

The following Questionnaire addressed to the Members of the Organisation has been prepared for that purpose. Conscious of the short delay to respond to this Questionnaire, the Permanent Bureau invites Members of the Organisation to bring to the attention of their judicial authorities Questions Nos 15 to 28.

The Permanent Bureau would very much appreciate receiving your answers (in either English or French) **before 11 January 2008** in order to have sufficient time to prepare, before the end of February 2008, a Report summarising the results of this consultation for the attention of the Council of early April 2008. Answers should be sent by e-mail to < secretariat@hcch.net > with the following heading and indication in the subject field: "Questionnaire concerning the Treatment of Foreign Law – [name of the Member of the Organisation]". Your cooperation in responding to this Questionnaire is very much appreciated.

Identification

Name of the Member State: TURKEY

For follow-up purposes

Name of contact person: **Ministry of Justice -Department of International Law and Foreign Relations**

Telephone number: **00 90 312 414 78 01**

E-mail address: **www. uhdigm.gov.tr**

Part I – General Questions

Please answer the following general questions with regard to the *European Convention of 7 June 1968 on Information on Foreign Law* (the "London Convention"), the *Inter-American Convention of 8 May 1979 on Proof of and Information on Foreign Law* (the "Montevideo Convention"), the *Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters* (the "Minsk Convention") and any bilateral treaty on proof of and / or information on foreign law ("bilateral treaty").

In this Questionnaire, the term "foreign law" encompasses both foreign internal (substantive) law and foreign private international law.

- 1) Is your State Party to:
- a) The London Convention⁸ YES NO
 - b) The Montevideo Convention⁹ YES NO
 - c) The Minsk Convention¹⁰ YES NO
 - d) Any bilateral treaty YES NO
- (Please indicate the number of bilateral treaties concluded: ____)

- 2) If not, does your State intend to become in the near future a Party to:
- a) The London Convention YES NO
 - b) The Montevideo Convention YES NO
 - c) The Minsk Convention YES NO
 - d) or conclude any bilateral treaty YES NO

3) Please indicate (if applicable) the number of requests received in 2006 and the average number of weeks taken to respond to the requests under:

There is no specific data as to the question.

- 4) Please indicate (if applicable) the number of requests that emanated from the judicial authorities in your State in 2006 and the average number of weeks taken to respond to these requests under:

There is no specific data as to the question.

5) Do you foresee an increase in the number of requests referred to in:

- a) Question No 3 (incoming requests)
 - YES
 - NO
- b) Question No 4 (outgoing requests)?
 - YES
 - NO

6) If so, in which areas of the law? Please specify for each of the sub-questions:

a) With regard to incoming requests, an increase is foreseen in the number of request in the areas of marriage and nullity of marriage, divorce and legal separations, parental responsibility, parent-child relationship, international child protection including child abduction and child adoption, maintenance (child support and other forms of family support) and inheritance.

b) As regards outgoing requests, an increase is foreseen in the number of request in the areas of marriage and nullity of marriage, divorce and legal separations, parental responsibility, parent-child relationship, international child protection including child abduction and child adoption, maintenance (child support and other forms of family support) and inheritance.

7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1:

As is known, the London Convention was signed on 7 June 1968 and entered into force on 20 March 1976 in Turkey. In addition, the implementation of the Convention concerned was regulated by a circular called "*the Circular on the Implementation of European Convention on Information on Foreign Law*". There are incoming and outgoing requests concerning information on foreign law under the London Convention. In addition to this, the information on foreign law has been provided through the Ministry of Foreign Affairs in terms of outgoing requests. These two methods are sufficient for providing of information on foreign law.

8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:¹¹

Indeed, due to the lack of information about the implementation of the London Convention and also the length of the process, obtaining information on foreign law through diplomatic channels is also preferred with regard to outgoing requests.

Part II – Free public access to information on the content of the law

9) Does your State and / or Regional Economic Integration Organisation ("REIO") provide online access to its legislation¹² through an official (governmental) website?

YES. Please specify whether this information is also provided in a non-official language and, if so, in which language(s):

This information is provided in Turkish.

NO. Does another, non-governmental body or organisation provide this information online (please specify which organisation or body)?

10) Does your State and / or REIO respond to written or oral requests for information on the content and / or application of its law?^{13 14}

YES. Please specify for which areas of the law:

Our State responds to written requests for information on the content of our law in all areas.

NO. Does another, non-governmental body or organisation provide this service (please specify which organisation or body)?

11) Are the services in Question No 10 available to people in other States?

YES. Is this service offered in any non-official language and, if so, in which?

This information is provided in Turkish.

NO

12) If yes, do people in other States have access to this service at the same costs as residents?

YES

NO

13) Do you foresee the proportion of people in other States using these services increase in the future?

YES

NO

Please specify:

The proportion of people in other States using these services may increase due to the rise of movement of persons abroad.

