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Article

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Reception and development of the Swiss Civil Code in Türkiye: where do we stand in Turkish Family Law after 100 years?

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Abstract

This article explores the century-long path of the reception and adaptation of the Swiss Civil Code in Türkiye through the lens of family law, tracing its evolution from the late Ottoman modernization efforts to the legislative overhaul of the 2002 Turkish Civil Code. Adopted by Türkiye in 1926, the Swiss model provided a modern, accessible legal framework designed to unify a legally and religiously pluralistic society. Over the past century, the implementation of this legal transplant has faced tensions between progressive statutory ideals and conservative social realities, notably regarding compulsory civil marriage and the legal status of children born out of wedlock. The 2002 tCC institutionalized formal gender equality, abolished the patriarchal 'head of the family' model, and established a default matrimonial regime of participation in acquired property, largely mirroring earlier Swiss reforms. However, the article highlights significant areas where the two systems have drifted apart due to deliberate policy choices or legislative inertia in Türkiye. These include the retention of fault-based divorce, a 300-day waiting period for women to remarry, lower minimum marriage ages, and restrictive frameworks for legal gender recognition and adult protection. Ultimately, the study underscores that while the tCC remains firmly rooted in its Swiss foundations, its ongoing evolution reflects a continuous socio-political struggle to balance secular modernization with traditional Turkish family values.

Keywords Legal Transplants, Turkish Civil Code, Swiss Civil Code, Legal History, Secularization, Gender Equality

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Introduction

The reception of the Swiss Civil Code by Türkiye in 1926, as part of a broader process of legal transformation that had begun in the late Ottoman period and continued after the establishment of the Turkish Republic, constitutes one of the most significant examples of legal transplantation in modern private law. With the adoption of the Swiss Civil Code, the new Republic established a unified and secular system of civil law, departing from the legal pluralism that had characterized the Ottoman Empire. This transformation was particularly profound in family law, where the influence of religious law and the coexistence of different legal regimes had historically been most pronounced.

Yet, the reception of the Swiss Civil Code should not be understood as a discrete historical event completed in 1926. Over the past 100 years, Swiss civil law has continued to exert a significant influence on the development of Turkish civil law, both in the interpretation of the Turkish Civil Code and in its adaptation to changing social conditions. During the same period, Swiss civil law itself underwent substantial reforms. Some of these reforms were subsequently incorporated into Turkish law, while others were not, whether as a result of deliberate legislative choices or legislative inertia. The relationship between the two legal systems has thus remained dynamic, with Turkish civil law retaining its Swiss foundations while increasingly following its own path.

Against this background, this Article traces the century-long development of Turkish family law from the late Ottoman modernization efforts and the reception of the Swiss Civil Code in 1926 to the adoption of the 2002 Turkish Civil Code and its subsequent development. It first examines the historical circumstances of the reception, the challenges encountered in applying the 1926 Code, and the reform efforts that followed. It then considers the extent to which the 2002 Code represents continuity with, or departure from, the Swiss model, focusing on major reforms concerning spousal equality, the protection of vulnerable family members, parentage and adoption, as well as the increasingly important role of the Turkish Constitutional Court in the development of family law. Finally, it examines areas in which the two systems have followed different paths, including marriage requirements, legal gender recognition, women's waiting period for remarriage, fault-based divorce and adult protection. Through this comparative and historical perspective, the article seeks to demonstrate how a received legal model may retain its foundational significance while acquiring distinct characteristics through a century of legislative, judicial and social development.

Reception history of Türkiye: from the Ottoman Empire to the Turkish Republic

The beginning of Türkiye's reception history is often equated with the founding of the Turkish Republic in 1923 and perceived as a unique reform project of Mustafa Kemal Atatürk (1881–1938). While this is partly true, it does not entirely reflect Türkiye's legal history. The history of legal reception, and thus the 'Europeanization' of Turkish law, actually dates back to the second half of the nineteenth century.[1] The ideas of the

[1] Charles J. Hamson, 'The Istanbul Conference of 1955' (1956) 5 *International and Comparative Law Quarterly* 26–39, 29f. See also Karl H. Neumayer and Peter Dopffel, 'Ein Jahrhundert türkischer Rezeptionsgeschichte, Versuch einer Würdigung' (1956) 5 *Annales* 53–62, 56.

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Enlightenment and the French Revolution reached the Ottoman Empire with some delay but profoundly influenced its nineteenth-century reform movements.[2] During this period, fundamental freedoms were gradually recognized,[3] and codification came to be viewed as a means of establishing an objective, rational, and just legal order.[4]

Originally, the legal order of the Ottoman Empire was grounded in Islamic law, conceived as a religious doctrine of duties derived from divine revelation and elaborated by religious scholars, with compliance overseen by Sharia courts. In matters of personal status, family law, and inheritance, non-Muslim subjects were governed by the laws and jurisdiction of their own religious authorities and consular courts, while remaining subject to Sharia law in all other respects.[5]

The Ottoman legal system was thus characterized by legal pluralism, combining religious and secular laws and courts.[6] Nineteenth-century reforms, heavily influenced by French law,[7] introduced codes based on the French commercial, civil procedure, penal, and criminal procedure codes, while the 1876 Constitution drew on the Belgian and Prussian constitutions.[8] Although at that time the adoption of the French Civil Code was seriously considered,[9] conservative opposition prevailed, leading instead to the codification of parts

[2] Cf. Bülent Tanör, *Osmanlı-Türk Anayasal Gelişmeleri [Ottoman-Turkish Constitutional Developments]* (Istanbul: Yapı Kredi Press, 2026) 25, 35f; Bernard Lewis, *The Emergence of Modern Turkey* (Oxford: Oxford University Press, 2002) p. 129ff; Şerif Mardin, 'The Influence of the French Revolution on the Ottoman Empire' (1989) 41 *International Social Science Journal* 17–31. See also Şebnem Akipek Öcal and Ahmet Arslan, 'Overcoming the Non-Acceptance of Civil Marriages in Türkiye – The Biggest Problem of the Legal Reception of the Swiss Civil Code' (2024) 32 *European Review of Private Law* 897–924, 900; Başak Baysal and Gizem Arslan, 'The making of the Turkish Civil Code', in M. Graziadei and L. Zhang (eds.), *The Making of Civil Codes – A Twenty-First Century Perspective* (Singapore: Springer Nature, 2023) pp. 51–63, 52.

[3] The first phase of the reforms (Tanzimat = Restructuring) lasted from 1839 to 1876. Through two imperial decrees (the Gülhane Edict of 1839 and the Reform Edict of 1856), the Sultan committed himself in particular to respecting fundamental rights such as the right to life, liberty, and property, as well as important principles of criminal law such as *nulla poena sine lege* and *nullum crimen sine lege*. He also undertook to guarantee equality between Muslim and non-Muslim citizens. With the first constitution of 1876 (*Kanun-u Esasi*), the Ottoman Empire was transformed into a constitutional monarchy (*Meşrutiyet*), although this proved to be short-lived. In 1878, Sultan Abdülhamid dissolved the parliament, and until its reopening in 1908, the constitution was effectively suspended. The period of absolutism was followed by the second era of constitutional monarchy beginning in 1908, which ultimately came to an end with the collapse of the Ottoman Empire. Regarding these reforms, see Ahmet Mumcu, 'Siebzig Jahre westliches Recht in der türkischen Republik, Eine rechtshistorische und aktuelle Bilanz', in Heinrich Scholler and Silvia Tellenbach (eds.), *Westliches Recht in der Republik Türkei 70 Jahre nach der Gründung* (Baden-Baden: Nomos, 1996) pp. 17–50, 34ff; Lewis (n 2) 109 f, 118 f, 160 ff.

[4] See Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998) 160ff; Tanör (n 2), 98.

[5] Erich Pritsch, 'Das schweizerische Zivilgesetzbuch in der Türkei, Seine Rezeption und die Frage seiner Bewährung' (1957) 59 *ZvglRWiss* 123–180, 135.

[6] Ibid 136.

[7] See Hıfzı Veldet Velidedeoğlu, 'De certains problèmes provenant de la réception du code civil suisse en Turquie' (1956) 5 *Annales* 99–123, 103ff; Çoşkun Üçok, Ahmet Mumcu and Gülnihal Bozkurt, *Türk Hukuk Tarihi* [*Turkish Legal History*] (Ankara: Yetkin, 2025) pp. 319–329.

[8] Georges Sauser-Hall, *La réception des droits européens en Turquie* (Geneva: Recueil de Travaux de la faculté de droit de Genève, 1938) pp. 325–360, 335ff; Yeşim M. Atamer, 'Rezeption und Weiterentwicklung des Schweizerischen Zivilgesetzbuches in der Türkei' (2008) 72 *RabelsZ* 723–754, 725.

[9] Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi, Osmanlı Devletinden Türkiye Cumhuriyetine Resepsiyon Süreci 1839–1939* [*Reception of Western Law in Türkiye: The Reception Process from the Ottoman Empire to the Republic of Türkiye (1839–1939)*] (Ankara: Türk Tarih Kurumu, 1996) p. 159ff; Velidedeoğlu (n 7) 105ff.

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of Hanafi Islamic law in the *Mecelle-i Ahkam-ı Adliye* between 1869 and 1876, which was intended to preserve rather than westernize Islamic law.

At the beginning of the twentieth century, debates resumed on secularizing family law, which had not been regulated by the *Mecelle*.[10] A preparatory commission examined various legal models before the promulgation of the 1917 Family Law Decree (*Hukuk-ı Aile Kararnâmesi*), which represented a significant secularizing step – for the first time bringing all Ottoman subjects under a single, state-issued family law framework – while still preserving separate substantive rules for Muslims, Christians, and Jews within that framework.[11] Though short-lived and later regarded as a failure, the decree introduced genuinely progressive reforms, notably restricting polygamy and granting Muslim women the right to divorce.[12]

Following the Ottoman Empire's defeat in the First World War, the Turkish War of Independence under Mustafa Kemal culminated in the Treaty of Lausanne and the proclamation of the Republic of Turkey (today Türkiye) in 1923. Until Atatürk's death in 1938, the Republic pursued far-reaching legal and social reforms that fundamentally transformed personal status, family, and inheritance law as part of its broader programme of modernization and secularization.[13] To this end, preparations for a new civil code regulating personal status and family law equally for all Turkish citizens, regardless of religion, began in 1923. However, both the original commission and its 1924 successor were dissolved after their drafts were deemed overly influenced by Islamic law.[14]

[10] Cf. on the publications of Ziya Gökalp, a prominent political thinker and one of the pioneers of sociology in the late Ottoman Empire who played an important role in debates on family law reform by challenging the exclusively religious foundations of family law and advocating its reform in accordance with changing social conditions, see, Bozkurt (n 9) 166f. See also Umut Özsu, 'Receiving the Swiss Civil Code: Translating Authority in Early Republican Turkey' (2010) 6 *International Journal of Law in Context* 63–89, 66ff.

[11] A significant impetus for the adoption of the Hukuk-ı Aile Kararnâmesi was the unilateral abolition of the Capitulations by the Ottoman government in 1914 and the associated effort to eliminate legal extraterritoriality within the Ottoman Empire. The Capitulations, originally granted by the Ottoman sultans as privileges to certain foreign powers, afforded their nationals various exemptions from Ottoman law and jurisdiction. In particular, foreign nationals could, in a range of matters, be subject to the jurisdiction of their own consular courts rather than that of Ottoman courts. As these privileges expanded over time, the resulting jurisdictional fragmentation increasingly constrained Ottoman legal sovereignty and strengthened the perceived need for a more centralized and uniform legal system. See in detail Kate Dannies and Stefan Hock, 'A Prolonged Abrogation? The Capitulations, the 1917 Law of Family Rights, and the Ottoman Quest for Sovereignty during World War 1' (2020) 52 *International Journal of Middle East Studies* 245–260.

[12] Berkes (n 4) 418; Dannies and Hock (n 11) 247ff.

[13] According to Art. 42 of the Treaty of Lausanne of 24 July 1923 (between the British Empire, France, Italy, Japan, Greece, Romania, the Serb-Croat-Slovene State and Turkey, League of Nations Treaty Series [L.N.T.S.] 28, 12). Turkey had agreed, following the abolition of the capitulations and consular jurisdiction, to regulate matters of personal status and family law in a way that also respected the customs of non-Muslim minorities. See Sauser-Hall (n 8) 341ff; Gülnihal Bozkurt, *Azınlık İmtiyazları, Kapitülasyonlardan Tek Hukuk Sistemine Geçiş* [*Minority Privileges: From the Capitulations to a Unified Legal System*] (Ankara: Atatürk Araştırma Merkezi, 1998) p. 44ff; Özsu (n 10) 76ff. The introduction of a uniform civil code also superseded the system of religiously differentiated personal status law that had been preserved under the Treaty of Lausanne once the minority communities renounced the corresponding treaty rights, cf. Atamer (n 8) 729 fn. 28.

[14] For detailed information, see Hıfzı Veldet Velidedeoğlu, *Türk Medeni Hukuku I: Umumi Esaslar* [*Turkish Civil Law I: General Principles*] (Istanbul: Istanbul Üniversitesi Yayınları, 1959) pp. 70–79. See also Mahmut Esat Bozkurt, 'Türk Medeni Kanunu Nasıl Hazırlandı? [How was the Civil Code Prepared?]', in *Medeni Kanunun XV. Yıl Dönümü İçin* (Istanbul: Kenan Matbaası, 1944) p. 7, 11.

