COURTS AS KEY ARCHITECTS IN THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS WITH A FOCUS ON THE TURKISH EXPERIENCE

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ABSTRACT

This study examines the Court of Cassation's landmark decisions on the recognition and enforcement of foreign judgments, which have collectively shaped the development of Turkish private international law. In selecting the rulings analysed in this study, special attention is given to their significant impact on doctrine, their role in prompting complaints to the Constitutional Court, or European Court of Human Rights, and their influence on Parliament to undertake reforms in private international law. The first section of this study begins with decisions on the *entitlement to initiate enforcement proceedings*, where the Court of Cassation initially required identity of parties in both the foreign and enforcement proceedings, despite the absence of such a requirement in the 1982 Private International Law and Procedural Law Act (PILA). This interpretation ultimately led to the inclusion of an explicit provision in the 2007 PILA. It then examines decisions where *foreign joint custody judgments* were deemed contrary to public order. These decisions sparked debate among academics and practitioners, which influenced the Court of Cassation's perspective and ultimately led to the acceptance of the enforcement of foreign joint custody judgments. The third section highlights the Court's introduction of a new and controversial ground for refusal of enforcement based on the plaintiff's bad faith. This reasoning is not among the statutory grounds listed in the 2007 Act. The study also explores the Court's inconsistent approach to enforcing unreasoned foreign judgments, particularly those issued by German courts under the *Mahnverfahren* procedure. Although the study may appear to focus primarily on a single country, it incorporates comparative analysis of private international law, and the cited rulings of the Court of Cassation offer valuable insights into four issues that have been insufficiently addressed in the legal literature.

Key Words: Recognition of foreign judgments, enforcement of foreign judgments, legal standing, joint custody, judgments lacking reasoning

INTRODUCTION

The roots of recognition and enforcement legislation is traced back to the Ottoman Empire. Until 1918, the Empire had no specific legislation on recognition and enforcement, primarily because it had granted capitulations to foreign nationals residing within its territory. These capitulations allowed foreigners to be tried in their own consular courts under their national laws.[1] In Ottoman law, the enforcement of foreign judgments was permitted only in cases between foreigners.[2] In such disputes, judgments rendered by foreign courts were enforced by consular courts operating under the capitulations. If both the plaintiff and the defendant were nationals of the same state, the consular court of that state had jurisdiction over the enforcement proceedings; if they were of different nationalities, the consular court

[1] Nuray Ekşi, *Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi* (2nd edn, Beta Publisher Istanbul 2020) 16; Ekşi, *Mahkeme Kararlarıyla Milletlerarası Özel Hukuk El Kitabı* (2nd edn, Beta Yayınevi Istanbul 2023) 15–16.
[2] Ekşi, *Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi* (n 1) 15; Yılmaz Altuğ, *Türk Milletlerarası Usul Hukuku* (Fakülteler Publisher Istanbul 1983) 118; Atâ Sakmar, *Yabancı İlâmların Türkiye'deki Sonuçları* (Fakülteler Matbaası Istanbul 1982) 6.

of the defendant's state was deemed competent to hear the enforcement case.[3] Following the abolition of capitulations in 1914, *Law on the Enforcement of Judgments Rendered by Foreign Courts,*[4] was enacted in 1918.[5] From 1927 to 1982, the enforcement of foreign judgments was governed by Articles 537 to 545 of the Civil Code.[6] These Articles were eventually repealed by the Private International Law Act (PILA) No. 2675 in 1982.[7] This Act was subsequently replaced by the current PILA No. 5718 in 2007.[8] According to Article 1(2) of 2007 PILA, international treaties ratified by Türkiye take precedence. As a result, in any given case, the court must first determine whether a relevant international treaty exists. If such a treaty is applicable, its provisions on recognition and enforcement prevail over those of PILA, unless the treaty itself provides otherwise.[9] This study examines selected rulings on the recognition and enforcement of foreign judgments issued during the period of the 1982 PILA and under the 2007 PILA,[10] which remains in force today.

The number of decisions issued by the Court of Cassation on private international law, which was relatively limited until the 2011[11], has steadily increased over time.[12] The sharp increase in such cases became particularly pronounced following the onset of the Syrian crisis and the large-scale migration to Türkiye from various parts of the world beginning in 2011. The growing volume of these cases has posed significant challenges for Turkish courts, particularly in matters related to undocumented migrants. Many of these cases involve individuals whose registration was based on self-declared information, either due to a lack of proper documentation or, more often, the deliberate concealment of identity papers. The situation has been further complicated by deliberate misrepresentations to the authorities concerning individuals' identity, nationality, and country of origin.

Turkish Private International Law is notably comprehensive. In addition to addressing choice of law rules and international civil procedural matters, it also encompasses nationality law and the law of

