

This article aims to clarify the matters concerning separation and divorcement in relation with Turkish family law. The article touched on the procedures of divorce and also grounds of divorce in Turkey.

Turkish family law had been inspired by Swiss Family Law which was the most modern law in Europe at the time that Mustafa Kemal Atatürk found necessary to adopt a new law in order to end the Islamic social rules which were against women's position in the society. In 2001, civil code was once more modified in accordance with the social and familial changes in the society.

These changes were mainly related to the position of women in the family such as preserving surname after marriage, working without work permit of husband, residing where to live without husband's permit and etc. One of the crucial change in Turkish law was enabling spouses to conclude agreements regarding separation of property before marriage. In the case that divorcement comes to the issue, spouses would be able to divorce in accordance with provisions of the separation of property agreement. If spouses does not involve in specific contractual relationship related to property in pre-marriage phase, spouses can only be divorced under the provisions of Turkish family law.

Turkish Family Law and judicial practice envisage spouses' direct or indirect economic contribution to family. Therefore, indirect economic contribution of housewife's labor which is related to house work or children is never disregarded by the law and the jurisdiction.

Procedures of Divorce

1. Contentious Divorce Suit

One of the spouse may bring a case to the court in order to end the martial relationship. The divorce suits are examined by the Court of Family (Aile Mahkemesi) which has exclusive jurisdiction related to divorcement. The suits must be brought to the court where spouses resided last 6 months or the court situates where the domicile of the applicant is. There are 2 main type of grounds (General or Specific) to divorce which are explicitly mentioned in Turkish family law.

A) General grounds: High-conflict divorce

B) Specific grounds: Such as Adultery, Plots against life, grave assaults and insults, crime and dishonorable life, desertion, mental illness.

As ordinary contentious suits, spouses should convince the court concerning their rightness and other's mistake or faults.

2. Uncontested Divorce (Consensual Divorce)

One of the spouse may apply to the court by submitting separation agreement and property settlement concluded among them. If none of objection will arise, spouses could be divorced in accordance with the provisions of the separation agreement and property settlement with consensus.

Judicial Separation

The spouse who has right to bring a divorce case may demand judicial separation. The judge may also order judicial separation if there is a possibility that the spouses could live together in the future. Judicial separation may be obtained on almost on the same grounds of divorce and the court relieves

the petitioning spouse from the duty of cohabitation.

The Consequences of Divorce

There are many legal consequences of divorce. Some of them are personal in nature: The wife will have her own independent domicile, while the both spouses keep the majority acquired by marriage. The wife resumes maiden name. She may however keep the family name of the husband if she convince the court that it will not damage to her husband. She can also preserve the nationality which has acquired during the marriage. Also the court can decide alimony to the spouse for indefinite time period. Unlike USA, there is no joint custody in Turkey, therefore custody must be granted to one of the spouse which is convenient for custody of the child.

ABOUT THE AUTHOR: Gökhan Cindemir

He graduated from Anatolian High School of Karadeniz Ereğli, after his graduation he studied in Belgium with AFS intercultural exchange program. He obtained his law license degree from Marmara University of Law Faculty. During his university education, he participated in Philip C. Jessup International Law Moot Court Competition on behalf of the Marmara University. After his admission to Istanbul Bar Association in 2009, he obtained master degree (LL.M) from Gent University / Belgium in the field of European and Comparative law. His master research was about Freedom of Establishment In Relation With Turkey and EEC in the frame of Ankara Agreement. He is specialized in International Private Law, European Law, Real Estate Law, Penal Law and Tort Law. He speaks fluent English and has good command of Dutch and French. He is also authorized as a solicitor, barrister.

Copyright [Cindemir Law Office](#)