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The Acquisition of Turkish Nationality by Way of Marriage Following the June 2003 Amendment

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ABSTRACT

Turkish Nationality Act Article 5 on the acquisition of Turkish nationality by way of marriage was recently amended. The amendment extended the scope of Article 5 to alien husbands, and made acquisition, in principle, subject to statutory requirements to prevent marriages of convenience. In principle, the automatic acquisition of Turkish nationality by way of marriage has been left aside. However, the opportunity of acquiring Turkish nationality automatically by way of marriage that was provided in the former Article 5 only for the benefit of the alien wife who has lost her previous nationality due to the marriage to a Turkish national is extended by the amendment to the alien husband.

ÖZET

Türk vatandaşlığının evlenme yolu ile kazanılmasını düzenleyen Türk Vatandaşlığı Kanunu m.5 yakın zamanda yeniden düzenlenmiştir. Değişiklikle 5. maddenin uygulama alanı yabancı erkek eşi de kapsayacak şekilde genişletilmiş, yanı sıra, cali evlenmelerin Türk vatandaşlığının kazanılması üzerindeki hukukî etkisini sınırlandırma amacıyla evlenme yoluyla Türk vatandaşlığının kazanılması, kural olarak, kanunî şartlara bağlanmıştır. Bir Türk vatandaşı ile evlenme yolu ile kendiliğinden Türk vatandaşlığını kazanma imkânı, kural olarak, artık bulunmamaktadır. Bununla birlikte, değişiklik öncesi, evlenme sebebiyle yabancı vatandaşlığını kaybeden kadın eşe tanınan Türk vatandaşlığını evlenme ile otomatik olarak kazanma imkânı değişiklik sonrası hem kadın hem de erkek eşe tanınmıştır.

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KEYWORDS

Nationality, Marriage, Alien, Spouse, Acquisition

ANAHTAR KELİMELER

Vatandaşlık, Evlenme, Yabancı, Eş, Kazanma

I. INTRODUCTION

The Turkish Nationality Act 1964 No. 403[1] is the latest statute governing acquisition[2], loss[3] and proof[4] of Turkish nationality.[5] The acquisition of Turkish nationality by way of marriage is one of the two types of derivative acquisition of Turkish nationality by operation of law. Following the amendment made in the Turkish Nationality Act in June 2003, the acquisition of Turkish nationality by way of marriage has been considerably changed[6]. The amendment can be considered as a product of the efforts to comply with the contemporary international line of the Law of Nationality. In fact, it was stated in the explanation of the amendment that the changes were made with a view to bringing Turkish Nationality Law into line with the Council of Europe

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[1] Türk Vatandaşlığı Kanunu [hereinafter TVK]. For the official text of the Law No. 403 of February 2, 1964, see the Turkish Official Gazette [hereinafter R.G.] of February 22, 1964, No. 11638. For the By-Law on the Application of Turkish Nationality Act [hereinafter TVK Application By-Law] see 11/2/1964 Tarihli ve 403 Sayılı Türk Vatandaşlığı Kanununun Uygulanmasına İlişkin Yönetmelik, R.G., July 1, 1964, No. 11742. For the official text of the By-Law recently amending the TVK Application By-Law, which covers the June 2003 amendments, however with the exception of TVK Article 5 see, 11/2/1964 Tarihli ve 403 Sayılı Türk Vatandaşlığı Kanununun Uygulanmasına İlişkin Yönetmeliğin Bazı Maddelerinde Değişiklik Yapılmasına Dair Yönetmelik, R.G., May 4, 2004, No. 25452 [hereinafter the By-Law 2004 Amending the TVK Application By-Law].

[2] Section I, Arts 1-18.

[3] Section II, Arts 19-37.

[4] Section III is on proof and the related judicial remedy (Arts 38-41); Section IV is on miscellaneous provisions (Arts 42-45) and Section V is on final provisions (Arts 46-48).

[5] In the system of the Turkish Nationality Act of 1964, Turkish nationality is acquired and is lost in three ways. Turkish nationality may be acquired: 1. *By Operation of Law:* a. Original acquisition (*ius sanguinis* TVK Art 1-2; *ius soli* TVK Art 4), b. Derivative acquisition (marriage TVK Art 5; adoption TVK Art 3); 2. *By The Decision of the Competent Authority: a.* general naturalization (TVK Art 6), b. exceptional or facilitated naturalization (TVK Art 7), c. recovery (TVK Art 8); 3. *By Right of Option* (TVK Art 12, Art 13).

[6] For the official text of the Statute Amending the Turkish Nationality Act, see Law No. 4866 of June 4, 2003, R.G., June 12, 2003, No. 25136. For the recent general works involving the amendment see Ergin NOMER, **Vatandaşlık Hukuku**, Filiz Kitabevi, İstanbul, 2003, p.1 et seq.; Rona AYBAY, **Vatandaşlık Hukuku**, Aybay Yayınları, İstanbul, 2003, p.1 et seq.; Vahit DOĞAN, **Vatandaşlık Hukuku,** Gözden Geçirilmiş 3. Baskı, Yetkin Yayınları, Ankara, 2003, p.1 et seq.

Convention on Nationality.[7] Although Turkey is a member of the Council of Europe, it is not a party to the Convention.[8] This amendment can be seen as an indication that Turkey will accede to the Convention in the near future.[9]

The aim of the legislature in respect to the original form of TVK Article 5 was to avoid statelessness and to follow the principle of unity of nationality in the family.[10] With this aim the alien woman, with or without a nationality, was able to acquire Turkish nationality by way of marriage. The acquisition of Turkish nationality was automatic for a stateless woman and for the alien woman who lost her foreign nationality upon marrying a Turkish man whereas an alien woman with a nationality was obliged to express her intent in writing to acquire Turkish nationality.

To evade the legal restrictions as to the status of aliens in Turkey, individuals abused TVK Article 5, in particular, to enable alien women engage in work.[11] Hence, the legislature considered it necessary to amend TVK Article 5 together with other provisions of the Turkish Nationality Act.

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

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[7] ETS 166. Done at Strasbourg on November 6, 1997. Entered into force on March 1, 2000. See the text of the Convention *available at* <<http://conventions.coe.int>>, 14.5.2004. For a detailed analysis on the Convention see, Gülin GÜNGÖR, "Avrupa Vatandaşlık Sözleşmesi", **Profesör Dr. Yılmaz Altuğ'a Armağan, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni,** Vol. 17-18, No. 1-2, 1997-98, pp. 229-250; for an analysis in respect of Turkish Nationality Act see, Feriha Bilge TANRIBİLİR, "Avrupa Vatandaşlık Sözleşmesi ve Türk Hukuku", Profesör **Dr. Ergin Nomer'e Armağan, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni,** Vol. 22, No. 2, 2002, pp. 791-818.