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Within only 3 years following the proclamation of the Republic, a broad legal reception process was completed, showing the determination of the revolutionary leadership.[15] The reception of modern European law in Türkiye was based on a series of legislative translations and adaptations. In 1926, the Swiss Civil Code (sCC) was enacted in its entirety, together with the first two sections of the Swiss Code of Obligations (sCO).[16] This was followed by the adoption of a Commercial Code compiled from French, Belgian, Italian, and German sources, as well as the Italian Criminal Code. In the following years, additional legislation was received: the Civil Procedure Code of the Canton of Neuchâtel was enacted in 1927, while the Swiss Federal Debt Enforcement and Bankruptcy Law, German maritime law provisions, and the German Code of Criminal Procedure were adopted in 1929. Together, these laws formed the foundation of the modern Turkish legal system.[17]

Reception of the Swiss Civil Code

Why Türkiye chose to adopt the sCC rather than another codification is explained in the official statement of the Minister of Justice accompanying the 1926 Turkish Civil Code (tCC), according to which:

> The Republic made it necessary to rescue Turkish justice from this confusion, deprivation, and its highly primitive condition, and to create and codify without delay a new Turkish Civil Code corresponding to the requirements of the Revolution and modern civilisation. To this end, the Turkish Civil Code was taken and adapted from the Swiss Civil Code, which, among the civil codes of the time, was regarded as the newest, the most complete, and the most people-oriented. This task was entrusted to a special commission composed of the country's most distinguished jurists.[18]

Scholars also attribute the choice to the fact that many leading Turkish jurists, including the Minister of Justice, had studied in French-speaking Switzerland and were familiar with Swiss law.[19] Its official French text made the sCC particularly accessible to Turkish jurists familiar with French through earlier reforms.[20] Another important factor was that the sCC and the sCO were among the most modern legal codes in Europe, rivalled only by the German Civil Code. The French and Austrian codes were considered outdated,[21] while the

[15] On 5 November 1925, the second law faculty in Türkiye (after Istanbul) was established at Ankara University to ensure the training of new jurists. At the opening ceremony, Atatürk already announced the reception: 'It is a completed fact that in the Turkish Republic the old social rules as well as the old legal rules are being replaced by new ones. We are on the verge of crushing the old legal system to the ground and replacing it with a completely new one.' (reproduced in Velidedeoğlu (n 14) 80 fn. 36).

[16] The Civil Code was adopted by Parliament on 17 February 1926, and the Code of Obligations on 22 April 1926. Both laws entered into force on 4 October 1926. The translations were prepared by a 26-member commission consisting of law professors, lawyers, judges, and members of parliament (Velidedeoğlu (n 14) 80). However, carelessness and uncoordinated work led to a large number of translation errors, which occupied the courts in the following years (see in detail Pritsch (n 5) 152ff).

[17] In detail Atamer (n 8) 730.

[18] Mahmut Esat (Bozkurt), Esbab-ı Mucibe [Statement of Purpose], 17 February 1926, TBMM Zabıt Ceridesi, İçtima Senesi III, cilt 22, devre 2, 225ff, Annex Türk Kanunu Medenisi [Turkish Civil Code] 1.

[19] Kurt Lipstein, 'The Reception of Western Law in Turkey' (1956) 5 *Annales* 11–27, 13; Ernst E. Hirsch, *Das Recht im sozialen Ordnungsgefüge, Beiträge zur Rechtssoziologie* (Berlin: Duncker&Humblot, 1966) p. 110. Likewise, Sauser-Hall (n 8) 345.

[20] Sauser-Hall (n 8) 346; Neumayer and Dopffel (n 1) 59.

[21] Bozkurt (n 14) 12; see also Neumayer and Dopffel (n 1) 59; Pritsch (n 5) 145.

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Italian Civil Code was regarded as unsuitable because of its strong Catholic influence on family law.[22] Consequently, the practical choice was between the Swiss and German Civil Codes. The choice of Swiss law was also influenced by its substantive merits. Compared with the German Civil Code, the sCC and sCO were shorter, more accessible in language and drafting style,[23] and relied extensively on general clauses, which afforded judicial flexibility and facilitated their adaptation to a different social environment.[24]

Although these explanations appear to conflict with *Koschaker's* thesis that legal reception depends on authority rather than quality,[25] the Turkish case arguably confirms it.[26] The adoption of Swiss law reflected Europe's intellectual and cultural authority, while Switzerland's neutrality and non-involvement in the Treaties of Sèvres and Lausanne made its legal system an ideal vehicle for modernization without suggesting foreign political imposition.

When the sCC was adopted in Türkiye, it was modified in several respects to accommodate local conditions.[27] Some changes reflected differences in administrative and judicial structures, such as the omission of references to Swiss cantonal regulations in favour of Türkiye's centralized system. Others embodied deliberate policy choices, including the adoption of separation of property as the default matrimonial property regime. Additional amendments responded to Türkiye's social and cultural context, for example by limiting judicial separation to 3 years and omitting the rule denying a divorce to a spouse that had consented to adultery. The legislature also lowered the age of majority, marriage, and testamentary capacity, reflecting societal conceptions of biological maturity in Türkiye. Finally, practical adjustments, such as extending deadlines for reporting births and deaths, accounted for Türkiye's size and less developed administrative infrastructure. Together, these modifications sought to adapt the Swiss model to Turkish realities while preserving its secular character.[28]

Challenges in the application of the 1926 Turkish Civil Code and reform efforts

Challenges

The sweeping legal reforms introduced in Türkiye within less than 3 years were not the result of a gradual social transformation. Consequently, despite the modifications made during reception, the 1926 tCC often reflected a level of legal development that exceeded the realities of Turkish society. Many aspects of social organization, daily life, and cultural traditions had not yet adapted to the new legal framework. Nevertheless, looking back 100 years later, the reception of Swiss law can be regarded as a success. Although

[22] Pritsch (n 5) 145.

[23] Bozkurt (n 14) 12; Pritsch (n 5) 145; Ataay (n 12) 68f; Andreas B. Schwarz, *Das schweizerische Zivilgesetzbuch in der ausländischen Rechtsentwicklung* (Zurich: Schulthess, 1950) p. 48.

[24] Velidedeoğlu (n 14) 87. See also Baysal and Arslan (n 2) 56.

[25] Paul Koschaker, *Europa und das römische Recht* (Munich, Berlin: Beck, 1947) p. 138.

[26] See Atamer (n 8) 732.

[27] A detailed overview of these modifications can be found in Pritsch (n 5) pp. 157–166; see also Lipstein Annales 5 (1956), 11 (16ff).

[28] For the issue of legal reception in Türkiye as a social process, see Ernst E. Hirsch, *Rezeption als sozialer Prozess, erläutert am Beispiel der Türkei* (Berlin: Duncker & Humblot, 1981) p. 11ff; Heinrich Scholler, 'Foreword', in Heinrich Scholler and Silvia Tellenbach (eds.), *Western Law in the Republic of Turkey Seventy Years after its Foundation* (Baden-Baden: Nomos, 1996) p. 7ff.

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implementation problems arose, they remained manageable and were gradually resolved through judicial interpretation and legislative reform.

It should first be noted that some institutions adopted from the sCC were never applied in practice in Türkiye. These included, in family law, matrimonial property agreements, family foundations and property community in families; and, in property law, the real burden, mortgage certificate and the land charge.[29] Other institutions, however, gave rise to significant practical difficulties. Foremost among these was the introduction of compulsory civil marriage.[30] Following the entry into force of the tCC, many people continued to conclude religious marriages performed by an *imam*, even though such unions lack legal validity.[31] In fact, until the Turkish Constitutional Court declared the relevant provision unconstitutional in 2015, the performance of a religious marriage ceremony prior to the conclusion of a civil marriage was criminalized under the Criminal Code as an offence against the family order.[32] However, the rule contained in Article 108 of the 1926 tCC (Article 143(2) 2002 tCC/Article 97(3) sCC), providing that 'no religious marriage ceremony may be performed unless the family certificate has been presented', remains in force, although its violation is not subject to any legal sanction.

Another major area of difficulty concerned polygamy and children born out of wedlock. In order to protect the interests of such children, the Turkish legislature enacted a series of temporary statutes (amnesty laws) on nine separate occasions.[33] These laws allowed parents living in religious marriages or polygamous unions to register their children as born in wedlock. They were particularly significant as the 1926 Civil Code prohibited the paternal recognition of children born as a result of adultery. However, these statutes did not legalize polygamy, since second and subsequent marriages remained legally invalid.[34] Instead, they sought to strengthen the legal status of children born from such

[29] Atamer (n 8) 736.

[30] Hilmar Krüger, 'Fragen des Familienrechts: Osmanisch-islamische Tradition versus Zivilgesetzbuch' (1976) 95 *Zitschrift für Schweizerisches Recht* 287–301; Bilge Öztan, 'Türkisches Familienrecht nach 70 Jahren ZGB', in Heinrich Scholler and Silvia Tellenbach (eds) *Westliches Recht in der Republik Türkei 70 Jahre nach der Gründung* (Baden-Baden: Nomos, 1996) pp. 85–124; Akipek Öcal and Arslan (n 2) 907; Baysal and Arslan (n 2) 60.

[31] See Akipek Öcal and Arslan (n 2) 913, who define the religious marriage as 'legally non-existent'. Where the spouses are married solely through a religious ceremony, the surviving spouse is denied any rights arising from the marital relationship, including rights relating to inheritance, the matrimonial property regime, and social security benefits. See Ceyda Süral Efeçınar and Ekin Ömeroğlu, 'How Does Turkish Family Law Cope with Different Ways of Living?' in Nadjma Yassari and Marie-Claire Foblets (eds.), *Normativity and Diversity in Family Law* (Cham: Springer, 2022) pp. 351–370, 358–359. In a judgment given in 2010, the European Court of Human Rights (ECtHR) accepted that Türkiye was entitled to reserve the legal effects of marriage for unions concluded in accordance with the civil marriage requirements. See Judgment of ECtHR (Grand Chamber), 2 November 2010—3976/05, *Şerife Yiğit v Turkey*. See also Esin Örücü, 'The changing concept of 'family' and challenges for family law in Turkey', in Jens M. Scherpe (ed.), *European Family Law Vol. II* (Cheltenham, Northampton: Edward Elgar Publishing, 2016) pp. 335–362, 342ff.

[32] Under Art. 237 of the 1926 Turkish Criminal Code, entering into a religious marriage without first concluding a civil marriage was considered punishable by imprisonment of up to six months. The same rule was preserved under Article 230 of the new Turkish Criminal Code, which entered into force in 2005. However, in 2015, the Turkish Constitutional Court annulled this provision on the grounds that it violated the right to respect for private and family life, and the freedom of religion and conscience. See the decision of the Turkish Constitutional Court (Anayasa Mahkemesi - AYM), 27.05.2015, E. 2014/36, K. 2015/51, Resmi Gazete (RG - Official Gazette) 10 June 2015, No. 29382.

[33] 1933 (Law No. 2330), 1934 (No. 2576), 1945 (No. 4727), 1950 (No. 5524), 1956 (No. 6652), 1965 (No. 554), 1974 (No. 1826), 1981 (No. 2526) and 1991 (No. 3716).

[34] Akipek Öcal and Arslan (n 2) 915.

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relationships.[35] In other words, despite the evident gap between social reality and the law, the legislature maintained its secular position with little compromise, making an exception only to protect the interests of children born out of legally unrecognized unions.

Reform efforts

Efforts to revise the tCC began early, given that the sCC itself reflected the prevailing social and moral order of early twentieth-century Switzerland, including contemporary conceptions of marriage, the family, and the respective roles of spouses and children. Even though in Türkiye a commission was already established in 1951 and a preliminary draft published in 1971, no comprehensive reform was enacted.[36] Building on the 1971 Draft, a new revision commission was established in the early 1980s. The resulting 1984 Draft retained many of the earlier proposals but went considerably further, particularly in the fields of family law and gender equality. It sought to strengthen the legal position of women within marriage, reflecting emerging international standards regarding equality between spouses as well as putting children born out of wedlock on equal footing with the siblings born inside a marriage. Despite the extensive work invested in the project, however, this draft was also never enacted.[37]

In the absence of sufficient political will to undertake a comprehensive revision of the 1926 tCC in light of the constitutional principle of equality, this task was assumed, in part, by the Turkish Constitutional Court during the 1980s and 1990s.[38] On several occasions, it reviewed provisions of the Code and declared discriminatory rules unconstitutional. At times, the Court adopted progressive interpretations; at other times, it remained influenced by prevailing social attitudes and the conservative orientation of the legislation.

Among the provisions annulled by the Constitutional Court were the rule requiring the dismissal of a paternity action for children conceived in adultery (1981),[39] the rule limiting the inheritance rights of children born outside marriage to one-half of the share accorded to children born within marriage on the paternal side (1987),[40] the provision requiring a married woman to obtain her husband's express or implied consent to pursue a profession or occupation (1990),[41] and the provision prohibiting a father from recognizing a child conceived in adultery (1991).[42] Through these decisions, the Constitutional Court became one of the principal forces driving the modernization of Turkish family and inheritance law during the final decades preceding the adoption of the 2002 Turkish Civil Code.

