

A Turkish Law Primer for Legal Assistance Attorneys

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Introduction

An assignment to the Republic of Turkey (Turkey) can be one of the most rewarding in the career of any military or civilian employee of the Department of Defense (DOD). Geographically, Turkey straddles the boundary dividing Europe and Asia. Sitting astride the Dardanelles and the Bosphorus, Turkey controls the warm-water naval access of Russia, the Ukraine, and the Commonwealth of Independent States (CIS). Control of the straits between the Black and the Mediterranean Seas has long been a matter of keen interest to Russia, as well as other CIS nations bordering the Black Sea. Historically, Russia has viewed such control as the *sine qua non* of its own sovereignty.² Turkey's strategic position and importance to the NATO Alliance cannot be overstated. Additionally, Turkey is a cultural bridge between the East and West and is an intriguing blend of Asian, Middle Eastern, and European cultures. Understanding the nature of such a transitional culture and the laws governing daily life will ease the entry into the Turkish culture, prevent misunderstandings, and help avoid pitfalls that could detract from an otherwise pleasantly memorable experience.

Although personnel may view an assignment to Turkey with trepidation after listening to fables from the uninformed or viewing unfounded cinematic bombast such as *Midnight Express*,³ these misgivings are unfounded. Despite the fact that the major focus of concern is the Turkish criminal law system, few people will ever become involved with the criminal law system.⁴ Most personnel, on the other hand will have frequent, if unbeknownst, dealings with Turkish civil law.

Legal assistance questions involving Turkish law arise on a daily basis. In light of the number of personnel who are either married to Turkish nationals or who will be stationed in Turkey at one point in their career, some basic knowledge of Turkish civil law is essential for all DOD attorneys, particularly those involved with legal assistance. This article addresses the following frequently encountered topics: (1) the Turkish legal system; (2) entry of personnel and personal property into Turkey; (3) living and working in Turkey; and (4) domestic relations. The scope of this article is limited to the major areas of Turkish civil law which U.S. personnel and their families will encounter from the time of their entry until their departure from Turkey.

Overview of the Turkish Legal System

Before addressing specific issues, it is paramount to examine the underlying legal system. On 20 October 1923, Ghazi Mustafa Kemal Pasha (Ataturk) founded The Republic of Turkey.⁵ This followed a long war of independence that resulted in the expulsion of the post-World War I Allied Occupation Forces and sounded the death knell of the long-declining Ottoman Empire.⁶ Ataturk's main objective was to create a modern state in the mainstream of Western civilization.⁷ One of his first steps to transform this Ottoman remnant with an Islamic-based legal code⁸ into a modern, secular republic was the adoption of a constitution in 1924.⁹ This established a Western European-style civil law system. Turkish legislators continued to build on various Western European models to draft a series of legal codes.¹⁰

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2. See Montreaux Convention of 1936, July 20, 1936, 173 L.N.T.S. 213; 1936 Gr. Brit. T.S., Turkey No. 1 (*Cmd.* 5249), 31 AM. J. INT'L L. (Spec. Suppl. 1937); NICHOLAS J. RENGGER, TREATIES AND ALLIANCES OF THE WORLD (6th ed. 1995); see also HEINZ KRAMER, A CHANGING TURKEY: THE CHALLENGE TO EUROPE AND THE UNITED STATES 107 (2000); SYDNEY NETTLETON FISHER, THE MIDDLE EAST, A HISTORY 267, 273-75, 296 (1969).

3. See, e.g., MIDNIGHT EXPRESS (Columbia/Casablanca 1978).

4. Telephone Interview with Colonel Michael J. Touhy, U.S. Fiscal and Property Officer, State of Connecticut, formerly, Deputy Command Judge Advocate, Allied Land Forces, Southeastern Europe, Izmir, Turkey (Sept. 4, 2003) [hereinafter COL Touhy Interview].

5. BERNARD LEWIS, THE EMERGENCE OF MODERN TURKEY 272 (3d ed., 2002). The Grand National Assembly bestowed the title Ghazi—Victor in the Holy War—on Mustafa Kemal in 1923 after he routed Greek invaders in a battle near the Sakarya River. This title was added to his Ottoman title of Pasha, a rank equivalent to a general or a field marshal. After Mustafa Kemal founded the Turkish Republic, he abandoned his name and titles and took the name Ataturk—Father of the Turks. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 122 (explaining that this Koranic-based legal system, known as the Madjelle, was adopted in 1870 and became the civil code of the Ottoman Empire).

9. See TURK. CONST. (adopted Apr. 20, 1924).

The constitution, adopted nearly eighty years ago, established a system of courts, which remains largely unchanged today despite the adoption of two constitutions.¹¹ The constitution adopted on 9 July 1980 made no changes to the judicial system established under the 1924 document except to establish a new constitutional court.¹² The current constitution became effective on 9 November 1982.¹³ This most recent constitution merely recognizes the system of courts established under the 1980 constitution.¹⁴

The Turkish system has the following courts, each with specific jurisdictional limits: (1) courts of general jurisdiction; (2) administrative tribunals; (3) military tribunals; and (4) the constitutional court.¹⁵ The courts of general jurisdiction are most analogous to the U.S. district courts, except for the fact that these courts have no jurisdiction to entertain constitutional questions.¹⁶ All civil and criminal proceedings originate and

are tried in the courts of general jurisdiction, with appeals directed to the High Court of Appeals.¹⁷ Administrative tribunals are roughly parallel to American Article I courts and the various administrative boards.¹⁸ The military courts serve a function very similar to their counterparts in the United States.¹⁹ As a party to the North Atlantic Treaty, the Republic of Turkey has agreed to share criminal jurisdiction over members of the force in certain circumstances,²⁰ but since 1 October 1914, Turkey has disaffirmed its long history of capitulations.²¹ Turkish authorities now vigorously exercise their plenary civil jurisdiction over matters arising within Turkish sovereign territory. Consequently, U.S. personnel in Turkey are subject to civil suits in Turkish courts, and are also capable of seeking redress in them.²²

Although the probability that an American national will become a party to a civil lawsuit is relatively low, the possibility does exist. The probability is, in fact, much higher than any

10. MORAL GÜÇLÜ, TURKEY xxviii (1981); see FISHER, *supra* note 2, at 393; LEWIS, *supra* note 5, at 256-67, 271; NASIM SOUSA, THE CAPITULATORY REGIME OF TURKEY, ITS HISTORY, ORIGIN AND NATURE 248 (1933).

11. See TURK. CONST. (adopted Apr. 20, 1924).

12. TURK. CONST. art. 145 (adopted 1960). Article 146 of the 1960 Turkish Constitution established the Constitutional Court, consisting of fifteen judges. *Id.*; see also *id.* art. 147 (adopted 1960, as amended by Law No. 1488, T.C. RESMİ GAZETE NO. 13964 (Sept. 22, 1971)) (establishing the powers of the Constitutional Court) (“The Constitutional Court controls whether statutes and parliamentary regulations of the Turkish Grand National Assembly are reconcilable to the constitution.”). Turkish courts differ from their American counterparts in that only the Constitutional Court may decide questions of constitutional law; its decisions are final. The Constitutional Court is also empowered to try the President, the Prime Minister, members of the Council of Ministers, members of judicial bodies, and members of its own bench for crimes committed within their official duties. The jurisdiction of the court may only be invoked by the President of the Republics, the political parties represented in the Grand National Assembly, one sixth of the members of either house of the Grand National Assembly, The High Council of Judges, the Court of Cassation, the Council of State, the Military Court of Cassation or the universities. Other courts may raise issues of constitutional law to the Constitutional Court on their own motion, or if they find merit in a motion of one of the parties to pending litigation that a law is unconstitutional. *Id.* art. 148; see also HELEN CHAPIN METZ, TURKEY, A COUNTRY LAW STUDY 248-50 (1995).

13. See TURK. CONST. (adopted Nov. 7, 1882). This constitution followed a period of military rule from September 1980 until the reestablishment of civilian rule in 1983. The Grand National Assembly drafted this constitution and ninety-two percent of the Turkish public ratified it in a referendum on 7 November 1982. LAW NO. 2709, T.C. RESMİ GAZETE NO. 1784 (Nov. 20, 1982) (implementing legislation).

14. TURK. CONST. art. 142 (amended 2001).

15. *Id.* art. 146 (Constitutional Court); *id.* arts. 140, 142 (Courts of General Jurisdiction); *id.* art. 140 (Administration Courts); *id.* arts. 145, 156 (Military Courts); see also CIV. P. LAW NO. 1086, T.C. RESMİ GAZETE NOS. 622, 623, 624 (July 2-4, 1927) [hereinafter CIV. P. LAW NO. 1086] (discussing specific courts’ jurisdictions and infrastructures).

