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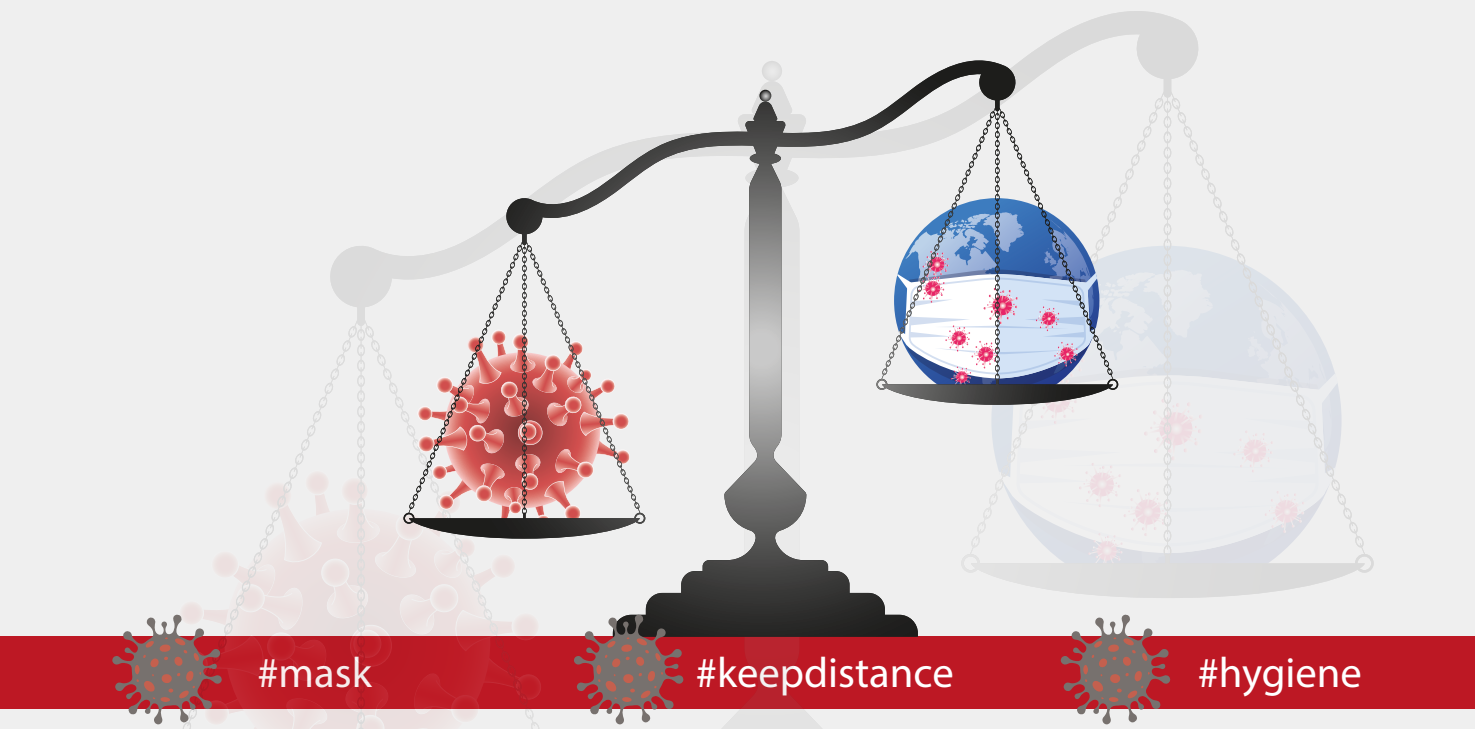
TÜBA COVID–19 GLOBAL OUTBREAK

Report on Judicial Changes and Interactions



August 2020 - Ankara

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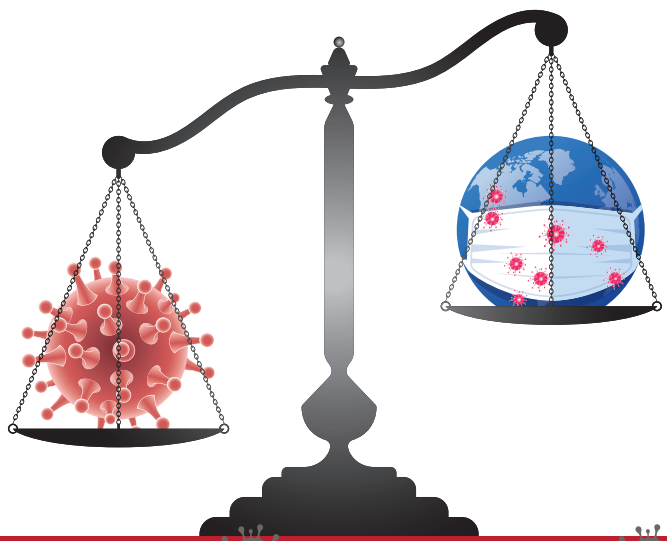

#mask # keepdistance #hygiene

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TURKISH ACADEMY OF SCIENCES

REPORT ON
DETERMINATION OF THE LEGAL PROBLEMS DUE TO COVID–19 OUTBREAK AND SOLUTION PROPOSALS AT NATIONAL AND INTERNATIONAL LEVEL

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Outbreak and Normalization

Necessity renders prohibited things permissible

Majalla, Article 21

We are going through the new normalization period of the COVID-19 global outbreak process, which shall be spoken about for many long years. Of course, the normalization term is a discussible issue because of the recent developments. The second wave of the pandemic has started without passing through the normalization period. Also, the effects of the global outbreak on the economy and social life postpone the normalization process. Nowadays, many analysis are being performed in many disciplines with respect to the current effects of the outbreak and its reflections on the period to follow and reports are being published. Another science discipline, in which the effects of COVID-19 global outbreak are felt, is the field of law that closely interacts within a multidisciplinary approach and relates to the social and economic lives of the people. Within this context, the potential developments of the period immediately following the outbreak should be analyzed in an efficient manner, as well as the outbreak itself and the individuals should be protected with legal regulations against the potential difficulties to be encountered.

During the global outbreak process, various changes and interactions are experienced anywhere on the world under many titles from the traditions of the societies to the modern life styles, from the food habits to hygiene conditions, from social relations to social norms. Shaping the interactions and changes concerning the process is a necessity in the field of law, which is the fundamental source and support of social consensus and peace. This state of necessity based on the *force majeure* events brought by the global outbreak shall bring along some updates on the context of the operation of the public order and the sufficiency and qualifications of the current laws.

As TÜBA, we issued reports which are updated at certain intervals since the first days of the global outbreak in Turkish and English (TÜBA Assessment Report on COVID-19 Global Outbreak). And also, in June 2020, we published a comprehensive book with the title "Anatomy of the Pandemic: The future of Human and Society", which included the anticipations, by analyzing many fields from the education to health, from trade to tourism, from philosophy to sociology, from pole studies to food safety, for the post global outbreak period. This report analyzes the legal problems to be encountered during and following the outbreak process and proposes legal solutions. As TÜBA, we carried out this process by contacting Turkish academicians and universities, and universities and demanding their legal evaluations with respect to the effects and results of the outbreak. As a result, this report consists evaluations in five part and, these evaluations, which are discussed by the specialists and academicians who are experts in their fields, examine the interactions of the process in the field of law.

Our valuable scientists contributing to this report, wherein we have a very long list of contributors, contributed devotedly, despite their intense agenda and private works. On behalf of TÜBA, I express my thanks to them. I would like to extend my gratitude to all the public officials and scientists, specifically the health care professionals who ceaselessly work under risk for the health, welfare and safety of the society and wish health, welfare and ease for all.

Prof. Dr. Muzaffer ŞEKER
TÜBA President

Preamble

COVID–19 outbreak, which is announced as global outbreak (pandemic) by the World Health Organization, and posed a risk for the lives of people, influenced the whole world in a very short time and significant restrictions were imposed on the rights and freedoms of the individuals by the measures taken by the administrations in order to prevent the outbreak. The measures taken in order to prevent the mentioned outbreak caused and even shall cause many legal problems in many areas at the national and international levels.

Within the structure of Turkish Academy of Sciences (TÜBA), it was decided to determine the legal problems that occurred or shall occur in our country and our legal system due to this global outbreak, to the extent possible and to carry out a reporting study for the solution of such problems; and within the frame of this decision, the duty of coordination of the mentioned study was conferred to me.

For this reporting study, first it was required to determine the legal problems that occurred or may occur in the own expertise areas of the academicians in the field of law and academic studies concerning such solution proposals were needed. Within this frame, a letter was sent to the Rectorate of the Universities which had a Faculty of Law in their structures and the instructors interested in this subject were invited to provide contributions. Upon this invitation, many scientific studies were sent to TÜBA. These studies were carefully examined and evaluated. Even the scientific studies in this area, which were previously published in various sources, were also determined and subjected to examination and evaluation. Although it was stated in this TÜBA invitation letter that a workshop program was to be organized with the participation of the academicians contributing to the mentioned study, such idea was renounced by taking the contents of the studies received and especially the time lag into consideration. Likewise, an intent for publishing the articles received was shared in the mentioned invitation letter, however, this publication intent was also renounced since a significant part of the studies received was already published and was accepted in order to be published in other sources.

The academic studies sent as a contribution and acquired otherwise are classified according to their subjects and were examined and evaluated by our working group which is compose of legists who are distinguished academicians in their fields of expertise. Since the content of the report prepared as a result of these examinations and evaluations contained proposed solutions in each Part with respect to the problems determined, a separate conclusion section was not included in order to protect the subject integrity. I would like to take this opportunity to thank the academicians who contributed to the mentioned study.

Prof. Dr. İzzet ÖZGENÇ
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Chapter 1

The Problems Caused or to be Caused by COVID-19 Outbreak in the Fields of Constitutional Law, Administrative Law, Penal Law, Tax Law and International Law and the Solution Proposed for Such Problems

Chapter Editor
Prof. Dr. İzzet ÖZGENÇ

Abstract

We are facing an important problem regarding the legality of the measures taken in our country in response to the "Covid-19" pandemic. This legality problem causes debates in the context of whether these measures are aimed at preventing the pandemic, as well as confusion about the applicability of the determined measures and, as a result, non-compliance with these measures. To ensure the effectiveness of the measures taken across the country against the pandemic, it is necessary to establish a legal basis for these measures.

There is no hesitation that the measures taken during the Covid-19 pandemic, such as;

- People should not leave their places during certain periods of time - even if it is not called "curfew",
- People who enter the country are obliged to stay in a certain place for a certain period,
- Restrictions on in-city public transport, intercity travel, education and training activities and public worship,
- Imposing restrictions on the activities of workplaces and even banning those activities

have the nature of interfering with the rights and freedoms of the persons. It should be stated that, even under ordinary legal regime, preventive measures may be taken to restrict the rights and freedoms of individuals as regards **to persons and places at risk of transmitting dangerous diseases**. The basis of this is the Public Health Law No. 1593 (Art. 72). However, there is no provision in the Public Health Law for taking measures that would restrict everyone's rights and freedoms, regardless of whether they carry a risk of infectious disease or not.

The constitutionality of the authority and the scope of such authority given by the Public Health Law to restrict the rights and freedoms of the persons is an issue in itself. However, this problem can only be examined by the Constitutional Court via constitutional review. Therefore, measures taken to prevent pandemics, which threaten public health, based on the authority arising from an existing law, are not illegal.

It should be pointed out that the basic starting point of Law No. 1593 is the presence of a dangerous infectious disease or disease suspect in terms of public health. In Article 57 of the Law, infectious diseases that put public health at risk (as of the date of entry of that Law) are listed. However, some of these diseases are not dangerous for public health today. Likewise, it can be argued whether this enumeration is exemplary or *numerus clausus*. Saying that the measures specified in Law No.1593 cannot be applied to the Covid-19 pandemic, which we currently live in, affects the whole world and indisputably threatens public health, can only be explained with a strict legal formalism.

There is no legal obstacle to taking various measures *without* restricting the fundamental rights and freedoms of the persons to prevent the transmission of diseases that are dangerous to public health. For example, during the pandemic, there is no need for a statutory basis to justify the measures, such as wearing masks and social distancing, imposed on persons - whether they carry a risk of disease or not. Not all the measures to be taken to prevent diseases dangerous to public health should be enumerated in the law. There should be an explicit provision in the Law for the measures that restrict the rights and freedoms of individuals such as the freedom of movement, freedom of work, right to property and the right to education. As a matter of fact, Article 72 of the Law clarifies the measures to be taken in the context of place or person. In this sense, there is no legal obstacle to take measures to prevent the transmission of diseases dangerous to public health, without restricting these rights and freedoms. The authority given by Law No. 1593 to the Public Health Assemblies should be understood within this framework.

1.1. The Problem of Imposing Restrictions on the Personal Rights and Freedoms due to COVID-19 Outbreak

I. In the article 19 of the Turkish Constitution with the title *"Personal Freedom and Security"*, an individual being in a state which ***"may spread diseases"***, having *"unsound mind, being an alcoholic, drug addict, constituting a danger for public"* are listed among the reasons for restricting the freedom of such individual (para. 2).

In the arrangement of the mentioned article, the provisions of the article 5 of **European Convention on Human Rights** are taken as the basis. According to the provision of the mentioned article, the freedom of an individual can be restricted if such individual is in a state which "may spread contagious disease" (art. 5, sub para. e).

According to the Constitution, the freedom of an individual can only be restricted based on health reasons only if such individual has "unsound mind, being an alcoholic, drug addict, constituting a danger for public" or is in a state which *"may spread disease"*, except a duly declared state of emergency (art. 19, para.2). Accordingly, a restriction based on health cannot be applied to the freedom of a person, who is not suspected of having a contagious disease, in an ordinary law regime. However, restrictions can be applied to the right of privacy (art. 20, para.2), immunity of domicile (art.21, para.2), right to assembly and demonstration (art. 34, para. 2) based on *"general health"* reasons, in other words, in order to protect health.[1] Likewise, according to the Constitution, the corporal integrity of an individual can be interfered in case of "medical necessity" (art. 17, para. 2).

However, unlike the Constitution of 1961[2], *general health is not included in the reasons for restriction of the freedom of travel in the Constitution of 1982.*[3] It is required to underline that this is a deficit of the Constitution of 1982.[4] Despite this, it cannot be stated that the use of the freedom of travel in a manner to risk the health of others is covered by the constitutional protection.[5] Accordingly, based on "**Protocol no 4 to the Convention for Protection of Human Rights and Fundamental Freedoms Securing Certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto"**[6] which arranges the freedom of travel, this freedom can be

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1 Although the Constitution provides that restrictions may be imposed on the freedom of communication (art.22 (2); art.31 (2)), freedom of association (art.33 (3)), right to establish unions (art.51 (2)), there is no logical explanation for this.

2 "Every individual shall be entitled to travel freely: this freedom can be restricted only by law for the purposes of maintaining national security or for preventing epidemics". (The 1961 Turkish Constitution, art.18(1)).

3 "Everyone has the freedom of residence and movement." (The 1982 Turkish Constitution, art. 23(1)), "Freedom of movement may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of crimes.". (The 1982 Turkish Constitution, art. 23(2)).

4 Unlike the 1961 Constitution, the 1982 Constitution has been criticized for not including 'general health' among the reasons for restricting the freedom of travel. See GÖZLER, Kemal, "Anayasa Değişikliğinin Temel Hak ve Hürriyetlerin Sınırlandırılması Bakımından Getirdikleri ve Götürdükleri: Anayasanın 13. Maddesinin Yeni Şekli Hakkında Bir İnceleme" (Gainings and Losses of Constitutional Amendment in terms of Restrictions of Basic Rights and Freedoms: An Inquiry on New Form of article 13 of the Constitution), Ankara Barosu Dergisi, yıl 59, sayı 2001/4, p. 64 ff.; ARSLAN, Zühtü, "Temel Hak ve Özgürlüklerin Sınırlanması: Anayasanın 13. Maddesi Üzerine Bazı Düşünceler" (Restrictions of Basic Rights and Freedoms: Some Thoughts on article 13 of the Constitution), Anayasa Yargısı, sayı 19, 2002, p. 219; SAĞLAM, Fazıl, "2001 Yılı Anayasa Değişikliğinin Yaratabileceği Bazı Sorunlar ve Bunların Çözüm Olanakları" (Some Problems 2001 Constitutional Amendment May Cause and Potential Solutions), Anayasa Yargısı, no 19, 2002, p. 254.

5 SAĞLAM, Fazıl: Anayasa Hukuku Ders Notları (Lecture Notes of Constitutional Law), Lefkoşa, 2013, p. 304.

6 The Protocol opened for signature on 16/09/1963 in Strasburg (ETS no: 46) was signed by Turkey on 19/10/1992. The Protocol that was approved by the Law no. 3975 and dated February 23, 1994, was ratified by the Council of Ministers Decision no. 94/5749, dated 09.06.1994. The Turkish text of the Protocol was published in the Official Gazette dated 14 July 1994 and numbered 21990.
However, since the ratification documents have not yet been submitted to the General Secretariat of the Council of Europe as of 14/06/2020, the Protocol is not yet binding in the context of international obligations, but it is in terms of domestic law.

restricted in order to protect general health (art. 2, para. 3). In the same manner, the provision of the second paragraph of the article 19 of the Constitution should be accepted as the constitutional basis for restriction of the entry of a person into the country from abroad, who is determined to be exposed or who is suspected to be exposed to a dangerous epidemic disease and his/her travel to any location within the country.

On the contrary, there are no problems in terms of constitution for imposing restrictions on the freedom of travel based on health reasons, with respect to a person who is not yet exposed to a hazardous disease in an ordinary law regime.[7]

With the "**International Covenant on Economic, Social and Cultural Rights"**[8] adopted by the Resolution of the United Nations General Assembly, no 2200 A(XXI) dated Dec.16, 1966 and opened for signature on Dec. 19, 1966, in which Turkey is a party, the states are required to take the required measures in order to "prevent, treat and control contagious....diseases" (art. 12).

It is not required to declare state of emergency in order to struggle with the dangerous epidemic diseases. The required measures can also be taken in the ordinary law regime by taking the hazard level of the contagious disease into consideration.

In our current legislation, the law containing detailed regulations with respect to the contagious diseases is **Public Health Law no.** 1593, dated Apr. 24, 1930.

The provisions related to the measures and treatments provided by this Law can be applied to the new epidemic diseases (art. 64), as well as the actual and known epidemic diseases (art. 57), as of the date they take effect.

In case the epidemic disease emerges abroad, then some restrictive measures can be taken with respect to the passengers who travel to Turkey from such country and the properties to be brought by such passengers (art. 49 to 56). With these regulations, the legal foundations are laid for the application of required measures against the risk of transmitting the disease with respect to all the properties brought from abroad, as well as the measures such as temporary suspension of all the transportation between the countries in which the epidemic disease had emerged and our country, examination of the passengers desiring to enter the country, keeping them under medical observation, isolation of those who are suspected of having the disease, application of vaccination or serum to these passengers. It is required to emphasize that the suspension of all the transportation between the countries in which the epidemic disease had emerged also includes the suspension of acceptance of the passengers and properties of this origin into the country. However, the acceptance of the citizen passengers into the country cannot be refused. Although the citizens are accepted into the country, the required quarantine and treatment measures are applied.

Contagious disease may spread into our country from a foreign country or may emerge in our country. In this case, the measures mentioned above, to be taken at the border gates during the arrivals into and departures from the country are not sufficient. The measures that can be taken in such cases are specified in the article 72 of the Law no. 1593. Accordingly, the individuals who are determined to be exposed to a contagious disease or who are suspected of this state can be subjected to examination and treatment, can be kept under medical observation and isolation. Within this frame, the travel of the **individuals who are determined to be exposed to a contagious disease or**

7 The Constitution allows for the postponement of elections only *"due to war"*. (art.78(1)). In this respect, a state of emergency declared in one region or throughout the country is not accepted as a constitutional reason for postponing the elections. Likewise, the existence of an epidemic threat does not constitute a constitutional reason for postponing the elections. Although a deferral provision in relation to the Turkey Grand National Assembly and Presidential elections has been included in the Constitution, and article 127(7) of the Constitution refers to article 67 only in terms of general principles of the elections, it must be accepted that such provision is also valid for the elections of local administrations. Furthermore, it must be noted that the Grand National Assembly of Turkey is the sole authority for making the decision of postponing elections due to war.

8 Official Gazette: 11 August 2003/25196.

who are suspected of this state[9] can be restricted in compliance with the provisions of the Law no. 1593, although there is no Constitutional basis. However, **there is no constitutional or legal basis for the restriction of the freedom of travel of the individual, to whom the contagious disease is not spread, as long as state of emergency is not declared based on a dangerous epidemics disease.** The authority of taking measures which was conferred to "Public health assemblies" by the article 27 of the Law no. 1593 does not cover the restriction of the freedom of travel or the freedom of enterprise or and work for the healthy people. The same condition also applies to the declaration of curfew for the people in general due to the presence of the risk of epidemic disease, as long as state of emergency is not declared based on a dangerous epidemic disease.[10]

The Act No. 1593 authorizes the taking of quarantine measures regarding the people who are detected or suspected to have spread of the contagious disease, however; according to the provisions of the aforementioned Act, having considered the fact that this disease as a "pandemic" has spread to everyone who is a part of the society and who is in the position of sharing the social life, the Public Health Assemblies should take certain measures for everyone, provided that they do not limit freedom of travel, the freedom of labour and the right to education. In this context, it is possible to cover the mouth and nose area with masks in social life and especially in closed areas, and to impose obligations regarding travel arrangements in public transportation vehicles, for instance.

According to the provisions of the Act No. 1593, the Public Health Assemblies determine and decide on the necessary measures for the "removal of the disease in the event of an illness" (art. 27). The orders given by the Public Health Assemblies are carried out by the governor or district governor (art. 28). It should also be noted that in case of the emergence of a contagious disease that is dangerous for public health, the measures that can be ordered by the Public Health Assemblies, are not limited to those listed in article 72 of the Act No. 1593.

Various preventive orders could be given without limiting the fundamental rights and freedoms of individuals in order to prevent the transmission of dangerous diseases in terms of public health. It is not necessary to make a clear amendment in the Act in the context of the measures taken for people whether they carry the risk of disease or not during the epidemic such as requirement of using masks outside or following social distance rules. It is not necessary to enumerate in the Act all of the measures to be taken to prevent diseases that are dangerous for public health. There should be a clear provision in the Act in the context of measures imposing restrictions on personal rights and freedoms such as freedom of movement, freedom of work, right of property, right to education and training. As a matter of fact, article 72 of the Act clarifies the measures to be taken in the context of place or person. It does not mean a limitation in terms of rights and freedoms; hoever, there is no legal obstacle to taking certain precautions to prevent the transmission of dangerous diseases in terms of public health during their exercise. The authority given to the Public Health Assemblies by the Act No. 1593 should be considered within this framework.

An effective precautionary system against the pandemic could not be established and it does not seem possible to establish the system by the Ministry of Interior's Circulars which are published as "instructions" to the Public Health Assemblies

In conclusion, it should be noted that in order to fight the Covid-19 through a legal and effective manner, as will be explained in detail below, there is an urgent need to declare a state of emergency

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9 The suspicion in this context should be based on a concrete reason such as the presence of an epidemic in the country or region of origin of the person or his/her contact with people who have been exposed to the epidemic.

10 For more information please see YÜZBAŞIOĞLU, Cihan/ALKIŞ, Burcu: "*Covıd-19 İle Mücadele Sürecinde 24.01.2020 Ha 23.05.2020 Tarihler Arasında Alınan Tedbirlerin Hukuka Uygunluğuna İlişkin Bir Değerlendirme (An Evaluation on the Legality of the Measures taken between the dates Jan.24, 2020 to May 23, 2020 during the Struggle with Covid-19)*"."; SEVER, Dilşad Çiğdem: "*COVID-19 Günlerinde İdare Hukuku: Salgınla Mücadelede Kolluk Yetkiler Üzerine Bir İnceleme (Administrative Law in the Time of COVID-19: Considering Administrative Powers in Combating Pandemic)*".

due to a dangerous epidemic disease. Within this context, the measures specified in the Emergency Act No. 2935 should be taken and obligations should be imposed.

Violating the orders taken by the Public Health Assemblies, such as violating social distancing in events that make it inevitable to come together, such as travel in public transport, weddings, funerals, and collective worship results in the application of administrative sanctions pursuant to article 282 of Act No. 1593.

According to the Law no. 1593, it is possible to restrict the activities and evacuate the "public premises" where the disease is spread, until the risk is over (art. 72). It is difficult to say that the term of "public premise" here covers all the workplaces, work areas, production facilities. Therefore, only the activities of the "public premises" where it is determined that the epidemic disease had spread can be restricted and evacuated. Again as based on the Law no. 1593, the people who are exposed to contagious disease can be restricted from performing their professions and arts as long as there is a risk to spread the disease to others (art. 76, also art. 126). On the other hand, there are not constitutional or legal basis for suspension of the activities of a workplace, educational or training institutions, restriction of the performance of a profession or art, in which the spread of the disease is not yet detected, as long as state of emergency is not declared based on a dangerous epidemic disease.

The individuals have the **obligation of bearing the treatment** in such cases which require public health.

With respect to the diseases which are within the scope of the notification obligation based on the provisions of the Public Health Law, the individuals have the **obligation to bear** the procedures concerning the **diagnosis and treatment** to be performed by a doctor (art. 67). Moreover, sanctions are provided for those patients who act contrary to this obligation (art. 287). In the same manner, the doctors also have the **diagnosis and treatment obligation** in such cases (Moreover see L. no 1593, art. 88, 90, 103, 107).[11]

Likewise, according to Turkish Civil Law no. 4721, "*each adult creating a risk for the society due to a contagious disease posing a serious hazard...is placed to an appropriate institution or is interned for... treatment";* and if required, force may be used for such person (art. 432).

In addition to the provision of the Constitution (art. 34, para. 2) for restriction of the right of holding meetings and demonstration marches based on general health reasons, the Law 1593 also authorizes the administration for restricting this right due to the risk of contagious and epidemic disease (art. 77). It is required to accept that this provision of the Law no. 1593 also applies to the collective prayers, weddings and funeral activities.

The administrative decisions restricting specifically the freedom of travel, taken in order to prevent the spread of the outbreak (pandemic) in our country were based on the Law for Provincial Administration no 5442 dated June 10, 1949. According to the mentioned Law, the governor is authorized to take *"the required measures in order to prevent the commitment of crime, protect the public order and security"* within the frame of the preventive police authority (art. 11, para. A). Within this frame, the governor has the authority to take decisions restricting the freedom of travel being limited by certain people and certain locations (art. 11, para. C). However, such regulations do not confer the governor the authority to restrict the freedom of movement of healthy people even if for the purposes of the protection of the public health, prevention of the risk of outbreak.

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[11] For more information please see ÖZGENÇ, İzzet: Türk Ceza Hukuku Genel Hükümler, Ceza Hukukuna Giriş, Suç Teorisi, Yaptırım Teorisi, Milletlerarası Ceza Hukuku (Turkish Criminal Law General Part, Introduction to Criminal Law, Crime Theory, Theory of Sanctions, International Criminal Law) , 15. bası, Ankara, Eylül 2019, p. 389. For different evaluations regarding Law no. 1593 please see HAKERİ, Hakan: "*Tıp Hukuku Açısından Bulaşıcı Hastalıklar (Contagious Diseases with regards to Medical Law)*".

Within this scope, it is also required to take into account, the provisions of the **Law on Police Duties and Powers** no 2559 dated July 04, 1934. According to the mentioned Law, the police have the authority to apply administrative measures in a manner to restrict the freedom of travel with respect to the *"people who may spread disease"* (art. 13, subpara. F). It should be noted that the police may use this authority only for the people who may spread the disease.

II. Mandatory vaccination is an interference with one's corporeal integrity. However, not every interference with a person's corporeal integrity will result in a violation of rights. In order to protect public health, certain rights and freedoms of individuals may be interfered with. For this purpose, people can be subjected to diagnosis and treatment, or even to vaccination, even if they are not sick yet. The basic requirement is that the interference should have a legal basis.

According to the 1982 Constitution, "The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law" (article 17/2).

*"**Medical intervention** is activities carried out by ones authorized to practice the medical profession for the purposes of diagnosis, treatment or prevention of diseases. In this context, it is clear that vaccination, in the form of injecting substances defined as solutions prepared with the microbe of that disease to the body to provide immunity against certain diseases, also constitutes an intervention to the corporeal integrity, regardless of the gravity of the intervention."*

The Constitutional Court does not consider the mere existence of medical necessity sufficient for the application of "mandatory vaccination". In addition to this necessity, mandatory vaccination could only be applied provided that there is a legal basis. It is also a problem about the understanding of what forms the legal basis. The Constitutional Court agreed that "mandatory vaccination" can be applied limited to certain diseases listed in the Public Health Act No. 1593 (art. 57 and art. 88 ff.). According to the Court's jurisprudence, in order for a "mandatory vaccination" to be applied for a disease, the disease must be determined by an Act.

According to the Court's jurisprudence, "mandatory vaccination" cannot be applied against diseases such as "HepB, DaBT, IPA, Hib and KPA", as they are not explicitly listed in the Act No. 1593, even if the fact that they may endanger public health.

It should be noted that the Court's approach is not justified. The Court disregarded Article 64 of the Act No.1593 in its assessment. Because, Article 64 allows the measures specified in this Act (art. 72) to be applied regarding the diseases that might occur later and pose a danger to public health. To put it in other way, according to Act No. 1593, the measures to be taken for public health purposed are not limited to the diseases listed in the Act. The diseases are enlisted by **exemplification** method. It should also be pointed out that the hazardousness of some of the diseases on public health has disappeared with the effect of measures taken over time. In this respect, measures specified in this Act may be taken to fight against diseases, such as **COVID-19**, which emerged later and are found to be dangerous for public health (art. 64).

The **problem** regarding the Act No. 1593 is the expression of "application of serum or vaccine to patients or those exposed to disease" (art. 72). First of all, it should be noted that **vaccination is a medical intervention for the purpose of protecting people against a certain disease, not for the purpose of protecting the patient**.

With the exception of **smallpox vaccination** (art. 88), the Act in question introduced the obligation of medical intervention and treatment only for **those who are found to be exposed to a contagious disease that is dangerous for public health, or who are suspected in this regard**. In this respect,

our legislation does not authorize medical intervention to those who are not suspected of having an epidemic, even if a state of emergency is declared due to a dangerous epidemic.

In conclusion, it can be stated that **the Act No. 1593** does not authorize medical intervention to **those who are not suspected of being sick as there is no concrete grounds indicating their sickness,** whether its purpose is protection from contagious disease or as a precaution against transmitted disease. The only exception to this is **smallpox vaccination** (art. 88). The presence of people in whom the dangerous epidemic disease spreads in the society expresses a general risk of contamination. However, the Act in question **does not authorize to intervene medically to anyone, regardless of whether they are sick or not, due to this general risk of contagion**. In this respect, our current legislation **does not allow individuals to be vaccinated without their will**, with the exception of **smallpox vaccination** (art. 88).

Even if it is accepted that our legislation allows the application of "mandatory vaccination" as an assumption, it cannot be actually applied; that is, if the person does not want to, s/he cannot be vaccinated by force.

However, from the expression of "measures to be taken against a dangerous epidemic disease such as COVID-19", it can be deduced **the requirement to be vaccinated could be sought** to benefit from certain services or to participate in certain activities such as public transport, to travel by plane, to benefit from education and training services, to participate in a meeting as being present. It should be noted that a LEGAL BASIS IS NEEDED to seek such a requirement. In this legal basis, preventing the person from exercising a right can be defined as a reason for compliance with the law. Moreover, not being admitted to the public institution where a public official works, or to the workplace where he works, because he has not been vaccinated, can be considered as not coming to work without an excuse.

It should also be noted that the Public Health Assemblies cannot establish a rule which set forth mandatory vaccination, even for the purpose of protection from a contagious disease that is dangerous for public health.

III. In the Constitution, the President of the Republic is given the authority to "declare **state of emergency** in one or more regions or throughout the country for a period not exceeding six months" in the event of ***"a dangerous epidemic disease"*** as well as other reasons (art. 119, para.1).

For a disease to be a reason for the declaration of a state of emergency, it is required that it poses a hazard for the public health. Whether a disease has the quality of *"a dangerous epidemic disease"*, whether it poses a hazard with respect to public health, requires an evaluation concerning its effects and results.

According to Constitution, additional obligations, when compared to ordinary periods, may be imposed on individuals during a state of emergency declared based on a dangerous epidemic disease, and various rights and freedoms may be restricted and even such rights and freedoms may be suspended temporarily.

"The financial, material and labor obligations which are to be imposed on citizens in the event of the declaration of state of emergency and the manner how fundamental rights and freedoms shall be restricted or suspended temporarily in line with the principles of article 15, which provisions shall be applied, and how the procedures shall be exercised, shall be regulated by law." (art. 119, para. 5).

Within this frame, **State of Emergency Law** no. 2935 dated Oct. 25, 1983 is brought into force.
Likewise, the Constitution confers the President of the Republic the authority to issue Presidential

Decree in case of a state of emergency, in the fields of *"fundamental rights, personal rights and duties... political rights and duties."* (art. 119, para. 6). It is accepted by the Constitution that such decrees have ***"the force of law" (art. 119, para. 6, final sentence)***.[12]

In the **State of Emergency Law** no. 2935, special provisions concerning the imposition of additional obligations on people during the declared state of emergency and also restriction of various rights and freedoms are included following the determination of the procedures for the declaration of the state of emergency in the event of a natural disaster or dangerous epidemic disease (art. 3, para. 1), in addition to the other reasons, within the frame of the mentioned provisions of the Constitution.

Various additional **obligations can be imposed** on people during the state of emergence declared due to a natural disaster **or dangerous epidemic disease.**

Accordingly, the natural persons and legal entities *"are compelled to provide land, buildings, establishments, instruments, materials, food,* ***medicines*** *and* ***medical supplies*** *and clothing and other materials* ***to be demanded*** *from them or in order to fulfill the* ***obligations imposed*** *on them" during the state of emergence declared due to a natural disaster or dangerous epidemic disease* (art. 7, para. 1).

Even the **obligation to work** can be imposed on people during the state of emergency declared due to a natural disaster or dangerous epidemic disease. Accordingly, the citizens between 18 and 60 years of age *"are obliged to perform the duties imposed on them."* (art. 8, para. 1).

During the state of emergency declared as based on the mentioned grounds *"if it is deemed necessary, the* ***daily working hours****, both during day and night, in work places* ***may be increased*** *in accordance with the nature and needed level of works. The application of provisions of the Law on Weekend Holidays, the Law on National Festival Days and General Holidays, and the Law on Midday Rest may be totally or partially* ***suspended."*** (art. 8, para. 4.a)

It is required to underline that the constitutional basis of the **obligation to work,** which may be imposed additionally on people in states of emergency is the provision of article 18, para.2.

