

LEGAL RIGHTS OF CHILDREN BORN OUT OF WEDLOCK ACCORDING TO THE TURKISH CIVIL CODE

Ozdemir Selman Zahid*

PhD Candidate,

Department of Fiqh and Usul al-Fiqh

AHAS Kulliyah of Islamic Revealed Knowledge and Human Sciences

International Islamic University Malaysia

ozdemir.selman@live.iium.edu.my

**Corresponding Author*

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ABSTRACT

This research aims to analyse the legal rights of children born to unmarried parents as outlined in the Turkish Civil Code. Data was gathered from several sources, encompassing books, legislation, and scholarly journals. Following the establishment of the Republic in Turkey in 1923, the Turkish Civil Code of 1926, which was based on the Swiss Civil Code with some minor adjustments, was implemented. Turkish Civil law predominantly adheres to the principles and regulations of Western legal systems. In this context, the legal status of children born to unmarried parents has become a subject of debate in Turkey and has found its place in the Turkish Civil Code. To establish the lineage between the mother and the child, it does not matter whether the child is born outside of marriage or not. Custody of a child born out of wedlock belongs to the mother. Nevertheless, the lineage of children born out of wedlock with their fathers can be established through recognition and lineage. Official recognition of paternity occurs when the father registers the child. Court-ordered paternity determination usually happens when the paternity bond is proven through scientific methods such as DNA testing. With the new Civil Code, when children born outside of marriage are officially recognised, their inheritance rights are regulated in the same way as children born within a marriage, according to the Turkish Civil Code.

Keywords: *Children, Wedlock, Turkish Civil Code, Lineage, Paternity.*

INTRODUCTION

The family is undoubtedly the dynamic of society. Building families with a strong basis benefits the family and society. The legal rights of persons within a family constituted by legal methods are duly safeguarded by the law. Nevertheless, forming a family unit by unlawful and untraditional methods jeopardises the rights of both the couples as well as the rights of their future offspring. While legal rules regulating extramarital relationships that became fashionable in Western societies since the 20th century were established, this was not respected by society and law in Turkey. (Bahcivanci, 2017) As all civilized nations have done, the new Republic of Turkey has sought to place the family, and therefore Turkish society, on solid foundations with the provisions of the new law it has adopted. Accordingly, for the cohabitation of a man and a woman to be recognised as a marriage, the persons concerned must declare their

will before a marriage officer following the conditions required by law. (Cin, 1974) Extramarital affairs were accepted as one of the most damaging factors to marriage union after marital violence. Since there is no obligation of fidelity in the institution of marriage in these relationships, the parties can easily separate from each other because they may not be as careful as married couples in fulfilling their responsibilities towards each other. In addition, since there is no legal connection between couples when the father does not recognise the child, the children born from this relationship are legally considered to belong only to the mother. Since the marriage union is not established, the mother and the children are harmed by this situation.

Another concern with illegitimate kids relates to their entitlement to inheritance and recognition. Legal experts argue that an illegitimate kid should be granted the same legal status as a child born within wedlock and that measures should be taken to ensure equality between these two groups of children. They believe that it is unjust for a kid born out of wedlock to be excluded from inheriting from their father. In contrast, there exists a second group that advocates for the segregation of children born from extramarital relationships. This stance is rooted in the belief that such segregation serves to prevent the formation of illicit unions, safeguard the integrity of societal moral norms, and maintain the sanctity of the institution of marriage. In this context, the rights of children born out of wedlock arouse societal curiosity and need to be examined.

RESEARCH QUESTIONS

1. What are the legal rights of children born out of wedlock according to the Turkish Civil Code?
2. How can the lineage of a child born out of wedlock be valid?
3. How is the recognition of a child determined and becomes legal in the Turkish Civil Code?
4. Does a child born out of wedlock have the right to inherit?

RESEARCH OBJECTIVES

1. To examine the legal rights of children born out of wedlock according to the Turkish Civil Code
2. To shed light on the lineage of a child born out of wedlock be valid
3. To determine the provision of recognition of children in Turkish Civil Law, and how did it become legal.
4. To demonstrate whether a child born out of wedlock has the right to inherit.

