

According to the Turkish Citizenship Law No. 5901 Evaluation of The Polygamy Problem in Acquiring Turkish Citizenship Through Investment with the Recent Decision of the 2nd Civil Chamber of the Supreme Court of Verdict Dated 04.26.2022

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ÖZET

Bu çalışma, Türk Vatandaşlığı Kanunu'nun (TVK) 12/1-b maddesi uyarınca, vatandaşlık başvurusunda bulunan yabancıların kendi ülkesine göre geçerli olarak birden fazla evlilik yapması halinde eşlerinin vatandaşlık kazanıp kazanmayacağı meselesine ışık tutulması ve konunun kamu düzenini ilgilendiren yönlerinin tartışılması amaçlanmıştır. Türk vatandaşlık hukuku kurallarında vatandaşlığın yetkili makam kararıyla kazanılması eşin vatandaşlığını etkilememektedir. Ancak TMK 12/1-b maddesine getirilen yenilik bu kuralın bir istisnasıdır. Herhangi bir şart aranmaksızın eşe vatandaşlık kazandırılması Türk vatandaşlık hukuku ilkelerine aykırıdır. Çok eşli yatırımcıların eşlerinin Türk vatandaşlığını kazanmasında önemli sorunlar ortaya çıkmaktadır. Ne yazık ki kanun koyucu bu konuda yaptığı düzenlemede sakıncaları dikkate almadığını ortaya koymuştur. Vatandaşlığın sonradan kazanılması durumunda aranacak sıkı şartlar varken, yatırım vatandaşlığında daha esnektir. Bu da vatandaşlık edinimine verilen değeri azaltmaktadır. Bu çalışmada yatırım yoluyla vatandaşlık başvurusunda bulunan kişinin birden fazla evliliği varsa bu evliliklerin butlanına ilişkin güncel Yargıtay kararına da değinilmiştir. Söz konusu kararda Türk vatandaşlığını sonradan kazanan kişinin birden fazla eşinin Türk vatandaşı olması ve bu evliliklerin yok hükmünde olması ile ilgilidir. Türk kamu düzenini açıkça etkileyecek olan bu durumun önüne geçilmesi için gerekli düzenlemeler yapılmalıdır.

5901 Sayılı Türk Vatandaşlığı Kanunu'na Göre Yatırım Yoluyla Türk Vatandaşlığının Kazanımında Çokeşlilik Sorununun Yargıtay 2'nci Hukuk Dairesinin 26.04.2022 Tarihli Güncel Kararı ile Değerlendirilmesi

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ABSTRACT

The prohibition of torture and ill-treatment, protected in Article 3 of the European Convention on Human Rights and Article 17 of the 1982 Constitution, is a right that directly safeguards the most fundamental rights to protect the physical integrity and human dignity of the person. Torture and inhuman and degrading treatment, which are considered a violation of this right, are subject to highly indistinguishable and ambiguous criteria. Accordingly, the severest one of such conscious and deliberate practices that humiliate people, injure their dignity, and cause them material and moral pain and suffering, is considered torture. The moderate one is inhuman treatment as expressed in the Convention and torment as expressed in the Constitution, and the mildest one is degrading treatment as expressed in the Convention and treatment incompatible with human dignity as expressed in the Constitution. The most basic criterion of the European Court of Human Rights and the Constitutional Court in determining the said treatments is the minimum threshold range. Accordingly, the



minimum threshold range is the criterion that serves to determine which type of ill-treatment will be evaluated by considering both the subjective and objective elements of the victim. The present study aims to make the minimum threshold range, an ambiguous criterion, as clear as possible in the context of the decisions of the European Court of Human Rights and the Constitutional Court.

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INTRODUCTION

Acquisition of Turkish citizenship has two types. Original acquisition is acquisition of citizenship by birth.. When a child is born and he immediately acquires a nationality for a reason which has some connection to his or her birth, the original acquisition, we say, has been realized. We call the nationality acquired by the mode the original nationality. The second type of acquisition of Turkish citizenship is derivative acquisition. It's the acquisition of nationality by some reason other than birth and at a time after the birth. General acquisition of Turkish citizenship, exceptional acquisition of Turkish citizenship , reacquisition of Turkish citizenship, acquisition of citizenship by marriage, acquisition by the decision of adoption, and acquisition by right of option are the other types of original acquisition. The most noticeable way of acquiring citizenship in recent years is *Ius doni*, meaning acquisition of citizenship by investment¹. Acquisition of citizenship by investment is also a new method added to the acquisition by exceptional means in Article 12 § 1-b of the Turkish Citizenship Law².

Currently, persons who meet the investment conditions set out in Article 20 of the Regulation on the Implementation of the Turkish Citizenship Law (Regulation)³ can apply for Turkish citizenship exceptionally, and the investor's spouse and children can also become Turkish citizens within this scope. What is essential in the norms of Turkish citizenship law is that the acquisition of citizenship of a person does not affect the spouse. However, in citizenship by *Ius doni*, which is the subject of the study, the spouse also has the opportunity to acquire citizenship with the investor.

In a few countries polygamic marriages⁴ are legally accepted. As such, the question arises as to

¹ Kalin, Christian H. *IusDoni in International Law and EU Law*, Leiden, 2019, p. 46.

² ."According to the AA, former Turkish Minister of Interior Süleyman Soylu informed that 25.969 foreign investors also acquired the Turkish citizenship by meeting the necessary criteria. Stating that the income from these foreign investors is 7 billion 530 million dollars, Soylu said that the investments of these people are real estate investments, and business and real estate investments." <https://www.gazeteduvar.com.tr/soylu-turkiye-vatandasi-olan-multeci-sayisini-acikladi-haber-1564114> (03.17.2023).

³ Regulation On The Implementation Of The Turkish Citizenship Law: Acceptance Date: 02.11.2010, Official Newspaper: 04.06.2010 /27544.

⁴ Polygamic marriages have two types. First one is polyandrous marriages mostly seen in Tibet, Nepal and Bhutan. In this type, women could marry more than one men. The other type, known as polygny marriages mostly seen in Islamic countries that man could marry more than one women at the same time: Thobejane, Tsoaledi Daniel. "An Exploration of Polygamous Marriages: A Worldview", *Mediterranean Journal of Social Sciences*,

what will be the opportunity to benefit from the "spouse" status in the applications made by these people to become Turkish citizens through investment, and whether the applications of these spouses are answered positively or negatively in the case of multiple spouses in practice. In the case of residence permits in the case of more than one spouse, the family residence permit is also mentioned in Article 34/2 of the Code of the Foreigners and International Protection⁵ (FIPL) about "(2) *In case of marriage with more than one spouse according to the law of the country of citizenship, only one of the spouses shall be granted a family residence permit. However, children from other spouses may also be granted a family residence permit.*" While there is no expression in the short-term residence permit within the scope of Article 31/1-j, which is the basis for the acquisition of citizenship.