Likewise, during a state of emergency declared as based on the mentioned grounds *"the following measures may be taken having regard to the events which necessitated the declaration of the state of emergency:*

> *(a) prohibition of people from residing in certain localities in the concerned region;* ***restriction of entry into and departure from certain areas****; evacuation of certain areas or transfer of people to other areas,*
>
> *(b)* ***suspension of training*** *at all levels of official and private education and training institutions;* ***closure****, permanently or temporarily, of* ***student dormitories****,*
>
> *(c) control and* ***determination of opening and closing times, limitation*** *and if necessary,* ***shutting*** *down of casinos, restaurants, public houses, drinking places, taverns, discotheques, bars, dancing places, cinemas, theatres and other* ***places of entertainment****, and clubs, gambling saloons, hotels, motels, camping grounds, holiday villages and other* ***accommodation facilities****, and* ***using*** *them for the requisitions of the state of emergency,*
>
> *(d)* ***limitation or suspension of annual vacation leave of personnel*** *in charge of carrying out the services required under the state of emergency in a region,*

[12] It must be noted that, prior to the amendment made in the Constitution by the Law no. 6771 and dated 21.01.2017, this authority had been given to the Council of Ministers and the regulations to be made within this framework were named as "decree-law". (See article 91 of the Constitution repealed by Law no. 6771 and dated 21.01.2017).

(e) utilization, and if necessary, temporary seizure of all means of communication within the region,

(f) demolition of unsafe buildings, ***destruction of real estate and movable property which threaten public health, and of food and other products which are deemed to be unhealthy****,*

(g) control, ***limitation*** *and if necessary, prohibition of the entry into or* ***carrying out of the region*** *of certain* ***foodstuffs****, animals, animal fodder or animal products,*

(h) ***regulation of the distribution of*** *essential* ***goods****,*

(i) ***taking necessary measures for production, sale, distribution, storage and commerce*** *of essential supplies of food and goods as well as any kind of fuel required for nutrition, heating, cleaning and lighting of public, medicines, chemical materials, instruments and other supplies used in the protection of health, treatment of diseases and in medical science, goods and materials used in construction, industry, transportation and agriculture; other goods, materials, instruments and all kind of necessities,* ***seizure and control of those places, and closure of workplaces*** *which are not of vital importance to the region,* ***of the persons who avoid to sell the mentioned goods or hiding them, sell on over-price, ceasing or decelerating their production****, taking into consideration the type and quality of the action,*

(j) taking necessary measures concerning land, sea and air traffic, and ***the registration or prohibition of the transportation of vehicles into or out of the region****." (art. 9).*

As a constitutional remedy against the necessity of imposition of additional restrictions and additional obligations when compared to the ordinary periods, concerning the various rights and freedoms for the prevention of the spread of the worldwide outbreak (pandemic) in our country, it is required to declare a **state of emergency** due to natural disaster or **dangerous epidemic disease** in order to be applied throughout the country.

It is required to underline that, there are no hesitations that the regulations allowing the restriction of various rights and freedoms and imposition of additional obligations especially for the people, who did not catch the disease yet, can be made by the **Presidential decree** concerning the state of emergency, due to the current dangerous epidemic disease. Accordingly, as a measure for the prevention of the epidemic (pandemic) disease experienced throughout the world, it is required to make amendments in the Public Health Law no. 1539 and the State of Emergency Law no. 2938 with regards to the issues which are not covered by such laws concerning the imposition of additional obligations and restriction of various rights and freedoms or to make regulations by a Presidential decree with respect to the state of emergency.[13]

It is required that the concrete decisions requiring imposition of additional obligation and restriction of the rights and freedoms during a state of emergency declared due to a **natural disaster or dangerous epidemic disease** should be taken as a **Presidential Decision, State of Emergency Coordination Board Decision** and even **Regional State of Emergency Board Decision** and should be announced or communicated to those concerned as based on the nature of such decisions.

If this method is applied, the legality of the decision and procedures, which are problematic concerning the constitutional and legal grounds mentioned above, shall be provided.

[13] According to the Law on State of Emergency no. 2935, "imposition of a limited or full curfew" is legally possible when a state of emergency is declared on the grounds of preventing the spread of acts of violence against free democratic order established by the Constitution or fundamental rights and freedoms. (art.11(a)). (ÖZGENÇ, Anayasa Yargısı, 35, 2018, p. 163 ff. HAKERİ, Hakan: *"Tıp Hukuku Açısından Bulaşıcı Hastalıklar" (Contagious Diseases with regards to Medical Law).*). In this respect, to restrict freedom of travel by imposing a limited or full curfew, without any discrimination, during the state of emergency declared due to natural disasters or dangerous epidemics, either an amendment to the State of Emergency Law no. 2935 or a regulation by the Presidential decree regarding the state of emergency is required. (ŞİRİN, Tolga: *"Tehlikeli Salgın Hastalıklarla Hukuksal Mücadeleye Anayasal Bir Giriş" (A Constitutional Introduction to Legal Struggling with Contagious Diseases)*.)

1.2. Effects of COVID–19 Outbreak on the Field of Penal Law

1.2.1. Liability of the Penal Law Due to Non-Compliance with the Quarantine Measures

The measure of quarantine due to contagious disease can be applied only for a **specific location.** Individuals can also be determined in the application of this measure; but it is not compulsory. For example, the people who enter to the country from a country in which the symptoms of the epidemic disease had emerged can be subjected to the quarantine measure at a specific location. In this case, although the measure concerns specific people, it can also be applied as limited to the location where such people are kept.

In some cases, a certain area, district, county or city can be subjected to quarantine measure without determination of specific individuals.

Another characteristic of the quarantine measure is the continuity throughout the risk. Accordingly, as a rule, quarantine is a measure with **indefinite period** of time.

The most important characteristic of the quarantine measure with respect to the crime defined in the article 1995 of Turkish Penal Law is that it creates **isolation** for identified or unidentified individuals. Accordingly, the application of quarantine measure also required police intervention, **execution under the supervision and control of the police.** Likewise, this isolation also requires the **medical supervision** of all the people who are in the quarantine area.

Application of quarantine measure results in restriction and even prohibition of the exit of identified or unidentified individuals from this area, who are in such area during the quarantine, and entry of the people from outside into this area. Violation of the requirements of this measure can be as **entry into the area or exit from the borders of the area.**[14] For the responsibility for this crime it is required that the perpetrator is the person who is determined to have caught the contagious disease or who is suspected of catching the contagious disease. Any person, in other words, a person who did not catch the disease yet and who is not suspected of catching it, can also be the perpetrator of this crime. This is important since the mentioned crime is committed specifically by entering the quarantine area.

The mentioned crime is an **abstract risk crime.** When this crime, where the public health is protected as a legal value, is committed by a healthy person by entering the quarantine area, then such person is actually endangering his/her own life concretely.

Quarantining an area is possible only with the decision of an administrative authority. Here, the authority deciding the application of a quarantine measure being an administrative authority does not constitute a legal obstacle for the application of a judicial punishment law sanction due to the actions that violate the requirements of this measure. The quarantine decision to be given by the administrative authority does not conflict with the principle of legality in the crime. What is important for this crime is the existence of the reasons that require the application of the

[14] For the view that the principle of legality and certainty has been violated in the definition of the crime in question, see ÖNOK, Anayasa Hukuku Dergisi, vol 9, no 17, year 2020, p. 159.

quarantine measure. If such reasons really exist, the fact that the decision of measure is given by the administrative authority does not mean the violation of the principle of legality in the crime. In this case, the crime can be committed with respect to a certain location as long as the quarantine measure application continues. Cancellation of the quarantine measures afterwards does not remedy the violations realized during the application of the measure. It should be noted that whether an action constitutes a crime or not is not at the discretion of the administration.

What is important within this context is the sufficient notification of the society with respect to the application of the quarantine measure. This is to be taken into account only with respect to the moral aspect (intention) of the relevant crime (TPL, art. 195).

Another issue, which is important with respect to the crime defined by the TPL, article 195, is that if a person going out of the quarantine area as contrary to the requirements of a quarantine measure spreads the disease to another person, then this shall require punishment according to the provisions of **real joinder.**

If a quarantine measure is not taken,), p.xample, the people arriving from abroad are sent home suggesting that they do not go out of their houses for a certain period of time, without any examination to see whether they caught the disease or not, and that they do not contact others, then it shall not be possible to speak about a quarantine measure. In this case, if such people leave the locations where they are and contact others, then it cannot be argued that the crime defined in the TPL, article 195 is committed.

Although there is no isolation application, the people can be allowed to perform their activities in the social and economic areas based on certain obligations such as complying with the distancing rule and using a mask in order to prevent the risk infection with the disease. Absolute noncompliance with the obligations determined within this context does not cause the formation of the crime defined in the TPL, article 195. In this case, it is required that the misdemeanor defined in the article 282 of the Public Health Law no. 1593 has formed.

1.2.2. The Problems Caused by COVID-19 Outbreak Concerning the Execution Law

a) In the **Law on the Execution of Sentences and Security Measures** no. 5275 dated Nov. 13, 2004 (Execution Law), the convict in the penal institution serving a sentence is required to comply with the measures concerning the prevention of the epidemic diseases and notify the administration about the *"states that pose a risk for the health of an individual"* (art. 27, para.1).

In the Execution Law, the right to health is given to the convict as well as this obligation (art. 71, para.1, first sentence). However, the disease *"examination for diagnosis and treatment"* of the convict shall be primarily carried out in the health unit of the penal institution. If this examination and treatment *"is not possible"* in the health unit of the penal institution, then it is carried out at the state or university hospitals (art. 71, para. 1, second sentence; Execution Regulation [15], art. 96, para. 2, art. 99, para. 2).

In the Circular of the Ministry of Justice no. 172 dated Jan. 06, 2020, it is also accepted to treat the convict, who is exposed to contagious disease, primarily in the health unit within the structure of the institution (Second Section, First Part, B).

[15] The "Regulation on the Management of Penal Institutions and the Execution of Penalties and Security Measures" was repealed by the Presidential Decision no. 2324 and dated 28/3/2020 and the "Regulation on the Management of Penitentiary Institutions and the Execution of Penalty and Security Measures" (Regulation on Execution) was accepted and put into effect. (Official Gazette: 29 March 2020/31083).

The problem in these regulations is about which authority shall decide whether or not it is possible to examine and treat the convict in the health unit of the institution. The first authority to intervene the convict medically is the doctor who serves at the health unit within the structure of the institution. This doctor shall notify the management of the penal institution by a "report" when "*he feels the need to send the convict to a hospital based on health reasons"* (Execution Law, art. 80, para. 1; Execution Regulation, art. 99, para. 1). In these regulations, the authority to decide the treatment of the convict in a State or university hospital outside the penal institution, is not clearly stated. In this case, it is required to accept that the authority of the management of the penal institution is limited by carrying out the works and procedures required for sending the convict to the hospital, based on the report about the sick convict, issued by the doctor serving at the health unit within the structure of the institution. In other words, the management of the penal institution or any other authority does not have any authority to decide to continue the treatment of such patient at the health unit within the structure of the penal institution, following the issuance of the report by the doctor serving at the health unit of the institution, stating that the treatment of the sick convict should be carried out at the State of university hospital (Circular no 172, Third Section, First Part, A, 1). Accordingly, the duty of the management of the penal institution and the concerned office of chief public prosecutor is to determine the health institution to which the convict shall be sent and the people to accompany the convict (Circular no 172, Second Section, First Part, C, 1, 2).

"Where the health or life of a convict who has a health problem and refuses examination and treatment is in serious danger or where there is a situation posing a danger to the health or life of those who are in the penal institution", **regardless of their consents, the examination and treatments are carried out** only "on condition not to pose a danger to the health or life" (Execution Law, art. 82, para. 3, and the para.2 it refers to).

Contagious diseases, which pose a risk for the lives of the others, may constitute the grounds for the **stay of the execution** with respect to the convicts of whom the execution of the punishment is not yet started. However, the decision concerning this issue is conditioned strictly: the decision concerning this issue, *"shall be made by the Office of Chief Public Prosecutor in the place of execution, upon a report issued by the Forensic Medicine Institution or issued by the health committee of a fully equipped hospital designated by the Ministry of Justice and approved by the Forensic Medicine Institution"* (Execution Law, art. 16, para. 3; Execution Regulation, art. 42, para. 3).[16]

In our legal system, the existence of the risk of COVID–19 virus spread does not constitute a reason for a general stay of execution.

As COVID–19 outbreak is started to be seen in Turkey, it is requested in a letter sent to the Offices of the Chief Public Prosecutors by the General Directorate of Prisons and Detention Houses of the Ministry of Justice, to investigate whether the detainees and convicts were exposed to COVID–19 virus, during their admission into the penal institutions. Accordingly, the detainee and convict shall be admitted into the penal institution as based on a health report to be issued after investigating whether there are findings such as "fever, cough, fatigue". Likewise, it shall be investigated whether the detainee or convict has any connections with abroad, the last date he/she entered the country from abroad and to which countries he/she travelled before being brought to the penal institution. If it is determined that he/she has any connections with the abroad during the last 14 days, then admission into the penal institution shall be carried out "*according to the information obtained as a result of the required medical evaluations and shall be sent to the relevant health institution"*.[17]

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[16] In this case, the execution of a penalty may be suspended for the period specified in the report. If the period is not specified in the report, the execution may be suspended for one-year periods provided that a new report is obtained each time (Execution Law, art. 16(3); Regulation on Execution, art. 42(3)); Similarly, instead of arresting the suspects or defendants who cannot survive by themselves under the conditions of a penal institution due to a serious illness, they may be taken under judicial control. (Turkish Criminal Procedure Code, art. 109(f)). This amendment of the Turkish Criminal Procedure Code was made by Law no. 7242 dated 14/04/2020. Despite the fact that the arrest of the suspects or the defendants is at the discretion of the judge, the decision to their release due to serious illness or disability has been made difficult with this regulation

[17] The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses No:57551099-207.01-E.1976/47040 dated 12/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses No:57551099-E.2019/47690 dated 14/03/2020.

On the other hand, it is stated in the letter sent to the relevant units by the General Directorate of Prisons and Detention Houses of the Ministry of Justice that "*during the delivery to the penal institution, of the convicts and detainees to be admitted into the penal institutions for the first time, it is required that an evaluation performed with respect to Coronavirus should absolutely be included in the health reports issued at the hospitals*".[18]

b) According to the letters sent by the General Directorate of Prisons and Detention Houses of the Ministry of Justice to the relevant units, visiting the convicts and detainees by the people, who are understood to have a "contact" with abroad or who are suspected to have a contact, can be prohibited, "if required".[19] Moreover, visiting the convicts and detainees by "*the people arriving from abroad who are understood to be of foreign nationality*" is absolutely restricted for a period of time.[20]

Again, based on the mentioned letters, **contact and non-contact visitation of the convicts and detainees** are **prohibited** for a specific period of time **by the Ministry,** except *"the obligatory conditions"*. According to such letters, visits can be made in obligatory conditions only by the written permission of the Office of the Chief Public Prosecutor.[21] As explained in detail above, **there are no legal basis** for this restriction, unless state of emergency is declared due to a natural disaster or dangerous epidemic disease in the country.

As COVID–19 outbreak is started to be seen in Turkey, the obligations of distancing (2 meters) and wearing a mask is brought during the lawyers visit, in a letter sent to the Offices of the Chief Public Prosecutors by the General Directorate of Prisons and Detention Houses of the Ministry of Justice, although the convict's and detainee's meeting with his/her lawyer is not prohibited.[22] However, except "*for obligatory and emergency cases", the* **convict's and detainee's meeting with the lawyer** is prohibited for a period of time, in the letters sent afterwards.[23] Accordingly, the convict and the detainee shall be able to meet the lawyer in the obligatory and emergency cases. However, it is required to underline that, **even if state of emergency is declared in the country** due to a natural disaster or dangerous epidemic disease, such prohibition does not have any legal basis. **There can be no legal grounds for restricting the convict and specifically the detainee from seeing his/her lawyer for months.** It is of course legal to demand the measures to be taken in order to prevent the risk of transmitting the disease during such meetings. However, even in a state of emergency, the convict's and the detainee's right to meet the lawyer cannot be restricted absolutely, due to the abstract risk of transmission.

As indicated, according to the mentioned letters, the convict and the detainee can be allowed to see the lawyer under *"obligatory and emergency cases"*. However, how and by whom such *"obligatory and emergency cases"* shall be decided is another problem.

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18 The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3000/63855 dated 23/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-E.2019/47690 dated 14/03/2020

19 The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.1977/47041 dated 12/03/2020.

20 The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2434/56864 dated 27/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2772/61154 dated 11/04/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3037/64845 dated 30/04/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3373/68794 dated 15/05/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3593/71081 dated 29/05/2020.

21 The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-E.2019/47690 dated 14/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2434/56864 dated 27/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2772/61154 dated 11/04/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3037/64845 dated 30/04/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3373/68794 dated 15/05/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3593/71081 dated 29/05/2020.

22 The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-E.2019/47690 dated 14/03/2020.

23 The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2050/48848 dated 16/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2434/56864 dated 27/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2772/61154 dated 11/04/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3037/64845 dated 15/05/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3593/71081 dated 29/05/2020.

During COVID–19 outbreak, taking the convict and detainee out of the penal institution based on a special permit is prohibited for a period of time.[24] This prohibition also does not have any legal basis.

c) According to the Execution Law, even if the punishment is started to be executed, **such execution can be interrupted "***in obligatory and very urgent cases such as the need for a continuous treatment for the convict's disease*".[25] However this is only limited by the convicts who are sentenced to imprisonment for three years for the crimes committed intentionally, for five years or less for a crimes committed involuntarily. The Office of the Chief Public Prosecutor is authorized with respect to this issue (Execution Law, art. 17, para.4; Execution Regulation, art. 43, para. 4).26 This can be applied in case of contagious disease which poses a risk for the lives of the others. It should be noted that the time the convict spent outside the penal institution shall not be counted in terms of execution.

It is required to underline that not all contagious diseases pose a risk to life. Therefore, for example, the treatment of the convict who has influenza or mange can be made at the health unit of the penal institution. Likewise, the disease as a result of being infected by COVID–19 virus can be treated at the health unit of the penal institution by isolating such patient in some cases. However, it is declared in the announcement made by the Ministry of Justice on Apr. 28, 2020, that 120 convicts at the penal institutions were found to have COVID–19 virus and such convicts are being treated at the **hospitals.**[27]

d) Within the frame of the measures taken against COVID–19 outbreak, those convicts in the open penal institutions and those convicts in the closed penal institutions but who qualify to be transferred to open penal institutions, are provided to go out of the penal institutions as "on leave" until a certain date[28] based on the Law no. 7242 dated Apr. 14, 2020 (Execution Law, temporary art. 9).[29] However in this arrangement, it was not required to subject the convicts, who go out of the penal institution as "on leave", to supervised release measure. This way, ten-thousands of convicts were released, **without determination of any conditions, completely as uncontrolled,** without investigating whether they have a house where he/she can accommodate, whether he/she has any financial support for his/her living.[30]

Within this scope, the convicts serving their sentences in a social environment based on the supervised release measure application in compliance with the provisions of the article 105/A of the Execution Law, as of Apr. 15, 2020 on which the Law no. 7242 took effect, were also moved out of supervision and were considered as "on leave".[31]

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[24] The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-E.2019/47690 dated 14/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2434/56864 dated 27/03/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.2772/61154 dated 11/04/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3037/64845 dated 30/04/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3373/68794 dated 15/05/2020.
The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no.57551099-207.01-E.3593/71081 dated 29/05/2020.

[25] In this case, the execution of penalties may be suspended for a maximum period of one year. However, the execution of penalties can be suspended twice at most for this reason. (The Law on the Execution of Penalties and Security Measures (Hereinafter Law on Execution), art. 17(4); Regulation on Execution, art. 43(4)).

[26] It is self-evident that the Chief Public Prosecutor's Office relies on a report on the convict's state of health when exercising such power. However, whether the report can be drawn by any doctor or according to the procedure in art.16(3) of the Law of Execution is unclear.

[27] http://www.basin.adalet.gov.tr/Etkinlik/adalet-bakani-abdulhamit-gul-baskanliginda-koronavirus koordinasyon- toplantisinin-yedincisi-yapildi (Last accessed 26/05/2020).

[28] Although this date is determined as 27.05.2020 from 31.04.2020 to 27.05.2020 in Law no. 7242, the period of leave may be extended three times for a maximum of two months by the Ministry of Justice upon the recommendation of the Ministry of Health. As a matter of fact, this permit has been extended for 2 (two) months from 31 May 2020 with the Ministry of Justice's "APPROVAL". The letter of the Ministry of Justice General Directorate of Prisons and Detention Houses no. 57551099-207.01-E.3525/70448 dated 27/05/2020.

[29] However, it must be noted that, although the total number of convicts released from penal institutions from 15/04/2020 to 27/05/2020 with the implementation of the Law no. 7242 is 109011; as of 27/05/2020, the number of convicts and detainees in penal institutions is 183953. This number is significant and increasing day by day.

[30] Some 'disciplinary' crimes committed by the convicts in penal institutions have even been ignored to enable them to be released on 'leave'.
In this context, acts such as
- Possessing, using or selling drugs or stimulants in the institution (Law on Execution, art. 46(7)b),
- Malicious wounding (Law on Execution, art. 46(7)p),
can be shown as examples of 'disciplinary' crimes that have been ignored.

[31] Since the scope and conditions of the application of art.105/A of the Law on Execution have been exceptionally extended in terms of the crimes committed by 30/03/2020 (Law on Execution, provisional art. 6), the number of convicts released as 'on leave' is expressed as 'ninety thousand'.

However, both the World Health Organization and the Council of Europe The Committee pf Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) provided for keeping such convicts, who were moved out of the penal institution within this frame, under supervised release measure.[32]

e) If the convict commits a new crime during the period of time which he/she passed outside the penal institution as "on leave", there are no provisions in our legislation for counting such escape period due to not surrendering after committing such crime, towards execution.

According to the Execution Law, the convict who is serving the sentence in a penal institution can go out of the penal institution as **"on leave"** based on various reasons (art. 93 ff.). Within this frame, the convict may be granted *"an excuse leave of up to ten days* ***excluding the travel time"*** under certain conditions (Execution Law, art. 94, para. 1). Likewise, the convicts at the open prison *"may be granted a leave for* ***up to three days excluding the travel time****, for once every three months ..... to ensure that they maintain or strengthen their ties with their families and to achieve their adaptation to the outside world." (Execution Law, art. 95). Also, "the convicts who have one month left before their release on probation may be granted a leave for* ***up to eight hours*** *on working days ..... so that they should not face adaptation problems when they return to their normal lives and in order to enable them to look for work." (Execution Law, art. 96). It is required to emphasize that "time spent on a leave shall be counted towards the prison sentence."* (Execution Law, art. 93, para. 1, second sentence).

Due to the shortness of the "on leave" periods in these provisions, it may not be considered as a deficit that there are no provisions in the legislation on what should be done if the convict who is moved out of the penal institutions as "on leave, but without any control and supervision application in some cases, commits a new crime during this period of time. However, when the state of being "on leave" which shall continue for months is imposed as based on the Law no. 7242, it is now a problem that if the convict commits a new crime during this period on which such convict is "on leave".

In this case, the problem is required to be evaluated with respect to two phases. The first phase is the period which starts as the convict leaves the penal institution on Apr. 15, 2020 as "on leave" until the date on which such convict intentionally commits the crime. The second phase is the period which starts when the convict who is "on leave" intentionally commits a crime and lasts until he is caught if he does not surrender, and in any case, until the end of the leave period.

If the convict released on probation deliberately commits a crime during the control period, then the decision for the release on probation shall be revoked (Execution Law, art. 107, para. 12). In this case, the convict shall serve in the penal institution on condition to *"start from the date of committing the subsequent crime"* (Execution Law, art. 107, para. 13, subpara. a). According to this arrangement, the time to pass from the date on which the convict is released on probation until the date of committing such crime intentionally will be counted towards the execution.

Likewise, if the convict serving outside the penal institution, for whom supervised release is applied before the release on probation, commits a crime during this period, then such convict shall again be taken to the penal institution (Execution Law, art. 105/A, para. 7). According to this arrangement, it is beyond doubt that the time passed outside under supervised release until the date on which the convict commits the new crime shall be counted towards the execution.

[32] Preparedness, prevention and control of COVID-19 in prisons and other places of detention, World Health Organization, http://www.euro.who.int/__data/assets/ pdf file/0019/434026/Preparedness-prevention-and-control -of- COVID-19-in-prisons.pdf?ua=1 (Last accessed 27/05/2020); https://rm.coe.int/16809e09ec (last accessed 27/05/2020).

If the convict leaving the penal institution based on either release on probation or supervised release does not surrender and is not caught after committing the new crime during the control period, then such time to pass is **not counted** towards the execution.

When such provisions are taken into consideration, it is concluded that the period to pass until the date on which the convict, who is released on Apr. 15, 2020 as "on leave" but without any control, intentionally commits a crime after leaving the penal institution (the first phase) is required to be counted towards the execution. On the contrary, it is not legally possible to despite against the second sentence of the Execution Law article 93, para. 1 that if the convict who is "on leave" does not surrender after committing the crime intentionally, then the time to pass until such convict is caught and in any case until the end of the leave period cannot be counted towards the execution. However, it is clear that such time should not be counted towards the execution. For this purpose, an urgent **legal provision** is required. It is required to underline within the scope of such an arrangement that the concept of "acquired right" does not have any application in the penal and execution law.

f) Another problem related to the release of ten thousands of convicts outside the penal institution as "on leave", based on the Law no. 7242 shall emerge when such convicts do not return to the penal institutions by the end of the leave periods. According to the Law no. 7242, a significant part of these **ten thousands of convicts,** who are released as "on leave" without any supervision and control, shall be required to return to the penal institution latest by Nov. 30, 2020. It is without a doubt that it is very hard to provide the return of these convicts back to the penal institutions.

While the article 292 of the TPL defines the escape of the convict as a crime; the Execution Law contains provisions for punishing the convict, who was released as on leave or by any other reasons, in compliance with the mentioned article 292 even if he does not return to the penal institution, (art. 58, para. 3; art. 97, para. 2; art. 105/A, p. 8; temporary art. 9, para. 5).

However, the crime defined in the article 292 can only be committed by act of commission as of its nature. The act constituting this crime is to **escape.** If the convict **escapes from the penal institution,** then this constitutes a crime. Likewise, the convict can be moved out of the penal institution by various reasons, but **under the supervision of the officials (gendarme);** for example, the convict can be taken to the hospital for treatment, can be sent to court for trial. The crime defined in the art. 292 of the TPL is committed in case the convict **escapes from the officials supervising him/her.**

It is required to emphasize that for example although in German Penal Law the acts of helping a convict to escape, providing the convict to escape are defined as crime (§120); the escape of the convict only does not require punishment. In this case, it is accepted that there is a **personal impunity reason.** On the other hand, the escape of more than one convict by force or by threatening is defined as a crime in the mentioned Law (§121).

In some other laws, for example if the convict who is moved out of the penal institution as on leave does not return to the penal institution on time, then this is considered as a crime (French PL, art. 434; Polish PL, art. 242).

In Turkish Penal Law a common way is applied as a crime policy when compared to these systems. While the act of escaping is defined as a crime, for example, if the convict released "on leave" but **not under the supervision of the officials** does not return to the penal institution when the leave ends, this is not defined as a crime. This situation requires only the disciplinary liability of

the detainee or the convict.[33] However, it is required to state that, the Execution Law includes provisions to provide the punishment as based on the provision of the article 292 of TPL, in case the convict, who is moved out of the penal institution as on leave or by any other reason , does not return to the penal institution on time (art. 58, para. 3; art. 97; art. 105/A, para. 8; temporary art. 9, para. 5). Within the scope of this Report, it was pointed out that these provisions are problematic both within the context of legality in crime and also as of the arrangement contents.

Within the scope of the measures taken against COVID–19 outbreak risk, the convicts are provided to make more telephone calls with their relatives instead of being visited by their relatives (Execution Law, art. 66).

Although the President's special pardoning power (Const., art. 104) can be considered for the convicts who are exposed to COVID–19 virus; such special pardoning power of the President is not appropriate for the discharge from the penal institutions, of the convicts who are exposed to COVID–19 virus outbreak risk since the process of utilization is long[34] and is useable only with respect to certain provisions.

Another remedy is the exercise of special pardoning power by the Grand National Assembly of Turkey (Const., art. 87). However, exercising this power require a political evaluation more than a legal one.

1.2.3. Liability Due to the Crime Resulting in "Bad Check" Process with respect to COVID-19 Outbreak and Checks

With the Law no. 7226, dated Mar. 25, 2020[35], the terms for using certain rights in various laws, making certain applications are suspended as of Mar. 23, 2020 (temp. art. 1)[36]. It is argued in the doctrine whether such suspension covers the period of presentation of the check or not37. Despite this argument, it is observed in the application that the transactions related to the checks presented to the bank between the dates Mar. 13, 2020 to Jun. 15, 2020 are performed, that the

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33 In this context, the following explanations that were given as justification in the Constitutional Court decision of the No: E. 2018/153, K. 2018/119 dated 27.12.2018 are important: *"It is clear that convicts who escape from penal institutions are different from convicts who do not return to the institution at the end of their leave. The legal benefit violated by the act of not returning to the institution and the legal benefit violated by the act of escaping from the penal institution are different from each other. Therefore, it is not against the principle of equality that the legislator regulates different material elements for the crimes of escaping the penal institutions and failing to return to the institution."*

34 The difference between the convicts' escape and their failure to return to the institution was indicated in the Constitutional Court decision No:2013/2754 dated 18/02/2016:
"The Constitutional Court has stated in many of its decisions that the issue of determining which acts will be regulated as a crime is a matter of crime policy, provided that it is not contrary to the Constitution. It is understood that the penal sanction stipulated by the objected rule aims to ensure that the state can fulfill its judicial functions within the framework of the aims to be achieved with the execution of penalties, the penal system can function effectively, and crimes and criminals can be tracked. It cannot be said that it is unfavorable and unnecessary for the legislator to provide a prison sentence for the act of escaping the institution to achieve the aforementioned purposes. It cannot be said that it is unfavorable and unnecessary for the legislator to provide a prison sentence for the act of escaping the institution to achieve the aforementioned purposes. Furthermore, using force, threat, or gun during the act of escape is regulated as the aggravating circumstances. In addition, effective repentance provisions that allow for a reduced sentence in case of the convict surrendering within a certain period of time after escaping from the institution are included. In this context, it is seen that the penalties and effective repentance provisions are determined according to the way that the act is committed. For these reasons, the contested rule regulated by the legislator within the scope of its discretion is not against the principle of proportionality.
…..
It is clear that the legal statuses of the convicts who escaped the institution and who failed to return to it within the given time are different. *The legal benefit violated by the act of not returning to the institution and the legal benefit violated by the act of escaping from the penal institution are different from each other. Therefore, it is not against the principle of equality that the legislator regulates different material elements for the crimes of escaping the penal institutions and failing to return to the institution."*

35 Official Gazette: 26 March 2020/31080 Repeating.

36 While the date for the termination of the suspension period was determined as of 30/04/2020 in the article in question, this period has been extended until 15/06/2020 by the Presidential Decision no. 2480 dated 29/04/2020 (Official Gazette: 30 April 2020/31114). (art.1).

37 One of the views in the literature states that the regulation in question also covers checks. PASLI, Ali: *"COVID-19 Salgınının Çek Hukukuna Etkisi: Güncel Koşullar Sürerken Çek İbrazı Mümkün Müdür?" (Effects of COVID-19 on Check Law: Is It Possible to Present Checks While Current Circumstances Are Lasting)*; PASLI, Ali: *"Çeklerin Pandemi Süresince İbrazının Devamına İlişkin Güncel Uygulamanın Eleştirisi: Çekteki İbraz Süresinin Bilhassa Çek Kanunu Sonrasındaki Teknik Anlamının Anlaşılamaması" (Critique of Current Practice on Continuity of Presentations of Checks During Pandemic: Ambiguity on Technical Meaning of the Period of Check Presentation Especially After Check Statue).*
On the other hand, an opposite view in the literature argues that the regulation does not cover checks. DURAL, Halil Ali: *"Covid-19 Salgını Nedeniyle Yürürlüğe Giren 7226 Sayılı Kanun'un Geçici 1. Maddesinin Çek Açısından Sonuçları" (Effect of Provisional Article 1 of Statue 7226 Which is Impemented Because of COVID-19 Pandemic in terms of Cheques)*, in: COVID-19 Salgınının Hukukî Boyutu, Hukukun Tüm Alanlarında Değerlendirmeler (Legal Dimension of COVID-19 Outbreak, Evaluations in All Areas of Law), Editör Muhammet Özekes, İstanbul, Onikilevha Yayıncılık AŞ, p. 649 ff.; AYDIN, Alihan *"Covid-19 Salgını ve 7226 Sayılı Kanunun Geçici 1. Maddesi Çekten Kaynaklanan Hukuki Sorumluluğun Şartlarını Değiştirmiş midir?" (Did Covid-19 Outbreak and Temporary Article 1 of the Law no. 7226 Changed the Conditions of the Legal Liability Arising of a Check)*, in: COVID-19 Salgınının Hukukî Boyutu, Hukukun Tüm Alanlarında Değerlendirmeler, Editör Muhammet Özekes, İstanbul, Onikilevha Yayıncılık AŞ, p. 633 ff.
Another view that has a hesitant approach to the issue, argues that this issue should be clarified with a legal regulation. For this view please see SARIKAYA, Sinan: *"7226 Sayılı Kanun'un Geçici 1. Maddesinin Çeklerin İbrazı ve Karşılıksız Çek Suçuna Etkisi"*, in: COVID-19 Salgınının Hukukî Boyutu, Hukukun Tüm Alanlarında Değerlendirmeler, Editör Muhammet Özekes, İstanbul, Onikilevha Yayıncılık AŞ, p. 661 ff.

honored checks are paid within this frame, that "bad check" transaction is carried out in case the check is to bounce. Accordingly, this argument in the doctrine does not have any effect on the legal law liability[38] of those concerned due to the checks that are subjected to "bad check" transaction between the dates Mar. 13, 2020 to Jun. 15, 2020.[39]

Likewise, if the payment of the check is abstained although it is presented to the bank as of its issuance date between the dates Mar. 13, 2020 to Jun. 15, 2020 and there is sufficient cash in the account, then it shall be required to accept that the crime defined in the Law of Checks, article 7, para.5 is committed.

According to the provisions of the temporary article 5 which is added to the Law of Checks, by the Law 7226 (art. 49); the **execution** of the imprisonment applied due to the non-payment of the judicial fine due to the crime **committed until the date Mar. 24, 2020,** for causing the performance of the "bad check" transaction with respect to the check, is sued as of the date on which the Law no 7226 took effect. As a natural result of this, the execution of the imprisonment which is not applied yet shall not be started. If the amount of the check is paid according to the installment method provided in the mentioned article, then **"***it is decided by the court convicting, to abolish the conviction decision with its consequences".*

In consideration of this arrangement, the investigations and prosecutions with respect to the mentioned crime shall be duly performed. If a punishment is to be decided in the end, and if such punishment is finalized, then the **execution of the punishment shall be waited** according to the provisions of the temporary article 5.