[8] Status as of May 14, 2004. See the latest status *available at* <<http://conventions.coe.int>>.

[9] See the official reasoning of the amendment *available at* <<http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss115m.htm>>, 30.1.2004.

[10] Gülören TEKİNALP, "Tâbiiyetin Genel İlkeleri ve 1964 Tarihli Türk Vatandaşlık Kanunu", **İstanbul Üniversitesi Hukuk Fakültesi Mecmuası,** Vol. 38, No. 1-4, 1973, pp. 483-497, at pp. 487-488; Ergin NOMER, "Türk Vatandaşlık Hukukunun Genel İlkeleri", **Vatandaşlık ve Yabancılar Hukuku Alanında Gelişmeler (Bilimsel Toplantı), İstanbul, September 24-25, 1998,** İstanbul 2000, pp. 67-79, at p. 74-75; Ergin NOMER, "Türk Vatandaşlık Hukukunun Genel İlkeleri", **Cumhuriyet'in 75. Yıl Armağanı**, İstanbul, 1999, pp. 733-743, at p. 739; NOMER, 2003, p. 62.

[11] On misuse of nationality laws see Andrew WALMSLEY, "Misuse of Nationality Laws", Report Presented to the 1st European Conference on Nationality, Trends and Developments in National and International Law on Nationality (Strasbourg, October 18-19, 1999), pp. 63-80, at p. 65 et seq. *available at* <<http://www. coe.int/T/E/Legal_Affairs/Legal_co_operation/Foreigners_and_citizens/Nationality/Conferences/Conference1

(1999)Proceedings. pdf>>, 30.1.2004.

I. THE FEATURES OF TVK ARTICLE 5

A. Non-Discrimination in Respect to Gender

Before the June 2003 amendment, the Turkish Nationality Act 1964 discriminated in favour of the alien wife of a Turkish man in terms of the acquisition of Turkish nationality through marriage by operation of law.[12] Since the term employed in TVK Article 5 has been changed from "alien woman" to "alien", the amendment has extended the application of TVK Article 5 to the alien husband of a Turkish woman. The alien husband of a Turkish woman also became eligible for the acquisition of Turkish nationality by way of marriage. Thus, TVK Article 5 is in accord with Article 5(1) of the Convention on Nationality by stating, "the rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin."[13]

B. Partial Avoidance of Distinctions in Respect to Categories of Aliens

Although it cannot be called discrimination, in the sense of the Article 5(1) of the Convention, the former Article 5 made a distinction between alien wives in respect of the procedure of acquisition. The alien wife was eligible for automatic acquisition if she was stateless[14] or if her national law caused her to lose previous nationality upon the marriage with an alien (a Turkish man). The alien wife with a nationality, however, was not eligible for automatic acquisition and she had to express her intent within a certain time and in a specific manner[15] in order to acquire Turkish nationality.

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[12]For a comment on inequality between man and woman in respect of former Article 5 see Bahadır ERDEM, "Türk Vatandaşlık Hukukundaki Cinsiyet Farkından Doğan Eşitsizlik Sonucunda Türk Vatandaşı Erkekle Evlenen Yabancı Kadının Yarattığı Sorunlar", **Profesör Dr. Aysel Çelikel'e Armağan, MHB,** Vol. 19-20, No. 1-2, 1999-2000, pp. 293-312, at p. 298 et seq.; TANRIBİLİR, (2002), p.797-798.

[13] For a recent criticism on Article 5(1) of the Convention see, Eva ERSBOLL, The "Principle of Non-Discrimination In Matters Relating to Nationality Law -A Need For Clarification?", Paper Submitted to the 2nd European Conference on Nationality "Challenges to National and International Law on Nationality At the Beginning of the New Millennium", Strasbourg, October 8-9, 2001, pp. 199-201, at pp. 199-200 *available at* <<http://www.coe.int/T/E/Legal_Affairs/Legal_co-operat>>, 30.1.2004. For the first views expressed by the Council of Europe on the equality between woman and man see, Ata SAKMAR, "Kadınla Erkek Arasındaki Hukuki Eşitlik İlkesi ve Vatandaşlık Hukuku", **İÜHFD,** Vol. 44, No. 1-4, 1978, pp. 123-133, at pp. 124-128.

[14] The term statelessness refers *de iure* statelessness therefore *de facto* stateless persons does not fall under that category. Cf. Article 4(b) of the Explanatory Report of the European Convention on Nationality *available at* <<http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>>, 30.1.2004.

[15] TVK Art 42.

The amendment has partly ceased to draw distinctions between alien categories. To this effect, the stateless spouse is equated to the alien spouse with a nationality. Nevertheless, there is an exception in TVK Article 5(2) in favour of the alien spouse whose national law caused that spouse to lose the previous nationality upon the marriage with a Turkish national. This latter group is entitled to automatic acquisition of Turkish nationality.

C. Avoidance of Automatic Acquisition by way of Marriage

1. Principle

It was generally accepted in Turkish Nationality Law that marriage, in principle, does not have any effect on Turkish nationality. This unwritten principle covered both acquisition and loss of Turkish nationality irrespective of the gender of the parties. Two exceptions, however, were provided in favour of the wife. TVK Article 5 was the exception with regards to regards the acquisition of the alien wife of a Turkish husband, and TVK Article 19, which is still in force, relates to the loss of Turkish nationality in connection to the Turkish wife of an alien husband with a nationality.

The unwritten general "no effect" principle of Turkish Nationality Law has now been put aside in respect to the acquisition of Turkish nationality. It is replaced by a specific rule inserted in the body text of TVK Article 5(1) that expressly avoids, in principle, the automatic acquisition of Turkish nationality by way of marriage. Thus, Turkish Nationality Law has reached a statutory principle that marriage does not automatically affect the acquisition of Turkish nationality.[16] It may be worth mentioning that the new principle is also in compliance with the Convention on Nationality. In fact, Article 4(d) of the Convention states that neither marriage nor the dissolution of a marriage between a national of a State Party and an alien (...) shall automatically affect the nationality of the other spouse.[17]

Nevertheless, as mentioned above, TVK Article 5(2) brings an exception to the new principle. It states that if the national law of the alien wife or the alien husband causes that alien spouse to lose nationality by way of marriage with a

[16] Art 5 (1), first line.

[17] This paragraph aims to extend the provisions of Article 1 of the 1957 Convention on the Nationality of the Married Women (New York, February 20, 1957) to both of spouses to make equality the rule between men and women. the Explanatory Report (ETS 166) on Article 4(d) *available at* <<http://conventions.coe. int>>, 14.5.2004. Pursuant to Article 1 of the Convention "Each contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife. Turkey is not a party to the Convention (status as of February 5, 2002). See the text of the Convention *available at* <<http://www.unhchr.ch/ html/menu3/b/78.htm>>, 30.1.2004.

