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THE ACQUISITION OF THE TURKISH CITIZENSHIP

Abstract:

Citizenship defined as *the state of being a member of a particular country and having rights because of it*. The citizenship does not show the ethnic identity of a person. In the same direction Turkish Constitution Article 66 pointed the general principles of Turkish citizenship, starts with ‘*Everyone bound to the Turkish State through the bond of citizenship is a Turk.*’ and proceeds: *Citizenship can be acquired under the conditions stipulated by law, and shall be forfeited only in cases determined by law. No Turk shall be deprived of citizenship, unless he/she commits an act incompatible with loyalty to the motherland. Recourse to the courts in appeal against the decisions and proceedings related to the deprivation of citizenship shall not be denied.*

The Constitution forms the general framework of the citizenship term and its acquirement. Additionally, the rules and procedures of acquirement has indicated in chapter 2 in *the Law on Turkish Citizenship*, the law no. 5901. Parallel with the systematic of the law bases, it is investigated in two main topics, namely ‘Natural Born Citizenship’, ‘Acquired Citizenship After Birth’.

A. Natural Born Citizenships

Natural born citizenship might be acquired with the birth place and paternity as mentioned in Article 6. Natural born citizenship takes effects from the birth.

As pointed out in Article 7, the child who borned from Turkish citizen mother and/or father is Turkish citizen as long as the birth has to be in marriage community. The birth place isn’t considered.

Article 7 revealed the births out of wedlock in two different conditions. Since the paternity between mother and child is established with the birth (Turkish Civil Code, 282.1); it is easy to determine the paternity and the citizenship, corollary the regulations are shaped with this presumption.

If the child births from Turkish citizen mother and foreign father without marriage community, the child is Turkish citizen, yet; If the child births from Turkish citizen father and foreign

mother, it requires meeting of the conditions of paternity. (affiliation, following that, recognising)

Even when the law no. 5901 has written with ground on the principle of paternal citizenship, Article 8 which enables acquiring the citizenship to the children which born stateless due to their foreign parents; we may separate the situations as ‘the child who borned in Turkey’ and ‘the child who founded in Turkey’. These children are Turkish citizens and founded in Turkey is accepted as born in Turkey.

B. Citizenships Acquired After Birth

The acquired citizenship is stipulated in the same section with natural born citizenship, between Article 9 to 23. It might be in different specified ways. Differences between repealed law(the law no.403) and 5091, the new law involves assent of the authorities, child adoption and right of choice after criticism raised against 403. Otherwise, there are some exemptions and special situations as Article 12 mentioned.

B1. Assent of the Authorities on Acquired

The foreigners can acquired Turkish citizenship on the following terms:

- a) be of the age of consent possessing the distinguishing power according to his/her own national legal system, or according to the Turkish law if s/he is stateless;*
- b) have been resident in Turkey for five years, without interruption, prior to her/his date of application;*
- c) have the intention of settling in Turkey and prove this intention with action;*
- d) not have any disease that constitutes a danger to public health;*
- e) be a person of good morals;*
- f) speak an adequate level of Turkish;*
- g) have an income or profession to provide for his own livelihood and those of his/her dependants in Turkey;*
- h) not pose a threat to national security and public order.*

If these conditions are fulfilled, the foreigners who wish to acquire Turkish citizenship, may apply a citizenship file and sent to the Ministry. The procedures are showing in Article 18 and 19.

According to the article 20, ‘Acquisition of Turkish citizenship upon the decision of competent authority shall not affect the citizenship of spouse.’ Furthermore the children whose guardianship belongs to the mother/father that acquired Turkish citizenship on the date of acquisition can acquire Turkish citizenship, just in case the other spouse gives acceptance. In case of disagreement of the spouse, action shall be taken upon the decision of the court.

