

# *The Macrotheme Review*

*A multidisciplinary journal of global macro trends*

---

---

## THE ACQUISITION OF TURKISH CITIZENSHIP BY WAY OF MARRIAGE

Cemil GÜNER

*University of Selçuk, Faculty of Law, Turkey*

---

### Abstract

*Turkish Citizenship Code Article 16 regulates the acquisition of Turkish citizenship by way of marriage. Turkish citizenship is not acquired automatically upon marriage with a Turkish citizen. However, alien who has been married with a Turkish citizen at least for three years and who is still married, can apply to acquire Turkish citizenship. The applicant married with a Turkish citizen have to fulfill some conditions. In this context, the applicant have to live in family unity, avoid acts not compatible with the marriage unity and not pose a threat on national security and public order. The lawful ministry has administrative discretion to decide or not on the acquisition of Turkish citizenship by way of marriage.*

Keywords: Citizenship, Turkish citizenship, acquisition of Turkish citizenship, acquisition of Turkish citizenship by way of marriage

### 1. Introduction

According to Turkish Citizenship Code 2009 No. 5901, Turkish citizenship is acquired by birth or after birth. In this context, the acquisition of Turkish citizenship by marriage is a way of the acquisition of Turkish citizenship by after birth. Because the acquisition of Turkish citizenship by way of marriage is occurred by the decision of competent authority (Nomer, 2009, p. 78; Güngör, 2014, p. 114; Tiryakioğlu, 2010, p. 39).

Under Turkish Citizenship Code Article 16/1, Turkish citizenship isn't acquired automatically upon marriage with a Turkish citizen. On the contrary, all lawful conditions in this Code must be fulfilled by the applicant. So the alien who wishes to acquire Turkish citizenship by marriage can acquire Turkish citizenship upon the decision of competent authority, provided that the alien fulfills all conditions stipulated by this Code. However, fulfilling the conditions required don't grant an absolute right to the applicant to acquire Turkish citizenship (Güngör, 2004, p. 33). Thus the competent authority has administrative discretion on the acquisition of Turkish citizenship by way of marriage (Erdem, 2013, p. 140).

As can be seen, the acquisition of Turkish citizenship by way of marriage has a string to fulfilling the conditions in Turkish Citizenship Code and the decision of competent authority (Nomer, 2009, p. 80). Besides the legislator values an alien spouse. Because the acquisition of citizenship is checked over by the competent authority on the application of the alien spouse. As a result,

Turkish citizenship is not entailed upon the alien spouse reluctantly. This situation is known the independency of the alien spouse's citizenship. If the alien spouses want to acquire Turkish citizenship, they can apply for the aim of citizenship unity at family (Güngör, 2014, p. 115).

There is no difference between wife and husband in terms of the acquisition of Turkish citizenship by way of marriage (Güngör, 2004, p. 32). Therefore, such a regulation conforms to the principle of equity (Aybay, 2004, p. 134).

This article will examine the status of the alien spouse in regard to the principles, requirements and effects of the acquisition of Turkish citizenship by way of marriage.

## **2. The Requirements Of Acquisition Of Turkish Citizenship By Way Of Marriage**

The requirements provided in Turkish Citizenship Code Article 16/1 are sought for the alien spouse who wishes to acquire Turkish citizenship by way of marriage. These requirements aim to grant citizenship to the alien spouses who enter into a genuine marriage. Hence, the aim of this way seems to reduce marriages of convenience for the purpose of acquiring Turkish citizenship (Güngör, 2004, p. 37).

In this context, the alien who has been married with a Turkish citizen at least for three years and who is still married, can apply to acquire Turkish citizenship. The applicant married with a Turkish citizen is required to fulfill some requirements too. Firstly, the applicant have to live in family unity. Secondly, the applicant have to avoid acts not compatible with the marriage unity. Lastly, the applicant have not to pose a threat on national security and public order.

Accordingly, the first two of these requirements are preliminary condition for the citizenship application. The alien who has been married with a Turkish citizen for minimum three years and who is still married can apply to acquire Turkish citizenship. However, the other three requirements are prime conditions (Doğan, 2014, p. 94). The applicant married with a Turkish citizen is required to fulfill these prime conditions, but these requirements grant extensive administrative discretion (Tanrıbilir, 2008, p. 48).