It is obvious that the issue of the citizenship of spouses in Turkish citizenship by investment is contrary to the Turkish public order and the Turkish family structure in the long term. As a matter of fact, if a foreigner who has a valid marriage according to the law of his own country acquires Turkish citizenship and make these marriages be remain valid, it means that a Turkish woman could be officially deemed as the second or third wife within the context of civil law. This situation is contrary to the Turkish Constitution, the basic principles of law and the Turkish Civil Code⁶. For this reason, in our opinion, two methods should be provided in the current legal system in order not to recognize these marriages in the Turkish legal system⁷. The first of these is that if there is more than one marriage, the chance becoming a Turkish citizen may be bestowed to a single spouse not to the other spouses in any way. The second is that if each of these spouses has been granted citizenship in some way and has become a Turkish citizen, the Public Prosecutor's Office should bring this problem before the Court for the annulment of the marriage concerned.

I. Turkish Citizenship by Investment

A. General Terms

States have the exclusive domestic jurisdiction regarding citizenship⁸. While this exclusiveness of jurisdiction also be seen in the European Convention on Nationality as "Each State shall determine under its own law who are its nationals" (art. 3), it is also included in the Turkish Constitution, art. 66 states that "*Citizenship is acquired under the conditions specified by the law and can only be lost in cases specified by the law.*".

Citizenship constitutes a legal and political link between the state and the individual⁹. A person's

Vol. 5, No. 27, December 2014, p. 1061; E. G. L. "Polygamy and the Conflict of Laws." *The Yale Law Journal*, vol. 32, no. 5, 1923, pp. 471–77. <https://doi.org/10.2307/788743>. Accessed 21 Dec. 2023.

⁵ Foreign and Internainal Protect Law, Law Number: 6458, Acceptance Date: 04.04.2013, Official Newspaper: 04.11.2013 /28615.

⁶ Turkish Civil Code: Law Number: 4721, Acceptance Date: 11.22.2001, Official Newspaper: 12.08.2001 /24607.

⁷ "*The dimensions of the individual, social, spiritual problems, the familial-human problems that polygamy brings with it far exceed the dimensions of all these legal problems... Far beyond this simple legal phenomenon, it means that the mutual love, affection and solidarity between the spouses and children that make up the family are also divided and crumbled, so that the problems that polygamy has piled up before the jurist remain dramatic in comparison with the deep traces it has left especially in women and children.*" Serozan, Rona. "Türk Medeni Kanunu Çerçevesinde Çokevlilik", *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, Vol. 41, Issue. 3-4, 1975, pp. 293-306.

⁸ Güngör, Gülin. *Tabiiyet Hukuku*, 10. Bası, Yetkin Yayıncılık, Ankara, 2022, p. 14; Nomer, Ergin. *Türk Vatandaşlık Hukuku*, 30. Bası, Beta Basım, İstanbul, 2022 p. 5; Doğan, Vahit/ Yılmaz, Alper Çağrı / İzmirli, Lale Ayhan. *Türk Vatandaşlık Hukuku*, 18. Bası, Savaş Kitabevi, Ankara, 2022, p.6

⁹ Yılmaz, Alper Çağrı. "Mukayeseli Hukukta ve Türk Hukukunda Yatırımcı Vatandaşlık Olgusu: Ius Pecuniae", *Public and Private International Law Bulletin*, Vol. 38, 2018, p. 191, 216.

citizenship and its material sense are important. Certain conditions must be sought for this "bond" to be established between citizenship and the state. Seeking these conditions is an acceptable reality for the state to grant a person the highest status, such as citizenship. In Turkish law, at least the residency requirement is not even required to create that link between the state and the person in acquiring citizenship by investment. The only criterion sought in citizenship by investment is that "national security and public order" obstacle other than the investment to be made¹⁰. The acquisition of citizenship by investment is a situation encountered in the laws of different countries¹¹. However, the fact that it is only conditional on investment is also seen as inconvenient by the countries implementing this system¹², often requiring the person to reside in the country where he will acquire citizenship¹³. On the other hand, Turkish law does not require the realization of the investor's intention to reside and settle in Türkiye¹⁴.

Article 12/1-b of the TCL regulates two types of foreigners and their spouses and children to be granted Turkish citizenship in exceptional ways. The first of these is Article 31 of the Law No. 6458 on Foreigners and International Protection (FPIL). Those who have received a residence permit in accordance with the clause (j) of the first paragraph of the article. According to this article, persons who have received a short-term residence permit are required in Article 31/1-j of the FPIL; *It is defined as "those who do not work in Türkiye but will invest in the scope and amount to be determined by the President of the Republic and their foreign spouses, minor or dependent foreign children of themselves and their spouses"*¹⁵. The concept we call investment citizenship is not actually expressed in this article alone. In the TCL, of course, Article 12/1-a has been applied for years¹⁶: *"Persons who bring industrial facilities to Türkiye or who have passed, or are thought to pass, extraordinary service in the scientific, technological, economic, social, sportive, cultural and artistic fields and for whom the relevant*

¹⁰ Erkan, Mustafa. "Türk Vatandaşlığının Sonradan Kazanılmasında Milli Güvenlik ve Kamu Düzeni Kavramlarının İncelenmesi", Editörler: Doğan, Vahit/ Yılmaz, Alper Çağrı / İzmirli, Lale Ayhan, *Milletlerarası Özel Hukukta Güncel Meseleler*, Savaş Kitabevi, Ankara, 2019, pp. 7-38.

¹¹ On the commodification of citizenship by investment in comparative law, see Gölcüklü, İlyas. "Güncel Gelişmeler Işığında Yatırım Yoluyla Türk Vatandaşlığının Kazanılması: Problemler ve Çözüm Önerileri", *Public and Private International Law Bulletin*, Vol. 40, Issue. 1, 2020, pp. 125- 137.

¹² Christians, Allison. "Buying In: Residence and Citizenship by Investment." *St. Louis University Law Journal*, Vol. 62, 2017, 51–71; Dzankic, Jelena. "The Pros and Cons of Ius Pecuniae: Investor Citizenship in Comparative Perspective", *EUI Working Papers*, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, 2012/14; Petra Weingerl/ Matjaž Tratnik. "Citizenship by Investment Programs from the Perspective of International and EU Law" *Lexonomica*, Vol. 11, No. 2, December 2019, pp. 95-126.

¹³ On the exceptional acquisition of Turkish citizenship by countries such as Brazil, Austria and Slovenia, see Köşgeroğlu, Banu Şit. "İstisnai Yoldan Vatandaşlığın Kazanılmasına İlişkin Genel Esaslar ve Son Değişiklikler Çerçevesinde Türk Vatandaşlığının İstisnai Yoldan Kazanılması", *Hacettepe Law Review*, Vol. 7, Issue. 1, 2017, pp. 169–198; Karşılaştırmalı hukukta yatırım vatandaşlığı hakkında bkz. Kaya, Talat. "Dünyadaki Örnekler Işığında Yatırım Yoluyla Vatandaşlık Uygulamasına Eleştirel Bir Bakış", *İnönü University Law Review*, Vol. 12, Issue. 1, 2021, pp. 115-132; Türe, Nazlı. "Yatırım Yoluyla İkamet ve Vatandaşlık", *Türkiye Adalet Akademisi Dergisi*, Vol. 11, Issue. 39, 2019 , p. 83, 90.

