

**GUIDELINE**  
**ON**  
**TURKISH LEGISLATION ACQUISITION OF INHERITANCE**



**November 2020**

## **FOREWORD**

Due to its geographical location, Turkey is one of the rare countries that can experience both winter and summer at the same time. In addition to this, with the rapid development of Turkey in recent years, the country has become a center of attraction of societies that share the same beliefs, customs and traditions.

It is obvious that the Turkish legislation in terms of mainly implemented processes should be well-known by foreign investors to minimize risks and prevent possible disputes.

It is also a responsibility for our country to ensure that foreign citizens who are guests in our country lead their lives in a peaceful, healthy and safe manner.

As Sariibrahimođlu Law Office, we considered that it would be useful to prepare a guide that shows the procedures to be followed in the four headings below in order for foreigners to overcome the important issues they may encounter.

We hope you find the Guideline useful.

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## TURKISH LEGISLATION ACQUISITION OF INHERITANCE BY FOREIGNERS IN TURKEY

### 1. *Acquisition of Property by the Heirs*

▪ In order for the property of the inheritor to be acquired, heirs must collect all kinds of evidence (burial papers, hospital reports, minutes prepared by law enforcement officers, documents prepared by the population and citizenship affairs units of foreign countries, etc.) to prove the relationship between the inheritor and them after the death. Documents obtained from the official institutions of foreign countries must be officially translated into Turkish and apostille must be attached to these documents.

▪ To acquire the property of the inheritor, an inheritance declaration should be issued. Inheritance declaration regarding immovable properties should be issued according to Turkish law; the inheritance declaration regarding movable properties should be issued according to the national law of the inheritor. If the inheritors request a declaration of inheritance for both movable and immovable properties,

they should report this to the court. Since there is no counterparty in the lawsuits related to the request for a declaration of inheritance, these cases are subject to ex parte proceeding. Therefore, these should be filed without an adversary. However, if there are people who oppose the title of inheritance and the share of inheritance of the plaintiff, it will be possible to show an adversary in cases regarding issuing a declaration of inheritance. It is a common mistake to show the Treasury as an adversary in such cases. It is a mistake to show the Treasury as a defendant, since the inheritance of the deceased person who passed away without leaving an heir, stemming from Article 501 of the TMK numbered 4721, cannot be said of the state's acquisition by force.

### 2. *The International Jurisdiction of Turkish Courts on Inheritance Lawsuits with Element of Foreignness*

▪ The international jurisdiction of Turkish courts in inheritance lawsuits with an element of foreignness must be determined

in accordance with Article 43 of the Law numbered 5718 (Act on Private International and Procedural Law).

- According to the article 43, lawsuits related to inheritance shall be heard by the court where the deceased had his/her last domicile in Turkey, but if his/her last domicile was not in Turkey, by the court of the place where his/her property is located. Article 43 of the Law numbered 5718 regulates the jurisdiction in inheritance lawsuits based on two principles.

- These are the last domicile of the inheritor and the location of the goods principles. Accordingly, the disputes regarding the movable and immovable property in Turkey of the deceased person who has not a last domicile in Turkey, will be settled before the courts of where the property settled.

- Deceased person may left property in outside of Turkey too but settlement of the property in Turkey is enough for the international jurisdiction of Turkish Courts. Article 43 of the Law numbered 5718 is accepted as the exclusive jurisdiction rule in terms of immovable subject to inheritance. In addition, an exclusive jurisdiction rule regarding immovable property would be seen in all other countries' law systems. Therefore, the jurisdiction clauses that give jurisdiction to foreign states' courts in immovable property settled in Turkey would be null and void.

### 3. *The Applicable Law in the Inheritance Lawsuits with Element of Foreignness*

- The applicable law in the inheritance disputes with element of foreignness should be determined according to Article 20 of the Law numbered 5718

- **Article 20**

(1) *The national law of the deceased shall govern inheritance. Turkish law shall apply to immovable property located in Turkey.*

(2) *Provisions relating to the reasons of opening, acquisition and distribution of succession shall be governed by the law of the state where the estate is located.*

(3) *The State shall inherit estates situated in Turkey that do not have any inheritors.*

*If the inheritor is a foreigner, the applicable law in the inheritance lawsuits shall not be Turkish Law. On the other hand, even if a foreigner deceased left immovable property in Turkey, disputes regarding immovable property shall be governed by Turkish Law.*

#### *Article 20*

*(4) The form of a testamentary disposition is subject to the provision of Article 7. A testamentary disposition executed in compliance with the national law of the deceased shall also be valid.*

*(5) The legal competency to execute a testamentary disposition is governed by the national law of the executing person at the time of the execution.*

*Testamentary dispositions made by a person who is capable of making testamentary dispositions according to his own national law, also in accordance with procedure of his own national law, shall be valid. Here, it does not matter whether the subject of testamentary disposition is movable or immovable property.*

#### **4. Recognition and Enforcement Procedure for Foreign Court Decisions On Inheritance**

- Recognition and enforcement of foreign court decisions regarding inheritance law is used to give validity to inheritance declaration given from foreign courts. Inheritance declarations are declaratory decisions so to give validity to an inheritance declaration given by a foreign court, the decision shall be recognized in Turkey. Otherwise, this decision may not be used as an evidence to acquire the property of the inheritor.

- According to the Law numbered 5718, the recognition decisions shall be requested from the court at the place of habitual residence of the person against whom enforcement is requested if he/she does have a domicile in Turkey, or from one of the courts in Istanbul, Ankara, or Izmir if he/she does not have a domicile or habitual residence in Turkey.

- On the other hand, the inheritance declarations regarding the immovable property in Turkey of the inheritor cannot be recognized in Turkey because Turkish Courts have exclusive jurisdiction on the immovable property in Turkey.

- In addition, if the inheritance declaration was given by foreign notary or municipality, this decision cannot be recognized in Turkey because only court decision may be recognized according to the Law no.5718.

#### **5. Enforcement of Testament**

- The testament issued in a foreign country may be submitted directly to the Turkish courts and the fulfillment of the testament, that is, the issuance of an inheritance declaration according to the testament. The testament issued in a foreign country shall include apostille or ratification of Turkish Consulate to be valid and applicable in Turkey. However, this requirement can be excluded via bilateral or multi-lateral agreements.