

# Court decides on issuance of certificate of inheritance for foreign-owned real estate

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Litigation, Turkey

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## Introduction

If a foreign national who owns real estate in Turkey dies, his or her successors must have recourse to the Turkish courts and obtain a certificate of inheritance in order to complete the transfer of the real estate under their names before the land registry or be able to legally dispose of the property in any manner.

Pursuant to Article 598 of the Civil Code 4721, the right and duty to issue certificates of inheritance was granted solely to the civil peace courts. However, Article 71/A of Law 6217, which came into force following its publication in the *Official Gazette* on April 14 2011, also granted this right to notary publics. However, the third paragraph of Article 71/B of Law 6217 stipulates that certificates of inheritance cannot be issued by notary publics if:

- such issuance necessitates adjudication;
- civil registry records are insufficient for issuance; or
- the certificate of inheritance is requested by a foreign national.

Therefore, the only competent authority regarding the issuance of certificates of inheritance for real estate in Turkey belonging to foreign nationals are the civil peace courts.

In practice, in order for a certificate of inheritance to be issued by a civil peace court on the request of a Turkish citizen, information and documents regarding the death and identities of the deceased's successors must be submitted alongside the application petition. For this reason, the courts request civil registry extracts from the civil registration offices with which applicants are registered. Therefore, in cases where the applicants are Turkish citizens, there are generally no problems regarding the procurement of this information and documentation.

However, in the event that the applicant is not a Turkish citizen, there may be difficulties regarding which documents must be presented to the court regarding the deceased and his or her successors. This problem arises out of the fact that in other jurisdictions there may be differences regarding the competent authorities for the registration of deceased persons and their successors, as well as the regulations thereon.

Supreme Court jurisprudence on this matter sets out that it is necessary and sufficient to submit court decisions or civil registry extracts issued by foreign courts or civil registries, demonstrating the degree of kinship between the applicant and the deceased and documents setting out how the inheritance should be transferred. However, there may still be uncertainties in practice as to how said documents can be obtained in each case.

## Facts

In the case at hand, a certificate of inheritance was required for a British citizen in order to complete the transfer before the competent land registry for real estate in Turkey, which was transferred to her from her British father through succession.

However, since no equivalent of the Turkish civil registry extract exists in the United Kingdom, the successor had to prove in court:

- her relationship with her deceased father;
- that the deceased's wife had died before the deceased; and
- that the inheritance was to be divided between the deceased's three children.

Thus, documents were required that would prove the deceased's death and his relationship with the successors.

In order to prove the death and the identities of the deceased's successors, Turkish translations of the following documents were submitted before the court:

- a death certificate for the deceased;
- the applicant's birth certificate;
- a death certificate for the deceased's spouse;
- the deceased's will demonstrating details of the inheritance's division; and
- an apostilled notary statement in which the successors were approved by a foreign notary public.

## Decision

The court decided that the said documents were sufficient and accordingly issued a certificate of inheritance in the name of the successors for the deceased's real estate in Turkey.

## Comment

The issue of proof arising out of differences between jurisdictions regarding the issuance of certificates of inheritance in Turkey for real estate belonging to foreign nationals, as evidenced by the absence of a civil registry extract in such jurisdiction, can be overcome by the submission of specific documents, such as birth and death certificates issued by the competent authorities of foreign countries, testaments or notary statements.

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