

Determination of Court Fees in the Recognition and Enforcement of Foreign Judgments: An Evaluation of a Constitutional Court Decision

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To date, the issue of court fees in the enforcement of foreign court judgments has been frequently reviewed and assessed by various chambers of the Court of Cassation. Article 4 of Law No. 492 on Fees, stipulates that proportional court fee must be imposed in enforcement proceedings involving a monetary award. However, despite this provision, some chambers of the Court of Cassation have ruled that enforcement proceedings are essentially declaratory in nature and, therefore, fixed court fee should be applied instead of proportional.¹

The restrictive impact of the proportional court fee on the right to seek legal remedies, along with discrepancies in practice, led to the matter being brought before the Constitutional Court. Following an application for annulment submitted by the Istanbul 14th Commercial Court of First Instance, which argued that the proportional court fee restricts the right to seek legal remedies and violates the principle of the rule of law, the Constitutional Court, by majority vote, ruled on October 17, 2024 (Decision No. 2024/104 E., 2024/173 K.) that the contested provision is constitutional. Although this ruling by the Constitutional Court may establish uniformity in practice, it also raises concerns regarding access to justice and the right to seek legal remedies.

Background of the Debates and Grounds for Annulment Application

Article 4 of Law No. 492 stipulates that *in court cases filed for the enforcement of foreign judgment in Türkiye, fees must be determined based on the value, type, and nature of the judgment in question*. Accordingly, if a foreign judgment involves a monetary award, a court fee in the amount of 6.832% of the monetary award, must be imposed. However, despite this provision, different chambers of the Court of Cassation have ruled that enforcement proceedings should be considered as declaratory actions, rather than action for performance. Consequently, they have

¹ The Turkish Court of Cassation 11th Civil Chamber's decision numbered 2014/16661 E., 2015/1675 K. and dated 11.02.2015; The Turkish Court of Cassation 11th Civil Chamber's decision numbered 2014/9333 E., 2014/11865 K and dated 23.06.2014; The Turkish Court of Cassation 11th Civil Chamber's decision numbered 2012/3869 E., 2014/1555 K. and dated 24.01.2014; The Turkish Court of Cassation 11th Civil Chamber's decision numbered 2012/3715 E., 2012/8307 K. and dated 18.05.2012.

concluded that court fees and attorney's fees should be fixed, rather than proportional.

The applicant, İstanbul 14th Commercial Court of First Instance, argued that imposing a proportional fee on the enforcement of foreign judgments violates both the principle of the rule of law and the right to seek legal remedies, requesting the annulment of the relevant provision. In its application, the court also referred to the consistent rulings of the 11th Civil Chamber of the Court of Cassation, which held that a fixed fee should be applied in such cases, emphasizing that enforcement proceedings are essentially declaratory in nature and therefore should not be subject to a proportional court fee.

The unconstitutionality of Article 4 of the Fees Law was presented with several arguments. It was asserted that a party who has already paid legal costs in the foreign court proceedings should not be required to pay an additional proportional fee for the same decision's enforcement in Turkey, as this restricts access to justice and imposes an excessive financial burden on claimants. Furthermore, even if a foreign court ruling involves a monetary claim, enforcement proceedings do not inherently concern the collection of money. Instead, they merely involve an assessment of whether the foreign judgment meets the recognition and enforcement conditions in Turkey.

It is possible to impose proportional court fee in cases where the subject matter can be monetarily evaluated, as a consideration for public services and to prevent the misuse of the right to benefit from such services. However, subjecting enforcement proceedings, which are not inherently subject to proportional fees, to such fees through a special legal provision creates a restrictive effect on the right to seek legal remedies for a claimant whose entitlement has already been confirmed by a foreign court ruling.

Furthermore, although enforcement proceedings do not directly concern a monetary claim, requiring parties to pay a proportional fee undermines legal certainty and imposes an unforeseeable financial burden. It has been argued that this practice violates the principle of the rule of law, which is safeguarded under Article 2 of the Turkish Constitution, and hinders individuals' access to a fair and predictable judicial process.

