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Making a Will in Türkiye: Formalities and Key Considerations

Introduction

Wills, written or oral, can be freely made and revoked at any time by the testator. There are three types of wills under Turkish law: (i) official wills, (ii) holographic wills, and (iii) oral wills. The Turkish Civil Code (Law No. 4721) allows the testator to dispose all or part of his/her assets through making a will. The process of creating a will in Türkiye follows a standard set of procedures, irrespective of the testator's nationality, place of residence, or domicile.

Eligibility for Making a Will

Any individual who has reached the age of 15 and possesses the mental capacity to make decisions is eligible to make a will.

The legal heirs of a testator, including their descendants, parents, or spouse, are entitled to a specific share of the inheritance as defined by the law. These entitled shares are commonly referred to as reserved portions. When creating a will, it is important to consider these reserved portions. If the testator has no legal heirs, they have the utmost freedom to dispose of their entire inheritance according to their wishes.

Types of Wills

Official Will

An official will is prepared by a notary public in the presence of two witnesses. After the notary public drafts an official will, the testator reviews the text and acknowledges its content by signing the

document while in the presence of two witnesses. The notary public retains the official will at their office, and a duplicate can be provided to the testator upon their request.

The law prohibits certain persons from participating in the preparation stage of the will as an officer or as a witness. These persons are as follows:

- Those who lack capacity to act,
- Those banned from public service by a court decision,

Illiterates,

- Spouse, descendants, and blood relatives of the testator,
- Siblings of the testator and their spouses.

The involvement of these persons can make the official will partially or entirely revocable.

Holographic Will

A holographic will must be entirely written and signed in the testator's own handwriting and include the date of issue, specifying the year, month, and day. Unlike the official wills, it is not necessary to have witnesses while making a holographic will.

Since the holographic will requires the testator to write in his/her own handwriting, it is not possible for illiterate persons to prepare this type of will.

Holographic wills are susceptible to being lost over time. Therefore, after the holographic will is prepared, it can either be handed over, either sealed or unsealed, to the custody of a notary, a magistrate, or an authorised officer for safekeeping.

The person(s) in possession of the will must diligently safeguard it and shall deliver it to the court for execution upon the death of testator.

Oral Will (Nuncupative Will)

An oral will can only be created if the testator is unable to make an official or holographic will due to extraordinary circumstances such as imminent danger of death, illness, war, etc.

In oral wills, the testator declares his or her last wishes to two witnesses and instructs them to write or dictates a will in accordance with his or her statement. One of the witnesses writes the testator's statement, indicating the place and date, and signs it together with the other witness to be presented to the competent court.

If the extraordinary situation ceases to exist and testator later has the chance to create an official or holographic will, the oral will becomes automatically null and void after one month. Hence, there will be no need to initiate legal proceedings for the annulment or invalidation of the will. If an oral will is made where making a holographic will was possible, the oral will may be annulled.

An oral will can also be made by witnesses with the application made to the competent court and having the testator's last wishes recorded in an official report.

Unsealing the Will After Death

The will shall be submitted to the competent court immediately after the death of the testator. The court has to unseal the will within one month.

Annulment of Will

The annulment of a will is only possible if there is at least one of the reasons specified by the law. Accordingly, a lawsuit can be filed for the annulment on the following grounds:

- If the will was made at a time when the testator did not have the legal capacity,
- If the will was made by the use of force, deception, intimidation,
- If the content of the will, the specified conditions, or imposed obligations are contrary to law or morality,
- If the will was made without complying with the forms stipulated by law,

The annulment can be requested from the court by the heirs or the beneficiaries who has an interest in the annulment.

It is possible to annul the whole or part of the will through an annulment lawsuit.

The right to file a lawsuit for the annulment of a will shall expire within one year from the date when the plaintiffs become aware of the will, the grounds for its annulment, and their status as a beneficiary. The one-year time limit shall not begin until the will is properly unsealed and notified to the relevant parties.

The right to file a lawsuit for the annulment of a will shall expire in any case, after ten years from the date of the will's opening provided that the defendants are acting in good faith, and twenty years when defendants are not acting in good faith.

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