Turkish national TVK Article 5 then recognizes an automatic effect to the marriage in regard to the acquisition of Turkish nationality.

In the original form of TVK Article 5, automatic acquisition of Turkish nationality by way of marrying a Turkish man was considered an easy legal tool, albeit compulsory, to avoid statelessness in respect to the alien women. There were two groups of alien women who were eligible for automatic acquisition without being subject to any further requirement. These were the already mentioned stateless women, and those alien women who lost their previous nationality upon marrying a Turkish man. The amendment extinguished this easy and compulsory acquisition of Turkish nationality for the already stateless women. Today, the already stateless wives must also satisfy the statutory requirements wherein the alien wives who lost their previous nationality through marriage are still eligible for the automatic acquisition of Turkish nationality. Similarly, since the acquisition of Turkish nationality by way of marriage is extended to the alien husband, the amended Article 5 also covers them. Accordingly, the already stateless husband of a Turkish woman is not eligible for automatic acquisition whereas the alien man who has lost his previous nationality upon marriage to a Turkish woman is eligible.[18]

The exception as to the category of already stateless spouse exists both in the general reasoning of the amendment, in the Government's proposal and in the Report of the Commission established by the Ministry of Interior.[19] It seems that the exception as to the category of already stateless spouse was deleted before the enactment of the amendment.

In this context it should be noted that avoiding *(de iure)* statelessness and right to a nationality[20] have been stated as vital and contemporary principles of

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[18] The equality of man and woman in respect of acquisition of nationality by way of marriage is also provided in Article 7 of the Nationality Act of the Turkish Republic of Northern Cyprus (hereafter cited as KKTCVK) even before the amendment made in TVK Article 5. Pursuant to Article 7(2) of the said Act the alien husband with or without a nationality is eligible to the nationality of Turkish Republic of Northern Cyprus. Nevertheless, the alien husband with a nationality is considered eligible if he has been married minimum a year and has been living together with his wife. In the latter case, he is also exempted from the requirement of residence. Conversely, the already stateless spouse (husband or wife) and the alien spouse (husband or wife) who has lost his previous nationality upon marrying a KKTC wife are subject to automatic acquisition (Art 7(3)). For a detailed analysis on the issue see, Turgut TURHAN, **Kuzey Kıbrıs Türk Cumhuriyeti Yurttaşlık Hukuku,** Turhan Kitabevi, Ankara, 2002, p. 42 et seq.; Turgut TURHAN, "Kuzey Kıbrıs Türk Cumhuriyeti Yurttaşlık Yasasında Evlenmenin Vatandaşlığa Etkisi ve Kadın", **Kadın/Woman,** Vol. 1, No. 1, 2000, pp. 37-60, at p. 37 et seq.

[19] See the general reasoning of the amendment in note 9.

[20] For a comment on the right to nationality see, Johannes M. M. CHAN, "The Right To A Nationality As A Human Right, The Current Trend Towards Recognition", **Human Rights Law Journal,** Vol. 12, No. 1-2, 1991, pp. 1-14, at p. 1 et seq.

the law of nationality in the Convention on Nationality.[21] Today, avoiding statelessness has become part of the customary international law[22] and necessarily invites the right to have a nationality. Hence, the right to a nationality has been interpreted by the foreign doctrine as a positive formulation of the duty to avoid statelessness.[23] However, Article 4(d) of the Convention constitutes a barrier to the automatic avoidance of statelessness by way of marriage. In this respect, omitting stateless spouses in TVK Article 5(2) does not conflict with, but is consistent with, the Convention.[24] Conversely, the exception in Article 5(2), which is explained below, may be in that respect inconsistent with the prohibition of the automatic acquisition in Article 4(d) of the Convention. Thus, there seems no good reason for a wider construction reinserting the stateless persons into the scope of Article 5(2).

2. Exception: "The Alien Spouse Who Lost Their Previous Nationality Upon Marriage"

In TVK Article 5(2), the alien wife or husband who has lost their previous foreign nationality upon marriage to a Turkish national has been treated as a separate category. Thus, an exception is provided to the "no automatic acquisition" principle. If the national law of the alien spouse causes that spouse to lose his or her nationality upon the marriage to an alien (Turkish national), TVK Article 5 then automatically imposes Turkish nationality on the alien spouse. In such cases the alien spouse need not express his or her intent nor satisfy the statutory requirements provided in TVK Article 5(1).

Even if the alien spouse does not wish to acquire Turkish nationality, the Turkish nationality is *ex lege* forced upon that spouse. The maxim aiming to reduce statelessness that "*Everyone should have a nationality*"[25] is one of the general principles of nationality law considered in Turkish Nationality Law as a justification of this outcome. It is based on the legal reasoning that in international law nationality is considered to be a human right, whereas remaining stateless is not. From this viewpoint, the attempts of sovereign states

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[21] Art 4(a) and (b).

[22] Article 4(b) of the Explanatory Report of the European Convention on Nationality in note 14.

[23] For this view see, Kay HAILBRONNER, "Nationality", Paper submitted to the Conference on International Legal Norms and Migration, Geneva, May 23-25, 2002, pp. 1-15, at p.2 *available at* <<http://heiwww.unige. ch/conf/psio_230502/files/ hailbronner.pdf>>, 30.1.2004.

[24] It should be noted, however, that the Convention puts the contracting states under the duty of simplifying naturalization for stateless persons, and for refugees who have been lawfully resident in the country (Art 6(4)(g)).

[25] See the Universal Declaration of Human Rights 1948 (Art 15), adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, U.N. Doc A/810, *available at* <<http://www.un.org/Overview/ rights.html>>, 30.1.2004.

to reduce statelessness may not be seen as the infringement of International Law.[26] In fact, Article 4(b) of the Convention on Nationality provides that the rules on nationality of each party shall, besides other principles cited in Article 4, be based on the principle that "statelessness shall be avoided". Furthermore, Article 6(4)(g) of the Convention states that each State Party has to facilitate in its internal law the acquisition of its nationality for stateless persons. On the other hand, however, the Convention in Article 4(d) expressly provides that the marriage between a national of a State Party and an alien shall not automatically affect the nationality of the other spouse. Hence, it can be concluded that, at least, within the limits of the Convention, "marriage" is no more considered as an automatic tool for avoidance of *de iure* statelessness created on any ground. To be more precise, *de iure* statelessness should not be avoided by way of marriage through automatic acquisition. Rather, the Convention treats marriage as a basis only to facilitate the acquisition of nationality for an alien spouse.[27] Thus, the exception in TVK Article 5(2) seems inconsistent with Article 4(d) of the Convention.

