



**SCREENING CHAPTER 24  
JUSTICE, FREEDOM AND SECURITY**

**AGENDA ITEM 3: JUDICIAL COOPERATION  
IN CIVIL MATTERS**

**Country Session: Republic of TURKEY  
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TURKISH LEGISLATION REGARDING THE “BRUSSELS I”  
REGULATION EC NO: 44/2001 ON JURISDICTION,  
RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN  
CIVIL AND COMMERCIAL MATTERS



## I- BILATERAL AGREEMENTS ON JURISDICTION, RECOGNITION AND ENFORCEMENT OF JUDGMENTS

Turkey has concluded bilateral agreements with three EU Member States (Austria, Italy and Poland) on mutual legal assistance including provisions on recognition and enforcement of judgments. Besides, the principle of *de facto* reciprocity is applied on that subject between Turkey and certain EU Member States such as Germany and Hungary.



According to Article 90 of the Constitution of the Republic of Turkey international agreements duly put into effect carry the force of law.

Article 90 of the Constitution provides that once an international agreement has been ratified, it becomes internal part of the national legal system and can directly be enforced.

No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional.



## II- RELEVANT TURKISH LEGISLATION

The rules on international jurisdiction, recognition and enforcement of judgments are regulated by the Turkish International Private and Procedure Law (No: 2675).





## 1- Jurisdiction (Articles 27 to 33)

The international jurisdiction of the Turkish courts is determined in accordance with the domestic rules of jurisdiction. (Article 27)

According to that rule the general provisions of jurisdiction envisaged in Civil Procedure Law (No: 1086) is applied.

Jurisdiction rules for cases related to the civil status of foreigners who do not have domicile in the Republic of Turkey is determined by the court where he/she is resident in Turkey and if he/she is not resident, where his/her property is located in Turkey.(Article 29)



## Jurisdiction Agreements .(Article 31)

The parties may agree upon jurisdiction of any court of a foreign state:

- if the dispute contains a foreign element and arises from obligation relationship, and
- if the jurisdiction is not determined on the basis of public order or exclusive jurisdiction of Turkish courts.



## Security Payment (Article 32)

The foreign individuals and legal persons shall submit a security payment that will be determined by the court in filing a civil case or intervening a case or initiating enforcement proceedings before a Turkish court.

The same rule is applied where a Turkish citizen does not have a domicile in Turkey. (Civil Procedure Law, No: 1086, Article 97)

Exemption from the security payment is possible on the basis of the principle of reciprocity.





Where there is a multilateral or bilateral agreement providing an exemption from security payment between Turkey and a foreign state, security payment shall not be sought.

Turkey is party to the Hague Convention of 1 March 1954 on Civil Procedure which includes exemption from security payment between contracting states. In that regard this provision shall be applied between Turkey and EU Member States which are parties to the Convention.



## 2- Recognition (Article 42 )

Recognition means consideration of foreign court judgments as conclusive evidence or *res judicata* in Turkish legislation.

Recognition requires the major conditions of the decision of exequatur, which are mentioned below under the title of enforcement. However, reciprocity and certain other exceptions are not required for the decision of recognition.



The recognition of undisputed judicial decisions is also subject to the same provision.

The same procedure shall also be applied in realizing an administrative transaction in Turkey based on the foreign court judgment.



## 3- Enforcement (Articles 34-41)

### Decision of Enforcement/Exequatur

The enforcement of final judgments in Turkey given by foreign courts on civil actions requires a decision of exequatur given by the competent Turkish court. (Article 34)

### Competent Court for Exequatur

The competent court for jurisdiction for the exequatur is the court of first instance depending on the domicile of the parties. (Article 35)





## Request for Exequatur (Articles 36,37)

The request for exequatur shall be realized by petition and the petition should include relevant information on the case, as described in that Article.

If a partial enforcement is sought, the relevant parts of the judgment should explicitly be stated in the request for exequatur. The original copy of the foreign court judgment duly approved by the authorities of that country and the certified translation thereof have to be attached to the petition of exequatur.





