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Table of Contents

Chapter I: Economics

Yusuf Alper, Serhat Özgökçeler
Positive Discrimination Practices Towards Women in Turkish Social Insurance System: "Women–Friendly Social Security System" 9

Asuman Altay, Sahin Karabulut
Implementation Methods of Financial Incentives and The Case of OECD Countries 19

M. Fikret Ateş, Menekşe Öztoprak, Hakan Turgut
The Mediating Role of Organizational Trust on The Effects of Leader-Member Exchange to Work-Family / Family-Work Conflict 27

Hediye Bahar Sayın
Authorized Capital System Within the Context of Measures to be Taken in Capital Market . 39

Yasemin Durak
Belıever Transactıons 47

Diğdem Göç Gürbüz
Return From Liquidation (Revival) in Corporations 59

Nur Kaman
Privitization of Turkish Electricty Market 69

Sahin Karabulut
Production Models of Pre-Capitalism and Process of Capitalist Accumulation 73

Fatma Kolcu, Nebiye Yamak
Asymmetric Effect of Inflation on the Relative Price Variability in Turkey 81

Gizem Sazan, Feray Unlu
Constructing the Idea of Neighbourhood Shopping in Themed Environments: The Case of Themed Indoor Markets 91

Bekir Kaya, Emine Öner Kaya
Terrorism and Economic Growth: An ARDL Bounds Testing Approach for Turkey 101

Haldun Soydal, Duygu Baysal Kurt, Sema Yaşar
Interest-Investment Relatıons: Developed And Developıng Country Comparısons Wıth Turkey 111

Arzu Organ, Engin Yalçın
The Energy Source Selection by Fuzzy AHP and Fuzzy MOORA Method in a Textile Firm 121

Chapter II: Business Administration

Enrico Lanza
The Penal Treatment of Foreigners in the time of Globalization 129

Ates Bayazit Hayta
Organizational Commitment Levels of Personnel Working in 4-Star and 5-Star Accommodation Businesses: The Case of Alanya 135

Enes Emre Basar, Aysel Ercis
History of Sustainability 147

Pınar Başar
The Effect of Organizational Justice on The Organizational Commitment 151

Esma Gorkem Ersoy
Entrepreneurship Concept in 21. Century and A Research About Entrepreneurship Perception of University Students 161

Melahat Öneren, Harun Demir, Tayfun Arar
The Relationship among Work Accidents and Human Capital: Decent Work 169

Gamze Kağan, Mehmet Zelka
Evaluation of Patient Satisfaction from Centralized Hospital Appointment System in The Anatolian Side of Istanbul Province 175

Canberk Koçak, Ezgi Cengiz
Neoliberal Rule and the Working Class in Turkey in the 21st Century 185

Şefik Okan Mercan, Serdar Sünnetçioğlu, Hacı Mehmet Yıldırım, Serkan Türkmen
Vegans' Expectations from Restaurants and Their Thoughts about Vegan Restaurants 195

Gulhan Suadiye
Ownership Structure and Firm Performance: Evidence from Turkey 203

Murat Cagri Tuna
Future of Non-Muslim Minorities in Turkey 211

Cengiz Gül
Transition of Government System In Turkey In The Context of The Presidential System and Its Relationship with the Democratic Regime 221

Mustafa Yağbasan, Oğuzhan Baygeldi
The Effects of Soma Mining AccidentOn Coal Miners In ZonguldakWithin To Context Of Industrial Accidents Appeared On Media 229

Neşe Aral, Nuran Bayram
The Effect of Personality on Moral Behavior 239

Habib Akdoğan, Ela Hiçyorulmaz

How Much Is Public Opinion Influenced By Attitudes Of The Accountancy Profession Members In The Issue Of Business And Profession Ethics? 247

Nuran Bayram, Mine Aydemir
A Structural Equation Modeling About Life Satisfaction 253

Fehmi Volkan Akyön, Şule Aydın Tükeltürk, Gökçe Karakoç
The Relationship Between Tourism Education and Career Intensions in the Industry: A Research Study on Undergraduate Students 259

Chapter III: Law

Daniela Fisichella
"Inequality" as a keyword to understand international community assets in 21st century: changing patterns in social sciences and international law 267