B.1.1. Acquiring Turkish Citizenships Exceptionally

Most of the countries accept the acquire citizenships opportunity for qualified people in comparative law. In the same direction with international regulations, Article 12 stipulates the exceptions for:

- a) Those persons who bring into Turkey industrial facilities or have rendered or believed to render an outstanding service in the social or economic arena or in the fields of science,*

technology, sports, culture or arts and regarding whom a reasoned offer is made by the relevant ministries,

b) Those whose being received into citizenship is deemed to be necessary,

c) Those persons who recognized as migrants.

When International Labour Law (the law no. 6735) and Foreigners and International Protection Law (the law no. 6458) entered into effect, a couple of different groups were amended at Article 12 which are investors, foreigners with Turquoise card and their foreigner spouse, their own/spouse underage/independent child.

As pointed out Article 31 at 6458, investors have to fund sufficient amount of money that is determined by Council of Ministers. For the other fundings, investors may apply to acquire Turkish citizenship after 3 years. Within the annexes on 2016, 2017 and 2018; the guideline of 5901 is determined investors which are qualified to obtain citizenship. According to Article 20 of the guideline, investors which are given below, may obtain Turkish citizenship with the decision of president:

- a) A fixed capital investment of at least 500.000 USD or foreign currency or Turkish Lira and determined by the Ministry of Industry and Technology,
- b) At least 250.000 USD or foreign currency or Turkish Lira equivalent real estate, to be registered land registry records for 3 years, the annotation determined by the Ministry of Environment and Urbanization purchased,
- c) Minimum 50 people employed determined by the Ministry of Family, Labor and Social Services,
- d) At least 500.000 USD or foreign currency or Turkish Lira equivalent of the deposits layed with the keeping condition for 3 years to banks operating in Turkey, determined by Banking Regulation and Supervision Agency,
- e) Minimum 500.000 USD or foreign currency or Turkish Lira equivalent Government debt instrument bought to keep for 3 years, determined by the Treasury and Finance Ministry,
- f) At least 500.000 USD or foreign currency or Turkish Lira equivalent real estate investment fund and participation share or venture capital investment fund participation share which is determined by Capital Markets Board of Turkey.

Within the annexes on 2016, in determining the monetary value specified in the second paragraph, the effective selling rate of the Central Bank of Turkey at the date of detection and/or cross exchange rates prevailed. Upon the written instruction of the Ministry about the foreigner who wishes to acquire the Turkish citizenships as an exception, the following documents shall be granted by the application authorities:

- Request form/petition
- A passport similar document showing the state of the person in which the person is a stateless person; provided that it is possible to obtain a statutory document
- The certificate of civil status and married if the marriage certificate, divorce if the divorce document, the widow's death certificate
- A certificate of birth, such as a birth certificate or sample of the person showing the identity of the person, and a sample of population registration that proves the family relation of the spouse and children if they are married
- The sample of the population taken from the system by the application authorities of these persons, if they have first or second degree relatives of Turkish citizens
- If the person does not have the month and date of birth date,

from the competent authorities of his country, and in case of failure to provide the document, the signed declaration that he accepts to take action in accordance with Article 39 of the Population Services Law no. 5490

After the case is completed, it is sent to Ministry. Lastly, within the last changes, dated on 19.9.2018, a commission consisting of representatives of the Ministry of Family, Labor and Social Services, the Ministry of Environment and Urbanization, the Ministry of Treasury and Finance, the Ministry of Industry and Technology can be established within the Ministry of Interior to follow the process related to applications for citizenship to be made under the scope of the second paragraph.

On the other hand, Turquoise Card defines as *a document that grants foreigner the right of work permanently in Turkey, and the right of residence to his/her spouse and children who are dependent in line with governing legislation* in the law no. 6735. According to the law bases, the Turquoise Card owners may apply to acquire citizenship in case of expiration of transition period. Because according to the Article 15 at 6735, Turquoise card may be cancelled in transition period.

Previous law on Turkish Citizenships (was mentioned before as 403) required other conditions such as speak an adequate level of Turkish, and caused misstatements. With 5901, these conditions were cancelled. The age is not considered. Admitted current terms are:

- not pose a threat to national security and public order,
- not included the enacted groups
- proposal of Ministry of Internal Affairs
- decision of Council of Ministers

B.1.2. Re-acquisition of Turkish Citizenship based on Residence Permit as a Condition

It provides an opportunity for re-acquisition and developed for the persons which lost their Turkish citizenship. Difference between acquisition and re-acquisition is, re-acquisition has a prior allegiance which lost with any kind of reason.