The provision of the mentioned temporary article **shall be applicable** only if the crime for causing the "bad check" transaction is **committed until the date Mar. 24, 2020.** However, the effect of COVID–19 outbreak on commercial life was just started **on such date.** In fact, the acts that are included within this scope are those which were committed before the emergence of COVID–19 outbreak. Accordingly, it is required to expand the application area of the mentioned provision in a manner to cover the term in which COVID–19 outbreak affects the trade life and to flex the conditions for the delay of the execution.[40] It is also required to underline that the state of influence of the commercial enterprises and the merchant real or corporate bodies by COVID–19 outbreak require the application of the provisions of TPL (art. 25, para.2) and LCP (art. 223, para. 3, subpara. b) with respect to the **state of necessity** in the context of the present case.[41]

[38] For detailed information please see; ÖZGENÇ, İzzet: Çek Kanunu, 8. ed., Ankara, Ağustos 2019, p. 118 ff.

[39] SARIKAYA, p. 677.

[40] However, it should be noted that the provisional article was amended by Law no. 7247 of 18.06.2020 (Art.11) (Official Gazette: 26 June 2020/31167). This amendment made it easy for the payment of the check price only. It did not expand the scope of application of the provision. In other words, the aforementioned provision can only be applied if the crime of causing an "unrequited" transaction regarding the check is committed **until 24.3.2020**. In this respect, it can be said that this change does not meet the needs.

[41] SARIKAYA, p. 675, 676.

1.3 Effects of COVID–19 Outbreak on the Field of Tax Law

COVID–19 Outbreak is assessed as a **force majeure** event with respect to the performance of the **tax obligations** by the individuals against the State. However, an effect limited only by suspension of the terms concerning the performance of the tax obligation cannot be attributed to this force majeure event. Suspension of the terms concerning the performance of the tax obligation until a certain date is not sufficient for elimination of the negative consequences caused by the outbreak. Suspension of the terms of the performances-duties related to the tax law until a certain date only prevents the application of sanctions to the individuals due to non-compliance with the terms. It is certain that the cases in which the tax debt cannot be paid shall be encountered due to the mentioned force majeure event, even if such force majeure event ceases to exist. The force majeure event based in COVID–19 outbreak makes or shall make it very difficult and even impossible to pay the tax debt in some cases. Therefore, it is very important to make legal regulations for reduction and even abolition of the tax debt for some cases specifically.

In fact, there is no need to make a legal provision for the effect of the force majeure event based on COVID–19 outbreak, on suspension of the terms related to the performance of the tax obligation.

Exceptional legal provision for suspension of the terms related to the performance of the tax obligations until a certain date shall function for elimination of the hesitations to emerge during the application.

The mentioned outbreak is a force majeure event; it suspended all the terms related to the performance of the tax duty. The terms for the notification, issuance of documents, bookkeeping, submittal, retention and presentation of declarations are also included in this scope as well as the payment terms. Moreover, all the administrative and judicial application terms are suspended for exercising a right.

A need has emerged for an extensive legal provision for solving the problems which occurred or shall occur for the payment of the tax debt due to a force majeure event based on COVID–19 outbreak. With respect to the payment of the **tax debt** within this frame, it is needed to abolish, reduce the tax debts that accrued or at least to apply installments by extending these to long terms and not subject them to interest application as long as the force majeure event related to COVID–19 outbreak continues specifically for the real or corporate bodies owning the enterprises of which the activities are suspended. Likewise, the tax debts that had arisen before COVID–19 outbreak but not timely paid due the force majeure event based on this outbreak are required not to be subjected to interest application or at least installments are required to be applied after a tax deduction. The level of exposure of the commercial enterprises or the tax debtors to the force majeure event based on COVID–19 outbreak should be taken into consideration in diversification to be formed with respect to the payment of the tax debt. For example, a tax debt which had arisen before the COVID–19 outbreak and not duly paid and a tax debt, which although had arisen before the COVID–19 outbreak, its payment calendar does not correspond to the force majeure event process based on this outbreak should not be subject to a payment regime with the same conditions.

If the tax debt is not duly paid due to force majeure event based on COVID–19 outbreak, it is beyond doubt that the tax fine application should not be applied. The level of exposure of the enterprises and people to the force majeure event should be taken into consideration. In return to renouncement of tax fine application for some enterprises, real and corporate bodies by taking this level of exposure into consideration, such facilitation should not be provided for the commercial enterprises which commercially turns the outbreak into an "opportunity". Accordingly, COVID–19 outbreak should not be considered as a force majeure event in the tax law for all the enterprises, all the tax debtor real and corporate bodies without any discrimination between them.

Then again, as in the payment of the tax debt, the **tax fine** accrued before COVID–19 outbreak but not timely paid and the tax fine with payment calendar corresponding to the force majeure event based on this outbreak, although accrued before COVID–19 outbreak, should not be subjected to the payment regime with the same conditions.

Similar regulations are required to be made for the execution of the **administrative fines**. Accordingly, delay of the execution of the administrative fines, of which the payment calendar corresponds to COVID–19 outbreak, making installment plans for the payments, suspension of interest application or application of interest at low rates can be implemented. However, administrative fines accrued before COVID–19 outbreak but not timely paid and the administrative fines with payment calendar corresponding to the force majeure event based on this outbreak, although accrued before COVID–19 outbreak, should not be subjected to the payment regime with the same conditions.

A similar method should be applied with respect to the execution of the judicial fines: judicial fines accrued before COVID–19 outbreak but not timely paid and the judicial fines for which the execution corresponds to the force majeure event, should not be subjected to the same conditions with respect to the execution. There is no need for a special arrangement for the judicial fines of the first category for execution by payment. However, with respect to the execution by payment of the judicial fines in the second category, the economic condition and the level of exposure of the convict to the outbreak should be taken into consideration and the installment method extended over long terms should be applied.

1.4. Sharing Personal Data of Special Nature and the Liability of the Penal Law

According to the **Law on Protection of Personal Data no. 6698 dated Mar. 24, 2016, prepared by taking European Council's "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data"**[42] into consideration; the date concerning the individual's health is sensitive data, in other words "*personal data of special nature" (art. 6, para. 1). The personal data concerning the individual's health*[43] "*may be processed without seeking explicit consent of the data subject, by any person or authorized public institutions and organizations that have confidentiality obligation, for the purposes of protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services, planning and management of health-care services as well as their financing." (art. 6, para. 3).*[44] Such personal data **may be transferred to a third party "***for the purposes of protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services, planning and management of health-care services as well as their financing" and "provided that sufficient measures are taken", "without seeking explicit consent of data subject" (art. 8, para. 2, subpara. B).*[45]

In the regulation of the article the *identity of the third party to* whom the personal data may be transferred is unspecified. In the present case, it is required to specify such third party, based on the specific purpose among the purposes listed in the third paragraph of the article 6 of the Law no. 6698. In other words, in the present case, it is required to determine the purpose for which the individual's personal data concerning health is desired to be transferred and then, to determine the real or corporate bodies or the institution to which such transfer can be made. Therefore, what is important in this transfer is the legal purpose aimed. This purpose is even an important criterion for determination of the content of the personal data to be shared.

Likewise, this transfer can be made only *"provided that sufficient measures are taken"*. What is aimed here is to take the measures in order to prevent the person to whom such data is transferred from using it for any other purposes and to prevent unauthorized people from accessing such data.[46]

Accordingly, there is a requirement for **public health** purposes, for sharing the information that the person is infected with COVID–19 virus, with the other people sharing the same physical environment, whom such person has close contacts.[47]

If seeking explicit consent of the person is not required with respect to the personal data where one of the purposes listed in the third paragraph of the article 6 of the Law no. 6698 is aimed, then

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42 For the contract text please see; OG: 7 April 2016/29677; Türk Ceza Hukuku Mevzuatı, Cilt 3 (Milletlerarası Sözleşmeler), Gazi Üniversitesi Türk Ceza Hukuku Uygulama ve Araştırma Merkezi yayını, Ankara, April 2017, p. 899 ff.

43 "Personal health data: It refers to all kinds of information about the physical and mental health of an identified or identifiable real person and information about the health service provided to the person." (Regulation on Personal Health Data [Official Gazette: 21 June 2019/30808], Art. 4, f. 1, item j).

44 The Central Health Data System (established under the Ministry of Health) and MEDULA (established within the Social Security Institution) are important examples in this context which are the systems that includes the data of everybody who admitted to health institutions and received health care services in Turkey.

45 Sharing the information on which drugs are used by health institutions and people who apply to physicians and receive health services with the Social Security Institution and the relevant private health insurance companies constitute an important example in this context.

46 In this respect, the decision of the Personal Data Protection Board dated 31.01.2018 and numbered 2018/10 (Official Gazette: March 7, 2018/30353) on "Adequate measures to be taken by data controllers in the processing of special qualified personal data" is important.

47 In fact, this transmission can also be done to protect someone else's health. For example, if HIV diagnosis is made in relation to one of the married spouses, the other spouse must be informed about this regardless of the consent of the patient.

notification, informing of such personal data transfer to the extent possible is a requirement of a personal right, although there are no explicit provisions in our legislation.

The Ministry of Health keeps the records of some information about the people who are exposed to COVID–19 outbreak and even those who have the risk of being exposed to this outbreak. This record process covers for example information related to the travels, the locations of the people, as well as the personal data related to their health conditions. This record keeping is performed **in order to protect the public health.** Accordingly, this record keeping is **legal**, regardless of whether the concerned person has consent.

1.5. Liability of International Law due to COVID–19 Outbreak

The first notification to the World Health Organization (WHO)[48] by the People's Republic of China with respect to COVID–19 Outbreak which originated from China, was made on Nov. 31, 2019.49 The declaration of the Chinese government in this notification that there are no proofs evidencing that the mentioned virus spreads from person to person, was relied on and "**public health emergency of international concern"** was not declared by WHO.[50,51] However, "**public health emergency of international concern"** was declared by WHO upon the notifications of China and governments of other states afterwards that the mentioned virus spreads from person to person.[52] Following this decision, recommendations were made numerous times by WHO to the member States with respect to the prevention of the mentioned outbreak.

On Mar. 11, 2020, it was declared by WHO that the mentioned outbreak is at "*pandemic*" scale by taking into account the prevalence of COVID–19 outbreak, the speed in spreading, the severity of its results and despite these, the inaction of the states.[53]

Considerable criticisms are directed to WHO on the international arena for the delay in the mentioned decision-making process. Likewise, Chinese government, for being the country of origin, was criticized for not making the required notifications timely to WHO and for providing incomplete information during this process.

Upon this criticism, the report to be issued as a result of the research and review to be carried out based on the decision taken in the 73rd meeting dated May 19, 2020 held by the decision-making organ of WHO, "*World Health Assembly",* is highly important both for the functionality of the mentioned Organization and for the arguments on the liability of international law due to COVID–19 outbreak.

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48 With the Law no. 5062 dated 09.06.1947, "The Final Act of the International Health Conference prepared and accepted by the International Health Conference held in New York between 19 June 1946 - 22 July 1946, the Constitution of the World Health Organization, the Agreement between the Governments represented in the International Health Conference and International Public Health Office on the protocol "was approved by Turkey and Turkey became a member of the world Health Organization (OG: June 17, 1947/6634).

49 The "International Health Regulations"(The Constitution of the World Health Organization Article 21), adopted by the World Health Assembly(The Constitution of the World Health Organization Article 10-23), in 1969 and last amended by the decision taken at the meeting dated 23.05.2005, gives member states the obligation to notify the epidemic cases that cannot be eliminated only by struggle on a national scale and that are in danger of gaining an international dimension.

50 Upon this decision, until the COVID-19 pandemic, the "Public Health Emergency of International Concern" (PHEIC) has been declared six times including this epidemic by WHO since 15.06.2005, when the last amendments in the "International Health Regulations" entered into force. These epidemics are related to "swine flu" in 2009, "wild polio" and "ebola" in 2014, "zika" in 2016, "ebola" and COVID-19 in 2019, respectively.

51 Based on this decision, the WHO Director-General has the authority to recommend various health measures to member states, including travel and similar restrictions. (International Health Regulations [2005], Article 15,16)

52 'Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-nCoV)' (WHO, 30 January 2020) Accessed 14 June 2020.

53 'WHO Director-General's opening remarks at the media briefing on COVID-19' (WHO, 11 March 2020) Accessed 14 June 2020.

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Chapter 2

Evaluation of the Legal Problems Caused by COVID–19 Outbreak in the Fields of Civil Law and Code of Obligations

Introduction to the Legal Problems Occurring/to Occur in the Fields of the Law of Contracts and Health Law due to COVID-19 Outbreak
COVID-19 and the Basic Principles of the Law of Contracts
COVID-19 and Force Majeure
COVID-19 and Impossibility of Performance - Hardship
COVID-19 and Collapse of the Basis of the Transaction
COVID-19 and Default of the Debtor
COVID-19 and Termination with a Valid Reason
COVID-19 and Debt Relations Independent of Performance Obligation
COVID-19 and Tort Liability
COVID-19 and Liability to Pay the Rent for the Rental of the Workplace
COVID-19 and Credit Agreements
COVID-19 and Consumer Transactions
COVID-19 and the Right to Establish Personal Relation
COVID-19 and Associations - Foundations Law
COVID-19 and Protection of the Personal Data
COVID-19 and Insurance Agreements
COVID-19 and Sports Sector

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Abstract

Administrative measures taken to prevent the spread of the Covid-19 pandemic also affected the private law relations. During the epidemic, it has become difficult to comply with the usual order of many legal relations for both legal and de facto reasons or has been completely eliminated. In this section, the issues arising in the field of civil law-law of obligations and listed below are discussed:

1. Considering the importance of contractual relations in human life, the effects of COVID-19 are primarily addressed in this context. Covid-19, has created obstacles that the parties could not predict before. The pandemic and the sanctions occurred outside the area, where the risk and control were by the parties. Therefore, current administrative measures are accepted as a force majeure.

2. It was pointed out that this qualification does not have the same effect on every legal relationship and the importance of evaluating each contractual relationship on the basis of its own terms and characteristics was emphasized. It was mentioned that it should also be examined whether the parties include a provision that will include the COVID-19 outbreak in the scope of application.

3. The basic principles of contract law and how the types of breach should be handled in the context of COVID-19 were evaluated separately. In this context following issues was evaluated: the freedom of contract and default in contract should be handled considering the COVID-19 conditions of debtor default; meaning of the impossibility/frustrations-hardship-collapse of the underlying basis of the transaction and which COVID-19 measures make it necessary to apply the principles of impossibility, frustrations-hardship-collapse of the underlying basis of the transaction for what kind of debt relations; the impact of COVID-19 measures on protection obligations and finally the possibility of rightful termination.

4. In addition, the effect of COVID-19 on some contracts has been examined under a separate sub-section. These contracts and the legal problems discussed under a separate heading regarding the relevant relationship can be listed as follows: status of payment debt in lease agreements; the scope of the borrower's repayment debt in loan agreements, the status of the seller's obligation to obey statutory periods in distance sales contracts and the time limitation for the right of withdrawal against COVID-19 conditions (This problem was also addressed specifically for education and package tour contracts), in insurance contracts, the payment of insurers' for the treatment expenses because of COVID-19 even if they are not covered by the contract and the consequences of the insured's failure to comply with the epidemic measures, the impact of COVID-19 measures on contractual relations in the sports sector.

5. In addition, it was discussed whether people who act contrary to the measures taken will be liable for this action according to tort law.

6. Another evaluation has been made upon the topic of conducting personal relation in accordance with Covid-19 restrictions between the divorced family members and the children, they do not live together. Within this scope it is examined, how to react by constituting the balance between the spread risk of the disease and children's right to personal development.

7. Postponement of general assembly meetings of associations and foundations were also examined. It has been determined that the associations and foundations will not dissolve due to the meetings that could not be held and the resolutions taken in the general assembly meetings held during the prohibition period are null and void.

Some problems have also been arisen within the context of protection of personal data due to Covid-19. As an example of these problems, data protection regarding remote working and tracing apps have been examined.

2.1. Introduction to the Legal Problems Occurring/to Occur in the Fields of the Law of Contracts and Health Law due to COVID-19 Outbreak

Various administrative measures are taken and continued to be taken in our country also as in all over the World, due to COVID–19 outbreak: All the meetings and organizations, land-air-marine travels are cancelled; borders are closed; entries into-exits from the cities are banned; quarantine applications are started; public areas are closed; communication forms encountered a radical change; national and international supply chains became inoperable due to such administrative measures.

It is inevitable for such developments to influence the debt relations. Among the most important problems brought up by COVID–19 with respect to the contractual relations is the problem of payment of the debts as agreed in the agreement. In fact, the possibility to comply with the order concerning the payment of many debts arising of the contractual relations, was not possible anymore both due to the legal reasons and the actual reasons during the outbreak.

It shall be required to consider the performance barriers to emerge based on the mentioned measures, which aim the prevention of the spread of the disease and of their effect on wider sections of the society and as a result, to provide public interests and safety, within the context of liability law. For example, whether or not the debtor, who cannot pay the debt due to the mentioned performance barriers, can be held responsible for the negative consequences of not paying the debt; or whether or not the creditor can exercise the rights given to him due to the contradiction to obligation, will be the questions that need a reply.

As a condition of this legal state, first it is required to determine whether or not an available debt relation is influenced by the measures taken due to an epidemic disease, namely COVID–19; if influenced, then it is required to determine the scope and nature of such influence. It is beyond doubt that the correct determination of the scope and nature of the influence determined shall also be important for determination of the legal consequences such state shall bring.

It is beyond doubt that the evaluation to be made as based on the current performance barriers system shall be an evaluation within the context of the consequences of the performance and non-performance of obligation. Accordingly, it shall be appropriate to determine whether or not the measures taken based on the phenomenon of the epidemic disease constitute a "*performance barrier*" with respect to the current debt relation; and if there is a performance barrier, then, to determine the effects and consequences of such performance barrier on the mutual rights and obligations of the parties under a current debt relation.

2.2. COVID–19 and the Basic Principles of the Law of Contracts

Economic life is mainly carried out as based on contracts. *Pacta sunt servanda* is among the indispensable principles of the law of contracts and, in connection with this, the economic life. Contract creates a special debt relation between the parties. Whether or not it is required to be loyal to this special debt relation even in epidemic disease periods; and if it is required, the limits of such loyalty are the questions now asked by all the economy actors. The questions that may come to mind within this context, can be listed as follows:

What will happen if a party of the contract cannot pay its debts during this period? Which rights may the creditor have?

In this case, can the debtor who is under contractual obligation abstain from not paying his/her debt at all or not paying it in a timely manner as promised? Or, can he/she be expected of paying his/her debt despite COVID–19 crisis?

If COVID–19 crisis made it impossible to pay the debt temporarily or definitely, then can the creditor be held responsible?

Our legal system offers many facilities in order to reply this and similar questions in an adequate manner. The mentioned legal facilities are mainly regulated in the Turkish Code of Obligations, Turkish Civil Law and other legislations. Turkish Code of Obligations specifically acquired the principle of "freedom of will" as the basis, as of the arrangements it contains; and due to this reason, reserve rules of law are included. Therefore, the parties of the legal relation also have the possibility to make arrangements that depart from the legal provision.

Due to this legal condition stated, first it is required to look at the contract itself, when searching for the answer of the question of how the administrative measures taken as based on the epidemic disease reason would affect a concrete legal relation. As frequently seen in contract application, the parties prefer to make arrangements by considering the questions such as which phenomenon shall have what types of effects on the debt relation and which facilities shall be provided to the parties; in such a case what will be the basic approach method. Such arrangements are valid and binding for the parties on condition that they are accepted in a manner that complies with the compulsory rules (such as general transaction conditions) related to the formation of a contract.

When the performance barriers system accepted by Turkish Code of Obligations is taken into consideration, the administrative measures taken due to the epidemic disease may result in the following legal problems with respect to the contractual liability:

If a debtor cannot perform his/her obligation (for contractor, the work; for a seller, the delivery of the property sold; for a lessee, the payment of the rent etc.) on time agreed in the contract, then he/she shall be considered as acting contrary to his/her obligation. In this case, "default of the debtor" can be mentioned legally.

If a debtor (job holder, buyer or lessor) could not accept the performance offered to him/her or could not make something which is required to be made by him/her for the realization of the performance, then, in this case, a sort of noncompliance with contract will occur for him/her. Accordingly, *"default of the creditor"* or, as the case may be, *"violation of the obligation to facilitate performance"* can be mentioned legally.

In line with these, the mentioned measures may make it impossible to pay the debt; or may cause an imbalance in the performance between the parties. In the first case, there shall be *"impossibility of performance"* and in the second case there shall be *"hardship of performance"*.

Again, as a whole, even in theory, the collapse of the basis of the transaction may become a current issue.

2.3. COVID–19 and Force Majeure

The legal problems mentioned above are actually the legal problems related to the liability legal system; and the purpose here is to determine whether the parties of the contract can be held liable or not for the legal consequences that emerge. "Fault" with respect to all liability types constitutes the basis of our liability law. If there is no fault, there is no liability. The rule is like this. Holding a person liable due to contradiction to law, although such person is not faulty, can only be spoken of in the presence of a special law provision related to the liability[54].

As it can be understood from this explanation, determination of whether a performance barrier is due to force majeure or not is important with respect to the liability of the debtor. Since there shall be no "fault" in cases where the performance barrier arises of a force majeure event, there shall also be no liability for the debtor. The same legal condition applies to "*fortuitous event*". Whether the *"epidemic disease"s* such as COVID–19 qualify as a *"force majeure"* or a *"fortuitous event"* for a solid debt relation shall be determined by taking the direct or indirect effects on the debt relation into consideration[55].

Force majeure (or fortuitous event) is accepted to be a condition which releases the debtor's liability for noncompliance with contract (TCO, art. 118). When it is taken into account that force majeure as a concept is defined as "*an external event non-relevant to the parties of the debt relation, which occurs by an irresistible force",* it is concluded that only an external, inevitable and unforeseeable phenomenon can be a force majeure event. For example, terrorist attacks, declaration of war, natural disasters such as flood, storm, epidemic disease shall be accepted as a force majeure event.

Fortuitous event on the other hand is an event which inevitably causes the debtor to violate the debt and which is independent of the debtor's will and behavior. In fact, each force majeure event constitutes a fortuitous event; however, each fortuitous event does not qualify as a force majeure event. The consequences of a force majeure event are required to be inevitable for everyone. In fortuitous event however, inevitability is only for the debtor of the mentioned performance. Moreover, according to the dominant opinion in Turkish law, the force majeure event is required to occur absolutely outside the operation and activity area of the debtor, in other words, it is required to be an external event. On the other hand, fortuitous event may occur within the debtor's operation or activity area[56]. The force majeure event is accepted to be more sever and intense when compared to the fortuitous event[57].

In obligations law; the events which absolutely prevent the performance appropriate for the debt, cannot be avoided or ruled out objectively, cannot be resisted and which occur rarely are

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54 The strict liability conditions stipulated in the Turkish Code of Obligations (such as the liability of the employer, the liability of the owner of the animal and landlord's liability) are regulated in Article 65 et al. of TCO.

55 Supreme Court Assembly of Civil Chambers defined force majeure in its decision numbered 2017/1190 E. and 2018/1259 K. as follows and underlined that epidemic diseases are also within the scope of force majeure: ; "Force majeure is an extraordinary event that cannot be foreseen and resisted against, occurring outside the activity and operation of the responsible or debtor and leading to the violation of a general behavior norm or debt.(Eren, F.: Borçlar Hukuku Genel Hükümler (Law of Obligations General Provisions), Ankara 2017, s. 582) Natural disasters such as earthquake, flood, fire and epidemic are considered as force majeure."

56 As an example, Haluk TANDOĞÂN: Türk Mes'uliyet Hukuku (Turkish Liability Law), 2. Edition, Istanbul 2010, p. 464

57 Selâhattin Sulhi TEKİNAY/Sermet AKMAN/Halûk BURCUOĞLU/Atillâ ALTOP: Borçlar Hukuku, Genel Hükümler (Law of Obligations, General Provisions), 7. Edition, Istanbul 1993, p. 1003.

accepted as a *force majeure events*[58]. According to the settled judicial practices, it is required that the phenomenon which occurs following the formation of the contract should be a phenomenon occurring extraordinarily outside the legal sovereignty area of the parties in order to speak of a force majeure (unavoidable circumstance); moreover, the parties should not be expected of foreseeing this in advance and taking the required measures. Again the mentioned phenomenon should not be a phenomenon which may occur at a frequency which can be considered as "*operational risk*".

It is without a doubt that the disease, namely COVID–19, which is spread all over the World today, is an extraordinary disease, which is beyond the intervention of the parties and outside their legal sovereignty areas. It is also apparent that the parties of a contract cannot be assumed to have the power and skills to prevent the occurrence of such a crisis. Due to this reason, it shall be accepted that the administrative measures taken in order to prevent the mentioned disease and the spread of this disease have the nature of a force majeure event (unavoidable circumstance).

It is required to underline that occurrence of a force majeure event does not give rise to all debt relations being influenced from this positively or negatively. Force majeure is a relative concept; the same event may constitute a force majeure event in some legal relations and may not have this quality for some other relations[59]. What is important for the evaluation of the force majeure event is that whether or not the phenomenon which is accepted to be a force majeure event affects a solid debt relation. In other words, the cause and effect relation (appropriate casual relation) is sought between the force majeure and the effect created on the debt relation. It is required to state that COVID–19 outbreak and the administrative measures taken within this frame are qualified to be accepted as a force majeure event with respect to some legal relations. However, reaching this conclusion is based on the realization of the stated conditions of the force majeure in the concerned legal relation.

If the administrative measures taken as based on COVID–19 are accepted as a force majeure event, then the creditor shall not have the possibility to exercise some of the legal rights arising of the default, against the debtor who is in default during such period of time. Accordingly, if the debtor can prove that non-payment of the debt timely is due to the force majeure event, then the debtor shall be able to avoid some negative consequences of the default (TCO, art. 118, 119). In the same manner, if the force majeure event results in impossibility of performance, the debtor shall be released of his/her debt in compliance with TCO, art. 136 and he/she shall not be held liable. However, in order to reach this conclusion, it shall also be required to examine whether the debtor could have prevent the effect of the force majeure event on the performance of obligation, by taking some measures. The debtor desiring to avoid the liability as based on the phenomenon of force majeure is required to take any and all measures which may be expected of him/her.

Again, it is accepted that the parties have a "*risk area" specifically in contractual liability system and the principle that the parties of the contract "personally bear the consequences of the performance barrier arising of his/her own risk area"* is adopted. Therefore, it is required to clarify the status of the performance barrier arising as a result of the measures taken due to the epidemic disease, with respect to the debtor's liability limited by his/her fault and the risk area.

It should specifically be emphasized that the force majeure evaluation should be made with respect to the debt relations existing during the period in which the phenomenon accepted to be a force majeure event. This is because the legal relations established following the occurrence of the mentioned phenomenon shall be established by knowing the presence of the phenomenon considered as a force majeure event and by taking its potential effects into account and there shall be no need for a separate force majeure evaluation with respect to these.

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58 TEKİNAY/AKMAN/BURCUOĞLU/ALTOP, p. 1003, 1004.

59 Fikret EREN: Borçlar Hukuku, Genel Hükümler (Law of Obligations, General Provisions), 23. Edition, Ankara 2018, p. 583, 584.

These explanations reveal that the effect of the force majeure on the debt relation can be in different ways. Force majeure may in some cases make the performance impossible, in some cases may cause falling behind on performance time(debtor's default), and in some cases may cause a barrier for performance (defective performance) of the obligation in a due manner. Based on this legal condition, it shall not be possible to adopt the same legal remedy in every case in which there is a force majeure event. In each debt relation affected by the force majeure event, it is required first to determine the type of the performance barrier; then to develop legal remedies that can be applied within the context of the mentioned performance barrier. In this regard, the remedies such as, termination of the debt and the debt relation through annulment or rescission, amendment of some provisions in order to align the contract with the changing conditions, suspension of the application of the whole contract or some provisions for a certain period, allowing one party or both parties avoidance of performance for a certain period or extension of the term of the contract, can be considered. However, it is specifically required to be emphasized that there should be a *"legal basis"* in order to apply such remedies which mean intervention to a valid contract. This legal basis may be a provision included in the contract by the parties as the case may be, or a provision of the law with a general (such as TCL, art. 2; TCO, art. 118, 119, 136 or 138) or special (TCL, art. 331) nature.

2.4. COVID–19 and Impossibility of Performance – Hardship

As can be understood from the explanations provided above, it is probable that COVID–19 may cause impossibility of performance in some legal relations which it affects as force majeure. However, it is important whether such impossibility is permanent or temporary. This is because the debt shall automatically end based on TCO art. 136 in case there is permanent impossibility, and the application of the provisions related to the debtor's default may be considered – in principle – in case there is temporary impossibility[60].

In compliance with the provision of TCO art. 136, if the performance of an obligation is impossible due to a reason for which the debtor is not responsible, then such obligation ends automatically and the other party may request the return of any performance which was made before. For example, the performance of obligation in the organization contracts made for locations such as wedding halls is impossible, due to closure of such places (legal impossibility). Here the service obligation has ended automatically, and if there is any amount paid by the other party, such amount shall be required to be returned. Since the performance period determined in such contracts has the nature of an absolute term, if the obligation is not performed on such term results in impossibility of performance. This is because if the obligation could be performed only at a certain time, then the impossibility for such certain time ends the obligation[61]. Compensation obligation shall not arise as the impossibility of performance is based on a force majeure; and if there is anything the parties gave each other before, then such things shall be required to be returned in compliance with the art. 136 of TCO.

In contracts that encumber both parties with debt, complete impairment of the economic balance between the performances of both parties – which is assumed to be present during the formation of the contract – as a result of material change of the circumstances and conditions – based on reasons which cannot be predicted in advance – (especially devaluation or unforeseeable increase of prices), is considered as hardship.

The binding nature of the contracts require the loyalty of the parties to the contract, independent of whether or not the conditions are changed afterwards (pacta sunt servanda); the promise given should be kept. Claiming that compliance with this requirement shall not be required makes the contractual liability system, which is based on loyalty to the promise given, meaningless. However, as in the case of all principles and rules, good faith constitutes the boundaries of the rule of loyalty to contract. It is beyond doubt that insistence for application of the rule of loyalty to contract, although the essential components of the contract are changed to the extent which is intolerable and unbearable for one of the parties, shall clearly constitute violation of the good faith. Accordingly, if the other party does not approve the development of a solution that complies with the equity and justice in such cases, then the legal order may intervene this situation and provide the development of a fair solution which balances the interests of both parties.

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60 TEKİNAY/AKMAN/BURCUOĞLU/ALTOP, p. 909.

61 M. Kemal OĞUZMAN/M. Turgut ÖZ: Borçlar Hukuku, Genel Hükümler (Law of Obligations, General Provisions), C. I, 12.Edition, Istanbul 2014, p. 468.

In such cases, not only annulment of the contract but also amendment of the contract should be accepted, in order to increase or reduce performance – through providing the balance of value between the mutual performances – for determination of a fair consideration in case the value of the performance which constitutes a consideration as the case may be, is extraordinarily reduced or increased[62].

It should be noted that this approach in a way supports the rule of *pacta sunt servanda*. Through this approach, some components of the contractual relation, although by amending, is provided to *"survive"*. Accordingly, the provision of the art. 138 of TCO was included in the new Turkish Code of Obligations, which took effect on June 1, 2012, by taking this probability into consideration, and in such cases the parties (if possible) are given the authority for *"adaptation of the contract to the new conditions"* and if this is not possible, to *"revoke the contract"* (by revision or annulment).

Accordingly, if the phenomenon available during the formation of the contract change and demanding performance from the debtor becomes contrary to the rule of good faith, due to an extraordinary condition which is not foreseeable by the parties and which is not attributable to the debtor, the debtor – on condition to provide the other conditions too – may demand the judge to adapt the contract, and if adaptation is not possible, to annul the contract. On the contrary, the changes, which is not considered as hardship but make it impossible for the parties to acquire the interests they expect from the contract or invalidate them, are excluded from the scope of arrangement of the mentioned provision and this condition was also pointed in the reasoning of the provision. However, some legal systems (for example, § 313 BGB provision German law) provide a more extensive adaptation phenomenon for similar situations.

When it is required to consider this situation within the context of the effects of COVID–19 crisis in question, on the current contractual relations, it shall immediately be seen that the provision of the art. 138 of TCO shall not be sufficient. For example, the administration decided to keep the shopping centers closed for a specific period of time, and even to apply lockdown in some cities, in order to prevent the spread of the epidemic disease. It is beyond doubt that these administrative measures shall affect the contractual relations in which the people operating at shopping centers are a party. It will probably be not possible to make claims such as the agreements, in which the lessees using their workplaces at shopping centers under a workplace lease agreement; the suppliers supplying goods to these lessees, the employees working at the workplaces of such lessees are the parties, *"continue as if the shopping center is not closed at all"*; accordingly, the workplace lessee is required to pay the rent payment during such period, the employee is required to come to the workplace and work during the days on which the workplace is closed, and the employee should be paid in full, the seller shall be held liable for delivery of the goods and demand the sales price etc. Prohibition of the entry of the customers into the shopping centers may result in *"an excessive imbalance between mutual performances"* as provided in the provision of the art. 138 of TCO. Therefore, in such cases the parties shall not be able to demand a solution for the current problem, through application of the provision of the art. 138 of TCO. Moreover, even if it is accepted for a while that the application conditions of the art. 138 of TCO are realized, it is evident that the solutions provided in this provision (if possible, adaptation of the contract price; if not possible annulment of the agreement) are not the solutions appropriate for the nature of the problem that occurred, especially, the mutual interests of the parties. It should not be forgotten that the major part of the administrative measures that occur as based on the mentioned measures for which there is no doubt that they have the nature of a *"fortuitous event"* or *"force majeure"* is *"temporary"* with respect to the liability law. It shall not be appropriate to the nature of the work to decide to permanently change some provisions of the concerned contract or terminate these completely, in order to solve this problem with temporary nature.

[62] It is also stated that such a solution can be achieved by basing the provision of article 480 / II of the TCO (previous TCO article 365/II) , which allows for an unforeseen extraordinary situation to increase the price agreed in the contract of work at a reasonable level. (Andreas von Tuhr/Cevat Edege (transl.): Borçlar Hukukunun Umumi Kısmı (General Part of the Law of Obligations), C. 1-2, Gözden Geçirilmiş 2. Edition, Ankara 1983, p. 644-645).

This legal condition underlines that it is not possible to solve the mentioned problem by referring to the provision of art. 138 of TCO. Accordingly, it is required to reach the conclusion that there is a *"legal gap"* technically with respect to the current legal problem.

The mentioned legal gap can be filled by acting within the frame of the provisions of the art. 1 and 2 of TCL and by benefitting comparatively from the art. 138 of TCO with respect to the solution to be developed meanwhile and solutions appropriate for the nature of the work can be developed. However, permanent solution of this problem shall be possible by rewriting the provision of the art. 138 of TCO in a manner to cover all the legal problems indicated.

