

Inheritance Law in Türkiye for Foreigners: Applicable Law

Introduction

Turkish Private International Law determines which legal system will be applicable to inheritance relations that involve a foreign element. Foreign element refers to the connection to multiple legal jurisdictions of a legal relationship. This article examines the applicable law in inheritance relations with a foreign element under the Law No. 5718 on International Private and Civil Procedural Law ("IPPL").

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Conflict of Law Rules Applicable to Inheritance Law

Article 20 of the IPPL regulates which law shall apply to inheritance relations involving a foreign element.

1. General Rule

Article 20/1 of the IPPL states that inheritance is subject to the deceased's national law.

On the other hand, Article 20/1 of the IPPL also determines that Turkish law shall be applicable to immovable properties located in Türkiye.

On the grounds of this provision, the primary principle is that inheritance is subject to the national law of the deceased, but if the immovable property subject to the inheritance is in Türkiye, Turkish law applies regardless of the national law of the parties. However, if

the deceased is a national of a foreign country and there are properties other than immovables included in his/her heritage, the national law of the deceased shall be applied to all properties other than the immovables located in Türkiye.

2. Opening, Acquisition, and Distribution of Inheritance

Under Article 20/2 of the IPPL, the provisions on the reasons for the opening, acquisition, and distribution of the inheritance are considered as an exception to the general rule governing the applicable law in inheritance matters. These provisions are subject to the law of the country where the heritage is located.

3. Heirless Immovable Property Located in Türkiye

Article 20/3 stipulates that in cases where immovable properties located in Türkiye have no eligible heirs, the state shall inherit such properties.

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4. Testamentary Dispositions

Under Turkish law, testamentary dispositions are categorized into two distinct forms based on their formal requirements: wills and inheritance agreements. IPPL does not contain a special provision on the law applicable to the "substance" of testamentary dispositions. Since paragraphs 4 and 5 of Article 20 of the IPPL apply to matters of "form" and "capacity to act", the general rule prescribed in Article 20/1 shall be applicable to the "substance" of testamentary dispositions which is deceased's national law.

Türkiye is party to the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions ("the Convention") which applies to the form of wills. Therefore, IPPL 20/4 does not apply to wills. The Convention shall apply even if the nationality of the persons concerned or the law applicable under the foregoing Articles is not of a Contracting State.

▶ The Applicable Law on the Form of Inheritance Agreements

Article 20/4 authorizes 3 different laws as "alternatives" to each other in terms of the form of inheritance agreements.

These are:

- ▶ The law of the country where the testamentary disposition is made,
- ▶ The law applicable to the substance of the testamentary disposition,
- ▶ The national law of the deceased.

▶ The Applicable Law on the Form of the Wills

Under the provisions of the Convention, the following laws are applicable when dealing with wills:

- ▶ The national law of the country where the testator made the will,
- ▶ The national law of the country in which the testator was a citizen either at the time he/she made the will or at the time of his/her death,
- ▶ The national law of the country in which the testator had his/her domicile either at the time he/she made the will or at the time of his/her death,
- ▶ The national law of the country in which the testator had his/her habitual residence either at the time he/she made the will or at the time of his/her death,
- ▶ The national law of the country in which immovable property is located, in cases concerning immovables.

▶ The Applicable Law on the Capacity to Act Upon Inheritance Agreements and Wills

Pursuant to Article 20/5, the capacity to exercise testamentary disposition shall be governed by the national law of the executing person at the time of the execution.

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