[3] Ekşi (n 2) 15; Altuğ (n 2); Altuğ, 118.
[4] Düstur, 3rd Series, Vol 10, 489.
[5]Sakmar (n 2) 6–7; Altuğ (n 2) 119; Ekşi, *Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi* (n 1) 16. Although *Liakopoulos* stated that "[t]he first Turkish legislative act of private international law with reference to the recognition and enforcement of foreign judgments was *the Law of Obligations of Aliens in the Ottoman State*" this statement appears to be incorrect (see Dimitris Liakopoulos, 'Recognition and Enforcement of Foreign Judgments in Accordance with Turkish International Private Law' (2018) 4(2) *International Comparative Jurisprudence* 117). Just to clarify, the correct name of the law is the *Temporary Law on the Rights and Responsibilities of Foreigners Residing in the Ottoman Empire* (Düstur: II. Tertip, Vol. 7, 458–459), commonly known as the 'Temporary Law,' and it was enacted in 1915. Although originally intended as a temporary law, it remained in force until 1982. Second, while the Temporary Law included provisions on conflict of laws and international jurisdiction, it did not contain any rules regarding the recognition and enforcement of foreign court judgments (Ekşi, (n 1) 20). While these two issues merit clarification, they do not diminish the overall contribution of *Liakopoulos*' article to the analysis of the 2007 PILA's provisions concerning the recognition and enforcement of foreign judgments.
[6] Official Gazette Dated 2-4 July 1927 Nos. 622, 623, and 624.
[7] Official Gazette Dated 22 May 1982 No. 17701.
[8] Official Gazette Dated 27 November 2007 No. 26728.
[9] Ekşi, Mahkeme Kararlarıyla Milletlerarası Özel Hukuk El Kitabı (n 1), 19; Liakopoulos (n 5) 118.
[10] For the English translation of the 2007 PILA, *see* N Ayşe Odman Boztosun, 'The 2007 Turkish Code on Private International Law and International Civil Procedure' (2007) IX *Yearbook of Private International Law* 583–604; for overview see Gülören Tekinalp, 'The 2007 Turkish Code Concerning Private International Law and International Civil Procedure' (2007) IX *Yearbook of Private International Law* 313–341..
[11] Nuray Ekşi, *Milletlerarası Nitelikli Davalara İlişkin Mahkeme Kararları* (Beta Publisher Istanbul 2007) 1–393.
[12] Not only civil courts, but also criminal and administrative courts, are handling an increasing number of cases involving foreigners. Moreover, certain criminal court judgments also have implications for private international law. For example, a criminal case was brought against a Syrian male citizen for cohabiting with and engaging in sexual intercourse with a Syrian citizen minor under the age of 15. The court of first instance convicted the defendant of child sexual abuse. A Syrian male citizen has appealed this decision. The appellate court, applying Article 223(3)(d) of the Criminal Procedure Code, concluded that the defendant was unaware that his actions would constitute a crime in Türkiye, due to the allowance of underage marriages in Syria. Therefore, the court decided that the defendant could not be sentenced. According to Article 223(3)(d) of the Criminal Procedure Code, if the defendant falls into an error that eliminates fault, the court may decide that there is no ground for punishment on the basis of the absence of fault. An appeal was made against this decision to the Court of Cassation. Thankfully, the 14th Criminal Chamber of the Court of Cassation overturned the appellate court's decision in its judgment dated 26 November 2019, and ruled that the Syrian defendant cannot benefit from the provisions on mistake, as, according to the ordinary course of life and rules of logic, he is expected to be aware that engaging in sexual intercourse with individuals under the age of 15 constitutes wrongdoing (Nuray Ekşi, *Türkiye'ye Sığınan Yabancıların Aile ve Şahsın Hukuku Davaları* (Beta Publisher Istanbul 2021) 93–94).

foreigners.[13] There are also landmark rulings in areas such as nationality law and the law of foreigners. Although these decisions often address highly sensitive, complex, and compelling issues, they are not examined in this study, as its scope is limited to landmark rulings on recognition and enforcement.

In selecting landmark rulings from a vast body of case law, particular attention is given to whether a decision has sparked significant debate in legal doctrine, or resulted in proceedings before the Turkish Constitutional Court or the European Court of Human Rights (ECtHR), or prompted legislative reforms in the PILA. The selection process also takes into account whether the rulings concern issues of recognition and enforcement of foreign judgments that either have not been addressed at all or have not been sufficiently examined, not only by the Turkish Court of Cassation, but, as far as the author's knowledge extends, also by the supreme courts of other countries.

Although refusal to enforce foreign judgments on public policy grounds is widely debated in legal doctrine, this study takes a different approach by focusing on landmark Court of Cassation rulings in four key areas. The first matter concerned the standing, which means *entitlement to initiate enforcement proceedings*, with particular attention to the fact that, although the 1982 PILA contained no provision on this issue, the Court of Cassation required that the parties involved in the foreign proceedings be identical to those in the recognition and enforcement proceedings. After presenting academic perspectives on this jurisprudence, the study explains how these discussions led to the inclusion of a specific provision in the 2007 PILA. The second matter explores cases where foreign judgments granting *joint custody* to both parents were considered contrary to public order. Initially discussed in the context of foreign judgment enforcement, this issue later expanded to domestic custody cases. The study traces how this jurisprudence evolved, particularly following the Constitutional Court ruling, which led to the acceptance of joint custody in domestic cases, and the enforcement of foreign joint custody judgments. The third matter addresses the Court of Cassation's creation of a ground for refusing recognition and enforcement of a foreign judgment based on the *plaintiff's violation of the principle of good faith*, a ground not explicitly stated in 2007 PILA. Another significant topic in Turkish legal practice concerns the enforcement of *foreign judgments without reasoning*. This issue will be addressed by this study as the fourth matter and arose in cases involving judgments from German courts rendered through the *Mahverfaharen* process. While some chambers of the Court of Cassation found these unreasoned judgments contrary to Turkish public policy, others allowed recognition and enforcement despite the lack of reasoning. The final issue addresses how the inconsistency in rulings on the enforcement of foreign judgments lacking reasoning was ultimately resolved.

WHETHER THE PARTIES IN RECOGNITION AND ENFORCEMENT PROCEEDINGS CAN DIFFER FROM THOSE IN THE ORIGINAL FOREIGN JUDGMENT

The 1982 PILA did not contain any provision regarding whether the parties in a recognition or enforcement action had to be identical to those in the original foreign proceedings. This legal gap was first addressed in Article 52(1) of the 2007 PILA, which states that any person with a *legal interest* may request the recognition or enforcement of a foreign judgment. Accordingly, the involvement of the same parties in both the foreign and domestic proceedings is not required. In the absence of such a provision under the 1982 PILA, the Court of Cassation had previously dismissed several recognition and enforcement cases due to lack of standing when the parties differed between the foreign and Turkish lawsuits.[14] This interpretation led to legal challenges and ultimately brought the issue before the European Court of Human Rights (ECrtHR). Below, several Court of Cassation decisions illustrating this restrictive approach will be examined. Next, the judgment of the ECtHR, which critiques the problematic nature of this jurisprudence, will be discussed.[15] Finally, with reference to the above rulings,

[13] Thomas Kadner Graziano, 'Private International Law in Legal Education in Europe and Selected Other Countries' in Jan von Hein, Eva-Maria Kieninger and Gisela Rühl (eds), *How European is European Private International Law? Sources, Court Practice, Academic Discourse* (Intersentia 2019) 342.

[14] Ekşi, Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi (n 1) 62.

[15] Both constitutional courts and the European Court of Human Rights have played a significant role in shaping private international law. The 'constitutionalisation' of private international law began in European countries in 1971 (Symeon C Symeonides, *The "Private" in Private International Law* (Maastricht Law Series 9, Eleven International Publishing 2019) 27). Similar to its constitutionalisation, what I refer to as the 'humanitarisation' of private international law has also advanced

special attention will be given to the provision introduced by the legislator in the 2007 PILA and to post-2007 Court of Cassation decisions that depart from earlier case law.