2.5. COVID–19 and Collapse of the Basis of the Transaction

Workplace lease agreements and contractual relations of the sports sector are among the legal relations which are considerably influenced by the administrative measures taken during COVID–19 times. Shopping centers were closed for the customers, and sports organizations were cancelled. Workplaces were deprived of the facility to carry out their commercial activities, which is the fundamental purpose for opening; many contractual relations which are directly connected to the sports sector (contracts between the athletes and clubs, contracts between the clubs and spectators-fans, contracts between the sports clubs and broadcast companies, contracts between the broadcast companies and subscribers, contracts concerning the betting sector) promptly became meaningless; specifically the contract party offering service was deprived from the possibility of performance.

While the measures taken influenced the contractual relation in full; and this way unforeseeable consequences occurred for both parties, it cannot be expected that all the negative results of this extraordinary development are to be borne by one party. With respect to the workplace rent payment, if the lessee of the workplace is obligated to "*continue to pay the rent payment*", despite he/she cannot continue such income-generating activities due to the lockdown and prohibition of entry into the shopping center, it will be accepted that such party is required to bear all the negative consequences of this extraordinary state. Likewise, claiming that a sports club is required to pay the athlete, broadcast company is required to pay the sports club, the subscriber is required to pay the broadcast company, although no sports activity is performed shall not and should not be seen as a fair solution appropriate for the nature of the work.

Due to the mentioned administrative measures, *"formation of an excessive imbalance between mutual performances"* within the frame of the provision of the art. 138 of TCO is not also on the agenda. This is because the mentioned monetary debts did not change in amount or there is no extraordinary and unbearable revaluation or devaluation following such measures. Therefore, it is not possible to develop solutions for the current problem by applying the provision of the art. 138 of TCO by claiming *"hardship"* in such cases; or by applying the provision of the art. 136 of TCO by claiming that the obligation of the lessor to let use, the obligation of the athlete to compete, the obligation of the sports club or the broadcast company to provide viewing of the competition are not possible to perform. In the same manner, since the debt of the lessee to the lessor, the sports club to the athlete, the broadcast company to the sports club, the subscriber to the broadcast company is "monetary debt", and since impossibility of performance cannot be claimed in monetary debts, it shall not be possible to refer to the provision of the art. 136 of TCO arranging the objective impossibility of performance. In these legal relations, the debtor shall be considered in default if the accelerated monetary debts are not paid even during the period in which the mentioned administrative measures are applied and the lessor be accepted as at least having the right to benefit from the consequences of the debtor's default which are not related to fault[63].

[63] It should be emphasized that with the Provisional Article 2 of the Law no. 7226 which dated on 26.03.2020, it was concluded that the rental fees that were not paid between 1.3.2020-30.6.2020 will not constitute the reason for the termination of the lease contracts and evacuation of the workplaces. For this reason, the lessor will not be able to benefit from the "termination of the contract" opportunity, which is a result of the tenant default in the aforementioned period, which is not due to fault. However, the same lessor will be able to demand "default interest payment" based on the provisions of Article 120 of the TCO for unpaid rent in this period. Because, for the obligation to pay default interest for money debts, it is not sought for the debtor to be at fault in default.

The decisions for the closure of the workplaces or the cancellation of the sports competitions are the administrative decisions taken within the frame of the principle of public interest, which are beyond the sphere of influence and responsibility of both parties. The facts that the workplace is leased for the performance of a specific commercial activity; that a contract is signed with the athlete for participation in the sports competitions; that the broadcast company is under the commitment of payment in consideration of the broadcast of the sports competition and the subscriber of the broadcast company agreed to pay the subscription fee in order to watch the sports competition; that the targeted commercial activity can only be carried out appropriately in case the shopping center where such workplace is located is open for the visits of the potential customers; that the contracts in the sports sector can be performed only if the relevant competitions are played, should be the facts which must be known by both parties. All these facts are accepted so much as "*appropriate for the nature of work"* in the contract application that the parties may not even feel the need to arrange these issues specifically in a contract. As a matter of fact, enforceability of the mentioned activity as anticipated constitutes *"the basis of the contract concluded"* during the formation of the contractual relation by both parties. For this purpose, "prohibition of the targeted activity" due to the administrative measures caused the purpose, which the parties desired by formation of the contract, disappear.

This situation is described as "collapse of the basis of the transaction in German Law and is regulated by the provision of BGB § 313. In order to mention the collapse of the basis of the transaction within this frame, the mentioned extraordinary development is required to result in material changes on the conditions which are accepted to constitute the basis of the contract. It should be possible to say that at least one of the parties would never want to be a party to this contract, with this content, if such conditions did not exist; moreover, it should be seen that desiring the survival of this state of the contract is an unexpected situation at least for one of the parties, when the contractual or legal risk distribution is taken into consideration.

In such cases which qualify as the "collapse of the basis of the transaction", the parties should be able to demand the change of the contract by taking the extraordinary developments, occurring afterwards, into consideration. For example, the lessors leasing the workplaces located in the shopping centers declared that *"they shall not demand rent payments as long as the shopping centers are kept closed"* by taking the pressure of the public into consideration. This is nothing but the adaptation of the relevant lease agreement by the parties by taking the changing circumstances and conditions into account. Accordingly, the parties shall solve a legal problem caused by an extraordinary (unexpected and unforeseen) development occurring after the formation of the contract, in a manner that is appropriate for the nature of work and by fairly balancing the interests of the parties. Realization of the same type of application for the contractual relations that concern the sports sector shall be an approach appropriate for the nature of the work. In conclusion, it is not possible to have one of the parties bear this extraordinary development and both parties were affected in the same manner. Despite this, while one of the parties is obligated to perform his/her own obligations, the other party is exempted from such performance obligation, which is a state that unharmonious with the justice of the contract. Since everyone is affected by such extraordinary development, the negative consequences to emerge should be distributed fairly among the contract parties. What should be underlined at this point is that the annulment of the contracts by taking such administrative measures into account, and dissolution of the entire contractual relation cannot be accepted as a solution that is appropriate with the purpose of balancing the interests of the parties. This is because such administrative measures have a "temporary" nature. Therefore, their effects on the contract are also "temporary". Determination of the solution to be produced by taking this condition into account shall be the best approach in compliance with the nature of the work.

2.6. COVID–19 and Default of the Debtor

As can be understood from the explanations above, it is not possible to collect the effect of COVID–19 on contractual relations under a single title. It is required to make different evaluations according to the performance barrier caused by the epidemic disease for each relation. Within this frame, COVID–19 may result in – permanent or temporary – impossibility of performance as a force majeure for some relations and may have an effect that reduces or eliminates the fault of the defaulting debtor, although may not result in the impossibility of performance. It is required that those mentioned are the non-exhaustive list of examples. Likewise, it should not be forgotten that there may be contractual relations in which a performance barrier caused by COVID–19, cannot be considered as right, as a rule. For example, the telephone subscription agreements or the agreements concerning internet banking are expected to be duly performed with respect to their fundamental performances. Internet service providers cannot claim that the obligation to offer internet service is ended or suspended due to the measures taken concerning the epidemic disease. When there is an interruption in this service, the customer can exercise any and all rights conferred by the debtor's default and, if there is any loss due to this, can demand indemnification of such loss.

The measures taken for COVID–19, although not causing impossibility of performance, may result in the delay of the performance and accordingly, cause the debtor to be in default. This is because the ordinary course of life has shifted when compared to the period before the epidemic disease, due to the reasons such as infection or the suspect of infection of many citizens with the virus, the quarantine obligations imposed, restrictions on travel and lockdown, closure of some workplaces and a new condition which could not be foreseen before the epidemic disease has occurred. Specifically some measures taken worldwide in order to prevent the disease (such as travel restrictions, import-export restrictions) may cause the break of supply chains and difficulties in the supply of the product, which is the subject matter of the debt. An interruption in the supply chain shall affect all the rings of the mentioned supply chain and the debtors in each ring shall not have the possibility to perform timely, although they have no influence and responsibility in the occurrence of this condition. The reasons such as the reduction of the work times, narrowing of the production capacities and restriction of the logistic facilities can prevent the timely performance of the obligations undertaken under the contracts signed during the period before the epidemic disease. Accordingly, non-performance due to the mentioned reasons shall cause the debtor to be in default on condition to provide the conditions (TCO art. 117).

In some contractual relations influenced by this, it is evident that the performance of the obligation shall not be possible as long as the administrative measures are in force. However, it is required to accept that the mentioned impossibility of performance is temporary since it is known that such administrative measures are temporary. As stated above, it is fundamental that the provisions related to the default of the debtor are applied (TCO art. 117 ff). Although the automatic termination of the debt due to the temporary nature of the impossibility of performance cannot be accepted, it is possible to produce a solution within the frame of the provisions related to the default of the debtor in the synallagmatic contracts.

It is not important whether the debtor is faulty or not in occurrence of the consequence of a default in this manner. However, the Debtor's state of fault shall influence the consequences of the default. Accordingly, whether the debtor is faulty or not, the creditor may theoretically insist on the performance of the obligation which can be performed or may terminate the synallagmatic contract,– upon fulfillment of the conditions (TCO art. 123 ff). However, as the creditor's claim for indemnification for the delayed performance (TCO art. 118) is conditional on the debtor's fault, so is the claim for remedying the loss encountered due to the invalidation of the contract in case of claiming indemnification (TCO art. 125) instead of performance or rescission of the contract in synallagmatic contracts. Therefore, the consequence of default is legally based on the creditor's insistence on performance and – if the conditions are present – the indemnification claims independent of the fault of termination of the contract are based on the fault of the debtor.

Whether or not the fault can be attributed to the debtor in default can be determined by considering the status of the parties in each contractual relation, the nature and subject of the contract, the actual effect of the epidemic disease on the debt relation, the measures taken by the debtor, the performance period decided in the contract and how delayed is such period. Therefore, COVID–19 may have an effect that reduces or cancels out the fault of the debtor, who is in default as based on the own conditions of each concrete case; and accordingly, the indemnification liability of the debtor shall be reduced or cancelled out completely.

Again another important problem caused by COVID–19 is that it **shall result in conditions in which demanding the debtor to perform shall be contrary to the rule of good faith.** It is required to underline at this point that the concept of impossibility, in its broadest meaning, covers the conditions in which the debtor cannot be expected to perform due to the humane and moral reasons. In this period, it should be noted that the performance which would specifically endanger the debtor's health cannot be demanded (despite the fact that the performance is technically possible and there is no impossibility of performance); unless the profession or the status of the debtor requires the debtor to undertake such risk[64]. For example, a trainer giving lessons to a person at home cannot be expected to continue the lessons in case the virus is found in a person living in the same house; it cannot be claimed that the trainer is in debtor's default due to not coming to the house for giving lessons at the determined hours.

Since the debtor is not faulty for being in default in this case, there is no indemnification liability also (TCO art. 118). In cases where it may be reasonable to demand waiting for the performance, although the performance time is passed, "***suspension of the demand for performance"*** shall be appropriate (for both parties with respect to the synallagmatic contracts) for the concerned period of time[65].

Accordingly, in cases where it may be considered as reasonable to request the creditor to wait for the performance without referring to the default provisions even if the pre-determined time for performance have passed, within the frame of the evaluation to be made as based on the nature, subject of the contract and the interests of the parties, it should be accepted that "*the rights arising of the debtor's default can be exercised" as of the moment in which such waiting period is over. As a matter of fact, according to the Supreme Court practices related to the temporary impossibility of performance, it is required "to determine the perseverance to contract"* within the frame of the own conditions of the case in question[66]. Assuming this application as the basis, granting an additional time corresponding to the continuity period of the mentioned performance barrier (TCO art. 123) and accepting the

64 Halûk TANDOĞAN: Türk Mes'uliyet Hukuku (Turkish Liability Law), Istanbul 2010, p. 397.

65 In terms of permanent debt relations, besides the suspension of the execution of the contract, it would be appropriate to extend the contract period as much as the duration of the performance obstacle.

66 YHGK. T. 28.04.2010 E. 2010/15-193 K. 2010/235; YHGK. T. 29.09.2010 E. 2010/14-386 K. 2010/427; YHGK. T. 28.09.2011 E. 2011/13-528 K. 2011/571; Yarg. 3. HD. T. 17.09.2013 E. 2013/10595 K. 2013/12801; Yarg. 8. HD. T. 14.10.2014 E. 2014/6935 K. 2014/18281; Yarg. 15. HD. T. 27.06.2018 E. 2018/828 K. 2018/2740 (For cases please see; Kazancı İçtihat - Bilgi Bankası).

use of the rights arising of the debtor's default after this, even in cases where additional time is not required in order to put the debtor in default or for using some of the rights given to the creditor, shall be an appropriate approach[67].

The creditor is granted additional opportunities other than performance demand, against the default of the debtor. The indemnification of the loss suffered as a result of the default (TCO art. 118) and the default interest demand in monetary debts (TCO art. 120) are among the leading ones. In the same manner, there are optional rights for the creditor with respect to the synallagmatic contracts. The creditor may refrain from the performance of the obligation by giving additional time to the debtor and the indemnification of the loss suffered or the indemnification of the performance and the loss suffered due to default and demand the indemnification of the (positive) loss suffered due to the non-performance of the obligation or the indemnification of the negative loss due to the rescission of a contract (TCO art. 125).

Among these opportunities given to the creditor, *"indemnification demand"* of any type can be claimed only if *"the debtor has a fault with respect to the default"* (TCO art. 118). This result is a requirement of basing our liability law system on the basis of *"fault"*. Whether or not the developments based on this legal condition due to COVID–19 crisis can be qualified as *"force majeure event"* (or fortuitous event) is important with respect to the liability of the debtor in the default of the debtor. As can be understood from examination of the provision of TCO art. 119, if the debtor proves that he/she is not faulty for being in default, that the delay in performance was due to the occurrence of a fortuitous event, then the debtor shall not be held responsible for the indemnification of the loss suffered by the creditor. Therefore, in each individual relation, it is required to examine the following issues separately:

- whether or not the administrative measures taken due to COVID-19 crisis really prevent the performance of the obligation,
- whether or not the debtor shall be able to perform the obligation timely, despite the crisis, based on the measures to be taken in advance.

Especially in cases where the debtor is a "merchant", it shall be appropriate to assess whether or not it shall be possible for a prudent merchant desiring to perform his/her obligation timely, to be able to perform it timely without being influenced by COVID–19 crises by taking some measures in advance. Accordingly, the debtor shall not be held liable for the negative consequences of the default due to fault, if he/she can prove through legally acceptable evidences that the sole reason of being in default is the measures taken due to COVID–19 crisis. Within this context, it shall be examined whether or not it is possible for the debtor to eliminate the negative consequences of COVID–19 crisis by taking some measures in advance.

In case of default of the debtor, it is evident that the opportunity of rescission from contract (termination in perpetual debt relations) and the opportunity to demand default interest in the monetary debts given to the creditor, as independent of the debtor, can be used even if the debtor has no fault in this respect. However, attention should be paid to the opportunity of "*rescission from contract"* which is restricted in cases where the debtor is not faulty in such default. If it is understood from the nature and extent of the condition that the default has a temporary nature, then it is accepted that the creditor is required to wait *"for a reasonable period required by such state and conditions"* for the termination of the default of the debtor; however, if the obligation is not

[67] In our opinion, accepting the same approach as valid in terms of all consequences of the debtor default, whether due to fault or not, would be an appropriate approach. Thus, in such cases where the debtor has no fault in defaulting, the creditor should not be able to benefit from the opportunity of "termination of the contract due to default" until the end of the administrative measure that results in the default. As a matter of fact, with the Law no. 7226 which dated on 26.03.2020, it was concluded that the rental fees that were not paid between 1.3.2020-30.6.2020 will not constitute the reason for the termination of the lease contracts. It should be noted that the legislator chose to make such a regulation even though it is accepted that the possibility of termination of the contract due to default is "a non-fault consequence of the debtor default".

performed despite the reasonable waiting period, then the creditor can exercise the opportunity of rescission from contract (termination in perpetual debt relation).

In fact, in cases where it is evident that the phenomenon constituting performance barrier has a *"temporary"* nature (for example, quarantining the debtor arriving from abroad for 14 days and default occurring as a result since the debtor cannot have the possibility to perform the accelerated obligation) the creditor should not use the rescission from contract opportunity even in a debt relation with definite term obligating both parties; wait for the end of the quarantine period; and if the debtor does not perform the obligation despite the expiry of such period, then should apply to the rescission from contract only after that.

2.7. COVID–19 and Termination with a Valid Reason

There is no provision of a "general nature" in the Turkish Code of Obligations or Turkish Civil Law enabling the contracts with a perpetual debt nature to be terminated with a valid reason. On the other hand, it is clearly regulated by the provisions of the relevant law that lease agreements (TCO art. 331, 369), service agreements (TCO art. 435), lifelong support agreements (TCO art. 617) and ordinary partnership agreements (TCO art. 639) can be terminated with a valid reason. Despite this legal status, doctrine and application considers these provisions in the special provisions part of Turkish Code of Obligations as the reflection of the rule of good faith described in TCL art. 2 and based on this, agrees that the perpetual debt relations can be terminated through extraordinary termination in the presence of a valid reason[68].

Within this context, the concept of "*valid reason"* defines *"a phenomenon making it unbearable to continue the contractual relation for at least one of the parties"*. This phenomenon may be related to a behavior of a party or personal risk area, as well as to external events independent of both parties. Accordingly, it is specifically underlined that unforeseeable extraordinary events mainly make it unbearable for a party to continue the contractual relation[69].

As a requirement of this legal state, when it is taken into account that COVID–19 is an unforeseeable extraordinary event (qualified as a fortuitous event), it should be stated that it constitutes a valid reason for the termination of some perpetual debt relations which are doubtlessly influenced from this phenomenon. What is important at this point is that whether or not the measures taken for the epidemic disease (*"new normal")* make it unbearable for a party of a contractual relation to continue such relation.

It is required to emphasize in particular that it is not possible to make a (general) evaluation that would apply to all the perpetual debt relations; it is required to evaluate each relation within the frame of its own conditions, and to determine separately whether or not it is possible to accept the administrative measures taken for COVID–19 as a valid reason for such legal relation.

For example, in the case of an annual subscription in a fitness center, it can be accepted that there is valid reason for the termination of the contract, as long as there is a risk for the spread risk of COVID–19. It should not be forgotten that the obligation to carry out the sports activities in an indoor area and together with others shall increase the risk of spread of the disease considerably. On the other hand, same does not apply to a contract which is about giving private lessons over internet. If the presence of a valid reason is disputed in a certain case, then the judge shall be required the exercise the power of discretion.

In case the contract is terminated with a valid reason based on COVID–19, the contract shall terminate proactively (on *ex-nunc* basis). For determination of the economic consequences of the termination, it shall be appropriate to benefit comparatively from *"The judge decides on the monetary consequences of the extraordinary termination notification, by considering the specifics of the case"* (TCO, art. 331/II, 369/II) arrangement in the lease agreement related to the extraordinary termination. However, the return of the mutual performances performed prior to the termination shall not be requested.

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68 As an example please see; Özer SELİÇİ: Borçlar Kanunu'na Göre Sözleşmeden Doğan Sürekli Borç İlişkilerinin Sona Ermesi (Termination of the Permanent Liability Relations Arising from a Contract according to Law of Obligations), İstanbul 1976, p. 202, 203.

69 SELİÇİ, p. 186 ff.

2.8. COVID–19 and Debt Relations Independent of Performance Obligations

In this contractual relation, the actual expectation of the parties from each other is the due performance of the obligation/obligations undertaken under such a contract[70]. What is meant by fundamental obligation is the *(primary)* obligations arising directly out of the debt relation following the establishment of such a relation, determining the legal character *(type)* of the relation[71]. For example, the fundamental obligation of the seller in a sales agreement is the transfer of the possession and title of the product sold to the buyer and the buyer's fundamental obligation is the payment of the price decided[72].

It is accepted that there are some special obligations concerning the trust relationship, which reached a certain level of intensity, before and beyond the contract, between the parties coming together in order to form a contract at the stage prior to the arising of fundamental obligations[73]. Such obligations, which are called protection obligations and which has a history of almost 100 years, are separate and different from the performance obligation[74]. The moment of occurrence and the purpose of existence of the protection obligations are not the same with those of the fundamental performance obligations. Protection obligations underlines the requirement for acting in compliance with the conditions of such state, by the parties, whose sphere of influence on the legal values and interest of each other expanded, based on a social contact containing the probability of formation of a legal transaction. According to a generally accepted approach, these obligations arising, not of the contract, but directly of TCL art. 2, are the general name for the obligations due to the environment of trust created/accepted to be created between the parties coming together in order to form a legal transaction and the increase of risk for influencing each other's personal and property values[75]. Based on this acceptance, it shall automatically be understood that the moment in which such protection obligations emerge is the moment in which such mentioned social contact starts.

The protection obligations are included in the secondary obligations which are based on the rule of good faith (TCL, art. 2), and accepted to exist between the parties who have a contractual relation between them. Accordingly, any party is required the pay attention that can be expected of it, in order to protect the other's personal values and property values. If the mentioned attention is not paid and the protection obligation is violated, then this gives rise to the indemnification obligation for the loss to be suffered therefrom[76] (TCO, art. 112).

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70 Performance obligations are obligations to fulfill the interest of performance; and the fundamental obligation of the debtor to the creditor in a debt relation is the "performance obligation". See Seyfullah EDİS: Medeni Hukuka Giriş ve Başlangıç Hükümleri (Introduction to Civil Law and Preliminary Provisions), Ankara 1979, p. 308; EREN, p. 29.

71 Necip KOCAYUSUFPAŞAOĞLU: Borçlar Hukuku Genel Bölüm, Birinci Cilt, Borçlar Hukukuna Giriş, Hukukî İşlem, Sözleşme (Law of Obligations General Part, First Volume, Introduction to Law of Obligations, Legal Transaction, Contract), İstanbul 2017, §.2, N. 7.

72 In addition, with the establishment of the contract, it is possible that some secondary performance obligations may arise. While some of these secondary performance obligations are shaped by the will of the parties; some of them are considered to exist as a requirement of TMK article 2. See for details; KOCAYUSUFPAŞAOĞLU, §.2, N. 13.

73 Rona SEROZAN: Borçlar Hukuku Genel Bölüm, Üçüncü Cilt, İfa, İfa Engelleri, Haksız Zenginleşme (Law of Obligations General Part, Third Volume, Fulfilment, Breach of Contract, Unjust Enrichment), İstanbul 2016, §. 19, N. 1; EREN, p. 2.

74 The idea of separation of performance obligations and protection obligations between the parties who come together to establish legal transactions with each other and the idea of the existence of debt relations consisting only of protection obligations has been accepted since 1930. See for details; H.R. Demircioğlu: Sorumluluk Hukukunun İkili Yapısının Aşılması Çabasının Ürünleri Olarak Culpa in Contrahendo ve Güven Sorumlulukları (Culpa in Contrahendo and Trust Responsibility as Results of Overcoming Effort on Duality of Liability Law), Gazi Üniversitesi Hukuk Fakültesi Sorumluluk ve Tazminat Hukuku Sempozyumu, Ankara 2009, p. 219 ff.

75 KOCAYUSUFPAŞAOĞLU, §. 2, N. 15; EDİS, p. 311; EREN, p. 40 ff.; H. YILMAZ: Sözleşme Görüşmelerinde Kusur "Culpa in Contrahendo" ve Sorumluluğun Hukuksal Niteliğinde Yeni Görüşler (Fault on Contract Negotiations "Culpa in Contrahendo" and New Ideas on Legal Characteristic of the Responsibility), Yargıtay Dergisi, C. XI, Y. 1985, S. 3, p. 234.

76 EREN, p. 39 ff.

The protection obligations come into existence with an actual phenomenon *(legal transaction contact)*, as independent of the emergence of the performance obligations undertaken/to be undertaken/not undertaken with the parties' mutual declarations of intent[77]. Contrary actions to the mentioned obligations cause similar consequences with those consequences of contrary actions to the performance obligations arising of a contract, in case of formation of a contract[78]. Although the specific performance of the obligation of *"protection of the addressee in person and his properties"* arising of the protection obligations cannot be demanded, the indemnification of the loss to be suffered as a result of noncompliance with these obligations can be demanded as based on the provision of contradiction to the contract[79].

Within this frame, it should be stated that COVID–19 caused the emergence of many protection obligations specific to this condition with respect to many contractual relations. Accordingly, the parties contacting within the frame of a contractual relation are required to pay due attention that can be expected from them, in order not to infect each other with the mentioned virus. This is because the individual's health (physical integrity) is one of the values and maybe the most important one, protected within the scope of the personal rights that have the nature of an absolute right. Each contract party shall expect the other party, with whom a special trust relation is established, to refrain from activities that may endanger his/her health, in other words, that may cause the virus to spread. Accordingly, noncompliance with the measures concerning the contagious disease is accepted as a "crime" (TCO, art. 195) and also injuring or causing the death of an individual through spreading the disease is also regulated as a "*crime*" (TCL, art. 86, 89).

It is required to express that the rules announced to the public by the authorities in our country in order to prevent the spread of the virus are required to be taken into consideration first, when determining the extent of the attention expected of the contract parties. At this point, it should be underlined that the rules announced by the Ministry of Health are specifically important. In the same manner, the other regulatory rules imposed by the public administrations, specifically by the Presidency of the Republic and Ministries, in order to prevent the epidemic disease, should also be taken into account.

Consequently, the actions such as noncompliance with the quarantine obligation of those who are required to be quarantined, violation of the travel restrictions and lockdowns or noncompliance with the rules imposed for keeping the social distancing, may result in violation of the protection obligation in a contractual relation. For example, the markets letting in the customers more than the number allowed or the customers who do not wear masks, noncompliance of the barbers – hairdressers with the required hygiene measures in the materials they use or passenger transportation companies carrying passengers over the half of the capacity shall be considered as the violation of the protection obligation.

Moreover, contracting party's failure to take the measures expected as based on the rule of good faith may cause the violation of the protection obligation, although this does not constitute the direct violation of the regulatory transaction of the Administration. Within this context, causing an employee, who is suspected of being infected, continue rendering service to the customers, failure to clear away the conditions that increase the risk of infection of the workplace with the virus and

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77 DEMİRCİOĞLU, p. 223.

78 In practice, there are court decisions in which the scope of these obligations is considered quite broad. In a lawsuit filed against the shopping center by the person whose belongings were stolen from the parking lot inside the shopping center, the Supreme Court ruled that the company that owns the Shopping Center is liable to indemnify the damage on the following grounds: "... The lawsuit is aimed at the compensation of damages upon the theft of some of the belongings in the car that the plaintiff left in the parking lot of a shopping mall. This request of the plaintiff also arises from the principle of pre-contractual liability (culpa in contrahendo). It is not necessary to establish a contract for the establishment of the responsibility, but to be a consumer who will come to the plaintiff shopping center and be the addressee of some possible service or sales contracts; the defendant company provided the parking lot service to potential consumers, albeit free of charge, in order to facilitate and make shopping attractive." See Supreme Court 13. HD., T. 15.1.2019, 23349/91, Lexpera-İçtihat, 26.05.2020.

79 It should not be forgotten that after the contract is established, the matters constituting the content of the protection obligations become contractual obligations. With the establishment of the contract, these obligations do not expire. The protection obligations are aimed at protecting the legal values and interests of the contractors at the stage after the establishment of the contract.

failure to take the measures for social distancing can also be seen as the violation of the protection obligation. Again, it can be claimed that a party, who, by insistently refraining from complying with the mentioned social behavior rules, caused the addressee acting in compliance with the relevant rules, to be infected, despite knowing that he/she has the risk of being a "carrier", has violated the protection obligations. It is beyond doubt that the person claiming violation should be infected with the virus and such infection should be a result of the contradiction to the protection obligations in order to talk about the violation of the protection obligations[80].

It is required to note that the violation of the protection obligation can also occur also as a result of the behavior of an assisting person. If the parties of the contract referred to an assisting person for the performance of an obligation or the exercise of the rights, then they also have the strict liability for the damage to the other party caused by such person (TCO, art. 116). This liability applies also to the violation of the protection obligations. For example, if the personnel sent to the address of the customer for the delivery of the product sold, causes the infection of the customer, then this results in the violation of the protection obligation and in such a case, the debtor sending the personnel is also liable for the damage suffered by the customer.

Again, it is required to note that formation of a contract is not necessary for the emergence of the protection obligations in the manner explained; starting the contract negotiations is sufficient. It should not be forgotten that the protection obligations occur when the parties socially contact each other for the formation of a contract. This liability which exists before the formation of a contract is known as *culpa in contrahendo* and again (comparatively) is subjected to the liability regime arising of the contract[81]. For example, if a customer goes to the market and leaves without shopping, and a customer candidate who complied with all the rules concerning the social contact rules is infected with the virus, as a result of taking excess number of people inside, then there shall be the violation of the protection obligation.

The liability regime with respect to those who do not have a contractual relation or contract negotiations between them shall be based on the tort liability examined below.

[80] Of course, at this point, the customer or prospect must also comply with the social contact rules (distance, mask, hygiene) while making legal contact, and the virus must still be infected. Otherwise, the damaged customer or potential customer is deemed to have "had an effect on the occurrence or increase of the loss" and this situation is considered as a factor that removes or reduces the liability (TCO, Art. 52).

[81] KOCAYUSUFPAŞAOĞLU, p. 8, 9.

2.9. COVID–19 and Tort Liability

COVID–19 virus spreads through droplets and even being near an infected person even for a short period of time is sufficient for the spread of the disease. Due to this reason, the specialists continuously underline that the most important measure in order to prevent the spread of the disease is to increase the social distance and reduce the contact between the people. Although it is expressed by the specialists that the most important measure to slow down the spread of the epidemic disease is establishing relations in compliance with the social contact rules, numerous people break the mentioned prohibitions.

It is beyond doubt that administrative and judicial sanctions will be applied for those who act contrary to the prohibitions. In addition to the administrative and judicial sanctions for the people who act contrary to the prohibitions, the problem whether or not the tort liability shall arise in compliance with TCO art. 49 ff. shall be spoken of at this point. These people violating the prohibition and joining the social life cause the spread of the disease and as a result cause damage to other people. It is an important question whether or not those suffering damage have any indemnification right arising of TCO art. 49 against such people.

Tort liability is regulated by TCO art. 49 ff. In compliance with the TCO art. 49 para. 1; "*whoever damages someone else with an unlawful and culpable act is obligated to compensate that damage*". Based on this provision (in a narrow sense), in order for the tort liability to emerge, it is required to have an illegal action, an appropriate casual relation between such action and the consequence of damaging someone else with such action (damage) and finally, a doer causing such damage with his/her fault. The actions directed at the violation of the physical integrity which is an absolute right are illegal, as a rule (TPL, art. 86, 89). The availability of a reason or legality concerning the action violating the physical integrity shall prevent illegality. Accordingly; since transmitting the disease to another person shall violate the physical integrity of such person, this shall be assumed as an illegal action even in the lack of a legality reason[82].

COVID–19 is spread through the coughing, sneezing of the infected person or through the droplets to form when breathing out. Inhalation of the virus spreading through droplets or touching the mouth, nose or eyes with the hands which touched the surface infected with the virus result in infection of the person. Accordingly, the action causing the spread of the virus is usually the people, who join the social life and contact other people unknowingly that they are infected. Article 19 of the Constitution and the article 5 of the European Convention on Human Rights, in which our country is also a party, regulating the personal liberties secure the individuals' right to freely join the social life together with the other people. In this case, it can be said that the participation of an individual in social life is a right originating from public law, and accordingly, a reason of legality. However, both in the article 19 of the Constitution and the article 5 of the European Convention on Human Rights (see para.1 subpara. b) it is clearly stated that the freedoms of individuals may be restricted and they may be isolated from social life in order to prevent the spread of the contagious diseases.

[82] For a decision of the Supreme Court stating that it is unlawful to infect a person with the AIDS virus, see; Yarg. 4 HD. T. 11.05.2015 E. 2014/9963 K. 2015/5944.

In the art. 195 of Turkish Penal Law, it is stated that "*any person who refuses to comply with the precautions imposed by the authorized bodies at places under quarantine to avoid spread of disease from an ill or death person , is punished with imprisonment from two months to one year*", and it is clearly indicated that the actions contrary to the measures taken by the state against the contagious diseases are illegal. When the judge decides although he/she is not bound by the provisions related to the penal liability and the decision of the penal court related to the fault and the power of discernment, due to the principle of independence stated in the art. 74 of TCO, the fact that whether the action committed is illegal or not is outside the scope of this independence. As stated in the doctrine, the actions considered as a crime by the penal law shall be assumed as an illegal action in compliance with art. 49 of TCO. In this case, it shall be concluded that the noncompliance with the lockdown or the quarantine decisions taken by the Administration in order to prevent the spread of COVID–19 and protect public health, shall be illegal (TPL, art. 195).

The second issue to be considered is whether or not there is an appropriate casual relation between the behaviors of the people, who violate the prohibition and go out and infect other people with the virus, and the damage suffered by the people getting sick. At this point, an ex post evaluation should be made concerning the casual relation, in other words, the conditions which existed but were not known by the doer at the moment of action, besides the conditions known by the doer should be taken into consideration when determining the casual relation. Accordingly, even if the people going out and contacting others despite the prohibition do not know that they are infected at that moment, it should be accepted that there is an appropriate casual relation between the actions of such people and the damage of the people who are infected with the virus. This is because when a COVID–19 carrier contacts another person spread of the virus to the contacted person is in compliance with the ordinary course of life and the available experiences.

The final issue to be examined related to the tort liability of a person acting contrary to the lockdown or quarantine decision is fault. The fault which describes the disapproved behavior of a person has two types as negligence and intent. The person acting illegally by violating the lockdown or quarantine obligation and as a result, causing another person to be infected by the virus can be assumed as faulty at the level of "negligence" at least, and those who are quarantined due to being carriers but violating this quarantine can be assumed as faulty at the level of (probable) intent. In conclusion, in case the "carrier" people going out by violating the prohibitions imposed by the Administration and knowingly acting against the contact rules, spread the virus to others, it can be accepted that the conditions required by TCO art. 49 para. 1 are present and that the indemnification liability emerged for those acting contrary to the prohibition.

2.10. COVID–19 and Obligation to Pay the Rent for the Workplace

The warnings made for the citizens for staying at home and measures taken within the scope of the measures taken for COVID–19 outbreak prevent the spread of the epidemic disease, but inevitably slow down the commercial life of the country. The question desired to be answered here is whether or not the lessees are required to pay the rent decided in the contract with respect to the workplace rentals, and especially whether or not there is any legal remedy that can be applied by the lessees of the workplaces located at the shopping centers that are decided to be closed.

The temporary article 2 of the Law no. 7226, which took effect following the start of COVID–19 outbreak, related to the workplace rents is as follows:

> "*Nonpayment of the rents that have risen between March 1, 2020 and June 30, 2020 does not constitute a ground for the termination of the lease agreement or evacuation*"

In the lease agreement the fundamental performance obligation is to pay the rent (TCO, art.313). Nonpayment of the rent causes the lessee to be in debtor's default in case of presence of the other required conditions and the lessor may demand the termination of the lease agreement and evacuation of the lessee as based on the grounds of default by complying with the conditions required by TCO art. 315.