¹⁴ For the opinion that citizenship application in Türkiye should be required for residence, especially in terms of security measures, see ibid pp. 125-128; Öztürk, Necla. "*Yatırım Yoluyla İkamet Etme ve Vatandaşlık Kazanma*", 1. Baskı, Oniki Levha Yayıncılık, İstanbul, 2022 p.191.

¹⁵ For thoughts about dependent children, Güngör, p. 111-119.

¹⁶ In the doctrine, it is emphasized that the expression in this article can cause the use of love and create negative situations, Göğler, Erdoğan. *Tabiiyet Hukuku*, Ankara, 1972, p. 72. In addition, the persons within the scope of this paragraph, who are expected to make an extraordinary contribution, must have made a significant contribution to the development of Türkiye in the fields of sports, arts and culture, and there must be strong predictions in this direction. Güngör, p. 109; Baran Çelik, Neşe. "Güncel Gelişmeler Işığında Türk Vatandaşlığının İstisnai Haller Kapsamında Kazanılması", *Türkiye Barolar Birliği Dergisi*, Vol. 130, 2017, p. 367.

ministries have made a reasoned offer." While there was a provision¹⁷, the legislature introduced Article 12/1-b in 2016 (Added: 28/7/2016-6735/27md.) and expanded the situations regarding the acquisition of citizenship by exceptional means, foreigners within the scope of this article became widespread through the purchase of immovable property as reported in the public and press¹⁸.

With the provision of 12/1-b added to the acquisition of Turkish citizenship by exceptional means from the derivative acquisition of Turkish citizenship, the acquisition of citizenship by purchasing immovable property is made possible by the Regulation and the guidelines issued pursuant to this regulation¹⁹. Within the scope of paragraph b) of paragraph 2 of Article 20 of the Regulation on the Implementation of the Turkish Citizenship Law: *"Provided that the undertaking that it has purchased immovable property in the amount of at least 400,000 US Dollars or its equivalent in foreign currency on the condition that it is not sold for three years in the land registry or that a condominium or condominium has been established and that at least 400,000 US Dollars or its equivalent foreign currency amount has been deposited in advance and that it will not be transferred and abandoned in the land registry for a period of three years Foreign persons identified by the Ministry of Environment, Urbanization and Climate Change, to whom the sale of the immovable property is promised with the contract arranged in the notary, can acquire Turkish citizenship with the decision of the President"*²⁰.

¹⁷ In the justification of TCL No. 5901: *"With the article; Foreigners who bring industrial facilities to Türkiye or who have passed or are thought to pass extraordinary service in the scientific, technological, economic, social, sportive and artistic fields and whose reasoned offer has been made by the relevant ministries and whose status is deemed appropriate by the Ministry of Interior, those who are deemed necessary to be naturalized and the foreigners who are accepted as immigrants are exceptional to Turkish citizenship, provided that there is no obstacle in terms of national security and public order. will be available. In this way, there should be no obstacle in terms of national security and public order in acquiring citizenship. Those whose status complies with this condition will be able to become Turkish citizens upon the proposal of the Ministry of Interior and the decision of the Council of Ministers."* statements. 23rd Legislative Year, Draft Turkish Citizenship Law and Report of the Committee on Internal Affairs (1/458), p. 6

¹⁸The scope and amount of the investment required for foreigners who want to gain citizenship within the scope of this article was first regulated by the Regulation on the Amendment of the Regulation on the Implementation of the Turkish Citizenship Law dated 01.12.2017 and about these scope and amounts; amendments were made respectively on 01.12.2017, 09.19.2018, 12.07.2018, 01.06.2022 and 06.13.2022 <https://www.hurriyet.com.tr/ekonomi/yabanci-konut-alimlarinin-yuzde18-6si-vatandaslik-icin-42315051>; <https://www.dunya.com/sectorler/emlak/sector-temsilcilerinden-kentsel-donusum-cagrisi-haberi-692004>; <https://listelist.com/yabancilara-konut-satisi-rekor-duzeve-ulasti/>. (08.08.2023).

¹⁹ Guidance on the Regulation on the Implementation of the Turkish Citizenship Law (06.13.2022) <https://www.tkgm.gov.tr/yabancii-db/vatandaslik-icin-tasinmaz-edinimi-hakkinda-mevzuat>

²⁰ "a) (Amended: O.G.-6/1/2022-31711-C.K-5072/1 Art.) Determined by the Ministry of Industry and Technology to have made a fixed capital investment of at least 500,000 US Dollars or its equivalent in foreign currency.

b) (Amended: O.G.-6/1/2022-31711-C.K-5072/1 Art.) The Environment in which it has purchased immovable property in the amount of at least 400,000 US Dollars or its equivalent in foreign currency on the condition that an annotation not to be sold for three years is placed in the land registry or where a condominium or condominium has been established, at least 400,000 US Dollars or its equivalent foreign currency amount has been deposited in advance and the sale of the immovable property is promised by a notarized contract provided that the commitment not to transfer and abandon it for three years is annotated in the land registry, Identified by the Ministry of Urban Planning and Climate Change.

c) (Amended: O.G.-6/1/2022-31711-C.K-5072/1 Art.) Determined by the Ministry of Labor and Social Security to have created employment for at least 50 people.

ç) (Change: O.G.-6/1/2022-31711-C.K-5072/1 Art.) Determined by the Banking Regulation and Supervision Agency to have deposited at least 500,000 US Dollars or its equivalent in foreign currency deposits in banks operating in Türkiye on the condition that they are kept for three years.

d) (Amended: O.G.-6/1/2022-31711-C.K-5072/1 Art.) Determined by the Ministry of Treasury and Finance to have purchased State debt instruments in the amount of at least 500,000 US Dollars or equivalent in foreign currency on condition that they hold for three years.

According to one opinion in the doctrine, these requirements contained ²¹in art. 20/2 of the Regulation are not additional requirements imposed on art. 12/1-b of the TCL, since the principle of legality is essential. The conditions required by the regulation are the issues that can be taken into consideration at the stage of evaluating the discretion / appropriateness of the administration.

According to Article 12/1-b of the TCL, the most common form of citizenship acquisition is the acquisition of immovable property. Today, a foreigner who purchases immovable property worth 400,000 USD in Türkiye can obtain the right to apply for Turkish citizenship with his family²². In accordance with Article 35 amended by Law No. 6302²³ on the acquisition of citizenship by foreigners and the application for Turkish citizenship through the purchase of real estate, Türkiye has provided the citizens of 183 countries with the opportunity to buy immovable property without the requirement of reciprocity. However, in accordance with the Retaliation Law²⁴ Numbered 1062, Syrian citizens cannot obtain Turkish citizenship through the acquisition of real estate.