Although they were not parties to the case heard in the foreign court, heirs hold an important position among those with a legal interest in filing a lawsuit in Türkiye for the recognition and enforcement of a foreign judgments. In a majority decision dated 19 December 1994,[16] rendered during the 1982 PILA period, the 2nd Civil Chamber of the Court of Cassation held that only the parties to the foreign court case could apply for recognition of a foreign divorce judgment, and that heirs could not file such a lawsuit. However, unless the foreign divorce judgment is recognized in Türkiye, the divorced spouses will still appear as married in the civil registry, and the surviving spouse will be entitled to a share of the inheritance. This situation will result in a reduction of the share of the inheritance that would otherwise go to the other legal heirs. Accordingly, the heirs have a legal interest in filing a lawsuit for the recognition of the foreign divorce judgment.

The other case involved Aslı Selin's father, Hamdi Öztürk, who married German citizen Doris Luise Rexin in 1968. While living separately from his German wife, Hamdi Öztürk came to Türkiye and began an extramarital relationship with Aslı Selin's mother. Aslı Selin Öztürk was born from this relationship in 2000. In 2001, Hamdi Öztürk and his German wife were divorced by a decision of the Bensheim civil court in Germany. However, Hamdi Öztürk passed away on 22 May 2001, without filing a case in Türkiye for the recognition of the divorce judgment issued in Germany. On 8 June 2001, the Ankara Civil Court of Peace issued a certificate of inheritance stating that one-quarter of Hamdi Öztürk's estate belonged to his German wife and the remaining three-quarters to Aslı Selin. On 14 July 2001, in an attempt to receive the entire inheritance and to block the German woman's inheritance rights, Aslı Selin Öztürk filed a lawsuit seeking recognition of the German divorce judgment. Since she was a minor, her mother represented her in the case. The first-instance court recognized the divorce judgment. However, in a majority decision dated 6 December 2001, the 2nd Civil Chamber of the Court of Cassation[17] overturned this decision and concluded that a child was not able to file a lawsuit for the recognition and enforcement of a foreign court judgment concerning divorce and alimony. In this decision, the Court emphasized that the parties to the case filed in the foreign court must be the same as the parties to the recognition and enforcement proceedings initiated in Türkiye. In this case, the father had obtained a divorce in the Bensheim court, which also ordered him to pay alimony to his ex-spouse. Before this decision was recognized and enforced in Türkiye, the father passed away. Subsequently, the child, who was represented by her mother, filed a lawsuit in a Turkish court seeking recognition of the foreign divorce judgment. Since the child was not a party to the foreign divorce and alimony proceedings, the recognition claim was dismissed. The Court of Cassation held that a heir cannot request recognition of a foreign divorce judgment. However, a dissenting opinion from the 2nd Civil Chamber argued that anyone with a legal interest may file such a lawsuit. Otherwise, if the foreign divorce judgment is not recognized in Türkiye, it would have no legal effect, and the foreign spouse might still be considered an heir despite the divorce.

As a result, Aslı Selin Öztürk could not receive the entire inheritance because she remained a co-heir along with the German spouse. Aslı Selin Öztürk subsequently filed a case against Türkiye at the ECtHR, arguing that the decision of the Court of Cassation violated Article 6 of the European Convention on Human Rights (the right to a fair trial), Article 8 (respect for private and family life), Article 13 (the right to an effective remedy), and Article 1 of Protocol No. 1 (protection of property).

The ECtHR first emphasized that the 1982 PILA does not explicitly specify who has standing to file a recognition and enforcement case. However, according to the established jurisprudence of the Turkish Court of Cassation, only parties to the foreign proceedings are permitted to initiate recognition and enforcement cases in Türkiye. In the ECtHR's view, this case law effectively eliminates the ability of children to seek recognition and enforcement of their parents' divorce decisions. Aslı Selin's father

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significantly (for an excellent monograph, *see* Louwrens R Kiestra, *The Impact of the European Convention on Human Rights on Private International Law* (TMC Asser Press 2014).

[16] 2nd Civil Chamber of the Court of Cassation, File No. 1994/11220, Decision No. 1994/12667, Dated 19.12.1994: Ekşi, *Milletlerarası Nitelikli Davalara İlişkin Mahkeme Kararları* (n 11) 215.

[17] 2nd Civil Chamber of the Court of Cassation, File No. 2001/15944, Decision No. 2001/17222, Dated 6.12.2001: Ekşi, *Milletlerarası Nitelikli Davalara İlişkin Mahkeme Kararları* (n 11) 352-353.

passed away one month and ten days after the German court's divorce decree became final. The ECtHR emphasised that Turkish courts deprived Aslı Selin Öztürk of the opportunity to request recognition and enforcement of her father's divorce ruling. As a result, not only was the recognition of her father's divorce decision prevented, but despite being his sole heir, she was also blocked from acquiring the entire inheritance. The ECtHR ruled that rejecting the case Aslı Selin filed for recognition of the German court's decision placed a disproportionate burden on her and thus substantially violated her right of access to a court, constituting a breach of Article 6(1) of the European Convention on Human Rights. The ECtHR also underlined that Article 52(1) of the current 2007 PILA allows anyone with a legal interest to file for recognition, and that, going forward, children should be allowed to request the recognition and enforcement of their parents' divorce decisions. Taking into account that Aslı Selin lost one-quarter of her inheritance due to this situation, the ECtHR concluded that Turkish courts' refusal to recognize the foreign divorce ruling constituted an interference with her property rights. The Court found that the Court of Cassation's practice under the old 1982 PILA was not compatible with the requirements of Article 1 of Protocol No. 1 to the Convention.[18] Following the ECtHR's ruling, Aslı Selin applied for a retrial. Her request was granted, the decision denying recognition of the Bensheim court's divorce ruling was annulled, and a judgment was issued in favor of recognizing the German court's decision.[19]

In response to the negative effects of decisions by the Turkish Court of Cassation during the period when the 1982 PILA remained in force, a specific provision was introduced in the 2007 PILA. According to Article 52(1) of 2007 PILA, anyone who has a *legal interest*[20] may initiate recognition or enforcement proceedings regarding a foreign judgment.[21] With this explicit statutory provision, it was acknowledged that the parties to a recognition and enforcement case in Türkiye may differ from the parties to the proceedings in the foreign court.[22] However, Article 52(1) also stipulates that in order for someone other than the original parties to file a recognition and enforcement case, they must have a "legal interest." Furthermore, States that have accepted the jurisdiction of the ECtHR are obligated to take necessary measures to prevent similar violations in the future. Within the scope of this obligation, and in light of the ECtHR's case law, Article 52(1) of 2007 PILA was drafted as part of the legislative reforms that began in 2002 and came into force in 2007. Thus, the ECtHR not only put an end to several incorrect interpretations made by the Turkish Court of Cassation, but also directly influenced the incorporation of a specific provision into the 2007 PILA.