D. Conservation of the Previous Nationality

The alien spouse with a nationality is also eligible for Turkish nationality. However, Turkish nationality is not ex lege forced upon that spouse. The alien spouse with a nationality wishing to acquire Turkish nationality should make an application. Moreover, the statutory requirements provided in TVK Article 5(1) must be satisfied.

On order to acquire Turkish nationality, the alien wife or husband with a nationality is not required to relinquish their current nationality. Turkish Nationality Law recognizes multiple or dual nationality acquired by way of marriage. This is particularly important in respect of the de facto stateless persons who cannot relinquish their nationality. In this respect, TVK Article 5 conforms with Article 16 of the Convention on Nationality stating, "A State party shall not make (...) the loss of another nationality a condition for the acquisition (...) of its nationality where such (...) loss is not possible or cannot reasonably be required.

II. REQUIREMENTS OF THE ACQUISITION BY WAY OF MARRIAGE

The requirements provided in TVK Article 5(1) are sought for any alien spouse who wishes to acquire Turkish nationality by way of marriage, with the

[26] NOMER, 2003, pp. 6-7.

[27] For the similar comment see, WALMSLEY, (1999), p. 66.

exception of those whose national law causes them to lose their nationality upon marriage to an alien, i.e. in this case a Turkish national.

The requirements provided by TVK Article 5(1) are cumulative requirements. In this context,

1. the alien spouse must have been married for a minimum 3 years; and,

2. the spouses must be *de facto* living together; and,

3. the marriage should be continuing.

It seems clear that these requirements aim to grant nationality to aliens who enter into a genuine marriage. Therefore, the aim of TVK Article 5(1) seems to reduce marriages of convenience[28] for the purpose of acquiring Turkish nationality. From this viewpoint a genuine marriage can be described as having the aim of founding a family with a Turkish national. These requirements, however, can be qualified as some of the general indications of a genuine marriage. There may be other indications of a genuine marriage such as the existence of children born within that marriage. In this respect, while the legislature tries to prevent the effect of the marriages of convenience on the acquisition of Turkish nationality it has also prevented some alien spouses in genuine marriages from acquiring Turkish nationality by way of marriage. These are the cases, for example where the alien spouse married a Turkish national, had children with Turkish nationality but the marriage was terminated before the end of three years upon the death of the Turkish spouse[29] or, if the spouses cannot live together because they are obliged to work in separate cities or even countries.

Nevertheless, since no amendment was made in TVK Article 7(b) on exceptional or facilitated naturalization, provided that the marriage is continuing, the alien spouse may invoke this opportunity[30] if the first two requirements cited in Article 5(1) cannot be realized. Thus, TVK Article 7(b) may be invoked, which appears to be more difficult but may surprisingly be a more reasonable and a comparatively easier[31] way in the latter case.

To satisfy the third requirement, it seems that the marriage should be continuing both at the time of the application and on the date of the Ministry of Interior's decision determining the situation. Thus, first of all, an alien cannot rely on a previous i.e. terminated marriage to acquire Turkish nationality. Secondly, it will suffice if the marriage was not *de iure* terminated at the time

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[28] Or *sham marriages*.

[29] AYBAY, 2003, p. 99.

[30] For a similar view see NOMER, 2003, p. 65; DOĞAN, 2003, p. 79 n. 47; cf. Fügen SARGIN, "Türk Vatandaşlığı Kanunu'nda Değişiklik Yapan 2003 Tarihli ve 4866 Sayılı Kanun Kapsamında Bir Değerlendirme", **AÜHFD,** Vol. 53, No. 1, 2004, pp. 27-63 at p. 36.

[31] (...) provided that the requirements of TVK Article 5(1) are not sought in the application of TVK Article 7(b) as the additional conditions within the meaning of TVK Article 10(2).

when the decision is made. Nevertheless, the amended Article 5 may still not succeed in precluding marriages of convenience to acquire Turkish nationality. For instance, no time limit has naturally been provided in law to remain married after having acquired Turkish nationality so the spouses who have contracted a marriage of convenience may choose to initiate divorce proceedings just after the acquisition of Turkish nationality of the Article 5 spouse. Similarly, assuming that it takes a while, the spouses may apply to court following the application of the Article 5 spouse for acquisition of Turkish nationality. In the latter case, the marriage of convenience succeeds if the divorce is realized after the acquisition of Turkish nationality. So, the amended Article 5 seems inadequate to overcome such difficulties. Besides, any legal attempt to exclude the cases where there exists a pending divorce proceeding from the scope of Article 5 through the future by-law cited in Article 5(5) seems under the threat of being considered contrary both to TVK Article 5 and Article 66(3) of the 1982 Turkish Constitution.[32] Further, social considerations should not be inserted in Article 5 at the expense of infringing the Turkish Nationality Act and the Turkish Constitution. If preclusion of such outcomes is the true aim of the legislature, then the issue must be reconsidered and the requirements of TVK Article 5 must be firmly established in future amendments that will possibly be made in the Turkish Nationality Act.

On the other hand, the phrasing of the second line of Article 5(1) has been considered in the doctrine in a way that it is implicitly putting forward the existence of an additional condition that seems to be "to succeed in the inspection and investigation carried out by the Ministry of Interior."[33] Hence, acquisition of Turkish nationality by way of marriage may be precluded on the considerations within the powers[34] of the Ministry of Interior that are not made known to the public. In this context, although TVK Article 5(5) states that the basis and the procedure of the application of TVK Article 5 shall be determined in the by-law which will be issued by the Ministry of Interior,[35] it seems

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[32] Pursuant to Article 66 (3) of the Constitution "Citizenship can be acquired under the conditions stipulated by law, and shall be forfeited only in cases determined by law". For the official text of the 1982 Turkish Constitution [Türkiye Cumhuriyeti Anayasası], Law No. 2709 of October 18, 1982, R.G., November 9, 1982, No. 17863 (Reiterated). For an English translation of the 1982 Turkish Constitution the official web site of Turkish General Assembly *available at* <<http://www.tbmm.gov.tr/anayasa/constitution.htm>>, 30.1.2004.

[33] Cf. the early comment involving the draft Article 5 by Vahit DOĞAN, "Vatandaşlık Kanununun Bazı Maddelerinin Değiştirilmesine İlişkin Kanun Tasarısı Çerçevesinde Bir Değerlendirme", **GÜHFD,** Vol. 3, No. 1-2, 1999, pp. 25-45, at pp. 31-32; DOĞAN, 2003, pp. 78-79; also see the official reasoning of the amendment *in* note 9.

[34] Cf. AYBAY, 2003, pp. 96, 104.