Again, another provision enabling the evacuation of the lessee if there is default in the payment of the rent is included in TCO art. 353/II. According to this provision; if the two "justifiable notices" are served to the lessee due to non-payment of the rent within the same lease year, then the lessor can evacuate the property by filing a case by the end of the lease period.

The purpose of the temporary article 2 of the Law no. 7226 is to prevent the termination of the lease agreements in compliance with TCO art. 315 and 353/II in case the lessees are in default in payment of the rents and/or side expenses that are accelerated between the dates March 1, 2020 – June 30, 2020. The warnings served for the rents between these dates shall not be considered as a *"justifiable notice"* within the frame of TCO art. 335/II and shall not enable the evacuation of the lessee. Although the temporary article 2 states that the agreement cannot be terminated only in case *"the rent is not paid"*, the provision should be interpreted in compliance with the purpose and it should also be accepted that the agreement cannot be terminated in case of default in payment of the side expenses as well as the rent. The temporary article 2 only prevents the use of the termination right for the agreement given to the creditor in case of the debtor's default. However, there are no barriers for the emergence of the other consequences of the debtor's default against the lessee. Accordingly, in case of nonpayment of the rents accruing during the mentioned four months period, it shall be possible to demand the lessees to pay default interest in compliance with TCO art. 120.

At this point, the lease agreement of the workplaces located at the shopping centers should be considered separately. This is because the entries into the shopping centers were "completely" closed from mid-March until May 11, 2020 in order to prevent the spread of the disease; and

were allowed to open only at specific hours from May 11, 2020 until June 01, 2020. It is beyond doubt that commercial activities could not be performed at the workplace at such time period; the owners of the workplaces were deprived of earning income. Since the Law no. 7226 does not contain any provision with respect to the rent payment of the lessees of the workplaces subject to this condition, it is beyond question that the rent payment obligation even during the period in which the workplace is totally closed continues. It is explained above in detail that this state is unacceptable, it cannot be associated with the justice of the contract, that accepting the continuity of the rent payment shall mean having one party bear the negative consequences, by taking into consideration that the closure of the workplace under an administrative decision is a result of an fortuitous event which is not within the sphere of influence and responsibility of the both parties of the contract; that this shall not comply with the justice of contract and effect of the fortuitous event on the liability law and it is concluded that a fair solution balancing the interests of both parties is required to be developed in such cases within the frame of the theory of "the collapse of the basis of the transaction"

2.11. COVID–19 and Credit Agreements

The cash credits constitute the most widespread type of credit agreements in the application. The legal nature of the transaction between the banks and people for granting cash credit is a commercial consumption loan agreement and the agreement is a synallagmatic agreement since the bank acquires interest income in consideration of the credit granted[83]. Within the frame of the cash credit agreement, the creditor bank is under the obligation to pass the title of the credit to the borrower, and the borrower is under the obligation to pay the credit amount and the accrued interest to the bank. Accordingly, in this case, the provisions related to the consumption loan agreement in TCO art. 386 – 392 shall be applied in the event there are no provisions in the individual cash credit agreement concluded by and between the bank and the customer.

When the obligations of the parties with respect to the current and valid cash credit agreements are taken into account, it is clear that the most important effects of COVID–19 shall be seen in the obligation of the borrower for the repayment of the credit and corresponding interest. In each credit agreement the borrower's condition should be considered separately. This is because while COVID–19 stopped the commercial life in some sectors, it did not give rise to this effect in others and even it may result in positive consequences commercially in some sectors.

The effects of COVID–19 with respect to the obligations of the borrower should be evaluated separately within the context the legal institutions of impossibility of performance, hardship and debtor's default which are general performance barriers.

What should be underlined first is impossibility of performance is not possible in monetary debts[84]. Therefore, impossibility of performance due to COVID–19 cannot be claimed for the borrower concerning the repayment of the monetary credit amount and interest payment obligation.

The economic status of the borrower based on the economic difficulties suffered as a result of COVID–19 is deeply influenced and the borrower be in a state in which he/she cannot be expected of continuing the credit agreement between the bank and the borrower as it is. In this case, the borrower may demand the adaptation of the agreement as based on the provision of TCO art. 138. However, attention should be paid to the fact that not all impossibilities of performance encountered during the performance process give rise to adaptation facility[85]. The occurrence of all conditions included in the provision is required in order to apply TCO art. 138. These conditions are as follows; the hardship to occur should occur as a result of the developments which are unforeseeable by the parties at the stage of formation of the contract; the mentioned unforeseeable situation should arise of the debtor; the unforeseeable situation to arise should change the situation during the formation of the contract making the performance claim, against

[83] In consumption loan agreements, the borrower's return debt does not constitute the counter act of the lending. The main act is for the lender to transfer ownership of the subject matter. The debt of the borrower does not constitute a compensation for this act and is related to the termination of the contract. Consequently, consumption loan is the contract that charges two parties. However, due to the interest receivables of the banks for the loan, the interest payment debt of the customer becomes a counter act and the cash loan agreements become a contract that imposes debts on both sides. (Ünal TEKİNALP: Ünal Tekinalp'in Banka Hukukunun Esasları Fundamentals of Bank Law from Ünal Tekinalp), Yeniden Yazılmış 2. Bası, Vedat Kitapçılık, 2009, p. 489; Mustafa Alper GÜMÜŞ: Borçlar Hukuku Özel Hükümler (Law of Obligations, Special Provisions), C. I, İstanbul, Vedat Press, 2012, p. 443- 444.)

[84] Although it is controversial that the nature of the monetary debt is a special type of debt of a kind or a third type other than a type and variety debt, see regarding that it will not be subject to impossibility provisions such as type debt; M. Kemal OĞUZMAN/Turgut ÖZ: Borçlar Hukuku Genel Hükümler (Law of Obligations, General Parts), C. I, 18. Edition, İstanbul, Filiz Press, 2018, p. 9.

[85] Başak BAYSAL: Sözleşmenin Uyarlanması (Adaptation of the Contract), İstanbul, On İki Levha Press, 2017, p. 203.

the rule of good faith; and finally, the debtor should not perform the obligation yet or perform it by reserving the rights to arise of hardship of performance[86]. Within this context it is explained above that COVID–19 is an unforeseeable situation which is not attributable to the debtor, in other words, it can qualify as a force majeure event. Accordingly, the level of hardship on the debtor, of the unforeseeable situation attributable to the debtor, should be determined in each case. If demanding the performance from the borrower in the credit agreement in question shall be contrary to the rule of good faith, then the borrower can demand the judge to adapt the agreement, in other words, to change it within the frame of the new conditions. For example, if the debtor operates in the workplace located at the shopping center for which the activities are prohibited, it is evident that he/she shall not be able to earn any income during such period and as a result shall not be able to pay the debts back. The debtor in such a situation should be able to demand a decision for the adaptation of the credit agreement and delay of the credit installments determined in the agreement "*as long as the prohibition on the activity is in force" on condition to prove the existence of such a situation*[87].

In addition to the impossibility of performance and adaptation, the default of the debtor shall also arise for the borrower in case the obligation is not performed. As we mentioned above, since the credit agreement concluded with the banks is a synallagmatic agreement due to the borrower's obligation to pay interest, if the borrower is not able to pay the debt, then the general consequences of the default of the debtor in the provisions of TCO art. 118 – 122, as well as the provisions of TCO art. 123 – 126 arranging the consequences of the default of the debtor in synallagmatic agreements, shall be applied with respect to the default of the debtor.

It is evident that extensive measures are taken, entry to – exit from the cities are prohibited, workplaces are closed, restrictions are imposed on international arrivals-departures, supply chains ate broken, the commercial life is about to stop due to COVID–19. Accordingly, it should also be considered whether or not the default of the debtor shall realize for the borrower due to the nonpayment of the credit repayment installments that were accelerated during the period in which such restrictions apply and whether or not the authorities provided by the provisions such as "*in case of nonpayment of an installment, the whole credit can be recalled"* included in almost all commercial credit agreements, can be exercised. Nonpayment of the accelerated installments in the periods in which the administrative measures continue, shall not cause the default of the customer since fault is not required for the default. However if the creditor can base the default related to the installment payment obligation of the customer, on the measures taken due to COVID–19, then, just like in the lease agreements, he/she should not be able to benefit from the termination of the agreement or accelerating the entire credit, based on the default realized in such period. Acceptance of the contrary, just like in the workplace rents, shall mean that all the negative consequences arising of a fortuitous event for which no party is responsible, shall be borne by the borrower.

[86] For detailed explanations of these terms please see; BAYSAL, Sözleşmenin Uyarlanması (Adaptation of the Contract), p. 203 ff.

[87] In this possibility, there is no doubt that contract interest will continue to be paid for postponed credit installments. If the court makes such a decision, this will prevent the bank from overdue the entire loan payment by dropping the loan customer into the debtor default when the business is closed.

2.12. COVID–19 and Consumer Transactions[88]

2.12.1 Package Tour and Temporary Accommodation Agreements

In case of formation of the conditions determined in the consumer legislation, within the scope of the provisions of article 51/6 of Consumer Protection Law and article 10/3 of Package Tour Agreements Regulation[89], the consumers affected negatively from COVID–19 outbreak and the measures taken for such outbreak, have the right to participate in another package tour with equal or higher value without any additional payment, to participate in a package tour with a lower value on condition that the price difference is returned to the consumer or to rescind from the agreement without any indemnification, following the annulment of the measures concerning the mentioned outbreak. The consumer can also terminate the package tour agreement with the start corresponding to the period in which the measures taken for COVID–19 outbreak continue, at least thirty days before the start of the package tour within the scope of the article 16 of the same regulation. Even if the consumer terminates the package tour agreement with the start corresponding to the period in which the measures taken for COVID–19 outbreak continue in a period less than thirty days to the start of the package tour, the amount paid is required to be returned without any deduction, except the expenses arising of the compulsory taxes, fees and similar legal obligations and the nonrefundable sums paid to the third parties which can be documented. However, if the package tour agreements starting as of Feb. 05, 2020 which include airline transport are cancelled due to COVID–19 outbreak, temporary article 1 of the Regulation Amending the Package Tour Agreements Regulation[90] applies with respect to the refunds to be paid to the consumer. On the other hand, according to the provision of the temporary article 1/1, if the package tour agreements starting after Feb. 05, 2020 and including airline transport are terminated, the flight cost paid to the airline companies and documented by the package tour operator or the intermediary of the operator shall be refunded to the consumer, within fourteen days after the sixtieth day following the cancellation of the flight restriction. The sum excluding the flight cost shall be refunded to the consumer within fourteen days after the termination notice reaches the counter party.

The consumer who is a party to the timesharing/vacation agreement shall be able to use the withdrawal right within the scope of the provisions of the article 50/6 of CPL and article 7 of Timesharing and Long-Term Vacation Service Agreements Regulation[91] or the termination right within the frame of the provision of the article 13/2 of the same regulation.

Hotel, motel and boardinghouse agreements are not directly regulated by the consumer legislation, but since the presentation of accommodation service can be considered as a consumer transaction in compliance with the provision of article 3 of CPL, the consumer legislation is applied primarily with respect to these agreements. Moreover, since such accommodations are organized by making reservations, generally without going to the location of the entity, the agreements related to these

88 This term is used in its sense as used in article 3.1 of the Law no. 6502 on the Protection of the Consumers.

89 OJ., N: 29236, Date: 14.01.2015, (https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=20446&mevzuatTur=KurumVeKurulusYonetmeligi&mevzuatTertip=5), (E.T.: 13.05.2020).

90 OJ., N: 31128, Date: 15.05.2020, (https://www.resmigazete.gov.tr/eskiler/2020/05/20200515-8.htm), (E.T.: 17.05.2020).

91 OJ., N: 29236, Date: 14.01.2015, (https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=20442&mevzuatTur=KurumVeKurulusYonetmeligi&mevzuatTertip=5), (E.T.: 17.05.2020).

are concluded as distance agreements regulated by article 48 of CPL. Based on the provisions of the consumer legislation which regulate the distance agreements, the consumer who is a party to such agreements shall be able to use the withdrawal right within the scope of the provisions of the article 48/4 of CPL and the article 9/1-2 of Distance Agreements Regulation[92] and the termination right within the scope of the provision of the article 19 of the same regulation, upon occurrence of the determined conditions.

Like in other temporary accommodation agreements such as hotel, motel and boarding houses etc., agreements for the real estate that shall be used as a summer house also generally emerge as a consumer transaction within the scope of the provision of the article 3 of CPL. Accordingly, the consumer legislation should be applied to the lease of a summer house which can be considered as a consumer transaction. In cases where there is a consumer transaction, the relevant agreements should be concluded in the form of a distance agreement which are regulated under the provision of the article 48 of CPL, since summer house accommodations are organized by making a reservation in advance without going to the location where the real estate is located. Therefore, the use of the withdrawal right, the termination right and the right of choice arising of the defective service in the distance agreements concluded within the scope of the hotel, motel and boarding house agreements shall also be considered as valid for the summer house lease agreements in which there is a consumer transaction and the rules explained above shall be applicable with respect to such types of agreements.

2.12.2. Distance Selling Agreements

The basic strategy applied worldwide in the struggle with COVID–19 outbreak is founded on providing the individuals to stay where they are and slowing down the spread of the disease. Based on this, it is observed that the common shopping habits have changed and an extraordinary increase is seen in the demand for the marketing techniques other than the workplace sale. Specifically, as of 2020 there is considerable increase in the online order volumes of the companies offering electronic trade service in certain product groups.

Distance agreements are regulated within the framework of the article 48 of the Consumer Protection Law no. 6502 and then, Distance Agreements Regulation published by the Ministry of Customs and Trade. Within the frame of a system created for the distance marketing of the products or services without simultaneous physical existence of the seller or the provider and the consumer, the agreements in which the remote communication instruments are used are defined as distance agreements, until the moment in which the agreement is concluded between the parties including such moment. The problems that occur with respect to the distance selling agreements as a result of the epidemic disease can be listed as follows:

a) Stock Problems in the Product Sales Agreements (Especially in Cleaning Products and Medical Products Groups)

Distance selling agreements are the agreements that are concluded between those who are not present, within the frame of the article 5 of TCO. Accordingly, the seller and the providers offer the products for which the prices and qualities are determined, on the distance selling platforms (websites, telephone applications, catalogues, telephones etc.). On the other hand, the consumers present their will for the purchase of the relevant product by actions such as filling the order forms, clicking the purchase buttons. There is a difference of opinion as to which activities shall be considered as proposal and which shall be considered as declaration of acceptance. The generally accepted view in the doctrine considers that the products supplied over the internet constitute an invitation to a proposal, that the consumer presents the will to purchase which is a proposal

[92] OJ., N: 29188, Date: 27.11.2014, (https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=20237&mevzuatTur=KurumVeKurulusYonetmeligi&mevzuatTertip=5), (E.T.: 25.05.2020).

and sharing a notification such as "*your order is confirmed/realized/successful*" by the seller/provider constitutes the formation of an agreement.

Together with the formation of the agreement, the performance obligation of the seller/provider through postal or courier services and the payment obligation of the buyer arise. The buyer (customer or consumer) usually performs the payment obligation through one of the electronic payment tools as online or by credit card or cash during the delivery of the product. Accordingly, the seller's and the providers' obligation to deliver the product and the buyer's obligation to pay the price definitely emerge as of the moment in which the agreement is formed. Following the formation of the agreement, it is not possible for the seller or the provider to be discharged from the obligation claiming that the agreement is not formed based on the grounds that " the product is not in the stocks" or that there is impossibility of performance. As a matter of fact, the 4th paragraph of the article 16 of the Distance Selling Regulation states that "*the state of unavailability of the product in the stocks cannot be considered as the impossibility of the performance of obligation*".

b) Delays in the Supply and Delivery Periods of the Product Sales Agreements

During this process, it is observed that the periods for the supply and delivery of the product by the seller and the providers is delayed. In compliance with the article 16 of the Distance Selling Regulation "*The seller/provider is required to complete the performance of the agreement within the undertaken period starting from the date when the consumer's order reaches the seller/provider. If the subjects of performance are goods, the performance time for the agreement is 30 days at the most.*"

If the performance took more than thirty days, then the consumers have a right of withdrawal in compliance with the article 16 of the relevant regulation. If the consumer uses this right, then the seller/provider is required to pay back all the payments collected including the delivery expenses, if any, together with the legal interest within fourteen days as of the date the termination notice is served and return all the valuable papers and documents that obligate the consumer, if any.

c) The Status of the 14-Day Withdrawal Right Provided to the Consumers, During the Epidemic Disease Process

The consumers are deprived of the opportunity to physically examine, try, control the quality of the product sold during the formation of the distance selling agreements. Due to this reason, the consumers are provided the right of withdrawal without any reasoning and a penal clause, on the day on which the agreement is formed in the service performance agreements; and within **fourteen days** starting from the date on which the product is delivered in the product delivery performance agreements, within the framework of the article 9 of the Distance Selling Agreements Regulation. However, this term could be insufficient for the consumers during the outbreak process. Accordingly, it should be considered whether or not the temporary article 1 of the Law on the Amendments on Certain Laws No 7226, dated Mar. 25, 2020 will apply concerning the right of withdrawal. Based on the provision of the mentioned law, application, complaint, opposition, warning, notification, presentation and prescription periods, and all the terms related to the occurrence, use or termination of a right including the lapse of time, are stopped starting from Mar. 13, 2020 until Apr. 30, 2020, in order to prevent losses of right in the field of jurisdiction, due to the cases of COVID–19 epidemic disease in our country. Afterwards, the relevant term is extended until Jun 15, 2020, inclusive of this date, based on the Presidential Decision. Since the term of 14 days provided for exercising the right of withdrawal is a type of lapse of time, the term of exercising the right of withdrawal related to distance selling agreements formed within this period shall not start until Jun. 15, 2020 and the mentioned right can be exercised within 14 days starting from Jun. 15, 2020.

d) Refund Problems as a result of Cancellation, Delay of the Concerts, Arts and Sports Activities

Another measure taken during COVID–19 process is the suspension of the meeting activities such as concerts, arts and sports activities. Being different from the product sales agreements, the consumers cannot use the right of withdrawal, unless it is otherwise agreed by the parties, in the agreements related to accommodation, goods transport, car rental, food-beverage supply and the leisure time activities for entertainment or resting purposes which are required to be performed at a certain date or period in compliance with the subparagraph (g) of the article 15 of the Distance Selling Agreements Regulation. However, the non-realization of such types of activities can be considered within the frame of the state of impossibility regulated by the 4th paragraph of the article 16 of the Regulation of the impossibility of performance regulated by the article 136 of the TCO. It should not be forgotten that it is now objectively impossible for the seller/provider to perform the relevant activity due to the public measures taken. Based on this legal situation, *the seller/provider is required to notify the consumer in writing or with permanent data register within three days as of the date on which he/she becomes aware of this situation and return all the payments collected including the delivery expenses, if any,* ***within maximum fourteen days*** *as of the date of notification.*

e) Problems Related to the Termination of the Subscription Agreements

Subscription agreements are the agreements that provide the consumer to acquire a certain product or service continuously or at regular intervals. Subscription agreements are regulated by the article 52 of the Consumer Protection Law no. 6502 and then the Subscription Agreements Regulation No 29246 issued by the Ministry of Customs and Trade. It is determined that the consumers felt the need to terminate the subscription agreements specifically as a result of the restriction of freedom to travel during COVID–19 process. As a rule, it is possible for the consumers to terminate the subscription agreements of indefinite duration or subscription agreements of a definite duration with a term longer than one year without reasoning and the payment of a penal clause. However, some problems occurred with respect to the form of the termination notice to be served during this process. In compliance with the Law, it is sufficient for the termination notice to be directed to the seller or provider in writing or through permanent data register. In this period in which the consumers are recommended to stay home and this is provided by lockdowns, it is difficult to serve the termination notice via fax or serve it to the physical workplace of the provider, and accordingly serving the termination notices over e-state system was enabled based on the decision of Information Technologies and Communication Authority, No "2020/DK-THD/139" taken on May 12, 2020.

2.13. COVID–19 and the Right to Establish Personal Relation

As a result of the measures suggesting social distancing and lockdown for COVID–19 outbreak, the right of the mother or father, who does not have the right of custody, to establish a personal relation with the child is being restricted. The restriction of this right may occur in three different ways:

- the mother or the father with the right of custody does not want the child to see the other party outside the house, due to the social distancing recommendations,
- the mother or the father with the right of custody, although allows the other party to see the child, the person using the right to establish a personal relation by taking the child during the weekends or visiting, is not able to use this opportunity due to lockdown, and
- again the inability of the person to use the right to establish a personal relation by taking the child due to the general lockdown applied for those under the age of 20.

As it can be seen, the right to establish a personal relationship, which is established by court order, may ne nonfunctional as a result of COVID–19 measures, unless there is an exception. There are no general exceptional provision concerning the problem. Although there is no exceptional provision, some court orders specifically in Germany[93] give an idea on the type of solution method to be applied. In a few number of disagreements concerning this issue, it is underlined by the court decision that the benefit of the child should be considered at an utmost level in cases where the mother or the father with the right of custody completely refuses the other party to see the child temporarily on the ground that there is a risk of spread of the disease. Despite the recommendations of the German health authorities for the postponement of the meeting unless obligatory, it is underlined that this state constitutes a requirement, that it is not correct to prevent the child seeing the mother or the father who does not have the right of custody. Only in cases in which the child is in the risk group, it is concluded that it will be appropriate to have the meeting "*in a way not to have a physical contact"* within the frame of the child's benefits. In the Swiss doctrine, similar to the situation in Germany, there are opinions giving the priority to the child's benefit and stating that it is a requirement for the child to see the mother or the father who does not have the right of custody, which should be performed even under COVID–19 measures[94].

When the provisions in Turkey are examined under the light of the opinions in Germany and Switzerland, the prevention of the other party's right to visit the child by the mother or the father with the right of custody shall be considered as the prevention of the establishment of personal relation with the child within the scope of article 324 of TCL, if the child is not in the risky patient group. In this case, the *modus operandi* to be applied in case of prevention of establishment of a personal relation with the child in the Enforcement and Bankruptcy Law can be considered. However, all the enforcement proceedings are suspended until Apr. 30, 2020[95], as based on the

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93 OLG Braunschweig (1. Senat für Familiensachen), Beschluss vom 20.05.2020 – 1 UF 51/20AG; Frankfurt a. M. Beschluss vom 9.4.2020 – 456 F 5092/20 EAUG (E.T. 20.05.2020).

94 Daliah Luks Dubno/Raffael Breitler: *"Das Besuchsrecht in Zeiten von Corona"*, Neue Zürcher Zeitung, Nr.**97, 27.04.2020**, p. 11 (E.T. 12.05.2020).

95 The fact that there is no possibility in this period to apply to the Enforcement Offices to establish a personal relation with the child constitutes a drawback. It would be appropriate to introduce an exception provision which would allow the use of the right to establish a personal relation with the child.

Presidential Decision no 2279 published in this period, and then this period was extended until Jun 15, 2020. It is an important failure that no solution to enable the use of the right to establish a personal relation, was developed during this period.

Since the time when the outbreak will be completely out of the society's agenda cannot be estimated yet, again the party not having the right of custody should be able to apply to the court within the frame of the article 183 of TCL and request the rearrangement of the right to establish a personal relation in a manner to cover this situation. Despite the fact that it is required to establish a personal relation with the mother or the father, who does not have the right of custody, for the benefit of the child, if the arrangement concerning the form of establishing a personal relation does not cover this, then it shall be possible to request a change based on the changing conditions. The mother or the father with the right of custody should allow the other party to establish a personal relation with the child in an appropriate manner until such requests are fulfilled.

If the child is in a risk group with respect to COVID–19 outbreak, then, for the benefit of the child, it shall not be possible for the mother or the father, who does not live in the same house, to come together physically with the child. However, the establishment of a personal relation with the child is required to be provided in this case via video calls or digital instruments similar to telephone, which do not require physical contact, and in a manner to protect the psychological ties of the parties.

2.14. COVID–19 and Law on Associations – Foundations

COVID-19 epidemic disease is a contagious disease that spreads through respiratory system intensely in areas where people come together[96]. Accordingly, the prevention of people from coming together and the reduction of the spread speed of the disease are aimed with the measures such as lockdown, suspension of the activities of some entities taken in order to prevent the disease. One of the places where people come together is the general assembly meetings of the associations, foundations, cooperatives and the capital companies. Various measures are taken in the world and in our country for the general assembly meetings in which people come together.

The first measure taken within this direction under the Circular of the Ministry of Interior dated Mar. 16, 2020, is the temporary postponement of any and all meetings and activities that bring people together, except the general assembly meetings of the nongovernmental organizations such as associations and foundations and the management activities requiring executive obligation[97]. Another measure taken under the Presidential Circular No 2020/3 dated Mar.19, 2020[98] is the indirect postponement of the general assembly meetings through the postponement of all the scientific, cultural, artistic and similar meetings or activities to be organized in indoor and outdoor areas at the national and international level, until the end of April.

The last provision concerning this issue is the measures taken under the provision of the article 2/1-(ç) of the Law no. 7244. Within the framework of the mentioned provision, the notifications and declarations to be presented by the associations in compliance with the Law on Associations and the Turkish Civil Law and the general assembly meetings of such associations are postponed until Jul. 31, 2020. Moreover, the authority to extend this term up to three months is given to the Minister of Interior. With the mentioned provision of the law, it is stated that the postponed meetings shall be held within 30 days following the expiry of the postponement and that the current duties, authorities and responsibilities of the current association organs shall continue until the first general assembly meeting to be convened following the postponement period.

In compliance with the mentioned provision, the ordinary or extraordinary general assembly meetings of the associations are prohibited until Jul. 31, 2020 if the Minister of Interior does not extend this term. Within this context, the mentioned provision is a mandatory legal rule. The general assembly meeting of an association convened as contrary to this mandatory rule is absolutely null and void in compliance with article 83/3 of TCL and article 27/1 of TCO and it is possible file a declaratory action for nullity against these decisions without consideration of the terms in article 83/1 of TCL.

In article 2/1-ç of the Law no. 7244, there is no provision for the associations duly established, which were notified by the highest civilian authority that there is no illegality in their certificates of formation according to the article 60 of TCL and which did not yet convene their first general assembly meeting. In our opinion, if the term stated in article 62 of TCL corresponds to a period in which the general assembly meetings are prohibited, then the association should not be dissolved

96 https://covid19bilgi.saglik.gov.tr/tr/covid-19-yeni-koronavirus-hastaligi-nedir.html (Online).

97 For the general text see http://www.antalya.gov.tr/icisleri-bakanligi---coronavirus-tedbirleri (Online).

98 Official Journal, 20.03.2020, 31074.

within the scope of the article 87/1-(2) of TCL, since the general assembly meeting is prohibited by a special law. In such a case, the association should convene the general assembly meeting within 30 days as of the date on which the prohibition for convening the general assembly meeting of the association is removed, otherwise, it can be stated that the association can be dissolved in compliance with article 87/1-(2) of TCL, following the period of 30 days.

Within the framework of the article 2/1-(ç) of the Law no. 7244, if the general assembly meeting of an association is postponed until Jul. 31, 2020, it should be allowed to take decisions by the members through written participation without coming together, except the general assembly meetings, within the framework of the article 76 of TCL. This is because the purpose of the measures taken in compliance with the provision of the article 2/1 of the Law no. 7244 is to prevent people from coming together and it seems possible to take a general assembly decision when it is taken into account that this method in article 76 of TCL does not violate this purpose.

COVID – 10 outbreak and the technologic developments show that there is a need for a legal provision in the law on associations that would allow the participation in an electronic media in place of and maybe together with the physical general assemblies, which require the physical togetherness of the people and which may result in considerable expenses. Within this scope, it is proposed to impose a provision in the Law on Associations no. 5253 or the Turkish Civil Law in order to convene the general assembly meetings of the associations over electronic media – just like the joint stock companies. Although a provision "*According to this Law and the Turkish Civil Law no. 4721 dated Nov. 22, 2001, any and all registrations and works and transactions related to the associations can be performed over the electronic media"* is included in the Law on Associations no. 5253 by the article 23 of the Law no. 7226, it is not evident whether or not this provision is related to the electronic general assembly.

2.15. COVID–19 and Protection of the Personal Data[99]

The problems arising of COVID–19, concerning the protection of the personal data can be summarized under three main titles. The first one is related to the relations of the private enterprises and public institutions and organizations with their employees; the second is related to the home office or distance education processes which became more of an issue during this period; the third is related to the smart phone applications that appear in different shapes in many countries just like our country.

COVID–19 caused a serious dilemma with respect to the private enterprises and the public institutions and organizations. The entrepreneurs or the public institutions and organizations in the position of employer took the required measures in order to protect the health of the employees, but were also required to provide the required environment so that the activities of the enterprise are not interrupted and the sufficient number of employees can work. The law on data protection is very important at the stage of balancing these two conflicting benefits. When this state is examined with respect to the protection of the personal data, there is no doubt that the employer is under an obligation of protection of the employee. For this purpose, required controls should be carried out, the employer should protect the employees by taking the required measures against the risk of spread of the disease both from the third parties and also the other employees, should take all the measures in order to protect the spread of the virus if symptoms are determined and should notify the authorities accordingly.

While performing such obligations, the employer shall inevitably be required to process personal health data. This is because taking the temperature of the employees, other tests and controls with respect to the virus symptoms, questions asked about the health status, examining whether or not health institutions are visited are all personal health data since they have the nature of information related to the physical health of the employee. While performing such obligations, the employer shall also be required to be careful about the protection of the personal data. Accordingly, the employer shall either take the explicit consent of the employee in compliance with the article 6/II of the Law on the Protection of Personal Data (LPPD)[100] or shall provide the processing of such data only by the workplace doctor and/or the assistant of the doctor within the frame of the 2nd sentence of the 3rd paragraph of the same provision, in order to process the health data of the employee.

Since personal health data has the nature of "sensitive data", the issues such as processing of the mentioned data, those who can access it, period of storage should clearly be determined and the explicit consent of the concerned person should be taken.

Both legal basis point out the presence of some problematic conditions. Accordingly, explicit consent should be "*specific to an issue, based on information and given freely*", based on article 3/I para. (a) of LPPD. However, it is generally not possible to speak about free will in the employee-employer relations. Whether or not the employee gives his/her consent with free will will always be doubtful due to the concern of losing his/her job.

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99 In writing this part, contributions sent by Prof. Dr. Hayrünnisa ÖZDEMİR, Assoc. Prof. Dr. Mesut ÇEKİN, Assoc. Prof. Dr. Selin SERT SÜTÇÜ were made use of.

100 Law no. 6698 on the Protection of Personal Data, OJ, N: 29677, Date: 07.04.2016.

On the other hand, it is always possible to withdraw the explicit consent. Therefore, even if it is accepted for a moment that the explicit consent taken from the employee is taken as based on free will and accordingly it is valid, the employer processing the personal data of the employee as based on the explicit consent will always face the withdrawal of such consent, and termination of the data processing activities in due course and the obligation of deletion of the data.

With respect to another legality condition provided in the law, the processing of the personal data exclusively by the workplace doctor brings along many problems in practice. Although there is no obligation of having a workplace doctor at each workplace, having all the health controls to be performed by a single person even at the workplaces having a full-time workplace doctor will cause an easier and faster spread of the virus. Accordingly, the risk of endangering the life and physical integrity of the employees emerges, when aiming the protection of the personal data.

Within this context, another important principle is the principle of proportionality. Accordingly, the employer should process the data which is required in order to achieve the purpose desired and should refrain from obtaining data beyond this. So, within the frame of the protection obligation, the employer shall be able to ask questions to the employee for the determination of the symptoms or whether or not the employee has been to places where there is a risk of infection (in the country or abroad), if symptoms are found in the employee or the people contacted by the employee, then the employer can ask questions for the determination of the people contacted and locations. On the other hand, if the employer takes the temperature of everyone at the gate, collects all the health data in the absence of a doubt, requests data which is random and not related to the pandemic symptoms in the absence of doubt, such actions shall mean the violation of the principle of proportionality. Again if the employer detects virus in an employee, he/she should avoid disclosing the identity of such employee as a rule, however, should disclose it as a last resort in case it is impossible to take measures for the whole department or unit without disclosing the identity of such employee. Moreover, if the personal data of the guests and other third parties visiting the workplace, other than the employees, is required to be processed, then such principles shall be applied in the same manner. Within this context, if the employer detects virus in one of the guests, then it is very important that he/she takes prompt action and take the required measures for the employees.

Many private enterprises started home office model, schools and universities are closed, domestic and international travels are restricted and even lockdown is applied in some cities in order to prevent the spread of COVID – 10 virus. Due to this reason, online methods are started to be preferred both in business life and in the field of education. Computer programs of foreign origin are specifically preferred frequently. Within this frame, particularly two issues are important with respect to the protection of personal data. The first one is the international data transfer and the second one is related to the technical and administrative measures. The article 9 of LPPD stipulates that transfer can be made to safe countries on condition to take the explicit consent of the concerned person, and if such consent cannot be taken, on condition that the provisions of the article 5 or 6 of LPPD are complied with; if the country is not safe, that the transfer can be performed by having the data controller or the data processor sign the letters of undertaking published by the Board and having it approved by the Board, and finally that the transfer can be made within the frame of the binding company rules that are prepared by the data controller and confirmed by the Board.

When such conditions are examined in practice, taking explicit consent seems to be the fastest and easiest method at present. However, the problems mentioned above concerning the explicit consent shall also apply here. The employee rejecting the video conference of the company on the ground that he/she does not want his/her personal data to be transferred abroad, may face the

termination of his/her employment contract. Therefore, whether or not the consent is given by free will should be discussed here. On the other hand, in case the consent is withdrawn, the data controller shall be required to terminate the mentioned processing activity. If explicit consent is not taken, there shall be letters of undertaking since the safe countries are not yet declared by the Board. However, it is required that the mentioned letters of undertaking should be signed by the foreign companies possessing the mentioned computer programs acting as the data controller or the data processor and then should be presented to the Board for approval. However, it is evident that this shall not be possible.

Moreover, how the obligations arising out of the protection of the personal data law against the applications planned to be used and currently being used within the scope of the pandemic shall be performed also needs to be examined. With respect to the struggle with the pandemic and the potential applications to be developed within this frame, the EU Commission published an opinion on Apr. 16, 2020 concerning the corona-applications[101]. In this opinion, applications providing information to the user about the pandemic, platforms used for diagnosis, tracing and warning, and constituting a communication platform between the doctor and the patient are taken into account. The purpose of the opinion of the Commission is to minimize the intervention of the applications to be developed to the fundamental rights and freedoms, especially the protection of personal data, personal rights and privacy and to provide the harmonization with the law on data protection.

Regarding Turkish law, there is the probability of excluding the mentioned applications and the data processing activities from the scope of the law, when it is taken into consideration that the measures taken during the mentioned process[102] within the frame of the article 28 of the Law no. 6698 are taken for the public security and that the Ministry of Health and the relevant institutions carry out these duties. It is required to determine the legal basis of the personal data processing activity for the application to be developed with respect to the issues other than the exception contained in the article 28 of the Law. What is specifically important here is whether or not the personal health data shall be processed. If the application targeted to be developed collects not only location data but also information about the health status of an individual, then such data can be processed within the frame of the purposes stated in the article 6/3, 2nd sentence of TPPD, by the people stated in the same place. Another form of solution is to refer to the explicit consent of the users.

