

Recognition under Article 27/A of the Law on Civil Registry Services

Article 27/A of Law on Civil Registry Services provides an exception to the recognition and enforcement regime under Turkish law. Foreign decisions that shall be subjected to the recognition process envisaged under Article 27/A of the Law on Civil Registry Services are specified as those relating to divorce, annulment or nullity of a marriage or a declaratory action to show the existence or non-existence of a marriage. In this regard, the decisions relating to custody, child maintenance, marital property or compensation shall not be given any effect pursuant this new process under Article 27/A of Law on Civil Registry Services. “Regulation on Registration of Decisions Rendered by Administrative or Judicial Authorities to Civil Registry” (Regulation) further stipulates conditions required for a divorce decision to be recognised pursuant this new process.

For the realisation of the recognition under this process, the foreign decision on the aforementioned subject matters, shall be final and rendered by a duly authorised administrative or judicial authority. Where the foreign divorce decision is manifestly contrary to Turkish public policy, it shall not be recognised. Finally, there shall not be any ongoing legal proceedings or dismissed claims relating to the decision which is subjected to recognition pursuant Article 27/A of the Law on Civil Registry. Where the conditions under Article 27/A are not fulfilled and hence the registration request at the civil registry is denied, recognition proceedings may be initiated before Turkish courts pursuant the Turkish Private International Law and International Civil Procedure Code (PIL Code).

When compared with the recognition and enforcement regime under the PIL Code, two significant differences are particularly noticed. Firstly, through this new process the foreign decision is given an affect outside of the court proceedings, though a direct amendment made at the civil registry provided that the aforementioned conditions are fulfilled. In order to be able to make the amendment regarding their civil status, the parties, their legal representors or attorneys shall apply to the civil registrar either together or separately provided that there shall not be more than 90 days between the separate applications of each party or their representatives.

Secondly, the administrative decisions may also be recognized in Turkey pursuant this process. In principle, pursuant Article 50 of the PIL Code, there needs to be a court decree as a pre-requisite for recognition of a foreign decision and thus, the administrative decisions will not be recognised in Turkey. Indeed, prior to Article 27/A being implemented, foreign divorce decisions rendered by foreign municipalities were refused to be enforced in Turkey. Non-recognition of foreign municipality decisions caused criticism amongst Turkish legal scholars. Whilst this exception regarding recognition of administrative decisions under Article 27/A of the Law on Civil Registry is considered as a positive development certain issues are open for discussion. Amongst the issues that raised doctrinal discussions are the appeal procedure regarding the registration made at the civil registry made pursuant this process and the interpretation of public policy exception by the civil registrar bearing in mind that Turkish statutory sources do not provide a definition for Turkish public policy and that interference of public policy requires a complex legal reasoning. Finally, the legal nature of the process under Article 27/A is also argued as to whether it may be considered as a recognition decision in its technical sense.