As the preamble of Article 14 emphasizes the importance of emotional commitment on citizenship, we can clearly deduce that persons who lost their nationality are under the scope of re-acquisition. It should not be forgotten that the only condition for both re-acquisition with residence permit and without laying down residence permit is ‘not pose a threat to national security and public order’. This condition also involves public order.

B.1.2.1. Without Laying Down Residence Permit as a Condition

By operation of Article 13, foreigners indicated below may re-acquire Turkish citizenship without laying down:

- a) Those persons who had lost Turkish Citizenship by obtaining renunciation permission,*
- b) Of the persons who had lost their citizenship because of their parents, those who did not enjoy the right of choice (right to apply) within the period foreseen in Article 21.*

The persons who lost their citizenships because of their parents, can re-acquire their citizenship without any residence permit condition. They also have right of choice which is regulated in Article 21, however the time allocated for this procedure is 3 years. From this aspect it is similar with reinstatement.

Furthermore the persons who lost their citizenship because of the cancelled law 403, may use that procedure to acquire Turkish citizenship within the acceptance of Ministry of Internal Affairs.

B.1.2.2. Residence Permit as a Condition

As long as the application of the persons who lost their citizenship in the direction of Article 29 (revocation of citizenship) and Article 34 (loss of citizenship by right of choice), can re-acquire Turkish citizenship by following the terms:

- a. have been residing in Turkey for three years
- b. assent of the authorized

For those who had lost Turkish Citizenship in accordance with Article 29 can be re-naturalized upon the decision of the Council of Ministers, and those who had lost Turkish Citizenship in accordance with Article 34 can be re-naturalized upon the decision of the Ministry.

A foreigner who applies for acquisition of Turkish Citizenship may stay abroad, without exceeding six months, within the residence period required for application. Period which they spend outside of Turkey shall be evaluated within the period of residence foreseen in this Law.

Lastly, Article 15 touches on the residence term which defines “*For a foreigner, residence means residing in Turkey with due respect to the Turkish laws.*” With the term of “Turkish laws” indicated Passport Law (the law no. 5682) and Foreigners and International Protection Law. (the law no. 6458)

B.1.3. Acquisition of Turkish Citizenship by Marriage

For the past decade, it is accepted that marriage should alter similar results for both spouses. Yet; parallel with the last innovations, the Turkish law system forbids pretended transactions, includes marriage. To preventing abuses¹, the law bases stipulates that some conditions for applicant which are arrayed at Article 16:

- a) shall live in family unity,
- b) shall avoid acts not compatible with the marriage unity,
- c) shall not pose a threat on national security and public order,
- d) shall be married for three years or more and marriage shall be continuing.

Furthermore the Article starts with the sentence “*Turkish citizenship is not acquired automatically upon marriage to a Turkish Citizen.*” In case the spouse who is a Turkish citizen dies after the application is lodged, then the applicant is not required to fulfill the condition “shall live in family unity”.

¹ Due to the pretended marriages. Council of States, Merits:2012/8144, Judgment:2015/4051; *For the determination of the pretended marriages, administration waits for judicial order.*

In decision of nullity of marriage, foreigners who acquired Turkish citizenship with marriage, can preserve their Turkish citizenship, if two sides have entered the marriage contract in good faith.

B.1.4. Acquisition of Turkish Citizenship by Adoption

Adoption is a civil contract which has established mock-relation between adoptive and adoptee. On the Comparative law, adoption affects only the acquisition, not losing citizenship. Yet, on German Law, if adoptee acquire the citizenship of adoptive, the German citizenship will be lost. Under the scope of repealed law 403, adoption did not effects for acquiring Turkish citizenship. If the adoptee was stateless or him/her state was indeterminable, the adoption have effects him/her citizenship.