[35] Atamer (n 8) 735; Örücü (n 31) 348; Wolfram Müller-Freienfels, 'Cohabitation and Marriage Law – A Comparative Study' (1987) 1 *International Journal of Law, Policy and the Family* 259–294, 266–267.
[36] Atamer (n 8) 738.
[37] Ibid 741.
[38] Ibid 747ff. For an overview of the Turkish Constitutional Court's decisions concerning the provisions of the Civil Code see Cevdet Yavuz, 'Anayasa Mahkemesi Kararları Işığında Türk Medeni Kanunu: Yorumlar ve Değerlendirmeler [The Turkish Civil Code in the Light of the Constitutional Court's Decisions: Commentary and Evaluation]', in Şükran Şıpka and Nesli Beril Özen Çolak (eds.), *Cumhuriyetin 100. Yılında Dünden Bugüne Medeni Hukuk Alanında Gelişmeler Sempozyumu* (Istanbul: Altınbaş Üniversitesi Yayınları, 2024) pp. 95–130.
[39] AYM 21 May 1981, E. 1980/29, K. 1981/22, RG 18 August 1981, No. 17432.
[40] AYM 11 September 1987, E. 1987/1, K. 1987/18, RG 29 March 1988, No. 19769.
[41] AYM 29 November 1990, E. 1990/30, K. 1990/31, RG 02 July 1992, No. 21272.
[42] AYM 28 February 1991, E. 1990/15, K. 1991/5, RG 27 March 1992, No. 21184).

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The 2002 Turkish Civil Code: continuity and divergence from the Swiss model

Is the new Turkish Civil Code really new?

In 1994, a commission consisting of academics, jurists, and representatives from professional associations, non-governmental organizations, and various ministries was reconvened to modernize the 1926 tCC. In the introduction to the draft text of the Code, the Minister of Justice underlined that the Commission's work was partially informed by the previous drafts from 1971 and 1984, and by the legal developments in Switzerland and, where relevant, from Germany, France, and Italy.[43] The final draft was published in 1999, adopted by Parliament on 22 November 2001, and entered into force on 1 January 2002, comprising 1,030 articles (up from the previous 937).

However, it must be recognized that the 2002 tCC is not a 'new' civil code in the strict sense of the term. This is illustrated, for example, by the fact that the legislature did not even consider removing provisions that had never been applied in practice in Türkiye (see above, section 'Challenges'). Instead, it retained the structure and, to a large extent, the wording of the 1926 tCC, while introducing a number of revisions. These include the modernization of the language by replacing the Ottoman Turkish used in the original translation with contemporary Turkish, the renumbering of the Code – a step that attracted justified criticism[44] – and the incorporation of developments in Turkish case law as well as reforms introduced into the sCC. In essence, the 2002 tCC constitutes a revision rather than an entirely new codification. Consequently, almost a century after the initial reception of the sCC, a remarkable degree of correspondence continues to exist between the two Codes, as well as between the legal practice that has developed under them.

This continuity is also reflected in the case law of the Court of Cassation. In 1945, sitting in plenary, the Court held that, where the Turkish text of the tCC gives rise to doubts owing to translation errors, the original Swiss text and its explanatory materials must also be taken into account when interpreting the Turkish provision.[45] More recently, the Court reaffirmed this principle in another plenary decision, notably after the entry into force of the 2002 tCC. By doing so, the Court implicitly acknowledged that, notwithstanding the 2002 reform, the current tCC remains firmly rooted in the sCC.[46]

The most significant changes introduced by the 2002 tCC occurred in the field of family law.[47] In response to evolving social and legal standards, the new Code built upon the progressive and secular foundations of the 1926 tCC and institutionalized the principle of gender equality by systematically amending or repealing provisions that were inconsistent with it. The reform commission also incorporated Türkiye's international obligations under ratified UN treaties, in particular the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).[48]

[43] Cf. the Introduction of the draft, written by the then Minister of Justice Hikmet Sami Türk, Türk Medeni Kanunu Tasarısı ve Türk Medeni Kanunu'nun Yürürlüğü ve Uygulama Şekli Hakkında Kanun (1999) VII.

[44] See Saibe Oktay Özdemir, '2002 Tarihli Türk Medeni Kanunu Ne Kadar Yenidir? [How new is the Turkish Civil Code of 2002?]', in Ali Çivi (ed.), *İsviçre Medeni Kanunu ve Borçlar Kanunu'nun Alınışının 80. Yılı Sempozyumu* (Istanbul: ITO, 2007) pp. 53–65, 54.

[45] See Yargıtay İçtihadı Birleştirme Kararı (YİBK: Court of Cassation – Decision on the Unification of Case Law), 28 November 1945, E.1945/13, K.1945/15.

[46] YİBK 19 January 2007, E.2005/1, K.2007/1.

[47] Oktay Özdemir (n 44) 55; Örücü (n 31) 339.

[48] For a critical overview of the compatibility of the provisions of the Turkish Civil Code with CEDAW, see Seda İrem Çakırca, 'Turkish Civil Code and CEDAW: Never Shall the Twain Meet?' (2013) XLV *Annales* 145–192.

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Most of the new family law provisions constitute direct translations of legislative reforms previously adopted in Switzerland. Nevertheless, in certain areas the Turkish legislature deliberately chose not to follow developments in Swiss law. Conversely, several reforms introduced in Switzerland in later years have likewise not been incorporated into Turkish law to this day.

The following sections first examine the substantive family law changes introduced by the 2002 tCC before turning to those areas in which Turkish law deliberately retained the previous legal framework (*status quo*), thereby diverging from the subsequent development of Swiss law.

Major family law reforms introduced by the 2002 Turkish Civil Code

The 1926 tCC – just like the sCC – established a legal framework that reflected the prevailing patriarchal social order and accorded men a dominant legal position in the social, economic, and legal spheres.[49] This was particularly evident in family law, where numerous provisions expressly established the husband's legal authority within the marriage and the unequal legal status of spouses.

Prior to the enactment of the 2002 tCC, the Constitutional Court had already begun dismantling this patriarchal framework by declaring a number of provisions unconstitutional (see above section 'Reform efforts'). Furthermore, Article 41 of the Constitution was amended in 2001 to provide that 'the family is the foundation of Turkish society and is based on equality between the spouses'.[50] However, it was not until the entry into force of the 2002 tCC that the principle of gender equality was fully institutionalized, at least *de jure*, through the systematic repeal or amendment of almost all statutory provisions that were incompatible with it.

The fundamental reforms of the 2002 tCC can be conceptualized within a tripartite framework. The first pillar comprises rules establishing full formal equality between spouses, thereby harmonizing domestic law with modern social requirements.[51] The second pillar is underpinned by the objective of protecting the vulnerable party within the family unit.[52] Finally, the third pillar seeks to establish legal parity among children by dissolving former distinctions based on whether they were born within the marital union or out of wedlock. Below, a synoptic overview of these changes is provided.

Establishment of spousal equality

The reforms aimed at establishing equality between spouses are primarily reflected in the provisions governing the requirements for marriage (Article 124ff tCC) and the legal effects of marriage (Article 185ff tCC).

[49] Biset Sena Güneş, 'Reform des türkischen Familienrechts durch die Justiz?', (2026) Heft 3 *Zeitschrift für Europäisches Privatrecht* 644–675, 645. These provisions were by no means unique to Swiss law; rather, they reflected the systemic gender inequality that prevailed throughout Western legal and social systems during this period, see Özsu (n 10) 72.

[50] Örücü (n 31) 338. Another important addition to the Constitution occurred in 2004, when a provision was added to Art. 10 of the Constitution which reads now as follows: 'Women and men have equal rights. The State shall ensure the effective realization of this equality.' For an overview of the constitutional and international legal framework governing gender equality in Türkiye, see Özgün Çelebi, 'Parental Equality in Turkey: Understanding Gender Roles Through the Legal Treatment of Working and Divorced Mothers' (2021) 35 *International Journal of Law, Policy and the Family* 1–23, 3ff.

[51] Tuğrul Ansay and Özgün Çelebi, 'Family Law', in Tuğrul Ansay, Don Wallace and Işık Önay (eds.), *Introduction to Turkish Law 7th edition* (Alphen aan den Rijn: Wolters Kluwer, 2020) pp. 123–148, 131. See also Seval Yıldırım, 'Aftermath of a Revolution: A Case Study of Turkish Family Law' (2005) 17 *Pace International Law Review* 17 (2005) 347–371, 365.

[52] Ansay/Çelebi (n 51) 131.

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Through Article 124, the 2002 tCC established a uniform minimum age for marriage for both men and women, thereby eliminating the previous distinction, under which the minimum age had been 17 years for men and 15 years for women. Accordingly, the minimum age for marriage is now 17 years, provided that the minor has obtained the consent of the legal representatives. Only in exceptional circumstances may a court authorize a marriage at the age of 16 years.[53]

The 2002 tCC also introduced a series of reforms regarding the general effects of marriage in favour of a partnership-based marriage or a union model.[54] Important amendments include the abolition of the provision designating the husband as the 'head of the marital union' and the introduction of new rules requiring spouses to jointly determine their family home as well as establishing that both spouses possess equal capacity to represent the marital union.

Furthermore, a provision found in the 1926 tCC whereby the husband was held primarily responsible for the maintenance of his wife and children was abolished and replaced by the principle of joint financial responsibility between the spouses. That said, it should be noted that such matrimonial contributions are not limited to monetary support but may also take the form of domestic labour and childcare.[55]

The 2002 tCC likewise did not reintroduce the former requirement that a wife obtain her husband's consent before engaging in a profession or carrying on a commercial activity, which had previously been declared unconstitutional.[56] Under Article 192 of the 2002 tCC, neither spouse is required to seek permission regarding their vocational choices. However, this autonomy is qualified by the statutory obligation to consider the interests of the other spouse and the welfare of the marital union, thereby mirroring Article 167 of the sCC.[57]

The reforms pertaining to the general effects of marriage reflect the legislative developments in the sCC, specifically the amendments that entered into force in 1988.[58] Consequently, the tCC became almost fully realigned with its Swiss counterpart, reaffirming the historical correspondence between the two legal systems, albeit with a 14-year long delay.[59] That said, it is also worth noting that, unlike in Switzerland, special family courts were created under Turkish law following the entry into force of the 2002 tCC.[60] As spouses enjoy equal decision-making power, any disagreement concerning the management of the marital union is to be resolved by these specialized courts.[61]

[53] But see below section 'Prerequisites for marriage' on the problematic decision to permit underage marriages.

[54] Ansay/Çelebi (n 51) 131; Çelebi (n 50) 5–6.

[55] Aslı Makaracı Başak/Mehmet Erdem, *Aile Hukuku* [*Family Law*], 2nd ed. (Ankara: Seçkin, 2024) p. 218.

[56] Cf. above (n 41).

[57] It has been contended that, in practice, the application of this provision is limited primarily to the professional choices of women. See Tuğçem Seçer, 'A Critical Overview of the Turkish Civil Code in the Context of Gender Equality' (2025) 29 *Law and Justice Review* 1–24, 20.

[58] Heinz Hausheer, Ruth E. Reusser and Thomas Geiser, Vorbemerkungen vor Art. 159ff, Berner Kommentar zum ZGB, 2nd ed. (Zurich, Basel, Genf: Schulhess, 1999) para 10ff; Ingeborg Schwenzer and Tomie Keller, 'The Changing Concept of 'Family' and Challenges for Family Law in Switzerland', in Jens M. Scherpe (ed.), *European Family Law Vol. II* (Cheltenham, Northampton: Edward Elgar Publishing, 2016) pp. 309–334, 313.

[59] Oktay Özdemir (n 44) 56.

[60] Law No. 4787 on the Establishment, Duties and Rules of Procedure of Family Courts, RG 18 January 2003, No. 24997.

[61] Ansay and Çelebi (n 51) 132.

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Protection of the vulnerable spouse: the concept of family residence and the new default matrimonial regime

Beyond the pursuit of formal gender equality, the 2002 tCC also introduced safeguard measures with the aim of protecting the vulnerable spouse in the marital union, which in practice, most frequently refers to the wife.[62] To this effect, a specific provision has been introduced into the Code concerning the concept and the protection of the family residence. Pursuant to Article 194 tCC, a spouse may terminate a lease relating to the family home, dispose of the family home, or otherwise restrict rights in respect of it only with the express consent of the other spouse. While the first part of this provision corresponds to Article 169 sCC, Article 194 tCC offers more expansive protections. Specifically, it grants the non-owner spouse a statutory right to request the annotation of the family home in the land registry, regardless of whether the spouses have entered into any agreement to that effect. Furthermore, where the family home is leased, the spouse who is not a party to the original lease may become a party to the tenancy through a unilateral declaration, without requiring the consent of the lessor or the conclusion of a separate agreement.

Turkish law has generated a substantial body of case law concerning the concept of the family residence. The most significant point of contention concerns the extent to which *bona fide* third-party pledgees and acquirers of immovable property are protected against claims based on family residence status. In a landmark decision rendered in 2015, the Court of Cassation expressly characterized the rules protecting the family residence as a limitation on the legal capacity of the owner-spouse.[63] Consequently, the transfer of ownership or the creation of a limited real right is ineffective in the absence of the express consent of the non-owner spouse, even where no annotation has been entered in the land registry.

Another landmark reform aimed at strengthening equality between spouses was the replacement of the default matrimonial property regime of separation of property with the regime of participation in acquired property.[64] The default matrimonial property regime of separation of property introduced by the 1926 tCC constituted one of the most significant deliberate departures from the sCC.[65] The regime was considered more compatible with prevailing patterns of family life in Türkiye. However, this choice ultimately generated unequal outcomes for women, who have historically been less represented in economic life and have had more limited access to independent financial resources.

Therefore, the shift from the regime of separation of property to the regime of participation in acquired property constitutes a welcome reform. Under the new Code, in addition to the statutory regime of participation in acquired property, the husband and wife are also free to choose among three elective matrimonial regimes: namely the former statutory regime of separation of property, separation of property with post-marital division of assets, and community of property. It is worth noting that, despite the extensive reception of the

[62] Ibid 133.