16. See CIV. P. LAW NO. 1086, *supra* note 15; TURK CONST arts. 8-9. Within the courts of general jurisdiction, there are Civil Courts of Peace and Civil Courts of First Instance. The Civil Courts of Peace serve a similar function to the justice of the peace courts, mayor’s courts, magistrate courts, or small claims courts in the United States. In addition, these courts deal with matters involving both adoption and probate. See CIV. P. LAW NO. 1086, *supra* note 15. The Civil Courts of First Instance are the true courts of general jurisdiction that handle all matters not specifically falling within the jurisdiction of the Civil Courts of Peace. See *id.*

17. TURK. CONST. art. 154 (amended 2001). This court is also known as the Court of Cassation. The Court of Cassation is composed of fifteen panels of five judges each. Nine of these panels entertain criminal appeals. The remaining six deal with civil matters. A special panel known as the General Board of Chambers hears appeals that the Court of Cassation rules upon twice, when the trial court assents. This Board serves both as an en banc court of appeals and as the highest court of appeal, whose rulings are final and conclusive. *Id.*; METZ, *supra* note 12, at 249.

18. The Turkish judicial system has a tax court, bankruptcy courts, and other tribunals to decide specific and specialized administration law matters similar to the administrative law judge system in the United States. METZ, *supra* note 12, at 249 – 50; TURK. CONST. art. 140 (amended 2001); see U.S. CONST. art. I.

19. METZ, *supra* note 12, at 250. Turkish military courts have jurisdiction over military personnel, and in some circumstances, over civilian personnel. *Id.* Military tribunals also try military administrative matters; much like the U.S. military does before boards of officers. The Military High Court serves as the court of last resort for military matters, much like the U.S. Court of Appeals for the Armed Forces (CAAF), excluding the occasional appeal to the U.S. Supreme Court. *Id.* at 250; TURK. CONST. arts. 145, 156; see *supra* note 15; see also 27 U.S.C. § 1259 (2000).

20. See Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, London, art. VII, June 19, 1951, 4 U.S.T. 1792, T.I.A.S. 2646 [hereinafter NATO SOFA].

potential involvement with the criminal justice system. The most common claims arise from landlord-tenant disputes and off-duty vehicular accidents.²³ As a result, it is imperative that all DOD personnel and their families have access to sound advice about their rights and duties under Turkish law.

Entry of Personnel and Personal Property into the Republic of Turkey

A permanent change of station to Turkey is a unique experience. If the individuals involved are prepared for what they will experience, the transition should be smooth. Anyone with orders for Turkey should first thoroughly read *Army Regulation (AR) 614-30*.²⁴ This will provide a basic understanding of the Turkish view of nationality and the legal obligations that accompany Turkish citizenship.

Turkish and American laws take very different approaches to citizenship. Under Turkish law, a person obtains the nationality of his parents irrespective of his place of birth.²⁵ Consequently, a child born to a Turkish mother or a Turkish father is considered a Turkish national, even if he was not born in Tur-

key. The Turkish government will recognize dual citizenship if the nation of birth, for example, the United States, confers citizenship based solely on birth within its territorial jurisdiction. Such recognition of dual citizenship does not relieve the Turkish citizen of any obligations he may have under Turkish law.²⁶ Conversely, a child born to foreign parents within the Republic of Turkey will not be recognized as a Turkish citizen, but as a citizen of the country in which the father holds citizenship.²⁷

Obtaining citizenship in another country does not necessarily terminate Turkish citizenship. A Turkish national who obtains citizenship in another country retains his Turkish citizenship until the Turkish government relinquishes sovereignty over the individual.²⁸ To obtain such a release, the individual must file an application through the governor of the province of residence or through the nearest Turkish Consulate.²⁹ Applications from individuals residing in foreign countries will be forwarded from the Turkish Consul General directly to the Interior Ministry.³⁰ If the Interior Ministry approves the application, it will forward it to the Turkish Cabinet for a final decision.³¹ If the Cabinet grants a release, it publishes the same in the *Official*

21. LEWIS, *supra* note 5, at 183, 254-55. Under international law, capitulation refers to the once-common practice under which sovereign states reciprocally recognized the personal nature of, and thus the extra-territoriality of, sister states' laws. Under this personality of law concept, a citizen of a state carried the laws of his state with him and would be largely immune from the laws governing citizens of other states. Each sovereign would refrain from exercising jurisdiction over foreign nationals, and in most matters, they would allow individuals to be subject only to the laws of their own states. At its zenith, this concept even saw foreign powers establishing courts within the territorial jurisdiction of sister states to try their own nationals. *Id.*; see Text at Executive Z, 68th Cong. (1st Sess., May 3, 1924); FOREIGN POL'Y ASS'N PAM. 27, series of 1923-24; Philip Marshall Brown, *The Lausanne Treaty*, 21 AM. J. INT'L L. 503 (1927).

22. TURK. CONST. art. 16 (amended 2001). Articles 10 and 36 of the 1982 Turkish Constitution give every legal person physically present within Turkey the right to apply to Turkish courts for redress of problems or disputes. Thus, U.S. personnel can both sue and be sued in the Turkish courts. Article 16 of the 1982 Constitution limits the rights of foreigners as plaintiffs. *Id.* These provisions may require a foreigner to post a bond to guarantee the payment of court costs and damages. The posting of a bond is not required if the foreign national resides in Turkey. *Id.* A conflicting statute, however, requires the posting of a bond when a foreign plaintiff sues a Turkish defendant, unless the requirement is waived. CIV. P. LAW NO. 1086, *supra* note 15, art. 97.

23. COL Touhy Interview, *supra* note 4.

24. U.S. DEP'T OF ARMY, REG. 614-30, ASSIGNMENTS, DETAILS, AND TRANSFERS, OVERSEAS SERVICE (30 Aug. 2001). Article I, paragraph 1c of the NATO SOFA defines "dependant" as "the spouse of a Member of a Force or of a Civilian Component or a child of such member depending on him or her for support." NATO SOFA, *supra* note 20, art. I, para. 1c. The regulation makes no reference to the nationality of the dependent. Paragraph 4 of the U.S.-Turkey SOFA states as follows: "[I]t is the agreed understanding of the Parties that reasonable quantities of provisions, supplies, and other goods imported for the exclusive use of [U.S.] personnel, directly by . . . post exchanges, or commissaries . . . shall be accorded duty free entry . . ." *Id.* The interpretation that U.S. representatives in Turkey currently give this provision is that "U.S. personnel" is synonymous with the terms "Member of the Force," "Member of the Civilian Component," and "dependent" as defined in the NATO SOFA, in which the United States is the sending state. *Id.*; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189. Under this interpretation, the current U.S. policy in Turkey is that all dependents receive ration cards and unimpeded access to all U.S. facilities. The Turkish authorities have never raised or put forth any objections or contrary readings. COL Touhy Interview, *supra* note 4.

25. TURK. CONST. art. 66 (amended 2001); see also, SYLVIA KEDOURIE, SEVENTY FIVE YEARS OF THE TURKISH REPUBLIC 185 - 208 (2000); see generally TURK. NATIONALITY LAW NO. 403, T.C. RESMI GAZETE NO. 11638 (Feb. 22, 1964) [hereinafter TURK. NATIONALITY LAW NO. 403].

26. See TURK. NATIONALITY LAW NO. 403, *supra* note 25. One of the most frequently encountered and burdensome requirements of Turkish law for U.S. personnel with Turkish dependents is the \$100 departure tax (termed a contribution to the collective housing fund) that Turkish nationals must pay each time they leave Turkey. See TURK. COUNCIL OF MINISTERS DEC. NO. 84/8922, T.C. RESMI GAZETE NO. 18619 (Dec. 7, 1984). The Turkish government rigidly enforces this decree despite concerted efforts by the Joint U.S. Military Mission for Aid to Turkey (JUSMAT) to eliminate this burden upon Turkish National dependents. COL Touhy Interview, *supra* note 4.

27. See TURK. NATIONALITY LAW NO. 403, *supra* note 25.

28. *Id.* arts. 19-22; see TURK. CONST. art. 66 (amended 2001).

29. TURK. NATIONALITY LAW NO. 403, *supra* note 25; see also KEDOURIE, *supra* note 25.

30. TURK. NATIONALITY LAW NO. 403, *supra* note 25.

Gazette.³² A release from citizenship is effective only after publication in the *Official Gazette*.³³

Personnel with Turkish national dependents—dual national or otherwise—should give serious thought to the status of those dependents in Turkey. One of the most serious of these obligations is mandatory military conscription for all male Turks between the ages of eighteen and forty-five.³⁴ The Turkish government will not relieve Turkish men of their citizenship obligations until they complete this mandatory military service.³⁵ Prior to deciding whether to accept or decline a tour in Turkey, military personnel with Turkish national dependents must fully evaluate, with the help of a legal assistance officer, those dependents' rights and obligations under Turkish law.