[35] TVK Art 5(5). Article 10 of the By-Law 2004 Amending the TVK Application By-Law has recently repealed Article 8 of the TVK Application By-Law, which was related to the acquisition of Turkish nationality by way of marriage.

unlikely that it will bring any real clarity as to the application of the said hidden condition.

Ultimately, it is apparent that the legal requirements cited in the second line of Article 5(1) together with the powers of inspection and investigation of the Ministry of Interior and the determination decision in the third line of Article 5(1), considerably change the nature of acquisition of Turkish nationality by way of marriage and rather transform it into a sort of "exceptional or facilitated" naturalization.[36] Hence, apart from the exception in Article 5(2), it seems difficult to classify marriage as a way of acquisition by operation of law. Nevertheless, this outcome, other than TVK Article 5(2), is consistent with the general attitude of the Convention on Nationality.[37]

III. AUTHORITY TO BE APPLIED AND THE TIME OF ACQUISITION

As mentioned above, the alien spouse who should make an application if they wish to acquire Turkish nationality is the stateless spouse and the alien spouse with a nationality. These two categories of alien spouses wishing to acquire Turkish nationality must apply in writing to the highest administrative authority in Turkey or to the Turkish Consulates abroad.[38]

After receipt, the competent authority will transmit the application to the Ministry of Interior to be processed. It is the Ministry of Interior that makes the necessary inspections and investigations in relation to the couple. If the Ministry of Interior is content that the statutory requirements have been met and finds no security risk[39] or any other reason to turn down the application then it will make a decision determining that situation. In such cases, the date of the decision of the Ministry of Interior shall also determine the moment of the acquisition. Turkish nationality will be acquired on the date of that decision.[40]

On the other hand, since *the alien spouse to a Turkish national,* who has lost their previous nationality on the grounds of marriage, is subject to automatic acquisition, that alien spouse will acquire Turkish nationality at the time of celebration of the marriage.

Finally, since no restriction has been provided in Article 5 to the otherwise, the alien spouse of a Turkish national, who did not or could not invoke the former Article 5 can now invoke the amended Article 5. Moreover, pursuant to Article 66(3) of the Turkish Constitution, their right to make use of Article 5 cannot be precluded by any instrument other than a statute.

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[36] Cf. AYBAY, 2003, p. 96.

[37] Cf. WALMSLEY, (1999), p. 66.

[38] TVK Art 5(1), second line.

[39] For a similar comment see, DOĞAN, 2003, p. 79.

[40] TVK Art 5(1), third line.

IV. EFFECTS OF (DERIVATIVE) ACQUISITION BY WAY OF MARRIAGE

A. In General

Turkish law considers "nationality" as the legal[41] and political[42] bond between an individual and the State. Accordingly, it neither attributes any significance to the ethnic origin nor allows any discriminative approach between the national by birth and the derivative Turkish national. Thus, the alien spouse who acquires Turkish nationality by way of marriage becomes a full Turkish national. The full Turkish nationality is acquired and effective from the date of the celebration of the marriage if the marriage has caused the Article 5 spouse to lose the previous nationality. Conversely, the alien spouse with a nationality or the already stateless spouses acquire Turkish nationality on the date of the determination decision of the Ministry of Interior.

The Article 5 spouse can enjoy all the rights and must perform all the duties as other Turkish nationals. Therefore, TVK Article 5 is in accord with the *principle of non-discrimination* in Article 5(2) of the Convention on Nationality. Similarly, TVK Article 5, in respect of the status of multinational Turkish nationals is also consistent with *the principle of equal treatment* in Article 17(1) of the Convention stating, "Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party".

However, the Article 5 spouse together with the other derivative nationals has a different legal standing than that of the original Turkish nationals in respect of the time of deprivation from the Turkish nationality on the grounds cited in TVK Article 26. Accordingly, the derivative Turkish nationals may be deprived of Turkish nationality at any time, whereas original Turkish nationals can be deprived only in times of war.[43]

In principle, the Article 5 spouse retains Turkish nationality even if the marriage is terminated.[44] The sole case to the otherwise effect is the proof of bad faith of that spouse in the nullity of marriage.[45]

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[41] NOMER, 2003, p. 20; NOMER, (2000), pp. 67-68; AYBAY, 2003, p. 4; DOĞAN, 2003, p. 34.

[42] See the 1982 Turkish Constitution Art 66(1).

[43] Pursuant to TVK Article 35(4) the persons who were deprived of Turkish nationality on the grounds cited in TVK Article 26 are no longer eligible for Turkish nationality through the ways cited in the Turkish Nationality Act. These persons, whether they were original or derivative Turkish nationals, can only recover Turkish nationality through the specific statutes enacted to that effect.

[44] NOMER, 2003, p. 69.

[45] See TVK Article 5(3) at p.46 et seq.

Finally, acquisition of Turkish nationality by way of marriage, in principle, causes personal effects. Hence, the existing alien children of the Article 5 spouse, in principle, do not acquire Turkish nationality in conjunction with their relevant parent. However, subject to certain statutory requirements the existing infant children of only the Article 5 woman[46] may acquire Turkish nationality in conjunction with their mother.[47]

B. Effects on the Existing Children of the Article 5 Spouse: "Conjunctive Acquisition by Parents"

As stated above, acquisition of Turkish nationality by way of marriage, in principle, may only affect the alien spouse. In some cases, however, it may affect the infant children of the Article 5 woman as well. This was also the rule before the amendment. Since the legislature has omitted to revise Article 14 as to the effects of marriage on the nationality of the infant children, the article still only covers the infant children of the Article 5 woman. In this respect, the children of the Article 5 man[48] are currently not eligible to acquire Turkish nationality in conjunction with their father.[49]

In general, all cases of conjunctive acquisition by a parent in the Turkish Nationality Act, including Article 14, call for the essential requirement of infancy/minority. Minority is ascertained pursuant to the national law of the child by following the reference made in Article 8 of *The Act on Private International Law and Law of International Civil Procedure*.[50] If the child is stateless, then the law referred to in MÖHUK Article 4(a) should be applied successively.[51] MÖHUK Article 4(a) states that, in cases where the applicable law pursuant to this Act is determined on the basis of nationality and where otherwise are not provided in this Act, for stateless persons the law of the domicile applies. If that does not exist, then the law of the habitual residence applies. If that also does not exist, then the law of the country where the person is at the time of the case applies.

Assuming that the child is an infant pursuant to the applicable law the alternative requirements of TVK Article 14(1) should then be met. Accordingly, the infant children of the Article 5 woman acquire Turkish nationality in conjunction with their mother if,

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[46] TVK Art 14.

[47] The alien wife.

[48] The alien husband.