Persons who will obtain the second type of acquisition in Article 12/1-b of the TCL; are turquoise card holders. The Turquoise card is an innovation introduced by the International Laborforce Law²⁵. The Turquoise Card is *"the document granting the foreigner the right to work indefinitely in Türkiye and the right of residence for his spouse and dependent children according to the provisions of the legislation"* (Article 3 / § of the International Labor Law). As explained in the justification of the law, *"In order to monitor and evaluate the international labor force potential and mobility for our country to have a competitive advantage in the economic and political field, the Turquoise Card system, which is a new work permit system facilitated for the acquisition of highly qualified human resources to our country with its education level, professional experience, contribution to science and technology and any field of strategic importance, has been established."* The Turquoise card brings the privilege of being a foreigner with privileged status for , strategically important foreigners crucial for Türkiye. Turquoise Card Regulation²⁶ entered into force in 2017. The Turquoise Card Regulation contains detailed regulations on the subject²⁷. According to the aforementioned legislation, foreigners holding a

e) (Added: 13/3/2017-2017/10008 K.) (Amended: OG-6/1/2022-31711-C.K-5072/1 art.) Determined by the Capital Markets Board to have purchased a real estate investment fund participation share or venture capital investment fund participation share in the amount of at least USD 500,000 or its equivalent in foreign currency on the condition that it has been held for at least three years.

f) (Added: O.G.-13/5/2022-31834-C.K-5554/2 Art.) Determined by the Insurance and Private Pension Regulation and Supervision Agency to have invested in the private pension system a contribution of at least USD 500,000 or its equivalent in foreign currency in the private pension system, provided that it remains in the funds whose scope is determined by the Insurance and Private Pension Regulation and Supervision Agency and remains in the system for three years."

²¹ Güngör, p. 118.

²² For a detailed explanation of the acquisition of citizenship through the acquisition of immovable property, see Acquisition of Citizenship. Annex to Circular No. 2019/5 Guidance dated 01.02.2023. For an explanation of the subject, see Bayata Canyaş, Aslı. "Yabancı Gerçek Kişiler Lehine Türkiye'deki Taşınmazlar Üzerinde Kat İrtifakı Tesisi ve Kat İrtifakı Tesisinin Türk Vatandaşlığı Kazanmaya Etkisi" *Uyuşmazlık Mahkemesi Dergisi*, Vol. 8, Issue. 16, 2020, pp. 91-109; Yüksek, Elif. *Türk Vatandaşlığının Yatırım Yoluyla Kazanılması*, 1. Bası, Yetkin Yayıncılık, Ankara, 2023, p. 67; Özkan, Işıl. "Vatandaşlık Satılabilir bir Şey midir?", *Uluslararası Sanat Kültür ve İletişim Dergisi*, Vol. I, Issue. 1, 2018, pp. 53-78.

²³ Law Amending The Land Registry Law And Cadastral Law: Law Number: 6302, Acceptance Date: 07.28.2016, Official Newspaper: 05.18.2012/28296.

²⁴ Retaliation Law: Law Number: 1062, Acceptance Date: 05.28.1927, Official Newspaper: 08.13.2016/608.

²⁵ International Laborforce Law: Law Number: 6735, Acceptance Date: 05.28.1927, Official Newspaper: 06.15.1927/29800.

²⁶ Turquoise Card Regulation: Official Newspaper: 03.14.2017/30007.

²⁷ For detailed information about the Turquoise Card and its application, please see Turquoise Card. Çalışkan, Zeynep. "Yabancı Yatırımların Teşviki: Turkuaz Kart Uygulaması ve Bazı Ülkelerdeki Benzer Düzenlemeler",

Turquoise Card and their spouses and children can also acquire Turkish citizenship within the scope of Article 12/1-b of the TCL²⁸.

B. Circumstances That May Arise in the Acquisition of Turkish Citizenship According to Article 12/1-b of the Turkish Citizenship Law

According to the legislation in force in Türkiye today, there are positive regulations on giving advantages to people who invest in Türkiye. The main ones are; a separate legal regulation for foreign investors, providing convenience for foreign direct investors; with the issuance of a Turquoise card, Turkish citizens were granted the opportunity to become citizenship by benefiting from the rights granted to them in the status of privileged foreigners and finally to be granted citizenship by making arrangements to Article 12/1-b of the TCL. We find it positive that investment is made attractive with the encouragement of foreign investors for Turkish economic development. We believe that a foreigner is given sufficient opportunity to benefit from certain privileges based on the legislation in Türkiye. However, if this person and acquires Turkish citizenship, a legal confusion occurs. We would like to point out that instead of being complementary to each other, arrangements that intersect and contradict each other from time to time will cause confusion.

The Foreign Direct Investments Law (FDIL)²⁹ entered into force in order to encourage and protect foreign investors in Türkiye. The purpose of this law is to regulate the principles regarding the encouragement of foreign direct investments, the protection of the rights of foreign investors and compliance with international standards in the definition of investment and investor, the transformation of the permit and approval system into an information system in the realization of foreign direct investments and the increase of foreign direct investments through the determined policies (art.1). According to the FDIL, persons who can gain the status of foreign investors are natural persons with citizenship of foreign countries; Turkish citizens residing abroad; are legal entities and international organizations established according to the laws of foreign countries. In this context, convenience and advantages are offered to foreign investors. In terms of the foreign real person who invests in Türkiye, the foreign direct investor who has the citizenship of the foreign country can obtain Turkish citizenship if the real person meets the investment condition in the amounts shown in Article 20 of the Regulation.

In order to obtain Turkish citizenship by investment, the person concerned must also have a short-term residence permit. In this case, confusion arises when the investor acquires Turkish citizenship through investment while residing in Türkiye. It is necessary to evaluate whether the foreign direct investor will be an investor within the scope of FDIL if he gains Turkish citizenship. Real persons with foreign citizenship and Turkish citizens residing abroad have been accepted as direct foreign investors within the scope of FDIL. Turkish citizens residing abroad can benefit from the protection provisions under FDIL as long as they reside abroad. It is concluded that foreign direct investors who are citizens of foreign countries cannot be included in the scope of the definition of investor specified in FDIL if

Maltepe Üniversitesi Hukuk Fakültesi Dergisi, Vol. 15, Issue. 2, 2016, pp. 55-88; Kavlak, Bengül. "Uluslararası İşgücü Kanunu ile Getirilen Bir Yenilik: Turkuaz Kart", *YBHD*, Issue. 2, 2019, pp. 337-362.

²⁸In the provision of Article 19/3 of the Turquoise Card Regulation on the acquisition of citizenship within the scope of Article 12 of the TVK of Turquoise Card holders, the acquisition of Turkish citizenship by relatives is regulated in violation of the legislation. According to the statement in the turquoise card regulation; "Within the scope of the subparagraph (b) of the first paragraph of Article 12 of the Turkish Citizenship Law No. 5901 dated 25/9/2009, the Turquoise Card holder and his/her relative may acquire Turkish citizenship if proposed by the Ministry, provided that there is no obstacle in terms of national security and public order and the transition period registration is removed.is. As can be seen, the statements in this article are incompatible with the TCL and undermine the principle of legality, Güngör, p. 119.