Since the enactment of the 2007 PILA, the Turkish Court of Cassation has recognized in its case law that the parties to recognition and enforcement proceedings may differ from those involved in the

[18] European Court of Human Rights, *Selin Asli Öztürk v. Turkey (Application no 39523/03)* Judgment 13.1.2010. For a commentary on the judgment, *see* Sedat Sirmen, 'Yabancı Mahkeme Kararlarının Tanınması ve Tenfizinde Taraf Sıfatı Sorunu ve Hukukî Yarar: Avrupa İnsan Hakları Mahkemesinin Selin Aslı Öztürk/Türkiye Kararı' in Tuğrul Arat (ed), *Armağan* (Ankara 2012) 1013–1022.

[19] Sirmen (n 18), 1019-1020.

[20] The first EU instrument concerning the recognition and enforcement of foreign judgments was the Brussels Convention. A report on the Convention was prepared by Jenard, providing commentary and context for its provisions. He stated in the Report on the Brussels Convention that "[t]he expression 'on the application of any interested party' implies that any person who is entitled to the benefit of the judgment in the State in which it was given has the right to apply for an order for its enforcement". Report by Mr P. Jenard on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 5.3.1979 C59, p. 49).

[21] A similar provision exists in the French Code of Civil Procedure, which also requires a recognizable legal interest. The standing of a spouse to seek enforcement of a foreign divorce obtained by his or her deceased ex-spouse is also recognized in France (James C Regan, 'The Enforcement of Foreign Judgments in France under the Nouveau Code de Procedure Civile' (1981) 4(1) *Boston College International and Comparative Law Review* 167). Article 36(2) of the Brussels I Regulation provides that *any interested party* may apply for the recognition of a judgment delivered in another Member State. Similarly, Article 45(1), which governs the refusal of recognition, also refers to *any interested party*. In contrast, the provisions concerning enforcement (Articles 39 to 44) use the term *applicant* rather than *any interested party*. It has been observed that under Article 36(2), a party who was not involved in the original proceedings may nonetheless have a legitimate interest in obtaining a ruling on the recognition of the foreign judgment (Patrick Wautelet, 'Chapter III: Recognition and Enforcement' in Ulrich Magnus and Peter Mankowski (eds), *Brussels Ibis Regulation–Commentary* (ECPIL Vol I, Otto Schmidt KG 2016) 821).

[22] Under Article 52(1), there is no distinction between foreign judgments that are monetary and those that are non-monetary. In contrast, Australian law requires identity of parties to enforce a non-monetary foreign judgment, meaning the parties to the original judgment must be the same as those involved in the enforcement proceedings (Kim Pham, 'Enforcement of Non-Monetary Foreign Judgments in Australia' (2008) 30(4) *Sydney Law Review* 665; Timothy J McEvoy, 'Common Law versus Statutory Approaches to Enforcing Foreign Judgments: The Australian Experience' in Paul B Stephan (ed), *Foreign Court Judgments and the United States Legal System* (Brill Nijhoff 2014) 180).

original foreign court proceedings. Indeed, in a decision dated 14 December 2009,[23] the 2nd Civil Chamber of the Court of Cassation ruled that heirs may file a case before Turkish courts for the recognition of a foreign divorce judgment. Similarly, in its decision dated 9 March 2009,[24] the same chamber found that a recognition lawsuit regarding a divorce decision rendered by the Amsterdam Civil Court on 10 September 1997 could be filed by a mother-in-law against her daughter-in-law. In that case, Kavas Atanur Aytaç and Yurdagül Aytaç were married on 18 July 1996. Yurdagül Aytaç filed for divorce in the Amsterdam Civil Court, and the divorce decision became final on 4 December 1997. The spouses did not apply to Turkish courts for recognition of the Amsterdam court judgment. Kavas Aytaç later joined the military and was killed during an armed conflict with terrorists. Following his death, Yurdagül, along with Kavas's parents, obtained a certificate of inheritance from a Turkish court and began receiving a martyr's pension. Later, the deceased's father filed a lawsuit seeking recognition of the Amsterdam court's divorce judgment, but his request was denied. Subsequently, the mother-in-law brought a recognition action, arguing that Yurdagül's continued receipt of the pension despite being divorced unfairly reduced her own share of the pension. The Ankara 2nd Family Court ruled in favor of the mother-in-law, determining that she had a legal interest under Article 52(1) of 2007 PILA and ordered recognition of the Amsterdam court's divorce judgment. The 2nd Civil Chamber of the Court of Cassation upheld the decision by majority vote.

The 2nd Civil Chamber of the Court of Cassation has established consistent jurisprudence affirming that heirs have a legal interest *(locus standi)* in initiating recognition or enforcement proceedings. In several other decisions, the Court of Cassation has reached the same conclusion.[25]

In its decision dated 16 September 2009,[26] the 2nd Civil Chamber of the Court of Cassation held that the Social Security Institution of Türkiye (SGK), which was not a party to the divorce proceedings in the foreign court, had a legal interest in initiating a recognition lawsuit before Turkish courts. In the case at hand, although the surviving spouse had been divorced by a foreign court decision, she applied to the SGK to receive a widow's pension. In response, the SGK filed a recognition lawsuit in Turkish court seeking recognition of the foreign divorce decision. The court of first instance rejected the claim. However, according to the 2nd Civil Chamber of the Court of Cassation, the SGK clearly had a legal interest[27] in bringing the recognition claim, as the defendant woman sought to receive a pension from the SGK as if she were still married to the deceased. Thus, the Court concluded that the SGK had a legitimate legal interest in the recognition of the foreign divorce decision.