RESULTS AND DISCUSSION

Lineage (*Nasab*) of Children Born Out Of Wedlock

A child born out of wedlock is a child born out of sexual intercourse without any marriage contract or before the marriage contract. (Altunkaya, 2001) As per the provisions of the Turkish Civil Code, a marriage not performed before a marriage officer is subject to the sanction of nullity and is only recognised as an illegal union. Children born out of illegal unions are legally fatherless. As an exception to this, since the law could not prevent marriages that were not performed in front of a civil servant in violation of the civil law that entered into force in 1926, the number of children with no paternity began to increase day by day; so much so that the legislator, seeing the magnitude of the danger, enacted a law numbered 2330 on 26.10.1933,

seven years after the adoption of the civil law, in the hope of finding a remedy to the situation. Article 16 of this legislative instrument, which was called the Amnesty Law, stipulates that in the event of a child being born to a man and a woman living together as husband and wife without a contract made in the presence of a marriage officer, this living together shall be deemed to be a marriage contract and such unions shall be registered as marriages and the children born thereof shall be registered by attributing the birth of the child to the man and the woman. (Cin, 1974) However, the legislature could not break the adherence to tradition by imposing sanctions and, by necessity, enacted amnesty laws approximately every five years. With these laws, extramarital unions were registered as marriages, and children born out of such unions were linked to the paternal lineage with the consent of their parents. Such laws aim to determine the parentage of children born out of such unions rather than give such unions a legal status. (Altunkaya, 2001) These unions continue today. There are unions that allow spouses to live the life of husband and wife with a contract made according to Islamic law, which is popularly called *Nikāḥ al-Imām* (Imam Marriage) between the society. Nevertheless, these relationships are established through an Imam marriage, and couples living together without a contract are considered to be in the same situation according to the law.

In the first years of the adoption of the Civil Code, there were some differences between the status of children born in marriage and children born out of marriage. This situation was regulated in the same way not only in Turkish Civil Code but also in the source laws, the Swiss Civil Code, the German Civil Code and the French Civil Code. (Altunkaya, 2001) One of the innovations brought by the new civil code is the end of the distinction between marital lineage and non-marital lineage. Indeed, the distinction between valid and invalid lineage was constantly criticised in the doctrine. The Turkish legislator took these criticisms into consideration and ended the distinction between marital lineage and non-marital lineage. (Baspinar, 1999) For instance, under the old civil code (Turkish Civil Code, 1926), the paternity link between a child who was not born within the marriage union and the woman who gave birth to the child is an invalid paternity link. (Altunkaya, 2001) Similarly, the distinction between proper and improper lineage of children from the father's side has been completely abolished in the new law. In the new civil code, it has been accepted that children born out of wedlock but related to their father through lineage have the same rights and authorities as children born in wedlock, and the distinction created between children has been ended (Kilicoglu, 2003).

According to Article 282 of the last Turkish Civil Code, the child's and the mother's lineage is established with the child's birth. Whether or not this birth occurred within the marriage does not affect the result. On the contrary, the lineage between a child born out of wedlock and his father, unlike the lineage between him and his mother, is a bond that cannot be acquired through birth. Because legally determining the father of a child born out of wedlock is more complex than determining the mother. (Altunkaya, 2001) The paternity between the child and the father is established through marriage with the mother, recognition, or a judge's decision. Paternity can also be established through adoption. (Turkish Civil Code, 2002) Article 285 of the Turkish Civil Code states that the husband is the father of the child born during the marriage or within three hundred days starting from the dissolution of the marriage. The child born after the expiration of this period can be attributed to the husband only if the mother proves that the child was conceived during the marriage. (Turkish Civil Code, 2002) If the child was conceived in wedlock, the plaintiff must prove that the husband is not the father. A child born at least one hundred eighty days after the marriage and at most three hundred days

after the dissolution of the marriage is deemed to have been conceived in wedlock (Turkish Civil Code, 2002).

Article 290 states different provisions during the second marriage of the women: If the child is born within three hundred days from the end of the marriage and the mother remarries in the meantime, the husband in the second marriage is considered the father. If this presumption is refuted, the husband in the first marriage is regarded as the father. (Turkish Civil Code, 2002) Based on Article 292, if a kid's parents are married, the child born outside of marriage will be automatically treated like children born within marriage. However, according to Article 294, the legal heirs of the mother and father, the child, and the public prosecutor may object to establishing lineage through subsequent marriage. The objector is obliged to prove that the husband is not the father.

