

Author: Av. Gunes Deniz Surmen
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INHERITANCE OF FOREIGN PERSON

I. Introduction

The number of acquisitions by foreign people of movable and immovable properties in Turkey is increased, therefore, in the event of death of those foreign persons, matters such as how these movable and immovable properties are acquired, validity of the testamentary disposition that are made by such people, the decisions taken by foreign courts on inheritance have become more and more important. To that end, the subject of this article is to determine the applicable law on inheritance matters, international jurisdiction of Turkish courts on inheritance lawsuits, recognition and enforcement of the foreign courts' decisions regarding inheritance matters. Mutuality, international treaties and article 35 of the Land Registry Law were not covered within the scope of this article.

II. The International Jurisdiction of Turkish Courts on Inheritance Lawsuits Containing a Foreign Element;

As it is known, according to article 11 of the Code of Civil Procedure numbered 6100, the jurisdiction of Turkish courts is exclusive on lawsuits arising out of inheritance matters, other than the ones on the issuance of certificate of inheritance and new certificate of inheritance. However, article 11 of the Code of Civil Procedure numbered 6100 is not applicable lawsuits containing a foreign element. For inheritance lawsuits containing foreign element, the international jurisdiction of Turkish courts is subject to article 43 of the International Private and Civil Procedure Law numbered 5718. According to that article, "Lawsuits related to inheritance shall be heard by the court where the deceased had his/her last domicile in Turkey, but if his/her last domicile was not in Turkey, by the court of the place where his/her property is located". Article 43 of the International Private and Civil Procedure Law numbered 5718 regulated the competency in inheritance lawsuits based on 2 principles: The last domicile of the decedent and the place where properties are located. Accordingly, inheritance lawsuit of a Turkish or foreign person whose last domicile is abroad and who has left movable or immovable property shall be heard by the court of the area of the properties. The decedent may have property in various places, but it is enough to have properties in Turkey for international authority of Turkish courts. Article 43 of the International Private and Civil Procedure Law is considered as exclusive jurisdiction in terms of immovable properties relevant to inheritance. Within this scope, the jurisdiction clauses/contracts granting jurisdiction to foreign courts on the inheritance of the immovable properties located in Turkey are invalid.

III. The Law Applicable to Inheritance Lawsuits Containing a Foreign Element;

The law applicable to inheritance disputes containing a foreign element shall be determined according to the International Private and Civil Procedure Law numbered 5718. According to article 20/1 of the International Private and Civil Procedure Law, “inheritance is subject to the national law of the deceased person.” Turkish law, regardless of nationality of the decedent, shall apply to the immovable properties of the decedent located in Turkey.

The principle according to article 20/1 of the International Private and Civil Procedure Law is that inheritance is subject to the national law of the deceased. However, an exception of this rule has been set forth in terms of inheritance of immovable property and Turkish law shall apply to inheritance lawsuits relating to immovable properties located in Turkey.

In other words, if the decedent is foreign, the law applicable to the merits of the inheritance lawsuits shall not be Turkish law; on the other hand, if the immovable properties of the decedent are in Turkey, Turkish law shall apply to the merits of such lawsuit. The national law of the deceased shall apply to the decedent’s movable properties in Turkey and movable and immovable properties located abroad. The Court of Appeals for the 2. Circuit concluded the scope of application of article 20/1 of the International Private and Civil Procedure Law numbered 5718 by issuing a verdict dated 29.11.2014 and numbered 2004/12300 E. 2004/14076 K. which is as follows: “The plaintiff is a Turkish citizen, but the decedent Murat is a Bulgarian citizen. Court’s decision on dismissal of action for the reason that the deceased did not receive Turkish citizenship is not appropriate. The duty of the court should be the determination of the inheritors and their shares of inheritance by enforcing the Turkish law in terms of immovable properties and the national law of the deceased in terms of movable properties. Therefore, the decision of dismissal is inconsistent with the procedure and the law.”

IV. The Law Applicable to the Lawsuits on Opening, Acquisition and Distribution of Inheritance Containing Foreign Element;

According to article 20/2 of the International Private and Civil Procedure Law numbered 5718, “provisions relating to the reasons of opening, acquisition and distribution of inheritance are subject to the law of the country where the estate is located. As it is understood from the letter of the provision, there is no distinction made in this provision in terms of movable or immovable property. Therefore, Turkish law shall apply to the reasons of opening, acquisition and distribution of foreign person’s inheritance within the borders of Turkey without requiring any distinction between movable or immovable properties.

V. The Law Applicable to the Legal Capacity to Conduct Testamentary Dispositions and to the Form of Testamentary Dispositions;

According to article 20/4-5 of the International Private and Civil Procedure Law numbered 5718, “(4) provision of article 7 shall apply to the form of Testamentary Dispositions. Testamentary

dispositions that are made in accordance with the national law of the deceased are also valid. (5) Legal capacity to conduct testamentary dispositions is subject to the national law of the decedent at the time of disposition.”

