

The surviving spouse may be entitled to more than her legal share written on a certificate issued by probate authorities:

Under Turkish Civil Code (“TCC”) article 499, the intestate estate is distributed to the surviving spouse as follows:

- a. if the decedent died with a surviving spouse and surviving issue, then the surviving spouse takes $\frac{1}{4}$ of the intestate estate;
- b. If the decedent was survived by a parent or parents and a surviving spouse, but no issue, then the surviving spouse takes $\frac{1}{2}$ of the intestate estate,
- c. If the decedent died with a surviving spouse, and grandparents and grandparents’ children, then the surviving spouse takes $\frac{3}{4}$ of the intestate estate,
- d. If the decedent died with only a surviving spouse but no one else, then the surviving spouse takes 100% of the intestate estate.

Additionally, since January 1, 2002 the “*marital property regime of participation in acquired property*” is adopted as the statutory marital property regime and therefore, the spouses as a general rule are entitled to one-half of the marital property. It is accepted that marital assets are derived from joint efforts and therefore, the spouses are treated as equals in the economic partnership even if only one spouse works and makes money.

According to the TCC, the marital property regime is dissolved on the death of a spouse, divorce, annulment of the marriage or when a different regime agreed between the spouses. Generally, following the death of a spouse the surviving spouse applies to the probate authorities for a legal certificate confirming the heirs with their legal shares in the intestate estate and then, the distribution process is started in light of this legal certificate. This is called “the classic way”. However, this may not sometimes be fair to the surviving spouse.

Therefore, the surviving spouse may choose the second option before following the classic way. This is: when the marital property regime dissolves on the death of a spouse, the surviving spouse may use her/his right to file a case at the Court and ask to entitle her/him to one-half of the “surplus” of the decedent’s estate under “the marital property regime of participation in acquired property” before applying to the probate authorities for a certificate confirming her/him as a heir. The “surplus” will be calculated in light of TCC Article 231 which will generally be the remaining total value of the acquired property after deduction of the debts encumbering it. After the Court’s judgment regarding the “surplus”, the surviving spouse’s share is required to be paid by the decedent’s estate primarily. And only after she/he takes her/his surplus share, then she may also ask for her legal share that is regulated under TCC Article 499 with the other heirs from the remaining estate.

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