On the other hand, if the application does not process the health data of the users and only offers virus distribution map with anonymous data; for example, if the application sends warning to the users by matching the information on whether or not there is a virus case in the place where they plan to go, with the user location data based on the anonymous data taken from the Ministry of Health, then it shall be possible to stand the processing conditions stated in the article 5 of LPPD since health data is not processed. However, it is required to comply with the general principles contained in the article 4 of LPPD, regardless of whether or not health data is processed. Accordingly, the processing process should be transparent, and the users are required to know why and by whom the data they share shall be processes, to whom such data shall be transferred and for how long such data shall be kept. This notification should have the minimum conditions provided in the article 11 of the Law and the concerned Communiqué. At the same time, it is very important for the data controller to take the required security measures in order to provide the data security within the scope of the article 12 of the Law.

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101 For the text of the Opinion see https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0417(08) &from=EN, (Access: 18.05.2020).

102 There are a number of applications adopted by the Ministry of Health to follow and track COVIID-19 practices. These applications have been published as; 1. Corona Prevention Test (19 March 2020), 2. Isolation Tracking System (09 April 2020), 3. Life fits into home (18 April 2020). The Ministry of Health collects personal health data through these three applications. Though the purpose is to protect public health, the Ministry should take necessary measures and precautions to prevent third parties from accessing personal health data.

2.16. COVID–19 and Insurance Agreements*

COVID–19 outbreak caused the occurrence of important changes and developments in the insurance agreements and insurance sector, as in all areas of life. Based on the "*freedom of contract"* principle in the private law area, the insurance agreements can easily be adapted to the epidemic disease conditions and be developed. The new proposals and changes we frequently see recently, are due to this principle which dominates the insurance agreements. The main source of the changes in the insurance sector is digitalization and it started to dominate this sector as in all the sectors.

The diagnosis and treatment expenses related to the epidemic disease are generally excluded from the coverage of the private health insurances. Despite this, a large part of the insurance companies took a decision, included the coronavirus within the coverage and started to pay all the treatment expenses by *ex-gratia* payment. This decision of change covers the health insurances and the supplementary health insurance agreements. It shall be appropriate for the decision of change to be considered as valid for the disease insurance in the nature of *fixed sum insurances* which do not have specific general conditions.

Unless otherwise agreed, all the analysis and treatment expenses, hospital expenses, daily incapacity to work payment, daily care payment can be paid by the health insurance in case of becoming ill and going to a private hospital due to COVID–19. If the test result is positive and the patient is hospitalized in the supplementary health insurance, then a part of the treatment expenses is paid over the State Health Practices Communiqué (HPC) and the remaining part is paid by the insurance company. If the patient's condition worsens and the patient is transferred to the intensive unit, then again, a certain part is paid over the State HPC and the remaining part is paid by the private insurance company.

COVID–19 is still *a risk which cannot be fully observed and controlled yet*. This risk may influence a single person or may influence a large number of people and even the next generations. Environmental pollution is a risk with effects at such a large scale. The loss to be suffered as a result or realization of the risk is, ideally, required not to be destructive.

By considering the article 1512 arranging the *"Disease Insurance"* in Turkish Commercial Code as a special provision specific to disease insurances when compared to the provision of the article 11/IV of the Insurance Law; it can be concluded that the insurance coverage only covers the disease/diseases stated in the agreement, and the diseases which are not stated are outside the coverage of the insurance. In a health insurance agreement, pandemic shall be subject to the Health Insurance General Conditions *(All Risks Coverage)* in case it is not included in the disease insurance as a special clause or as an additional agreement with respect to the article 1512 of TCC.

In cases in which the epidemic disease is within the insurance coverage, if the insured person violates the quarantine, lockdown, use of mask, social distancing rules and knowingly exposes himself/herself to a severe risk, then this shall be a reason for exclusion from the scope of the coverage. This is because the insured person's actions knowingly exposing himself/herself to risk is a condition which releases the liability of the insurer according to the article 1477 of TCC.

* This part is a summary of the work entitled *"The Effects of the Pandemic on the Insurance Agreements and the Insurance Sector"*, prepared by Prof. Dr. Huriye KUBİLAY.

COVID–19 may cause the introduction of new special conditions in insurance agreements. For example, some insurance agreements such as health and travel insurances may contain special conditions concerning quarantine (*self-isolation)* and social distancing. The condition of compliance with the social distancing rules may be imposed in travel insurance in order to benefit from the insurance protection. Even if there is no such special condition in the insurance agreement, the insurance company may be relieved of the obligation to pay insurance indemnity or may apply a discount in the insurance indemnity, within the scope of *"the obligation to prevent, reduce loss and protect the recourse rights of the insurer"* stipulated in the Turkish Commercial Code no 6102, since the insured person does not fulfill the obligation to prevent and reduce the loss.

An employer observing that the employees do not take the measures such as keeping the social distance is required to notify the insurance company about this situation promptly within the scope of the notice obligation during the insurance term; notify the insurer immediately in case it is understood that the employees are infected. Non-performance or incomplete performance of this obligation may result in not benefiting from the insurance indemnity at all or the sanction of making a discount in such insurance indemnity.

Public decisions taken during the pandemic period also require the evaluation of the Business Stoppage/Interruption/Cancellation/Nonappearance insurances agreements. Business stoppage insurance is defined as an insurance type that covers the loss of income an entity suffers as a result of disaster. The loss of income covered by the insurance may be due to the closure of the workplace because of a disaster or due to reconstruction process following a disaster. This insurance is generally covers the losses of income occurring as a result of physical events such as fire and flood which the goods suffer. It is not possible to consider pandemic as a physical event which the goods suffer. Insurance policies typically contain the exemption of *"the loss and damage causing pain, disease or disturbance arising of virus, bacteria and other microorganisms".* In practice, it is seen that a very little number of Business Stoppage Insurance Policy have coverage for the infection risk arising out of a contagious disease.

Cancellation or postponement of the sports activities due to pandemic show that it would be appropriate to consider *"Parametric Insurance Agreements".* The *"Parametric Insurance Agreement"* is an agreement where it is decided to pay the insurance indemnity in case of occurrence of any event (for example pandemic) that may trigger the payment of the insurance indemnity. The triggering event may be an epidemic disease or a natural event that may cause the occurrence of a loss or losses. In a parametric travel insurance, if a train or airplane is delayed for a predetermined time, the predetermined insurance indemnity is paid to the insured person automatically, if such delay is within the parameters or index limits of the insurance policy. In parametric insurances, a long time is not needed for examination since insurance indemnity payment is made based on a predetermined objective index, which is the advantage of this insurance.

An important step taken during this process is the start of "distant expertise" application with the change made in the Insurance Experts Appointment Regulation. With the new provision, a new dimension is provided especially for the expertise procedures to be carried out in the pandemic environment. *"Distant expertise"* application provides the loss adjustments and payments to be made with lesser expenses and in shorter times since the loss adjustments are carried out over electronic media.

Again in this period, smart agreements which were developed by using blockchain systems are also talked about in the insurance sector. It is important that the smart agreements *are legal/lawful,* fulfill the *recognition rules* and *the requirements of the law on contracts.* Within this context, the Unfair Terms Directive and the Directive on the Contracts for the Supply of Digital Content and Digital

Services restrict the potential area of the smart agreements in the European Union; and this is a correct approach.

Digital applications are not only the arrangements that allow the formation of an agreement or offering distant expertise service; they also developed digital applications for some insurance support services which are to be provided within the scope of insurance services during this process. Video diagnosis and treatment applications are among these.

2.17. COVID–19 and Sports Sector

One of the sectors which COVID–19 affected the most is the sports sector. All activities in all sports branches are halted and this condition affected all the sectors which base their existence and continuity on the continuity of the sports activities. The Summer Olympics and the European Football Championship are delayed for one year, which could not be imagined previously; the Wimbledon Tennis Tournament and others are cancelled; all the sports competitions and games in our country and in the world in general are prohibited. This condition caused many sports clubs to face existence problems in our country and in the world in general. The sports clubs have been deprived of the revenues expected from the sports matches and the broadcasting of such matches as well as sponsorship revenues. It is beyond doubt that this condition caused many legal problems specifically between the professional athletes and the clubs, the clubs and the fans, the clubs and the broadcast companies, the broadcast companies and the customers, the sports clubs and the other sports clubs, the sports clubs and the national and international institutions.

It shall be appropriate to accept COVID–19 outbreak as a "*force majeure*" and act by taking into account the individual effect of the force majeure on the mentioned legal relations, with respect to the evaluation of the mentioned legal problems. Within this frame, it is considered that it will be appropriate to develop a solution among the solutions of *"termination, adaptation of the primary performance obligations, suspension, extension of the term"* of the agreement, by preferring those which are suitable for the nature of the relation, through applying the rules related to the impossibility with respect to some relations, default with respect to some relations, hardship with respect to some relations.

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Chapter 3

Effects of COVID–19 Outbreak on Commercial Law

Changes Occurring in Commercial Law Following COVID–19 Outbreak
Determinations on the Effects of COVID–19 Outbreak on Commercial Law
Proposals for the Problems Caused by COVID–19 Outbreak Concerning Commercial Law
Evaluation of the Results in terms of Turkish Law

Chapter Editor
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Abstract

The COVID-19 pandemic has affected the whole World. Undoubtedly it has its effects on every area of life and one of the areas mostly affected by the pandemic is business life. Some measures have been taken and regulations have been made to reduce the negative effects of pandemic conditions on business life. Within the scope of commercial law, such measures and regulations determined on this report and the following evaluations have been reached.

Temporary Article 2 added to Law no. 5834 on Disregarding the Records Related to Bad Checks and Protested Bills and Credits and Credit Card Debts. Accordingly, principal and installment payments of checks, bills, credit cards or other credit debts before Mar. 24, 2020 are completely paid or restructured until Dec. 31, 2020, records held by the Risk Center of the Banking Association of Turkey established in accordance with article 1 of the Annex to the Law no. 5411 shall not be considered by credit institutions and financial institutions in financial transactions carried out with these persons. Thus, the borrowers are protected from the undesired consequences, which may occur in the future due to the records in the Risk Center.

Temporary Article 5 added to Law on Checks no. 5941 enables, one time only, suspension of execution of imprisonment, which is converted from a judicial fine. The law applies for crimes committed until 24/03/2020 and prison sentences which are imposed as judicial fines for issuing bad checks but turned into prison sentences due to the failure to pay as defined in the article 5 of the Law on Checks no. 5941. In addition, arrangements were made regarding the collection of remaining parts of check amounts and the elimination of the criminal consequences; hence the creditors were given the opportunity to obtain their receivables, even in installments.

Temporary Article 1 on Law no 7226 regulates that all periods related to the arising, exercise or expiry of a right, including periods for filing of actions, initiation of enforcement proceedings, applications, complaints, objections, notices, notifications, presentation and periods of limitations, periods of prescription and compulsory administrative application periods; the periods set forth for the parties under the Code of Civil Procedure no. 6100 dated Jan. 12, 2011 as well as other laws containing procedural provisions, and the periods ruled by the judge in this extent; and the periods in the institutions of mediation and conciliation are suspended starting from Mar. 3, 2020 (included) to Jun. 15, 2020.

Temporary Article 2 on Law no. 7226 regulates that inability to pay the workplace rents between Mar. 1, 2020 – Jun. 30, 2020 does not create a basis for termination and evacuation.

Article 2/d on Law no. 7244 postpones General assembly meetings under the Law on Cooperatives no. 1163 dated Apr. 24, 1969 until Jul. 31, 2020.

Temporary Article 13 added on Turkish Commercial Code limits the distribution of the profit acquired for the year 2019 by the capital companies to twenty five percent until Sep. 30, 2020. The distribution of the previous years' profits and free reserve funds is prohibited completely until the same date.

On this report, besides the determination of the above-mentioned law changes, the evaluation of these changes according to the pandemic conditions is evaluated. It is also discussed whether the changes are sufficient to remove the adverse conditions of the pandemic. In addition, subjects which are required to be regulated in pandemic conditions are addressed.

3.1. Changes Occurring in Commercial Law Following COVID–19 Outbreak

COVID–19 outbreak directly influenced all the areas of life as well as the order of law and in particular, trade life and trade law as of the moment it emerged in our country as in the whole world. Some measures are taken in order to reduce the effects of the outbreak on the commercial life and also some legal provisions are implemented in order to determine the effects of such provisions and the potential problems that may occur in future and the other measures that are required to be taken, the following report is prepared by taking into account the studies of the scientists in the field of trade law. In this study, first the provisions adopted and the measures taken shall be presented and evaluations about each measure shall be made and then proposals shall be provided.

Following the emergence of the outbreak in Turkey, changes have been introduced in the Law no. 7226 dated Mar. 25, 2020 and the Law no. 7244 dated Apr. 16, 2020 and in many other laws, in addition to the measures taken. The Law no. 7247 dated Jun. 18, 2020 and the first paragraph of the temporary article 5 of the Law on Checks no. 5941 have been re-amended. Each of the changes introduced in commercial law shall be taken separately below.

3.1.1. Changes Introduced by the Law no. 7226

3.1.1.1. Temporary Article is Added to the Law no. 5834 on Disregarding the Records Related to Bad Checks and Protested Bills and Credits and Credit Card Debts

ARTICLE 48 - The following temporary article is added to the Law no. 5834 on Disregarding the Records Related to Bad Checks and Protested Bills and Credits and Credit Card Debts dated Jan. 22, 2009:

"TEMPORARY ARTICLE 2 – (1) Records held by the Risk Center of the Banking Association of Turkey established in accordance with article 1 of the Annex to the Law no. 5411 concerning bad checks, protested bills, credit cards and other credit debts of natural and legal persons who delay the principal, interest or other payments of the cash and non-cash loans they use and the principal or installment payment date is before 24.03.2020 and of all natural persons and credit customers, whether or not they are engaged in commercial activities, are not considered by credit institutions and financial institutions in financial transactions with these persons in case of full payment or restructuring of the overdue part of the relevant debts by 31.12.2020.

(2) Restructuring of the current credits or making new credits available by the credit institutions and financial institutions in compliance with the provision of the first paragraph do not result in legal or penal liability."

With the provision mentioned above, principal and installment payments of checks, bills, credit cards or other credit debts before Mar. 24, 2020 are completely paid or restructured until Dec. 31, 2020, records held by the Risk Center of the Banking Association of Turkey established in accordance with article 1 of the Annex to the Law no. 5411 shall not be considered by credit institutions and financial institutions in financial transactions carried out with these persons.

The above provision covers both natural persons and legal persons, regardless of whether or not they are engaged in commercial activities.

The restructuring of the current credits or making new credits available by the credit institutions and financial institutions in compliance with the provision of the first paragraph do not result in legal or penal liability.

Accordingly, the debtors are prevented from suffering during the following period before the banks with respect to the credits and checks as a result of records kept by the risk centers concerning the delays arising of the credits, credit cards or the checks. This is a provision satisfying the needs and temporarily protecting the debtors from the negative effects to be caused by the payment difficulty based on COVID–19 outbreak.

3.1.1.2. Temporary Article is Added to the Law on Checks no 5941

ARTICLE 49 – The following temporary article is added to the Law on Checks no. 5941 dated Dec. 14, 2009.

"TEMPORARY ARTICLE 5 – (1) The execution of the sentences imposed on those convicted of the crime defined in article 5 and committed until 24/3/2020 shall be suspended as of the date on which article takes effect. The convicted person is first of all required to pay 1/10 of the unpaid part of the check amount to the creditor within no later than three months beginning from the date of release. On the other hand, the court rules that all the consequences of the criminal conviction would be repealed if the outstanding portion is paid by the end of the three months, by the indebted party in fifteen equal installments with intervals of 2 months. It was ruled that if the convicted person fails to pay one tenth of the unpaid check amount maximum within three months as of the date of suspension of the execution, then the court would rule for the continuation of execution from the point where it was suspended again upon complaint of the creditor. It was ruled that if the convicted person fails to pay for the first time, any of the installments when due during the process of payment of installments, that installment would be added as an installment at the end of the payment of all other installments. If the convicted person does not pay one more of the remaining installments, then the court would rule for the continuation of execution upon complaint of the creditor[103].

(2) In case of the suspension of the execution of the sentence, criminal lapse of time would not operate.

(3) The court shall rule for putting judicial control for the convicted person, for whom the execution is suspended in compliance with this article, in place pursuant to the subparagraph (a) of the third paragraph of the article 109 of the Code of Criminal Procedure.

(4) In the decisions to be given in compliance with this article, the enforcement penal court ruling is authorized. All the decisions taken by the court in compliance with this article shall be served to the creditor.

(5) Objections may be raised against the decisions to be given under the scope of this article. Such objections shall be examined based on the procedure provided for by the first paragraph of the article 353 of the Enforcement and Bankruptcy Code.

(6) The provisions of this article can be applied only once for each crime."

[103] With the Law dated 18.06.2020 and numbered 7247, the expression "three months" stated in the temporary article 5/1 of the Law on Checks no. 5941 has been amended as "one year".

If the judicial fine imposed on the person who caused "bad check", as defined in the article 5 of the Law on Checks no. 5941, is not paid, the execution of punishments arising out of the conversion of this judicial fine directly into an imprisonment are suspended as based on some conditions. First of all, what should be underlined is the punishments for which the execution is suspended should be related to the sentence decisions given before Mar. 24, 2020. The convicted person of whom the execution is suspended is required to pay 1/10 of the unpaid part of the check amount to the creditor within no later than three months (1 year) beginning from the date of release. The court rules that all the consequences of the criminal conviction would be repealed if the outstanding portion is paid by the end of the three months (1 year), in fifteen equal installments with intervals of 2 months. If the amount, which is required to be paid, is not paid within three months (1 year) as of the date of suspension of the execution, then the court would rule for the continuation of execution upon complaint of the creditor. The provision also stipulates the sanction to be applied in case the following installments are not paid.

The above mentioned provision is a provision which suspends for once and under certain conditions, the consequences related to the conversion of the judicial fine given as a result of drawing bad checks, into imprisonment and aims to eliminate all the consequences of the execution of the punishment with respect to the person paying the unpaid part of the check in compliance with the conditions. Though a provision related to the execution of the punishment, this provision is considered to be a positive one for enabling the creditor of the check to receive payment (even though in installments) and alleviating the effects of COVID–19 outbreak. However, the restriction of the scope of the provision with the conviction decisions given before Mar. 24, 2020 is subject to criticism since it covers the period before the occurrence of COVID–19 outbreak.

3.1.1.3. Changes Concerning the Terms in CCP no 6100 and Other Laws Containing Procedural Provisions

"TEMPORARY ARTICLE 1 – (1) In order to prevent the losses of right in the field of jurisdiction due to the occurrence of COVID–19 epidemic disease in our country;

a) All periods related to the arising, exercise or expiry of a right, including periods for filing of actions, initiation of enforcement proceedings, applications, complaints, objections, notices, notifications, presentation and periods of limitations, periods of prescription and compulsory administrative application periods; the periods set forth for the parties under the Administrative Procedure Act no. 2577 dated Jan. 6, 1982, the Law of Criminal Procedure no. 5271 dated Dec. 4, 2004 and the Code of Civil Procedure no. 6100 dated Jan. 12, 2011 as well as other laws containing procedural provisions, and the periods ruled by the judge in this extent; and the periods in the institutions of mediation and conciliation are suspended starting from Mar. 3, 2020 (included)

b) The periods set forth under the Enforcement and Bankruptcy Code no. 2004 dated Jun. 9, 1932 as well as the periods set forth under other laws related to the enforcement law and those ruled by the judge or enforcement and bankruptcy offices in this extent; all enforcement and bankruptcy proceedings, -save for enforcement proceedings related to alimony receivables- , the procedures related to parties and proceedings, the admission of new claims for enforcement and bankruptcy proceedings, and the procedures related to enforcement and execution of precautionary attachment decisions are suspended starting from Mar. 22, 2020 (included)

until Apr. 30, 2020 (included). The suspended periods shall start to run as from the date following the expiry of such suspension. The periods, which have fifteen or less days to expire until the starting date of the suspension, are deemed extended for fifteen days starting as from the date following the expiry of the suspension. If the epidemic continues, then the President

may extend the suspension for once, which extension shall be no longer than six months, and narrow down the scope of the suspension. The decisions in this respect shall be published in the Official Gazette.

(2) The following terms are excluded from the scope of this article:
(a) The periods of limitation stipulated under the laws for crimes and punishment, misdemeanor and administrative sanction and disciplinary detention and preventive detention,

(b) the periods related to the protection measures as stipulated under the Law of Criminal Procedure no. 5271,
(c) the periods related to complementary procedures for precautionary injunctions as stipulated under the Code of Civil Procedure no. 6100.

(3) Within the scope of the Law no. 2004 and other laws related to enforcement law;

(a) If the auction dates declared by the enforcement and bankruptcy offices with respect to property or rights fall within the suspension period, enforcement and bankruptcy offices shall designate a new auction date falling after the expiry of suspension for such property or rights without seeking any further request. In this case, the auction announcement shall be made only on electronic platform, and no fee shall be collected for the announcement,

(b) Payments made consentingly within the suspension period shall be accepted, and one of the parties may request the performance of the procedures which are favorable for the other party,

(c) The effects of the time granted for composition with creditors (concordat) on creditors and debtors shall continue during the suspension period,

(ç) Other measures necessary to prevent the interruption of the enforcement and bankruptcy services shall be taken.

(4) All other measures required to be taken, including the postponement of hearings and negotiations during the suspension period, and the principles and procedures related thereto shall be set forth

a) by the relevant Board of Presidents in terms of the Supreme Court and the Council of State,

b) by the Council of Judges and Prosecutors in terms of the first-degree judicial and administrative justice bodies and the regional courts of justice and regional administrative courts,

c) by the Ministry of Justice in terms of the services of justice.

The above provision suspends the legal processes, cases, proceedings and presentation periods in a manner to have an effect not only in the field of commercial law but also in almost all areas of law. The authority given to the President for extension of such suspension periods once was used by the President under the Decision no 2480 and the date for suspension of the periods was determined as Jun. 15, 2020 (inclusive). The suspension periods were expired on the date of preparation of this report. However, the effect of the actions, proceedings and presentation periods and the periods of limitations, periods of prescription suspended shall continue with respect to this transaction and periods.

As for the other lawsuits, periods for commercial lawsuits are also suspended for the period between Mar. 13, 2020 to Jun. 15, 2020.

In this respect, an issue that resulted in salient discussions arose with regard to the suspension of the presentation periods of checks. In general, the prohibition of the presentation of checks before the issuance date stated on them as well as the suspension of the presentation periods due to COVID–19 and the uncertainty concerning whether or not such suspension is only for the authorized bearer or also for the check debtor resulted in a discussion. *Pasli* claimed that presentation is not possible during the inactive presentation period and accordingly no check can be validly presented for payment demand until May 04, 2020 (Jun. 15, 2020)[104]. In our opinion this approach is not compliant with the explicit wording of the provision. This is because the provision only includes the term of suspension with respect to the presentation period. There are no provisions concerning the payment debtor and the addressee. In this case, the bank is required to pay if there is money in the debtor's account, and apply the bad check procedure if there is no money in the debtor's account, where the presentation is made by the authorized bearer who is entitled to present. A similar approach has been endorsed in practice.

Demir, on the other hand, claimed that there is a gap since the provision lacks an explicit expression with respect to the drawer and the addressee and this gap is required to be filled with general provisions concerning the force majeure[105]. In other words, it should also be possible for the drawer to rely on the force majeure provisions.

Against this opinion, *H. Ali Dural* argued that, the interpretation of a provision in favor of the right holder, in a manner that it will result in inability for the right owner to use the right during the suspension and inactivity of the periods shall give rise to a consequence which shall be against the right holder but in favor of the debtor which shall be completely contrary to the purpose of the provision; that it is unacceptable to accept such consequence of the provision which in fact aims to protect the creditor; that although the period of limitation is suspended, if there is no barrier for the creditor to file a case and start proceedings and if the debtor cannot claim that the suspension of the period of limitation gives rise to the occurrence of consequences which are in favor of him/her, then there should be no barriers for the right holder to use such right, in other words, present the check to the bank and accordingly give rise to the occurrence of the consequences based on the presentation, even if the period provided for the right holder to use the right is suspended; and therefore, it is required to interpret the temporary article 1 in a manner that it extends the presentation periods in checks.

In our opinion, it is also required to accept that the suspension of the presentation period shall only give rise to consequences with respect to the bearer, that there is no barrier for the bearer to present, if possible, despite the suspension of the period. Of course, the conditions of the force majeure can be claimed only if such conditions also arose for the drawer. However, the obligation to keep a provision for the drawer with respect to the check in the bank in an automatic manner, is not terminated yet. In this case, the bank should apply the bad check procedure in case of presentation.

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104 PASLI, Ali: Covid-19 Salgınının Çek Hukukuna Etkisi: Güncel Koşullar Sürerken Çek İbrazı Mümkün Müdür? (*The Effect of COVID-19 Outbreak on Law on Checks: Is the Presentation of Checks Possible under Current Conditions?*).

105 DEMİR, Koray: Covid-19 Salgınının Çek İbrazına Etkisi, *(Effects of Covid – 19 Outbreak on the Presentation of Checks)*, Türk-Alman Üniversitesi Çalıştay Raporu, s. 43

3.1.1.4. The Effect of the Official Acceptance of COVID–19 Outbreak on the Merchant's Obligation to Act as a Prudent Businessman

It is required to mention briefly, the effect on a merchant's liability to act as a prudent businessman as a result of the official acceptance of COVID–19 outbreak with the Law no. 7226. Article 18/2 of the Turkish Commercial Code (TCC) no. 6102 imposes the merchant an objective duty of care, the Supreme Court usually emphasizes the predictability of the risk to occur in general, and accepts that the merchant has more extensive knowledge about the life and specifically in trade life when compared to a person not dealing with trade, and due to this reason, the merchant is required to take measures with respect to the issues for which the occurrence can be predicted. When considered from the viewpoint of pandemic, a periodical discrimination should be made: In all the legal relations established after the date on which it was predictable that the pandemic may also spread into our country following the emergence and spread of the pandemic in the world, the predictability of the pandemic as of the date on which such legal relation was established shall create the basis for the judge in assessing whether or not the merchant acted as a prudent businessman.

3.1.1.5. Provision on Inability to Pay the Workplace Rents

TEMPORARY ARTICLE 2 – (1) Inability to pay the workplace rents between Mar. 1, 2020 – Jun. 30, 2020 does not create a basis for termination and evacuation.

With respect to the payment of the rents of the workplaces, if the workplace rents cannot be paid for the period between Mar. 1, 2020 – Jun. 30, 2020, it is resolved that this shall not constitute the basis for the termination of the lease contract and evacuation. The provision does not give the lessee the possibility of nonperformance of the rent debt. It only eliminates some consequences temporarily if such rent is not timely paid.

3.1.2. Changes Introduced by the Law no. 7244

3.1.2.1. Extension of the Period for the General Assembly Meetings of the Cooperatives, Postponement of the Meeting and Working Remotely

ARTICLE 2 – (1) Due to forcing grounds caused by the new Covid-19 outbreak;

...

d) General assembly meetings under the Law on Cooperatives no. 1163 dated Apr. 24, 1969 are to be postponed until Jul. 31, 2020. This period can be extended up to 3 months by the relevant Minister. The postponed general assembly meetings are to be held within 3 months from the date of postponement. The duties, authorities and responsibilities of the current organs continue until the first general assembly meeting to be held following the postponement period.

The general assembly meetings within the scope of Law on Cooperatives no. 1163 are postponed until Jul. 31, 2020. The postponed meetings are convened within three months as of the expiry of the postponement. The duties, authorities and responsibilities of the current organs continue until the first general assembly meeting to be held following the postponement period. The legislator included only the cooperatives within the scope of the Law no. 1163 and excluded the other cooperatives (craftsman's cooperatives, agricultural credit cooperatives).

3.1.2.2. Amendment Related to the Restriction of the Profit Distribution in Capital Companies

ARTICLE 12 – The following temporary article is added to the Turkish Commercial Code no. 6102 dated Jan. 13, 2011.

"TEMPORARY ARTICLE 13 – (1) Until the date of Sep. 30, 2020, only up to twenty-five percent of the net profit of fiscal year 2019 can be distributed, previous years' profits and free reserve funds cannot be subjected to the distribution of dividend and finally the board of directors cannot be authorized to distribute advance dividends by general assembly. The provisions of this paragraph do not apply to state funds, provincial administrations of state, municipality, villages and other public legal entities and companies that directly or indirectly owned by more than fifty percent of their capital by the funds, which more than fifty percent of their capital are publicly owned. The President is authorized to extend and shorten the period specified in this paragraph for three months.

(2) In case the general assembly has issued a resolution to distribute dividends for the fiscal year 2019, but the shareholders have not yet been paid or partial payments have been made, payments for the part exceeding twenty-five percent of the net profit of 2019 are postponed until the end of the period specified in the first paragraph.
(3) The Ministry of Trade is authorized to determine the exceptions for companies that fall under the implementation scope of this article and the procedures and principles related to the practice by taking the opinion of the Ministry of Treasury and Finance.

The distribution of the profit acquired for the year 2019 by the capital companies is limited to twenty five percent until Sep. 30, 2020 based on the temporary article added to the Turkish Commercial Code no 6102. The distribution of the previous years' profits and free reserve funds is prohibited completely until the same date. Also the board of directors cannot be authorized by the general assembly to distribute advance dividends until such date. The provisions of the first paragraph shall not be applied to state funds, provincial administrations of state, municipality, villages and other public legal entities and companies whose capital are directly or indirectly owned by more than fifty percent by funds whose capital belong by more than fifty percent to the state. Moreover, the President shall be authorized to extend and shorten the period specified in this paragraph for three months.

Transition provisions are stipulated for the profit distribution decisions taken before this provision.

The Ministry of Trade is authorized to determine the exceptions for companies that fall under the mentioned restriction and the procedures and principles related to the practice by taking the opinion of the Ministry of Treasury and Finance.

The article 5 of the Communiqué on the Methods and Principles Related to the Implementation of the temporary article 13 of the Turkish Commercial Code no. 6102, softened this prohibition to some extent by bringing some exceptions (the decision for the distribution of the profit share in the amount of 120,000 TL or less, the shareholders' use of the amount to be received as profit share, in their performance of the capital commitments in another capital company, the shareholders' use of the profit share to be received from the company, in their performance of the accelerated obligations arising out of the credit agreements or project financing agreements, see art. 5 "a", "b", and "c") on condition to get the Ministry of Trade's opinion of appropriateness (see art. 5 and 6). In principle, however, the temporary article 13 terminates the possibility to make profit distribution from the previous years' profits and reserve funds. Since this provision constitutes a disproportionate intervention on the operating profits of capital companies, which have a property right on those profits, it is claimed that this is contrary to the provision of the article 35/2 of the Constitution[106]. In fact, the total restriction of the profit share right may result in a violation of the Constitution with respect to the previous years' profits and the reserve funds.

[106] Lecturers at Galatasaray University, Law Faculty, Department of Commercial Law; Prof. Dr. Tolga AYOĞLU, Prof. Dr. Sıtkı Anlam ALTAY, Asst. Prof. Dr. Halil Ali DURAL, Assoc. Prof. Dr. Fülürya YUSUFOĞLU, Dr. Sinan Hüdai YÜKSEL.

The provision is introduced so that the capital structures of the capital companies remain strong and the profit distribution is restricted for a specific period of time. However, it is possible to evade the restriction by not referring to the provisions enabling the indebtedness based on the presence of some conditions in the article 358 and 644/1-b of TCC. This is because if the shareholders/partners of a joint stock company or a limited liability company do not have any due capital debts and if the company's profit together with the free reserve funds is at a level to meet the previous years' losses, then it is possible for the shareholders/partners to borrow from the company. Since no restrictions are imposed on the borrowing in this case, the restriction related to the mentioned profit distribution can be evaded.

3.2. Determination of the Effects of COVID–19 Outbreak on Commercial Law

It will be beneficial to mention briefly the determinations in the works sent by the academics with respect to the potential problems to arise in the commercial law due to COVID–19 Outbreak.

One of these works is written by Prof. Dr. *Vahit DOĞAN*[107]. The effects of force majeure on the documentary credits are examined in the study. Although it is resolved that the bank shall not be liable due to force majeure in the Uniform Customs and Practice for Documentary Credits Rules, the rules published by the International Chamber of Commerce state that the effect of the force majeure on the documentary credit should be taken into account as based on the characteristics of the case in question, since such rules cannot be taken into consideration if the law of the judge is contrary to the compulsory legal rules and equity.

In the work edited by Prof. Dr. *Nuray EKŞİ*[108], which is about the effects of the force majeure on letters of guarantee, it is expressed that the force majeure events eliminating the risk secured by the letter of guarantee do not affect the bank's payment obligation against the addressee, as a rule, that if the bank is notified with liquid evidences about the elimination of the risk secured by the letter of guarantee, the bank is required to refrain from making the payment to the addressee, that the addressee's payment demand from the bank shall be the abuse of right, that in case of occurrence of force majeure in a manner to prevent the addressee from payment demand and the bank from inspection and payment, then it shall be in compliance with the rules of equity to give a reasonable period of time for the payment demand, inspection or payment.

Examining the effects of COVID–19 outbreak on the patent law, Assoc. Prof. Dr. *Ali PASLI* and *Hamza ARSLAN* examined in these studies[109] whether or not the patented invention can be used by the third parties without the consent of the right holder. Accordingly, although it is apparent that COVID–19 outbreak which turned into a global health crisis creates "extraordinary conditions", the "extraordinary solutions" to be found for this crisis are, beyond being possible, are required to be within the boundaries of law. Within this scope, the patented drugs, vaccines, diagnosis instruments and the medical devices such as breathing devices of both the state and the private legal bodies, and the patent problems related to the tendency/opportunity to carry out the production and sale of their parts can be solved by complying with the patent right's features based on their property right status and on international agreements. Within this frame, the conditions for the compulsory license have emerged for the required patent inventions concerning the actual outbreak, due to the public benefit/health, based on the article 132 of IPD. Moreover, the use of the patented inventions required for the patients and healthcare workers, whose physical integrity is under risk due to emergencies, specifically outbreak, by the third parties without the consent of the patent holder, to the extent required to eliminate this risk should also be regarded as legal within the framework of the state of necessity regulated by the article 63/2 of TCO.

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107 DOĞAN, Vahit: "*Mücbir Sebeplerin Akreditife Etkisi*" *(Effects of the Force Majeure on the Documentary Credits)*.