LANDMARK COURT OF CASSATION RULINGS ON REFUSAL TO ENFORCE FOREIGN JOINT CUSTODY JUDGMENTS AND ITS LATER CHANGE IN PRACTICE

Before analysing the enforcement of foreign *joint custody* judgments, a brief overview of custody under the Turkish Civil Code is provided to clarify the Court of Cassation's approach to such judgments. According to Article 336(3) of the Turkish Civil Code, in the case of divorce, custody is granted to one of the spouses. In regulating the personal relationship between the spouse who does not have custody and the child, as per Article 182(3), the child's best interests particularly in terms of health, education, and morality are prioritized. Article 337(1) of the Turkish Civil Code states that the custody of a child born out of wedlock belongs to the mother. Although the Turkish Civil Code does not explicitly provide

[23] 2nd Civil Chamber of the Court of Cassation, File No. 2009/8580, Decision No. 2009/21495, Dated 14.12.2009: Nuray Ekşi, *5718 Sayılı Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanuna İlişkin Yargıtay Kararları* (Oniki Levha Publisher Istanbul 2010) 77–85.

[24] 2nd Civil Chamber of the Court of Cassation, File No. 15353, Decision No. 4235, Dated 9.3.2009: Ömer Uğur Gençcan, *Boşanma Tazminat ve Nafaka Hukuku* (Yetkin Yayınevi Ankara 2010) 1615–19.

[25] 2nd Civil Chamber of the Court of Cassation, File No. 2011/10496, Decision No. 2012/5126, Dated 8.3.2012. 2nd Civil Chamber of the Court of Cassation, File No. 2011/21901, Decision No. 2012/8257, Dated 3.4.2012. For a commentary for this decision, *see* Nuray Ekşi, 'Yabancı Boşanma Kararının Türkiye'de Tanınması Davasının Mirasçılar Tarafından Açılabileceğine İlişkin Yargıtay 2. Hukuk Dairesinin 3.4.2012 Tarihli Kararının Değerlendirilmesi' (2012) 32(1) *Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni* 33–50.

[26] 2nd Civil Chamber of the Court of Cassation, File No. 2009/11856, Decision No. 2009/15801, Dated 16.9.2009: Ekşi, *5718 Sayılı Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanuna İlişkin Yargıtay Kararları* (n 23) 76–77.

[27] Ekşi, *Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi* (n 1) 81–82; Gülin Güngör, *Milletlerarası Özel Hukuk* (Yetkin Yayınevi Ankara 2021) 274–75.

for joint custody, whether courts can still grant it based on the child's best interests remains a subject of debate in legal doctrine.[28]

The Turkish Civil Code lacks specific regulations on joint custody following divorce. However, in some countries, custody is granted jointly to both parents at the end of a divorce case.[29] The differences in custody systems in comparative law should, as a rule, not prevent the enforcement of foreign joint custody judgments.[30] That means that a foreign court joint custody judgment does not, by itself, constitute a violation of public order. For a foreign joint custody judgment to be deemed contrary to public order, it must be shown that joint custody is not in the best interests of the child.[31] Therefore, such judgments should be examined on a case-by-case basis to determine whether they violate public order.[32]

In its earlier decisions, the 2nd Civil Chamber of the Court of Cassation consistently held that foreign judgments granting joint custody to both parents were contrary to Turkish public order and, on that basis alone, refused to enforce such judgments.

In its ruling dated 20 March 2003, the 2nd Civil Chamber of the Court of Cassation held that custody is a matter of public order.[33] It ruled that a foreign court's decision to grant joint custody of the children to both parents violates the Turkish Civil Code and is therefore contrary to public order. The decision has faced criticism, with arguments stating that joint custody better protects the child's interests when divorced parents maintain friendly relations.[34]

The subject of another decision by the Court of Cassation's 2nd Civil Chamber, dated 15 April 2004, is the enforcement of the Wiesloch Local Court's final ruling on divorce and the granting of joint custody to both the mother and the father. It concluded that the part of the Wiesloch court's decision relating to the divorce would be recognized, but the part granting joint custody of the child to both parents could not be enforced. According to the Court of Cassation, custody arrangements are a matter of public order. It stated that granting joint custody to both parents by a foreign court is in violation of the Turkish Civil Code.[35]

In the case subject to the 2nd Civil Chamber's decision dated 22 November 2004, the Rotterdam court in the Netherlands had ruled for the divorce of the parties, and the decision became final on 24 October 2003. In the foreign judgment for which enforcement was requested, it was decided that the custody of the two children would be granted to both the mother and the father jointly.

In the 2nd Civil Chamber of the Court of Cassation decision dated 22 November 2004, it was concluded that, because custody is a matter of public order, the foreign court joint custody judgment was incompatible with the Turkish Civil Code and, therefore, could not be enforced in Türkiye.[36] However, this decision was made by a majority vote. In the dissenting opinion, two main arguments were put forward to support the view that a foreign court's decision to grant joint custody to both parents does not violate Turkish public order. The first reason is that, although the foreign court's decision to grant

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[28] For scholarly discussions in civil law on the court's authority to order joint custody, *see* Filiz Yavuz İpekyüz and Merve Polat, 'Türk Medeni Kanunu ve Öğretideki Görüşler Işığında Birlikte Velayet' (2022) 27(47) *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* 630–652; Barış Can Öztürk, 'Birlikte Velayette Gönüllülük Prensibinin Yeri ve Anayasa Mahkemesi Kararının Değerlendirilmesi' (2022) 71(3) *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 1029–1033.

[29] Joint custody developed in the U.S. in the 1970s. For more information, *see* Barbara Stark and Jacueline Heaton, *Routledge Handbook of International Family Law* (Routledge 2021) 184. In Sweden since 1982, (*see* M Lynn Jacobsson, *Joint custody in Sweden: A Policy Case Study* (Columbia University ProQuest Dissertations & Theses 1991); Stark and Heaton, 184; Barbara Stark, International Family Law: An Introduction, Taylor & Francis Group, 2005, p. 4); in Canada, (*see* Edward Kruk, *The Equal Parent Presumption: Social Justice in the Legal Determination of Parenting after Divorce* (McGill-Queen's University Press 2013) 26. et seq.); in Denmark and Norway, (*see* Stark and Heaton, 184). *Stark* stated that in the Netherlands, joint custody is automatically granted after a divorce unless one or both parents specifically request sole custody, citing that it is in the best interest of the child (Stark, 4).

[30] Ekşi, Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi, 586.

[31] Aslı Bayata Canyas, 'Why Not Enforce? A Critical Analysis of the Refusal to Enforce Foreign Joint Custody Judgments in Turkish Courts' (2013) 22 *International Journal of Law, Policy and the Family* 15.

[32] Ekşi, Yabancı Mahkeme Kararlarının Tanınması ve Tenfiz (n 1), 587.

