign court decisions solely will not prevent the enforcement of the finalised foreign court decisions."

4) Right of defence should have been given to the defendant

In principle, the right of defence of the person against whom the enforcement of the decision is requested (the defendant) should be provided while the decision is rendered according to the laws of this country. It does not affect the enforceability of the decision by itself if the defendant has not been duly summoned or represented before that court, or the decision has been rendered in the defendant's absence against the laws of the country in which the decision was made. However, if the defendant files objection before the Turkish court against the request for enforcement based on one of the above-mentioned issues and proves this situation, the decision cannot be enforced in Turkey.

The procedure in enforcement cases

According to Article 53 of the IPCPC, the enforcement petition must include: i) the original or a copy of the foreign court decision, which has been duly approved by the authorities of that country and a certified translation of the decision; and ii) the document certified by the authorities of that country showing that the decision has been finalised and its certified translation. In summary, it should be understood from this provision that the notarised and apostilled versions of the approved foreign court decision and the finalisation certificate should be submitted together with their certified translations.

Pursuant to Article 55 of the IPCPC, the request for enforcement is examined and concluded according to the simple judgment procedure. Simple judgment procedure is regulated under Article 316 et al. of the Code of Civil Procedure and unlike the written judgment procedure, the exchange of petitions stage is completed together with the submission of the plaint petition and the response petition. The aim here is to conclude the case more quickly and practically because in these cases the Turkish court will not make a detailed examination as to the concrete incidents. It will only examine whether the foreign court decision, which is requested for enforcement, is capable of enforcement in terms of procedural requirements.

Prohibition of revision

In enforcement cases, Turkish courts do not have the authority to examine and evaluate the accuracy of the procedure applied in the foreign court decision or the material and legal determinations contained in the decision. Turkish courts can only examine whether the foreign court decision meets enforcement requirements in enforcement cases.

This rule known as prohibition of revision is also accepted in the decision of the General Assembly of the Court of Cassation on the Unification of the Judgments numbered 2010/1 E and 2012/1 K as follows: "The judge of the enforcement has no authority to examine and evaluate the accuracy of the foreign court

decision in terms of material law. Within the scope of this prohibition, the enforcement judge cannot examine and evaluate the present reasoning of the decision.”

For this reason, it is not possible to introduce claims regarding the fact that the material event and the legal findings that are the subject of the foreign court decision are incorrectly evaluated by the foreign court and demands that they should be re-examined by a Turkish court to be accepted in enforcement proceedings.

The impact of the enforcement decision

In light of the conditions established by the IPCPC, it is possible to enforce a foreign court decision partially or entirely. If a foreign court decision is enforced, this decision will be treated as if it is a Turkish court decision and it will have the same consequences as a Turkish court decision. In cases concerning enforcement of a foreign court decision related to the payment of compensation arising from IP rights, the decision can be executed in Turkey.