Part III – Access to information on the content of foreign law at the litigation stage

14) Please indicate, where possible, a rough estimate of the percentage of civil and commercial law cases heard by the judicial authorities of your State in 2006 which required the application of foreign law and whether this percentage is likely to increase. If no estimate can be obtained for 2006, please refer to another year. Percentage: ___% (year: ____). Likely to increase: YES NO

There is no specific data as to the question.

15) Please indicate, if possible, the most common areas of foreign law applied by or invoked before the judicial authorities of your State.

Marriage and nullity of marriage

Divorce and legal separations

Parental responsibility

Parent-child relationship

International child protection including child abduction and child adoption

Protection of adults

Maintenance (child support and other forms of family support)

Traffic accidents

Products liability

Other types of tort

Consumer protection

Commercial contracts

Sale of goods

Securities transactions

Property

Inheritance

Bankruptcy

Choice of court agreements

Other, please specify:

16) Please identify, if possible, the States whose laws are most frequently applied by or invoked before judicial authorities in your State:

German Law, Austria Law and French Law are most frequently applied by and invoked before judicial authorities in our State.

17) In your State, a judicial authority ascertains foreign law (check more than one box if applicable):¹⁵

- a) *ex officio* without the assistance of an expert¹⁶ (e.g. law firm, specialised institute,¹⁷ university, government (i.e. specialised department or embassy), etc.)
- b) *ex officio* with the assistance of an expert
- c) by submitting, *ex officio*, a request for information under a bilateral or multilateral treaty (where applicable)
- d) as the result of an (express) agreement of all parties, without the assistance of an expert
- e) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- f) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by all parties
- g) by submitting, as the result of an (express) agreement of all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- h) at the request of a party (without the objection of the other or another party) or all parties, without the assistance of an expert
- i) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- j) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by one or all parties
- k) by submitting, at the request of a party (without the objection of the other or another party) or all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- l) by any other method (please specify):

18) Please rank in order of priority (1 being the highest) the sources consulted by judicial authorities in your State to ascertain the content of foreign law under any of the methods described in a), d) and h) of Question No 17:

- [1] Internet (official legislation, case-law and legal publications websites)
- [4] Internet (legislation, case-law and legal publications from private databases (as opposed to official databases))
- [3] Local or personal library (local electronic databases)
- [2] Local or personal library (printed legislation, case-law and legal publications)
- [] Other:

19) Please explain whether and, if so, how the judicial authorities in your State verify the reliability and / or authenticity of these sources and the information provided therein:

They do not have the opportunity to verify the information obtained unless it is provided via the Central Authority of the requested state.

20) Where these sources and the information provided therein are not available in a language understood by the judicial authority, please describe the mechanisms used to address this difficulty. Description:

The documents and the information provided are being translated by the relevant

judicial authority and the financial burden is undertaken by the party that raised the application of foreign law and at the end the party(ies) against whom costs will be awarded.

21) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of your State? In the case of a specialised institute, does it need to meet certain requirements?

- YES
 NO

22) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of the State whose laws are being ascertained? In the case of a specialised institute, does it need to meet certain requirements?

- YES
 NO

23) Please specify which individuals and / or institutions may provide expertise under any of the methods described in b), e) and i) of Question No 17:

a) Local private expert (e.g. law professor, lawyer and / or jurist in private practice)

- YES
 NO

b) Foreign private expert (e.g. law professor, lawyer and / or jurist in private practice)

- YES
 NO

c) Local specialised institute

- YES
 NO

d) Foreign specialised institute

- YES
 NO

e) Local government (including embassies abroad)

- YES
 NO

f) Foreign government (including embassy in your State)

- YES
 NO

g) Member of the local judicial authority

- YES
 NO

h) Member of a foreign judicial authority

- YES
 NO

i) Other(s):

j) Which of the above is most often used?

Depending on the assistance sought any of them may be used. However,

mostly (e) and (f) is used.

24) Please indicate who bears the costs of the expertise provided under any of the methods described in b), e) and i) of Question No 17:

The requesting judicial authority

The party that raised the application of foreign law

The party(ies) against whom costs will be awarded

All parties

Other: **The methods described in (b), (e) and (i) are not used in order to ascertain foreign law.**

25) Would your answers to Questions Nos 21-24 be the same for the expert referred to under f) and j) of Question No 17?

YES

NO, please explain: **Because the methods in (f) and (j) are not used in order to ascertain foreign law.**

26) Please describe, if possible, the common characteristics of requests for information on foreign law submitted under any of the methods described in c), g) and k) of Question No 17: The type of question asked; who most frequently asks questions (*e.g.*, parties with too little or no resources to afford an expert); the reasons why questions are asked (*e.g.*, no material available in a language understood by the judicial authority seized of the matter); etc.

Description:

27) Please indicate whether judicial authorities in your State can transmit the request for information directly to a receiving agency in the State addressed under any of the methods described in c), g) and k) of Question No 17?