[49] For the view referring to TVK Article 16 see NOMER, 2003, p. 65.

[50] Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun [hereinafter MÖHUK]. For the official text of the Law No. 2675 of May 20, 1982 see, R.G., May 22, 1982, No. 17701. Pursuant to MÖHUK Article 8(1), the national law of the individual governs his capacity.

[51] Cf. TVK Art 6(a) on naturalization.

the father is dead (TVK Art 14(1)(a)); or,

the father is unknown (TVK Art 14(1)(b); or,

the father is stateless (TVK Art 14(1)(c)); or,

the child is stateless (TVK Art 14(1)(ç)), or,

the custody is vested in the mother (TVK Art 14(1)(d)).

In cases where the father is dead or the custody of the child is vested in the mother, TVK Article 14(2) seeks for an additional requirement with reference to the effects of naturalization. Pursuant to TVK Article 14(2), in cases where the father is dead or the custody is vested in the mother, the requirement in TVK Article 16 should also be met. Hence, in the application of TVK Article 14(1)(a) and (d), the national law of the child must not prevent the acquisition of Turkish nationality (TVK Art 16(2)). Pursuant to Article 22(2) of the TVK Application By-Law, which explains TVK Article 14, these children can acquire Turkish nationality provided that their national law will permit and will not prohibit the change of their nationality. Since TVK Application By-Law Article 22(2) uses the term "change of nationality", it has been accepting a narrower view that avoids dual nationality.[52] However, Article 25 of the TVK Application By-Law, which explains Article 16(2), has been providing that the national law of the child should not consist of a provision prohibiting his acquisition of Turkish nationality. So, it seems suitable supporting a wider view. In fact, it has been considered by some doctrine to the effect that the national law of the child should legally respect his acquisition of Turkish nationality[53] that may both invite single and dual nationality in this era and may be more appropriate to the needs of the mother and her infant children living together.

On the other hand, with a view towards avoiding discrimination in respect to gender[54] Article 14 will necessarily require revising as regards the infant children of an alien husband. For the purposes of being consistent with the rule in relation to the infant children of the mother, it may be suggested to adopt alike *alternative* requirements. Thus, the infant children of the Article 5 husband may be able to acquire Turkish nationality in conjunction with their father if, the mother is dead; or, the mother is stateless; or, the child is stateless; or, the custody is vested in the father.

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[52] For the doctrine supporting this view see Erdoğan GÖĞER, **Türk Tâbiiyet Hukuku,** AÜHF Yayınları, Ankara, 1972, p. 56; DOĞAN, 2003, p. 82.

[53] NOMER, 2003, p. 66.

[54] See Article 5(1) of the Convention on Nationality.

V. THE EFFECT OF TERMINATION OF THE MARRIAGE ON TURKISH NATIONALITY

A. In General

Termination of the marriage, in principle, does not affect the nationality status of the Article 5 spouse.[55] In this context, it does not cause the Article 5 spouse to automatically lose Turkish nationality. Therefore, the Turkish Nationality Act is, in principle, also in line with Article 4(d) of the Convention on Nationality expressly stating that "(...) nor the dissolution of a marriage between a national of a State Party and an alien, (...), shall automatically affect the nationality of the other spouse".

Nevertheless, as an effect of the absolute or relative nullity decrees in Turkish law, the Article 5 spouse having bad faith at the time of celebration of the marriage loses Turkish nationality upon that decree[56].

B. Nullity[57] of the Marriage

1. Law Governing the Nullity of Marriage

In Turkish Private International Law, nullity of a marriage is considered a matter related to the validity of marriage.[58] To invoke the relevant choice-of-law rule, however, the alleged ground of nullity is characterized pursuant to Turkish law. Thus, Turkish law decides if the alleged ground of nullity is an issue related to the essential validity or formal validity of marriage.[59]

In Turkish Private International Law, MÖHUK Article 12(1) governs the essential validity of marriage, i.e. the substantive requirements of a marriage (marital capacity and requirements to marry). In MÖHUK Article 12 (1), the marital capacity and requirements to marry are separately ascertained by the national law of each spouse *(dual nationality rule)* at the time of celebration of the marriage *(time factor)* whereas the formal validity of a marriage is, with the exception of Consular marriages, governed by the law of the place where the marriage is celebrated *(locus regit actum)*. It is the law of the sending state governing the formal validity of a Consular marriage.[60]

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[55] NOMER, 2003, p. 69.

[56] Cf. TVK Art 5(3). See also NOMER, 2003, p. 68; DOĞAN, 2003, p. 83.

[57] In this study the term "nullity" is employed to cover absolute and relative nullity in the sense of Turkish Civil Law.

[58] Yücel SAYMAN, **Türk Devletler Hususî Hukukunda Evlenmenin Kuruluşu**, İÜ Yayınları, İstanbul, 1982, p. 190.

[59] Ergin NOMER and Cemal ŞANLI, **Devletler Hususî Hukuku,** Beta Basım Yayım Dağıtım, İstanbul, 2003, pp. 229 and 237.

[60] See in general, NOMER and ŞANLI, 2003, pp. 241-244; Aysel ÇELİKEL, **Milletlerarası Özel Hukuk, Genel Kurallar, Milletlerarası Özel Hukuk, Milletlerarası Usul Hukuku, Genişletilmiş 6. Bası,** Beta Basım Yayım Dağıtım, İstanbul, 2000, p. 206; Gülören TEKİNALP,

Before the amendment, Turkish nationality was acquired at and effective from the time of celebration of the marriage. Hence, Turkish law as the common national law was governing the substantive requirements of a marriage. After the June 2003 amendment, Turkish law may no longer be the common national law of the spouses at the time of celebration of the marriage. In cases where the Article 5 spouse was an alien with a nationality at the time of celebration of the marriage, that spouse will not be able to acquire Turkish nationality at the time of celebration of the marriage. In such cases, the national law of the alien spouse at the time of the celebration of the marriage governs the capacity to marry and the other substantive requirements for that spouse. If the Article 5 spouse was a multi-national with foreign nationalities at the time of celebration of the marriage, then MÖHUK Article 4(c) should be invoked to find out the applicable law. It is the national law of the alien spouse with which that spouse was having a closer relation at the time of celebration of the marriage.[61] Thus, the Turkish judge shall seek to determine the effective nationality of the alien spouse. Hence, it is apparent that the Turkish law is not the common national law of these spouses at the time of celebration of the marriage.

Nevertheless, Turkish law is the common national law of the spouses at the time of celebration of the marriage if the alien spouse with a nationality has lost that nationality upon marrying the Turkish spouse so that an automatic acquisition of Turkish nationality has occurred pursuant to TVK Article 5(2).