To enter Turkey, every non-Turkish dependent, whether military or civilian, must possess a valid passport.³⁶ Military personnel need only possess a valid military identification card and a copy of their permanent change of station orders.³⁷ All non-Turkish dependents and members of the civilian component must obtain residence permits upon their arrival in Turkey.³⁸ The residence permit is an immigration control document that grants temporary immigration status, as either a dependent or as a member of the civilian component, for a stated period of time,

for up to two years.³⁹ If an individual intends to remain in Turkey beyond the expiration of his residence permit, he must apply for a new residence permit before the expiration of the current permit or within fifteen days after its expiration.⁴⁰

The Turkish government may deny a residence permit to any person either unable to conform to Turkish law, customs, or political conditions, or who engages in any activity not deemed to conform to the above.⁴¹ The Interior Ministry may revoke residence permits at any time.⁴² Furthermore, the Council of Ministers may, at its discretion, make changes in the conditions and duration of residence permits either in general or in specific cases.⁴³

The holder of a residence permit must surrender it to immigration officials upon his departure from Turkey, and may retrieve it upon his return.⁴⁴ In the absence of a residence permit, the entry stamp on a passport is valid as a ninety-day tourist visa.⁴⁵ Any individual who remains in Turkey beyond the ninety days without a valid residence permit is subject to a stiff fine at the time he attempts to leave the country.⁴⁶ In addition to the fines, violators are likely to experience delays and the disruption of their travel plans.⁴⁷

31. *Id.*

32. *Id.*

33. *See id.*

34. *Id.*

35. *Id.*

36. TURK. LAW ON RESIDENCY AND TRAVEL OF FOREIGNERS IN TURKEY No. 5583, T.C. RESMI GAZETE No. 7564 (July 24, 1950) [hereinafter RESIDENCY PERMIT LAW]; NATO SOFA, *supra* note 20, art. III, para. 3, Agreement Between the United States of America and the Republic of Turkey Relative to the Implementation of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, June 19, 1951, 4 U.S.T. 1792, T.I.A.S. 2846; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189.

37. NATO SOFA, *supra* note 20, art. III, para. 3; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189.

38. RESIDENCY PERMIT LAW, *supra* note 36; NATO SOFA, *supra* note 20, art. III, para. 3; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189.

39. TURK. RESIDENCY PERMIT LAW, *supra* note 36, art. 10.

40. *Id.*

41. *Id.* arts. 19, 21 & 30.

42. *Id.*

43. *Id.*

44. NATO SOFA, *supra* note 20.

45. *Id.*

46. TURK. RESIDENCY PERMIT LAW, *supra* note 36, art. 10.

47. COL Touhy Interview, *supra* note 4 (explaining that affected travellers are likely to miss their scheduled flights while they endeavor to resolve this matter with the government authorities at the departure airport).

When a “member of a force”⁴⁸ enters Turkey, Turkish authorities will affix an entry stamp to his permanent change of station orders.⁴⁹ The member must safeguard this stamped copy of his orders carefully because he must present it each time he enters or leaves Turkey. Otherwise, the traveler risks the same fines he would face for overstaying his residence permit.⁵⁰ The individual will not be granted re-entry after a temporary absence without the stamped copy of permanent change of station orders, because it is the equivalent of a residence visa for the duration of the tour prescribed.⁵¹ Without proof that the individual has a legal right to enter into or remain within Turkey, the Turkish immigration officials at the port of entry will likely deny entry until the individual’s status can be resolved.⁵²

Personnel will confront Turkish regulations governing the importation of personal property soon after they arrive. Paramount among these regulations is the law regarding *beyan-names*,⁵³ the customs declarations. Article IX, paragraph 5 of the NATO Status of Forces Agreement (SOFA) permits members of a force, members of the civilian component, and their dependents to import their personal effects and furniture duty-free for the duration of their service in the receiving state.⁵⁴ The *beyanname* is intended to insure that personnel who bring their goods into Turkey bring them back when they leave, to protect the Turkish economy.⁵⁵ The *beyanname* is a customs declara-

tion form on which personnel must list all items of personal property they import. Personnel must prepare separate *beyan-names* for each shipment of household goods, hold baggage, and vehicles they receive.⁵⁶

Objectively, the *beyanname* should pose no problems. In practice, however, the *beyanname* frequently causes burdensome bureaucratic tangles.⁵⁷ Among the more rigidly burdensome aspects of the *beyanname* is the absolute adherence to the requirement to list all specified items. As a result, even items that were clearly destroyed in shipment are listed on the *beyanname* and must be re-exported.⁵⁸ Compounding this problem is that Turkish customs officials will not accept the DD Form 1348-1A from a defense reutilization and management officer (DRMO) as proof of appropriate disposition.⁵⁹ A provision in the Turkish customs regulation permits owners to return destroyed property to the Customs Ministry with a subsequent removal from the owner’s *beyanname*.⁶⁰ This provision, however, is of little practical use if the individual has filed a claim for the destroyed property. If the replacement cost is used as the basis of adjudication of the claim, the claimant is required to turn the property into the appropriate agent of the United States.⁶¹ Because claimants cannot accomplish the requisite turn-in while in Turkey, they are routinely advised to turn-in the property to the DRMO at their next installation.⁶² The U.S.

48. NATO SOFA, *supra* note 20, art. I, para. 1 a.

49. *Id.*

50. COL Touhy Interview, *supra* note 4.

51. *Id.*

52. TURK. RESIDENCY PERMIT LAW, *supra* note 36, art. 1; COL Touhy Interview, *supra* note 4.

53. TURK. GEN. CUSTOMS LAW No. 1615, art. 10, para. 2, T.C. RESMI GAZETE No. 14263 (Aug. 1, 1972) [hereinafter GEN. CUSTOMS LAW No. 1615].

54. NATO SOFA, *supra* note 20, art. IX, para. 5.

55. *Id.* art. XI, paras. 5, 8b.

56. *Id.* As a practical matter, personnel only list high value items, firearms, electrical appliances, and motor vehicles, but the practices vary with each location. The individual customs inspector has discretion over what to list, and customs officers vary widely in how they exercise this discretion. COL Touhy Interview, *supra* note 4. *But see* U.S. ARMY EUROPE, REG. 600-501, REGULATIONS ON PERSONAL PROPERTY, LOCAL CURRENCY AND MOTOR VEHICLES FOR U.S. PERSONNEL IN TURKEY (PA) (17 Aug. 1987).

57. COL Touhy Interview, *supra* note 4.

58. *Id.*

59. *Id.*; *see* U.S. Dep’t of Defense, DD Form 1348-1A, Issue Release/Receipt of Document (July 1991).

60. GENERAL CUSTOMS LAW No. 1615, *supra* note 53, art. 10, para. 2. Under 31 U.S.C. § 3721 and its implementing regulation, in this case, AR 27-20, there is not a provision permitting the donation of U.S. government property to a foreign government in lieu of turn-in to a DRMO. *See* 31 U.S.C. § 3721 (2000); U.S. DEP’T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS SECS. III, IV (1 July 2003) [hereinafter AR 27-20]; U.S. DEP’T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES paras. 2-73a, 2-77b(3) (8 Aug. 2003); *see also* Agreement Approving the Procedures to be Used in the Sale of Excess and/or Scrap Property in Turkey by the United States, Exchange of Notes, Nov. 13, 1959, 10 U.S.T. 1990, T.I.A.S. 4366; 40 U.S.C. §§ 304g, 483-84, 511-14 (2000); U.S. DEP’T OF DEFENSE, DIR. 4160.21M, DOD DISPOSAL MANUAL (31 July 1979); U.S. ARMY CLAIMS SERVICE MANUAL, PERSONNEL CLAIMS BULL. No. 75 (22 July 1985).

61. AR 27-20, *supra* note 60, para. 11-15b.

62. COL Touhy Interview, *supra* note 4.

government has initiated negotiations with the Turkish Customs Ministry to resolve this problem.⁶³ Until those negotiations produce a resolution, personnel must store the destroyed items for the duration of their tours and re-ship those items when they depart Turkey. Furthermore, the U.S. government provides no additional weight allowance to ship the destroyed property, for which the owners legally serve as temporary trustees of the U.S. government; thus, owners remains liable for any excess shipping costs.⁶⁴

The *beyanname* carries yet another legal risk. The Turkish government considers the *beyanname* holder an absolute insurer of the property.⁶⁵ Thus, if a *beyanname* item is lost or stolen, the individual *beyanname* holder may be liable for the customs duties due on the item.⁶⁶ Even a police report proving that the loss was due to theft is no defense to the assessment of customs duties.⁶⁷ These duties are extremely high and can amount to as much as 115% of the market value declared on the *beyanname*. The *beyanname* form lists the specific amounts levied on particular classes of items.⁶⁸

Not every aspect of Turkish customs law is unfavorable for U.S. personnel. Couples consisting of one Turkish national and one foreign national who intend to reside in Turkey after their expiration of the U.S. government employee's term of service or retirement can legally import a certain amount of personal effects duty-free.⁶⁹ This quantity, known as the *trousseau*,⁷⁰ consists of a limited quantity of personal effects and household goods.⁷¹ The right belongs to the wife, regardless of the respective nationalities of each spouse.⁷² The bride's right to import her *trousseau* will permit the entry of most household goods, but the right is not unlimited and requires prior approval from the Minister of Customs.⁷³ Anyone wishing to take advantage

of this privilege should contact the nearest DOD legal assistance office. The legal assistance officer can contact one either an Army or Air Force legal assistance office in Turkey to assist in this effort.