## Main Conditions for Exequatur (Article 38)

- Reciprocity (de facto or de jure) with the state concerned,
- The foreign judgment rendered on a subject should not fall into the exclusive jurisdiction of the Turkish courts,
- The foreign judgment should not be considered as expressly contrary to the Turkish public order,
- Pursuant to the laws of the country where the foreign judgment is rendered, the person against whom execution is requested shall be duly summoned to the court that rendered the judgment or represented before that court,



- The law which is authorized in accordance with the Turkish rules on conflict of laws shall be applied in the foreign judgment concerning the civil status of the Turkish citizens.

If the foreign judgment is contrary to this provision, the defendant Turkish citizen should not have objected to the execution in this respect.



## Notification and Objection Procedure (Article 39)

The petition regarding the request for exequatur shall be notified to the opposing party.

The opposing party can only object by claiming that the conditions of enforcement are not present according to the provisions of the chapter thereof, or that the foreign court judgment has been already executed partially or completely or a reason hindering the enforcement has arisen.



## Enforcement Decision (Article 40)

The court can give decision for a full or partial enforcement.

## Enforcement and Appeal Means (Article 41)

The foreign judgments, for which the exequatur is rendered, shall be executed the same as the judgments rendered by the Turkish courts.

Appeal against the decisions rendered in respect of the acceptance or dismissal of the request for exequatur is subject to the general provisions.





## TURKISH LEGISLATION REGARDING LUGANO CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

The scope of the Lugano Convention is very similar to the Brussels Regulation 44/2001.

Therefore, the corresponding Turkish legislation is the same as mentioned above in the Brussels Regulation 44/2001.





# TURKISH LEGISLATION REGARDING THE SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

## I- INTERNATIONAL CONVENTIONS

Turkey is party to the following international conventions on service of judicial and extra judicial documents:

- 1- The Hague Convention of 1 March 1954 on Civil Procedure.
- 2- Convention on the Service Abroad of Judicial and Extrajudicial Documents on Civil or Commercial Matters dated 1965.



There are also bilateral agreements between Turkey and 10 EU Member States (Germany, Italy, Austria, Poland, Slovakia, Lithuania, Czech Republic, Slovenia, the United Kingdom and Hungary) and four candidate countries (Romania, Bulgaria, Croatia and Macedonia) on judicial assistance including provisions on service of the documents.



## II- RELEVANT TURKISH LEGISLATION

- 1- The Law on Service, No: 7201 (Articles 25-28),
- 2- The Regulation on Service (Articles 36-47),
- 3- Circular No: 63, on the Principles on Executing the Requests for the International Judicial Assistance in Civil Matters, dated 01.01.2006.



## IMPLEMENTATION

The details have been explained in Circular No:63, issued by the Ministry of Justice, Directorate General for International Law and Foreign Relations.

There are three possibilities in the implementation of service of the documents depending on presence of a convention or bilateral agreement between Turkey and the foreign state.





## a) Absence of An Agreement or Convention Between Turkey and the Foreign State

The service of documents shall be executed in accordance with the provisions of the Law on Service and the Regulation on Service within the framework of the principle of reciprocity.

According to Article 25 of the Law on Service, the document to be served on persons abroad shall be sent to the Ministry of Foreign Affairs via the Ministry of Justice and then from that Ministry to the relevant Turkish Embassy or Consulate General.





The request for service should be prepared in accordance with Annex 1 of the Circular.

According to the Circular, the request for service addressed to the authority of a foreign state should include:

- the authority originating the document,
- the legal nature of the document in question,
- the names and addresses of the parties.

Additionally, the request for service has to be accompanied by two copies of translations certified into the language of requested State.



b) Existence of a Multilateral Convention Between Turkey and a Foreign State

Service of the documents shall be executed by taking into account the relevant articles of the Convention.

Turkey designated the Ministry of Justice as the Central Authority with respect to the Hague Convention of 1 March 1954 on Civil Procedure.



### c) Existence of a Bilateral Agreement for Judicial Cooperation Between Turkey and a Foreign State

The document to be transmitted shall be accompanied by the request for service drawn up using the standard form in Annex I of the Circular.

The request for service should include the details for the request (the name of the requesting authority, the legal nature of the document in question, the names and addresses of the parties and other necessary information).



The letter of request and the documents annexed shall be furnished in duplicate and they have to be accompanied by two copies of translations into the language of the requested state. The request for service signed and certified by the requesting authority shall be forwarded to the Turkish Ministry of Justice.