In cases where the Article 5 spouse was already stateless at the time of celebration of the marriage, that spouse will not be able to acquire Turkish nationality at the time of celebration of the marriage. In such cases, however, the reference in MÖHUK Article 4(a) should be followed to find the applicable law on the part of the alien spouse and to see if it overlaps the Turkish law. MÖHUK Article 4(a) states that, in cases where the applicable law pursuant to this Act is determined on the basis of nationality and where otherwise are not provided in this Act, for stateless persons the law of the domicile applies. If that does not exist, then law of the habitual residence applies. If that also does not exist, then the law of the country where the person is at the time of the case applies. Accordingly, the Turkish law is not the common personal law of the spouses unless the Article 5 spouse was domiciled or habitually resident[62] in Turkey at the time of celebration of the marriage. Secondly, provided that the

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Milletlerarası Özel Hukuk - Bağlama Kuralları, Beta Basım Yayım Dağıtım, İstanbul, 2002, p. 126.

[61] Işıl ÖZKAN, **Devletler Özel Hukukunda İkametgâh, Mutad Mesken ve İşyeri Bağlama Noktalarının Yeniden Değerlendirilmesi**, Naturel Yayıncılık, Ankara, 2003, p. 99; for a detailed analysis on MÖHUK Article 4(c) see İnci ATAMAN-FİGANMEŞE, "Çifte Vatandaşlık Halinde MÖHUK'un 4. Maddesinin b ve c Bentlerinin Uygulama Alanı", **Profesör Dr. Aysel Çelikel'e Armağan, MHB,** Vol. 19-20, No. 1-2, 1999-2000, pp. 95-114, at p. 97.

[62] MÖHUK Art 4(a).

alien spouse was not domiciled or habitually resident anywhere at the time of celebration of the marriage, Turkish law will then be the common applicable law for the spouses if the Article 5 spouse was in Turkey at the time of filing of the case. Thus, the applicable law may or may not overlap the Turkish law on the part of the Article 5 spouse who was already stateless at the time of celebration of the marriage.

In cases where the Turkish law is not the common applicable law, the dual nationality rule requires the application of Turkish law to the Turkish spouse and the foreign law to the alien spouse.

In cases where the alien spouse was either already stateless or was an alien with a nationality both of the applicable laws may uphold the marriage, or either or both may consider the marriage invalid on the alleged ground(s) of nullity. Nevertheless, for a marriage to be considered invalid in substance, it suffices if it is considered invalid in terms of one of the laws. In that case, the law invalidating the marriage governs the effects of invalidity on that marriage.[63]

However, both of the laws may invalidate the marriage, nevertheless, on different legal degrees. One law may provide for the marriage void ("no marriage") whereas the other considers it voidable on the grounds of absolute or relative nullity. Turkish doctrine conflicts, in this respect, have a tendency to prefer the more stiff result.[64] However, this may give rise to legal problems as regards Turkish Nationality in cases where Turkish law provides for the marriage to be voidable whereas the law governing the essential validity of the marriage on the part of the alien spouse at the time of celebration of the marriage considers it void. In such cases, to rely on the more stiff result affects the Turkish nationality of the alien spouse with good faith, the Article 14 children and in particular the children born to that marriage through a Turkish father. With the aim of avoiding inconsistent results and to remain in line with the Turkish Nationality Act, one possible way, nevertheless peculiar to this case, may be to prefer the less stiff result where Turkish law provides for the marriage to be voidable albeit the foreign law is stiffer, i.e. void, "no marriage". Hence, the issue requires further and joint reconsideration of the Turkish Private International Law doctrine in respect to Turkish Nationality Law and Turkish Private International Law.

On the part of the Turkish law, the grounds of nullity as to substance are cited in the Turkish Civil Code.[65] In this context, an existing marriage (TMK Art 145(1)) or lack of discretion of one of the spouses at the time of celebration of the marriage (TMK Art 145(2), and Art 148), insanity (TMK Art 145(3)) or

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[63] TEKİNALP, 2002, p. 146.

[64] SAYMAN, 1982, p. 202; ÇELİKEL, 2000, p. 204; TEKİNALP, 2002, p. 146; NOMER and ŞANLI, 2003, pp. 243-244.

[65] Türk Medeni Kanunu [hereinafter TMK]. For the official text of the Law No. 4721 and dated November 22, 2001, R.G., December 8, 2001, No. 24607.

the prohibited degrees of relationship between the spouses to the extent that it prohibits marriage (TMK Art 145(4)), mistake (TMK Art 149), dishonesty (TMK Art 150), and/or duress (TMK Art 151) can all be cited in general as the grounds of nullity. Conversely, a marriage with a Turkish national with the mere purpose of acquiring Turkish nationality does not constitute a ground of nullity.[66] Similarly, remarriage before the waiting period is over for the woman does not constitute a ground of nullity (TMK Art 154).

In cases where Turkish law characterizes the alleged ground(s) of nullity as a matter of form, then the law of the place where the marriage takes place (lex loci celebrationis), or in case of a consular marriage the law of the sending state governs the issue. In this context, if the Turkish law is the applicable law, provided that the marriage was celebrated before the competent authorities that are in charge of celebrating marriages, any inconsistency with the formal requirements of Turkish law does not constitute a ground of nullity (TMK Art 155).

Finally, it should be added that, in Turkish Law a marriage is annulled by a court decree and upon the existence of the grounds of absolute or relative nullity in the Turkish Civil Code. Thus, the marriage produces the effects of a valid marriage until the decree of nullity is granted (TMK Art 156).[67] In the case of annulment of the marriage, the spouse having good faith at the time of celebration of the marriage retains the personal status acquired by way of marriage (TMK Art 158(1)).[68] In any case, the children born to that marriage are considered as having been born in wedlock even if their parents did not have good faith (TMK Art 157(1))[69].

2. Effects of the Nullity Decree on Turkish Nationality

a. Effects on the Article 5 Spouse

Pursuant to Article 5(3), "In case the marriage is annulled by a nullity decree, those who have acquired Turkish nationality by way of marriage retain Turkish nationality if they were acting in good faith in the contract". Thus, the spouse who contracted the marriage in good faith retains Turkish nationality. Since Article 5(3) refers to the "contract" the requirement of good faith seems to be ascertained by reference to the time of celebration of the marriage. Acting

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[66] NOMER, 2003, p.67; AYBAY, 2003, pp. 102-103. For comments on the former Article 5 see, Osman Fazıl BERKİ, "Türk Hukukunda Evlenmenin Tâbiiyete Tesiri", **Profesör Dr. H.C. Oğuzoğlu'na Armağan**, AÜHF Yayınları, Ankara, 1972, pp. 89-100, at pp. 97-98; Rona AYBAY, **Kadının Uyrukluğu Üzerinde Evlenmenin Etkisi,** SBF Yayınları, Ankara, 1980, pp. 110-111.