Living in Turkey

Regarding Dwelling Places

A substantial percentage of U.S. personnel in Turkey live off-post.⁷⁴ Problems between Turkish landlords and American tenants are not uncommon given the cultural differences and the different expectations they can create. United States personnel often pay substantially higher rents than their Turkish neighbors for several reasons, including the common misconception that all Americans are wealthy.⁷⁵ Turkish law limits the amount by which a landlord can increase the rent against a current tenant, but leaves landlords free to set initial rental prices at whatever level the market will bear.⁷⁶

The rate of tour extensions in Turkey is high.⁷⁷ Personnel who extend their tours, however, deprive their landlords of the ability to arbitrarily increase the rent. Unfortunately, some landlords attempt to take advantage of their American tenants, many of whom are unfamiliar with—and intimidated by—the Turkish legal system.⁷⁸ American tenants who understand the basic elements of Turkish law soon realize that those laws generally favor tenants and empower them to halt unscrupulous practices.

The Turkish Law of Obligations and Real Estate Law Number 6570 governs the overall scheme of leases.⁷⁹ At a mini-

63. *Id.*

64. 1 JOINT FED. TRAVEL REGS., U5310(A)(1), U5315(C)(4) & U5340 (1 Feb. 2002), available at <http://www.dtic.mil/perdiem/jftr.pdf> (last visited Jan. 14, 2003).

65. GENERAL CUSTOMS LAW NO. 1615, *supra* note 53, art. 10, para. 2.

66. *Id.*

67. *Id.* If a report is made to both the U.S. military police authorities as well as to the Turkish National Police (TNP) and if the TNP report is accepted and signed by the local governor, the victim of the theft will be immune from prosecution for violating the Turkish anti-smuggling law. This process has no bearing on the Customs Ministry. Consequently, the individual may still be held for customs duties due for introduction of an item into the Turkish economy. *Id.*

68. Turk. Customs Bureau, *Beyanname* Form Sec. 13.

69. GENERAL CUSTOMS LAW NO. 1615, *supra* note 53, art. 10, para. 5.

70. WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 1238 (1984); WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1961 (2nd ed. 1979) (defining a *Trousseau* as a bride's personal possessions, such as jewelry, clothing and linens, that she accumulates in anticipation of her marriage).

71. GEN. CUSTOMS LAW NO. 1615, *supra* note 53, art. 10, para. 5.

72. *Id.*

73. *Id.*

74. COL Touhy Interview, *supra* note 4.

75. *Id.*

mum, a lease must include a description of the premise, a description of its intended use, the names and addresses of the parties, the effective dates of the lease, and the term of the lease.⁸⁰ The parties are free to add any other desired clauses delineating the rights and responsibilities of each party regarding any collateral matter such as payment of utilities or the provision of heat.⁸¹ As with all contracts, the best advice is to write all of the specific terms of the agreement into the lease. It is almost certain that any important detail not specifically and unambiguously set forth in the lease will become a point of contention between the landlord and the tenant. If the landlord makes verbal assurances when the potential lessee views the premises, the lessee should insure they are incorporated, in writing, into the lease document.

It is imperative that the parties conduct a joint inspection before they sign the lease agreement. The prospective tenant should note the condition of the premises in detail in the lease documents. The tenant should then keep one original copy. The local housing referral office will often keep a copy, as well. The housing referral office can also assure that American tenants receive an English version of the lease. Landlords commonly attempt to charge American tenants large sums for putative damages.⁸² Because local housing offices often cooperate more closely with the landlords than with the tenants,⁸³ a tenant may be unable to clear housing if the landlord refuses to sign a release, even in the absence of a pending lawsuit for the alleged damages.⁸⁴ Rather than demanding their day in the

Turkish courts, Americans often accede to this subtle form of extortion to prevent delays in their scheduled departures, even when the putative damage is an obviously pre-existing condition. In some instances, landlords have charged several successive American tenants the same fee for the same putative damage that was actually preexisting damage or ordinary wear and tear.⁸⁵ At the time of the final inspection, landlords will know the precise location and estimated repair cost of every minute defect in their premises.⁸⁶ The tenant's failure to note the damage in the lease documents will be prima facie evidence that the tenant caused the damage. Prospective lessees should know what to expect. A thorough pre-lease inspection of the premises may save many dollars at the time that the tenancy is terminated. Prospective lessees should not hesitate to modify the form leases provided by the housing referral office to add additional safeguards or a more detailed inspection form. If a tenant encounters problems with a landlord, he should immediately seek the advice of a legal assistance officer.

If a lease will extend for a period exceeding one year, it must state the amount of annual rent increases during its term.⁸⁷ The landlord may only increase the rent once each calendar year, and only to the extent that legal limits on rent increases allow.⁸⁸ A tenant is under no obligation to vacate the premises when the lease expires unless the landlord serves him with a notice of intent to evict at least fifteen days before the lease expires.⁸⁹ In the absence of such a notice, the lease is automatically renewed for an additional year.⁹⁰

76. TURK. REAL ESTATE LAW No. 6570, T.C. RESMI GAZETE No. 9013 (May 27, 1955) [hereinafter TURK. REAL ESTATE LAW No. 6570]; File No. 1979/278, Dec. No. 1979/340 (T.C. Yargıtay, Ucüncü Hukuk Dairesi, Jan. 23, 1979). The current ceiling is twenty percent of the base rental price which lags far behind the current rate of inflation, which is officially forty percent. TURK. REAL ESTATE LAW No. 6570, *infra* note 76; File No. 1979/278, Dec. No. 1979/340 (T.C. Yargıtay, Ucüncü Hukuk Dairesi, Jan. 23, 1979). The Third Chamber of the Turkish Court of Cassation established the following formula governing rent increases: if the official rate of inflation is less than twenty percent, rents may only be increased by the amount of inflation. If the official inflation rate runs between twenty and forty percent, rents may be increased by no more than twenty percent. If the official inflation rate exceeds forty percent, rents may be increased by only one-half of the rate of inflation. File No. 1979/278, Dec. No. 1979/340 (T.C. Yargıtay, Ucüncü Hukuk Dairesi, Jan. 23, 1979).

77. COL Touhy Interview, *supra* note 4.

78. *Id.*

79. TURK. LAW OF OBLIGATION No. 818, arts. 48-98, T.C. RESMI GAZETE No. 366 (Oct. 4, 1926) [hereinafter TURK. LAW OF OBLIGATION No. 818]; TURK. REAL ESTATE LAW No. 6570, *supra* note 76.

80. TURK. LAW OF OBLIGATION No. 818, *supra* note 79, arts. 48-98.

81. *Id.*

82. COL Touhy Interview, *supra* note 4.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. See *supra* note 76 and accompanying discussion.

88. *Id.*

89. *Id.*

At the expiration of the lease, landlords frequently attempt to increase the rent far beyond the established government rent-control ceilings.⁹¹ The landlord's right to increase the rent is not unilateral and is subject to several limitations.⁹² Initially, if it is apparent that the tenant intends to continue to occupy the premises, and if the landlord does not have cause to seek eviction, he may propose a rent increase to the tenant by written notice.⁹³ He must present this notice to the tenant at least thirty days before the expiration of the lease.⁹⁴ The tenant is not obligated to accept the proposed increase.⁹⁵ If the tenant refuses to accede to the proposed increase, the landlord may pursue one of the following two options: he may negotiate a mutually agreeable sum with the tenant; or he may apply to the appropriate court for an assessment of the rental value.⁹⁶ Too few military personnel are aware of this protective provision, and it is rare for landlords to seek equitable relief from the courts.⁹⁷

A common tactic of landlords who are distraught over the extension of American tenants who refuse to accept arbitrary rent increases is to threaten these tenants with eviction.⁹⁸ Some landlords even produce neatly printed and "notarized" eviction notices.⁹⁹ These actions may intimidate tenants who do not understand their rights under Turkish law,¹⁰⁰ but if a tenant has

paid his rent on time, a landlord may only evict him for the causes specified by law¹⁰¹ and discussed below.