## TURKISH LEGISLATION REGARDING TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL MATTERS (COUNCIL REGULATION NO:1206/2001)

Turkey is party to the following international conventions on taking of evidence:

- 1-The Hague Convention of 1 March 1954 on Civil Procedure.
- 2-The Hague Convention of 18 March 1970 on the Taking Evidence Abroad in Civil and Commercial Matters.



Turkey has already concluded bilateral agreements with eight EU Member States (Germany, Austria, Czech Republic, United Kingdom, Italy, Lithuania, Hungary and Poland) and four candidate countries (Bulgaria, Croatia, Macedonia and Romania) on judicial assistance in civil and commercial matters, which include provisions for taking of evidence.



## IMPLEMENTATION OF THE CONVENTIONS

The requests for taking of evidence either received from or sent to foreign countries are governed by the Circular No:63, issued by the Ministry of Justice, Directorate General for International Law and Foreign Relations on the principles applying on the requests for the international judicial assistance in civil matters.



In relations between the contracting states, the Hague Convention of 1970 replaces Articles 8 to 16 of the 1954 Convention on Civil Procedure.

Turkey applies the provisions of the Convention on Civil Procedure of 1954 to the states which are not party to the Hague Convention of 1970.





If there is a bilateral agreement between Turkey and the states which are party to the Hague Conventions of 1954 and 1970, the provisions of the Convention which has simpler and quicker procedures are applied.

If there is no bilateral agreement or multilateral convention, the principle of reciprocity is applied to the letters of request.



The Circular No: 63 sets out the basic principles on “letters of request” from Turkey to foreign countries and from foreign countries to Turkey, according to the provisions of the Hague Conventions of 1954 and 1970 and bilateral agreements.

There is a form for “letter of request” in Annex 2 attached to the Circular. This form is used for submitting the request to the foreign countries.



The EU Regulation 1206/2001 applies in civil and commercial matters where the court of a Member State requests from another Member State's court that evidence be taken directly in that Member State.

On the other hand, in the Turkish legal system, it is not possible that the court of another state requests evidence be taken directly in civil and commercial matters in Turkey. In practice, Turkish Courts send the letters of request abroad via the Turkish Central Authority. Letters of request and attached documents should be translated into the official language of the requested state.



Turkish judicial authority which executes the letters of request shall apply Turkish Law to the methods and procedures to be followed in accordance with the Circular No: 63.

If the content of a letter of request received from a foreign country is against the sovereignty, security or public order of Turkey and if the request is not considered as compatible with Turkish Law, the execution of the letter of request may be refused provided that the grounds for refusal are indicated.





# TURKISH LEGISLATION REGARDING REGULATION NO 805/2004 ON EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS

## I- INTERNATIONAL CONVENTIONS

There is no international instrument that Turkey is party to corresponding to the scope of the Regulation.



## II- RELEVANT TURKISH LEGISLATION

The general rules of the Turkish International Private and Procedure Law on enforcement (Article 34 - 41) shall be applied to the issues related to enforcement of uncontested claims.

Those rules have been explained above under the title of Brussels I Regulation 44/2001.



# TURKISH LEGISLATION REGARDING 1980 ROME CONVENTION ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS

## I- INTERNATIONAL CONVENTIONS

There is no international instrument that Turkey is party to corresponding to the subject matter of the Rome Convention.



## II- RELEVANT TURKISH LEGISLATION

### 1- The Turkish International Private and Procedure Law No: 2675

The applicable law on obligation relationships arising from contracts is regulated by Article 24:

The obligation relationships arising from contracts are subject to the law expressly chosen by the parties.





- In a case where the parties have not expressly chosen any law, the law of the place of performance of obligation;
- Where there is more than one place of performance, the law regarding the place of performance of the contractual obligation constituting the gravity of the obligation relationship;
- Where this place cannot be determined, the law of the place with which the contract is most closely connected shall be applied.



Other issues corresponding to the provisions of Rome Convention in Turkish International Private and Procedure

Law:

The Validity of Legal Transactions (Article 6)

Legal transactions may be concluded in accordance with the form foreseen by the Law of the place where they are concluded or by the law which is competent as to the substance of the legal transaction.