In other words, the testamentary dispositions that are made in accordance with national law of person who has the legal capacity to conduct testamentary disposition in accordance with his/her national law are valid. The subject of the testamentary disposition being immovable or movable property is not important.

VI. Recognition and Enforcement of Foreign Court Decisions on Inheritance;

In practice, recognition and enforcement of foreign court decisions on inheritance are filed for having the legal consequences of the foreign certificates of inheritance effective in Turkey. Certificate of inheritance that is issued by a foreign court is a declaratory decision. Therefore, recognition lawsuit should be filed for having the legal consequences of such certificate of inheritance that is taken from a foreign court effective in Turkey.

Recognition and enforcement of foreign court decisions on inheritance may be filed in any of these courts: the civil court of first instance where the person who requests the recognition and enforcement resides, or if he/she does not reside in Turkey, Ankara, Istanbul or Izmir civil court of first instance.

Enforcement lawsuit can be filed as an independent lawsuit, but recognition claim may be raised in a pending lawsuit. Whoever has legal interest in recognition and enforcement of a foreign court decision may file that lawsuit with the condition that the decision of the foreign court is final.

Recognition of a certificate of inheritance issued by a foreign court on immovable properties of foreign person located in Turkey is not possible, since Turkish courts have exclusive jurisdiction on immovable properties located in Turkey. The Supreme Court of Appeals for the 2. Circuit set forth with its decision dated 10.02.1986, numbered 1986/808 E. 1986/1284 K. that “Immovable properties located in Turkey fall within the exclusive jurisdiction of the Turkish courts, therefore, there is no mistake in refusal of recognition request for a foreign court decisions on immovable properties located in Turkey. On the other hand, refusal of the recognition request relating to movable properties with the foregoing reasons is contrary to procedure and law, therefore, the decision should be reversed accordingly.” If the foreign certificate of inheritance covers both movable and immovable properties, it is possible to refuse the recognition of the part of certificate of inheritance relating to immovable properties while approving the recognition of the part related to the movable properties. Thus, the Supreme Court of Appeals for the 14. Circuit confirmed in its decision dated 7.11.2016 and numbered 2016/2464 E. 2016/9178 K. that the certificate of inheritance may be requested from civil court of peace is possible. The decision is as follows: “Under Turkish law, there is no provision which prevents issuance of certificate of inheritance by Turkish court for the inheritance of a foreign person subject to foreign law.”

If the certificate of inheritance is issued by a foreign notary public or a municipal authority, recognition and enforcement of these documents is not possible since Turkish recognise duly enforced foreign court decisions.

VII. Enforcement of a Will;

Execution of a will prepared in a foreign country, in other word issuance of a certificate of inheritance according to the will may be requested by directly submitting such will to Turkish courts. For a will prepared in a foreign country to be valid and enforceable in Turkey, it should either be certified by the Turkish Consulate or carry an apostille. However, if the requirement of consulate certification or apostille is removed with a reciprocal judicial assistance agreement between Turkey and the country in which the will is prepared, the official will may directly be submitted to Turkish courts.

VIII. Acquisition of Properties within the Estate;

For the acquisition of the immovable properties of the decedent, the inheritors should collect any kind of evidence (death certificate, medical report, official reports issued by police force, documents issued by foreign countries' directorates of civil registration and nationality etc.) that would be useful for proving the heirship relation between the decedent and himself /herself. Documents obtained from public authorities of foreign countries should be officially translated into Turkish and shall carry the apostille.

Certificate of inheritance on immovable properties is issued in accordance with Turkish law; whereas the certificate of inheritance on movable properties is issued in accordance with national law of the decedent. If the inheritors claim certificate of inheritance on both movable and immovable properties, they should notify the court accordingly. Since the lawsuits filed for the issuance of certificate of inheritance are subject to non-contentious proceedings, such lawsuits should be filed without a counter party. However, if there are persons opposing to the heirship of the inheritor or the shares, it is possible to file the lawsuit for the issuance of a certificate of inheritance with opponents. In practice, it is possible to see such lawsuits filed against Treasury as the opponent by mistake. However, as it is known, according to article 501 of the Turkish Civil Code, inheritance of a deceased person may only pass to the government if such deceased person does not have any inheritor. In other words, the government confiscates the estates which do not have any inheritors based on its sovereign rights arising from public law. The Supreme Court of Appeal's Assembly of Civil Chambers also confirmed that according to the legislation, there is no need to file the lawsuit for the issuance of certificate of inheritance towards the Treasury as the opponent, by stating in its decision the Supreme Court of Appeal Assembly of Civil Chambers numbered 2009/7-376 E. 2009/528 K. and dated 18.11.2009 as follows: "Although the lawsuit was filed towards the Treasury as an opponent, it is understood from the entire case file that there is no need to show Treasury as an opponent. Therefore, while it was required that the lawsuit was refused based on the state of Treasury not being a party to the lawsuit and the shares of inheritance should be set forth, the acceptance of the lawsuit that was filed against the Treasury is wrong."