Özgür Oğuz
Benefits of an Alternative Dispute Resolution 277

Zeynep Özlem Üskül Engin
Ecological Balance, Ethical Arguments And Law in Terms Of Human Rights 287

Nur Bolayır
Mediation in Civil Disputes According to Turkish Law 295

Sevgi Bozkurt-Yasar
Business Judgment Rule in Turkish Corporate Law Particularly a Comparison with Selected Legal Systems 305

Selda Caglar
The Right To Education in The Constitution 317

Seniha Dal
Mediation as Alternative Dispute Resolution in Trademark Disputes in Turkish Law 327

Guzide Burcu Gunveren
Inheritance Rights of Illegitimate Children in Roman Law 335

Huriye Kubilay
Equalıty Or Encouragement? Reduced Attorney Fee in Turkısh Insurance Arbıtratıon Proceedıng 343

Kenan Koç, Selahattin Erol
Electronic Contracts And Consumer Protection 349

Ebru Tuzemen-Atik
An Overview of the Minority Rights in Joint Stock Company under the Provisions of New Turkish Commercial Code 357

Mehmet Ertan Yardım

Conditions for Granting Legal Aid in Civil Proceedings in Respect of Decisions of the European Court of Human Rights 367

Cigdem Mine Yilmaz
Heirship of Surviving Spouse in Turkish Law and a Proposal for Turkish Law under the Light of Comparative Law..... 375

Foreword

The social changes and challenges of the 21st century encourage new scientific and methodological pursuits in the quest for new developments in the field of social studies. An emerging perspective in academic publishing promotes interdisciplinary reflection for a more coherent understanding of current problems addressed by economics, social justice, and other scientific areas that society and policy makers engage in. This book series stands proof that complex issues are better understood and resolved with insight from more than one disciplinary framework.

Current Perspectives in Social Sciences provides a forum for diverse issues bridging an intersection of domains relevant to the broad scope of social sciences. The current volume focuses on innovative and trans-disciplinary work analysing significant aspects in diverse academic fields and disciplines. Editors integrate topics across an array of disciplines and domains related to finance, management, political and law studies: democratic and capitalist processes, human capital, entrepreneurship, the right to education, organizational justice, minority rights, public opinion and perception, ecological balance from an ethical and human rights perspective, as well as other issues of interest to the international scientific community.

The research papers included in the volume employ different approaches to address contemporary challenges and try to find solutions to the working hypotheses they put forward. Selected papers integrate insights from a range of scientific areas into an inclusive analytic framework emphasizing inter-disciplinarity and dissemination in today's information society. Interdisciplinary research integrates methodological frameworks from more than one branch of knowledge with the aim is to foster a more comprehensive framework of analysis for the issues under examination. From this encompassing perspective, researchers highlight a range of issues pertaining to human rights and social relations, thus contributing to an enhanced understanding of the correlation between social processes and world events.

The series builds on the idea of cross-cultural references and the need for genuine scientific research to break traditional barriers. The Editors' mission is to join international scientific communities and to promote a forum for a wider understanding of social issues having a strong emphasis on substantial experimental or theoretical studies.

We would like to thank the Editorial Board and the publishers who created the opportunity for this series to be born. In particular, many thanks are due to dr. Hasan Arslan (Turkey), who has devoted a lot of time and energy to this enterprise.

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Positive Discrimination Practices Towards Women in Turkish Social Insurance System: "Women–Friendly Social Security System"

Yusuf Alper, Serhat Özgökçeler

1. Introduction

Discrimination in working life is one of the basic problems of social policy nationally and internationally. It is the act of treating a person differently —negatively or positively— because of that person's race, class, religion, sexual orientation/gender or any other group to which that person belongs, rather than assessing individual needs and merits. Positive discrimination towards women means that the act of giving the advantage to them in a society that is often treated unfairly because of their sex/race/religion etc. According to the ILO, social insurances which were taken part in basic social security systems institution in industrial society were regulated by only men and their needs were taken into account. After World War-II, the developing service sector and increasing participation of women in the workforce (especially in atypical works) made essential new regulations towards women in social insurance systems. Social insurance is defined gender-neutrally in Turkish Social Insurance Law. There are also special provisions towards women such as; allowing them to retire earlier and maternity insurance. The unique positive discrimination regulation towards women in Turkish Social Insurance System is that girls qualify for orphan pensions without age limit. In addition to this (widow) women can qualify for widow pensions after late husbands. Similarly, women who are both widows and not married can also qualify pensions. However, receiving benefits from health services can be exemplified. These practices towards women are the women-friendly social security system. But in 2008 by the favor of Social Security Reform the relevant practices were limited and put in order with the new regulations about positive discriminations towards women such as statutory maternity pay; caring for children with disabilities; maternity and parental leaves; work-life (motherhood) balance.