## Capacity/Majority of a Person (Article 8)

The legal capacity/majority of a person shall be determined by the national law of that person.

A foreigner who is incapable according to his/her national law is bound by the legal transaction concluded in Turkey if he/she has a legal capacity in accordance with the Turkish law.



The majority obtained by the person with his/her national law does not come to an end by changing his/her citizenship.

The legal capacity of the legal entities or communities of persons or estates is subject to the Law of the state where their headquarters is located, as stated in their founding statutes. However, if the actual administrative center is located in Turkey, Turkish law may be applied.





## Family Law

TURKISH LEGISLATION REGARDING COUNCIL  
REGULATION (EC) NO 2201/2003 OF NOVEMBER 2003  
IN MATRIMONIAL MATTERS AND PARENTAL  
RESPONSIBILITY



## I- INTERNATIONAL CONVENTIONS

Turkey is party to the following Conventions:

- The Hague Convention on the Civil Aspects of International Child Abduction of 1980.

(Turkey is party to the Convention since 1 August 2000 and there is a Draft Law at the Turkish Grand National Assembly for the implementation of the Convention.)



- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Luxembourg 20.5.1980 (in force since 01.06.2000)
- Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants, 5 October 1961 (in force since 24.10.1983)



Turkey is not party to the following Conventions:

- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation In Respect of Parental Responsibility and Measures for the Protection of Children (Dated 19 October 1996)  
(Turkey has not signed the Convention yet.)
- Convention on Contact Concerning Children, Strasbourg, 15 May 2003 CETS No: 192  
(Turkey has signed the Convention on 15 July 2003, but has not ratified it yet.)





## II- RELEVANT TURKISH LEGISLATION

### 1- Turkish Civil Code (Law No: 4721)

The general legal terminology on family law issues is specifically defined in the Turkish Civil Code.

### 2- Law on Establishment of Family Courts (Law No: 4787)

Family courts are competent on recognition and enforcement of judgments in matters mentioned in the Regulation.



### 3- The International Private and Procedure Law :

There is no specific provision in the Turkish International Private and Procedure Law corresponding to the Regulation No:2201/2003. Therefore, general principles of the Law are applied in this field.

The rules on international jurisdiction of the Turkish courts (Articles 27-33), recognition (Article 42) and enforcement (Articles 34-41) of the Turkish International Private and Procedure Law have been explained before under the Turkish legislation regarding Brussels Regulation 44/2001.



#### 4- The Law on Execution and Bankruptcy (No: 2004)

The Law on Execution and Bankruptcy includes rules on enforcement of judgment on return of children and personal contact with children.

According to Article 25, the defendant has to obey the order on return of the child in seven days upon receiving the enforcement order; if the defendant does not obey that order, the child shall be taken by law enforcement bodies.



Likewise, enforcement order on personal contact with children shall be executed by law enforcement bodies where the defendant refuses to do so in time. (Article 25/a)

In the enforcement proceedings, a pedagogue or psychologist or other relevant expert shall be present. (Article 25/b)





5- The Circular No: 65 of 1.01.2006 issued by the Ministry of Justice on the implementation of the Hague Convention on the Civil Aspects of International Child Abduction of 1980



## Implementation of the Hague Convention on the Civil Aspects of International Child Abduction of 1980

The implementation of the above mentioned Convention can be explained under 3 headlines;

- Processing the applications
- Resolving matters in court
- Enforcing return orders



In case of a request, the Central Authority confirms the receipt of the request, and afterwards checks whether the application satisfies the requirements set out in the Convention, whether it is complete and in an acceptable form.

After completing these procedures, the request is transmitted to the Public Prosecution Office of where the child is thought to be present in order to locate and protect the child from possible harm.



As soon as the request is transmitted, the Public Prosecution Office initiates preliminary examination and endeavours to obtain an amicable resolution between the parties.

The Office also finds the abducting parent and takes his/her counter declaration about the return request. If the abducting parent does not accept to hand over the child voluntarily then a judicial procedure is initiated before the competent family court by the public prosecutor.

After the appeal process, the judgment becomes final and enforceable throughout the country.





**TURKISH LEGISLATION REGARDING COUNCIL  
REGULATION (EC) NO: 1346/2000 OF 29 MAY 2000 ON  
INSOLVENCY PROCEEDINGS**

There is no corresponding Turkish legislation.