[63] YHGK (Court of Cassation, General Assembly of Civil Chambers) 15 April 2015, E. 2013/2-2056, K.2015/1201.

[64] Oktay Özdemir (n 44) 58. In fact, this shift has been defined by some authors as the most significant reform of the new Civil Code. See Ergun Özsunay, 'The Scope and Structure of Civil Codes: The Turkish Experience', in Julio César Riviera (ed.), *The Scope and Structure of Civil Codes* (Dordrecht: Springer Nature, 2013) pp. 387–407, 397; Veysel Başpınar, 'Türk Medeni Kanunu ile Aile Hukukunda Yapılan Bazı Değişiklikler ve Bu Konuda Bazı Önerilerimiz [Some Amendments Introduced by the Turkish Civil Code in Family Law and Suggestions for Further Reform]' (2003) 52 *Journal of Ankara University Faculty of Law* 79–101, 86.

[65] Hirsch (n 28) 44.

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Swiss matrimonial law reforms of 1988, Turkish law diverged from its model by introducing the elective regime of separation of property with post-marital division of assets, which has no counterpart in Swiss law. Modelled on the Austrian system,[66] this regime preserves the spouses' proprietary autonomy during marriage while ensuring, upon dissolution, the equitable division of marital household assets and savings.[67]

The designation of the participation in acquired property regime as the default statutory regime represents a significant step towards the legal recognition of unpaid domestic labour. This reform acknowledges the socio-economic contribution of the spouse, traditionally the wife, whose work is performed within the household rather than in the formal labour market.[68] The previous statutory regime of separation of property frequently disadvantaged women because ownership of family assets was typically concentrated in the hands of men. By failing to recognize the non-owner spouse's contribution to the accumulation of marital wealth, the law often left women economically vulnerable upon the liquidation of the matrimonial property regime, whether through divorce or death.[69]

Although the rules on matrimonial property law substantially reflect the Swiss regime, certain differences can nevertheless be observed.[70] Notable among these is Article 236(2) tCC, which has no counterpart in the sCC and grants the court the discretion, on grounds of equity, to reduce or revoke a spouse's entitlement to the surplus value in cases where the divorce is based on adultery or an attempt on the life of the other spouse.[71]

Lineage and succession rights of children

Another significant reform introduced by the new tCC was the elimination of the distinction between children born within and outside marriage. The repealed Code was premised on this discriminatory distinction, as was Swiss law until its reform in 1978, resulting in unequal treatment of children born out of wedlock.[72] Not only were more stringent requirements imposed for establishing the legal relationship between the father and the child, whether through recognition or judicial determination, but the legal consequences

[66] Ehegesetz ss 81–98; Işık Önay, *Medeni Hukukta İkame ve Kaim Değer Kavramları* [*The Concepts of Surrogate Benefit and Surrogation in Civil Law*] (Istanbul: On İki Levha, 2022) p. 265. Cf. Başpınar (n 64) 90. According to Başpınar, the separation of property with post-marital division of assets, originally envisaged as the default regime in the 1998 draft, is not a direct replica of the Austrian matrimonial property system, but rather constitutes a sui generis regime within Turkish law.

[67] Makaracı Başak and Erdem (n 55) 327.

[68] Ansay and Çelebi (n 51) 136; Örücü (n 31) 345. See also Yasin Alperen Karaşahin, 'Wedding Gifts in Turkish Law' (2026) 40 *International Journal of Law, Policy and the Family* 1–14, 3.

[69] Ansay and Çelebi (n 51) 135; Muzaffer Şeker, *Edinilmiş Mallara Katılma Rejimi* [*The Participation in Acquired Property System*] (Istanbul: On İki Levha, 2022) p. 39; Aydın Zevkliler, 'Yasal Mal Rejiminin Yasalaşma Sürecindeki Tartışmalar [The Legislative Debates on the Statutory Matrimonial Property Regime]', in Emel Badur and Gamze Turan Başara (eds.), *Evrensel Hukuk İlkeleri Işığında Türk Medeni Hukukunda Değişimler Sempozyumu* (Ankara: Seçkin, 2016) p. 258ff.

[70] Şeker ibid 60ff. See also Hanswerner Odendahl, 'Dissolution of the Matrimonial Regime of Participation in the Acquisition in Turkish Law', in Fatih Ibili and Zeynep Derya Tarman (eds.), *Recent Developments in Turkish Family Law* (The Hague: Eleven International Publishing, 2020) pp. 54–69.

[71] Cf. Şeker (n 69) 66. Surplus value refers to the positive net balance of the property acquired by a spouse during the marriage, after deduction of the liabilities attributable to it, which forms the basis for the other spouse's participation claim.

[72] Esin Örücü, 'Turkey: Reconciling Traditional Society and Secular Demands' (1987) 26 *Journal of Family Law* 221–236, 227.

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of such a relationship were themselves discriminatory.[73] For example, under the original version of Article 443 of the former Code, a child born out of wedlock was entitled to only half of the inheritance share accorded to a 'legitimate' child.[74]

As already addressed above (section 'Reform efforts'), even before the entry into force of the 2002 tCC, legislative measures had been taken to mitigate the discriminatory consequences affecting children born out of wedlock by enacting amnesty laws[75] enabling parents to register their children as having been born within wedlock. Besides, the Turkish Constitutional Court declared many of these unjust provisions unconstitutional and void.[76]

With the entry into force of the 2002 tCC, the traces of this outdated distinction were eliminated. By establishing full equality in the rules governing filiation and succession irrespective of whether a child was born within or outside wedlock, and by severing these rights from the nature of the relationship between the father and the mother, the reform reflected a broader paradigm shift. It placed the child and the child's best interests at the centre of legal protection, replacing the previous conception of family law primarily concerned with the preservation of property-based family structures.[77]

Adoption of minors

Another area in which the 2002 tCC introduced significant reforms is adoption. Adoption, which establishes a legal parent–child relationship by court decision, is regulated in Articles 305–320 tCC. Under the former regime, adoption was only permitted if the adoptive parent did not have a child of their own.[78] Moreover, adoption was conceived as a contractual relationship subject to judicial approval, which could be terminated by the mutual consent of the parties.[79]

Under the new legal framework, adoption has become possible even if the adopting parent has descendants.[80] The contractual approach to the establishment of the adoption relationship has been abandoned.[81] The minimum age required to adopt was lowered from 35 to 30 years, and it was established that married persons may only adopt jointly with their spouse (Article 306 tCC).[82] It follows that unmarried couples cannot adopt together, and a

[73] Ibid 228; Sanem Aksoy Dursun, 'Geçmişten Günümüze Soybağına İlişkin Değerlendirmeler ve Güncel Gelişmeler [Reflections on Filiation from Past to Present]', in Fatih Gedikli and others (eds.), *Cumhuriyet'in Yüzüncü Yılına Armağan Vol. 1* (Istanbul: On İki Levha, 2024) pp. 895–924, 896ff.

[74] It is worth noting that such distinction has significant real-life impact as the concept of religious marriage (*imam nikahı*) continues to be a social reality in Turkish society. According to a 2014 survey conducted by the Ministry of Family and Social Policies and Hacettepe University, approx. 3 per cent of marriages in Türkiye are still concluded solely through a religious ceremony. For the full report, see <https://fs.hacettepe.edu.tr/hips/dosyalar/Arastirmalar-raporlar/Aile içi Siddet Arastirmalari/2014_english_main_report_kyais.pdf> (last accessed 18 May 2026)

[75] See above (n 33).

[76] Above section 'Random effors'.

[77] Aksoy Dursun (n 73) 898.

[78] Örücü (n 31) 352.

[79] Ansay and Çelebi (n 51) 145; Rona Serozan, *Çocuk Hukuku* [*Law of the Child*] (Istanbul: Vedat, 2017) p. 223.

[80] In the case of adoption of adults, the express consent of the descendant of the adopter is nevertheless required (Art. 313).

[81] Örücü (n 31) 353. For detailed information about the conditions of adoption of minors, see Başak Başoğlu and Kadir Berk Kapancı, 'The Rights of the Child in Turkey', in Hilal E. Şen and Helaine Selin (eds.), *Childhood in Turkey: Educational, Sociological and Psychological Perspectives* (Cham: Springer Nature, 2022) pp. 1–16, 6ff.

[82] Başpınar (n 64) 96.

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married person cannot, as a rule, become an adopter alone.[83] The minimum age requirement for the adopter does not apply where a married couple who have been married for at least 5 years adopt jointly. In the case of stepchild adoption, the adopting spouse must either have been married for at least 2 years or have reached the age of 30 years (Article 308(2) tCC). In case of the adoption of minors, the consent of the child's biological parents is required. If the child possesses the capacity of discernment, the child's consent is also required (Article 308, 309 tCC).

These developments are largely welcome, as they enable children, who are deprived of adequate parental care, to grow up in a stable family environment with continuing legal protection. They also serve the interests of childless couples and individuals in forming a family and in formalizing what may already be a functioning parent–child relationship (e.g. in cases of stepchild adoption).[84] The new regime confers upon the courts the exclusive authority to establish the adoptive relationship, while simultaneously imposing a duty to investigate whether all statutory requirements have been satisfied and whether the best interests of the child are adequately protected (Article 316 tCC). Subjecting adoption to judicial approval and oversight is consistent with the principle of safeguarding the child's best interests and reflects a deliberate policy choice to reconceive adoption as a status-altering act with a public law dimension rather than a matter of private ordering.[85]

The rules on adoption under the 2002 tCC are partly based on the provisions introduced into the sCC by the 1973 reform. However, neither the amendments enacted in Switzerland in the early 2000s nor the subsequent developments in Swiss adoption law, including the 2018 reform, were in the meantime incorporated into Turkish law.[86]

The most fundamental structural divergence between the two systems concerns the legal effects of adoption. While the 1973 Swiss reform already implemented the principle of strong adoption (*Volladoption*), thereby severing the child's legal ties with the biological parents, the Turkish legislature opted for a hybrid model that combines elements of both full and weak adoption, under which the legal relationship with the family of origin survives the adoption.[87] This divergence has significant implications, particularly for the law of succession. Under Turkish law, the inheritance relationship between the adopter and the adoptee is strictly unidirectional; while the adoptee can inherit from the adopter, no reciprocal inheritance rights arise in favour of the adopter (Article 500 tCC). At the same time, the inheritance relationship between the adoptee and the biological family remains fully intact. One of the most problematic consequences of this arrangement is that the estate of an adopter who has cared for and raised the adoptee may ultimately pass to the biological

[83] According to Art. 307 (2) of the Civil Code, a married person can adopt alone only if they are at least 30 years old and their spouse lacks capacity of discernment, or cannot be reached for the last two years, or has been living apart from their spouse for at least two years due to a separation decision given by the court.

[84] Serozan (n 79) 223. See also Ayşen Çilenti Konuralp, 'Evlat Edinmeye İlişkin Düzenlemelerin Küçüğün Menfaatine Etkisi Üzerine İsviçre Hukukuyla Karşılaştırmalı Bir Değerlendirme [A Comparative Analysis of the Impact of the Rules on Adoption on the Best Interests of the Child under Turkish and Swiss Law]' (2022) 80 *Istanbul Law Review* 41–80, 44.

[85] Çilenti Konuralp (n 84) 44. According to Örücü too, this shift signals a policy change in this context: Örücü (n 31) 353.

[86] Çilenti Konuralp (n 84) 45.

[87] Atamer (n 8) 751. For the criticism of this mismatch, see also Serozan (n 79) 233; Cem Baygın, 'Evlat Edinmenin Sonuçları [Consequences of Adoption]' (2003) 7 *Journal of Ankara University Faculty of Law* 627–650, 648.

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parents despite the absence of any meaningful parental relationship.[88] Furthermore, the case law of the Court of Cassation affirms that biological parents possess the right to maintain personal contact with the child after the adoption. Since this right is traditionally grounded in filiation, such an approach contradicts the basic idea of adoption and also violates the principle of adoption secrecy.[89]

Another area in which Turkish law has taken a different approach concerns the required age difference between the adopter and the adoptee. While Swiss law requires an age difference of at least 16 years and no more than 45 years (Article 264d(1) sCC), Turkish law imposes an absolute minimum age difference of 18 years in the case of minor adoptions (Article 308(1) tCC). The rationale underlying this requirement is understandable. On the one hand, it reflects the idea that the adoptive relationship should resemble the natural parent-child relationship as closely as possible (*adoptio imitatur naturam*). On the other hand, it seeks to prevent the use of adoption to disguise other types of relationships and to reduce the risk of abuse of the child.

Unlike Swiss law, which expressly permits exceptions where required by the welfare of the child (Article 264d(2) sCC), the corresponding Turkish rule is strictly mandatory and admits no exceptions. The Constitutional Court recently addressed this rigidity in the context of an individual application.[90] It held that the strict application of the 18-year age gap requirement in a stepchild adoption case, in the absence of any mechanism allowing for exceptions, violated the applicant's right to respect for family life under Article 20 of the Constitution and was contrary to the principle of the child's best interests.[91] As the judgment was rendered in an individual constitutional application, however, it has not resulted in the annulment of the said rule. Consequently, the statutory rule remains unchanged, and Turkish law continues to diverge from Swiss law in this respect.

