BULLETIN

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HOW TO MAKE A TESTAMENT (WILL)?

1. What is a testament?

A testament is a written document or a verbal statement that regulates the wishes of the person who leaves an inheritance and the distribution of his/her inheritance after his/her death.

In this context, the provisions regarding wills are regulated in the Turkish Civil Code No. 4721 (hereinafter referred to as the **"TCC" or "The Law"**).

The testament, which is issued in official, handwritten or verbal form, is regulated by law with strict formal requirements (mandatory conditions specified in the law) due to the fact that the person disposes after his/her death. It is possible that the absence of the formal requirements in the law, the lack of the power of discernment or the presence of issues that cannot be regulated in the testament unlawfully may cause the will to be invalid. For this reason, compliance with the formal requirements for the testament and the matters specified in the law is necessary for the validity of the testament.

2. What are the issues that can be regulated in the testament?

The law specifies the issues that can be made in the testament. According to this, the testator can make the following:

- Appoint inheritors,
- Bequeath a specific property to one of his/her heirs or to a third party,
- Bequeath to establish a foundation with the inherited property,
- Regulate the principles regarding the division of inheritance,
- Determine the conditions and obligations regarding inheritance,
- Appoint substitute heirs or successor heirs.

In this context, except for the cases listed in the Law, it is not possible for the testator to issue a will in a way that violates the rights of the heirs with reserved shares. The reserved share is regulated to protect the inheritance rights of the heir's descendants, parents and living spouse.

3. What are the types and conditions of a testament?

3.1. The official testament is drawn up by an authorized official in the presence of two witnesses (Art. 532-537 TCC). The official officer mentioned in the Law may be some judges, a notary or someone authorized by law.

During the preparation of the official testament, the testator notifies his/her wishes to the official, and the official writes or dictates the testament and gives it to the testator to read. The testator signs the will he/she has read, and then the official signs and dates it.

In this context, the witnesses do not need to know the content of the testament, he/she only declares to the two witnesses in front of the officer that he/she has read the will and that it contains his/her last wishes. In the continuation of the procedure, the witnesses write or dictate on the testament that this declaration of the testator was made in front of them and that they deem the testator competent to make a will and sign under it.

If the testator is unable to read or sign the will himself/herself, the official reads the will to him/her in front of two witnesses, whereupon the testator declares that the will contains his/her last wishes.

The Law also stipulates that certain persons may not participate in the preparation of a testament (Art. 536 of the TCC). Accordingly, the following persons cannot participate in this procedure as officials or witnesses:

- Those who do not have the capacity to act,
- Banned from public service,
- The illiterate,
- The spouse, next of consanguinity and descendants, siblings and their spouses of the inheritor.

3.2. **A handwritten testament** shall be written in the testator's handwriting, including the date and signature (Art. 538 TCC).

In this context, as clearly stated in the Law, the entire text must be handwritten and must not be issued as a computer printout or written by someone else.

The date in the handwritten will is important for the determination of mental health and capacity to distinguish. Otherwise, the issues regarding the testator not having the power of discernment may be the subject of dispute.

In terms of signature, the signature must be the wet signature of the heir, and other issues such as fingerprints, seals, electronic signatures are not sufficient for a written will.

In this context, if the signature in the will is not handwritten, there is no date of issue or the text is written by someone else, the will may be invalid.

3.3. **A verbal testamen**t is formed only in extraordinary cases when the testator explains his/her last wishes to two witnesses and the witnesses write them down and sign them (Art. 539-541 TCC)

In this context, in order for a verbal testament to be issued, an extraordinary situation must exist and other types of testaments should not be possible to be issued. These extraordinary circumstances are not limited in the Law (there may be different circumstances depending on the necessity of the situation), **such as imminent danger of death, interruption of transportation, illness, war, etc. are listed as examples.**

In order to document the verbal testament as valid, the Law has adopted two different methods. In this context, one of the witnesses immediately writes down the last wishes declared by the testator, indicating the place and date, signs it and has the other witness sign it. With the written document, the two witnesses go to the court and declare that the testator made these statements within the scope of the extraordinary situation and that the testator is competent to make a testament.

The other method for the verbal testament to be valid is for the witnesses to apply to the court without delay and have

the last wishes of the testator recorded .

It is important to note that an verbal testament will be invalid if one month has elapsed since the person in whose name the verbal testament has been made is alive and the possibility of making a testament in other ways has arisen.

The Law also **regulates that certain persons may exceptionally replace the judge in the approval of the verbal testament by the judge according to the necessity of the extraordinary situation (Article 540 of the TCC). In this context, if the testator is one of them, the following may act as a judge:**

- If he/she is in military service, a lieutenant or an officer with a higher rank,
- In the case of a means of transportation traveling outside the borders of the country, the responsible manager of the vehicle,
- In the case of treatment in health institutions, the most authorized manager of the health institution may act as a judge..

4. How can a testament be annulled?

The grounds for annulment of a testament are regulated in a limited manner under Article 557 of the TCC. In this context, the situations where an annulment action may be filed are as follows:

- If the testator does not have the power of discernment when drawing up the testament or if he/she is under the age of fifteen, **due to incompetence,**
- Drafting a will as a result of mistake, deception, intimidation or coercion of the testator and **due to will infirmity,**
- The content of the testament or the conditions and obligations attached to it are contrary **to law and morality,**
- If the formal requirements of the testament stipulated in the law and mentioned in this article are complied with, **a case for annulment of the will can be filed due to the absence of formal requirements.**

It should be noted that, regardless of whether the testament obtained after the death of the heir is valid or not, it is opened, read and notified to the relevant persons within one month from the delivery of the testament to the court in the last settlement of the inheritor as soon as possible.

In this context, after the finalization of the reading decision of the court, the case for the annulment of the will must be filed within the one-year prescriptive period.

In terms of the period within which the annulment action must be filed, the Law stipulates that the right to file a case will be lost at the end of the ten-year period against bona fide persons and at the end of the twenty-year period against malicious persons from the opening of the testament.

Although the time limit for the annulment of the testament is foreseen, it is not possible for the right holders to exercise their rights before the testament is opened and read. For this reason, since the condition of learning the testament will not be realized, it cannot be said that these periods have started.

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