108 EKŞİ, Nuray: "*Mücbir Sebeplerin Teminat Mektuplarına Etkisi*" (*The Effect of Force Majeure on Letters of Credit*).

109 PASLI, Ali/ARSLAN, Hamza: "*Covid-19 Salgını ve Patent Hukuku*" *(COVID-19 Outbreak and Patent Law)*.

Prof. Dr. *Huriye KUBİLAY*, who examined in detail, the effects of COVID – 10 pandemic on the insurance agreements and insurance sector in a study[110], stated that the examination of the content of the insurance agreements dominated by the principle of "*freedom of contract*", by the contracting parties is important in order to determine whether or not COVID–19 disease is covered by the insurance coverage and in order to prevent the losses of right, that if there is any provision in the insurance agreements concerning the force majeure and adaptation, then such provision can be implemented, that in compliance with the provision of the article 1526/2 of TCC, the number of insurance policies allowed by any of the electronic signatures shall increase due to the outbreak, that many of the insurance companies included coronavirus within their health insurance coverage, that it shall be possible to include the waiting periods in the insurance companies in compliance with the article 1516 of TCC, that the adaptation can be requested from the court, termination or withdrawal rights can be exercised by implementation of the article 138 of the Turkish Code of Obligations related to "*hardship of performance*". The author also states that, together with the emergence of pandemic, the importance of digitalization increased considerably in the insurance agreements and insurance sector, that digitalization appears before us at all stages of the insurance agreements, all stages as before the conclusion of the agreement, during conclusion, through operation and until termination and in the periods of conflict, that the settlement of all conflicts are carried out digitally, based on the Insurance Arbitration Commission system.

[110] KUBİLAY, Huriye: "*Pandeminin Sigorta Sözleşmelerine ve Sigorta Sektörüne Etkileri*" (*Effects of the Pandemic on the Insurance Agreements and the Insurance Sector).*

3.3. Proposals for the Problems Caused by COVID–19 Outbreak Concerning the Commercial Code

3.3.1. Proposals of Change Required in the Turkish Commercial Code

3.3.1.1. Proposals of Change Required in Company Law

a) Proposals of Change related to the art. 376/2-3 of TCC, art. 179, 345/a of EBC and art. 63 of CoopL

In the workshop report written by the Turkish – German University, it was stated that the majority of the companies work with credits and the recession in the market as a result of the epidemic diseases resulted in loss of capital and insolvency of the company, and that in this respect, the application of the provisions stipulated by the articles 376, 633 of TCC and article 63 of CoopL, which are known as "technical bankruptcy" during extraordinary periods, shall cause the termination or bankruptcy of many companies, and accordingly recommended that it shall be appropriate to temporarily suspend the implementation of the mentioned provisions with respect to the joint stock, limited and cooperative companies containing similar provisions, based on a temporary article added to the Turkish Commercial Code. The proposals and the reasoning are given below.

TEMPORARY ARTICLE
The following provisions of the Law cannot be applied until the end of 2021:
a) The second and the third paragraphs of the article 376 of Turkish Commercial Code no. 6102;
b) The article 376 of Turkish Commercial Code no. 6102;
c) The articles 179 and 345/A of the Enforcement and Bankruptcy Code no. 2004;
d) The article 63 of the Law on Cooperatives no. 1163.

REASONING:
The second paragraph of the article 376 of the Turkish Commercial Code includes a provision that, if two-thirds of the sum of capital is lost, then it shall be completed or the capital shall be reduced and if none of these are applied, then the company shall automatically terminate and the third paragraph includes a provision related to the bankruptcy of the company due to over-indebtness. article 633 related to limited liability companies refers to article 376 of TCC. The same applies to cooperatives. The law provides for the temporary non-application of the mentioned provisions.

The majority of the companies work with credits and the recession in the market as a result of the epidemic diseases resulted in loss of capital and insolvency of the company. The non-application of these provisions does not affect the provisions related to general bankruptcy in the Enforcement and Bankruptcy Code. However, the application of these provisions stipulated in article 376 of TCC and article 633 of TCC, and referred to as technical bankruptcy, in extraordinary periods shall cause the termination or bankruptcy of many companies. Accordingly, it is proposed that the application of these provisions should be halted until the end of 2021.

b) Facilitation of the General Assembly Meetings over Electronic Media in Joint Stock Companies and Cooperatives

Another important proposal in the workshop report prepared by the Turkish-German University was for the facilitation of the general assembly meeting over the electronic media in joint stock companies and cooperatives[111]. In fact, the Turkish Commercial Code no. 6102 allows the general assembly meetings to be convened over the electronic media. However, it shall be appropriate to extend this facility based on a change to be made in the Code. Accordingly, when the models applied abroad are examined, the general assembly meetings are also facilitated in the laws of the relevant country. In these provisions, general assembly meetings over the electronic media are accepted, even if there are no such provisions in the articles of association. At this point, it is required to make the required changes in order to enable the convening of the general assembly meetings. This should be considered specifically for the joint stock companies and cooperatives where there is intense participation.

In limited liability companies, the partners are able to convene the general assembly meetings without coming together (TCC, art. 617/2). Due to this reason, there is no need for changing the provision for the limited companies.

Accordingly, the following changes should be made in the Turkish Commercial Code no. 6102:

ARTICLE 1 – Article 1527 of the Code no. 6102 is amended as follows:

"IV – General Assemblies over Electronic Media"

1. Principles

ARTICLE 1527 – (1) On condition to be stipulated by the deed of partnership or the articles of association or by a decision to be taken by the board of directors, the board of directors and the executive board meetings can be held completely over the electronic media in the capital companies or these can be convened where some members are physically present and some members participate over the electronic media. In such cases, the meeting and decision quorums provided by the Code or the deed of partnership and the articles of association are applied exactly.

(2) In collective companies, commandite companies, limited liability companies and companies where the capital is divided into shares, participation, proposals and voting in the partners assembly and the general assembly through electronic media, as provided in the company's deed of partnership and the articles of association bear all the legal consequences of a physical participation, proposals and voting.

(3) In cases provided in the first and second paragraphs, the company is required to have a specific website for this purpose, the partner is required to make a request within this direction, the suitability of the electronic media tools for effective participation should be proven by a technical report and this report must be registered and announced and the identities of the voters should be kept in order to vote over the electronic media.

(4) As a requirement of the deed of participation or the articles of association in the companies mentioned in the first and the second paragraphs, the company management performs all the conditions of voting through the mentioned method and provides the partner all the tools required.

[111] Turkish-German University, Law Faculty, Covid-19 TÜBA Workshop Report, Prof. Dr. Vural SEVEN, Prof. Dr. Tekin MEMİŞ.

(5) In joint stock companies, participation, recommending, expressing opinions and voting in the general assembly through electronic media bear all the legal consequences of a physical participation and voting. The application of this provision is ensured by a regulation in which the principles are prepared by the Ministry of Customs and Trade. The regulation includes a sample of the articles of association related to the participation and voting in the general assembly meeting over the electronic media. The joint stock companies cannot apply any changes to this provision which shall be transferred from the regulation in exact form. The general assembly meeting can be convened over the electronic media on condition to be stipulated in the deed of partnership or the articles of association or by a decision to be taken by the board of directors. The regulation also covers the rules providing the voting by the actual voter or his/her representative and the authorities related to the authorities of the representatives of the Ministry related to this provided in the third paragraph of the article 407. Upon entry of this regulation into force, the system of participation and voting in the general assembly meetings over the electronic media becomes compulsory for the companies of which the share certificates are listed in the stock exchange.

(6) Within the frame of the provisions of the first to fourth paragraphs, the rules related to voting by the actual voter and application as well as the principles and methods for the shareholder to instruct his/her representative through the website are regulated by a Communiqué to be issued by the Ministry of Trade.

It shall be appropriate to make the following changes in the Law on Cooperatives in a similar manner. This is because a large number of people participate in the general assembly meetings of cooperatives.

ARTICLE 1 – The following final paragraph is added to the article 45 of the Law on Cooperatives no. 1163.

"The provisions related to convening the general assembly meetings of the joint stock companies over the electronic media are also applied for the cooperatives".

c) Proposal on Amendment related to the Profit Share Distribution

As mentioned above, the temporary article 13 is added to the Turkish Commercial Code, by the Law no. 7244. It is stated that it will be more appropriate and more in line with the principle of proportionality to introduce the following sentence, instead of the temporary article 13 of TCC[112]. Within this frame, a provision such as "*not to pay the shareholders, the profit share decided to be distributed by the general assembly so long as all the accelerated public debts are not performed, otherwise, the members of the board of directors shall personally be held responsible for the pubic debts of the capital companies*" is recommended.

d) Proposal on the Disability Report to be taken as a result of a Traffic Accident

There is a proposal concerning the disability report to be taken as a result of traffic accident, in the report prepared by Prof. Dr. *Vural SEVEN* in the Turkish – German University COVID–19 workshop report[113]. According to this, "*examination in person*" condition in the report to be requested for the disabilities to arise as a result of a traffic accident to be changed as "*examined if required*", shall be beneficial to prevent the spread of the outbreak and reduce the load of the hospitals and doctors during this period. For this purpose, the Regulation on the Disability Evaluation for the Adults should be changed as "*the Board determines the disability condition of the individual by examining if required according to the principles provided by this Regulation*".

[112] Lecturers at Galatasaray University, Law Faculty, Department of Commercial Law; Prof. Dr. Tolga AYOĞLU, Prof. Dr. Sıtkı Anlam ALTAY, Asst. Prof. Dr. Halil Ali DURAL, Assoc. Prof. Dr. Fülürya YUSUFOĞLU, Dr. Sinan Hüdai YÜKSEL.

[113] Turkish-German University, Law Faculty, Covid-19 TÜBA Workshop Report, Prof. Dr. Vural SEVEN.

3.3.1.2. Proposed Amendments to the Turkish Code of Obligations

It is deemed appropriate to include a proposal mentioned in the workshop report prepared by Galatasaray University, Faculty of Law, related to the rent of commercial entities[114].

The most important problem faced in the field of the Law on Commercial Enterprise due to COVID–19 is about whether or not the rent for the real estate leased in order to carry out the operations of the commercial enterprises shall be paid by the lessees to the lessors during the period in which such enterprises are closed as based on administrative decisions/measures. When this issue will arise befor the courts, this atmosphere of uncertainty may cause many conflicts between the owners of the commercial enterprises and the lessors, and the filing of many lawsuits following the COVID–19 process and such lawsuits would create a heavy workload for the courts. The legislator should end such arguments and should save the courts from being overwhelmed with such workload by clarifying the content of the provision of the article 324 of TCO. Based on the paragraph to be added to the provision of the article 324 of TCO and being subject to the legislator's preference;

Following the conclusion of the lease agreement, if the leased property cannot be used due to the reasons not attributable to the lessor or the lessee, then it can be stated that the payment of the rent is required to be paid,

In this case, since the lessor shall not fulfill his/her obligation to make the leased property available for use, then it can be stated that the payment of the rent is not required to be paid.

As a third option, if the leased property cannot be used, due to the reasons not attributable to the lessor or the lessee following the conclusion of the lease agreement, then, the payment of "*half*" of the rent can be decided in compliance with the principle of "*balancing of sacrifices*". In our opinion, this third solution is a solution which fairly and equitably shares the economic load created by COVID–19 process, between the lessor and the lessee based on the principle of balancing of sacrifices.

[114] Lecturers at Galatasaray University, Law Faculty, Department of Commercial Law; Prof. Dr. Tolga AYOĞLU, Prof. Dr. Sıtkı Anlam ALTAY, Asst. Prof. Dr. Halil Ali DURAL, Assoc. Prof. Dr. Fülürya YUSUFOĞLU, Dr. Sinan Hüdai YÜKSEL.

3.4. Evaluation of the Results in terms of Commercial Law

In addition to the measures taken following the emergence of the outbreak in Turkey, amendments are made in many laws with the Law no. 7226 adopted on Mar. 25, 2020 and the Law no. 7244 adopted on Apr. 16, 2020. While some of these amendments are sufficient to eliminate the negative effects of the outbreak, some others are open to criticism. Moreover, there are issues that should urgently be contemplated due to the matters which have not yet been regulated or amended. Consequently, the review of the provisions adopted and the evaluation of the proposals are important.

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Chapter 4

The Problems and Proposed Solutions for the Problems Caused by COVID–19 Global Outbreak with Respect to Labor and Social Security Law

Chapter Editor
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Abstract

The COVID-19 virus, which was declared a global epidemic (pandemic) by the World Health Organization, affected the whole world in a short time, and as of 20.01.2021, 165,629,929 people were infected and 3,433,602 people died.

The global epidemic, which threatens the lives of people, has also led to the emergence of legal problems in many areas around the world. With the decisions taken due to the global epidemic, significant restrictions have been imposed on the fundamental rights and freedoms of individuals. For example, freedom of work and freedom of travel were greatly restricted in this process.

With the global epidemic, the global economy has also contracted. The economic contraction experienced also showed its effects in the field of labor relations. In this process, many workplaces were closed, factories became inoperable, workers' contracts were suspended or dismissed. Large payments had to be made from the short-time working and unemployment insurance funds. In addition, financial support was provided to tradesmen and craftsmen whose workplaces were closed or negatively affected by the epidemic.

In a report published by the International Labor Organization in April 2020, it was announced that after the COVID-19 epidemic, 1.25 billion people may face the risk of losing their jobs.

The global epidemic has adversely affected all countries.

The global epidemic showed its economic effects heavily in our country as well. In addition to the negative developments in the economy, curfews and quarantine of people who are likely to be infected have also led to problems related to working life.

In the global epidemic process, the works that were suitable in terms of their nature were carried out with the remote working method. Many methods of flexible working (such as part-time working, working at home, teleworking, rotating work) were used in this process.

The global epidemic caused expansion in some sectors. For example, sectors such as logistics and cargo worked intensively during the pandemic process. In addition, the business volume of the markets has increased significantly compared to the pre-pandemic period. The expansion in these sectors has caused the sector employees to work more intensively, for example, to do more work beyond the legal limits.

As in all countries of the world, decisions have been taken regarding the problems experienced in the field of labor relations in our country. The global epidemic process has also been an opportunity to see the shortcomings of the legal system. Thus, it is possible to see how prepared or unprepared the legal system is in the face of events such as a global epidemic or a global economic crisis.

The global epidemic has negatively affected working relations. The process has also given the opportunity to identify the deficiencies of the labor legislation. The need to make temporary arrangements in the legal order only arises when permanent arrangements are insufficient. Temporary arrangements made in this process are the result of deficiencies in permanent arrangements.

In the face of compelling reasons that affect all labor relations, such as the global economic crisis or the global epidemic, measures must be made permanently in advance. In our country, a Covid-19 case was encountered in mid- March 2020 , measures were taken immediately to protect public health but the necessary arrangements in terms of working relations have could only be made in mid-April.

The most important shortcoming of the labor law in case of compelling reasons such as the global epidemic is that the flexible working methods that will enable this process are not adequately regulated. For this reason, making the changes listed in the report will also be a preparation for similar events that will occur in the future.

4.1. Introduction

COVID–19 outbreak affected the whole world in a very short period of time and such effects also appeared in the field of work relations. During this process, many workplaces were closed, were not able to work, the employment contracts were suspended and even the workers were discharged. The necessity to pay large amounts from the short-time working and unemployment insurance funds arose. While the Social Security Institution suffered premium loss, a significant reduction occurred in the unemployment insurance fund.

In addition to the negative developments in the economy, lockdown, quarantine for fourteen days for those who have the risk of spreading the virus led to the emergence of problems related to work life.

During the global outbreak process, the works which have an appropriate nature were carried out on a remote basis. During this process, many flexible work methods such as part-time working, home-office, teleworking, work in shifts have been benefitted from.

The global outbreak resulted in an expansion in some sectors. For example, sectors such as logistics and cargo worked intensively during the pandemic process. Moreover, the work volume of supermarkets increased considerably when compared to the period before the pandemic. The expansion in these sectors caused the employees of those sector to work more, for example work overtime beyond the legal restrictions.

As in all the countries of the world, decisions concerning the problems encountered in the field of work relations have also been taken in our country. The global outbreak process was at the same time an opportunity to see the deficiencies of the legal system. Accordingly, it was possible to see to what extent the legal system is prepared for the events such as global outbreak or global economic crisis.

4.2. Measures Taken in our Country with respect to the Work Relations during the Global Outbreak

The lockdown restrictions imposed for those below twenty years and above sixty-five years of age, closure of the workplaces such as barbers, hairdressers, restaurants and cafeterias, the narrowing of the economy affected the work relations considerably and steps are taken in order to eliminate or reduce the negativities caused by this process.

During one month that went by until Apr. 17, 2020, when the Law 7244 entered into force, the workers received half-payment for only one week. After this one week, the employment contracts were terminated by the employer in compliance with the article 25/III of the Labor Law based on the force majeure. These workers were able to benefit from unemployment allowance only if they possessed the required conditions. There are no legal remedies for the workers not possessing the required conditions for the unemployment allowance[115].

Some of the decisions taken during this period are as follows:

1) Amendments are made in the Law no. 7226 dated Apr. 26, 2020 and the Unemployment Insurance Law no. 4447 and Social Insurances and General Health Insurance Law no. 5510. According to the temporary article 23 of the Law no. 4447;

> "*In order to be applicable until Jun, 30, 2020, in relation to the short-time working applications made under compulsory reasons arising from the new coronavirus (Covid-19), the provision related to the meeting of entitlement conditions to unemployment insurance, except for termination of the service agreement that is stipulated for entitlement to short-time working allowance by the employee set out in paragraph 3 of additional article 2, shall be applied as payment of premiums for unemployment insurance and having worked subject to insurance for 450 days in the past 3 years in respect of the employees that are subject to employment agreement within the last 60 days prior to the commencement date of the short-time working. Employees who fail to meet those conditions will continue to benefit from the short-time working allowance for the period remaining from the last unemployment allowance right ownership, provided that it does not exceed the short-time working period.*
>
> *In order to benefit from short-time working within the scope of this article, the employer must not discharge the employees, except for reasons set out in subparagraph II of the first paragraph of article 25 of Labor Law numbered 4857 during the term of the short-time working applied at the workplace. The applications made in respect of this article will be concluded in 60 days following the application date.*
>
> *President is authorized to extend the date of application to be made under this article until Dec. 31, 2020 and to amend the days stated in the first paragraph above*"

2) The social insurance premiums are postponed with the temporary article 29 added to the Law no. 5510 with the article 29 of the Law no. 7226.

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115 ENGİN, p.1.

"By the employers who employ insured individuals for whom the provisions of the long-term insurance branches are applied within the scope of the subparagraph (a) of the first paragraph of the article 4;

The amount to be found by multiplying
a) In the monthly premium and service documents or withholding and premium service declarations given to the Institution for the same month of 2019, provided that the insured whose daily earnings based on the premium are reported as 128 TL and below are not exceeding the total number of premium payment days, the total number of the premium payment days related to the insured notified in the monthly premium and service documents or the withholding and premium service declarations given for the current month in 2020,

b) The total number of premium payment days of the insured notified for the workplaces that were included in scope of the law for the first time in 2020,

by 2.50 Turkish Liras per day for the January-December period of 2020 will be set off from the insurance premiums that employers will pay to the Institution and such amount shall be provided from the Unemployment Insurance Fund. However, the amount of the earning for the premium basis is 256 TL for the workplaces belonging to private sector employers subject to collective labor agreement in accordance with the provisions of Law no. 6356.

The provisions of this article are not applied during the month/period in which the support shall be benefitted within the scope of this article, in case less than the minimum number of insured notifications reported for the long-term insurance branches for the month/period in which the least number of insureds are notified within the frame of the subparagraph (a) of the first paragraph of the article 4, under the monthly premium and service documents or withholding and premium service declaration for January to November 2019 ,

In case it is understood that a collective transaction is established in order to take advantage of the Unemployment Insurance Fund contribution such as the closure of an existing workplace and opening as a business unit under a different name and title or shifting of the between companies that have direct or indirect partnership relationships in a way that retains management and control, changing ownership in private businesses or it is determined that the workplaces have underreported the earnings of the insureds constituting the basis for the premium for the January / December 2020 period, then the amount covered by the Unemployment Insurance Fund are withdrawn with due amount penalty and interest and the provisions of this article do not apply to these workplaces.

The provisions in the subparagraph (b) of the first paragraph are not applied in case it is determined that the employers do not timely give the monthly premium and service documents or the withholding and premium service declarations concerning the insureds for January / December 2020 period, that the insurance premiums are not paid within the legal period, that the employees employed are not notified as insured to the control and audit officials during the investigations and audits or the notified insured does not actually work, that there are premium, administrative fine and delay interests related to these are owed to the Institution. However, the employers who postpone the premium, administrative fine and delay interests owed to the Institution in compliance with the article 48 of the Law no. 6183 and split these into installments can benefit from the provision of the mentioned paragraph as long as such postponement and installments continue. The provisions of the additional article 14 are not applied in application of this article.

In the application of the subparagraph (a) of the first paragraph, if the monthly premium and service document or the withholding and premium service declaration for the same month of the previous year is not submitted, then the notifications in the monthly premium and service document or the withholding and premium service declaration for the following first month in which notification is made shall be taken as the

basis. The provisions of the subparagraph (b) of the first paragraph is applied for the employers included in the scope of the law before 2019, but who have never reported any insured in 2019.

In cases where the insurance premiums of the insured and employer shares are paid by the State, if the insurance premium to be paid by the employer is less than the amount to be provided by the Unemployment Insurance Fund, then the set off is made only to the extent of the insurance premium debt.

According to the additional article 9 of the Law no. 3213, the daily earnings based on the premium to be determined in compliance with subparagraph (b) of the first paragraph for the insured working underground will be taken as 341 TL, where "Lignite" and "Hard Coal" extracted in the workplaces wages cannot be less than twice the minimum wage and not exceeding 50 percent of the premium payment days reported in the monthly premium and service document or withholding and premium service declarations reported to the Institution for the same month of 2019, in 2020 the total number of premium payment days for the insured reported in the premium and service documents or withholding and premium service declarations given for the current month is taken into consideration.

The provisions of this article are not applied for the insured working in the staff and positions belonging to the public administrations listed in the table in the annex (I) to the Law no. 5018, within the scope of the subparagraph (a) of the first paragraph of the article 4.

In the service purchases made by the administrations listed in the subparagraphs (a), (b), (c) and (d) of the first paragraph of the article 2 of the Law no. 4734, in compliance with the relevant legislation, in which the payment of a price difference is anticipated in the agreement, the amou8nts to be paid by the Unemployment Fund are deducted by these administrations from the progress payments of the employers in compliance with the first paragraph for the labor for which the number of personnel is determined in the tender document and the whole weekly work hours are anticipated to be used at the administration.

The provisions of this article are not applied to those insured who are registered in the monthly premium and service documents given to the Institution or the withholding and premium service declarations to be given to the Ministry of Treasury and Finance beyond the legal period for the months/period of January to December 2020.

The methods and principles for the application of this article are determined by the Institution upon taking the opinions of the Ministry of Family, Labor and Social Services and the Turkish Employment Agency.

3) Determination of conformity in order to be entitled to short-time working allowance is cancelled and short-time payments are made as based on the declaration of the employer:

"For short-time employment applications with compulsory reasons made by the employers due to the new coronavirus (Covid-19), a short-time employment allowance is made in accordance with the employer's declaration without waiting for completion of the determination of conformity. Excess and improper payments made due to the employer's providing incorrect information and documents are collected from the employer along with their legal interest." (Law no. 4447, temp. art. 25).

4) Employers are prohibited from terminating the employment contracts for a period of three months starting from Apr. 17, 2020, which is the date in which the Law took effect, except for the cases that are contrary to ethical and good faith rules. It is ensured that the employers violating the termination prohibition shall pay a monetary fine in the amount of minimum wage applicable on the date on which the act is committed, for each employer whose employment contract is terminated.

"*Regardless of whether or not covered by this Law, the employer shall not be able to terminate the labor or service contracts for a period of three months starting from the date on which this article took effect, unless*

the termination is due to one of the reasons noted in subparagraph (II) of the first paragraph of the article 25 of the Labor Law and the relevant provisions of the other laws related to the cases which do not comply with ethical and good faith principles.
On condition not to exceed the period of three months following the date on which this article took effect, the employer can have the employee leave completely or partially on unpaid leave. In this context, using the unpaid leave does not give the employee the right to terminate the contract based on the valid reason.

Being contrary to the provisions of this article, the employer or the representative of the employer terminating the labor contract is given an administrative fine for each employee whose contract is terminated, in the amount of gross monthly minimum wage applicable on the date on which the act is committed.

The President is authorized to extend the period of three months stated in the first and second paragraphs up to six months." (Labor Law, temp. art. 10).

5) It is anticipated that the employer, instead of termination, can have the employee leave partially or completely on unpaid leave, on condition not to exceed the period of three months starting from Apr. 17, 2020, the date on which the Law took effect.

6) The employees who do not fulfill the conditions to benefit from the short-time working allowance, who are over sixty-five years of age, although the workplace continues its activities, have chronic diseases, cannot work due to being quarantined are also included within the scope of the unpaid leave.

7) Daily net 39,24 TL of cash wage support is provided from the Unemployment Insurance Fund for the employees who are on unpaid leave based on the Law no. 7244.

"*39,24 Turkish Liras daily cash wage support which is to be covered from the Unemployment Insurance Fund will be provided to the employees, although having a labor contract on the date on which this article took effect, who are forced to take unpaid leave by employers according to the temporary article 10 added to the Labor Law no. 4857 and who cannot benefit from short-time working allowance, and the employees whose contract is terminated within the scope of article 51 after Mar. 15, 2020 and who cannot benefit from unemployment allowance during period they are on leave or unemployed, provided that they do not receive a pension from any social security institution and on condition not to exceed the period in which the termination cannot be made stated in the temporary article 10 of the Law no. 4857. No deductions are applied to these payments, except the stamp tax.*

If it is determined that an employee, who is on unpaid leave within the scope of the first paragraph and who benefit from cash wage support, is actually employed, then administrative fine is applied by the labor and employment agency provincial directorates to the employer in the amount of monthly gross minimum wage determined in compliance with the article 39 of the Law no. 4857, on the date on which the act is committed, as separately for each employee employed in such manner and for each month of employment and the cash wage support paid is collected from the employer together with the legal interest to accrue from the date of payment.

Among those receiving cash wage support within the scope of this article, the ones who are not within the coverage of the general health insured or the ones whom the general health insured is required to take care of in compliance with the Law no. 5510, are considered as the general health insured according to the subparagraph (g) of the first article of the article 60 of the same Law and their premiums for the general health insurance are provided from the Fund.

The Ministry is authorized to determine the payment methods and principles related to the cash wage support and to eliminate the hesitations to arise related to the application of this article." (Law no. 447, temp. art. 24)

8) The period of remedy in the Law no. 7224 and the Law no. 4857 is increased to four months from two months and the President is authorized to double this period.

9) The periods in the collective bargaining agreements processes are suspended as based on the amendment in the Law on Trade Unions and Collective Bargaining Agreements no. 6356:

> "*Processes regarding making authority determinations, realizing collective bargaining agreements, resolution of collective bargaining disputes and strike and lockout under the Law on Trade Unions and Collective Bargaining Agreements no. 6356 dated Oct. 18, 2012 are prolonged for 3 months as from the effective date of the article. The President is entitled to extend this three-month period for an additional three months upon its expiry*." (Law no. 7244, art. 2/1)

As can be seen, it was necessary to adopt temporary provisions in order to reduce the negative consequences in the work relations following the emergence of the global outbreak. The insufficiency of the provisions of the current legislation gave rise to the adoption of temporary provisions specific to this period.

4.3. Proposals for the Elimination of the Consequences to be Encountered in case of Occurrence of Force Majeure Events such as Global Outbreak or Global Economic Crisis

4.3.1. The Provisions Regulating the Termination of Labor Contracts based on Force Majeure Events should be Rearranged together with the Provisions concerning Severance Pay

Suspension of the works at the workplace due to the global outbreak is a force majeure event according to the article 24/III of the Labor Law no. 4857. Accordingly, "In case of occurrence of force majeure necessitating the suspension of work for more than one week in the establishment where the employee is working", then the employee can terminate the employment contract on valid grounds. Again, if the employee cannot come to the work due to quarantine or lockdown, this shall constitute a force majeure event according to the provision of 25/II of the Labor Law. In this case, "occurrence of a force majeure preventing the employee from performing his duties for more than one week", the employer can terminate the employment contract on valid grounds [116]. According to the article 40 of the Labor Law, "The employee who cannot work or who is not engaged in work due to the reasons set forth in subparagraphs III of articles 24 and 25 shall be paid, up to one week, half his wages for each day.".

As can be seen, the right to terminate the employment contract emerges in case of occurrence of a force majeure event and lasting of such event for more than one week. The employee receives half-wage within the week and the contract remains suspended if the employment contract is not terminated after one week.

The provision is open to criticism with respect to the employment security. It is seen that it does not provide sufficient security to the employee in case of a force majeure event such as global outbreak or global economic crisis. Moreover, it should be underlined that the employee is entitled to a severance pay in terminations made in compliance with the provisions of 24/III and 25/III. In periods where the economy narrows, it is very difficult for the employers to bear the burden of severance pay. This state emphasizes once more, the need for the establishment of a severance pay fund.

In case of emergence of the force majeure for both parties, for example, it is required to make a clear provision concerning the method of termination of the contract in case the employee is quarantined and the workplace is closed.

If the employee is prevented by the administration from going out or travelling based on grounds such as an epidemic disease, it is required to introduce a provision so that the employee is provided wage support from the unemployment insurance after one week[117].

As a result, the provisions related to the termination of the employment contract due to force majeure events do not provide sufficient security for the employee. The provision should be considered as a whole together with the consequences for the employee to get short-time working allowance during this period or the severance pay in case of termination of the contract[118].

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116 For detailed information see Hasan KAYIRGAN, *Bireysel İş Hukukunda Zorunlu ve Zorlayıcı Nedenler (Compulsory and Compelling Reasons in Individual Labor Law)*, İstanbul 2019.

117 ASTARLI, p. 9.

118 See ASTARLI, p. 8.

4.3.2. The conditions for the Suspension of the Employment Contract should be Evaluated together with the Provisions Arranging the Termination of the Employment Contract due to Force Majeure and a Provision should be Adopted Concerning this Issue

The option provided by the employer to the employee, whose employment contract is not terminated, during the global outbreak is to induce him/her to take an unpaid leave. The unpaid leave is also provided in the temporary article 10 added to the Law no. 7244, by the Law no. 4857:

> "*On condition not to exceed the period of three months following the date on which this article took effect, the employer can have the employee leave completely or partially on unpaid leave. In this context, using the unpaid leave does not give the employee the right to terminate the contract based on the valid reason.*"

Inducing the employee to take an unpaid leave, by the employer during the pandemic process, is again regulated by a temporary provision. In our Labor Law legislation, the employer does not have the authority to have the employee leave on an unpaid leave. Due to this reason, it is required to adopt special and temporary provisions related to the global outbreak period. The same Law provides for the cash wage support for the employees who are made to leave on an unpaid leave:

> "*39,24 Turkish Liras daily cash wage support which is to be covered from the Unemployment Insurance Fund will be provided to the employees, although having a labor contract on the date on which this article took effect, who are forced to take unpaid leave by employers according to the temporary article 10 added to the Labor Law no. 4857 and who cannot benefit from short-time working allowance, and the employees whose contract is terminated within the scope of article 51 after Mar. 15, 2020 and who cannot benefit from unemployment allowance during period they are on leave or unemployed, provided that they do not receive a pension from any social security institution and on condition not to exceed the period in which the termination cannot be made stated in the temporary article 10 of the Law no. 4857. No deductions are applied to these payments, except the stamp tax.*" (Law no. 4447, temp. art. 24).

1,358,375 people were entitled to get cash wage support during the periods of April and May 2020. Within this frame, total 1,701,581,864 TL were paid[119].

In case of emergence of force majeure events such as global crisis or global outbreak, the termination of the labor contract and the suspension of the labor contract should be considered together and extension of one week period in 24/III and 25/III of the Labor Law to a reasonable level, suspension of the labor contract during this period, providing wage security to the employee from the labor fund should be considered by the legislator.

4.3.3. The conditions of Short-Time Working Allowance, Period of Enjoyment and the Method of Access to Short-Time Working Allowance should be Rearranged in favor of the Insured According to the Additional Article 2 of the Unemployment Insurance Law no. 4447;

> "*In case of temporarily reducing the weekly work hours at the workplace significantly or suspension of the activities at the workplace fully or partially due to the general economic, sectoral or regional crisis and force majeure events, short-time working can be applied at the workplace on condition not to exceed three months.*"

Short-time working allowance is paid from the Unemployment Insurance Fund in the event of short-time working. The requirements for the entitlement to unemployment insurance, except the termination of the service contract, are needed to be fulfilled in order for the employee to become entitled to short-time working allowance (Law no. 4447, add. art. 2/3). Accordingly, among those

[119] https://www.iskur.gov.tr/yayinlarimiz/issizlik-sigortasi-bulteni

insureds working under an employment contract during the last 120 days before the termination of the employment contract, the people who worked as insured for 600 days during the last three years and paid unemployment insurance premium can benefit from the short-time working allowance. It is evident that these conditions are very heavy. These conditions are softened by a temporary article added to the Law no. 4447:

"*In order to be applicable until Jun, 30, 2020, in relation to the short-time working applications made under compulsory reasons arising from the new coronavirus (Covid-19), the provision related to the meeting of entitlement conditions to unemployment insurance, except for termination of the service agreement that is stipulated for entitlement to short-time working allowance by the employee set out in paragraph 3 of additional article 2, shall be applied as payment of premiums for unemployment insurance and having worked subject to insurance for 450 days in the past 3 years in respect of the employees that are subject to employment agreement within the last 60 days prior to the commencement date of the short-time working. Employees who fail to meet those conditions will continue to benefit from the short-time working allowance for the period remaining from the last unemployment allowance right ownership, provided that it does not exceed the short-time working period.*

In order to benefit from short-time working within the scope of this article, the employer must not discharge the employees, except for reasons set out in subparagraph II of the first paragraph of article 25 of the Labor Law numbered 4857 during the term of the short-time working applied at the workplace.

The applications made in respect of this article will be concluded in 60 days following the application date. (1) President is authorized to extend the date of application to be made under this article until Dec. 31, 2020 and to amend the days stated in the first paragraph above."

As can be seen, the temporary article reduced the 600-day requirement to 450 days; and 120 days to 60 days. However, the temporary article should facilitate the conditions for making use of the short-time working allowance and even unemployment allowance and the period of enjoyment should be extended. The global outbreak once more emphasized that the conditions in the Law are heavy and that legislator was required to soften this with a provision, even in a temporary manner.

The statistics published by İşKur showed that short-time working allowance is an effective method in reducing the effects of the pandemic during a global outbreak period[120].

	2018		**2019**		**2020**	
Months	*Number of People*	*Payment Amount (Thousand TL)*	*Number of People*	*Payment Amount (Thousand TL)*	*Number of People*	*Payment Amount (Thousand TL)*
January	6	13	26,562	18,800	24,847	23,210
February	1	2	36,139	24,598	17,862	12,096
March	0	0	35,850	27,966	95,128	32,232
April	17	61	23,259	20,946	3,243,126	5,100,339
May	20	47	11,964	10,273	3,091,402	5,154,840
June	1	1	9,638	7,435		

[120] https://www.iskur.gov.tr/yayinlarimiz/issizlik-sigortasi-bulteni

As can be seen, while the number of people who benefit from the short-time working allowance in January was 24,847, this figure increased to 3,091,402 in May 2020.