The role of the Constitutional Court in shaping the 2002 Turkish Civil Code

Through numerous decisions rendered before 2002, some of which have been discussed above, the Constitutional Court contributed significantly to the reform of Turkish private law. Following the enactment of the new tCC, its influence has continued through two different constitutional review mechanisms: abstract review of legislation and, since the constitutional amendment of 2010, the individual constitutional application procedure, introduced in part to reduce the number of applications brought against Türkiye before the European Court of Human Rights. Whereas abstract review enables the Court to annul statutory provisions, the individual application procedure allows it to determine whether the application of legislation in a particular case violates constitutional rights.[92]

[88] Serozan (n 79) 233; Çilenti Konuralp (n 84) 76. See also Ece Baş Süzel, 'Biyolojik Ailenin Evlat Edinilene Mirascı Olması Sorunu [The Problem of Biological Parents Being Heirs to the Adopted Child]', Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi (2019) 14 *Journal of Bahçeşehir University Faculty of Law* 1463–1488.

[89] Serozan (n 79) 233.

[90] AYM 25 July 2023, application of Yıldız Ceylan Var, No. 2020/10490, RG 17 October 2023, No. 32342.

[91] For an overview and analysis of this decision, see Kemal Atasoy, 'An Outstanding Decision of the Turkish Constitutional Court Against the Age Gap Barrier in the Adoption of a Stepchild under Turkish Family Law' (2025) 77 *Annales de la Faculté de Droit d'Istanbul* 25–37.

[92] In light of Art. 153 of the Constitution, the general constitutional rules governing the finality and binding effect of Constitutional Court judgments also apply to decisions rendered upon individual applications. Although such judgments arise from individual constitutional complaints, both the Court's decisions and the constitutional interpretations they contain are, as a matter of principle, binding on all courts and administrative authorities. In practice, however, this principle has frequently been disregarded.

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Until today, the Court's jurisprudence presents a mixed picture. In some areas, it has acted as a catalyst for legal reform by invalidating statutory provisions that no longer corresponded to constitutional standards or contemporary social realities. In others, it has adopted a considerably more restrained approach, adhering to traditional conceptions despite evolving constitutional and human rights standards. Recent case law suggests a growing tendency towards judicial restraint in matters touching upon family values and personal status. Two examples illustrating these contrasting approaches are briefly discussed below.

Surname of the married woman

Although the 2002 tCC largely established formal gender equality, one contentious issue remained that continued to reflect the approach of the 1926 tCC, namely the surname of a married woman.[93] In this respect, the new Code retained the solution introduced by the 1997 amendment to the tCC. Under the original version of the provision, the wife was required to assume her husband's surname upon marriage. The 1997 amendment partially relaxed this rule by giving a married woman the choice to use her premarital surname alongside her husband's surname. But she was not allowed to retain her premarital surname as her sole surname after marriage.[94] This solution was carried forward into Article 187 of the 2002 tCC and has been the subject of extensive criticism in Turkish legal scholarship.

The Constitutional Court had reviewed the constitutionality of this rule on several occasions following its amendment. In 1998, the modified provision was challenged before the Court for the first time. By a majority, the Court upheld its constitutionality, reasoning that the rule reflected social realities and codified longstanding customs and traditions within Turkish society. It therefore concluded that the provision was compatible with the constitutional principle of equality.[95] The ECtHR reached the opposite conclusion in its landmark judgment *Ünal Tekeli v Turkey* (2004), holding that the rule constituted discrimination on the ground of sex.[96] As Türkiye did not amend its legislation in response to the judgment, a series of subsequent 'clone cases' were brought before the ECtHR raising the same complaint.[97] In 2011, the Constitutional Court revisited the issue, this time reviewing Article

Consequently, notwithstanding the Constitutional Court's settled interpretation, substantially identical disputes have repeatedly returned to the Court through individual applications. See Korkut Kanadoğlu, *Anayasa Mahkemesine Bireysel Başvuru* [*Individual Application to the Constitutional Court*] (Istanbul: On İki Levha, 2015) pp. 258–264; Ece Göztepe, 'Bireysel Başvuru Kararlarının İcrası: Anayasa Mahkemesi'nin Doğrudan ve Dolaylı "Çağrı Kararları" Üzerine Bir İnceleme [The Execution of Individual Application Decisions: An Overview of the Direct and Indirect "Appeal Decisions" of the Constitutional Court] (2021) 38 *Anayasa Yargısı* 43–83, 54ff; Bertil Emrah Oder, 'Turkish Constitutional Court and Judicial Resistance: Instances of Defiance Under Pressure' (2025) 25 *Global Jurist* 293–319.

[93] Oktay Özdemir (n 44) 56; Güneş (n 49) 645.

[94] Yasin Alperen Karaşahin, 'The Surname of Women and Children in Turkish Law', in Fatih Ibili and Zeynep Derya Tarman (eds.), *Recent Developments in Turkish Family Law* (The Hague: Eleven International Publishing, 2020) pp. 71–90, 73.

[95] AYM 29 September 1998, E. 1997/61, K. 1998/59, RG 15 November 2002 No. 24937. For an overview and criticism, see Joseph Zand and Bahar Öcal Apaydın, 'The Myth of Gender Equality in Turkey: Her Name or Sir-Name?' (2016) 22 *Cardozo Journal of Law and Gender* 253–285, 267.

[96] ECtHR 16 November 2004—29865/96, *Ünal Tekeli v Turkey*.

[97] See Karaşahin (n 94) 75; Zeynep Günler, '20 Years After Ünal Tekeli v. Türkiye: Struggle for a Name of One's Own' (2025) 7 *Advances in Women's Studies* 50–56, 53.

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187 of the 2002 tCC, but once again held by majority that the provision was *not* unconstitutional.[98]

Both the 1998 and 2011 judgments of the Constitutional Court were based on the abstract norm review. Following the introduction of the individual constitutional application procedure, however, the issue repeatedly came before the Constitutional Court in the constitutional complaint setting. Although the Court had upheld the constitutionality of Article 187 in its abstract review judgment of 2011, it later concluded, in a series of individual application decisions,[99] that the provision violated constitutional rights, in particular the right to the free development of one's personality under Article 17 of the Constitution.[100] While these decisions were welcome developments, women wishing to use only their premarital surname after marriage were still required to initiate court proceedings, thereby incurring both financial and emotional costs and creating the risk of rational apathy.

Pursuant to Article 152 of the Constitution, Turkish law imposes a 10-year bar on renewed abstract constitutional review of a statutory provision once the Constitutional Court has rejected a challenge to its constitutionality. Upon the expiry of this period in 2021, the Constitutional Court was, for the third time, called upon to review Article 187 tCC. In 2023, the Court finally declared the provision unanimously unconstitutional.[101] The Court held that the judgment would enter into force 9 months after its publication in the Official Gazette in order to provide the legislature sufficient time to amend the Civil Code. To date, however, no legislative action has been taken.[102] Moreover, Article 24 of the Regulation on the Implementation of Population Services (*Nüfus Hizmetleri Uygulama Yönetmeliği*) has likewise not been amended. As a result, civil registry offices continue, in practice, to refuse applications by married women seeking to retain only their premarital surname, notwithstanding the Constitutional Court's annulment of Article 187 tCC.[103]

Paternity-related litigation

Over the past decades, the Constitutional Court has rendered a series of decisions concerning actions to challenge the husband's presumed paternity (disavowal actions) and actions to establish paternity, thereby substantially reshaping the statutory framework.

Prior to 2009, a husband could challenge the presumption of paternity within 1 year of becoming aware of the relevant facts,[104] but in any event no later than 5 years after the child's birth. The corresponding Swiss provision, Article 256c(1) sCC, provides for the same time limits but, unlike Article 289(3) tCC, permits both to be extended where justified grounds exist (Article 256c(3) sCC). The Turkish provision, by contrast, allowed an

[98] AYM 20 March 2011, E. 2009/85, K. 2011/49, RG 21 October 2011 No. 28091. For a critical overview see Bertil Emrah Oder, 'Eşitlik İlkesi ve Temel Hakların Norm Alanlarının Somutlaşması Bakımından Evli Kadının Soyadı [The Surname of a Married Woman in Light of the Principle of Equality and the Concretization of the Normative Scope of Fundamental Rights]', in Tufan Öğüz and İlhan Helvacı (eds.), *Anayasa Mahkemesinin Medeni Hukuka İlişkin Kararlarının Değerlendirilmesi Sempozyumu* (Istanbul: On İki Levha, 2013) pp. 1–18.

[99] E.g. AYM 19 December 2013, application of Sevim Akat Ekşi, No. 2013/2187; AYM 6 March 2014, application of Gülsim Genç, No. 2013/4439; AYM 16 April 2015, application of Neşe Aslanbay Akbıyık, No. 2014/5836.

[100] Zand and Öcal Apaydın (n 95) 271; Karaşahin (n 94) 76; Günler (n 97) 53.

[101] AYM 22 February 2023, E. 2022/15, K. 2023/38, RG 28 April 2023 No. 32174. For an overview of the decision, see Güneş (n 49) 654ff.

[102] Güneş (n 49) 658ff.

[103] Günler (n 97) 55.

[104] I.e. learning of the birth and of the fact that he is not the father or that another man had sexual intercourse with the mother around the date of the conception.

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extension only of the 1-year period. It was this difference that led the Constitutional Court to annul the 5-year absolute time limit in 2009.[105] The Constitutional Court found that this provision violates the right to the free development of one's personality under Article 17 of the Constitution and the right of access to justice.[106] As the legislature has not enacted a replacement provision, the husband may now challenge the presumption of paternity without being subject to any absolute time limit.

The Constitutional Court also reviewed the time limits governing paternity actions. Under Turkish law, both the mother and the child have an independent right to bring an action to establish paternity, although the mother's action is subject to a 1-year limitation period following the child's birth. By contrast, the child's right was governed by Article 303(2) tCC, which made the applicable time limit dependent on whether a curator had been appointed for the child. If a curator had been appointed, the child's right expired 1 year after the appointment. Otherwise, the child lost the right to bring the action 1 year after reaching the age of majority, irrespective of whether he or she had knowledge of the relevant facts concerning parentage.

The Constitutional Court held in 2011 that the time limit restricting the child's right to establish a legal parental relationship with the father was unconstitutional.[107] In its reasoning, the Court drew an analogy between actions to challenge the presumption of paternity and actions to establish paternity, concluding that, since the 5-year absolute time limit for the husband's action had been annulled, the strict time limit governing the child's paternity action should likewise be removed.[108] Notwithstanding this welcome outcome, however, the Court's reasoning remains open to criticism, as it fails to account for the fundamentally different purposes of the two actions and the competing interests they seek to protect.[109] An action for the disavowal of paternity seeks to dissolve an existing legal parent–child relationship, making strict time limits important to safeguard the child's interest in legal certainty and family stability. By contrast, a paternity action seeks to establish a legal paternal

[105] Notably, the Court of Cassation had already ruled in favour of application of Art. 289(3) tCC by analogy also to the 5-year period prior to the Constitutional Court's annulment decision (Yargıtay Hukuk Genel Kurulu [YHGK, Court of Cassation, General Assembly of Civil Chambers], 22 December 2004, E. 2004/2-554, K. 2004/742). For a critical analysis of this judgment see Yalçın Tosun and Ece Baş, 'Soybağının Reddi Davasında ve Babalık Davasında Sürelere İlişkin Anayasa Mahkemesi Kararlarının Değerlendirilmesi [An Analysis of the Constitutional Court's Decisions on the Time Limits Applicable to Actions for the Disavowal of Paternity and Paternity Actions]'(2014) 9 *Journal of Bahçeşehir University Faculty of Law* 99–117, 109; Sanem Aksoy Dursun, 'Soybağı Davalarındaki Hak Düşürücü Sürelere İlişkin Anayasa Mahkemesi Kararlarının Değerlendirilmesi [An Assessment of the Constitutional Court's Decisions on Preclusive Time Limits in Filiation Proceedings]' (2018) 76 *Istanbul Law Review* 393–416, 396.

[106] AYM 25 June 2009, E. 2008/30, K. 2009/96, RG 7 October 2009 No. 27369. According to Serozan, this ruling is rooted in a patriarchal ideology that overlooks the principle of protection of the best interests of the child, while placing an undue emphasis on the 'purported sanctity and primacy of formal biological and blood lineage'. Rona Serozan, 'Anayasa Mahkemesi'nin Yeni Medeni Kanun Kurallarına İlişkin Kararlarının Değerlendirilmesi [An Analysis of the Constitutional Court's Decisions on the New Civil Code]', in Tufan Öğüz and İlhan Helvacı (eds.), *Anayasa Mahkemesinin Medeni Hukuka İlişkin Kararlarının Değerlendirilmesi Sempozyumu* (Istanbul: On İki Levha, 2013) pp. 137–165, 155. Cf. also AYM 10 October 2013, E. 2013/62, K. 2013/115, RG 10 December 2013 No. 28847.

[107] AYM 27 October 2011, E. 2010/71, K. 2011/143, RG. 7 February 2012 No. 28197.

[108] Tosun and Baş (n 105) 112; Aksoy Dursun (n 105) 408.

[109] Tufan Öğüz, 'Anayasa Mahkemesinin Türk Medeni Kanununun Soybağına İlişkin İptal Kararlarının Değerlendirilmesi [An Analysis of the Constitutional Court's Annulment Decisions Concerning the Filiation Provisions of the Turkish Civil Code]', in Tufan Öğüz and İlhan Helvacı (eds.), *Anayasa Mahkemesinin Medeni Hukuka İlişkin Kararlarının Değerlendirilmesi Sempozyumu* (Istanbul: On İki Levha, 2013) pp. 201–210, 209.