Assessment of the Constitutional Court

The Constitutional Court concluded that imposing a proportional court fee in enforcement proceedings based on the monetary value of the foreign judgment, restricts both the right to property and the right to seek legal remedies. Consequently, it examined whether these restrictions were in line with the grounds prescribed by the Constitution and whether they met the principle of proportionality. In this context, the Constitutional Court expanded the scope of the annulment application, reviewing the relevant provision not only in terms of the rule of law and the right to seek legal remedies but also in light of Article 13 of the Constitution, which governs limitations on fundamental rights and freedoms, and Article 35, which protects property rights.

The Constitutional Court emphasized that court fees serve as a contribution to the state in exchange for judicial services and that individuals benefiting from these services are expected to bear part of the cost. Additionally, it noted that court fees also serve to prevent unnecessary legal claims from being brought before judicial authorities. From the perspective of procedural economy, the court highlighted that reducing the workload of courts and ensuring that disputes are resolved with minimal costs and within the shortest time possible serve to public interest.

Considering the legitimate objectives of imposing court fees, the Constitutional Court stated that the contested provision, which mandates the collection of a proportional fee in enforcement proceedings, aims to reduce the workload of judicial authorities and thereby enable them to resolve disputes as efficiently as possible. Consequently, the Court found that this regulation serves the public interest.

Furthermore, the Court emphasized that it is not sufficient for a legal provision restricting fundamental rights and freedoms to merely have a public interest objective; it must also comply with the principle of proportionality. In this regard, the Constitutional Court assessed the provision in light of the three key elements of proportionality principle: *suitability, necessity and proportionality*.

According to the contested rule, requiring parties to bear a certain financial burden by paying a proportional fee was deemed necessary and suitable for achieving the objective of procedural economy - and thus, *the public interest*.

In its assessment of the principle of proportionality, the Constitutional Court compared the financial burden imposed on the parties with the public benefit of reducing the courts' workload and ensuring the swift resolution of proceedings. It concluded that the contested rule does not impose an excessive burden on the parties to the enforcement proceedings and that there is no disproportionality between the intended public benefit and the obligation imposed on the individuals concerned. Additionally, the Court examined the proportionality of the provision from the defendant's perspective. It noted that the defendant, by failing to voluntarily fulfill the obligation imposed by the foreign court ruling, had directly caused the enforcement proceedings to be initiated. As a result, it was foreseeable that the defendant would be subject to the court fee in the enforcement case. Moreover, the fee rate applicable to enforcement proceedings is the same as the fee rate applicable to other cases filed in Turkey, meaning that it is not disproportionately higher. Therefore, the Court held that the provision does not impose a severe restriction on the right of access to the courts. Consequently, the Constitutional Court ruled that the provision does not constitute a disproportionate interference with property rights or the right of access to the courts and is not unconstitutional.

Furthermore, the Constitutional Court found that the fee to be paid under the contested rule is clearly defined, specific, accessible, and foreseeable, leaving no room for arbitrariness. It also confirmed that the applicable fee is a proportional fee. Therefore, it concluded that the principle of legality had not been violated.

Dissenting Opinions on the Decision

The Constitutional Court's decision includes dissenting opinions from three judges. One of the key dissenting arguments is that imposing a proportional fee in both the foreign court case and the enforcement proceedings in Turkey - for the same claim amount - constitutes a disproportionate interference with property rights. Individuals who have already paid fees in foreign court proceedings are subjected to a double financial burden when required to pay a proportional fee again at the enforcement stage.

Another dissenting argument challenges the court's argument that the enforcement process of court rulings imposes an unnecessary workload on judicial authorities. In monetary claims filed in Turkish courts, a proportional fee is charged as the filing fee, whereas, at the execution stage, only a fixed fee applies. Even when a person has obtained a court ruling recognizing their claim, it does not produce legal consequences unless enforcement proceedings are initiated.