The measures such as termination restriction prevented the increase in the number of insured individuals who receive unemployment allowance.[121]

	2018		2019		2020	
Months	*Number of People*	*Payment Amount (Thousand TL)*	*Number of People*	*Payment Amount (Thousand TL)*	*Number of People*	*Payment Amount (Thousand TL)*
January	438,701	369,172	653,925	646,063	610,287	712,457
February	435,774	368,965	676,725	673,334	592,810	698,441
March	436,211	365,359	682,362	672,860	594,577	683,678
April	420,304	352,790	657,387	654,531	591,804	730,895
May	412,158	352,790	643,229	656,442	530,015	656,460
June	416,663	366,148	643,797	660,651		
July	430,925	378,850	657,026	688,367		

The above two tables show that the short-time working allowance was more functional when compared to the unemployment allowance during the global outbreak.

In conclusion, short-time allowance is an effective and important tool for solving the problems of the employees during the periods such as global crisis or global outbreak. Due to this reason, the utilization conditions, time and method of access to the short-time allowance should be reviewed and a provision in favor of the insured should be adopted.

If the conditions of short-time working allowance are re-evaluated, the temporary applications like cash wage support shall not be needed in the event of a force majeure such as global outbreak or global crisis and wage support can be provided as short-time working allowance.

4.3.4. Legal Provisions Concerning Flexible Working Methods should be Reviewed and Secondary Legislation should be Introduced

The employers were required to choose one of the flexible working methods appropriate to the nature of the work, instead of classical work methods due to the security reasons or lockdown restrictions during the global outbreak. Commonly, home-office and teleworking methods were applied.

The method of remote working is regulated by the article 14 of the Labor Law no. 4857:

> "*Remote working is the employment relationship based on the performance of work by the employee at home or outside the workplace through technologic communication tools within the frame of the work organization created by the employer, as agreed to in writing*

[121] https://www.iskur.gov.tr/yayinlarimiz/issizlik-sigortasi-bulteni

In the labor contract to be concluded in compliance with the fourth paragraph; the provisions related to the description of work, the form of performance, duration and location of the work, wages and the payment of the wages, the equipment to be provided by the employer and the obligations concerning the protection of such equipment, communication of the employer with the employee and the general and special work conditions are included.

In the remote working, the employees cannot be subjected to different procedures when compared to similar employees due to the nature of the labor contract, unless there is a material reason. The employer is required to inform the employee, who is employed under remote working relation, about the measures on labor health and safety by taking the nature of the work into consideration, to provide required training, to provide health monitoring and to take the required labor safety measures related to the equipment provided.

The methods and principles of remote working, which works are not appropriate for remote working as based on the nature of the work, the application of the operation rules related to the protection and sharing of data and other issues are determined by a regulation issued by the Ministry of Labor and Social Security."

Moreover, a provision relating to home service contract has been introduced in the Turkish Code of Obligations:

"*Home service contract is the contract under which the employee undertakes to carry out the work given by the employer at the employee's own home or another place to be determined, in person or together with family members, in consideration of a wage.*" (art. 461).

Part-time working, work on call, home office and teleworking are regulated by the Labor Law no. 4857. However, there are not enough provisions in many issues related to these work methods. Especially, a significant part of the problems related to part-time working are tried to be solved through judicial decisions. A clear provision has not been adopted regarding issues such as annual paid leave rights of the employees working part-time, use of weekends, severance pays.

The issues such as the transition from the classical work methods to the flexible work methods during the global outbreak, the conditions for returning to the previous work order after the outbreak loses its effect, for example, whether or not the employee's consent is needed are required to be reviewed.

A special provision is needed in order to determine how the employer shall perform the occupational health and safety obligations in the flexible work method.

The Regulation determining the remote working principles should be issued promptly. The issues such as the consent of the employee for the transition to remote working, records of the working hours and calculation of the overtime, how the occupational health and safety measures shall be taken, who shall provide the tools and devices the employee uses for the performance of the work, who shall pay for the expenses of such devices and tools, if the employee is teleworking from home, then the problems concerning the difficulties regarding the separation of work life and domestic life, should be considered in a legislation study to be carried out during the new period[122].

Global outbreak also revealed the importance of the application of intensified business week and equalization period. The employees in the sectors such as logistics, supermarket, cargo were required to work over their usual working hours. The provisions such as free time in consideration of overtime, equalization period should be reviewed and should be adjusted in a manner to meet the needs of these extraordinary periods.

[122] ASTARLI, p. 24; SUBAŞI, p. 20.

The conditions related to the compensatory work and the period for such compensatory work should be made more flexible. A provision should be adopted for the effective use of the compensatory work especially during the processes such as a global outbreak.

One of the applications used during the pandemic process was *advance-paid leave application*. Although not earned yet, the employee was provided advance-paid leave and such leaves are set off from the annual paid leave right to be deserved in future. It should be underlined that it is required to adopt a provision for the implementation of this application, which does not have a legal basis, only in the event of occurrence of force majeure events that exceed a certain time.

Moreover, the waiting period required for the employee's entitlement to the annual paid leave should be amended in manner to take into consideration the whole period in which the employee could not work due to a force majeure event such as global outbreak.

As a result, the use and spread of flexible work methods by taking protective measures for the employee shall contribute to the employers both in overcoming the extraordinary processes such as an outbreak and also in increasing their competitive power in the global markets.[123] Also, the employment shall be protected for the employee who continues to work with flexible work methods.

4.3.5. A Provision should be Adopted in order to Prevent Deductions in the Wages of the Employees due to the Global Outbreak

The wage of the employee is among the working conditions and it cannot be unilaterally reduced by the employer. A change in the working conditions can only be made by the method provided in the article 22 of the Labor Law. However, it is seen that reductions are made in the wages by the employers claiming that the work volume narrowed down during the global outbreak. Force majeure events such as global outbreak or global crisis or transition to flexible work methods based on such events should be added to the conditions in the article 62 of the Labor Law, under which no deductions can be made in the wages. Accordingly, the fact that no deductions can be made in the wages based on the above-mentioned reasons shall have an explicit basis.

4.3.6. Incentives should be Provided by Deductions in the Social Security Premiums and Taxes for the Protection of the Employment and Creation of New Employment during and after the Global Outbreak

There are many incentives for increasing the employment in our country. It is beyond doubt that these are very beneficial and play a significant role in increasing the employment.

It would be beneficial to adopt a provision which provides tax and insurance deductions in order to support the employers who protect the employment during the global outbreak and create new employment following the emergence of the outbreak[124].

4.3.7. The Conditions for the Right to Abstain from Work in case of a Serious Threat to the Health and Life of the Employees such as a Global Outbreak should be Reviewed

Article 13 of the Occupational Health and Safety Law no. 6331 regulates the employees' rights to abstain from work:

[123] YİĞİT, p. 75 ff.

[124] AYDIN, p. 15.

"(1) Employees exposed to serious and imminent danger shall file an application to the committee or the employer in the absence of such a committee requesting an identification of the present hazard and measures for emergency intervention. The committee shall convene without delay and the employer shall make a decision immediately and write this decision down. The decision shall be communicated to the worker and workers' representative in writing.

(2) In the event that the committee or the employer takes a decision that is supportive of the request made by the employee, the employee may abstain from work until necessary measures are put into practice. The employee shall be entitled to payment during this period of abstention from work and his/her rights arising under the employment contract and other laws shall be reserved.

(3) In the event of serious, imminent and unavoidable danger; employees shall leave their workstation or dangerous area and proceed to a safety place without any necessity to comply with the requirements in the first paragraph. No rights of the Employees may be restricted because of their action.

(4) Where the necessary measures are not taken despite the requests by employees, employees under labor contract might terminate their employment contract in accordance with the provisions of the law applicable to them. As for the public employees under collective bargaining agreement, shall be deemed to have worked during the abstention period.

(5) In compliance with the article 25 of this law, the provisions of this article shall not apply in the event of cease of work in the enterprise"

The method of exercising the right to abstain from work by the employees is determined in the above-mentioned article. Following the application of the employees to the committee, if the measures to be determined by the committee are not taken by the employer, then they shall have the right to terminate the employment contract in compliance with the provisions of the law to which they are subject. The protection of the employment is important during extraordinary processes such as global outbreak. Exercising the right to terminate the employment contract by the employees due to the lack of required measures would lead to unemployment for the employees.

According to *Aydın*, "This provision is far from being functional. First of all, the path to follow is apparent if the committee or the employer does not take a decision despite the request of the employee. Secondly, the use of the right to abstain from work is not secured; although the termination of the employment contract seems like a security, it leads to unemployment for the employee in the end. The employee may be subjected to discriminative treatment even termination as a result of exercising the right to abstain from work. Thirdly, the article of the law did not link this subject with the public authorities and referred the process to the initiative of the employer. Under the light of all these explanations, amendments to make the right to abstain from work functional so that it can also be beneficial during the pandemic periods should be made with respect to the occupational health and safety."[125].

With respect to the occupational health safety measures to be taken within the scope of the struggle with the global crisis, having more frequent and effective control activities, application of the administrative measure of halting the activities at the workplace which does not take the required measures in compliance with the article 25 of the Law no. 6331[126] can be considered.

[125] AYDIN, p. 23.

[126] ASTARLI, p. 6.

As a result, it was concluded that a special provision related to the use of the right to abstain from work in case of an outbreak threatening the lives of the whole society, is required.

4.3.8. The Conditions for the Right to Immediate Termination in case of a Serious Threat to the Health and Life of the Employees such as a Global Outbreak should be Reviewed

Article 24 of the Labor Law no. 4857 regulates the employee's right to immediate termination on a valid ground. According to the first paragraph of the article where the health reasons are regulated:

> *"The employee is entitled to break the contract, whether for a definite or an indefinite period, before its expiry or without having to observe the specified notice periods, in the following cases:*
>
> *I. Health reasons:*
>
> *If the performance of the work stipulated in the contract endangers the employee's health or life due to the nature of the work;*
> *If the employer or another employee who is constantly near the employee and with whom he is in direct contact is suffering from a contagious disease or from a disease incompatible with the performance of his duties."*

The provision of the paragraph determines the situations in which the employees can exercise the right to immediate termination due to health reasons. According to the provision, if the employer or another employee who is constantly near the employee and with whom he/she is in direct contact is suffering from a contagious disease, this situation entitles the employee to terminate the contract with immediate effect. In the relevant provision, although contagious disease is considered to be a reason for termination, the law does not include the definition of the contagious disease. In the labor law doctrine, there are different opinions as to what should be understood from the concept of contagious disease, under which conditions the employee is entitled to termination with immediate effect. At this point, it is required to define contagious disease in a manner that leaves no room for doubt.

The provision does not contain the right of the employee to terminate the contract in case he/she is infected with the disease. It shall be appropriate to remedy this situation by including it within the scope of the provision.

The global outbreak threatens the psychological health of the individuals as well as their physical health. It is observed that many people have concerns about the disease and they prefer to take the utmost measures during this process. Although the protection of employment is important during the extraordinary processes such as a global outbreak, the desire of the employees to terminate the contracts due to their concerns about their health should be considered as natural. The employee shall be entitled to severance pay in case of immediate termination due to health reasons. In the relevant provision, the inclusion of right to immediate termination can be considered in case of a life-threatening contagious disease, without any further requirement.

4.3.9. A Provision should be Introduced on how to Handle the Collective Labor Contract Process in case of Occurrence of Force Majeure Events such as a Global Outbreak

During a global outbreak, how to carry out the collective labor contract process (authorization, collective negotiations, intermediation, arbitration, strike and lockout) was discussed and the terms in the collective labor contracts were suspended based on the amendment made to the Law on Trade Unions and Collective Bargaining Agreements no. 6356:

"*Processes regarding making authority determinations, realizing collective bargaining agreements, resolution of collective bargaining disputes and strike and lockout under the Law on Trade Unions and Collective Bargaining Agreements no. 6356 dated Oct. 18, 2012 are prolonged for 3 months as from the effective date of the article. The President is entitled to extend this three-month period for an additional three months upon its expiry*." (Law no. 7244, art. 2/1).

The provision provides a solution for a certain time. However, it will be more appropriate to have a permanent solution instead of a temporary one in order to provide a solution in case of occurrence of an extraordinary situation.

According to a proposal concerning this issue;

"*In our opinion, what should be done is to make the collective labor law process online as much as possible following the Pandemic Period. Bringing the legislation in line with the online transactions and accelerating the processes should be among the priorities. In fact, the first step is taken within this direction with the provision (Law no. 6356, art. 17/5) enabling the union memberships over e-state. This can be continued. Moreover, the operation of authorization processes, collective bargaining, union management and general assembly meetings, intermediation discussions, strike voting and even strike and lockout applications we mentioned above can easily be realized over online mediums. What should be done is to include in the Law no. 6356 and the secondary legislation, the provisions concerning the online transactions and to direct the unions to carry out the transactions within this direction.*"[127]

It is beyond doubt that this proposal is to the purpose. In particular, the performance of all the transactions that can be performed over electronic media shall save time and provide ease of proof. Moreover, this shall enable the transactions without creation of any risk during a global outbreak. The measures to enable the use of the authorities required by the union, collective bargaining agreements, strike and lockout rights secured by the Constitution, during a global outbreak should be taken.

[127] AYDIN, p. 14. In the same direction see ASTARLI, p. 26.

4.4. Conclusion

Global outbreak affected work relations negatively. This process also enabled the identification of the shortages of the labor legislation. In the order of law, the need to adopt temporary solutions only arises when the permanent solutions are insufficient. The temporary solutions adopted during this process are the result of the shortages of the permanent solutions.

The measures should be taken in a permanent manner in advance, against the force majeure events affecting all the work relations such as global economic crisis or global outbreak. In our country, COVID- 19 case was seen by mid-March, and prompt measures were taken in order to protect the community health, however, the provisions required with respect to the work relations were adopted by mid-April.

The most important shortage of the labor law in case of a force majeure event such as global outbreak is the insufficiency of the flexible working methods which would enable to overcome this process. Due to this reason, the realization of the changes we listed above shall constitute a preparation with respect to similar events to occur hereafter.

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Chapter 5

The Problems and Proposed Solutions for the Problems Caused by COVID–19 Global Outbreak with Respect to Civil Procedure and Enforcement and Bankruptcy Law

Determination and Evaluation with respect to Civil Procedure and Enforcement and Bankruptcy Law

Some Proposals for Solving and Minimizing the Problems in terms of Civil Procedure and Enforcement and Bankruptcy Law

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Abstract

Although Covid–19 pandemic has effected several different areas of law, Procedural Law and Execution and Bankruptcy Law are among the mostly effected ones. There are two fundamental reasons of this. These areas are directly related to realization of rights and consequently require intense interaction between people. There exists no general regulation on this issue due to lack of such a crisis in recent history.

Problems were attempted to be solved with some provisional articles and regulations (i.e. suspension of enforcement proceedings, regulation of enforcement proceedings, regulation of judicial periods and hearings). These provisional regulations, despite providing some amount of easement and protection for plaintiffs, are temporary and need to be re-regulated each time. In addition, Turkish Execution and Bankruptcy Law contain an explicit article and this article was in fact employed at the beginning of the pandemic. Thus, it is open to criticism to enact additional regulations despite existing provision that might already serve as a solution. In some of the akin legal systems, separate laws were enacted, and certain amount of discretion was provided to judicial bodies.

In order to be equipped for such situations, enacting general framework legislation in advance and to implement in times of need would be beneficial and would remove the need for new regulations for each required occasion. Additionally, forming a relevant scientific legal committee and monitoring the issue by this committee would expediate to intervene to problem. It should also be taken into consideration that some deferred legal issues will be intense in post-pandemic period, and also some legal problems (i.e. payment difficulties, economic crises of companies, employee-employer relations, judicial workload) will increase due to economic and social impact of the pandemic.

Following points could be suggested for solution:

- Technical means may be use more extensively without harming fundamental judicial rights related to procedural and execution law,
- State might pose an example for individuals. For instance, certain amount of convenience might be provided in State monetary claims, debt collection might be deferred.
- Special regulations might be enacted in advance for particularly problematic areas of substantive law and disputes and enforcement proceedings might be decreased in this way.
- Regulations for protection of production and employment might be enacted in sectors that have special importance and privilege. Bankruptcy proceedings might be reevaluated in Turkish law which has been lagging behind the rest.
- In the existing enforcement proceedings, along with current installment opportunities, debtors might be provided with additional opportunities to extend the due date. Provisional measures such as long-term loans (enforcement loan) might be implemented to cover creditors' risk of non or incomplete payment.
- It is crucial that measures are taken, including those mentioned above, in order to prevent loss of social and economic accumulation, to protect employment, production and tax resources, to prevent loss of added values, to prevent collapse of supply, production, service and distribution networks and, in short, to protect commercial and economic integrity of establishments.

5.1. Determination and Evaluation with respect to Civil Procedure and Enforcement and Bankruptcy Law

It is possible to summarize the determinations and proposals concerning the Civil Procedure and Enforcement and Bankruptcy Law due to COVID–19 outbreak in the scientific studies sent to the Turkish Academy of Sciences for examination and also those published in this area.

5.1.1. A Need for a General Provision

It shall be beneficial to introduce a special law in order to carry out especially the judicial services under a foreknown and prepared method both in the civil procedure and the enforcement-bankruptcy law, when there are such outbreaks, natural disasters and important problems affecting the social life. With this law, putting the law into operation by the legislative and executive decisions to be taken in such problematic situations, determination of how all the judicial services shall be carried out under this law, determination of the limitations, implementation of the judicial and proceeding processes in compliance with this special case, should be adopted. Moreover, lapse of time and prescription periods, and application, objection etc. periods related to legal remedies should also be determined in this law.

Solving the problems caused by an outbreak with such an extensive scope and deep effects on the judicial and proceedings law by a separate provision, not by a temporary article, is very important when the severity of the problem is taken into account.

5.1.2. No Need for a New Provision Since There is a Provision with respect to Proceedings

While there is a provision concerning the enforcement and bankruptcy law (proceedings law) in the current state, this provision was not duly applied, as a matter of fact, the same issue was regulated by different legislative provisions. According to article 330 of EBC, it is possible to suspend the enforcement proceedings by the decision of the President in extraordinary situations such as the current outbreak. This provision is a special provision. Although the provision is in force, its application is only possible with the decision of the President (previously the Council of Ministers). The President has the authority to determine the scope and time of this. Despite the fact that this provision was applied in the beginning of the process based on the decision of the President no. 2279; this issue was regulated by a temporary provision in the Law no. 7226 which took effect afterwards. On the other hand, while there is an explicit provision concerning this issue and while it was possible to implement it and it was implemented under a decision, it is not required to adopt a new provision, since it is possible to implement this provision in a more appropriate manner; also, there is a potential to result in practice arguments.

5.1.3. The General Frame of the Provisions with respect to the Jurisdiction and Proceedings Law During the Outbreak

The basic provision related to the jurisdiction and proceedings law during COVID–19 process is stipulated by the temporary article (temp. art. 1) of the Law no. 7226. First, the periods and

transactions in these issues were suspended until Apr. 30, 2020, then this suspension period was extended to Jun. 15, 2020. Meanwhile the CJP adopted some provisions as regards this subject and took some administrative measures. The basic approach in these provisions is the prevention of the loss of rights concerning the periods both in material law and jurisdiction and proceedings law during the outbreak. Accordingly, those in search of a legal remedy are saved from the risk of missing the periods due to the outbreak. In principle, this approach is a correct approach. However, some arguments have arisen with respect to the above-mentioned situation concerning the proceedings law and the content of the provisions.

5.1.4. The Problem of Intensity and Accumulation to Occur as the Jurisdiction and Proceedings Start

In this period in which the measures related to the outbreak are implemented both for the jurisdiction and proceedings, although the judicial and execution organs worked with reduced intensity (compulsory works and limited working capacity), it is evident that there shall be an accumulation of workload as of June, where such measures and limitations shall be removed. Moreover, if it is considered that judicial recess shall start after a short time, it is expected that the workload of the jurisdiction and enforcement organs shall increase above the normal especially after September 2020. As a matter of fact, postponing part of the trials, judgments and proceeding procedures after this date also underlines this.

The reason for the increase in the workload is not only attributable to the performance of the works after this time, which were suspended. Although some measures are taken, the reflection of the economic and social problems caused by the outbreak in the field of law is unavoidable. For example, although those who cannot pay the rent during this period are not evacuated, it is possible to file a case for the recovery of the debts and debt follow-up. It is beyond doubt that proceedings shall increase as a result of economic problems. Likewise, it is quite possible that the entities, which cannot operate, shall be subject to attachment or concordat at a further stage, since they cannot bear this in a specific period of time. When the legal suspension or postponement measures are over, it is possible to have a peak in the enforcement proceedings, bad check procedures, tax and SSI premium proceedings, evacuation proceedings and cases postponed due to such measures. As a matter of fact, it is evident that it is not possible for the restricted entities to earn all the revenues and recover all the losses collectively as soon as the restrictions on the economic activities are terminated.

It shall be appropriate to consider and take the required measures now against this judgment and proceedings wave, which began in the jurisdiction and proceedings law and which is expected to increase in a few months. It is also possible that the measures to be taken at the last moment may result in some other legal consequences.

5.1.5. Formation of a Legal Science Board consisting of Specialists for the Measures to be taken for the Problems and Operation of this Board in cooperation with the Ministry of Justice and the Relevant Judicial Organs

For the problems explained above, which shall be emphasized below, it shall be appropriate to coordinate the provisions to be adopted and measures to be taken under the consultancy of a legal scientific board consisting of a specific number of specialists from all the areas of law. This will both prevent the occurrence of new problems and result in the conformity and effectiveness of the provisions to be adopted and the solutions to be applied in all areas of the law.

The examples of other countries can be used in these studies. However, solutions specific to our country should be developed. The opinions and thoughts of the trusted specialists and those

suffering the problems (instead of a narrow circle) should be evaluated in the determination of the problems and solution proposals. This shall enable both the adaptation of the problem and solutions, and the carrying out of the most appropriate provisions and applications with the broadest participation.

5.1.6. Some Examples from Foreign Countries

During COVID–19 process, each country took measures appropriate for its own conditions, legislation, habits and legal infrastructure. For example, the courts have the initiative to postpone the trials and judgments in Germany; the reason for this is that the German Procedural Law is flexible about this and the judgment rules do not contain solid provisions like ours. However, a provision for the proceedings law has been adopted in Germany and some provisions (full enforcement) have been temporarily suspended. Likewise, a number of temporary provisions such as flexing some of the judicial principles, benefitting from technical facilities are adopted in Switzerland. However, the issues related to the right to a fair trial, right to legal remedies are observed during the application of such provisions.

Moreover, judiciary recess in Switzerland was moved to an earlier time this year, and was rearranged in a manner to cover the period, in which the outbreak was intense, and which already included the period in which the courthouses worked at a reduced intensity; this way it was preferred to minimize the loss of time to occur in the jurisdiction, within its own normalcy.

As can be seen, in the countries, with which we have similar legal systems, solutions were produced either with independent legal provisions or the priority was placed on the special applications of the available provisions as based on the significance of the issue, not by a temporary article of the law making amendments in many laws like in our country.

5.2. Some Proposals for Solving and Minimizing the Problems in terms of Civil Procedure and Enforcement and Bankruptcy Law

It is accepted in the studies carried out about COVID–19 that it is unavoidable for this process to cause some problems in the jurisdiction and proceedings law, as in all areas. However, some proposals are made in order to minimize these. Some of these proposals can be described as follows:

1. Use of technical facilities to the extent possible in the jurisdiction and proceedings law shall enable both the protection from the outbreak and faster progress of the works. Especially, the presence of NJIS system and the systems integrated into it in our country is a significant advantage. However, attention should be paid so that these methods are used by taking the fundamental jurisdiction and proceedings principles into consideration. In fact, the countries making arrangements within this direction specifically drew the attention to this characteristic. Correct judgment and fair decision should not be sacrificed to the fast judging. When the decision is not fair and correct, the judgment shall not be a real judgment no matter how fast it is. Otherwise, there may be excess application to legal remedies, and increase in the individual remedies. What is more important is that we may see losses of rights and fair judgment may be damaged. Due to this reason, some solutions using technology and offering fast and shortcut solutions, and solving the problem, should be accepted by considering the probability to cause other problems.

2. It is possible that by the end of this process, there shall be increases in the similar disagreements of the same type (employee-employer, lessee-lessor, some commercial disagreements, recovery of debts etc.). First, arrangements should be made in the field of material law, if possible, with respect to solving the similar disagreements before they occur, and in the event of occurrence of a disagreement, the measures should be taken carefully in order to solve these in a short time. At this point, the methods such as alternative settlement methods for disagreements, which do not restrict the individual's right to legal remedies, facilitation and simplification of the resort to jurisdiction, development of class action lawsuits in similar disagreements can be considered. The most important point here is the application of the provisions of the current CCP. If these provisions are fully applied, it is possible to prevent loss of time, trials and accumulation at the courthouses. For example, although it is stated in CCP that evidence shall not be collected after the preliminary inspection as a rule, evidences are collected and unneeded trials are made just for collection of evidence. It is known that the actual problem is not the provision, but the correct application.

3. In settlement of the disagreements, the State should set an example for the individuals, and at the same time should not be a part of disagreements in this process. Due to this reason, when it is considered that the number of cases in which one party of the disagreement in the administrative jurisdiction is State, that likewise, in which the State institutions are directly or indirectly a party in private law disagreements, reached a considerable amount, a process applying compromise and intermediation for the settlement of the disagreements in which the State is a party, should be followed. For this purpose, sufficient legal infrastructure

is already provided by the DL No 659. What should be done is the effective use of this. Likewise, first the operation of the alternative methods can be extended for the cases and proceedings in which the State is a party. For example, compulsory intermediation can be applied in the disagreements in which the State is a party. Moreover, when it is taken into account that the State uses the public power in the proceedings directly performed, the measures considered for the normal proceedings should also be used in the proceedings where the State is a party. However, the proceedings in EBC are suspended within the scope of the measures taken for the outbreak, but no provision is adopted for the proceedings in the Law no. 6183.

4. The significance, essentiality and necessity criteria can be determined for the protection of the supply chain, protection of the competition, protection of employment for the economy of the country, and a provision can be adopted for the restructuring of the debt in a manner to bind all the creditors for the debts of the entities operating especially in the sectors with strategic importance. Temporary or permanent measures can be taken. Encouraging the banks and finance institutions for the restructuring of debts and reducing the positive vote rates required for the contract to be binding can be provided.

5. In order to prevent the start of the enforcement proceedings suspended by the Law no. 7226, collectively in a cumulative manner, the right to pay by installments for a specific time (for example between 12 – 24 months) with the lowest current interest applied to the credits as of the effective date of the proceeding can be provided to the debtors with a temporary provision in the enforcement proceedings that are started and suspended. It is possible to adopt a special provision by a temporary article in the article 111 of EBC.

6. In all the proceedings through attachment, leaving the attached properties (especially constituting the entity integrity, oriented to economic activity or being compulsory for the individual's life or social existence) by the debtor, suspension of the custody procedures temporarily or being subjected to certain conditions can be decided by a temporary decision. With respect to the proceedings started due to the debts of the commercial and industrial entities within this scope, the provisions providing the transfer of an entity as a whole by prevention of the individual attachments and sales can be brought, when the economic and commercial integrity decision is taken according to the criteria to be determined in order to prevent the spoilage of the integrity of the entity.

7. A special temporary provision can be adopted so that long term low interest credit (proceeding credit) can be provided by the public banks to the entities having a cash shortage since the receivables could not be collected as a result of the legislation.

8. The bankruptcy system applied specifically in our country almost does not exist in the World today; and although our concordat system is also regulated, renewed, continuously changed many times it is commonly accepted that it does not produce solutions. In place of these old models, the institution of restructuring through conciliation (or similar institutions) regulated by the article 309/m ff. of EBC can be updated, developed, rearranged and implementation can be provided by taking the needs of our Country into consideration. This institution enables not only the restructuring of the debts but also the restructuring of the companies and entities. This is more important now during the outbreak.

9. The use of "Extraordinary Grace Period" included in the article 337 ff. of EBC, which is not general like article 330 of EBC applied directly for the proceedings during the outbreak, but can be applied by a special determination under the judicial control for those who may

suffer problems due to the outbreak, and provide certain relief, give rise to effects similar to concordat and restructuring, can be considered.

10. It is very important to take the measures, of which some are mentioned above, in order to prevent the fading away of our national values, protect employment, prevent the destruction of added values, protection of tax source, prevent the collapse of the supply, production/service and distribution networks, and in summary, protect the commercial and economic integrity of the national entities

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REFLECTIONS ON THE PANDEMIC
in the Future of the World

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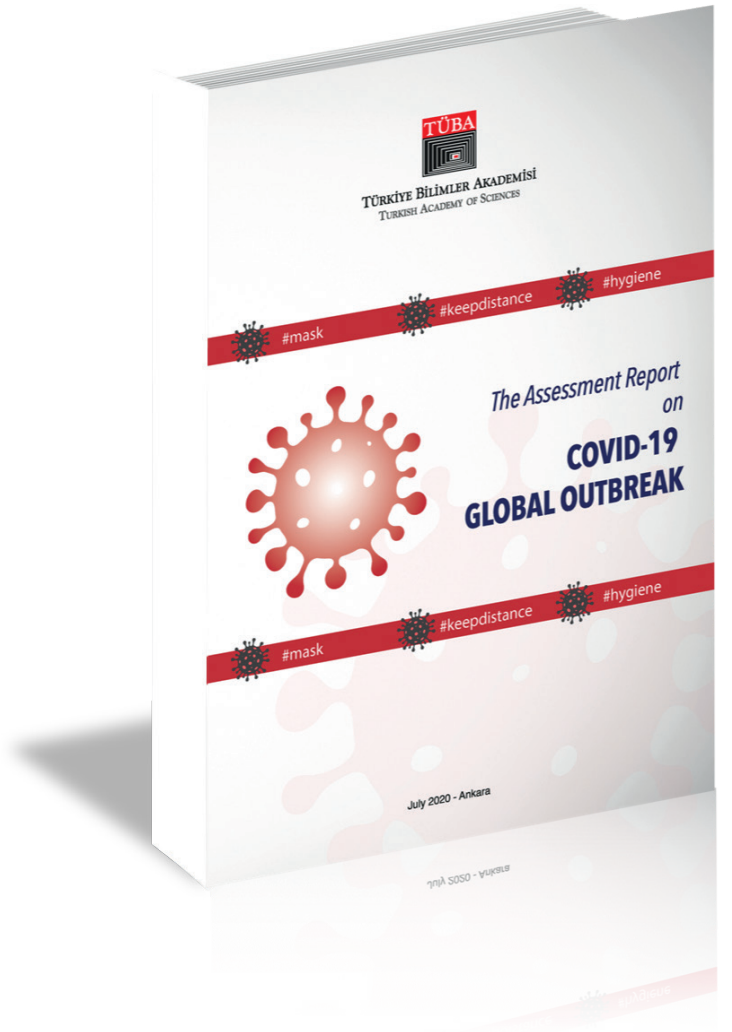
The book consists of 49 thematic articles. There are projections for a wide range of post-epidemic periods, from healthcare to education, information technologies to political science, economics to international relations, trade to philosophy, artificial intelligence studies, sociological analysis, environment and agriculture, space, and polar studies.



TÜBA COVID-19 GLOBAL OUTBREAK ASSESSMENT REPORT

TÜBA - COVID-19 Global Outbreak Assessment Report, which has been presented as open source on April 17, 2020 and published with the recent data on June 4, 2020, can be accessed from libraries and TÜBA internet site (www.tuba.gov.tr/en). The report, consisting of 5 parts, is prepared with an interdisciplinary approach.

i. Terminology, Definitions, History and Current Situation in Turkey

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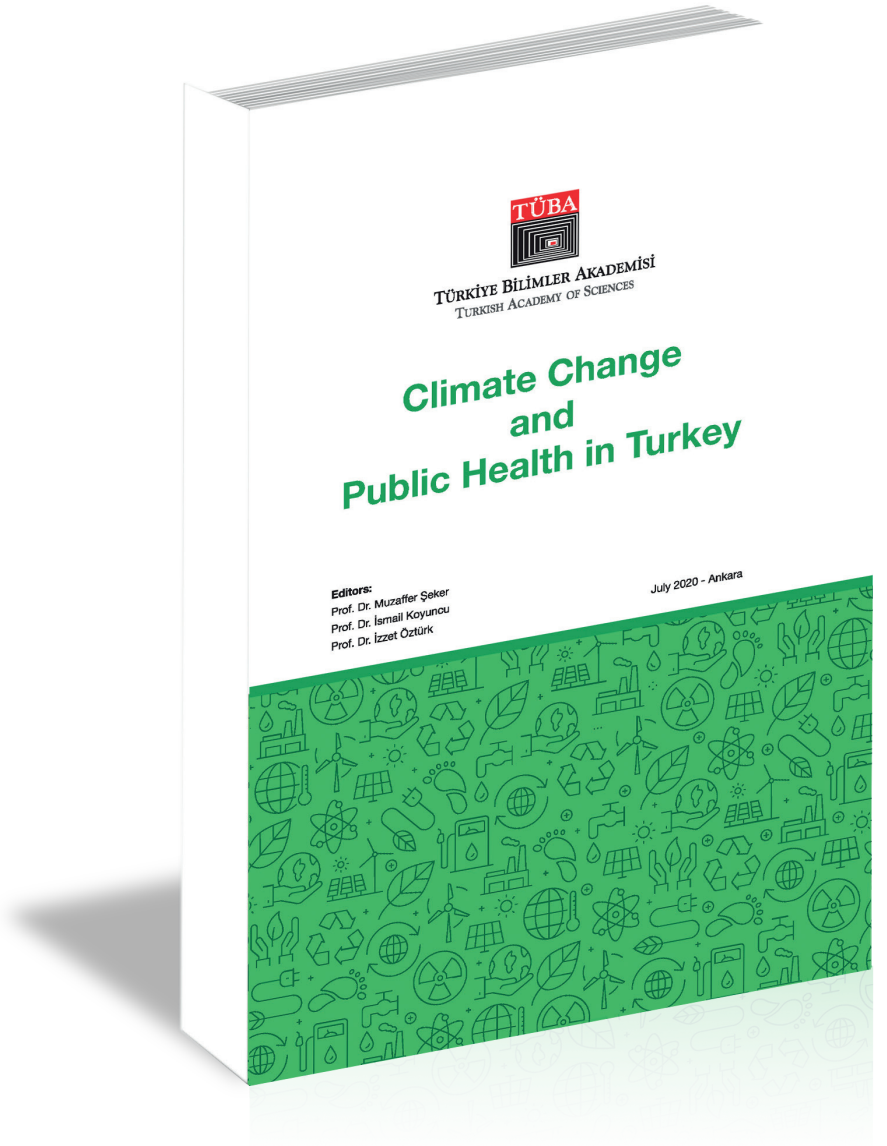
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