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relationship where none exists. Accordingly, while fixed periods play an important role in actions for the disavowal of paternity in order to prevent the disruption of an established family relationship, they are considerably less compelling in paternity actions.[110]

Furthermore, the annulment of both provisions appears difficult to reconcile with the principle of judicial self-restraint, as the determination of fixed limitation periods for paternity actions falls primarily within the legislature's sphere of authority. Finally, rather than grounding its reasoning in the principle of the child's best interests, the Court consistently emphasizes the importance of establishing a 'true' paternal relationship, namely one that corresponds to biological reality.[111]

This tendency has become even more pronounced in two recent judgments, rendered in 2023[112] and 2024[113] respectively, in which the Constitutional Court addressed the issue of standing to bring disavowal actions. In the first judgment, adopted unanimously, the Court declared unconstitutional the exclusion of the mother from bringing a disavowal action under Article 286 tCC, a ruling that subsequently led to the amendment of that provision to include the mother among the persons with standing to bring such actions.[114] Significantly, the Court grounded its reasoning not in the child's best interests but in the mother's right to respect for private and family life and her right to an effective remedy, thereby further shifting the constitutional focus away from the child's interests and toward the personality rights of the adult parties.

In the second judgment, this time adopted by majority, the Court went further still, declaring unconstitutional the restrictions imposed under Article 291 tCC on the biological father's standing, which had been recognized only where the husband died, was declared missing, or became permanently incapable of judgment before the limitation period expired.[115] It is evident that, in this decision as well, the Court favoured the legalization of biological reality over the protection of the child and the family, once again framing the issue chiefly in terms of the biological father's right to respect for private and family life and his right to an effective remedy. That said, unlike Article 286 tCC, Article 291 tCC was not correspondingly amended to extend unconditional standing to the biological father. The legislature, in apparent defiance of the Constitutional Court's judgment, deliberately declined to grant him unlimited standing.[116]

Areas where the two codes drift apart

As discussed above, many of the amendments introduced by the 2002 tCC paralleled legislative reforms previously adopted in Switzerland, although subsequent case law of the

[110] Serozan (n 106) 157.
[111] Serozan (n 106) 158.
[112] AYM 26 July 2023, E. 2023/37 K. 2023/140, RG 20 October 2023, No. 32345. In detail Güneş (n 49) 664.
[113] AYM 23 January 2024, E. 2023/135 K. 2024/18, RG 6 March 2024, No. 32481. In detail Güneş (n 49) 664f.
[114] By contrast, Swiss law grants standing only to the husband and, under certain circumstances, to the child (Art. 256 sCC). Upon the husband's death, or permanent incapacity before the expiry of the preclusive period, it confers standing on the husband's parents (Art. 258(1) sCC). As discussed further below, Art. 291 (1) tCC extends standing in the same circumstances to the person claiming to be the biological father, the husband's descendants, and his parents.
[115] For a detailed analysis of this judgment, see Güneş (n 49) 664–665.
[116] Güneş (n 49) 668, while disapproving of the position taken in the Constitutional Court's decision, rightly criticizes the legislature's disregard of the Court's judgment, which is, in principle, binding, arguing that such conduct endangers the democratic order and the rule of law.

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Turkish Constitutional Court has altered some of these parallels. Nevertheless, the two codes also diverge in a number of respects. Some differences are attributable to the fact that certain issues have not yet attracted legislative attention in Türkiye, as in the field of adult protection. Others result from deliberate legislative choices rooted in different social values and policy preferences, such as those concerning same-sex marriage, legal gender recognition, and restrictions on underage marriage. These areas of divergence are briefly discussed below.

Prerequisites for marriage

Age

Unlike Swiss law, which requires prospective spouses to have attained the age of 18 years since 1996, Turkish law continues to permit marriage at the age of 17 years with parental consent and, in exceptional circumstances, even at the age of 16 years with judicial authorization.[117] Underage marriage represents a complex phenomenon situated at the nexus of deeply rooted cultural, social, and religious traditions, while simultaneously serving as a battleground where private law, public law, and international law intersect. A quick look into the history of this provision under Turkish law illustrates well the precarious footing upon which this rule rests.

When the Turkish Civil Code was enacted in 1926, the minimum marriage age was initially set at 18 years for men and 17 years for women, a statutory threshold that closely aligns with the existing standards in contemporary modern jurisdictions. Occurring only 3 years after the founding of the Turkish Republic, this progressive benchmark stood as an ambitious legislative expectation. Indeed, it confronted a society that still struggled to internalize the fundamental paradigm shift that civil marriage was now the sole legally recognized form of union.[118] The 1938 amendment, which lowered the minimum marriage age to 17 years for men and 15 years for women (and to 15 and 14 years, respectively, under extraordinary circumstances), thus represented an important concession by the legislature to social realities.[119] The decision of the Turkish legislature to refrain, even in 2002, from establishing a strict minimum marriage age of eighteen without exception reflects a deliberate departure from the sCC.

This policy preference is best understood in light of the socio-legal realities in Türkiye. Establishing a strict marriage age of 18 years without exceptions would result in profound vulnerabilities for certain social groups, predominantly women. Given that Turkish law strictly recognizes civil marriage to the exclusion of all other partnerships, most notably religious (*imam*) marriages, women, who are typically the structurally weaker party in these dynamics, enjoy few legal safeguards during the relationship or upon its termination. They are not, for instance, entitled to inheritance rights or alimony, which effectively leaves them outside the protective boundaries of the legal system. Therefore, mitigating these vulnerabilities serves as an explanation for this specific policy preference of the Turkish lawmaker. On the other hand, this stance stands in contrast to Türkiye's international commitments and obligations, most notably those stemming from the United Nations Convention on the Rights of the Child, which defines every individual under the age of 18 years as a child.[120]

[117] Cf. above section 'Establishment of spousal equality'.

[118] Akipek Öcal and Arslan (n 2) 907ff.

[119] See also Akipek Öcal and Arslan (n 2) 920, who considers the position taken by the Turkish legislature as a 'compromise with the desired strict legal revolution and adaptation to people's habits'.

[120] See Bahar Öcal Apaydın and Volkan Maviş, 'The Unacceptable Spectre of Under-Aged Forced Marriage in Turkey' (2020) 5 *University of Bologna Law Review* 28–58, 39ff. See also Özge Hancı, 'Çocuk Yaşta, Erken

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In both legal systems, the minimum age for marriage constitutes a prerequisite for marriage. However, the tCC does not expressly regulate the legal consequences of a marriage concluded in breach of this requirement. The Court of Cassation has therefore distinguished between marriages concluded before and after the age of 16 years. A marriage contracted before the age of 16 years is regarded as void *ab initio* and therefore incapable of producing legal effects.[121] By contrast, where the minor has already attained the age of sixteen but married without judicial authorization, the marriage is regarded as merely voidable: it remains valid unless annulled in judicial proceedings and may not be challenged *ex officio* by the public prosecutor.[122]

The Swiss approach offers a more nuanced solution. Following the reform on measures against child marriages adopted on 14 June 2024 and in force since 1 January 2025,[123] a marriage concluded while one spouse was a minor must, in principle, be annulled by the court, provided that the action is brought before that spouse reaches the age of 25 years (Articles 105a(1) and 106(3) sCC). The marriage nevertheless remains valid if the court concludes that, while the spouse is still a minor, its continuation is in that spouse's overriding interests and is freely desired or, after the spouse has attained majority, that he or she freely wishes the marriage to continue. This model combines a clear legislative prohibition of child marriage with a narrowly tailored judicial safety valve for exceptional cases. At the same time, the Turkish experience demonstrates that implementing such a model in countries like Türkiye requires a careful balancing of child protection with the need to avoid driving underage relationships into legally unrecognized unions that leave those concerned without the protection of the law.

Sex

Under Turkish law a marriage may only be concluded between a woman and a man. Pursuant to Article 134 tCC 'the man and the woman who wish to marry each other' shall jointly apply to the competent marriage officer. The institution of marriage is therefore statutorily reserved for opposite-sex couples. Consequently, same-sex marriages cannot be celebrated in Türkiye, nor does Turkish law currently provide an alternative legally recognized institution, such as a registered partnership, for same-sex couples. In light of the current political and social climate in Türkiye, which has in recent years been characterized by increasingly adverse governmental attitudes towards LGBTQ + rights, there is presently no indication of any legislative initiative to extend marriage or introduce a comparable legal institution for same-sex couples. On the contrary, the current situation suggests that a reform in this direction is unlikely in the foreseeable future.

The legal development in Switzerland followed a different path. Until 2007, Swiss law likewise restricted marriage to opposite-sex couples. However, with the entry into force of the Registered Partnership Act (*Partnerschaftsgesetz*) on 1 January 2007, same-sex couples were afforded the possibility of entering into a registered partnership. While this institution conferred many of the legal effects of marriage, it remained distinct from marriage

ve Zorla Evlilikler [Child, Early, and Forced Marriage]', in İ. Hamit Hancı and Özge Hancı (eds.), *Çocuk İstismarı ve İhtimaline Karşı Çok Bilimli Bakış* (Istanbul: On İki Levha, 2024) pp. 97–132, 111; Akipek Öcal and Arslan (n 2) 917.

[121] Yargıtay 2. Hukuk Dairesi [Y2HD: Turkish Court of Cassation 2nd Chamber], 3 May 2011, E. 2011/4235, K. 2011/7649. For a critical assessment, see Makaracı Başak and Erdem (n 55) 72, fn. 100; Hancı (n 120) 118.

[122] Y2HD, 4 March 2009, E. 2007/17963, K. 2009/3892.

[123] Massnahmen gegen Minderjährigenheiraten, AS 2024 590; BBl 2023 2127.

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and did not provide complete legal equality in all respects. Following the approval of the Marriage for All (*Ehe für alle*) proposal in a popular referendum on 26 September 2021, the Swiss Civil Code was amended with effect from 1 July 2022 to open marriage to couples irrespective of their sex. Since then, registered partnerships can no longer be concluded, although existing partnerships remain valid and may be converted into marriages.

Excursus: legal gender recognition

Even though gender recognition forms part of the law of persons rather than family law in the strict sense, it merits brief consideration here, as it illustrates how Turkish law has evolved from a comparatively progressive approach to a markedly more conservative one in recent years. The principal provision governing legal gender recognition is Article 40 tCC, which regulates gender reassignment and the corresponding amendment of the civil status register. This provision is based on former Article 26 of the 1926 tCC, introduced by an amendment in 1988, and represented a legislative innovation, as it had no direct counterpart in the sCC.[124]

Prior to 1988, the tCC contained no provisions on legal gender recognition. During this initial period, the Turkish Court of Cassation was required to decide the application of a well-known Turkish singer who had undergone gender confirmation surgery abroad and sought to have her legal gender amended in the civil status register. The Court rejected the application, holding that the existing legal framework did not confer upon individuals the freedom to choose their gender, that a person could not unilaterally change their legal gender and demand recognition of that change, and that permitting such applications would amount to a circumvention of the law.[125] The Court also expressly rejected the argument that Turkish law was silent on the issue and therefore contained a legal gap that judges could fill pursuant to Article 1 tCC by recognizing a new cause of action to amend the civil status register.[126]

The decision is particularly noteworthy. Although Swiss courts were confronted with essentially the same issue under corresponding provisions of the sCC, they generally adopted a more flexible approach. In the absence of specific legislation, they accepted applications to amend the civil status register following gender confirmation surgery by relying on the gap-filling function of Article 1 sCC. Thus, despite the common statutory origins of the

[124] For detailed information on the development of the rule, see Yeşim M. Atamer, 'The Legal Status of Transsexual and Transgender Persons in Turkey', in Jens M. Scherpe (ed.), *The Legal Status of Transsexual and Transgender Persons* (Louvain-la-Neuve: Intersentia, 2017) pp. 313–332, 314; Yeşim M. Atamer and Damla Taşkın, 'Transseksüellere İlişkin Hukuksal Düzenlemeler: Uygulama, Anayasa ve Avrupa İnsan Hakları Sözleşmesi'ne Aykırı Yönler ve Revizyon Teklifleri' [The Legal Regime of Transsexuals: The Current Practice, Violation of the Turkish Constitution and of the European Convention on Human Rights - Proposals for a Revision]' (2016) 42 *Yargıtay Dergisi* 719–782; Serhat Özkan, 'Cinsiyet Geçiş Sürecinin Hukuki ve Toplumsal Boyutu: Haklar ve İhlaller [Legal and Social Dimension of Gender Transition Period: Rights and Violations]', (2017) 14 *Journal of Yeditepe University Faculty of Law* 55–84, 67; Özgün Çelebi, 'Anayasa Işığında Medeni Hukukta Cinsiyet Kimliğinin Korunması [The Protection of Gender Identity in Private Law in the Light of the Constitution]', in Sibel Özel and others (eds), *Contemporary Issues in Private Law and the Impact of the Constitution on Private Law* (Istanbul: On İki Levha, 2022) pp. 285–328, 291.

[125] Atamer (n 124) 315; Özkan (n 124) 67; Çelebi (n 124) 292. See also Ulaş Sunata, Aslı Makaracı Başak and Seda Öktem Çevik, 'Legal Gender Recognition in Turkey' (2022) 22 *International Journal of Discrimination and the Law* 56–73, 58.

[126] Y2HD, 27 March 1986, E. 1986/651, K. 1986/3256.

