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Parents of Different Nationalities: Certain Legal Aspects to Consider Before Expanding Your Family
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Without a doubt, the world is becoming more and more international by the day as the means of communication and transportation rapidly enhance.

Correspondingly, a child having parents of different nationalities is not a rare phenomenon in today's world. Surely, it is very rewarding to be raised in a multicultural environment and your child will benefit from that. However, there are certain legal points you should be aware of and well-plan before having a child. Some of the main considerations are as follows:

Nationality of the child

There is not one single rule on how a person acquires his/her nationality. States establish and implement their own laws concerning how their citizenship is attained. This is why; the parents who would like to have a saying on their child's nationality should be aware of these different rules and plan accordingly, preferably before the birth of their child. Citizenship can be acquired by birth or after birth (by marriage, by naturalization, etc.). Here, our topic of interest concerns the citizenship as a birthright. In that regard, there are two common policies that States often adopt: *national territory and/or common descent*.

As the name suggests, *national territory* approach refers to where a person acquires the citizenship of the state where he is born in, such as in the USA. States which adopt this policy often also acknowledge citizenship by common descent but subject it to certain conditions. On the other hand, in the common descent policy the key factor is the nationality of the parents regardless of the territory where the child is born, such as in Turkey and many European, Asian and African countries. Similarly, states which adopt *common descent* policy tend to provide special rules in relation to individuals who are born in the territory of the

respective country. In this respect it is important to be aware of these different rules and plan accordingly.

Dual citizenship is also an important subject to pay attention to given that states apply different policies in the subject matter. For example, some states allow their citizens to hold dual citizenship whereas some forbid or impose certain restrictions. Therefore a prior research on the matter plays a vital role in making a comprehensive decision.

When deciding on your child's nationality, what are the aspects that you should take into consideration? In our opinion, it is imperative that you consider:

- Where you envisage your family to live on a long term basis
- Visa regimes
- Tax regimes (Some states subject their citizens' worldwide income to income tax, regardless of where they reside)

There may be other considerations that are of significance depending on the circumstances and preferences of the parents. Indeed aside from the nationality, child's **permanent residence** and **habitual residence** shall also have certain legal consequences of which the parents should be aware.

Parents' custody rights over their child

The issue of **custody rights** may not be as straightforward as you may assume. Again, each state has its own rules on the matter. For example under Turkish Law, in accordance with Civil Code No. 4721 Article 337, if parents are not married, custody right resides with the mother. However if the parents are married, in principle, they exercise those rights together as long as the marriage lasts, pursuant to Article 336. When the parents get divorced, custody is granted only one of them. Therefore, under Turkish law there is no legal instrument called as "**joint custody**". If the parents are not or no longer married, only one of them may exercise custody rights over the child, whereas the other party has a **right to personal relationship** with the child. On the other hand, some countries like the UK have the concept of **joint (shared) custody** for unmarried or divorced parents.

Indeed, custody right is an important issue to consider before the birth of your child and it is advisable that you seek for a legal consultancy in that respect.

Divorce of the parents

When parents, especially those of different nationalities decide to get separated or divorced, it is of paramount importance that they consider the best interest of their children during the judicial process. Especially in cases where one of the

parents wishes to relocate the child to a state other than the one child was last habitually resident in. In such circumstances, the parent should, preferably, have the consent of the other parent concerning the relocation of the child. However if the parents cannot agree on the matter, it is crucial that they pay attention to the applicable rules on child's relocation. Otherwise, it is highly likely to encounter legal implications both in civil and criminal nature. For example, if the conditions are met, left-behind parent may file a Return Application for child's return to his/her habitual residence pursuant to **the Hague Convention on the Civil Aspects of International Child Abduction**.

Moreover, as undesirable as it may be, depending on the circumstances, the left-behind parent may file a criminal complaint against the parent who wrongfully relocates the child. This quarrel over the child would not only prolong and increase the level of complexity of the separation/divorce process but it may also cause severe negative effects on the child.

In summary, parents, in particular those with different nationalities should consider certain legal aspects before and after they decide to expand their family in order to have a saying on various important matters, avoid any unpleasant surprises and protect the best interest of their children. Should you have any further questions on international family or Turkish family law, you may contact me at fatmaesra@guzeloglu.legal