The Recognition of Children Born Out of Wedlock

Recognition is a unilateral legal act; it allows for the establishment of lineage between the father and child. Recognition has not been properly applied in Turkey since the adoption of the Civil Code from Switzerland. The above-mentioned “Amnesty Laws” enacted at various times have been effective in this. In addition, the prohibition of recognition under Article 292 of the former Civil Code is another aspect of this negativity. (Bilgili, 1994)

Ways and Consequences of Recognition of a Child Born Out of Wedlock

Article 295 of the new Turkish Civil Code governs the requirements and method of recognition. A child who is related to another man cannot be recognised unless this relationship is nullified. The father can obtain recognition by submitting a written application to the civil register office or the court, having a notary prepare an official document, or including a statement of recognition in a will. The civil registrar to whom the declaration was made, magistrate, notary public or the judge who opened the will shall notify the civil registry offices where the father and the child are registered of the recognition. The registry office where the child is registered shall also notify the recognition to the child, the mother, and if the child is under guardianship, to the guardianship authority. If the person making the recognition declaration is a minor or a restricted person, the consent of his parent or guardian is also required. (Turkish Civil Code, 2002) There is no time limit for recognition to be made. If the child is not yet registered in any family register, a birth form is issued, and the child is registered in the father's household with the father's surname. If the child is registered in the mother's single household, the record in this household is closed. The child is registered in the father's household with the father's surname. These deeds of recognition are recorded in the family registers. (Akademik Hukuk ve Danismanlik, 2024)

Filing Paternity Cases and Objections

Since the recognition is a contractual act, the recogniser cannot revoke the recognition. (Bilgili, 1994) Nevertheless, the recogniser may sue for annulment of the recognition due to mistake, deception or intimidation. The action for annulment is filed against the mother and the child. The mother, the child, the child's heirs in case of the child's death, the public prosecutor, and other interested parties may sue for annulment of the recognition. The lawsuit shall be filed against the recogniser, or if the recogniser is deceased, against his heirs. (Turkish Civil Code, 2002) Article 300 of the Civil Code specifies the time periods in which the right to sue for recognition becomes time-barred. The right of the recogniser to sue expires one year from the

date the reason for cancellation is learned or the effect of fear is eliminated, and in any case five years after the recognition. The right of the relevant parties to sue expires one year from the date the plaintiff learns of the recognition and that the recognizer cannot be the father of the child, and in any case five years after the recognition. The child's right to sue expires one year from the date he or she reaches adulthood. If there is a reason justifying the delay after the above periods have passed, a lawsuit can be filed within one month from the elimination of the reason.

Recognising Children Born as a Result of Adultery Between a Married Man and Woman

Another point that drew attention was that it was forbidden to recognise a child born from a relationship between a married man and a married woman. According to Article 292 of the old Civil Code (Turkish Civil Code, 1926), children born from marriages between people who are prohibited from marrying each other or from adultery between married men and women cannot be recognised. According to the decision of the Constitutional Court dated 28.2.1991, the relevant article that prohibits recognition of children who are products of adultery was annulled in terms of the father. Thus, the child born from the adultery of a married man can be recognised. The ban continued for married women. (Altunkaya, 2001) The same provision is still in effect today. The recognition of a child born from the adultery of a married woman can be achieved by first registering the child in the registry of the husband to whom she is officially married, then filing a lawsuit for rejection, removing the child from the registry, and recognizing the child's real father.

Recognition of Children Born From the Relationship of People Related by Blood

The Civil Code drafts from 1971, 1984, and 1998 contained a provision that prohibits the recognition of children born from the union of blood relatives who are legally forbidden from marrying. The preliminary draft and justification of the Turkish Civil Code from 1984 stated that the provision in question, Recognition of children born from sexual relationships between relatives of blood who have been forbidden from marrying each other is prohibited (Art. 281), was controlled. The prohibition was repealed by the newly enacted Civil Code No. 4721 on 22.11.2001, in accordance with Article 260 of the original Swiss Civil Code. The article's explanation asserts that the prohibition was revoked due to its failure to align with the child's welfare. (Sayita, 2010) However, some comments were made before the law came into force, stating that if this law were to be abolished, as in Switzerland, it would not only be incompatible with the moral values of Turkish society, but also could lead to embarrassing situations in the child's future life, alienate him from social life and be against his best interests. (Bilgili, 1994)

The Inheritance of Children Born Out of Wedlock

Certain legal scholars contend it is inequitable to deny a kid born to unmarried parents the entitlement to inherit from his biological father on the grounds of the concept of egalitarianism. Another faction of proponents supports the segregation of children born to unmarried parents, arguing that this separation helps to deter the establishment of unlawful relationships, uphold society's moral standards, and protect the sacredness of marriage. In this sense, different provisions have been noted in the Turkish Civil Codes that have come into force from past to present.

Until 14.11.1990, children born outside of marriage and with an invalid lineage could not benefit from the legal inheritance that children born in marriage benefited from. The second sentence of Article 443 of the old Civil Code was annulled by the Constitutional Court with its decision dated 11.9.1987 and numbered 1/18, based on the Constitutional provisions regarding equality, protection of family and inheritance rights. Thus, the inequality between children born in marriage and out of marriage was eliminated. However, this rule continued until the amendment made by Law No. 3678. Later, Article 443 of the Civil Code was rearranged with Law No. 3678 dated 14.11.1990, and it was stipulated that relatives with an invalid lineage have the same right to inherit as relatives with an accepted lineage (Bilgili, 1994 ; Altunkaya, 2001).