A landlord can evict a tenant who makes a written promise to vacate on or before a specified date after entering a lease.¹⁰² A promise to move out on the expiration date of the lease, or on any date thereafter must be incorporated into the lease or made at the time the lease was signed to be legally effective.¹⁰³ The term of the lease itself does not imply a promise to vacate on its expiration date, and the expiration of the lease by itself is not a basis for eviction.¹⁰⁴

A landlord may evict a tenant if he can demonstrate that he requires the use of the premises as a residence for himself, or for his wife and children, if he is legally separated.¹⁰⁵ The most common reason landlords cite as a basis for eviction is a purported need to use the premises as a residence for members of the landlord's family.¹⁰⁶ Other legal grounds for eviction include the following: (1) necessity to repair, renovate, or modify the leased premises;¹⁰⁷ (2) failure to pay rent (after two warnings within one year);¹⁰⁸ (3) the possession of another residence by the tenant or his wife;¹⁰⁹ (4) subletting the premises without authority;¹¹⁰ (5) breach of the terms of the lease;¹¹¹ or (6) breach of the peace of the community.¹¹²

90. *Id.*

91. COL Touhy Interview, *supra* note 4.

92. TURK. EXECUTION LAW No. 2004, art. 272, T.C. RESMI GAZETE No. 2128 (June 19, 1932).

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*; Dec. No. 1964/2, File No. 1964/2 (T.C. Yargitay (High Ct. of App.), Gen. Bd. of Chambers, (Nov. 16, 1964), T.C. RESMI GAZETE No. 9013 (Nov. 18, 1964).

97. COL Touhy Interview, *supra* note 4.

98. *Id.*

99. *Id.*

100. *Id.*

101. TURK. REAL ESTATE LAW No. 6570, *supra* note 76.

102. *Id.* art 7.

103. *Id.*

104. *Id.* art. 7, para. A.

105. *Id.* art. 7, para. B.

106. *See id.*; COL Touhy Interview, *supra* note 4.

107. TURK. REAL ESTATE LAW No. 6570, *supra* note 76, art. 7, para. C.

108. *Id.* art. 7, para. E(1).

109. *Id.* art. 7, para. E(2).

If, after proper notice, the tenant decides to contest the eviction, the landlord must sue in an appropriate court.¹¹³ The landlord has the burden to prove his alleged need.¹¹⁴ Such suits can take as long as two years to finalize, and the tenant is under no obligation to move in the absence of a court order directing him to do so.¹¹⁵ Mere unfounded assertions by the landlord that he needs the premises—or that he may need them in the future—will not suffice. A landlord can only evict the tenant if he can demonstrate to the court’s satisfaction that he, his wife, or his children require the use of the premises as a place of business.¹¹⁶ If a landlord successfully evicts a tenant to convert the premises to his own use, or to that of his family, he may not subsequently lease the premises to anyone other than the evicted tenant for a period of three years.¹¹⁷

Although buying real estate in Turkey has some built-in disadvantages, personnel may purchase real estate if they desire.¹¹⁸ American citizens may purchase real estate in Turkey, subject to the following two restrictions: foreign nationals may not purchase real property in villages¹¹⁹ or military restricted areas;¹²⁰ and foreign buyers must obtain advance permission from the General Directorate of Titles, Deeds, and Cadasters.¹²¹ The buyer must pay the purchase price in Turkish lira, which he must purchase with hard currency at a Turkish bank.¹²² Resell-

ing the property later will also involve significant legal constraints.¹²³ Before a foreign national sells real property, he must obtain a valuation from the tax assessment commission.¹²⁴ The sale price cannot be less than the assessed value, nor can it exceed the assessed value by more than twenty five percent.¹²⁵ The seller must pay a real estate appreciation tax on the difference between the purchase and sale prices.¹²⁶ The seller must then deposit the balance of the sale price into a special “blocked” account at the central bank, which the seller may not transfer outside of Turkey.¹²⁷ Consequently, a foreign seller may bring funds into Turkey to purchase land, but may not transfer them out again. This effectively restricts the option of buying land to those who are certain they will remain in Turkey.

Employment of Dependents

Once personnel become settled in their new residences, their attention often turns to finding employment for their spouses or other dependents. The prospects of dependent employment in Turkey are limited.¹²⁸ The small size of U.S. government organizations creates few job opportunities for dependents, and the Turkish government and labor unions aggressively protect the indigenous work force from foreign workers.¹²⁹

110. *Id.* art. 12.

111. TURK. LAW OF OBLIGATION NO. 818, *supra* note 79, art. 256.

112. *Id.*

113. *See supra* note 105.

114. *Id.*

115. *Id.*

116. *See id.* art. 7, para. C.

117. *Id.* art. 15.

118. TURK. TITLE DEED LAW NO. 2644, T.C. RESMI GAZETE NO. 2792 (Dec. 29, 1934).

119. TURK. VILLAGE LAW NO. 442, art. 87, T.C. RESMI GAZETE NO. 68 (Apr. 7, 1924).

120. TURK. MILITARY AND FORBIDDEN SECURITY AREA LAW NO. 2565, art. 7, para A & art. 9, para. B, T.C. RESMI GAZETE NO. 7552 (Dec. 22, 1981).

121. *See generally* TURK. TITLE DEED LAW NO. 2644, T.C. RESMI GAZETE NO. 2792 (Dec. 29, 1934).

122. TURK. LAW REGARDING PROTECTION OF THE VALUE OF TURK. CURRENCY NO. 1567, T.C. RESMI GAZETE NO. 1433 (Feb. 25, 1930), *as amended by* TURK. LAW NO. 6258, OFF. GAZETE (Feb. 15, 1954); TURK. COUNCIL OF MINISTERS DECREE NO. 30, REGARDING PROTECTION OF THE VALUE OF TURK. CURRENCY, T.C. RESMI GAZETE NO. 18,451 (July 7, 1984).

123. TURK. LAND USE TAX LAW NO. 1319, T.C. RESMI GAZETE NO. 13,576 (Aug. 11, 1970).

124. *Id.*

125. TURK. DUTY LAW NO. 492, art. 64, T.C. RESMI GAZETE NO. 11,756 (July 17, 1964).

126. TURK. COUNCIL OF MINISTERS DECREE NO. 30, REGARDING THE PROTECTION OF THE VALUE OF TURK. CURRENCY, T.C. RESMI GAZETE NO. 18,451 (July 7, 1984).

127. *Id.*

128. COL Touhy Interview, *supra* note 4.

One of the means the Turkish government uses to protect the local work force is the residence permit system.¹³⁰ The Turkish government admits foreign nationals based on a declared status at the time of entry. Residence permits issued under the NATO SOFA¹³¹ admit personnel either as “dependents” or as “members of the civilian component.”¹³² The 1980 U.S.-Turkish Defense and Economics Agreement (DECA)¹³³ sets ceilings on the number of members of the civilian component that the United States may employ at various listed locations.¹³⁴ Turkey uses both the residence permit system and reports submitted by the U.S. government to ensure compliance with the established ceilings.¹³⁵ Turkish law also prohibits foreigners from engaging in certain occupations.¹³⁶ Finally, the 1980 DECA directs that the U.S. government must hire the maximum feasible number of Turkish nationals.¹³⁷ As a result, tension has developed between the competing interests of the United States—to maximize dependent employment opportunities—and Turkey—to maximize employment opportunities for its population.

When the U.S. government began to increase its hiring of U.S. dependents in the early 1980s, Turkish labor unions protested.¹³⁸ In 1985, the *Harb-İş* Union persuaded a Turkish labor court that when the U.S. government hired dependents, those dependents became members of the civilian component in vio-

lation of both Turkish and international law.¹³⁹ The Turkish High Court of Appeals subsequently affirmed this ruling.¹⁴⁰

Because of the political sensitivity of the situation, the Interior Ministry has increasingly resisted amending or reissuing residence permits since late 1984.¹⁴¹ In fact, the Turkish government has even revoked the residence permits of dependents who applied for work permits. On 29 September 1986, the Turkish Interior Ministry informed the base operations contractor, which is responsible for all U.S. installation operations throughout Turkey, that the Turkish government would not issue residence permits to dependents who joined the contractor’s work force after 17 April 1985.¹⁴² The Interior Ministry may revoke an individual’s residence permit or it may declare that the individual does not possess a valid residence permit and levy a fine against the individual when he attempts to depart the country. Ultimately, the Turkish government could order the deportation of any illegal alien without a valid residence permit.¹⁴³

The U.S. and Turkish governments have discussed these issues at the highest levels but no changes have resulted.¹⁴⁴ Although a limited number of positions are available for dependents, they must understand their legal status in Turkey and the

129. *Id.*

130. See RESIDENCY PERMIT LAW, *supra* note 36.

131. See *id.*

132. “Member of the Force,” “Member of the Civilian Component,” and “dependent” are defined in the NATO SOFA, in which the United States is the sending state. NATO SOFA, *supra* note 20.