According to the law no. 5901 Article 17 *‘A child, under the age of maturity, adopted by a Turkish citizen shall acquire Turkish citizenship from the day he is adopted, if she/he does not pose threat on national security and public order.’*

We can list prerequisites in order to acquire Turkish citizenship by adoption:

- a) Adoptee shall be underage for related country.
 - b) Adoptee shall not pose a threat to national security and public order.
- The applicant will acquire citizenship when Ministry of Internal Affairs has decided.

For an acceptable adoption, general conditions (Civil Law, Article 305) below must be satisfied:

- Pupil shall be nursed and be educated for a year.
- Adoption shall be beneficial for adoptee.
- Children of adoptive shall not be damaged.

B.2. Procedures for Acquisition of Turkish Citizenship

The competent authorities upon naturasing are Office of the Governor for persons who residing in Turkey, foreign delegations for persons who residing abroad. Foreign delegations defines in decree law on the Organizations of State Institutions (13.12.1983 dated, 189 numbered). However on guidelines of 5901, the term ‘foreign delegations’ has a strict construction and just includes Turkish embassies, consulates and consulate generales.

B.2.1. General Acquisition Procedure and Acquisition of Turkish Citizenship by Marriage

In this procedure, an examining applications committee will be established in order to check the conditions. For the committee of applications from Turkey, public authorities is determined in guidelines of 5901. Applications from abroad, vice consul or above him/her are authorized to examine the applications in the committee.

Applications are sent to provincial security directorate in order to controlled these following matters: ‘pose/not pose a threat to national security and public order’, ‘residence duration’, ‘moral/immoral investigation’ etc.

After investigating aforementioned conditions for marriage such as ‘shall live in family unity’, ‘shall avoid acts not compatible with the marriage unity’ ; the case will sent to Directorate of Civil Registration and Citizenship Affairs in City.

According to Article 16 and 17 of guideline, the committee will send back the documents which owned persons that could not fulfilled the conditions. Regarding persons who were applicant to acquire citizenship by marriage; the committee will send back their cases after the investigation as long as the conditions are not fulfilled. However, the committee is not authorized as decide to the accusations. Thus, applicants may apply after they fulfilled their lack points of their cases. If the conditions are fulfilled, the case sent to Ministry of Internal Affairs by recourse with the report of examining applications committee.

Since there was a possibility of mistakes made by recourse, the applicants has right of bringing actions at administrative courts in Turkey. As reflects on the decision of the State Council, the decision maker regarding citizenship applications, is Ministry of Internal Affairs.

B.2.2. Procedures of Other Acquisitions

According to Article 19, recourse is not authorized as decide to the accusations and only makes procedural viewing, and thus; after the application, Office of the Governor or foreign delegations prepares a case. This case will be sent to Ministry of Internal Affairs which is general competence upon naturalizing. Yet, Ministry of Internal Affairs will send the cases to Council of Ministers in case of following situations: exceptions in acquiring Turkish citizenship and re-acquisition of persons who lost their citizenship by decision to lose.

B.3. Conclusion of Acquiring the Citizenship

According to the Article 20, we may separate the effects as the person, his/her name and surname, his/her spouse and children.

B.3.1. Effects on Persons and Their Names and Surnames

With the decision of competent authority, acquirement of citizenship will verdict on date of the decision. Persons become vested citizen and they have same rights with natural born citizenships, yet; liabilities will starts after the notification of the decision.

According to the guideline Article 74, foreigners may choose Turkish name surname but they may use their names just in case it shall be beneficial with the law regarding Acceptance and Application of Turkish Alphabet.

B.3.2. Effects on Spouses and Children

According to Article 20, acquisition of Turkish citizenship upon the decision of competent authority shall not affect the citizenship of spouse.

Children whose guardianship belongs to the mother or father who acquired Turkish citizenship on the date of acquisition can acquire Turkish citizenship in case the other spouse gives consent. In case of disagreement of the spouse, action shall be taken upon the decision of judge in the country where the mother or father is residing regularly.