2. Social Security Systems in the industrial society and Woman

Social security system in industrial society has been mainly constructed over social insurances as called bismarck-model (this means social security systems with social contributions). Social insurances have been set up by the principles of operation in which an important part of the workforce works at dependant statute (as workers), and the relationship of being insured is established compulsorily, and the liability of calculating and paying premiums belongs to employers. The worker is a man and works mostly in the industrial sector and on a full-time basis. And the guarantee of social security of his spouse (woman) and children is provided by the statute of persons (dependant people) to whom the insured working man is liable to look after.

The chart attached to Section XI of the International Labor Organisation's (or ILO's) "Convention of Minimum Standarts of Social Security" No. 102 dated 1952, which is called the milestone of social security, the situation of the periodical benefits related to the example insured or beneficiaries, can be clearly seen.

Table 1: Rights Provided by Social Insurance System as stipulated in the Convention No. 102

Social insurance risk	the ratio of the aids to be provided to the example insured	Ratio of benefit to be provided
Disease	Married, with two children	45
Unemployment	Married, with two children	45
Old-age	Man whom has a wife that is of age for being paid pension	-
Occupational Accidents & Vocational Diseases (or İKMH shortly in Turkish)		
Temporary total disability	Married, with two children	50
Disablement	Married, with two children	50
Death	Widow, with two children	40
Maternity	Woman	45
Disablement	Married, with two children	40
Death	Widow, with two children	40

Source: Chart attached to Section XI of the ILO's "Convention of Minimum Norms of Social Security" No.102.

Table 1. Social insurances constituting the basic institution of social security systems in industrial society as determined clearly in the ILO's Report dated 1984 on " Into the 21'st Century: The Development of Social Security"" have been established "by men and by taking their needs into account" (ILO, 1984). In this model, the man works, and the woman does not work, she is a housewife. The woman's social security is provided by the man working under the statute of person who is liable to look after his dependants during the continuation of matrimony. Death is a risk for the man, and those remaining after him are his wife and children if any. In the period after World War II:

- Growth of service sector where woman workforce is needed more, and
- The increasing participation of women in workforce, and
- Women working at atypical jobs mostly in the service sector, this being a result of the security system in the industrial society not being able to meet the needs of this changing structure. Some reasons such as the increase of participation of women in workforce along with single parent families resulting from increasing divorcements causing such changes in social structure, and the increasing of the trends of cohabitation without official wedding/marriage, and the rising of marriage age have required the restructuring of social insurances (Alper, 2014: 230). The last quarter of the 21st century has been a period that has concentrated on the efforts of change and transformation oriented to the needs of such change by the social security systems in industrial society. These arrangements towards the provision of woman-man equity have formed the weight point of such change and transformation. While changing basic parameters of the new system, the woman has become the main actor of working in part-time jobs and demand social security assurance without the need for a marriage-tie, and married women have become main actors in taking into consideration responsibilities of work, home and family together.

3. Woman in the Turkish Social Security System

The Turkish social insurance system has been established by statute at the very beginning. According to this, SSK (Social Insurance Institution) has been established for workers, and Retirement Fund for state employees, and Bag-Kur for those working independently. Within

the scope of the social insurance system, the man has defined as a working individual, and the woman as an individual who is the man's dependent spouse, and the spouse notion has been described for woman and accordingly she is the "wife of the insured man in compliance with the social security systems in industrial society as described in the first social insurance laws as prepared for workers in particular. However, this general trend has caused to eliminate the woman-man discrimination regarding the personnel and social security laws causing to continue the state employment regime as formed after the Ottoman Reorganizations Reforms as well as of the labor and social security rights as amended granted through the 1961 Constitution at last. The State Employee Law (Code No: 657) has arranged the principle "equal wage for equal work" legally before many developed western countries. And another amendment which can be deemed as a milestone in terms of woman-man equity was realized in 1987, and the spouse notion has gained a "neutral" qualification, and so it has been accepted that the spouse means wife for men, and husband for women and the transitivity of social security rights under the same conditions has been provided.