133. Agreement for Cooperation on Defense and Economy Between the Governments of the Republic of Turkey and the United States of America in Accordance with Articles II and III of the North Atlantic Treaty, March 29, 1980, 32 U.S.T. 3323, T.I.A.S. 9901 [hereinafter DECA].

134. The DECA Supplementary Agreement Number 3 Between the Governments of the Republic of Turkey and the United States of America on Installations art. IV, 32 U.S.T. 3323, T.I.A.S. 4901 [hereinafter DECA, Suppl. Agreement No. 3].

135. See RESIDENCY PERMIT LAW, *supra* note 36 and accompanying text. The Residence Permit Law requires foreigners who intend to work in Turkey to obtain permission from the pertinent security authorities, and they must have their status registered in their residence permit. *Id.*

136. TURK. LAW PERTAINING TO CRAFTS AND SERVICES ALLOCATED TO TURK. NATIONALS IN TURKEY, No. 2007, T.C. RESMI GAZETE No. 2126 (June 16, 1932).

137. DECA, Suppl. Agreement No. 3, *supra* note 134, art. VI.

138. See Dec. No. 1985/284, File No. 1985/416 (Ankara 5th Labor Ct., Apr. 17, 1985); *affd.*, Dec. No. 1985/5416, File No. 1985/5587 (T.C. Yargıtay) (High Court of Appeals), 9th Legal Dep’t, May 20, 1985) (illustrating that the union filed an action in the Turkish Labor Court).

139. *Id.*

140. *Id.*

141. COL Touhy Interview, *supra* note 4. In at least one case in Izmir, the Turkish government refused to reissue a work permit to an individual as a member of the civilian component; the Turkish National Police ordered her to cease working. This individual quit her job rather than challenge the Turkish Authorities and risk possible criminal prosecution. *Id.*

142. *Id.*

143. See RESIDENCY PERMIT LAW, *supra* note 36 and accompanying text. Note that the Residence Permit Law allows the denial of residence permits based on non-conformity to political condition. The Interior Ministry may revoke residence permits at will. *Id.*

144. COL Touhy Interview, *supra* note 4.

potential problems any attempt to alter their status can create before they accept work.

Domestic Relations Laws

Introduction

Human emotions and relationships are no different in Turkey than in other locations where U.S. personnel are assigned. Legally, however, courting and marriage in Turkey has little resemblance to the common experience of the average American.

Courting and Engagement

In the Turkish culture, courting and engagement hold a special place. Courtship in Turkey is not the casual affair to which Americans are accustomed; it is considered a serious prelude to an engagement and marriage.¹⁴⁵ Under Turkish law, pre-marital chastity is presumed, and sexual intercourse with a previously chaste female implies an enforceable promise to marry.¹⁴⁶ A breach of the implied promise to marry can result in a two-year jail term.¹⁴⁷

An engagement—a promise to marry¹⁴⁸—is a formal status governed by the Turkish Civil Code.¹⁴⁹ A breach of this promise to marry may be grounds for a civil cause of action for damages by the aggrieved party.¹⁵⁰ Furthermore, although the engagement itself establishes no familial ties, the death of one

of the engaged partners can be grounds for a wrongful death lawsuit by the surviving party.¹⁵¹ To state a cause of action, however, the survivor must establish that she would have depended upon the decedent for support after the marriage.¹⁵²

Marriage

The Turkish culture regards marriage as a lifetime commitment—parties should not marry hastily or for the wrong reasons.¹⁵³ Divorce is legally permissible, but society does not condone it.¹⁵⁴ Consequently, the Turkish Civil Code establishes a complex process that frequently requires one to three months to complete before a couple may marry.¹⁵⁵ The process may serve as the first test of whether the parties are serious enough to endure a lifetime together.

The individual military departments, the U.S. Department of Justice, and the Bureau of Customs and Immigration—formerly the Immigration and Naturalization Service—each add another tier of bureaucratic complications.¹⁵⁶ The U.S. government-imposed rules for marrying a foreign national are not unique to Turkey.¹⁵⁷ This article addresses only those procedures required to contract a valid marriage under Turkish law, irrespective of the nationalities of the parties or their intended immigration status.

Under Turkish law, marriage is a strictly secular matter.¹⁵⁸ Religious ceremonies are not legally valid. A religious ceremony may be held for the benefit of the parties after the legally sanctioned civil ceremony, *not* before it.¹⁵⁹ Each neighborhood

145. *Id.*

146. TURK. PENAL LAW No. 765, art. 423, T.C. RESMI GAZETE No. 320 (Mar. 13, 1926) [hereinafter TURK. PENAL LAW]; TURK. CIV. CODE, LAW No. 743, arts. 81-87, T.C. RESMI GAZETE No. 399 (Apr. 4, 1926) [hereinafter TURK. CIV. CODE].

147. *Id.*

148. TURK. LAW OF OBLIGATION No. 818, *supra* note 79, arts. 41-49; TURK. CIV. CODE, *supra* note 146, art. 110.

149. *Id.*

150. TURK. LAW OF OBLIGATION No. 818, *supra* note 79, arts. 41-49.

151. TURK. CIV. CODE, *supra* note 146, art. 110.

152. *Id.*

153. COL Touhy Interview, *supra* note 4.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *See* TURK. PENAL LAW, *supra* note 146, art. 236; *see also id.* arts. 241, 526.

159. TURK. PENAL LAW, *supra* note 146, arts. 236, 241 & 526; COL Touhy Interview, *supra* note 4.

in a city and each village in Turkey has its own *muhtar*, who is the local registrar of vital statistics information on all persons in his jurisdiction.¹⁶⁰ The *muhtar*'s records supplement the records maintained in the Nafus Office, or central registry, which is located in the hometown of every Turkish national father.¹⁶¹

The marriage process begins with each party who has not previously registered, Americans included, registering with his or her respective *muhtar*.¹⁶² The parties must then obtain a certificate verifying their physical residency from the *muhtar*.¹⁶³ These statements are necessary before the parties may obtain a marriage application package from the local marriage bureau.¹⁶⁴

After each party visits his or her respective *muhtar*, he or she must obtain a statement or affidavit of freedom to marry.¹⁶⁵ Turkish nationals obtain this document from their respective Nafus Office.¹⁶⁶ American citizens may obtain an affidavit of freedom to marry from the nearest U.S. Consulate, which issues this document free of charge on presentation of proof of marital status.¹⁶⁷ The applicant must then take the consulate-issued affidavit of freedom-to-marry to the provincial governor's office for translation, verification of the Consular signature, and a nominal payment for tax stamps.¹⁶⁸ After these steps, the affidavit is legally valid and ready for presentation at the marriage bureau, where the parties receive their marriage application.¹⁶⁹

Both parties must proceed to the marriage bureau with jurisdiction over their particular residential areas with the affidavits of freedom to marry and with the documents from their respective *muhtars*.¹⁷⁰ At the marriage bureau, the parties may obtain a marriage application. Each party must submit two photographs with his or her application.¹⁷¹ They must complete the marriage application and return it to the marriage bureau when they pay the marriage fee and apply for an appointment to be married.¹⁷² If both parties are foreign nationals, they may complete the application and schedule the appointment at this time.¹⁷³

If one of the parties is Turkish and the other is a foreign national, the couple must first obtain a background check on the foreign national from the Turkish National Police.¹⁷⁴ The marriage bureau will provide the foreign national with the two forms necessary to complete this investigation.¹⁷⁵ The Foreign Division of the Turkish National Police Provincial Headquarters will receive and process the application, which consists of the two forms from the marriage bureau and two copies of the foreign national's military identification card or of the passport.¹⁷⁶ The investigation takes approximately one to three weeks.¹⁷⁷

Assuming the result of the investigation is favorable, the couple may return to the marriage bureau to make a wedding appointment. Each party must appear at the marriage bureau with the completed marriage application, any background

160. COL Touhy Interview, *supra* note 4.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* At the time the author and the interviewee were stationed in Turkey, the fee was 1500 Turkish lira or approximately two U.S. dollars.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

check reports, and four additional photographs of each party.¹⁷⁸ The couple may purchase a blank marriage book¹⁷⁹ for a small fee.¹⁸⁰ Once the couple completes the paperwork and pays the appropriate marriage fee, the marriage bureau sets the date and time for the marriage ceremony.¹⁸¹ A local marriage officer will conduct this secular marriage ceremony.¹⁸² Once this legally binding marriage is completed under the Turkish Civil Code, the couple may re-solemnize their vows in a religious recognition ceremony.¹⁸³ If a Turkish national marries a foreign national outside Turkey, the couple must register the marriage with the nearest Turkish Consulate for the marriage to be valid within the Republic of Turkey.¹⁸⁴

Adoption

A combination of social and economic factors in Turkey has resulted in many children being consigned to orphanages.¹⁸⁵ The Muslim religion prohibits abortions, and although Turkey is legally secular, Turkish law severely restricts abortions. A woman who seeks an abortion and any person performing the procedure outside the limits of these restrictions are both subject to prison sentences of one to five years.¹⁸⁶ Premarital virginity is protected by criminal sanction,¹⁸⁷ and illegitimacy is an

almost irremediable social stigma.¹⁸⁸ Because of these factors, many women who become pregnant outside of marriage or who simply cannot afford to support them consign their children to orphanages.¹⁸⁹ By doing so, however, parents do not relinquish their parental rights, and may reclaim their children at any time.¹⁹⁰ Thus, adopting a Turkish child can be difficult, even frustrating.¹⁹¹

Under Turkish law, adoption of a child requires the consent of the parents and the voluntary relinquishment of their parental rights.¹⁹² Parents who refuse to relinquish their parental rights make their children ineligible for adoption, and may even reclaim custody of their children when they become old enough to work and produce income for the family.¹⁹³ These facts, along with the slowness of working-class Turks to accept adoption,¹⁹⁴ can make adoption of Turkish children prohibitively difficult.