## Access to Justice

# TURKISH LEGISLATION REGARDING COUNCIL DIRECTIVE 2003/8/EC ON COMMON MINIMUM RULES RELATED TO LEGAL AID

## I- INTERNATIONAL CONVENTIONS

Turkey is party to the following international conventions on legal aid:

- European Agreement on the Transmission of Applications for Legal Aid (Ratified on 26 March 1982)
- Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid (Ratified on 31 March 2005)

Turkey has also signed The Hague Convention on access to justice (Signed on 7 July 2004 but has not come into force yet).



Turkey has also concluded bilateral agreements with seven EU Member States (Germany, Austria, Czech Republic, Italy, Lithuania, Hungary and Poland) and four candidate countries (Bulgaria, Croatia, Macedonia and Romania) on judicial assistance in civil and commercial matters including provisions on legal aid.

Therefore, where there is an international convention or bilateral agreement with those countries, that instrument is applied to legal aid between Turkey and that country.





## II- RELEVANT TURKISH LEGISLATION ON LEGAL AID

Legal aid is regulated under the following legislation:

- 1- Civil Procedure Law (No: 1086)
- 2- Attorneyship Law (No: 1136)
- 3- Circular No: 66 on the implementation of the European Agreement on the Transmission of Applications for Legal Aid issued by the Ministry of Justice Directorate General for International Law and Foreign Relations, dated 1 January 2006.



## 1- Civil Procedure Law (Articles 465 – 470)

It is an obligation for foreign citizens to prove the existence of the principle of reciprocity between Turkey and his/her country in order to achieve legal aid.

Any natural person who satisfies the conditions laid down by law and legal persons established for charity may benefit from legal aid. (Article 465)



## Legal aid includes;

- Temporary exemption from costs of the proceedings,
- Advance payment made by state on costs of the witnesses and experts,
- Exemption from guarantee for costs of the proceedings,
- Payment for costs of the notifications,
- Appointment of the lawyer,
- Payment for the costs of the execution,
- Exemption for transactions concerning stamps and
- Temporary exemption from charges of documents and their copies prepared by notaries (Article 466)



## 2- Attorneyship Law (Articles 176 to 179)

Legal aid means that costs of advocacy are met for those who are not able to pay for costs of the advocacy and proceeding. (Article 176)

Request for legal aid is filed to the Legal Aid Office, constituted from lawyers of the Bar Association or representatives of the legal aid. The applicant should bring forward evidence to make sure that he/she needs legal aid. Decision on request for legal aid may be appealed to the president of the Bar Association. The Decision of the president of the Bar Association is final. (Article 178)





The Legal Aid Office appoints one or more lawyers who have to fulfill the obligations concerning advocacy services. (Article 179)

### 3- Circular No: 66

The Circular regulates the implementation of the Agreement and includes transmitting and receiving procedure for legal aid requests and relevant forms annexed to the Circular. Ministry of Justice has been appointed as the “transmitting” and “receiving” authority.



## TURKISH LEGISLATION REGARDING COUNCIL DIRECTIVE 2004/80/EC OF 29 APRIL 2004 RELATING TO COMPENSATION TO CRIME VICTIMS

There is no corresponding Turkish legislation relating to cross-border compensation to crime victims .



## Practical Aspects of Judicial Cooperation

TURKISH LEGISLATION REGARDING COUNCIL  
DECISION 2001/470/EC OF 28 MAY 2001  
ESTABLISHING A EUROPEAN JUDICIAL NETWORK IN  
CIVIL AND COMMERCIAL MATTERS

There is no corresponding Turkish legislation.



## Administrative Capacity of the Ministry of Justice for International Law

Directorate General for International Law and Foreign Relations consists of 3 main sections. 35 Judges serve including the Director General, 3 Deputy Directors General, Heads of Department and 70 administrative staff.

The Criminal Section deals with extradition, mutual legal assistance and transfer of sentenced persons.

The Civil Section deals with mutual legal assistance, child abduction and maintenance obligations.





The Human Rights Section deals with the human rights cases.

Most of the judges at the Directorate General speak several foreign languages and have master degrees. In 2005 the Directorate General dealt with approximately 110,000 communications.