As previously stated, under the Turkish Civil Code, a legal connection is created between the mother and the kid at the time of birth, regardless of whether the child is born out of wedlock. essentially, there is no have to take any steps to confirm the fatherhood of a kid born out of wedlock with the mother, as it is instantly recognised upon birth. Consequently, the child will inherit from his mother upon birth. Legally, in order for a child to receive a share of the inheritance after the death of their father, a lineage relationship must be established between the father and the child. According to Article 498 of the Turkish Civil Code, Once a lineage relationship is established between the father and the child, a child born out of wedlock will have the same inheritance share as a child born in wedlock. This is a reflection of the principle of equality in the law. The fact that the child was born out of wedlock does not affect their inheritance status (Kok, 2024).

The Custody of Children Born Out of Wedlock

Custody is the totality of the duties imposed on parents by law to ensure the care and protection of minors and exceptionally disabled children, to take care of their property, and to represent them, and the rights it provides for the proper performance of these duties. (Altunkaya, 2001) The parents share custody of a child born within the marriage union. (Turkish Civil Code, 2002) In cases of extramarital relationships, there is no right that the mother and father can use together. In this case, custody of a child belongs to the mother alone (Turkish Civil Code, 2002) despite the recognition or court decision of the lineage with the father. In cases when the mother is young, restricted, passed away, or has had her custody rights revoked, the judge will either assign a guardian or grant custody to the father based on the child's welfare.

CONCLUSION

This research attempted to analyse the legal rights of children born to unmarried parents as specified in the Turkish Civil Code. The legal status of these children has become a matter of debate in Turkey and has been on the agenda in different forms and cases since the Turkish Civil Code came into force in 1926. Although legal regulations governing extramarital relationships have been popular in Western nations since the 20th century, Turkish society and law have not adhered to these standards. However, extramarital affairs continue to exist as one of the most damaging realities to the institution of marriage. In these illegitimate relationships, there is no obligation of fidelity in the institution of marriage. In addition, since the father does not recognise the child born from this relationship, there is no legal bond between the couple, and the child is legally considered to belong only to the mother. Since the marriage union is not established, both the mother and the child are harmed by this situation. It is obvious that if the father does not know the child, he will suffer losses in terms of the child's alimony, custody, carrying the surname, and inheritance.

A new provision introduced by the New Civil Code eliminates the differentiation between lineage within and outside marriage. The child's lineage is formed upon birth, connecting them to their mother. The paternity between the child and the father can be established through marriage to the mother, recognition, or a judicial ruling. For a child to be acknowledged, whatever familial connection they have with another individual must be invalidated. Recognition is a legal act that the father can obtain through many methods. As cognition is contractual, the person who acknowledges it cannot withdraw or cancel their acknowledgment. However, the recipient can legally challenge the party granting recognition if there was an error, deceit, or coercion involved in the recognition process. The prohibition on recognising children born from blood relations in Turkey was eliminated by the recently issued Civil Code No. 4721, in compliance with Article 260 of the Swiss Civil Code. The article asserts that the ban was lifted due to its incompatibility with the child's welfare. Nevertheless, the rule has faced criticism due to its incompatibility with the moral principles of Turkish society, its potential to create embarrassing situations in the child's future, and its tendency to isolate the child from social interactions. Before 1990, children born out of wedlock were ineligible to receive the same legal inheritance rights as children born within wedlock. Subsequently, following the principle of legal equality, it determined that if a lineage is established between the father and the kid, a child born out of wedlock will be entitled to an equal share of the inheritance as a child born within wedlock. Non-marital relationships do not entail the shared custody for both the mother and father. In this situation, custody of the kid is granted to the mother, regardless of the recognition of paternity by the father or any judicial rulings. If the mother is young, incapacitated, dead, or has had her custody rights revoked, the judge will either appoint a guardian or grant custody to the father based on the best interests of the child. Finally, couples who intend to have a happy, peaceful and solid family want to create a role model family that their children will look up to and that society will envy, the bond between them must be a legal one. In marriages established with this bond, all family members will not experience the concerns mentioned above.

AUTHOR CONTRIBUTIONS

Selman Zahid Ozdemir: Abstract, Introduction, Research Questions, Research Objectives, Results and Discussion, Conclusion, References.

CONFLICTS OF INTEREST

The manuscript has not been published elsewhere and is not under consideration by other journals. All authors have approved the review, agree with its submission and declare no conflict of interest on the manuscript.

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