The legal prerequisites for an adoption are as follows: the persons adopting must be at least thirty five years of age;¹⁹⁵ they must have no biological children of their own;¹⁹⁶ and they must be at least eighteen years older than the person whom they intend to adopt.¹⁹⁷ Both parties of a married couple must agree to the adoption,¹⁹⁸ and the parents of the adoptive child must

178. *Id.*

179. The marriage book is the equivalent of a marriage license.

180. *Id.*

181. *Id.*

182. *Id.*

183. See METZ, *supra* note 12, at 134.

184. *Id.* at 133 – 34; Telephone Interview with Mr. Gunay Evinch, Counsel for the Embassy of Turkey (Sept. 11, 2003) [hereinafter Gunay Evinch Interview].

185. See Gunay Evinch Interview, *supra* note 184.

186. TURK. PENAL LAW, *supra* note 146, arts. 469, 470. *But see* TURK. BIRTH CONTROL LAW No. 2827, T.C. RESMI GAZETE No. 18059 (May 27, 1983), as implemented by TURK. ABORTION AND STERILIZATION LAW REG., T.C. RESMI GAZETE No. 18255 (Dec. 18, 1983) (permitting abortions during the first ten weeks of gestation).

187. See *supra* note 86.

188. Gunay Evinch Interview, *supra* note 184.

189. *Id.*

190. Gunay Evinch Interview, *supra* note 184; COL Touhy Interview, *supra* note 4.

191. *Id.*

192. TURK. CIV. CODE, *supra* note 146, art. 254.

193. *Id.*; COL Touhy Interview, *supra* note 4.

194. *Id.*

195. See TURK. CIV. CODE, *supra* note 146, arts. 253-258, as amended by TURK. LAW No. 2846, T.C. RESMI GAZETE No. 18,081 (June 18, 1983).

196. *Id.*

consent to the adoption.¹⁹⁹ If the child to be adopted was abandoned, a court must approve the adoption in lieu of the parents.²⁰⁰

A couple initiates adoption proceedings by filing a petition with the Ministry of Social Services (Ministry) in the province where they reside.²⁰¹ In this petition, the adoptive parents must set forth the facts indicating that they meet the legal prerequisites for a valid adoption.²⁰² Once the Ministry approves the petition, it will identify an orphan available for adoption.²⁰³ The Ministry will then conduct a home study on the prospective adoptive home, as well as periodic home visits.²⁰⁴ The home study and visits serve the same purpose as those conducted by social service agencies in the United States—to assure that the adoptive home is an adequate, wholesome, and loving environment.²⁰⁵ The home study and home visitations do not result in expense to the potential adoptive parents.²⁰⁶ If the Ministry deems the prospective adoptive family to be acceptable, it may place the child in the new family's foster care pending a final adoption.²⁰⁷

The final adoption proceedings are relatively simple and take place in the local Peace Court.²⁰⁸ The Ministry may appoint a guardian ad litem to represent the interests of the

child.²⁰⁹ Absent any unforeseen difficulty, the court will review the case, determine that the legal criteria are met to its satisfaction, and issue a formal decree of adoption.²¹⁰ Once the court issues the decree of adoption, the parents may obtain a new birth certificate identifying the new parents,²¹¹ who may then obtain a Turkish passport.²¹² It is here that the family enters the most difficult and the most frustrating phase of the adoption process—dealing with the U.S. Bureau of Customs and Immigration.²¹³ Anyone considering adopting a child in Turkey should begin the process at least six months before his scheduled departure from Turkey.

Marital Dissolution

Turkish culture strongly disapproves of the termination of a marriage, but Turkish law provides for it in several forms.²¹⁴ Marital dissolutions can take the form of legal separation, annulment, or absolute divorce.²¹⁵

An annulment is a legal declaration that a putative marriage was null and void *ab initio*.²¹⁶ In a culture that attaches a severe social stigma to divorce, an annulment is the preferable (but rarely applicable) method of marital disengagement.²¹⁷ Under

197. *See id.*

198. *Id.* art. 255.

199. *Id.* art. 254.

200. *Id.* art. 256.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* art. 257.

205. *Id.*

206. *Id.*

207. *Id.*

208. CIV. P. LAW No. 1086, *supra* note 15, art. 8.

209. *See* TURK. CIV. CODE, *supra* note 146, arts. 253-258, *as amended by* TURK. LAW No. 2846, T.C. RESMI GAZETE No. 18,081 (June 18, 1983).

210. *Id.*

211. *Id.* art. 257.

212. *Id.*

213. *See* Lieutenant Colonel Pamela M. Stahl, *The Legal Assistance Attorney's Guide to Immigration and Naturalization*, 177 MIL. L. REV. 1 (2003).

214. *See* TURK. CIV. CODE, *supra* note 146, arts. 112-128.

215. *Id.*

216. *Id.* art. 116.

the Turkish Civil Code,²¹⁸ the grounds for an annulment are as follows: (1) that either party to the putative marriage was legally incompetent to marry;²¹⁹ (2) that either party was already married at the time of the putative marriage;²²⁰ (3) that either of the parties did not possess the power of discernment at the time of the putative marriage;²²¹ or (4) that the parties to the putative marriage are within the proscribed limits of consanguinity.²²² Similarly, annulments may be sought on the grounds of fraud in the inducement; fraud in the execution, duress, or coercion; or in the event that one of the parties alleges that he or she has made a fundamental error.²²³ In the event that either of the parties was legally incompetent to enter into the putative marriage, either the incompetent party or the public prosecutor may petition for the annulment.²²⁴ In all other cases, the allegedly aggrieved party may request an annulment.²²⁵

Regardless of the grounds cited, a judge in the Civil Court of First Instance for the jurisdiction of the putative marital domicile decides the case.²²⁶ Parties must file petitions seeking annulments within six months of the discovery of the grounds for an annulment.²²⁷ If the court renders a decree of annulment, the parties are free to conduct themselves as unmarried persons—as if the marriage had never occurred.²²⁸ Thus, the parties avoid the social stigma attached to a divorce. If the

annulled union produces children, the annulment will not render them illegitimate; they will be treated as if they were born within a bona fide marital relationship.²²⁹

If a party to a troubled marriage files for divorce but believes that reconciliation is possible, that party may request that the court order a legal separation instead of a divorce.²³⁰ During the pendency of a divorce proceeding, the court may also order a legal separation on its own motion.²³¹ Courts may grant legal separations for between one and three years.²³² While the legal separation is in force, the court cannot enter a divorce decree.²³³ When ordering a legal separation, the court will leave the marital contract intact, but it will enter orders regarding child custody, as well as child and spousal support.²³⁴ In the absence of a legal separation or any other court order regarding the custody of the children, the father's preference regarding custody will be legally conclusive.²³⁵

If a married couple residing in Turkey seeks a divorce in Turkish courts, the court must initially determine its jurisdiction to adjudicate the case.²³⁶ Next, it must resolve any conflict of law issues. The answer to both questions depends on the nationality of the parties. If either party is Turkish, Turkish courts have jurisdiction to resolve the case and will apply Turk-

217. *See id.*

218. *Id.* arts. 112-128.

219. *Id.* arts. 116-118.

220. *Id.*

221. *Id.*

222. *Id.* art. 112.

223. *Id.* arts. 116-118.

224. *Id.* art. 112.

225. *Id.* arts. 116-118.

226. TURK. CIV. P. LAW, *supra* note 15, arts. 8, 9.

227. TURK. CIV. CODE, *supra* note 146, art. 125.

228. *Id.*

229. *Id.*

230. *Id.* arts. 135, 162.