While the establishment of the Turkish social insurance system at later years as compared to those of the western countries has facilitated the making of arrangements towards the provision of such equity, the making of some arrangements has required in favor of women in the social insurance system with the effects of traditional values describing the woman as a disadvantageous group who should be protected. Such arrangements have considerably changed the definition of dependent person regarding women and daughters in particular of whom the social insurances are liable to look after, and eventually a "woman-friendly" social insurance system was formed especially regarding death insurance. This study has been prepared mainly to evaluate the arrangements passing beyond "the principle of positive discrimination" towards woman as mentioned in the Turkish social insurance system, and the effects thereof. This study has focused and concentrated on the subjects concerning the beginning and termination of the relationship of being insured, and the condition of winning rights for social insurance guarantee and the transitivity of such rights.

3.1. Beginning and Termination of the Relationship of Being Insured

In the Turkish Social Insurance System, there is no anl legaly discrimination in respect of the beginning and termination of the relationship of being insured women and men. Women and men are subject to the same conditions in respect of the beginning of being insured (namely regarding age and duration). And the restriction relating to that " women can be insured if they are matriarchies and come to the age of 22” has also been abolished within the scope of Agricultural Bag-Kur Code No. 2926 which had been adopted due to the particular conditions of the agricultural sector. The practice of positive discrimination towards women in the period of pro-2008 has been subject matter for voluntary insurance; while it has been possible for men to be voluntarily insured after being compulsorily insured for a definitive period, it has been provided that women can be voluntarily insured "as housewives" within the scope of Bag-Kur without needing any condition of working and of being insured beforehand.

3.2. Conditions for women regarding Service Debt and Duration of Insurance

In the Turkish Social Insurance System, some special arrangements have been made in the practice of service debts for women (inclusion of the period elapsing without insurance into the period of being insured by paying Premium afterward). As a matter of fact, for all the insured without woman-man discrimination;

- Periods elapsing strikes-lockouts during the process of collective labor disputes,
- Periods of studentship and internship,
- No pay leaves,
- Periods of imprisonment and custody have been deemed to be the periods of time when service debt can be made (Code No. 5510, Art. 41). In addition to such debiting cases, a possibility of birth debting only peculiar to women, and of women's debting for a period of 2 years elapsing after giving birth provided that they should have at least 3 children.

Despite that there is not any difference in respect of calculating the beginning and duration of being insured; in all the social insurance codes, an opportunity had been given for women to get old age pension 5 years before men (with a period of insurance of 20 years) on the terms mentioned in the Code No. 5510. This difference has been eliminated in stages by the Code No. 5510.

Any other arrangement which can be accepted as the practice of positive discrimination has been the subject matter of the Code No.3201 on Foreign Service Debt; according to this, the Turkish workers working abroad can pay debt for their periods of time of working abroad without any term of working with their unemployed woman spouse.

4. Arrangements of Short Term Insurance Branches for women

The insured are given "pension against incapacity to work" from the İKMH and Disease insurances without making any woman-man discrimination. This pension covers 2/3 of daily income at ambulatory treatments, and ½ of the daily income at inpatient treatments. However, although the mode of calculation is the same, such pension given eight weeks before giving birth and eight weeks after giving birth within the scope of motherhood is 2/3 of daily income per day without any discrimination regarding ambulatory treatment and inpatient treatment. As one will see if the arrangements of the motherhood insurance which is related to women are put up, in short term insurance branches there is not any discrimination regarding the amount and duration of aids.

5. Long Term Insurance Branches: Disablement, Old-ageOld-ageOld-Age, and Death

5.1. Disablement Insurance

There is not any discrimination prophylactically between women and men insured individuals in respect of disablement insurance. Women and men having the same degree of disablement deserve salary under the same conditions.