[67] Turgut AKINTÜRK, **Türk Medenî Hukuku, Yeni Medenî Kanuna Uyarlanmış Aile Hukuku,** Yenilenmiş Yedinci Bası, Vol. 2, Beta Basım A.Ş., İstanbul, 2002, p. 198.

[68] AKINTÜRK, 2002, p. 222.

[69] AKINTÜRK, 2002, p. 224.

in good faith at the time of celebration of the marriage amounts to that, the alien spouse should not have known[70] or ought not to have known[71] the grounds of nullity. To this effect, for instance, the alien spouse should have no knowledge that the other spouse is already married[72]. On the other hand, since in Turkish law it is not currently considered a ground of nullity,[73] the marriage celebrated with the mere purpose of acquiring Turkish nationality rather than founding a family (i.e. *marriages of convenience)* does not on its own harm the good faith of the Article 5 spouse. Accordingly, the Article 5 spouse retains Turkish nationality. Conversely, the Article 5 spouse who has entered into a marriage knowing the ground(s) of nullity loses Turkish nationality on the date of the nullity decree[74].

b. Effect on Children of the Article 5 Spouse

The effects of a nullity decree on the children of the Article 5 spouse may be discussed in respect to two categories of children. The first category is children born within the annulled marriage, whereas the second category consists of children who have acquired Turkish nationality in conjunction with the Article 5 spouse.

Within this sphere, the effect of the nullity decree on the Turkish nationality of the children born within that marriage is clearly settled by the Turkish Nationality Act. These are the children who have acquired Turkish nationality *ex lege* by descent *(ius sanguinis)* pursuant to Article 1 of the TVK[75]. In fact, pursuant to Article 5(4), children who were born within an annulled marriage retain Turkish nationality despite the bad faith of their parents. Thus, the bad faith of the Article 5 spouse, i.e. *a priori* knowledge of the grounds of nullity,[76] that resulted in the loss of Turkish nationality does not affect the nationality status of the children born to that marriage.

The effect of the nullity decree on the Turkish nationality of children who have acquired Turkish nationality in conjunction with the Article 5 spouse that has lost Turkish nationality upon the proof of bad faith is not considered in Article 5. The amendment has also omitted this case. Since TVK Article 14 only covers the effect of marriage on the acquisition of Turkish nationality of

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[70] NOMER, 2003, p. 68; DOĞAN, 2003, p. 83.

[71] AKINTÜRK, 2002, p. 222.

[72] TMK Art 145(1). For a comment on the previous law see Şakir BERKİ, "Türk Medenî Kanununda Evlenmenin Evli Kadınla İlgili Neticeleri", **Profesör Dr. H.C. Oğuzoğlu'na Armağan,** Ankara, 1972, pp. 101- 118, at p. 117-118.

[73] NOMER, 2003, p. 67; AYBAY, 2003, pp. 102-103.

[74] NOMER, 2003, p. 68; DOĞAN, 2003, p. 83.

[75] For the acquisition of Turkish nationality by way of descent (ius sanguinis) see NOMER, 2003, p. 53 et seq.; AYBAY, 2003, pp. 69-71; DOĞAN, 2003, pp. 50-53.

[76] NOMER, 2003, p. 68.

the children of the Article 5 woman, the children in the second category seem limited with those who have acquired Turkish nationality in conjunction with the Article 5 woman. The children of the Article 5 woman, whether infant or not at the time of the nullity decree, also retain their Turkish nationality. This is the legal consequence of Article 66(3) of the 1982 Turkish Constitution stating to the effect that Turkish nationality is acquired and is lost only on the grounds cited in the statutes.[77] Therefore, as long as no statutory rule exists providing for their loss of Turkish nationality these children retain Turkish nationality, whether infant or not at the time of annulment of the marriage. Currently, no statute, including the Turkish Nationality Act, contains such a specific provision. Thus, owing to the overriding ruling of the 1982 Turkish Constitution Article 66(3) and the lack of any specific statutory rule to the otherwise, children who have acquired Turkish nationality in conjunction with the Article 5 woman will retain Turkish nationality.

However, this result, which is considered suitable in respect to those children who have attained their age of majority, has been considered unsatisfactory by the doctrine in respect to the infant children at the time of annulment of the marriage. In fact, in the doctrine, these children's loss of Turkish nationality has been considered logical and consistent with the rule on the collective effects of loss of Turkish nationality of the Article 28 woman by way of right of option in Article 37(1).[78]

CONCLUSION

TVK Article 5 was amended in June 2003 with the aim of bringing the Turkish Nationality Act into line with the Convention on Nationality. The amendment extended the scope of Article 5 to alien husbands, but also made the acquisition, in principle, subject to certain requirements to prevent marriages of convenience and to preserve the respect for Turkish nationality. Although, in principle, the automatic acquisition of Turkish nationality by way of marriage no longer remains, an exception has been provided in favor of the alien wife or the alien husband who have lost their previous nationality due to the marriage to a Turkish national. The exception, however, seems contrary to the general principles cited in the Convention.[79] Conversely, despite the fact that the status of the stateless spouse in TVK Article 5 may seem somewhat absurd and may attract criticism in relation to the Turkish Nationality Law, it is, albeit

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[77] Accordingly, it is possible to comment that analogy is not permitted in Turkish Nationality Law as to the grounds of acquisition and loss of Turkish nationality. See also Bilgin TİRYAKİOĞLU, **Milletlerarası Özel Hukukta Çocuklara İlişkin Kurallar,** Bilim Serisi, Ankara, 1991, p. 92.

[78] Nihal ULUOCAK, **Vatandaşlık Hukuku, Karşılaştırmalı-Uygulamalı**, Gözden Geçirilmiş Yeni Bası, Filiz Kitabevi, İstanbul, 1989, p. 45; NOMER, 2003, pp. 68-69.

[79] See Art 4(d) of the Convention on Nationality.

surprisingly, in line with the legal attitude of the Council of Europe Convention on Nationality.

On the other hand, the legislature seems to have omitted to extend the scope of TVK Article 14 to the children of the Article 5 man. Hence, currently the marriage seems to produce a collective effect in respect to the acquisition of Turkish nationality only on the existing infant children of the Article 5 woman, which may be considered inconsistent with Article 5 of the Convention, i.e. the principle of non-discrimination.

Finally, in annulment of a marriage, the infant children who have acquired Turkish nationality in conjunction with the Article 5 spouse[80] constitute another issue of revision that begs to be statutorily settled, nevertheless logically and consistently with the general attitude of the Turkish Nationality Act.

[80] Currently, only in conjunction with the Article 5 woman.