

Understanding the Separation of Property Regime in Turkey



The Turkish Civil Code accepted the regime of participation in acquired property as the default legal property regime starting from January 1, 2002. Besides this default system, spouses can choose one of the other regimes stipulated by law through a property regime contract made in the form of a notarized arrangement or approval, either before or during the marriage. The separation of property regime in Turkey is one of these alternative options.

Types of Marital Property Regimes in Turkish Law

The property regimes regulated in our law are as follows:

- **Regime of Participation in Acquired Property:** This is the legal (default) regime from 2002 onwards. Unless spouses agree otherwise, assets acquired during the marriage are, as a rule, shared equally in the event of a divorce.
- **Separation of Property Regime:** This is the regime where each spouse's wealth remains separate. Under the **separation of property regime in Turkey**, the

spouses' earnings are considered to belong exclusively to each spouse, with no sharing.

- **Shared Separation of Property Regime:** If spouses choose this regime by contract, the assets of both spouses are divided equally at the end of the marriage; however, it has some technical differences. For example, if one spouse proves a superior interest, they can take the entire interest in a specific asset by paying its value to the other spouse. In this regime, it is also possible to reduce the at-fault spouse's share in cases of adultery or an attempt on life.
- **Community of Property Regime:** This is the regime in which spouses make their assets joint, either completely or partially. In this regime, the assets agreed upon by the spouses are considered joint, and they are shared upon the marriage's end. However, spouses cannot independently dispose of the assets they jointly own during the marriage.

The types of property division essentially vary depending on the property regime the spouses are subject to. The factors that determine which property regime applies during the marriage are whether the spouses have entered into a contract and the date of their marriage.

What is the Separation of Property Regime?

What exactly is the property regime in Turkey? The separation of property regime in Turkey is a property system in which all assets and income earned by the spouses during the marriage belong entirely to them, and the other spouse has no legal rights to this wealth. In this regime, the principle of "each spouse is the owner of what they earn" applies.

Under the separation of property regime in Turkey, there is no distinction between acquired property and personal property; even if an asset is purchased during the marriage, it belongs to whoever it is registered to and whoever paid for it.

Key Features of the Separation of Property Regime

The main characteristics of the **separation of property regime in Turkey** include the following:

- **Independent Management:** Spouses can acquire and dispose of property as they wish, and the other spouse's consent is not required for property acquisitions. However, within legal limits, the other spouse's consent may be necessary. For example, the consent of the other spouse will be sought if the family home is to be sold.
- **No Division in Divorce:** In the event of divorce or the end of the marriage, as a principle, each spouse will take their own property and cannot make a claim from the other party.
- **Contribution Claims:** If one of the spouses has contributed to the other's property and has not received compensation for it, they can demand a contribution share claim in proportion to their contribution. For instance, if one spouse expended labor in building a house for the other, they can demand a share proportional to their contribution.
- **Legal History:** Because the **separation of property regime in Turkey** was the accepted default legal property regime for the period before January 1, 2002, it has become an optional regime with the new civil code. Spouses can adopt this regime by mutual agreement through a marriage contract. For this reason, the default legal property regime after January 1, 2002, was accepted as the acquired property regime .
- **Pros and Cons:** The **separation of property regimes in Turkey** can reduce property disputes at the time of divorce; however, if the balance of economic power diverges significantly during the marriage, this property regime may not protect the interests of the weaker spouse.
- **Common Use Cases:** Although transitioning to the separation of property regime via a contract is not common in practice, the separation of property regime in Turkey may be chosen by spouses in situations such as second marriages, advanced-age marriages, or large wealth disparities.

Summary of the Process

In summary, there will be no property division under the separation-of-property regime in Turkey. This is because the concept of joint or acquired property does not exist in this

regime; the principle of "everyone's property is their own" applies. Spouses can demand receivables from the other spouse only for the debts or contributions mentioned above.

Termination of the separation of property regime in Turkey is simpler than in other regimes: when the marriage ends, everyone takes back their property, and there are no disputes over assets.