

THE AMENDMENTS TO THE TURKISH CIVIL CODE

The new Turkish Civil Code was approved by the Turkish Grand National Assembly (TGNA) on November 27, 2001 and was promulgated by President Ahmet Necdet Sezer and published in the Official Gazette on December 8, 2001.

The new law which consists of 1,030 articles covering important amendments to the family law amends the Civil Code enacted in 1926.

The justification written by the then Justice Minister Mahmut Esat Bozkurt is preserved in the new code.

The Turkish Civil Code was enacted in 1926 in accordance with Atatürk's overarching goal of bringing Turkey into line with the standards of modern civilization. Taking into account the era of its origins, the Code must certainly be considered a revolutionary step forward.

Through imposing nationwide consistency in the Turkish system on what had previously been a patchwork of differing legal practices, the Turkish Code succeeded in keeping the country from plunging into a judicial chaos. It furthermore guaranteed all Turkey's citizens equal rights before the law, irrespective of their language, religion, race or gender, thus sweeping away all of the traditional and legal obstacles to implementing a fully just legal system. Finally it bolstered the social status of Turkey's women, providing them with the same rights as any other citizen.

Yet living conditions undergo constant change, society's needs and the very nature of human relations cannot help but be touched by new circumstances arising from economic and technological progress. Therefore laws are fated to always fall behind the times; they must be periodically amended and renewed.

In light of the reasons enumerated above, there existed a need to update the Turkish Civil Code.

Amendments:

- ∅ The language in the Turkish Civil Code has been simplified.

- Ø Article 21 of the current law under the sub-title “Legal Residence,” stipulating a legal residence, was changed to the “Legal Domicile” and the provision “the residence of the husband” was not included in the law in order to ensure equality between man and woman.

- Ø Rules on associations have been re-arranged in detail.

- Ø Sex changes will be subject to certain conditions. Those who are over 18, single, who obtain a medical report, who are transsexuals and whose reproductive system is deficient may be allowed to have a sex change, providing that it is a must for their mental health. Even then a doctor must approve of the sex change. (Article 40)

- Ø The legal age for marriage has been raised, to over 17 for both men and women. However under extreme situations and sufficient cause both men and women who are over the age of 16 can be married with the permission of the judge. (Article 124)

- Ø The marriage ceremony can hereby be held not only in the province where the man resides, but also in the one where the woman resides. (Article 134)

- Ø A third legal grounds for divorce, “humiliating behaviour,” is hereby established, in addition to “plots against life” and “grave assaults and insults.” (Article 162)

- Ø Divorced woman is allowed to retain her former spouse’s name if he so agrees. Women are now allowed by law to retain their maiden name after marriage, though must still adopt their husband’s name as well. (Article 173)

- Ø Under these changes, the husband is no longer automatically the head of the family. (Article 186)

- Ø The new code allows couples to jointly decide where they will live. (Article 186)

- Ø The principle that the husband is responsible for looking after his wife and children has been deleted, with the new code specifying that a shared financial responsibility be adopted. (Article 186)

- Ø Both men and women are given equal status within the marriage and are both able to represent the family in legal matters. (Article 188)

- Ø The obligation for spouses to obtain permission from the other spouse before choosing a profession or a job is hereby abolished. However, in the choice and pursuit of professions, the welfare and benefit of the unity of marriage shall be taken into consideration. (Article 192)

- Ø The clause which required a widow to obtain a judge's permission before she could incur debts in favor of her husband is hereby abolished under the principle of equality of women and men.
- Ø The regime of participation in acquired property is hereby accepted as a legal estate regime. Additionally, couples may also accept one of the other estate regimes existing in the law. (Article 202)
- Ø With regard to descent, discrimination between children born during the marriage and those born outside of marriage is hereby ended. Thereby damage done to children born outside of marriage is prevented and their future is safeguarded.
- Ø The age for a couple to be eligible to adopt is dropped from 35 to 30. For a couple to adopt, they must have been married for at least two years. The adoption of small children is conditional on those who seek to adopt being willing to bring up and educate such children for at least one year. Couples who already have children are also deemed eligible for adoption; "the adoption should benefit the child, and other children should not be harmed by this adoption." (Article 305, 306, 308)
- Ø Persons who have mental illness, mental infirmity, habitual drunkenness or substance addiction and thus harm their own family and surroundings can, by order of a court, be placed in a health center for their protection. However, this person has right to challenge and appeal this order as do their relatives. (Article 432, 437)
- Ø The reserved portion in the law of succession is hereby reduced, in order to extend the freedom to dispose of property left by the deceased. (Article 506)
- Ø Taking the Turkish traditional family structure in consideration, under certain conditions, close relatives and aunts and uncles who bring up children when father dies will take a part of the estate. (Article 497)

- Ø In case of the death of wife or husband, for the protection of the surviving spouse he or she can claim under the right to inheritance ownership of the furniture, household or house in which the couple lived together. If however there is just cause, upon the request of the surviving spouse or other legal heirs the right to residence or usufruct can be granted in lieu of ownership. (Article 652)
- Ø An agricultural enterprise with economic integrity and sufficient agricultural property mentioned in the will can be allotted in its entirety to a single heir competent to run this enterprise upon his or her request in line with its assessed value. If it is an enterprise which can obtain almost the same amount of profits even if it is divided, it can be allotted in separate portions to all heirs who are able to manage them upon their request. (Article 659, 667 and 668)
- Ø Regarding joint ownership, shareholders shall be allowed to make different agreements on the issues of management and the use of shared property, rather than the ones envisaged in the Law. (Article 689)
- Ø In joint ownership, a new provision prevents discontent arising from one partner having the right to the usufruct on share. According to this provision, if a usufruct exists and if one of the shareholders asks for sharing the property in three months, the usufruct on the share in question is to continue on the value set for each share. (Article 700)
- Ø Taking this implementation into consideration, it is stated that the preemption right must be used by applying to a court of law. (Article 734)
- Ø In order to ensure the security of credits-in-cash or Lombard loans in foreign exchange or indexed to foreign exchange given by the credit

institutions carrying out activities in the country or abroad mortgage shall be constituted. (Article 851)

Ø Since the distinction between real possession and derivative possession in Law No. 743 is made according to the right claimed by the possessor of the property, another distinction between direct and indirect possession is made. It is stated that the person who has the property directly is called the direct possessor, and one who has it via a mediator is called the indirect possessor. (Article 975)