²⁹ The Foreign Direct Investments Law: Law Number: 4875, Acceptance Date: 06.05.2003, Official Newspaper: 03.17.2003/25141.

they reside in Türkiye after acquiring Turkish citizenship³⁰. It should also be noted that if these persons subsequently acquire Turkish citizenship, if they continue to reside abroad, Turkish citizens residing abroad will also be able to continue to benefit from the foreign direct investor provisions since they are considered as direct foreign investors.

According to Article 5, paragraph b of the Turquoise Card Regulation in terms of Turquoise Card holders, which is another opportunity recognized for foreign real persons: "Considered as a highly qualified investor in terms of the level of investment or export, the size of the employment it will provide, its contribution to scientific and technological development and similar features." People can apply for a Turquoise card. In this context, a real person who is a foreign direct investor who is a citizen of a foreign country can also obtain the status of "privileged foreigner" provided that he applies to the Turquoise Card application. In this case, although the person is a foreigner, he can benefit from the rights granted to Turkish citizens except for the exceptions specified in the Law. While this is the case, the national benefit in giving the person the opportunity to gain Turkish citizenship is not understood. The person concerned can benefit from all the opportunities in Türkiye exactly as a citizen, except for the works reserved for Turkish citizens.

Finally, in terms of providing the necessary incentive for an investor to invest in Türkiye, the granting of citizenship through investment, which we included in our study, FDIL; At the point of providing privileges for business and transactions in Türkiye, we would like to state that while it is possible to give privileged foreigner status such as Turquoise Card, we do not find it suitable to bestow Turkish citizenship so easily. It should also be emphasized that persons who bring industrial facilities to Türkiye or make significant investments in Türkiye, who have the status of qualified investors, already have the right to apply for Turkish citizenship according to Article 12/1-a of the Turkish Citizenship Law

II-The Role of the Spouse in Acquiring Turkish Citizenship by Investment

According to the regulation in Art. 20/2 of the TCL and Art. 37/1 of the Regulation; "The subsequent acquisition of Turkish citizenship does not affect the citizenship of the spouse". On the other hand, according to Article 11/1-b of the TCL; "Pursuant to subparagraph (j) of the first paragraph of Article 31 of the Law on Foreigners and International Protection dated 4/4/2013 and numbered 6458, residence permit holders and foreigners holding Turquoise Card and their foreign spouse, minor or dependent foreign child of themselves and their spouse." and within the scope of this article, in the case of acquisition of Turkish citizenship, it is allowed that the citizenship acquired subsequently affects the spouse³¹.

According to one view in the doctrine, It is a deficiency that within the scope of Article 12/1-b of the TCL, it is not considered that foreigners who have an investment or Turquoise card may have more than one marriage or a same-sex marriage, and that no regulation has been made about the procedure to be applied in these cases³². The author notes that regarding granting citizenship to the spouse within the scope of Article 12/1-b of the Turkish Citizenship Law, this is not an automatic

³⁰ İrge Erdoğan, Burcu. "4875 Sayılı Doğrudan Yabancı Yatırımlar Kanunu Kapsamındaki Yabancı Gerçek Kişinin 5901 Sayılı Türk Vatandaşlığı Kanunu'na Göre Yatırım Yoluyla Vatandaşlık Kazanması", Uluslararası Akdeniz Hukuk Kongresi 04-06 July 2022: <https://webis.akdeniz.edu.tr/uploads/1139/files/o%CC%88zet.pdf>

³¹ In the documents requested in exceptional citizenship applications; Certificate of civil status and certificate of marriage if married, certificate of divorce if divorced, death certificate of spouse if widowed; A document such as a birth certificate or population registration sample showing the identity information of the person and a population registration sample or similar document proving the family ties of the spouse and children if married." <https://www.nvi.gov.tr/turk-vatandasliginin-kazanilmasi>

³² Baran Çelik, p. 357.

acquisition, but only an application for privilege acquired due to the naturalization of the spouse³³.

In another view in doctrine; In the aforementioned article, the drawbacks of the spouse are also referred to as a question of consensual marriage. The author foresees that unreal marriages can be made just to take advantage of this opportunity. In addition, according to the view we agree with, we do not find it right that the conditions required for acquisition through marriage with an existing Turkish citizen are not required for citizenship by investment. Serious difficulties may arise in the implementation of unconditional citizenship for spouses in Article 12/1-2 of the Turkish Citizenship Law

Another problematic area is the fact that the condition of 3 years of retention in the acquisition of citizenship by investment cannot be met due to death. If the investor spouse dies before the completion of 3 years, how will the spouse's and children's citizenship be affected. There is an opinion in the doctrine that it would be correct to withdraw Turkish citizenship³⁴.

In our opinion, contrary to the general principles of Turkish citizenship law, the issue of granting citizenship to the "spouse" here is not appropriate. If the legislator's purpose was to ensure family unity, he rejected it with a mandatory provision for other cases of citizenship acquisition. However, it is stated that the purpose of preserving the family unity in citizenship through investment is achieved.

While none of the cases of subsequent citizenship acquisition in the TCL affect the citizenship of the spouse, it is clear that the direct acquisition of the spouse to Turkish citizenship by investment is incompatible with the regulations in the law. For example, for a foreigner who marries a Turkish citizen, while the conditions required for the acquisition of Turkish citizenship through marriage are subject to strict form conditions in both the law and the regulation, we do not find it appropriate to take Turkish citizenship with investment without any conditions in citizenship by investment³⁵.

III- Problems That May Arise When The Person Who Acquires Turkish Citizenship By Investment Has More Than One Valid Marriage

A foreigner may have more than one valid marriage in his country of nationality. Marriages performed in a foreign country are formally valid according to Article 13/2 of the Turkish Code of Private International and International Procedural Law (PIPL)³⁶. (Is polygamic marriages issue related with the substantive requirements of marriage (13/1) or the form of the marriage? (13/11)) Even if it is not in accordance with Turkish law, the marriage of a foreigner, valid according to his personal status, is

³³ Baran Çelik, p. 401. Writer; "As a matter of fact, the fact that the foreigner has more than one marriage has been taken into consideration in Article 34 of the YUKK, which regulates the family residence permit. Accordingly, according to the law of the country of citizenship, only one of the spouses is granted a family residence permit in case of marriage with more than one spouse. However, children from other spouses may also be granted a family residence permit (Art.34/2). Although the expression of the law of the country of which he is a citizen initially seems to be compatible with Article 13/1 of the MoH.C., since it is possible to authorize a law other than national law due to the application of Article 13/1 with reference and since national law cannot be applied in accordance with Article 4 of the Mohuk in the case of stateless, refugees and those injured by international protection, it would have been more appropriate to make arrangements in the law as 'more than one marriage according to the law designated as competent in accordance with the Mohuk'." statements.

³⁴ Yüksek, p. 173.