### **a. The Alien Spouse Must Has Been Marrying For Minimum Three Years**

Turkish citizenship isn't acquired automatically upon marriage with a Turkish citizen. However, the alien who has been married with a Turkish citizen for minimum three years can apply to acquire Turkish citizenship (Nomer, 2009, p. 80). Three years period is a kind of the presumption of genuine marriage.

If the Turkish citizen spouse had acquired Turkish citizenship by after birth, the date of acquisition of Turkish citizenship must be predicated for the computation of three years period. This isn't regulated in Turkish Citizenship Code Article 16/1, but there is such a condition in Turkish Citizenship Regulation Article 25/3.

The marriage must be valid (Nomer, 2009, p. 83). The validity of marriage is determined in accordance with the regulations of Turkish conflict of laws (Doğan, 2014, p. 88). Thus, the marriage must be valid in terms of both prime conditions and formal conditions (Güngör, 2014, p. 114).

### **b. The Spouses Must Be Still Married**

The marriage between alien and Turkish citizen spouses must be still continued at the application date (Nomer, 2009, p. 80). For this reason, if this marriage was given out by way of divorce,

death or nullity before the application date, the alien spouse may not apply to acquire Turkish citizenship by way of marriage.

According to Turkish Citizenship Code Article 16/2, the death of Turkish citizen spouse after the application date don't prevent the finalization of application (Doğan, 2014, p. 97). Namely, in case the spouse who is a Turkish citizen dies after the application is lodged, then the applicant isn't required to fulfill this condition.

### **c. The Spouses Must Live In Family Unity**

The spouses married for minimum three years must live together. This condition intends the genuine marriage. So this condition aims to grant citizenship to aliens who enter into a genuine marriage like first two conditions (Güngör, 2004, p. 37).

Therefore, the spouses have a mutual conjugal life (Erdem, 2013, p. 152). Certainly, if the spouses don't live together because of the compelling reasons, this temporary situation can't prevent to occur this conditions. In this context, the keeping of the mutual conjugal and the family life are important for determining this condition (Güngör, 2014, p. 117).

This condition has a exception. According to Turkish Citizenship Code Article 16/2, if Turkish citizen spouse died after the citizenship application, the family unity condition isn't needed (Nomer, 2009, p. 80).

In this context, the fictitious marriage may come to order. Namely, the spouses may marry for the alien spouse to acquire Turkish citizenship. For this reason, this condition is important for the determining of the fictitious marriage.

### **d. The Applicant Spouse Must Avoid Acts Not Compatible With The Marriage Unity**

The alien spouse married with a Turkish citizen has not to do an act that conflicts with the marriage unity.

The legislator doesn't clearly define which action conflicts with the marriage unity in Turkish Citizenship Code. But it can be imply that the actions contrary to the morality and the law are in this context. For instance, the engaging in prostitution, the mediating to prostitution, the forcing to prostitution, the engaging in slave trade prevent to occur this condition (Erdem, 2013, p. 153).

### **e. The Applicant Must Not Pose A Threat On National Security And Public Order**

The alien spouse married with a Turkish citizen must not has a situation contrary to national security and public order. This condition grants the administrative discretion to the competent authority (Güngör, 2014, p. 118).

The legislator doesn't clearly define which situations of the alien spouse are contrary to national security and public order in Turkish Citizenship Code. But some actions of the alien spouse may be against to national security and public order. For instance, the applications of the aliens acting against to national interests and national unity aren't granted by the competent authority. Similarly, the applications of the aliens supporting such a action aren't granted too. Besides, the rebellion, the sabotage, the spying, the gun running, the narcotics smuggling or the counterfeiting are kind of action contrary to national security and public order (Erdem, 2013, p. 154).

### 3. The Procedure Of Application

According to Turkish Citizenship Code Article 37, the application regarding the acquisition of Turkish citizenship should be made directly to the Governorate of the province where spouse resides or to the Diplomatic Representations abroad. The applications should be made individually or by a power of attorney for the use of this right (Doğan, 2014, p. 107). This application is made by the form brief (Güngör, 2014, p. 123).