5.2. Old-Age Insurance

This is one the most important of the insurance branches where the woman-man discrimination is arranged for women that step out. In this case, up to the year 1990, the women have had the opportunity to get old age pension five years earlier and five years younger in working years. This situation was amended by virtue of the Code No. 447 dated 1999 first, and after this date, the age of retirement for those to be insured for the first time has been changed as 58 for women and 60 for men. The difference of age has diminished to 2 years, and difference of 5 years in the period of insurance has been abolished. However, this has been provided through a staged transition to be completed in the year 2022. Another significant amendment concerning with old-age insurance has been provided through the Code No. 5510 dated 2008, and the ordinance

of eliminating the difference of age between women and men, and both of them to be retired at the age of 65 between the years of 2036 – 2038 has been put into effect.

Table 2: Staged Retirement Ages for Women and Men

Staged Retirement Ages for the Insured within the Scope of 4/1-a					
INSURED MAN			INSURED WOMAN		
60 Age	7200 Days		58 Age	7200 Days	
1/1/2036 - 31/12/2037	61		1/1/2036 - 31/12/2037		59
1/1/2038 - 31/12/2039	62		1/1/2038 - 31/12/2039		60
1/1/2040 - 31/12/2041	63		1/1/2040 - 31/12/2041		61
1/1/2042 - 31/12/2043	64		1/1/2042 - 31/12/2043		62
1/1/2044 and later	65		1/1/2044 - 31/12/2045		63
			1/1/2046 - 31/12/2047		64
			1/1/2048 and later		65

In spite of criticizing very much, the justifications of this arrangement are that the average expected lifetime of women is longer than those of men, and to eliminate the difference of ages of women and men as in the whole world. As a matter of fact, the data indicated in Table 3 also confirms this.

Table 3: Expected lifetime according to gender and age in Turkey (2013-2014)

Age	Total	Man	Woman
0	78.0	75.3	80.7
15	64.3	61.5	66.9
50	30.5	28.3	32.9
65	17.9	16.2	19.4

Source: http://www.tuik.gov.tr/PreHaberBultenleri.do?id=18618 (08.05.2016).

While the Code No. 5510 equalizes the retirement age of women, it also provides an arrangement which can be assessed as a positive discrimination towards women. As a matter of fact, the women that work and undertake the care of physically challenged (60% and more) children get defacto service pay increase that they deserve of 90 days for each year when they have worked, and this period of theirs can be deducted from the age of retirement. To explain this with an example, a woman who has both worked for 20 years and also undertaken the care of a physically challenged child deserves defacto of five years' service pay increase, and can retire five years earlier, and her retirement salary can be more by 10 points. In a sense, it has been tried to balance the work and family responsibilities of the working woman.

5.3. Survivor Insurance

As a result, the traditional values have been reflected in the social insurance regulation, the practices of positive discrimination towards the woman regarding social security show themselves fairly in the death insurance. And the reason why the Turkish social insurance system is named "woman-friendly" is the practices relating to this insurance branch. This subject has been studied under the following headline.

6. Woman in the Turkish Social Insurance System

6.1. In general

The woman becomes "the subject" of the social security system in three (3) different statutes and situations, and their social assurances changes according to such “statutes” in respect of the Turkish social insurance regulation. These are;
a. The woman has a social security assurance depending on her work;
b. Of the man working under insurance, who is bound with a formal marriage and the spouse is a housewife and does not work (it is the same for the man);
c. Daughters who receive widow’s wage and income from the deceased (the field where positive discrimination is fundamentally applied).
What the provisions concerning the social security rights of the women insured depending on their job has been stated before. The insured man’s spouse who has an official marriage tie with him and is a housewife and does not work has a health assurance as a person to whom the injured man is obliged to look after while he is still alive during the period when the hısband and wife are not divorced. And in the event of the death of the injured, she gets salary as a beneficiary as long as the case of divorcement continues. At this point, despite that there is no discrimination legally between women and men, it is seen that the system operates for women in de facto case. As a result of the fact, while 25% of the total injured persons are women, the ratio of the women getting salary as the wife of the deceased or injured men is 41%.

6.2. Daughters who are the Right Owners in the Social Insurance System

This is the statute where the traditional values operate for the woman, and where the woman is the daughter of the injured man. The law-maker, by taking the family and social structure of the Turkish society into consideration, has put special provisions towards daughters and attributed a special importance to daughters.