³⁵ According to the view we agree with; The author expressed reservations about granting citizenship to the spouse in the acquisition of citizenship by investment, arguing that in addition to the application of the obstacle of "national security and public order" in the matter of polygamy, it is useful to introduce a restrictive provision in the residence permit in Article 31/1-j of the FIPL as in the case of the family residence permit Yüksek, p.139. Shevtsova, Maryna. "Acquisition of European Union citizenship through marriage: Citizenship policies and the experience of transnational couples in Germany and Italy" *Central European University, Department of Gender Studies*, Budapest, 2013, p.46.

³⁶ Private International and International Procedural Law: Law Number: 5718, Acceptance Date:11.27.2007, Official Newspaper: 12.12.2007/26728.

also valid in Turkish law. However, from the moment the foreigner acquires Turkish citizenship according to Article 12/1-b of the Turkish Citizenship Law, the basic principles of Turkish public order and civil law should be taken into consideration here. However, as soon as the person acquires Turkish citizenship, he is now subject to Turkish law (Article 4/1-b of the PIPL), so marriages performed in violation of the Turkish Civil Code are invalid. For example, in the case of marrying more than one spouse, while it is valid and usual to marry in the other country of which he is a citizen, according to the Turkish Civil Code in Türkiye, marriage is absolutely superstitious. In this case, the public prosecutor shall immediately terminate the second marriage by filing a case for the annulment of the marriage. The issue encountered in practice and which constitutes the essence of this study arises here. As it is sometimes reflected in the press,³⁷ people who have more than one marriage and who are nevertheless granted Turkish citizenship through investment in each of their spouses become a "Turkish family" at the end of the day. The problem that this practice will create over time is bigger and more complex than it is thought.

In our opinion, in addition to our criticisms in acquiring Turkish citizenship through investment, it is not appropriate to give citizenship to the spouse of the person who invests exceptionally. In addition, it is possible that the concept of "spouse" can be more than one marriage according to its national law. In this case, the fact that the "spouses" are Turkish citizens is incompatible with Turkish civil law rules and requires a solution³⁸. We would also like to point out that in practice it is technically possible for polygamous investors to take their second wives under Article 12/1-c of the Turkish Citizenship Law. Suppose the first spouse of the foreign investor is taken in accordance with Article 12/1-b of the Turkish Citizenship Law. In that case, there is no objection by law to include the other spouse/spouses within the scope of persons deemed necessary according to Article 12/1-c. In our opinion, this situation is of a nature that will seriously undermine public order and should not be allowed. Currently, it is imperative that the relevant institutions identify the persons who could obtain citizenship in this way in Türkiye and that the relevant audits are carried out.

According to one view in the doctrine, it would be useful to regulate the relevant regulation by adding the phrase "the foreign spouse of the person concerned in the family union" to Art. 12/1-b of the TCL. Otherwise, consensual marriages may occur just for the acquisition of citizenship. It was also stated that if the foreign investor is polygamous, this issue should be subjected to the obstacle of "public order" by the administration. In the decision to grant Turkish citizenship to more than one spouse, the author considers it appropriate to get back Turkish citizenship per Article 40 of the TCL³⁹.

IV- Precedent Decision Review: 2 nd Civil Chamber Of The Supreme Court Supreme Court 2021/10953 Number, 2022/3995 Decision Number, Dated: 04.26.2022⁴⁰

It is necessary to discuss the status of the marriages of persons who have acquired Turkish

³⁷ <https://www.cumhuriyet.com.tr/turkiye/yargitaydan-turk-vatandasligina-gecen-cok-esli-suriyelilere-iliskin-emsal-karar-2023964>. <https://www.haberturk.com/gundem/haber/1618584-yabancilara-vatandaslikta-ikinci-es-ve-cocuk-formulu> (08.01.2023).

³⁸ Since same-sex marriages are not considered valid in terms of Turkish law, they are not included in order not to expand the scope of the study, see Same-sex marriages for information. Sirmen, Kazım Sedat. "Eş Cinsel Birliktelikler ve Bunların Kanunlar İhtilâfi Hukukunda Düzenlenişi", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, Vol. 58, Issue. 4, 2009, pp. 825-880.

³⁹ Yüksek, p.175.

⁴⁰ See for the decision. <https://karararama.yargitay.gov.tr/> For a report on the subject, see: <https://www.cumhuriyet.com.tr/turkiye/yargitaydan-turk-vatandasligina-gecen-cok-esli-suriyelilere-iliskin-emsal-karar-2023964>.

citizenship and who are polygamous in the context of Turkish law. As seen in current practice⁴¹, it is possible for foreign investors who acquire Turkish citizenship to have more than one spouse. On the other hand, polygamous marriages are invalid under Turkish law. Therefore, it is necessary to decide on the invalidity of marriages other than the first marriage. public prosecutors are authorized in this regard. In the decision we will examine below, there is a case study on the subject matter of our study.

Summary of decision: *"At the conclusion of the proceedings between the parties, the judgment rendered by the Civil Division of the District Court, the date and number of which is shown above, was appealed by the defendants and the documents were read and considered accordingly:*

Whereas the writings in the file, the evidence on which the decision is based and the statutory exigencies and, in particular, whether a marriage has taken place in accordance with Turkish Law (Art. 124-160 of the Turkish Civil Code) remain within the scope of the family court's duty pursuant to Law No. 4787; that the validity of a marriage and its violation of the Turkish public order cannot be examined by the court of first instance. WHEREAS the judgment in accordance with procedure and law is UPHOLD by rejecting the appeals which are not in place according to the merits of course under the provision of s. 1, the following approval fee shall be imposed on the appellant, the deduction of the advance fee and the sum of TRL 292.10. It was decided by a majority vote that there was no room for any other fee to be levied since the appeal fee was received and that the file should be sent to the court of first instance and a copy of the decision should be sent to the civil department of the relevant district court of justice.

OPPOSE VOTE

Lawsuit... is a "annulment of marriage" lawsuit filed by the court of first instance on the basis of absolute legal reason under Article 145/1 of the Turkish Civil Code, and as a result of the trial conducted by the court of first instance, the second marriage of the plaintiff was decided to be annulled in accordance with Article 145/1 of the Turkish Civil Code, and the appeal of the defendant against this decision ... District Magistrate Court ... It was rejected on the merits by the Legal Department. This time, an appeal was again filed by the respondent against the decision of the district court and as a result of the appellate examination conducted by our Department, it was decided to uphold the judgment by rejecting the appeals with the majority of the votes.

Article 145/1 of the Turkish Penal Code, on which the case and judgment are based, is a provision regulating the annulment of the second marriage of a person who is married as a citizen of the Republic of Türkiye without proving the termination of his first marriage (Article 130 of the Turkish Civil Code). In the concrete case, the parties ... While they were citizens of the state, they performed their marriage contracts according to the national law to which they were subject. According to Turkish legislation, there is no legal regulation regarding the annulment of a legally valid marriage made in accordance with its own national laws due to acquired citizenship due to invalid. ...

Although it is alleged that the second marriage of the defendants, who were citizens of the state and at the same time acquired the citizenship of the Republic of Türkiye, was contrary to the Turkish public order in accordance with the concrete situation; According to the general provisions, this case should be heard as a case for correction of the civil registry in the Court of First Instance.

