

United Kingdom Court Rules on Recognizing and Enforcing Turkish Judgments

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A recent case in the United Kingdom established a precedent for recognizing and enforcing foreign judgments, particular Turkish ones. The court appointed Moroğlu Arseven to act as a Turkish law expert in the case, which has become a reference point in the United Kingdom for considering the prerequisites to enforcing foreign judgments.

The case sought enforcement of a Turkish decision against a debtor's assets located in the United Kingdom. The debtor challenged the Turkish judgment's enforceability, claiming that all executorial remedies in Turkey must be exhausted before filing a claim in the United Kingdom. The debtor also claimed that satisfying debts from United Kingdom assets runs the risk of double recovery. The court rejected the debtor's claims, paving the way for recognition of Turkish judgments in the United Kingdom.

In principle, English law states that final and conclusive judgments made by foreign courts will be recognized unless they are against public policy, or fraud exists. With the new decision, it is clarified also that executorial remedies need not be satisfied abroad for the adoption of this principle, relying heavily on the report provided by Moroğlu Arseven.

This approach sets an example for Turkish and foreign practitioners from other countries which do not have bilateral treaties with the United Kingdom with regard to recognizing and enforcing foreign judgments in the United Kingdom.

The Turkish Judgment and Court Proceedings

The original Turkish judgment considered allegations that the claimant lent €115,000 to his son during a visit to Turkey in 2006. The claimant (father) filed an application with the Collection Office in Turkey in 2008. The defendant (son) opposed the debt and it was brought before the Civil Court. The Civil Court refused to hear the case in 2010, on the grounds that witness statements alone (the only written evidence) were insufficient evidence.

The claimant applied to the Turkish Court of Appeals, which held that under specific conditions, witness statements should be taken into consideration unless there is evidence suggesting otherwise. The defendant applied to the same chamber for correction of decision, but the request was refused and the case was returned to the Civil Court.

The Civil Court complied with the Court of Appeals' decision that it should hear the case, ultimately accepting the €115,000 debt, but refusing any interest or auxiliary amounts. The defendant appealed the Civil Court's judgment to the Court of Appeals, which refused the defendant's appeal. The defendant appealed further to the Chamber of the Court of Appeals, seeking to correct the Court of Appeals' decision. The higher body refused the defendant's request, causing the Civil Court's decision to become finalized and enforceable within Turkey.

Once these court processes and appeals were complete, the claimant sought to satisfy the debt from the defendant's assets located in the United Kingdom, even though there were assets in Turkey at the time of enforcement.

Approach by the United Kingdom Court

Turkey has no bilateral agreements with the United Kingdom regarding recognition or enforcement of judgements, but there is an established reciprocity in practice between Turkey and the United Kingdom in this respect. Therefore, on the basis of reciprocity, Turkish judgments are subject to the common law in the United Kingdom and a legal action must be initiated for them to be recognized. The British courts will primarily assess whether the Turkish judgment is:

- **Rendered by a competent court, as a result of due process.**
- **Obtained by fraud or contradicts public policy or natural justice.**

In cases where objections can be raised on the basis of above principles, the defendant may have the opportunity to prevent the Turkish decision being ratified in the United Kingdom. Accordingly, the defendant raised arguments about the Turkish decision's enforceability in the United Kingdom, as well as against the actual substance of the finalized Turkish decision.

The defendant's objections included the eligibility of witness statements as evidence and the appropriateness of the Collection's Office notification served to the defendant's Turkish address.

The defendant also argued that claimants must exhaust all options in the origin country before enforcing a judgment in another country. The defendant claimed that allowing a debt to be satisfied in another country without exhausting all enforcement remedies in the country of origin would lead to a risk of double recovery.

The United Kingdom's High Court of Justice appointed Turkish law experts for both parties. The experts were given the task of evaluating the case under Turkish law to identify any irregularities in the Turkish proceedings. Moroğlu Arseven was appointed as an expert on the claimant's side.

Matters Considered by the Turkish Legal Experts

The experts prepared a joint report for the court to consider, including analysis of the defendant's specific arguments:

Exhaustion of enforcement:

The claimant's expert argued that there is no such rule under Turkish law which requires a party to exhaust all executorial routes in Turkey before attempting to enforce a Turkish judgment in the United Kingdom. The principles applied to enforcing and recognizing foreign judgments are silent on this topic (International Private and Procedure Law number 5718). The claimant's expert asserted that there is no priority for the location of assets which are subject to attachments. Therefore, if a debtor has assets outside Turkey, creditors can choose where to enforce the payment order until the total debt has been collected, provided no double recovery occurs.

The defendant's expert argued that the Turkish assets are sufficient to satisfy the debt. Accordingly, the expert claimed it runs counter to judicial economy and seeking to enforce the payment order in the United Kingdom indicates a lack of goodwill.

The judge held that a plaintiff could look for assets anywhere in the world, without needing to first exhaust the debtor's assets in the decision's country of origin.

Double recovery:

The claimant's expert briefly argued that Turkish courts would not allow double recovery if the defendant shows his United Kingdom assets have been sequestrated. Since no regulation specifically prevents a judgment being enforced before other executorial routes are exhausted, the regulatory framework inherently deems creditors' rights to collect receivables as more important than the burden which debtors could suffer due to double recovery.

The defendant's expert argued that if the claimant is allowed to collect in the United Kingdom, he may still continue with proceedings in Turkey.

The judge held that a plaintiff can apply for recognition and enforcement in the United Kingdom and the risk of double recovery exists in both jurisdictions, to varying degrees.

Based on the experts' report, the High Court of Justice held that it is not necessary to exhaust all executorial options in the origin country before making an application in other jurisdictions. The court also took the view that the risk of double recovery does not preclude enforcement of a foreign judgment.

The position taken by the High Court of Justice is along the same approach of the Supreme Courts of the Netherlands in Prism Investments B.V. v J.A. van der Meer case. In the case, the advocate general stated in its opinion that: "...satisfaction of the claim established in the judgment alone does not deprive the judgment of its enforceable nature and that judgment cannot, when enforced abroad, be attributed with legal effects which it does not have in the State in which it was delivered." ([link to case](#)).

Conclusion

The decision sets an important precedent to the effect that any debtor assets in the origin country should not affect recognition and enforcement of a foreign judgment in the United Kingdom, under English law, provided that there is a bilateral agreement or reciprocity in practice between the United Kingdom and the origin country.

In particular, parties which hold final and binding Turkish decisions against international parties can now more securely seize assets in the United Kingdom, even if assets in Turkey exist. A party might choose this option if it wishes to increase international pressure on the debtor, or if it believes the Turkish sequestration process will take longer to complete.

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