While the children being defined as the right owners of the deceased injured person (Code No. 5510, Art. 33), the right ownership has been tied to age apart from not working at any job within the scope of social insurance, and from not gaining any income. According to this, the children get salaries resulting from their deceased mothers and fathers as right owners up to the age of 18 years old in every case, and up to 20 years old if they attend high school or equivalent educational institutions, and up to 25 years old if they attend higher education. However, this condition is invalid for daughters and children that are 60% or more physically challenged children. The children whose disability status continue to get salary during when they do not work, and the daughters continue to get salary as long as they do not work and get married whatever their ages are. In fact, the daughters who have got married and divorced afterward continue to take advantage of this right. Statistical data relating to those insured under 4/a that constitutes the biggest injured group verifies this much clearly.

Table 4: Distribution of Those Who Get İncomes within the Scope of Article 4-1/a of the Code No. 5510, 2014

Ages	Survivors Pensions						
	Husband	Wife	Son	Daughter	Father	Mother	Total
0-10	0	0	18.047	17.588	0	0	35.635
11-20	0	101	66.076	76.579	0	2	142.578
21-30	52	4.270	17.457	56.894	0	2	78.675
31-40	605	26.861	2.952	63.949	0	10	94.377
41-50	1.793	91.991	3.987	94.723	38	322	192.854
51-60	4.781	220.089	2.480	80.922	264	1668	310.204
61-70	7.424	317.360	704	44.615	444	2.347	372.894
71-80+	11.433	419.230	172	24.896	1.245	6.595	463.571
Total	26.088	1.079.902	111.875	460.166	1.991	10.946	1.690.968

Source: www.sgk.gov.tr/istatistikyilligi/2014 (01.06.2016).

When the data given in Table 4 is reviewed, it is understood in respect of the insured persons in this statute that the number of man-spouses getting the pension as the spouse of the deceased injured is 26.088 only and that the number of women spouses are 1.079.902. This is the system that assigns pension to woman-spouse fairly. Likewise, regarding children, while the number of the daughters to whom pensions are assigned depending on the death of their mothers and fathers) is 460 thousand, the numbers of sons is around 111 thousand.

However, the issues drawing utmost attention are related to the age of the daughters to whom pension is tied to. While the number of the daughters and sons getting pension up to the age of 18 is very close to each other, the daughters gain importance after this age range. The table indicates that 80 thousand daughters between the ages of 51-60 and 44 thousand daughters between the ages of 61-70 and 24 thousand daughters over the age of 71 have been getting pensions "at the statute of a child". At one point, there is a social insurance system in which monthly salary is assigned to maternal and paternal grandmothers. Our opinion is that everybody without making any discrimination of woman and man, who are in need, should be included in social assurance. In fact, by taking into consideration that social insurances are the institutions which are based on actuarial account balance, it will be a more accurate method to include daughters in the scope of social aids after the age ranges instead of assigning life-long pension to them over insurance.

6.3. Marriage Benefit [Dowry Money]

Only "daughters" among the right owner, children of the deceased injured person get the income of 2 years in advance for once only when they are married. This money is given due to meeting extra load caused by marriage, which is peculiar to Turkey. However, the fact that only daughters take advantage of this has become a practice of positive discrimination towards women.

6.4. Working and Getting Monthly Salary as Right Owner

This is a situation being valid for those who are included in the scope of the Public Retirement Fund only. In fact, when an insured person who is a member of the Retirement Fund has died, their daughters continue to get the pension for death even if they work subject to any social insurance regime out of the Retirement Fund. Similarly, the daughters of the insured persons subject to the Retirement Fund gets pensions from both their fathers and mothers (as a daughter). Additionally, they can get pensions for death as widow spouses from their deceased

husbands subject to SSK [Social Insurance Institution (SII)] and Bag-Kur [Self Employed Institution].

7. Conclusion

The Turkish social security system and its practices passing beyond positive discrimination towards women offer a structure preventing the working and participating of women in the workforce within the time out of the lawmaker's purposes. According to a study made in the year 2015 (Alper, Özgökçeler & Sümer, 2015), it is also the subject matter that "those who have the death salary income because of their parents, and who take advantage of social benefits" are relatively reluctant to work, or that they show tendency to undeclared work. In the same way, as emphasized in the study mentioned herein, it can be expressed that those who get pensions from their spouses as well as death pensions because of their parents maintain a relatively better life.