Namely; Paragraph (1) of Article 21 of the 'Population Services Implementation Regulation' dated 09.05.2020 and numbered 31122 titled 'Registration of population events of persons with multiple citizenships' contains the provision that the event requested to be registered must take place in

⁴¹ See: <https://www.birgun.net/haber/chpden-suc-duyurusu-vatandaslik-verilen-afgan-iki-esini-nufusuna-kaydetmis-490000>.

accordance with Turkish law in order for the personal status changes made by persons with multiple citizenship with the other state identity they carry citizenship to be registered in the family registers. As such; The registration made by the registry office that the respondent ..., although it has no place in our law, has two wives, contrary to the relevant legislation article and therefore to Turkish law, is a corrupt registration. Regarding the cancellation of the corrupt registration, only in the general courts, with the participation of the representative of the population directorate, a case for the correction of the population registration can be filed. For the reasons stated, it is not appropriate to decide to annul the second marriage in the concrete case on the ground of absolute merit under Article 145 of the TCA and I do not agree with the majority opinion of our Chamber, which is in the form of upholding the decision to that effect."

The decision relates to the determination of more than one marriage of a foreign citizen after obtaining Turkish citizenship and the absolute invalid of the next one in accordance with Article 145/1 of the Turkish Civil Code. The 2nd Civil Chamber Of The Supreme Court gave the decision by a majority vote, and the dissenting vote argued that according to the TCC, there should be no case of absolute nullity according to the TCC, where there is no regulation for the termination of the validity of the marriage, but a case of correction of unfair registration with the Population Directorate according to the 'Population Services Implementation Regulation'. The arrangement stated in the dissenting vote;

"Registration of population events of persons holding multiple citizenships

ARTICLE 21- (1) In order for the personal status changes made by persons with multiple citizenships with the other state identity card they carry citizenship to be registered in the family registers;

a) If the person concerned or his/her representative makes a request in writing, and if the person concerned is dead, his/her legal heirs who certify that he/she has a legal interest in the registration of the population event make a request in writing,

b) The event for which registration is requested takes place in accordance with Turkish law,

c) It is mandatory that the person's population register contains a statement that he has multiple citizenships." form. In the event that there is a violation of the condition that it has taken place in accordance with the Turkish law contained herein, a lawsuit should be filed in accordance with Article 30 of the same regulation⁴².

A majority vote reached the result of the decision, and the marriage was decided to be abolished due to the existing marriage. The valid conduct of marriage is subject to strict conditions by the legislature. The nullity of marriage takes more than one form. These are the absence of marriage, absolute nullity and relative nullity. The rules laid down by the legislator on the conditions of marriage relate to public order, and non-compliance with these conditions is the absolute cause of marriage. According to the regulation in Article 145 of the Turkish Civil Code; *"Marriage is absolutely superstitious in the following cases:*

1. If one of the spouses is married at the time of marriage,

2. If one of the spouses is deprived of the power of discrimination for a permanent reason during

⁴² *"ARTICLE 30- (1) Correction cases regarding population records shall be filed by the public prosecutors in the civil court of first instance in the place where the address of the place of residence is located upon the need to be shown by the persons requesting the correction and the official institution concerned. (2) If there are justified reasons, the judge may be requested to make a correction in the population register related to the same subject."*

marriage,

3. *If one of the spouses has a mental illness that prevents marriage,*

4. *The existence of such animosity between the spouses as to prevent marriage”*. is.

In fact, the decision does not clearly indicate the route by which a person acquires Turkish citizenship. However, it is possible to make this inference since the granting of citizenship to the spouse in cases of acquisition is only through investment. Regarding the issue, it is clear that the persons who acquire citizenship to more than one spouse with the title of "spouse" are in violation of Turkish family life and population records. In this regard, it is also not possible for second spouses to obtain a family residence permit as a method, nor is it possible to grant a residence permit to more than one spouse according to Article 34/2 of the FDIL.

Previous marriage; It is regulated in Article 130 of the Turkish Civil Code as a definitive obstacle to marriage. In order for a person to get married, he has to prove that his previous marriage has ended. If a person makes another marriage while his current marriage is in progress, the second marriage is absolutely superstitious⁴³.

In lawsuits filed for the annulment of the second marriage of a person who remarries while still in a valid marriage on the grounds of absolute nullity (Art. 145/1 of the Civil Code), the public prosecutor must attend the hearings. The public prosecutor initiates a civil lawsuit or takes part as a party in a civil lawsuit that has already been initiated in cases expressly stipulated in the Law (Article 70/1 of the Code of Civil Procedure).

In cases filed with a request for the annulment of the second marriage of a person who remarries while he is still in a valid marriage (Article 145/1 of the Turkish Civil Code), the public prosecutor is obliged to attend the hearings. The public prosecutor shall initiate a civil lawsuit in cases expressly provided for in the Law or take part as a party in the civil proceedings already filed (Article 70/1 of the Turkish Civil Code).

As seen in the decision of The 2nd Civil Chamber Of The Supreme Court, It Is Possible For The Spouses of a foreign investor who has more than one marriage to directly acquire Turkish citizenship and to make a decision about those other than the first marriage. In this case, the question of what will be the fate of the acquired Turkish citizenship is encountered. In Turkish citizenship law, cases of loss of Turkish citizenship are regulated by law in accordance with the Constitution. In the case of TCL No. 5901, a limited number of cases of loss were regulated. These are: opt-out, forfeiture, revocation by right of choice and revocation.

In the Turkish citizenship law system, in the case of acquiring citizenship through marriage, there is a special regulation on the condition of marriage. Article 16/3 of the Turkish Citizenship Law states that "*Foreigners who acquire Turkish citizenship by marriage shall retain their Turkish citizenship if they have good intentions in marrying if it is decided to marry.*" statements. What is meant by good faith in the butlan of marriage is that the person concerned did not know that there was a superstitious reason for marriage at the time of marriage or that he was not in a position to know if he took the necessary care. There are different opinions about the fate of Turkish citizenship for this

⁴³ Berki, Şakir. "Türk Medeni Kanunu'nda Evlenmede Mutlak Butlan", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, Vol. 19, Issue. 1, 1962, pp. 201-231; Gümü, Mustafa Alper/ Ögüz, Tufan/ Dural, Mustafa. *Türk Özel Hukuku Cilt III Aile Hukuku*, 18. Bası, Filiz Kitabevi, İstanbul, 2023, p.59; Gençcan, Ömer Uğur. *Milletlerarası Aile ve Usul Hukuku*, 1. Baskı, Yetkin Yayıncılık, Ankara, 2020, p. 274.

situation in the doctrine⁴⁴. For persons who acquire citizenship within the scope of Article 16 of the Turkish Citizenship Law, there is no doubt that the foreigner who knows or should know that there is a superstitious reason for marriage will lose the Turkish citizenship he has gained by arranging that they will retain their Turkish citizenship if they have good intentions in marriage. On the other hand, there is no clarity on whether the loss of citizenship will be through revocation or revocation.