[33] 2nd Civil Chamber of the Court of Cassation, File No. 2003/2818, Decision No. 2003/3889, Dated 20.03.2003.

[34] Gülören Tekinalp, *Milletlerarası Özel Hukuk* (13th edn, Vedat Kitapçılık 2020) 441.

[35] Ekşi, Yabancı Mahkeme Kararlarının Tanınması ve Tenfiz (n 1) 587-588.

[36] Ekşi, Yabancı Mahkeme Kararlarının Tanınması ve Tenfiz (n 1) 588.

joint custody of the children to both parents after the divorce is not in accordance with Article 336 of the Turkish Civil Code, this fact alone does not make the foreign judgment contrary to public order. The reasoning here is that custody decisions can be modified in response to changing circumstances. The second reason is as follows: "Turkey has accepted the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and the Establishment of Custody Rights.[37] This has made it more difficult for foreign judgments to intervene in Turkish public order and minimized their impact. Articles 9 and 10 of the Convention list the reasons for refusing recognition and enforcement, emphasizing that a request can be denied only if the results of the foreign decision clearly conflict with the fundamental principles of the requesting state's family and child law. Although granting joint custody to both parents is not in line with Turkish legal practice it does not constitute a clear violation of Turkish public order." This dissenting opinion argues that while the foreign decision may not align with Turkish legal practice, it does not necessarily breach Turkish public order as defined by law.

In its decision dated 27 December 2004, the 2nd Civil Chamber of the Court of Cassation also concluded that the request for the recognition and enforcement of the divorce and joint custody decision issued by the Amsterdam court should be rejected in regard to the joint custody part.[38]

In its decision dated 10 October 2006,[39] the 2nd Civil Chamber of the Court of Cassation also concluded that the decision of the Hagen Court in Germany, which granted joint custody to both parents, could not be enforced. This decision was rendered by majority vote. In the dissenting opinion attached to the decision, it was stated that in recognition or enforcement proceedings, the judge does not have the authority to examine the substantive correctness of the foreign judgment; that the provisions applied by the foreign court, as well as factual and legal findings, should not be subject to review; that the concept of public policy is aimed at protecting the interests of society; and that a clear violation of public policy can only be asserted if the fundamental values of Turkish law are infringed.

Likewise, in its decision dated 12 June 2006, the 2nd Civil Chamber of the Court of Cassation found the decision of the Michigan State Court in the United States, which granted joint custody to both parents, to be contrary to public policy.[40]

These decisions of the Court of Cassation have been criticized in legal doctrine.[41] It has been argued that, considering the best interests of the child, a joint custody decision rendered by a foreign court is not contrary to Turkish public policy, and that the mere fact that the provisions of the foreign law regarding custody differ from those of the Turkish Civil Code does not, by itself, constitute an obstacle to enforcement.[42]

The Court of Cassation maintained its view that the enforcement of joint custody decisions issued by foreign courts was contrary to public policy until 2017. Although the decision of the 2nd Civil Chamber of the Court of Cassation dated 20 February 2017[43] concerns a custody case rather than an enforcement proceeding, its reasoning is also applicable to enforcement cases. In the case in question, the plaintiff father, a British citizen, requested that custody of his child born out of wedlock be jointly granted to both parents. The court of first instance rejected the claim on the grounds that although joint custody is permissible under English law –the national law of both parties– it is contrary to Turkish public policy. However, the Court of Cassation overturned this decision, referring to Article 5 of Protocol No. 7 to the European Convention on Human Rights, which Turkey has ratified.[44] According to Article 5 of Protocol No. 7, "[s]pouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, during marriage and in the event of its dissolution. This

[37] Official Gazette Dated 8 August 1999 No. 23780.
[38] 2nd Civil Chamber of the Court of Cassation, File No. 2004/13947, Decision No. 2004/15854, Dated 27.12.2004.
[39] 2nd Civil Chamber of the Court of Cassation, File No. 2006/6824, Decision No. 2006/13638, Dated 10.10.2006.
[40] 2nd Civil Chamber of the Court of Cassation, File No. 2006/2773, Decision No. 2006/9267, Dated 12.6.2006.
[41] Ergin Nomer, *Devletler Hususi Hukuku* (23rd edn, Beta Publisher 2021) 523; Aysel Çelikel and Bahadır Erdem, *Milletlerarası Özel Hukuk* (18th edn, Beta Publisher 2024) 703; Cemal Şanli, Emre Esen and İnci Ataman Figanmeşe, *Milletlerarası Özel Hukuk* (11th edn, Beta Publisher 2024) 530.
[42] Nomer (n 41) 523; Şanli, Esen and Ataman Figanmeşe (n 41) 530; Çelikel and Erdem (n 41) 703.
[43] 2nd Civil Chamber of the Court of Cassation, File No. 2016/15771, Decision No. 2017/1737, Dated 20.2.2017.
[44] Official Gazette Dated 25 March 2016 No. 29664.

Article shall not prevent States from taking such measures as are necessary in the interests of the children." The 2nd Civil Chamber emphasized that, under Article 90 of the Turkish Constitution, international treaties concerning fundamental rights and freedoms take precedence over domestic legislation. Consequently, the Court of Cassation concluded that the provisions of English law on joint custody are not contrary to Turkish public policy, provided they do not conflict with the best interests of the child. Having regard to the reasoning set out in this decision, it can be said that the arguments supporting the compatibility of foreign joint custody judgments with Turkish public policy are both strong and persuasive.

Following this ruling, first-instance courts began to grant joint custody decisions. Surprisingly, in divorce cases between Turkish citizens that do not involve a foreign element, requests for joint custody by the spouses have been accepted, in consideration of the principle of the child's best interest.[45]

The 2nd Civil Chamber of the Court of Cassation also revised its approach to the enforcement of joint custody decisions. In its decision dated 4 December 2017,[46] it ruled that the divorce and joint custody decision issued by the Södertörn court could be enforced. The first-instance court had recognized the foreign court's decision regarding the divorce but rejected the part related to joint custody, arguing that it violated public order. The Court of Cassation's 2nd Civil Chamber concluded that joint custody could not be said to clearly violate Turkish public order or infringe upon the fundamental structure and interests of Turkish society, and therefore, it overturned the first-instance court's decision.