The applicant board makes an advance canvass on the requirements after the application. If the applicant spouse has not application conditions for the acquisition of Turkish citizenship by way of marriage in accordance with Turkish Citizenship Code Article 16, the citizenship application must be rejected. Nonetheless, if the applicant spouse has all application conditions for the acquisition of Turkish citizenship by way of marriage, the citizenship file is prepared in the name of the applicant spouse and submitted to the Police Department for investigation. After this investigation, the determination of whether or not the applicant is eligible to acquire citizenship in accordance with Turkish Citizenship Code Article 16, shall be made by the commission, which shall be established in provinces, for examination of the citizenship application (Erdem, 2013, p. 156). This commission has an interview with the alien spouse and Turkish spouse separately and collectively. This interview's aim is to determine whether or not the marriage is genuine.

From among the alien who wishes to acquire Turkish citizenship by way of marriage, for those who fulfills the conditions required to apply a citizenship file is opened and sent to the Ministry (Doğan, 2014, p. 108). Those who are deemed appropriate following the examinations and inquiry launched by the Ministry acquire Turkish citizenship upon the decision of the Council of Ministers, those, whereas those whose applications are not deemed appropriate to acquire citizenship is rejected by the Ministry. In this context, Ministry has administrative discretion on acquisition of Turkish citizenship by way of marriage (Güngör, 2014, p. 125).

### 4. The Consequences Of Acquisition Of Turkish Citizenship By Way Of Marriage

The acquisition of Turkish citizenship by marriage is the way of the acquisition of Turkish citizenship by the decision of competent authority. Likewise, it is the way of acquisition of Turkish citizenship after birth too (Nomer, 2009, p. 85). So the consequences of the acquisition of Turkish citizenship by the decision of competent authority is valid for the acquisition of Turkish citizenship by way of marriage too. According to Turkish Citizenship Code Article 20/1, the decisions regarding the acquisition of Turkish citizenship shall become valid from the date of decision (Güngör, 2004, p. 39). Therefore, the acquisition of Turkish citizenship by way of marriage doesn't retrospectively prompt.

Turkish citizenship acquiring by way of marriage is absolute. For this reason, Turkish citizen acquiring citizenship by way of marriage is subject to the equal legal statute with Turkish citizen acquiring citizenship by birth (Nomer, 2009, p. 85).

Besides, Turkish citizenship acquiring by way of marriage is permanently. Thence, if this marriage between alien and Turkish citizen spouses gived out by way of divorce or death after the acquisition of Turkish citizenship, the spouse doesn't lose Turkish citizenship (Nomer, 2009, p. 85). But according to Turkish Citizenship Code Article 16/3, in the decision of nullity of marriage, the alien who acquired Turkish citizenship by way of marriage can preserve Turkish citizenship, if two sides have entered the marriage contract in good faith (Erten, 2014, p. 262).

The spouse acquiring Turkish citizenship may have children. In this context, whether or not the spouse's children acquire Turkish citizenship is a problem. According to Turkish Citizenship Code Article 20/2, the children whose guardianship belong to the father or mother who acquired Turkish citizenship on the date of acquisition can acquire Turkish citizenship in case the other spouse gives consent. In case of disagreement of the spouse, action shall be taken upon the decision of judge in the country where the father or mother is residing regularly (Doğan, 2014, p. 113).

The spouse acquiring Turkish citizenship is not required to take Turkish name. So the spouse may keep his/her current foreign name (Nomer, 2009, p. 95).

If the spouse acquiring Turkish citizenship is a husband, his military duty is another problem in this context (Aygün, 2010, p. 231). According to Military Code, the man acquiring Turkish citizenship has to be in the army to his age when acquiring Turkish citizenship like a peer Turkish man (Nomer, 2009, p. 96).

## 5. Conclusion

The acquisition of Turkish citizenship by marriage is a way of the acquisition of Turkish citizenship by after birth. According to this, Turkish citizenship isn't acquired automatically upon marriage. On the contrary, all lawful conditions in Turkish Citizenship Code must be fulfilled by the applicant. So the alien who wishes to acquire Turkish citizenship by way of marriage can acquire Turkish citizenship with the decision of the competent authority, provided that the alien fulfills the conditions stipulated by this code. However, fulfilling the conditions required, don't grant an absolute right to the spouse to acquire Turkish citizenship. The competent authority has the administrative discretion on the acquisition of Turkish citizenship by way of marriage.