Pursuant to Article 40 of the Turkish Citizenship Law, the decision on the acquisition or loss of Turkish citizenship shall be revoked before the legal conditions have arisen or if it is later found that it has been taken repeatedly. Here, without any false statement or concealment of important issues by the person concerned, the administration has misjudged the legal conditions as a result of its own error⁴⁵. The revocation is carried out by the authority that made the decision concerned and has retrospective effect; from the moment it is made, this decision is considered as if it had never been taken⁴⁶.

Pursuant to Article 31 of the Turkish Citizenship Law the decision to acquire Turkish citizenship shall be revoked by the authority that issued the decision if it has occurred as a result of the perjury of the person concerned or the concealment of important matters concealing the important issues constituting the basis for acquiring citizenship. Pursuant to Article 32 of the Turkish Citizenship Law, it is stipulated that depending on the person concerned, in other words, those who acquire citizenship by being included in the decision that makes the person concerned a citizen will also be affected by the annulment decision.

According to the view that we agree with in the doctrine; In the event of marriage, the issue of citizenship of the foreign spouse should be in favor of the cancellation of the decision on the acquisition of citizenship⁴⁷. While it is possible to discuss the status of the spouse in this way in the acquisition of Turkish citizenship through marriage, a clear answer cannot be given to the question of what the citizenship of the spouse will be with the decision of marriage in the acquisition by investment.

In Turkish citizenship law, the effect of the marriage decision in the citizenship acquired pursuant to Article 12/1-b of the Turkish Citizenship Law on the citizenship of the spouse should be discussed separately. In our opinion, it is not possible to apply Article 16/3 of the Turkish Penal Code by way of analogy. The legal questions of citizenship acquired based on investment may differ. In our opinion, on the basis of Article 12/1-b of the Turkish Citizenship Law, if the spouse acquires citizenship and this marriage is absolutely superstitious for a reason in the law, the effect on Turkish citizenship should be the withdrawal of the decision. In Article 40 of the TCL; "*Decisions regarding the acquisition or loss of Turkish citizenship shall be reversed before the legal conditions arise or if it is subsequently understood that it was granted repeatedly.*" It would be appropriate to reverse this citizenship acquisition decision considering the "public order" shattering effect of marriage without the legal conditions in the statement. If there is no real marriage in the investment citizenship, if there is a consensual marriage

⁴⁴ For details see Şermet Süzen, Begüm. "5901 Sayılı Türk Vatandaşlığı Kanunu'nun Vatandaşlığının Evlenme Yoluyla Kazanılmasına İlişkin 16. Maddesinin 2 ve 3. Fıkralarının Değerlendirilmesi", *Uluslararası Hukukta Göç ve Vatandaşlık*, Editörler: Özkan, Işıl/ Sirmen, Kazım Sedat, Yetkin Yayıncılık, Ankara, 2022, p. 143-158.

⁴⁵Güngör, p. 226-227; Bayata Canyaş, Aslı. "Hukuki Şartlar Oluşmadan Verilmiş Olan Türk Vatandaşlığını Kazanma Kararının Geri Alınmasında Süre Sorunu", *Türkiye Barolar Birliği Dergisi*, Vol. 114, 2014, p. 352; Alibaba, Arzu. "Türk Vatandaşlığının İrade Dışı Kaybı ve İnsan Hakları", *Milletlerarası Özel Hukukta Güncel Meseleler Sempozyumu*, Editörler: Vahit Doğan/Alper Çağrı Yılmaz/Lale Ayhan İzmirli, Savaş Yayınları, Ankara, 2019, s. 57; Egemem Demir, Işıl. "İdare Hukuku İlkeleri Çerçevesinde Türk Vatandaşlığına Alınma Kararının İptali ve Geri Alınması Kavramları", *Türkiye Barolar Birliği Dergisi*, Vol. 139, 2018, pp. 129-164; Güner, Cemil. "Türk Vatandaşlığının Kazanılması ve Kaybı Kararlarının Geri Alınması", *Public and Private International Law Bulletin*, Vol. 37, Issue. 2, 2017, pp. 376-407.

⁴⁶ Güngör, p. 224; Alibaba, p. 56-57.

⁴⁷ Süzen, p. 143.

made only for the acquisition of this citizenship, it is also possible to cancel it according to Article 32 of the Turkish Citizenship Law if this is determined.

CONCLUSION

Being a citizen of a country means having ties with that country. Citizenship is the highest status that a state can grant to a person. Turkish citizenship is essentially acquired by birth. Post-earning depends on special conditions. Subsequent acquisition is earned with the fulfillment of the specified conditions and the discretion of the administration. As we explained in our study, there are different conditions for different types of earnings. For example, the conditions sought by marriage and those sought for acquisition by general means are independent and different. The condition that is the subject of this study is the exceptional acquisition, which was introduced in 2016 under the title of even more exceptional method, the study was completed in order to shed light on the inadequacy of the conditions required for citizenship by investment and only one of the drawbacks that may arise with it.

Including the unconditional spouse of investors and turquoise card holders in becoming Turkish citizens is wrong in terms of legal systematics and brings sociological problems. As a matter of fact, although it is not on the agenda for the time being, we are very worried about the damage it will create in the long term. Today, the status of the second and even third wives of those who are citizens by investment from countries where more than one marriage is legitimate after gaining the status of Turkish citizen confirms the title of second wife. The fact that more than one spouse of the person who has subsequently acquired Turkish citizenship is also a Turkish citizen will clearly affect the Turkish public order.

While it is a clear rule in Turkish citizenship law that citizenship will not affect the spouse, the regulation in Article 12/1-b of the Turkish Citizenship Law causes a serious duality and confusion. As a matter of fact, we would like to state that we do not find it right to give citizenship to a spouse through direct investment without even looking for the conditions required for acquisition by marrying a Turkish citizen. In addition, the fact that the possibility of marriages contrary to the Turkish public order has not been evaluated in these citizenship acquisitions and that this issue has not been clarified in the secondary legislation is a major deficiency.

Article 12/1-b of the Turkish Citizenship Law No. 5901 should be reviewed urgently, the necessary revision should be made and those who have gained Turkish citizenship on the basis of this article and who are married in violation of the Turkish civil code should be identified and this mistake should be reversed.

A spouse can only be granted citizenship under the current law if he or she is a citizen by investment or a turquoise card holder. There is, however, uncertainty regarding how the state that bestows the citizenship will recognize the spouses of multiple valid marriages in their home countries. As a result, this is a complex and risky situation in terms of law and practice. We believe that, due to the public order issue, it may be possible to dismiss citizenship applications involving invalid polygamous marriages according to the law of the State that grants citizenship. As a second option, State may also choose to naturalize the spouse of the oldest valid marriage as an official spouse. The other spouses can be granted a residence permit without acquiring Turkish citizenship, something we oppose.

Çıkar Çatışması

Çıkar çatışması bulunmamaktadır.

Yazar Katkıları

Makale tek yazarlıdır.

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