

General Practice in Turkish Law about the Form Requirements of Testamentary Dispositions Involving a Foreign Element

The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions is an international agreement with a desire to establish common provisions of the conflicts of laws relating to the form of testamentary dispositions. Concluded on October 5, 1961, Turkey signed the Convention in 1983.

This way, a testamentary disposition shall generally be considered valid by a Contracting State as regards to the form if its form complies with the internal law referred to in Article 1 of the Convention. Therefore, it has been a safe harbour to the Court of Cassation in Turkey which has been citing to in many of its decisions since 1983.

For the purpose of considering the form requirements of testamentary dispositions issued in a foreign country but which is not a party to the Convention, one of the sources that Turkish courts primarily refer to is the Law no. 5718.

Pursuant to Articles 20/4 and 7 of the Law No.5718; in order for a testamentary disposition to be considered valid in terms of form requirements, it is required to be in compliance with the law of the country where it is issued, *or* the law of the country applicable to the merits of the transaction, *or* the deceased party's national law. Turkish courts will inquire about the content of the related foreign law, and if necessary, a detailed report will be received from experts as to whether or not its form complies with the related foreign law that is referred to under Articles 20/4 and 7 of the Law No.5718.

Heirs who are foreign nationals may, *as a general rule*, acquire by inheritance the deceased's movable properties and rights and receivables that are located in Turkey*. Immovable properties located in Turkey, on the other hand, are subject to Turkish law, and accordingly it will be first checked whether or not there is any administrative decision or exceptional legislative provision that would restrict or prevent citizens of such foreign

countries in terms of/from acquiring immovable properties in Turkey. In this case, the reference that is primarily checked is the Land Registry Law. We would like to note that by virtue of the latest amendments, citizens of many foreign countries are now permitted to acquire immovable properties in Turkey *on the condition of complying with certain legal restrictions* even when there is no “*de facto* or *de jure* reciprocity” between Turkey and those countries.

*14th Chamber of the Court of Cassation’s 10/17/2019 dated, 2019/15965E., 2019/6744 S. Decision; 14th chamber of the Court of Cassation’s 06/30/2015 dated, 2015/2061 E., 2015/7260 S. Decision; 14th chamber of the Court of Cassation’s 02/25/2019 dated, 2017/4849 E., 2019/1595 Decision.