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## **TURKEY**

### **Overview**

Although the majority of the Turkish population are Muslims of the Hanafi School of Islamic jurisprudence, the 1982 Turkish Constitution establishes Turkey as a secular republic. Therefore, family law is not based on Sharia principles and the present Turkish legal system has been greatly influenced by European laws. The Civil Code is based on Swiss law, whereas the Commercial Code was influenced by German law and administrative law by the French system. The Turkish Penal Code takes its influence from Italian law.

### **Foreign Orders**

Foreign orders can be enforced if they fulfil certain conditions established in the Law of Civil and Procedural Law of 1982. A request to enforce a foreign judgement must be made to the local court and at the discretion of the court foreign orders may be given evidential weight.

### **Court Structure**

The general courts are divided into civil and criminal courts, which are subdivided further into higher and lower courts. The Civil Courts of the Peace (*Sulh Hukuk Hakimligi*) are the lower civil courts. There are 846 of these courts, in which one judge hears all civil matters where claims do not exceed 5,000,000,000 Turkish Liras.

The higher civil court is the Civil Court of First Instance (*Asliye Hukuk Hakimligi*), of which there are 958 in Turkey. The jurisdiction of this court is over all civil matters not assigned to the Civil Courts of Peace. Family

matters are heard in separate chambers that were established in 2003 and employ psychologists and sociologists to oversee personal status cases. Similarly the Commercial Courts (*Asliye Ticaret Mahkemesi*) are a specialised branch of the Court of First Instance. There is at least one of these courts in the 35 provinces of Turkey. Where they are not available the Court of First Instance hears commercial matters.

The lower criminal court is the Penal Court of the Peace (*Sulh Ceza Hakimligi*). The higher level is the Penal Court of First Instance (*Asliye Ceza Hakimligi*), of which there are 899. More serious offences that carry a penalty of more than five years imprisonment or capital punishment come under the jurisdiction of the Central Criminal Courts (*Agir Ceza Mahkemesi*). There are 172 of these courts throughout Turkey.

The Court of Cassation (*Yargitay*) is the highest appellate court in Turkey and is divided into 30 chambers. These include 20 civil chambers and 10 penal chambers. In each chamber there is one presiding judge and four members.

In addition The Execution Investigation Authority (*icra Tetkik Hakimligi*) has jurisdiction over disputes arising during the implementation of all civil judgements and judicial decrees. There is also a Constitutional Court, an Administrative Court, Juvenile Courts, Labour Courts, Intellectual and Industrial Property Rights Courts and a State Security Court.

### **Filiation**

The new Civil Code does not use the term ‘illegitimate’, but instead refers to establishing descent in Article 282. Maternal descent is established by birth and paternal descent is established through marriage to the mother, recognition or a court ruling. For a child born outside marriage no legal relationship is established with the father unless he makes a declaration, notarised, before a court, or before related government authority, claiming paternity or if the mother or child can obtain a court decision establishing paternity. The children of an unmarried couple take the surname of the mother according to Article 321 and she has the right to custody of the children.

If paternal descent is established the children have the same rights to inheritance as children born with wedlock. Paternity can also be established for an illegitimate child who is born as a result of adultery even if the mother is married. In this case paternity is established by the rejection of paternity by the husband (who is not the father) and a declaration by, or a court order against, the real father.

Kinship is also established through adoption, which is permitted in Turkey.

### **Custody and Guardianship**

The new 2001 Civil Code states in Article 186 that the spouses have equal authority within the family and an equal duty to support the family. During marriage authority over the raising of children is shared by the parents, according to Articles 185 of the Civil Code. Parents are responsible for the formal and religious education of their children and have a duty to represent them and protect them. If the parents separate the judge will award custody of the children to one of the parents according to the best interests of the child. According to Article 20 of law 2675 on Private International and Procedural Law, custody should be decided according to the law of the jurisdiction governing the divorce.

The parent who is not awarded custody is expected to contribute to the financial burden of raising the child. In the event of the death of one of the spouses custody belongs to the surviving spouse. The authority of the parents over their children ends when majority is attained at the age of 18. If the parents are absent the court will appoint a guardian (*vasi*).

### **Access**

Both parents should have access to the children unless the court decides that this is not in the best interests of the children.

### **Non-Muslim Family Law**

There is no separate family law for non-Muslim Turkish citizens.

### **Nationality**

According to Article 1 of the Turkish Citizenship Law 403 of 1964 regarding nationality, men and women are both able to transmit their Turkish nationality to their children, wherever the children are born. Article 2 of the Turkish Citizenship Act states that a child born to a foreign mother will be considered to be a Turkish citizen if a Turkish citizen is recognised as the father through a court order or recognition.

### **Leaving the Jurisdiction**

According to the Passport Law number 5682 of 1950 a minor may be put onto the passport of either parent. Article 17 reads that both parents must give permission in order for a minor to be able to obtain an individual passport.

### **International Law**

Turkey acceded to the UN Convention on the Rights of the Child in 1994.

Turkey is also a signatory to the Hague Convention and in accordance with paragraph 3 of Article 26, Turkey is not bound to assume any costs or expenses arising from any proceedings or from the participation of legal counsel or advisers or from the returning of the child. According to Turkey's response in 2005 to the questionnaire on the enforcement of return orders under the 1980 Hague Convention and of access/contact orders, which was prepared by the Permanent Bureau at the Hague, while there are no specific legislative provisions that exist in Turkey concerning the enforcement of return orders under the Hague Convention, there is a draft law being considered by parliament. A Hague return order can be appealed if either party petitions the Supreme Court within 15 days. After 15 days the order is finalised. A return order issued by the Turkish courts will be enforceable throughout Turkey and is executed by an officer of the Execution office. The public prosecutor in the place of residence of the child is responsible for organising the repatriation of the child. In practise the applicant is generally requested to collect the child and to cover the costs of repatriation.

### **Parental Child Abduction**

According to Article 25 of the Enforcement and Bankruptcy Law an order requiring a defendant to return a child to the plaintiff can be enforced, with

the assistance of the police if necessary, if the child is not returned. Article 341 states that a parent without parental authority who abducts or retains a child can be subject to a penalty of 1 to 3 months in prison upon the application to the court by the parent with custodial rights. If a child is taken into hiding before a Hague return order can be enforced the public prosecutor will make enquiries into the whereabouts of the child with police assistance. The Turkish Central Authority can also apply directly to the Ministry for the Interior for help in establishing the whereabouts of the child.

### **Contacts**

Turkish Central Authority  
Ministry of Justice  
General Directorate of International Law and Foreign Relations  
Millî Müdafaa Cad. No:22  
06659 ANKARA  
Tel: +90 312 425.8497 **or** +90 312 418.2932  
Fax: +90 312 425.0290

Ministry of Foreign Affairs,  
Balgat 06100 Ankara  
Turkey  
E-mail : [webmaster@mfa.gov.tr](mailto:webmaster@mfa.gov.tr)  
Tel : +90 312 292 10 00

**Approved by Mr N. Yuca and Mr. Seckin Arikan**

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