

## Law Bulletin

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### **SERVICE ON FOREIGN NATIONALS RESIDING ABROAD**

Globalization of economic and commercial relations has placed an additional dimension on the legal interactions between the parties. As the volume of international commercial interactions increases, the need for dispute resolution processes to be conducted on an international scale also rises. The issue of international service is seen emerging on the scene in cases where the dispute resolution processes are conducted in state courts. Accordingly, carrying out the international service process in a successful manner is highly important to conclude the judicial proceedings without any delay.

#### **I. Sources of Service Abroad**

Under Turkish law, the rules for international service are set out under the Law on Service of Proceedings and the Regulation on the Application of the Law on Service of Proceedings. In addition to this, Turkey is party to bilateral and multilateral agreements with many countries. Most notable among them is the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "**Convention**") to which a large number of states are signatories. The Convention is one of the most commonly used sources in both lawsuits and execution proceedings initiated in Turkey as it provides for a relatively simple procedure to carry out the international service procedure. However, there may be more than one bilateral or multilateral agreement between Turkey and the foreign state where the individual or the legal entity to be served is resident. In such circumstances, it is necessary to evaluate which agreement's provisions will be given priority.

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## **II. International Service of Legal Documents on Foreign Parties Under the Convention**

In cases where the service process is carried out under the Convention, the Request for Service Abroad of Judicial or Extrajudicial Documents<sup>1</sup> is initially prepared by the relevant official authority (e.g., originating court) that requests the service of legal documents abroad. The original or copy of the documents to be served (e.g., statement of claim, preliminary interim decision, hearing invitation) must be attached to the request form and all of them must be translated into the official language of the state where the service will be made. All in all, it is crucial for the party's counsel to closely follow up on this process and keep in touch with the relevant court or execution office so that the process can proceed swiftly.

The Convention obliges the signatories to establish a central authority to fulfill international service requests. If the Directorate General for Foreign Relations and European Union Affairs of the Turkish Ministry of Justice (the "**General Directorate**") is satisfied that the document set sent to it by the originating court or execution office is duly prepared, the General Directorate directly sends the document set to the central authority of the foreign state where the service is requested. Subsequently, the relevant central authority carries out the service process abroad and informs the General Directorate about the status of the process.

## **III. Frequently Encountered Issues in Practice**

The mechanism provided under the Convention seems theoretically adequate for completing the international service process promptly. However, in practice, service abroad may take almost four months in the best-case scenario and up to a year on average. The period may extend depending on the dynamics of the foreign state where the service will be made. This being the case, a period of four months at minimum (considering the best-case scenario) for each service to be made during a proceeding can cause proceedings in Turkey to be prolonged.

Another issue is the requirement for a three-month gap between the date notified to the foreign individual or legal entity and the delivery of the document set to the General Directorate. For instance, in lawsuits where a hearing date will be notified to the foreign defendant abroad, there must be at least three months between the hearing date and the date when the General Directorate receives the set of documents sent by the originating court. If this matter is not considered, the document set may be returned to the originating court by the General Directorate. Therefore, the service process may take even longer.

The General Directorate rejects inquiry requests if such request is submitted within six months from the date of sending the document set to the foreign state where the service is requested. The General Directorate's ground is that "inquiries cannot be made until six months have passed

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<sup>1</sup> The request form is also referred to as "Form Numbered 184" in practice.

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from the date of sending the relevant document, except for emergencies.". As a result, even if the service process abroad is completed, it may take time to inform the relevant Turkish authorities about its status.

## IV. Conclusion

While more efficient systems are being implemented with different technological integrations, the fact that the international service process, which plays a very crucial role in dispute resolution, has turned into a slow-moving mechanism may disrupt the functioning of judicial proceedings and commercial life. Today, judicial proceedings significantly accelerated thanks to the introduction of electronic service in Turkey and vast progress has been made on this issue. The need for similar implementations to become applicable to the international service process is increasing day by day.

## CONTACT

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