

Adoption As Agreed By The Parties:

Under Turkish legal system, there are two main types of adoptions:

- The independent adoptions are where the biological parents select the family or the person and then Turkish courts decide whether to approve an adoption;
or
- Where a child is under the supervision and guardianship of the State and therefore, the Ministry of Family and Social Policies Directorate General of Child Services is fully engaged in.

Please also note that, since January 14, 2004, Turkey is a party to The 1993 Hague Convention on Protection of Children and Co-Operation in Respect Of Intercountry Adoption (“*The Hague Convention on Intercountry Adoption*”). However, as it is also stated in the Regulation which is based on the Council of Ministers Decision No. 2009/14729 Article 16(1) that intercountry adoption is only “considered” if it is not possible to find a suitable family in Turkey and also if it is in the child’s best interest. In other words, national solutions are considered first by Directorate General of Child Services.

Therefore, in this article we are focusing on the independent adoptions that the biological parents select the family/the person and then Turkish courts decide whether to approve an adoption in light of;

- Turkish Civil Code (“TCC”) articles, *and*
- the relevant national law *if* one of the parties has a foreign citizenship¹.

In other words, both Turkish citizens and foreigners with a legal residency in Turkey may bring an adoption case in front of the Turkish courts.

The general requirements for an adoption under TCC:

- The adoption should be in the child’s best interest without being unfair to any other children of the adoptive parents,
- Spouses may adopt a child *jointly* if they have been married for at least five years or both must have attained the age of thirty,

Please note that a person is permitted to adopt a child of the spouse (a stepchild) if they have been married for at least for two years or if she/he attained the age of thirty.

A married person who is at least thirty years old is permitted to adopt alone if the other spouse is permanently mentally incapacitated, or her/his whereabouts have been unknown for more than two years or if the spouses have been legally separated

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for over two years since the issuance of a court order. The burden of proof belongs to the person asserting it.

- A person who is not married is permitted to adopt if she/he has attained the age of thirty,
- The person/s wishing to adopt must care for and educate the prospective adoptive child for at least one year before filing for adoption in court,
- The age difference between the child and the persons wishing to adopt cannot be less than eighteen years, and if the child is capable of judgement, her/his consent is also required for the adoption.
- The consent of the child's birth parents must be obtained,

Such consent must be given by oral or written declaration and recorded by the court where the parents are domiciled. The consent will be considered valid even if the persons wishing to adopt are not named in the declaration.

Consent to adoption may not be given until at least six weeks after the birth of the child. Please note that, the consent might be revoked within six weeks after it was recorded by the Court. If the consent, having been revoked, is given again, it is final and therefore, may not be revoked again.

Consent is not required from a parent if;

- a. the identity of that parent is not known, or if her/his whereabouts has been unknown for a long time, or she/he is permanently mentally incapacitated; or
- b. her or his care of the child is not adequate.

Relevant national law of each of the parties shall be taken into account by the Turkish Court:

As we also stated above, as a result of Act No. 5718 Article 18's requirement and also in light of the various Supreme Court decisions in Turkey, if one of the parties or both parties wishing to adopt in Turkey has/have foreign citizenship and file(s) an adoption case at Turkish court, the Court shall apply;

- a. the relevant national law of each of the parties at the time of an adoption which shall govern the legal capacity and conditions of adoption,
- b. the national laws of the spouses shall be jointly applicable to adoption with respect to the consent to the adoption of the other spouse,
- c. the adoption itself shall be governed by the national law of the adoptive parent, and in case of a joint adoption, by the law governing the general provisions of the marriage.

¹ International Private and Civil Procedural Law (Act No. 5718) Article 18;