231. *Id.* art. 138.

232. *Id.* art. 139.

233. *Id.* art. 140.

234. *Id.* arts. 137, 162.

235. *See id.* art. 152.

236. CIV. P. LAW No. 1086, *supra* note 15, arts. 8, 9.

ish substantive law.²³⁷ If both parties are foreigners residing in Turkey, and if they petition the Turkish courts to dissolve their marriage, the Turkish courts will also have jurisdiction. In such cases, the courts will resolve the conflict of law issues as follows: (1) if both parties share a common nationality, Turkish courts will apply the law of their common nationality;²³⁸ (2) if the parties are of different nationalities, the courts will apply Turkish substantive law as the law of their common residence;²³⁹ and (3) if the parties are either stateless persons or refugees, the courts have jurisdiction to hear the case, and they will apply Turkish substantive law to resolve the issues in the case.²⁴⁰

Because most cases of divorce involve the application of Turkish substantive law, a brief overview of the law is appropriate. The Turkish Civil Code lists the following lawful grounds for divorce: (1) one of the parties has committed adultery;²⁴¹ (2) one of the parties has attempted to kill the other or has subjected the other to cruel treatment;²⁴² (3) one of the parties has committed an ignominious crime that has wrought such disgrace on the family as to render life together unbearable;²⁴³ (4) one party has deserted the other or refuses to return home;²⁴⁴ (5) one of the parties has suffered mental illness for three or more years, the manifestation of which makes continued life together unbearable; or (6) the parties are violently incompatible.²⁴⁵ Either the

husband or the wife may sue for divorce if he or she can prove one or more of the listed grounds—with one severe limitation.²⁴⁶ Turkish law recognizes the defense of recrimination, which means that the court will not grant a divorce unless the petitioning party is free from marital fault.²⁴⁷

Divorce procedures are relatively straightforward. The complaining party first files a complaint in the Civil Court of First Instance with jurisdiction over the marital domicile.²⁴⁸ The court will take and evaluate evidence and will then issue a decree either granting or denying the petition.²⁴⁹ If the court grants the divorce, it will simultaneously rule on the collateral matters of child custody, child support, and alimony, and will order the non-custodial parent to pay child support.²⁵⁰ The court will base the amount of child support on the non-custodial parent's ability to pay.²⁵¹ The court may also order the party guilty of marital fault to support his ex-spouse for one year if she should become a pauper.²⁵² If the court orders a legal separation rather than a divorce, the court will frequently order the husband to pay both child support and alimony during the pendency of the separation.²⁵³

Once the court grants a divorce, obtaining recognition of the divorce and its collateral personal orders in foreign jurisdictions becomes an issue.²⁵⁴ This is equally true whether it is an

237. TURK. LAW REGARDING PRIVATE INT'L LAW AND LAW OF PROCEDURE No. 2675, art. 13, T.C. RESMI GAZETE No. 17,701 (May 22, 1982) [hereinafter TURK. LAW OF PROCEDURE No. 2675].

238. *Id.*

239. *Id.*

240. *Id.*

241. TURK. CIV. CODE, *supra* note 146, arts. 129-134.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.* art. 134.

247. *Id.* The application of the law of recrimination has been substantially diminished. The party least at fault may petition for a divorce on the ground of violent incompatibility. *Id.*

248. TURK. CIV. PENAL LAW, *supra* note 146, art. 9.

249. TURK. CIV. CODE, *supra* note 146, arts. 138, 148-150.

250. *Id.* arts. 152-153, 163.

251. *Id.*

252. *Id.* art. 144.

253. *Id.* art. 162.

254. See Charles W. Hemmingway, *Foreign Divorces and the Military: Traversing the "You're No Longer Mine" Field*, ARMY LAW., Mar. 1987, at 17.

American seeking recognition of a Turkish divorce decree or a Turkish national divorced in the United States seeking to have Turkey recognize the decree.²⁵⁵ The Law Regarding Private International Law and the Law of Procedures Number 2875 govern recognition of foreign decrees by Turkish courts.²⁵⁶ Recognition of foreign decrees is not automatic.²⁵⁷ The party desiring to obtain the recognition and enforcement of a foreign decree must petition the Civil Court of First Instance that exercises personal jurisdiction over the petitioner.²⁵⁸

Articles 36 - 42 of Law Number 2675 set forth in detail the prerequisites to filing the petition and obtaining recognition.²⁵⁹ There are two pivotal requirements that the petitioner must meet to obtain recognition of a foreign decree.²⁶⁰ The first is that the jurisdiction in which the decree was rendered would, as a matter of fact, and not necessarily as a matter of formal international agreement, recognize similar decrees rendered by Turkish courts.²⁶¹ The second is that the judgment itself must state that the court issuing the decree considered and resolved conflict-of-law issues.²⁶²

The failure of a Turkish national to have the Turkish courts recognize his divorce decree can have severe social and legal

repercussions upon his repatriation to Turkey.²⁶³ Similarly, U.S. personnel could encounter difficulties if American courts do not recognize their Turkish divorce decrees.²⁶⁴ This problem may arise in the event of remarriage and application for benefits, either in the military or elsewhere, for any subsequent spouse.²⁶⁵ Any party contemplating legal action in the Turkish courts should contact both the nearest DOD legal assistance office or the American Consulate and also a Turkish attorney to assure that the legal rights of all parties are fully protected.²⁶⁶ Likewise, a legal assistance attorney in any location who is approached by a Turkish national spouse contemplating divorce proceedings in a U.S. or other “foreign” jurisdiction must carefully investigate what steps the client must take to protect his or her rights under Turkish law.²⁶⁷

Conclusion

In Turkey, DOD legal assistance attorneys must safeguard the legal interests of both their U.S. citizen clients and their foreign national clients who are—and who may remain—subject to the laws of the nation of their citizenship, irrespective of their current nation of residence.²⁶⁸ These tasks, however, may seem

255. Because the recognition of foreign decrees in the United States is a matter courts resolve on a case-by-case basis in accordance with the laws and public policies of each individual state or territory, it is a topic beyond the scope of this article.

256. *See* TURK. LAW OF PROCEDURE NO. 2675, *supra* note 237.

257. *Id.*

258. *Id.* art. 35.

259. *Id.* arts. 36-42. These articles set forth with specificity the form that the decree must take to be presented, the procedures to notify the other party to afford them an opportunity to contest, and the mandates of comity and reciprocity. *See id.*

260. *Id.* art. 38.

261. *Id.*

262. *Id.* art. 38, para. e.

263. Divorce carries a heavy stigma in Turkey. An individual’s marital status will impact his ability to re-marry to avoid social ostracization. The question of who is a legally recognized spouse will impact such matters as inheritance, the legitimacy of children of any subsequent union, and similar social concerns.

264. Similarly, Americans would encounter difficulties if they intend to re-marry, if they apply to DEERS for their new putative spouse, if they list their spouse as the beneficiary of survivor benefits, if the putative spouse applies for social security benefits, if the putative spouse attempts to claim a spousal right of inheritance under the laws of intestate succession in the event of death, etc. All of these matters require proof of the legal termination of any previous marriage.

265. Inheritance and benefits that flow from being a legal spouse, to include military benefits, survivorship benefits, social security benefits, etc., all hinge on demonstrating that the applicant is a bona fide spouse. In the absence of proof that a previous marriage was legally dissolved, the current, putitive spouse may not be able to claim benefits as a legal spouse.

266. A legal assistance officer may contact his or her counterparts serving at a Turkish duty station to assist in arranging for the retention of Turkish counsel. Legal assistance officers may also contact the American and or Turkish Consular officials for assistance.

267. Legal assistance officers confronted with these questions may contact the legal offices of either the Army or the Air Force in Turkey. They may also obtain information from the American Embassy and or consular personnel in Turkey or from the Turkish Embassy or one of Turkey’s consulates in the United States or in other countries where soldiers are stationed. This author found that the personnel at both the U.S. and the Turkish consular offices were eager to assist U.S. personnel in search of answers to legal questions or concerns. Some useful points of contact are: The Turkish Consulate General, tcbkny@broadview.net; a general portal to websites for Turkish lawyer referral and to Turkish law libraries at <http://www.turkhksitesi.com/turkishlaw/index.shtml>; and the Library of Congress, Near East Section, African and Middle Eastern Division, 101 Independence Avenue, SE, Washington, D.C., cmur@loc.gov.

268. *Id.*

daunting in light of the long misunderstood Turkish legal system. This brief overview of the Turkish legal system, with its focus on the laws that most frequently affect U.S. personnel and their dependents in Turkey, should help legal assistance attorneys advise their clients before, during, and after an assignment

to Turkey. With the mystical shroud removed from the Turkish legal system, Americans and their dependents will better enjoy this assignment.