In its decision dated 6 October 2021, the Constitutional Court examined whether a court decision granting joint custody between two Turkish citizens violated the fundamental right to respect for family life. In the case at hand, the couple had divorced, and custody was granted to the father. The mother filed a lawsuit to change the custody arrangement. The court, taking into account the healthy relationships both the mother and father had with the child, decided on joint custody. The mother appealed to the Constitutional Court, claiming that the decision to grant joint custody violated her right to respect for family life.[47] The Constitutional Court noted that the parties had not requested joint custody; however, the court decided to grant joint custody anyway.[48] The mother objected to joint custody, and the father did not request it either. The Constitutional Court stated that the lack of an agreement between the spouses on joint custody, as well as the failure to obtain the opinions of the parties and the child on joint custody, violated the right to respect for family life.[49] The Constitutional Court emphasized that joint custody could only be decided when it aligned with the best interests of the child and when both parents had an agreement on the matter.[50]

"VIOLATION OF THE GOOD FAITH PRINCIPLE" AS A NON-STATUTORY OBSTACLE TO FOREIGN JUDGMENT ENFORCEMENT CREATED BY THE COURT OF CASSATION

The obstacles to recognition and enforcement are enumerated in the 2007 PILA. The court cannot expand or introduce new obstacles beyond those specified in the law.[51] However, for the first time, the Court of Cassation introduced a brand-new obstacle with its judgment issued in 2008.[52]

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[45] *See*, for example İzmir 4th Family Court, File No. 2009/448, Decision No. 2009/470, Dated. 27.05.2009.
[46] 2nd Civil Chamber of the Court of Cassation, File No. 2016/18674, Decision No. 2017/13800, Dated 4.12.2017.
[47] Constitutional Court, First Section, *Hilal Erdaş Application* (Application Number: 2018/27658), Judgment 6 October 2021, Official Gazette Dated 30 November 2021 No. 31675.
[48] Hilal Erdaş Application (n 47) § 50.
[49] Similarly, in Germany, joint custody was not recognized until 1982, when the German Constitutional Court ruled in its favor. This landmark decision paved the way for the Parental Law Reform Act of 1998, which introduced a presumption of joint custody in cases of divorce or separation (Stark (n 29) 207). In contrast, although the Turkish Constitutional Court has acknowledged joint custody, the Turkish Civil Code still contains no explicit provisions supporting it.
[50] For a short commentary on the decision of the Turkish Constitutional Court *see*, Öztürk (n 28) 1037-1040.
[51] Ekşi, Mahkeme Kararlarıyla Milletlerarası Özel Hukuk (n 1) 235.
[52] Similar to the Turkish Court of Cassation's decision dated 10 April 2008, the Israeli Supreme Court has applied the principle of good faith in the context of foreign judgment enforcement. Although the Israeli Foreign Judgments Enforcement Law does not explicitly recognize lack of good faith or improper conduct as independent grounds for refusing recognition or enforcement, such considerations may nonetheless influence the court's decision when assessed alongside other relevant factors. For the Israeli Supreme Court judgment and commentary on it, *see* Haggai Carmon, 'Israeli Requirement of Good Faith Conduct in Enforcement of Foreign Judgments' (Conflict of Laws.net, 22 April 2020)

Gençcan, who was a judge at the Court of Cassation at the time, stated that if the claimant in a recognition or enforcement proceeding for a foreign judgment acts contrary to the principle of good faith, the case should be dismissed. He supported this view by referencing a decision of the Court of Cassation.[53] In the case decided by the 2nd Civil Chamber of the Court of Cassation on 10 April 2008, the parties continued their relationship after a foreign court granted a divorce judgment in 1993, and a child was born in 1996. Subsequently, an action was filed in a Turkish court for the recognition of the 1993 foreign divorce decree. The 2nd Civil Chamber of the Court of Cassation rejected the request for recognition, reasoning that the request violated the principle of good faith set forth in Article 2 of the Turkish Civil Code.

The decision of the 2nd Civil Chamber of the Court of Cassation dated 10 April 2008, was criticized by *Ekşi*.[54] According to *Ekşi*, with this decision, the 2nd Civil Chamber of the Court of Cassation not only introduced a new ground for refusing recognition and enforcement, but also prioritized the parties' *de facto* situation over a finalized court decision. The spouses were divorced by a judgment rendered by a foreign court, and this divorce decision became final in the country where it was issued. Although the marriage was legally terminated under the law of that country, the spouses continued to live together and had a child from this relationship. However, this situation has no legal effect on the divorce judgment issued by the foreign court. Despite their *de facto* cohabitation, the spouses are not legally married. In recognition and enforcement proceedings, the review by Turkish courts must be limited to whether the foreign judgment meets the conditions for recognition and enforcement. Turkish courts hearing such cases cannot consider events that occurred after the foreign judgment was issued in order to block recognition and enforcement, nor can they introduce new grounds for refusal.[55]

EARLIER RULINGS AND CURRENT POSITION OF THE COURT OF CASSATION ON THE ENFORCEMENT OF FOREIGN JUDGMENTS WITHOUT REASONING

The issue of whether foreign judgments without reasoning can be enforced arose particularly in relation to the so-called *Mahnverfahren* in German procedural law[56], which refers to a simplified proceeding resulting in a judgment that lacks detailed factual or legal reasoning. The question was whether such judgments by German courts could be enforced in Türkiye. Before Court of Cassation's General Assembly of Civil Chambers in its ruling dated 10 February 2012, the prevailing view in Turkish legal doctrine holds that the enforcement of foreign court judgments cannot be denied solely on the grounds that they lack reasoning.[57] However, there are also those who argue that the lack of reasoning in foreign court judgments is contrary to Turkish public order.[58] This view holds that the only principle that can prevent arbitrariness is that judgments must be reasoned. The reasoning makes the factual and legal basis of the judgment clear. Therefore, the principle in Article 141 of the Constitution, which requires reasoning, is a fundamental aspect of judicial procedure and applies to foreign court judgments to be recognized and enforce in Türkiye.[59]

https://conflictoflaws.net/2020/israeli-requirement-of-good-faith-conduct-in-enforcement-of-foreign-judgments/ accessed 5 July 2025.

[53] 2nd Civil Chamber of the Court of Cassation, File No. 5133, Decision No. 5094, Dated 10.4.2008. For the text the decision *see*, Gençcan (n 24) 1607.

[54] Ekşi, Yabancı Mahkeme Kararlarının Tanınması ve Tenfiz (n 1) 350.

[55] Ekşi, Yabancı Mahkeme Kararlarının Tanınması ve Tenfiz (n 1) 350.