Children who are not transacted along with the parents at the date of the acquisition of Turkish citizenship, the provisions of Article 11 shall be applied for their applications, in case they apply to acquire Turkish citizenship after they become reach the age of majority.

B.4. Acquisition of Turkish Citizenship by Right of Choice

On this acquiring way, the acquirement will be completed with unilateral statement of will of a person who fulfilled legal requirements.

Children who had lost their Turkish citizenship because of their parents according to Article 27 shall acquire Turkish citizenship by using their right of choice within three years from the day they reach the age of majority.

Validity and consequences of the acquisition covered under the scope of Article 22. Hereunder *“Acquisition of Turkish citizenship, by using the right of choice shall become valid from the date of decision, relating to the determination of the conditions for using of this right, is made.”*

C. Other Acquisitions

Other than 5901, it is seen that regulations on the acquisition and loss of citizenship have been included in some bilateral and multilateral agreements. The other acquisitions are immigration, renunciation and annexation of land. Since Turkey emphasized that *“the rights of the Turkish Cypriot people emanating from international agreements”* in Joint Declaration 1997, Turkish Republic of Northern Cyprus (hereafter referred as TRNC) citizens have a specific acquisition method. Before proceeding with other acquisitions, TRNC will be explained.

C.1. The Situation of TRNC (Turkish Republic of Northern Cyprus)

According to the amendments on 5901, especially Article 42, TRNC citizenship may acquire Turkish citizenship with their written statement of will as long as they proved their TRNC citizenship.

Recourse authorities prepare a case which will be sent to Civil Registration and Citizenship Affairs in order to investigate the truth of the information. End of this process, the applicant will acquire Turkish citizenship with decision of Ministry. However; the situation of their spouses and children are not regulated in 5901 but this issue has pointed on guideline. Natural born TRNC citizenships have exact same rights the group aforementioned on chapter B.3. It is crucial to say that this kind of case is contradict with legality which is a *sine qua non* principle for state of law.

C.2. Acquisition with Immigration

Immigration is an internal law institution much as a subject for international agreements. As an example, on 1952; the agreement between Turkey and Bulgaria is stated that Bulgarian citizenships with Turkish origin immigration to Turkey.

In Turkish law system, immigration is regulated in Settlement Law. (Numbered as 5543, dated as 2006) 5543 defines immigration and immigrant and persons shall not be counted as immigrant well. Refugees are not regulated under the scope of 5543. The purpose is after the reasons for asylum are removed, they return to their countries. According to 5543, we may count the requirements for being an immigrant as:

- descend from Turks

- stay loyal to Turkish culture
- not being deportee
- not own an obstacle regarding security

The person shall not be treated as immigrant before such procedural actions have been established. These persons are accepted as guests until the necessary procedures are completed. After the process is fulfilled, it is compulsory to file a declaration of naturalization and to obtain a certificate of immigration, provided by competent authorities for persons' immigration branch. Persons who are completed the procedures, shall be naturalized by the decision of Council of Ministers.

C.3. Renunciation and Annexation of Land

It is an agreement regarding transfer of all/ a part of a certain piece of land belonging a state to another state. One of the states may also give to right to choice of citizenship. When all the agreements have evaluated, principles may determined as citizens' residence and/or birth place.

In Turkish law system, according to Article 30, Treaty of Lausanne is stated that *“Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become ipso facto, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.”* The renunciation and Annexation of Land is mentioned with Treaty of Lausanne for Cyprus, Egypt and Sudan areas. Also there is a similar agreement between Turkey and Albania.

For example, Treaty has arranged upon Cyprus area; according to the same agreement: *“.....they will, however, have the right to opt for Turkish nationality within two years from the coming into force of the present Treaty, provided that they leave Cyprus within twelve months after having so opted.”*

CONCLUSION

It is tried to reveal that acquisition of citizenship with articles title by title. The law bases, preambles and related treaties are also included thereof. Turkish citizenship may be acquired from the birth or after the birth with aforementioned necessary steps. Furthermore, there are another acquisition methods which are guaranteed with international agreements.

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