There is no difference between wife and husband at the acquisition of Turkish citizenship by way of marriage. Such a regulation conforms to the principle of equity.

The requirements provided in the code are sought for the alien spouse who wishes to acquire Turkish citizenship by way of marriage. These conditions aim to grant citizenship to the aliens who enter into a genuine marriage. In this context, the alien who has been married with a Turkish citizen for minimum three years and who is still married, can apply for Turkish citizenship. The applicant married with a Turkish citizen is required to fulfill some conditions too. Firstly, the applicant has to live in family unity. Secondly, the applicant has to avoid acts not compatible with the marriage unity. Lastly, the applicant has not to pose a threat on national security and public order.

The application regarding the acquisition of Turkish citizenship should be made directly to the Governorate of the province where the spouse resides or to the Diplomatic Representations abroad.

The alien spouses who are deemed appropriate following the examinations and inquiry launched by the Ministry may acquire Turkish citizenship upon the decision of the Council of Ministers. The decision regarding the acquisition of Turkish citizenship shall become valid from the date of decision. So the acquisition of Turkish Citizenship by marriage doesn't retrospectively prompt.

Turkish citizenship acquiring by way of marriage is absolute. So Turkish citizen acquiring citizenship by marriage is subject to the equal legal statute with Turkish citizen acquiring citizenship by birth. Turkish citizenship acquiring by way of marriage is permanent too.

Thence, if this marriage between alien and Turkish citizen spouses gived out by way of divorce or death after acquisition of Turkish citizenship, the spouse doesn't lose Turkish citizenship.

The spouse's children whose guardianship belong to the father or mother who acquired Turkish citizenship on the date of acquisition can acquire Turkish citizenship in case the other spouse gives consent. In case of the disagreement of the spouse, the action shall be taken upon the decision of judge in the country where the father or mother is residing regularly.

## References

Aybay, R. (2004). Vatandaşlık Hukuku. İstanbul.

Aygün, M. (2010). Askerlik Hizmetinin Türk Vatandaşlığı Açısından Değerlendirilmesi, Vatandaşlık, Göç, Mülteci ve Yabancılar Hukukundaki Güncel Gelişmeler, Uluslararası Sempozyum Bildirileri, 15-16 Mayıs 2009-Eskişehir, Türkiye Barolar Birliği Yayını, 231-251.

Doğan, V. (2014). Türk Vatandaşlık Hukuku. Ankara.

Erdem, B. B. (2013). Türk Vatandaşlık Hukuku. İstanbul.

Erten, R. (2014). Evliliğin Butlanının Evlenme Nedeniyle Kazanılan Türk Vatandaşlığına Etkisi Hususunda Değerlendirmeler, Türkiye Adalet Akademisi Dergisi, 19, 243-278.

Güngör, G. (2004). The Acquisition Of Turkish Nationality By Way Of Marriage Following The June 2003 Amendment, Ankara Law Review, 1/1, 29-49.

Güngör, G. (2014). Tabiiyet Hukuku. Ankara.

Nomer, E. (2009). Türk Vatandaşlık Hukuku. İstanbul.

Tanrıbilir, F. B. (2008). Türk Vatandaşlığı Kanunu Tasarısının Vatandaşlığın Kazanılmasına İlişkin Hükümleri, Türkiye Barolar Birliği Dergisi, 75, 27-62.

Tiryakioğlu, B. (2010). Yeni Türk Vatandaşlığı Kanunu'nun Eleştirel Analizi, Vatandaşlık, Göç, Mülteci ve Yabancılar Hukukundaki Güncel Gelişmeler, Uluslararası Sempozyum Bildirileri, 15-16 Mayıs 2009-Eskişehir, Türkiye Barolar Birliği Yayını, 24-66.

Turkish Citizenship Code in English. Translation by. Karayiğit, Mustafa T. <http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=TUR%205901%202009%20%28original%29.pdf> (27.07.2015)