[56] For information on the monetary claims eligible for the Mahnverfahren and the requirements of this process, *see* Emre Esen, 'Alman Hukukunda İhtarlı Basit Dava Usulü (Mahnverfahren) Çerçevesinde Verilen Kararların Türk Hukukunda Tenfizi' (2007) 1–2 *Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni* 25–27, 30–43; Bartosz Sujecki, 'The German Electronic Order for Payment Procedure' (2007) 4 *Digital Evidence and Electronic Signature Law Review* 51–55.

57 Esen (56) 78; Sakmar (n 2) 78-79; Ergin Nomer, 'Yabancı Mahkeme Kararının Tenfizinde "Gerekçe"' (2011) X(1) *İstanbul Kültür Üniversitesi Hukuk Fakültesi Dergisi* 9–16.

[58] Cemal Şanlı, *Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları* (7th edn, Beta Yayınları 2019) 294–95 n 378.

[59] Şanlı (n 58) 294-295 fn. 378.

In its decision on 1 April 1961, the Court of Cassation held that the lack of reasoning in the Berlin Commercial Court's judgment was an obstacle to its enforcement.[60] This decision criticized in the doctrine, with the argument that the absence of reasoning in a foreign judgment is not, by itself, a sufficient reason for refusing enforcement; that the procedural rules and the form of the judgment are subject to the *lex fori*; and that under German procedural law, a judgment issued following a trial in absentia may not include reasoning.[61]

In some decisions after 1961, the Court of Cassation also stated that foreign court judgments lacking reasoning are contrary to Turkish public order[62], while in other decisions, it reached the opposite conclusion.[63]

This contradiction between the decisions of the Court of Cassation chambers was resolved by the Court of Cassation's General Assembly of Civil Chambers in its ruling dated 10 February 2012. According to this ruling, the presence or absence of reasoning in a foreign court judgment is neither relevant nor necessary for the intervention of Turkish public order in the enforcement. Accepting the contrary would necessitate a retrial and create the undesirable situation in which the court enforcing the foreign judgment becomes a body of review and scrutiny. The mere fact that the procedural rules applied by the foreign court differ from those of Turkish procedural law does not justify the intervention of Turkish public order.[64].

This decision was made by a majority vote. The dissenting opinion enumerated three key reasons for opposing the enforcement of foreign court judgments lacking reasoning, asserting that such judgments violate public order. First, it was argued that the compatibility of a judgment with public order can be assessed through the reasoning it contains. Second, the dissent invoked Article 141(3) of the Constitution, which requires judicial decisions to be reasoned, thereby ensuring that rulings are subject to meaningful review. Third, it was emphasized that Article 45 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, includes the requirement of reasoned judgments as an essential element of the broader right to a fair trial. Despite the aforementioned strong arguments raised in the dissenting opinion, it should be noted that references to article numbers of a law in a foreign judgment, even without further explanation, still constitute part of the court's reasoning.

CONCLUSION

The decisions of courts especially their interpretations and applications of the PILA carry undeniable significance for both theory and legal reforms. In addition, the guiding judgements of the courts on matters that are not clearly regulated in the law clarify ambiguous or uncertian issues. Sometimes, wrong decisions inspire the doctrine and lead to the emergence of new ideas or different interpretations. In short, whether right or wrong, the decisions rendered by the courts play a vital role in shaping the interpretation and development of private international law.

While legal doctrine is traditionally viewed as a cornerstone of judicial reasoning and legal reform, the rulings analysed in this study demonstrate that courts themselves are equally instrumental and act as architects in shaping legal change and refining doctrine. Courts do not merely apply existing rules; they actively participate in the development of the PILA. Some, like the Swiss Federal Court, have earned

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[60] For the text of the decision, *see* Chamber of Commerce of the Court of Cassation, File No. 928, Decision No. 1060, Dated. 01.04.1961: Aysel Çelikel, 'Yabancı Mahkeme Kararlarının Tenfizi' (1963) 29(3) *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* 863–64.

[61] Çelikel (n 60) 864; Işıl Özbakan, *Türk Hukukunda Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi* (Kazancı Hukuk Yayınları No. 58, Ankara 1987) 167–68.

[62] 3rd Civil Chamber of the Court of Cassation, File No. 1990/7708, Decision No. 1991/1235, Dated 8.2.1991; 4th Civil Chamber of the Court of Cassation, File No. 1992/7081, Decision No. 1993/2756, Dated 18,03.1993; 13th Civil Chamber of the Court of Cassation, File No. 1996/3116, Decision No. 1996/3450, Dated 08.04.1996; 2nd Civil Chamber of the Court of Cassation, File No. 1999/5858, Decision No. 1999/7609, Dated 30.06.1999; 2nd Civil Chamber of the Court of Cassation, File No. 2001/9007, Decision No. 2001/11406, Dated 05.12.2001; 13th Civil Chamber of the Court of Cassation, File No. 2003/6226, Decision No. 2001/11095, Dated 02.10.2003.

[63] 2nd Civil Chamber of the Court of Cassation, File No. 2006/2612, Decision 2006/9147, Date 08.06.2006.

[64] Grand General Assembly of Civil Chambers of the Court of Cassation for the Unification of Jurisprudence, File No. 2010/1 Decision No. 2012/1, Dated 10.2.2012.

reputations that extend beyond their national jurisdictions. Its rulings influence not only Swiss jurisprudence but are also cited by foreign courts, including those in Türkiye. At the supranational level, the ECtHR exerts binding authority over member states that have accepted its jurisdiction. Its judgments frequently prompt significant legal and administrative reforms, including the reopening of cases. As explained in this study, one such decision directly led to the inclusion of a specific clause in Article 52 of the 2007 PILA. Likewise, the European Court of Justice (ECJ), through its preliminary rulings, ensures uniform interpretation and application of EU law across member states. These examples highlight a broader point that national and international courts play an active role in shaping the law. They do more than interpret existing rules; their decisions often drive legal reform and contribute to the development of legal doctrine, as demonstrated by the rulings of the Turkish Court of Cassation cited in this study. The full value of court decisions is not always apparent from a straightforward reading. However, when these decisions are evaluated in the context of a specific legal issue, it becomes clear how far they sometimes go beyond what is found in academic writings. As demonstrated in this study, authors should not only acknowledge their sovereignty in legal reform and the shaping of practice but also recognize the reciprocal impact that court rulings have on their work.

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