Similarly, for a foreign court judgment to be enforceable in Turkey, it must first go through recognition and enforcement proceedings. Until enforcement is granted, the foreign court decision has no legal effect in Turkey and cannot be executed. However, requiring a proportional fee in enforcement cases does not serve to prevent unnecessary litigation; instead, it hinders individuals from filing enforcement actions, violating their right to access the courts. In this context, the dissenting judges argued that the contested provision does not serve a legitimate purpose and merely restricts individuals' right to seek legal remedies.

Recognition and Enforcement of Foreign Arbitral Awards

The Constitutional Court's decision does not include an assessment regarding the fees applicable to the enforcement of foreign arbitral awards. However, within the context of this debate, it is also important to examine the statutory provision that mandates a fixed fee for the enforcement of foreign arbitral awards.

With the amendment introduced by Law No. 6728, the Tariff No. 1 of the Fees Law, under the section "A) Court Fees", in the subsection "III. Decision and Judgment Fees", Article (a) stipulates that proportional fees shall not be imposed in arbitration proceedings.

Taking into account this provision, the General Assembly of Civil Chambers of the Court of Cassation ruled that a fixed fee must be applied in enforcement proceedings for foreign arbitral awards.² This ruling effectively ended discussions on the matter, leading to a consensus that fixed fees should apply to the enforcement of foreign arbitral awards.

Regardless of whether the decision for which enforcement is sought is an arbitral award or a court judgment, the examination to be conducted and the ruling to be rendered will be of a similar nature. In this context, the difference in fee practices applied in enforcement proceedings of foreign court judgments and foreign arbitral awards before judicial authorities may give rise to legal debates.

² The Turkish Court of Cassation General Assembly of Civil Chambers' decision numbered 2017/930 E., 2019/812 K. and dated 27.06.2019.

Conclusion and Evaluation

With its decision No. 2024/104 E., 2024/173 K., the Constitutional Court ruled that proportional fee must be applied in enforcement proceedings of foreign court judgments in Turkey and that the relevant provision is not unconstitutional. Accordingly, the Court concluded that this practice does not violate the right of access to justice.

This ruling has the potential to spark new debates regarding the right of access to justice and the freedom to seek legal remedies. In particular, while a fixed fee is applied in the enforcement of international arbitral awards, the continued application of a proportional fee in the enforcement of foreign court decisions creates a legal disparity. This discrepancy significantly increases the cost of enforcing foreign court judgments and may impose financial barriers on individuals seeking to assert their rights.

Although decisions of the Constitutional Court are binding on lower courts, the Court of Cassation may nevertheless adopt a different legal interpretation and refrain from adhering to such decisions. This is because the interpretation of legal norms falls outside the Constitutional Court's jurisdiction. Indeed, in a 2022 ruling on uncertain debt claims³, the Constitutional Court's interpretation was not accepted by the Court of Cassation, which explicitly stated that it was not bound by the Constitutional Court's assessment.⁴

Given this precedent, it remains to be seen whether the Court of Cassation will reconsider its stance and adopt the Constitutional Court's position on the requirement to impose a proportional fee in the enforcement of foreign court decisions in future rulings. Notably, some recent decisions of the Regional Appellate Court rendered after the said ruling of the Constitutional Court still maintain the approach that a fixed fee should be applied in such cases.⁵

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³ The Turkish Constitutional Court's decision dated 22.02.2022, rendered in application No. 2019/12190.

⁴ The Turkish Court of Cassation 9th Civil Chamber's decision numbered 2024/558 E., 2024/3615 K. and dated 26.02.2024.

⁵ See Istanbul Regional Appellate Court 12th Civil Chamber's decision numbered 2025/25 E., 2025/304 K. and dated 27.02.2025.