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Law Applicable to Maintenance Obligations In Turkish Private International Law

Law applicable to maintenance obligations in Turkish Private International Law is determined by reference to international conventions to which Turkey is a party and where they are not applicable, through the national conflict of laws rules provided under the Turkish Code on Private International Law, dated 2007 and numbered 5718. According to Article 1 of the said Code that provides for its scope, provisions of international conventions to which the Republic of Turkey is a party are reserved and therefore have precedence over the Turkish rules on conflict of laws. On the law applicable to maintenance obligations, Turkey has ratified the Hague Convention of 1956 on the Law Applicable to Maintenance Obligations towards Children as well as of 1973 on the Law Applicable to Maintenance Obligations. Thus, only in cases where these Conventions are not applicable national conflict of laws rules shall have application. Under the Code on Private International Law maintenance is regulated under different provisions: Article 19 of the Code regulates a general rule on the subject as the law of the habitual place of residence of the party entitled to maintenance without making a differentiation between maintenance obligations arising from different relationships whereas maintenance between divorced spouses are subject to the provision regulating grounds for and effects of divorce and separation (Article 14, para. 2). The latter provides for the application of the law of the state of which both spouses are nationals. However if the spouses have different nationalities, law of the common place of habitual residence of the spouses, or failing that Turkish law shall be applicable. Lastly, alimony pendente lite is subject to the application of Turkish Law (Article 14, para. 4).

The presentation shall aim to draw the general framework of the law applicable to maintenance claims under Turkish Law and to highlight some problems regarding its application. In the latter regard, especially the practice by Turkish courts regarding public policy exception shall have an emphasis.