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Turkish and Swiss Civil Codes, judicial interpretation led the two legal systems in different directions even before the Turkish legislature intervened in 1988.[127]

Two years after this decision, in 1988, the Turkish Parliament amended the 1926 tCC in order to regulate the legal status of transgender individuals. It introduced a new provision allowing persons who could produce a medical report issued by a health commission certifying that they had undergone gender confirmation surgery to apply for legal gender recognition through the amendment of the civil status register. If the applicant was married, the spouse had to be notified of the proceedings and, once the court granted legal gender recognition, the marriage was automatically dissolved.[128]

Following considerable criticism of this provision – primarily concerning the possibility for married persons to undergo gender confirmation surgery and the absence of sufficiently clear conditions governing access to such procedures – the legislature adopted a more restrictive approach in the 2002 tCC. [129] Under Article 40 tCC, legal gender recognition now consists of two distinct stages. First, a person seeking legal gender recognition must obtain judicial authorization to undergo gender confirmation surgery.[130] To obtain such authorization, the applicant must be at least 18 years of age and unmarried and must submit a medical report establishing that the surgery constitutes a medically necessary form of treatment. The report must confirm both that the applicant is transgender (i.e. that the person's gender identity differs from the legal gender assigned at birth) and that gender confirmation surgery is medically indicated for mental health reasons.[131] A further requirement, namely that the applicant be permanently deprived of reproductive capacity, was declared unconstitutional and annulled by the Constitutional Court in 2017.[132] Only after judicial

[127] Atamer (n 124) 315; Schwenzer and Keller (n 58) 331f. See e.g. Bezirksgericht Laupen 17 February 1971, ZZW (Zeitschrift für Zivilstandswesen) 1971, 129f; Bezirksgericht Vevey 9 May 1974, ZZW 1974, 181–185; Zivilgericht Kanton Basel-Stadt 8 May 1979, ZZW 1979, 281–285. For an analysis of these decisions, see Pierre Aubert and Hélène Reich, 'Der Eintrag der Geschlechtsänderung in die Zivilstandsregister', (1987) 55 *Zeitschrift für Zivilstandswesen* 2–8. For a comparison of the Swiss and Turkish court decisions on the subject, see Michael Will, 'Die Sängerin im Zivilgesetzbuch – Zum Neuen Türkischen Transsexuellengesetz', in *Festschift für Werner Lorenz zum 70. Geburtstag* (Tübingen: Mohr Siebeck, 199) pp. 825–846.

[128] Atamer (n 124) 316.

[129] Atamer (n 124) 316; Çelebi (n 124) 292f; Sunata, Makaracı Başak and Öktem Çevik (n 125) 59.

[130] This marked a significant departure from the previous regime under the former Civil Code. Once a person had undergone gender confirmation surgery, the courts were obliged to amend the civil status register, leaving them with a fait accompli. See Sunata, Makaracı Başak and Öktem (n 125) 61.

[131] Atamer (n 124) 318; Sunata, Makaracı Başak and Öktem Çevik (n 125) 60. In the Thematic Report on Legal Gender Recognition in Europe, prepared by the Council of Europe (2022), the requirement to obtain such a diagnosis is considered to be 'against the international trend towards the full depathologisation of transgender persons'.

[132] AYM 29 November 2017, E. 2017/130, 2017/165, RG 20 March 2018, No. 30366. In its 2017 judgment, the Constitutional Court acknowledged that, given the irreversible nature and medical risks of gender confirmation surgery, the legislature was entitled to regulate access to the procedure in order to prevent its trivialization, protect public order and ensure that courts exercise genuine control rather than merely approving a fait accompli. It nevertheless held that requiring applicants to be permanently deprived of reproductive capacity before obtaining judicial authorization was disproportionate. Since infertility is ordinarily a consequence of gender confirmation surgery itself, the statutory requirement compelled applicants to undergo an additional medical intervention solely to satisfy a legal prerequisite. The Court therefore declared the requirement unconstitutional. This result is consistent with the earlier judgment of the ECtHR in *Y.Y. v Turkey*, which had likewise held that making infertility a precondition for legal gender recognition violated Art. 8 ECHR (ECtHR 10 March 2015, 14793/08, *Y. Y. v Turkey*). For a detailed analysis of both cases, see Sunata/Makaracı Başak/Öktem Çevik (n 125) 62.

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authorization has been granted may the applicant undergo the surgery. Following the procedure, the necessary medical documentation must be submitted to the court, which may then order the amendment of the applicant's legal gender in the civil status register.

The annulment of the sterilization requirement constituted an important step towards lowering the barriers to legal gender recognition, bringing Turkish law closer to the case law of the ECtHR and contemporary human rights standards.[133] Whether the continuing requirement of gender confirmation surgery as a precondition for legal gender recognition is likewise compatible with fundamental rights, however, remains open to debate. Indeed, on the same day that it annulled the sterilization requirement, the Constitutional Court held in a separate judgment that the requirement of gender confirmation surgery as a prerequisite for legal gender recognition did not constitute a disproportionate interference with the rights to respect for private life and was therefore constitutional.[134]

Accordingly, legal gender recognition under Turkish law continues to require, at present, two separate judicial decisions as well as compulsory medical diagnosis and gender confirmation surgery and remains available only to persons who have reached the age of 18 years. Married persons must furthermore dissolve their marriage before commencing the procedure, a requirement reflecting the heteronormative conception of marriage underlying Turkish family law. Finally, legal gender recognition remains confined to the binary categories of male and female, leaving no room for the legal recognition of non-binary gender identities.

In Switzerland, until the introduction of Article 30b SCC in 2022, legal gender recognition was not regulated by statute but was shaped almost entirely by judicial decisions. In its landmark judgment of 1993,[135] the Swiss Federal Supreme Court held that a change of the legal gender entry generally required an irreversible physical transition and was therefore understood as presupposing gender confirmation surgery. Over the following decades, however, Swiss courts gradually departed from this restrictive approach in light of evolving medical knowledge and the case law of the ECtHR. A significant step was taken by the High Court of the Canton of Zurich in 2019,[136] which held that neither surgery, hormonal treatment nor sterilization could be required as a condition for legal gender recognition and instead focused on the applicant's completed psychological and social transition. This judicial evolution ultimately paved the way for the adoption of Article 30b sCC in 2022, which introduced a system based largely on self-determination. Under this framework, legal gender recognition is effected by a simple declaration to the civil registry and does not require a medical diagnosis, medical intervention, or judicial authorization.[137] Although special rules apply to minors and persons under comprehensive guardianship, recognition is not conditioned on age or marital status in the way it is under Turkish law.

[133] Çelebi (n 124) 297.

[134] AYM 29 November 2017, E. 2015/79, K. 2017/164, RG 20 March 2018 No. 30366. Cf. Çelebi (n 67) 293; Sunata, Makaracı Başak and Öktem (n 125) 65. Cf. however ECtHR 19 January 2021—2145/16 and 20607/16, *X. and Y. v Romania*. In that judgment, the European Court of Human Rights held that making legal gender recognition conditional upon undergoing gender confirmation surgery violated Art. 8 of the Convention.

[135] BGE 119 II 264.

[136] OG Kanton Zürich, 19 September 2019, Geschäfts-Nr.: NC180003-O/U.

[137] Andrea Büchler, in Kren Kostkiewicz Jolanta, Wolf Stephan, Amstutz Marc and Fankhauser Roland (Hrsg.), *ZGB Kommentar, Schweizerisches Zivilgesetzbuch*, 4. Aufl., (Zürich: Schulthess, 2021) Art. 30b, para 1ff.

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Given that legal gender recognition has long been regarded as being at odds with predominant social and religious values in Türkiye,[138] the introduction of statutory rules on the subject as early as 1988 was remarkable. At the same time, recent legislative and judicial developments suggest that Turkish law has become increasingly resistant to further liberalization. Compared with a growing number of European jurisdictions, including Switzerland, and the evolving case law of the ECtHR, the current Turkish framework for legal gender recognition remains comparatively restrictive.

Women's waiting period for remarriage

Article 132 tCC establishes a 300-day waiting period before a woman whose marriage has ended may remarry. The same provision provides that the waiting period ends upon the birth of a child and may be waived by the court if it is established that the woman is not pregnant from her previous marriage or if the former spouses wish to remarry each other. Traditionally, the waiting period was intended to prevent *perturbatio sanguinis*, that is, uncertainty concerning the paternity.[139] In the age of reliable DNA testing, however, this rationale has largely lost its practical significance.[140]

The provision finds its origins in Article 103 of the sCC.[141] Despite being abolished in Switzerland in 2000 following sustained criticism, it was retained unchanged when the 2002 tCC was enacted.[142] The waiting period applies irrespective of the manner in which the previous marriage ended and therefore covers not only the death of a spouse but also divorce and judicial annulment. Furthermore, because Article 26 of the Civil Registration Act (Law No. 5490) provides that the period begins only once the relevant judicial decision has become final, its effective duration may substantially exceed 300 days, particularly in contested proceedings.

Indeed, the provision was challenged before the ECtHR by a divorced woman, *Nurcan Bayraktar*. After the Turkish Constitutional Court rejected her individual application, she brought the matter before the ECtHR. She argued that requiring divorced women to produce medical evidence of non-pregnancy in order to obtain a court waiver of the mandatory waiting period imposed an unnecessary and disproportionate burden on women and therefore constituted an unjustified interference with the right to respect for private and family life. In 2023, the ECtHR ruled against Türkiye, holding that the provision violated Articles 8 and 14 of the Convention read in conjunction with Article 12.[143]

[138] Örücü (n 31) 358.

[139] Işık Aslı Han, 'TMK m. 132'de Öngörülen Bekleme Süresinin Soybağının Doğru Belirlenmesine Etkisi: Avrupa İnsan Hakları Mahkemesinin Nurcan Bayraktar/Türkiye Kararı Işığında Eleştirel Bir İnceleme [The Effect of the Waiting Period under Article 132 of the Turkish Civil Code on the Establishment of Parentage: A Critical Analysis in Light of the European Court of Human Rights' Judgment in Bayraktar v. Türkiye]', in *Essays in Memory of Prof. Dr. Serap Helvacı* (Istanbul: On İki Levha, 2024) pp. 1963–1980, 1970.

[140] Çakırca (n 48) 170; Yıldırım (n 51) 366; Güneş (n 49) 670.

[141] Güneş (n 49) 669. It is worth noting, however, that similar waiting periods, derived from Islamic law, already existed during the Ottoman era, prior to the adoption of the Turkish Civil Code in 1926. For an overview of the historical development of this concept, see Ayşe Özkan Duvan, 'Toplumsal Cinsiyet Perspektifinden Kadının Bekleme Süresi: İddet [The Waiting Period for Women (Iddet) from a Gender Perspective]', (2025) 83 *Istanbul Law Review* 667–688, 673. See also Yıldırım (n 51) 365, who defines this rule as 'the most obvious vestiges of Islamic law in the 1926 Civil Code to survive into the 2002 Civil Code'.

[142] Özkan Duvan (n 141) 675.

[143] ECtHR 27 June 2023—27094/20, *Nurcan Bayraktar v Türkiye*. For an analysis of the judgment see Candan Yılmaz, 'Remarriage Restriction for Woman of 300 Days in Türkiye: Review of the ECtHR's

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In 2024, the constitutionality of Article 132 tCC was again challenged before the Turkish Constitutional Court. However, the Court's review was limited to the specific constellation underlying the referral, namely the remarriage of a woman to her former husband, which already constitutes an exception to the statutory waiting period. By a majority, the Court held that the provision, as applicable to that situation, was not disproportionate and therefore constitutional.[144]

Although several legislative initiatives have sought to amend or abolish the provision, none has been successful so far. In a Civil Code otherwise committed to the principle of gender equality, the continued existence of this rule is striking and may be explained by the persistence of patriarchal conceptions of female sexuality and reproduction in Turkish society.[145]

Fault-based divorce

Another area in which Turkish law diverges from Swiss law is divorce.[146] Although the 1988 reform reduced the role of fault to some extent, both the grounds for divorce and many of its legal consequences remain closely linked to the concept of fault.[147]

The tCC continues to distinguish between specific and general grounds for divorce. With the exception of incurable mental illness, all specific grounds (adultery, an attempt on the spouse's life, cruel or degrading treatment, the commission of a crime or the pursuit of a dishonourable lifestyle, and desertion) presuppose fault on the part of one spouse.[148] By contrast, the general ground for divorce under Article 166 tCC encompasses three distinct situations: contested divorce based on the irretrievable breakdown of the marriage, divorce by mutual consent, and divorce where the spouses have failed to re-establish their common life following the dismissal of an earlier divorce action.[149]

Although the 1988 reform abolished the rule preventing the spouse predominantly at fault from petitioning for divorce on the ground of the irretrievable breakdown of the marriage, fault continues to play a central role. Most notably, the spouse who is less at fault may oppose the divorce petition, requiring the court to determine the parties' relative degrees of fault.[150] Consequently, divorce proceedings frequently become highly adversarial, with each spouse seeking to establish the other's responsibility for the breakdown of the marriage.

Nurcan Bayraktar v Türkiye Judgment' (2024) 73 *Journal of Ankara University Faculty of Law* 2091–2117; Özkan Duvan (n 141) 681. See also Güneş (n 49) 670–671.

144 AYM 10 September 2025, E. 2024/233, K. 2025/181, RG 31 December 2025 No. 33124. For an analysis of this judgment, see Güneş (n 49) 671–673.

145 Similarly, Yıldırım (n 51) 366.

146 Oktay Özdemir (n 44) 61.

147 Özgün Çelebi, 'The Role of Fault in Divorce Proceedings', in Fatih Ibili and Zeynep Derya Tarman (eds.), *Recent Developments in Turkish Family Law* (The Hague: Eleven International Publishing, 2020) pp. 35–51, 40.

