

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 10-05636 DMG (SSx)** Date **May 5, 2011**

Title ***Garbis Davoyan, et al. v. Republic of Turkey, et al.*** Page **1 of 3**

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

VALENCIA VALLERY

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER DENYING PLAINTIFFS’ MOTION FOR
ORDER VALIDATING SERVICE**

On April 11, 2011, Plaintiffs filed a motion for an order validating service of process on Defendant Republic of Turkey or, in the alternative, an order allowing Plaintiffs to serve the Republic of Turkey by an alternative method pursuant to Federal Rule of Civil Procedure 4(f)(3) [Doc. #24]. Defendants Central Bank of the Republic of Turkey and T.C. Ziraat Bankasi filed an opposition on April 18, 2011 [Doc. #25]. The Court finds this matter suitable for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

Rule 4(j) provides that “[a] foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.” Section 1608, in turn, provides four methods for serving a foreign state:

- (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
- (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
- (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

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- (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a). These four methods are listed in descending order of preference. *Peterson v. Islamic Republic Of Iran*, 627 F.3d 1117, 1129 n.4 (9th Cir. 2010).

Both the United States and the Republic of Turkey are signatories to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service Convention” or “Convention”), opened for signature Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163. See Hague Service Convention Status Table, http://www.hcch.net/index_en.php?act=conventions.status&cid=17 (last visited Apr. 16, 2010). The Hague Service Convention applies to service on a foreign sovereign defendant. See *Sabbithi v. Al Saleh*, 623 F. Supp. 2d 93, 98 n.4 (D.D.C. 2009).

The Convention requires each member state to establish a central authority that receives requests for service of documents from other countries. Upon receipt of a request in the proper form, a central authority must serve the documents by a method prescribed by the receiving state’s internal law or by a method designated by the requester and compatible with that law. The central authority must then provide the requester with a certificate of service that conforms to a specified model. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698-99, 108 S.Ct. 2104, 100 L.Ed.2d 722 (1988) (citing Hague Service Convention arts. 2, 5, 6).

A signatory to the Convention may refuse to comply with a request for service “only if it deems that compliance would infringe its sovereignty or security.” Hague Service Convention, art. 13. In that case, the state’s central authority “shall . . . promptly inform the applicant and state the reasons for the refusal.” *Id.*

Plaintiffs provided a translated version of the summons and complaint to Turkey’s central authority in December 2010. (Jabagchourian Decl. ¶ 4.) In a letter dated January 4, 2011, the

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Republic of Turkey refused service on sovereign immunity grounds pursuant to Article 13.¹ (*Id.*, Ex. A.)

Plaintiffs maintain that they have strictly complied with 28 U.S.C. § 1608(a). The Court assumes that no special arrangement for service exists between Plaintiffs and the Republic of Turkey,² and thus that subsection (a)(1) does not apply. Plaintiffs have not effected service pursuant to subsection (a)(2) because the Republic of Turkey refused service under the applicable convention.

To the extent Plaintiffs ask the Court to rule that the Republic of Turkey wrongfully denied service pursuant to Article 13, the Court lacks jurisdiction to consider that issue. The Convention is clear that “[d]ifficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.” Hague Service Convention art. 14. Moreover, as a practical matter, the Court cannot compel the Republic of Turkey to accept service.

There is no evidence that Plaintiffs have attempted to comply with 28 U.S.C. § 1608(a)(3) or (a)(4). Nor can the Court authorize service by alternative methods under Rule 4(f)(3). Rule 4(f) applies only to individuals. A foreign state “*must* be served in accordance with 28 U.S.C. § 1608.” Fed. R. Civ. P. 4(j)(1) (emphasis added).

Accordingly, Plaintiffs’ motion for order validating service is **DENIED**.

IT IS SO ORDERED.

¹ The letter was addressed to the U.S. Department of Justice, which transmitted a copy to Plaintiffs.

² Plaintiffs sent a copy of the summons and complaint to the Turkish embassy in Washington D.C., which refused to accept delivery. (Jabagchourian Decl. ¶ 2.) Plaintiffs’ attempt at personal service at the Turkish embassy was also unsuccessful. (*See id.* ¶ 3.)