This situation caused by death insurance benefits resulting from the social insurance regime has covered the "family-centric" and "woman-friendly" social benefit and service practices in the recent years. Without taking the reverse effects of the social security system into consideration, the participation of women in the workforce and especially the policies towards increasing the declared employment will not be able to form the expected influence.
The results of any system the main aim of which is social protection, which prevents women to work because of its practices or compels women to work undeclared, cannot be accepted. On the other hand, it is also an interesting result that this practice convicts the women to a style of life where the women terminate their formal marriage for enabling to get the salary but continue to live together with their husbands. That, in the Code No. 5510, this case is stated clearly, and this is evaluated as "fraud against the law" and "abuse of a right" shows that this is an undesired result.

Although it is possible to evaluate affirmatively to the arrangements bearing the qualification of "positive discrimination" towards balancing the home-family and work responsibilities of women, it does not seem to be possible to defend any practices preventing women to work, pushing them out of workforce, orienting them to undeclared work or forcing them to live together with their husbands without any formal marriage tie. In this respect, the Turkish social insurance law should revise again, and develop the examples of the practice of real positive discrimination towards women, and should terminate any practices creating reverse effects as well.

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Implementation Methods of Financial Incentives and The Case of OECD Countries

Asuman Altay, Sahin Karabulut

1. Introduction

Tax that is the most important financial means to meet public needs has many important functions like providing financial resources, having tool of economic and fiscal policy, and directing social behavior. Therefore, tax is an indispensable element of the state in order to continue its existence. Tax that is the biggest and ordinary income resources of states has caused to seen as a tool of persecution and the emergence of reaction against tax because of the sloppy taxation. Taxpayers can not the compare benefits of public expenditures and costs of taxation rationally. This is the main reason of adverse reactions. Therefore, various financial incentives are used for reducing discontent against the tax, increasing the investment, increasing the employment, increasing the tax revenue. These financial incentives are quite used method to achieve the government's macro-economic objectives. In this study, types and methods of implementation methods of financial incentives were investigated and financial incentives in Turkey by 2000s were enquired. In this study, the implementation of financial incentives is investigated particularly OECD countries.

2. Financial Incentives in OECD Countries

Countries maintain their focus on key research areas and enabling technologies such as biotechnology, nanotechnology, ICT, new materials and advanced manufacturing at he present time. While most countries support research in these technologies, there is a growing effort to improve policy support at different stages of the innovation value chain (for example by providing incentives for R&D via grants or tax credits, fostering specific technology clusters or development of venture funds) in order to enhance firms' ability to capitalise on public and private investments in these emerging technologies. More countries are using tax incentives than a decade ago and the schemes are more generous than ever. Today, more than 20 OECD governments provide fiscal incentives to encourage business R&D, up from 12 in 1995 and 18 in 2004. Nevertheless, direct public funding through grants, subsidies and loans remains the most frequent form of support to business R&D, with an increased focus on competitive and merit-based programmes. The balance between direct funding and indirect measures such as R&D tax incentives varies according to factors such as a country's industrial structure, the presence of large R&D-intensive firms, R&D intensity and specialization. Government support for non-technological and user-driven innovation is increasing in some countries, in recognition of the importance of non-technological innovation, design and branding for competitiveness, especially in service-sector firms(OECD, 2010, pp.9-13). The prominence of financial incentives, especially in the field of R&D, has necessitated to implementation methods of incentives and analyses of the consequences. In this case, OECD member countries play a guiding role in the large sense.

In **England** that has a rare state intervention in the market; Capital for Enterprise Ltd that is a public economic enterprises has been established by governement to meets of small business' financial needs. Capital for Enterprise Ltd, which is a fund management company, is knowledge, expertise, communication, evaluation and management center of all financial measure implemented by the British government for the benefit of SMEs. This corporation is managing and control center of majority of state supports in England. Grant supports in England are about education, consultancy, R&D and innovation. Rather than grant the government

prefers to give financial support to small businesses with the reviving the credit markets. Incentives items in the UK outlined as follows(TCGTB, 2014, pp.94-122):