YES

NO, please explain: **The judicial authorities in our state transmit the requests for information on foreign law through a central authority. They do not transmit the requests directly.**

28) If so, can the request be transmitted by regular non-secured e-mail?

YES

NO, please explain: **The central authority transmits the requests to the foreign central authority by official post.**

Part IV – Future development of an instrument and / or mechanisms to access information on the content of foreign law

29) In the light of your answers to this Questionnaire, are you of the view that the Hague Conference should develop a global instrument and / or mechanisms to access information on the content of foreign law?

YES

NO

Please explain: The Conference should develop a global mechanism to access information on the content of foreign law under the condition that this instrument accelerates and simplifies the process of obtaining the evidence. If the process becomes faster and easier, one of the big hurdles before the decision taking process of the courts will be overcome.

30) If the Hague Conference were to develop a global instrument to access information on the content of foreign law:

a) Would you be in favour of a flexible instrument in particular with respect to:

i) the availability of several channels through which information on foreign law can be sought and in relation to experts from whom information can be obtained?

YES

NO

Please explain:

The availability of several channels through which information on foreign law can be sought instead of a strict mechanism would be a tailor-made solution. Because every case has its own features and alternative ways of obtaining evidence may help depending on the situation. Also the states will not be reluctant to be a party to such a mechanism if they are able to use existing alternative ways.

ii) the use that may be made of each such channel and expert?

YES

NO

Please explain:

There is no need for a new global instrument but a need for alternative global mechanism for to accelerate and simplify the process to access information.

iii) the availability of information technologies to ensure a speedy process of the requests and to alleviate language barriers?

YES

NO

Please explain:

We are not in favor of a new instrument. However, with regard to an alternative new mechanism, employing information technologies is beneficial. It would be wise to use these opportunities in the area of access to foreign law. By this way, the litigation process can be shortened.

b) Should the information received provide an objective and general description of the law in the foreign State, including references to relevant case-law (as opposed to a specific answer as to how the foreign law should be applied to the issue(s) at stake)?

YES

NO, please explain:

c) Should the information received be non-binding (as opposed to binding)?

YES

NO, please explain:

d) Should this instrument and / or these mechanisms be general in order to permit access to different areas of foreign law (as opposed to being limited to certain area(s) of the law)?

YES

NO, please explain:

e) Should this instrument and / or these mechanisms contain provisions on legal assistance to accommodate individuals with little or no resources?

YES

NO, please explain:

f) Should this instrument and / or these mechanisms be extended to notaries and other professionals who need to have access to the content of foreign law in contexts other than litigation (*e.g.* in relation to successions)?

YES

NO, please explain:

In order to broaden the scope of such a mechanism, we need to provide sufficient infrastructure.

31) If this is not yet the case for your State / REIO, are you of the opinion that it would be useful to make information on the content of the law of your State / REIO available online in a central database?

YES

NO

Please explain.

It would be beneficial for the smooth operation of the process.

32) Are you of the opinion that it would be useful to have information on the content of the law of your State / REIO available online in a standard electronic format (*e.g.* in the form of country profiles that are based on a pre-established, harmonised structure) available in English and French (or other language(s)) in addition to its language of origin?

YES

NO

Please explain.

It would be quite useful at least for giving the hints of the law that is looked

for. However, financial burden of the translation rises as a big obstacle for such a mechanism.

33) If information on the content of the law of your State were to be made available worldwide in either of the forms mentioned in Questions Nos 31 and 32, please identify for which of the following subjects it would be most valuable?

- Legal order in general
- Organisation of the courts of justice system
- Organisation of the administrative tribunals system
- Legal professions
- Access to justice including legal aid
- Jurisdiction of the courts / administrative tribunals
- Bringing a case to a court / an administrative tribunal
- Alternative dispute resolutions
- Procedural time limits
- Applicable law
- Service of documents
- Taking of evidence and modes of proof
- Interim measures and precautionary measures
- Enforcement of judgments
- Simplified and accelerated procedures
- Marriage and nullity of marriage
- Divorce and legal separations
- Parental responsibility
- Parent-child relationship
- International child protection including child abduction and child adoption
- Protection of adults
- Maintenance (child support and other forms of family support)
- Traffic accidents
- Products liability
- Other types of tort
- Consumer protection
- Commercial contracts
- Sale of goods
- Securities transactions
- Property
- Secured interests
- Inheritance
- Bankruptcy
- Legalisation and / or certification of documents
- Notarial acts or certificates
- Other, please specify:

34) Are you of the opinion that the instrument identified under Question No 29 should be developed in combination with either of the instruments described under Questions Nos 31 and 32?

YES

NO

Please explain.

35) Other comments on the models proposed in Preliminary Document No 21 A, any other model, or on a possible future instrument in this field:¹⁸