148 Ibid 40.

149 Ibid 38. In 2024, the Constitutional Court annulled the provision deeming a marriage to have irretrievably broken down where the spouses had failed to resume their common life within 3 years after the dismissal of a previous divorce action had become final, in which case the court was required to grant a divorce upon the request of either spouse. Following this decision, the legislature amended Ar. 166 tCC in the same year. Under the new Art. 166(3), either spouse may now file for divorce once 1 year has elapsed since the dismissal of the previous divorce action became final. See AYM 22 February 2024, E. 2023/116, K. 2024/56, RG 19 April 2024 No. 32522. For an overview of this decision see Güneş (n 49) 645–650.

150 Çelebi (n 147) 41.

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In contrast, the comprehensive reform that entered into force in Switzerland in 2000 abandoned the traditional fault-based system and replaced it with a model under which divorce may be obtained by mutual consent, following 2 years of separation, or exceptionally, where the continuation of the marriage has become unreasonable.[151] Accordingly, spouses may file a joint petition, accompanied by a full or partial agreement on the consequences of divorce (Article 111–112 sCC), or, in the absence of mutual consent, a unilateral petition after 2 years of separation (Article 114 sCC). Only exceptionally may a spouse seek an earlier divorce where the continuation of the marriage would be unreasonable for serious reasons not attributable to that spouse (Article 115 sCC). Unlike Turkish law, Swiss divorce proceedings therefore no longer require the courts to determine which spouse bears responsibility for the breakdown of the marriage.

The two legal systems likewise differ fundamentally with regard to the financial consequences of divorce. Under Turkish law, compensation for both pecuniary and non-pecuniary damage, as well as post-divorce maintenance, may be awarded only to the spouse who is either free from fault or less at fault than the other spouse.[152] By contrast, the 2000 Swiss reform replaced fault with the economically weaker spouse's need and the principle of post-divorce self-sufficiency as the primary criteria governing financial relief, an approach that has been further developed in the case law of the Federal Supreme Court.[153]

Beyond rendering divorce proceedings highly contentious, often to the detriment of the parties' children, the role of fault in determining the financial consequences of divorce may disproportionately disadvantage women. This is particularly significant for those who lack independent financial means and depend on post-divorce maintenance for their livelihood. The problem is compounded by the broad discretion afforded to courts in assessing fault, a process that may be influenced by implicit bias and stereotypical assumptions about the roles and conduct of spouses.[154]

Rules on adult protection and patient autonomy

The final point of comparison in this section concerns the protection of adults and patient autonomy, another field in which Turkish and Swiss law have taken different paths. Whereas Switzerland fundamentally reformed this field with the introduction of the new adult protection regime in 2013,[155] Turkish law has largely retained the traditional

[151] Cf. e.g. Thomas Geiser, *Basler Kommentar zum Zivilgesetzbuch*, Vol. I, 7th ed. (Basel: Helbing Lichtenhahn, 2022) Vor Art. 111 – 134 ZGB Rn. 2ff.

[152] Çelebi (n 147) 47. The continuing significance of fault is further reflected in Article 236(2) tCC, which permits the court to reduce or extinguish the at-fault spouse's participation claim in the other spouse's acquired property (see above n 71). According to Oktay Özdemir, this rule encourages parties to invoke adultery or an attempt on the other spouse's life as grounds for divorce, thereby introducing allegations and evidence into the court record that may subsequently have detrimental consequences for both the parties and their children. See Saibe Oktay Özdemir, 'Türk Hukukunda Boşanma Sisteminde Revizyon İhtiyacı [The Need to Reform the Turkish Divorce System]', (2015) 35 *Public and Private International Law Bulletin* 29–46, 34f.

[153] Urs Gloor and Annette Spycher, *Basler Kommentar zum Zivilgesetzbuch*, Vol. I, 7th ed. (Basel: Helbing Lichtenhahn, 2022) Art. 125 ZGB para 2; BGE 147 III 249 E. 3.4.3–3.4.6; Betül Özlük and Melek Saral, 'Concept of Fault, Post-Marital Maintenance Obligation and Discrimination Against Women in Turkish Judicial System', (2018) 32 *International Journal of Law, Policy and the Family* 281–301, 282.

[154] For a detailed analysis of gender stereotypes and implicit bias in the case law of Turkish courts in divorce proceedings, see Özlük and Saral (n 153) 281ff.

[155] For an overview, see Walter Boente, 'Vorbemerkungen zu Art. 360-373, Der Erwachsenenschutz, Art. 360-387 ZGB', in Schmid Jörg (Hrsg.), *Kommentar zum schweizerischen Zivilrecht, Schweizerisches*

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institution of guardianship, reflecting a more paternalistic and state-centred approach.[156] The Swiss reform introduced two key instruments into the sCC: the durable power of attorney in the event of incapacity (*Vorsorgeauftrag*) and advance healthcare directives (*Patientenverfügung*).[157] Neither instrument has a direct counterpart in Turkish civil law.

The Turkish rules on adult protection, which remain centred on guardianship (Articles 396ff tCC), are characterized by substitute decision-making rather than supported decision-making. As Turkish law adheres to a *numerus clausus* model of guardianship, it offers little scope for tailoring protective measures to the individual's circumstances.[158] Instead, guardianship largely operates on an all-or-nothing basis: an adult either retains full legal capacity or, upon the appointment of a guardian, has that capacity correspondingly restricted.[159] Moreover, the statutory grounds for appointing a guardian, ranging from mental weakness and psychological disorders to prodigality and mismanagement, are broadly formulated, affording courts considerable discretion to interfere with individual autonomy. Unlike Switzerland, which entrusts these matters to the specialized and interdisciplinary Child and Adult Protection Authority,[160] Turkish law assigns both the administration and supervision of guardianship to the courts.[161]

Many of the criticisms directed at Swiss guardianship law before the 2013 reform therefore remain relevant for Turkish law today.[162] Most fundamentally, the system places insufficient emphasis on self-determination and individual autonomy and instead appears primarily designed to protect the family or the individual's estate.[163] A further criticism is that the existing framework lacks the flexibility to be tailored to the specific needs and circumstances of the person seeking legal protection.[164]

Zivilgesetzbuch (Zurich: Schultness, 2015); Ingeborg Schwenzer and Tomie Keller, 'Switzerland – A New Law for the Protection of Adults', in Bill Atkin (ed.), *The International Survey of Family Law 2013* (Bristol: Jordan Publishing, 2013) 375–386; Olivier Guillod, 'Présentation globale de la réforme', in Olivier Guillod and François Bohnet (eds.), *Le nouveau droit de la protection de l'adulte* (Basel: Helbing Lichtenhahn, 2012) pp. 1–32.

[156] For a comparative analysis of Turkish and Swiss law, see Ece Baş Süzel, 'Adult Protection in Turkish and Swiss Civil Law', (2025) 27 *Journal of Adult Protection* 262–282.

[157] Schwenzer and Keller (n 155) 377ff.

[158] Baş Süzel (n 156) 266.

[159] Art. 14 tCC provides: 'Persons lacking the capacity of discernment, minors, and persons under guardianship have no capacity to act.'

[160] For detailed information, see François Bohnet, 'Autorités et procédure en matière de protection de l'adulte: droit fédéral et droit cantonal', in Olivier Guillod and François Bohnet (eds.), *Le nouveau droit de la protection de l'adulte* (Basel: Helbing Lichtenhahn, 2012) pp. 33–93. See also Schwenzer and Keller (n 155) 384ff.

[161] Baş Süzel (n 156) 271.

[162] For an overview of the objectives of the reform, see BK-Boente (n 155) Vorbem. zu Arts. 360–373 para 3ff; Guillod (n 155) 4f.

[163] Unlike Swiss law, Turkish law currently provides no binding legal mechanism by which a person anticipating a future loss of capacity may make advance arrangements to safeguard their autonomy. Consequently, once a person loses the capacity of discernment, they have no legally recognized means of influencing the appointment of their guardian, defining the guardian's powers, or determining the protective measures to be adopted. These matters are left to the guardianship court and the court-appointed guardian. See Cevdet Yavuz, Fulya Erlüle and Murat Topuz, *Yeni Vesayet Hukukuna Doğru: Yetişkinlerin Korunması Hukuku (İsviçre Örneği)* [*Towards a New Law of Guardianship: Adult Protection Law (The Swiss Model)*] (Istanbul: Beta, 2017) p. 24.

[164] It should be underlined that the contractual mechanisms available under Turkish law do not provide protection comparable to advance directives as recognized in many other jurisdictions. An individual who anticipates a future loss of decision-making capacity may, in principle, conclude a contract with a trusted person, tailor its content to their wishes, and make its entry into force subject to the suspensive condition of losing the capacity of discernment. Although no formal legal obstacle exists to such arrangements,

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Advance healthcare directives remain another concept largely absent from Turkish law and practice, despite their growing recognition in many jurisdictions, including Switzerland.[165] Such directives enable a person capable of judgment either to make binding decisions regarding future medical treatment or to appoint another person to decide on their behalf in the event of incapacity. Although Türkiye became a party to the Oviedo Convention in 2003, Article 9 of which requires previously expressed wishes concerning medical treatment to be taken into account, no corresponding provisions have been introduced into the tCC. Consequently, despite Article 90(5) of the Constitution giving international conventions the force of law, the absence of implementing legislation has prevented Article 9 from having meaningful practical effect.[166]

Conclusion

On 17 February 1926, immediately before the Turkish Grand National Assembly unanimously adopted the Turkish Civil Code, the Minister of Justice Mahmut Esat (Bozkurt) addressed Parliament in a speech that vividly illustrates the ambitions attached to the reception of the Swiss Civil Code.

> In my view, the most tragic figure in Turkish history has been the Turkish woman. The provisions of the new draft concerning family organization and the law of succession will restore the Turkish mother, who, whenever desired, has until now been treated like a slave, dragged from place to place by her collar, despite having from time immemorial been a lady, to the position of respect that she deserves. (Voices of "Bravo", applause.)
>
> This law, which will restore the Turkish mother to her rightful position and dignity, must also be remembered as a law that will at the same time shape the Turkish nation in its strongest and most fundamental form.
>
> Gentlemen, at the very moment when you approve and enact the Civil Code, you will confer a new direction upon the Revolution, upon Turkish history, and upon Turkish life. When you raise your hands in favour of this law, thirteen centuries will come to an end, and a new, fruitful, and civilized life will open before the Turkish nation and Turkish society.[167]

significant practical and legal limitations remain. First, this practice is not established in Turkish legal culture, which may in part be explained by the associated transaction costs and practical complexity. More importantly, such arrangements are not immune from the powers of a subsequently appointed guardian. Since the guardian replaces the individual's decision-making authority, they may revoke or modify these contractual arrangements, potentially in a manner that does not reflect the person's previously expressed wishes and preferences. See also Yavuz, Erlüle and Topuz (n 163) 25.

[165] Gökçe Kurtulan Güner, 'Karşılaştırmalı Bir Bakış Açısıyla İleriye Dönük Hasta Direktifleri ve Türk Hukuku İçin Öneriler [Advanced Healthcare Directives from a Comparative Perspective and Proposals for Turkish Law]' (2021) *79 Istanbul Law Review* 409–439.

[166] The most tangible implementation of this obligation in Turkish law is Art. 24(5) of the Regulation on Patient Rights, introduced in 2014 as a verbatim transposition of Art. 9 of the Oviedo Convention. Unlike the approach adopted in many other jurisdictions, however, the provision remains confined to secondary legislation rather than being incorporated into the Civil Code or another statutory framework. As a result, it neither expressly recognizes the binding nature of advance healthcare directives nor regulates their formal requirements, thereby hindering their effective integration into both Turkish jurisprudence and clinical practice. See Ibid 433; Saibe Oktay Özdemir, 'Ayırt Etme Gücü Bulunmayan Yetişkinlere Yapılacak Tıbbi Müdahalelere Onay Konusunda İsviçre Hukukunda Yapılan Değişiklikler [The Reforms in Swiss Law Concerning Consent to Medical Treatment for Adults Lacking the Capacity of Discernment]' (2016) 11 *Journal of Bahçeşehir University Faculty of Law* 223–243, 240ff.

[167] Bozkurt (n 18) 230.

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These words demonstrate that the reception of the Swiss Civil Code was conceived by the revolutionary cadres as far more than a legal reform. It formed part of an ambitious civilizational project intended to reshape Turkish society through law. Yet, while the Code itself was enacted unanimously, the broader vision it embodied, especially regarding the family and the role of women, never enjoyed the same degree of consensus. Opposition to the reforms existed from the outset, and the political developments following the transition to multi-party democracy increasingly exposed the deep divisions within Turkish society.

Since then, Turkish family law has developed within the tension between these competing visions: one seeking to continue the modernizing and secularizing aspirations of the early Republic, the other favouring the preservation or revival of more traditional conceptions of family, gender roles, and society. The legislative reforms and constitutional jurisprudence discussed in this article reflect this continuing struggle. Some reforms have brought Turkish law closer to the Swiss model and to contemporary conceptions of equality and personal autonomy; others have deliberately departed from subsequent developments in Switzerland or have remained untouched despite decades of legal evolution.

One hundred years after its reception, the Swiss Civil Code undoubtedly continues to constitute the historical and conceptual foundation of Turkish private law. At the same time, the Turkish experience illustrates – like many other legal transplants – that a code may transform institutions almost overnight, but it takes decades to transform society itself. The long-term success of transplants ultimately depends on the extent to which the values embodied in the transplanted law are accepted, internalized, and defended by the society into which they are introduced. Therefore, the role of those who were willing and able to invoke the rights the Turkish Civil Code creates – particularly women, lawyers, judges, and civil society actors who continued to defend its modernizing aspirations through litigation, constitutional review, and legislative reform – cannot be underestimated. The history of the Turkish Civil Code over the past century is not only a remarkable story of legal reception but also of this ongoing struggle between competing visions of Turkish society.

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