Table 1 – Financial Incentive Tools in England

-	**Enterprise Finance Guarantee – EFG**
-	**LearnDirect**
-	**Enterprise UK**
-	**Regional Growth Fund – RGF**
-	**Enterprise Capital Funds – ECF**
-	**Growth Accelerator Programme**
-	**Manufacturing Advisory Service – MAS**
-	**Start-up Loans**
-	**Wholesale Guarantee Programme**
-	**Enterprise Capital Funds - Venture Capital Catalyst - VCC**
-	**Investment Programme**
-	**Community Development Finance – CDF**
-	**Seed Enterprise Investment Scheme – SEIS**
-	**Business Angel Co-Investment Fund**
-	**Venture Capital Trust Scheme – VCT's**
-	**National Loan Guarantee Scheme – NLGS**
-	**Funding for Lending Scheme – FLS**

There is another application for R&D spending made by SMEs, although many R&D activities in **Japan** are carried out by large-scale enterprises. Accordingly, 10% of R&D expenses are deductible from corporate tax by SMEs. Besides, expenditures made are subject to 15% tax credit, if SMEs take place such R&D activities with the academic departments like universities, research centers, public institutions or public institution commissions (Sarısoy & Sarısoy, 2008, p.397). Apart from that, Japanese SMEs may take advantage of either an investment tax credit of 7% or an additional depreciation of 30% for the acquisition of qualifying machinery or equipment (Chen, Lee & Mintz, 2002, p.18).

If taxable income of small scale enterprises is less than 30 million Yen (269.060 Dollars) in the previous two years, the sales of these enterprises are exempt from the 5% VAT. On the other hand, taxable domestic sales' less than 10 million Yen of small scale enterprises are exempt from consumption tax (VAT). Besides, as a result of tax reform in 2000, the corporate tax rate was reduced from 52% to 43%. Corporate tax consists of central administration, regional-local administration and Corporate Inhabitant Tax. Central administration tax rate was reduced from 37,5% to 30% (Sarısoy & Sarısoy, 2008, p.396).

In the **United States of America**, final regulations were issued in 2015 providing that taxpayers can elect the alternative simplified credit (ASC) on amended returns if certain requirements are met. Under prior law, taxpayers were required to elect the ASC on timely filed original returns. Final regulations were also issued in 2015 clarifying the type of supply expenditure incurred in R&D activities that qualify for current deductions. Proposed regulations were also issued in 2015 clarifying the requirements for claiming internal use software for the research credit. Taxpayers are permitted to apply the proposed internal use software rules for tax years ending on or after 20 January 2015. The new internal use software rules are intended to expand opportunities for taxpayers to claim research credits for software-related expenses. Although the research credit provision expired on 31 December 2014, there is extensive support for extending the credit through 2015. The credit provision has been extended 17 times since it was signed into law in 1981. Draft legislation for an innovation box was proposed in July 2015 that would offer about a 10% tax rate on income attributable to innovations. (Deloitte, 2015, pp.3-4).

The tax incentive for R&D spending is calculated by two different methods in the US. First of these is the "traditional credit" equal to 20% of the amount of the expenditures

exceeding a “base amount”. Second of these The alternative simplified credit (ASC) equal to 14% of the excess of the qualified research expenditures over 50% of the average of the three prior years’ expenditures (Deloitte, 2014, p.48).

A capital expenditure qualifies for SR&ED treatment if it is incurred for, and is all or substantially all attributable to, the prosecution of R&D in **Canada**. Concern had been expressed over the fact that equipment used primarily in R&D, but less than ninety percent, was not eligible for ITCs. The absence of a credit was particularly important for companies that perform R&D in a shop-floor setting, where equipment can often be used for both R&D and production activities (Hamilton, 1993, p.251).

In **France**, the current R & D expenditures are completely deductible from taxable income in the year in which the expenditure is made. R & D capital expenditures are subject to general amortization applications. There is broad-based implementation of a tax incentive which is called “Research Tax Credit” and all firms can use that. When calculating the amount of credit in this incentive, both the total amount of expenditure and the amount of increased spending over the past years are used. At the end of the year, taxpayers, who have tax credit more than tax liability, can defer their credit receivables for 3 years. Cash pay back privilege has given only some certain corporation (Yıldız, 2010, p.190).

Outside of these incentves in France, there are incentives towards newly established R&D oriented company. In France, companies that is at least 8 years old and at least 15% of total expenditures are related to R&D activities are called “Young Innovative Company”. It provided a number of conveniences to sustain growth to this corporation (Günaydın & Can, 2008, p.18).

Providing financial incentives by **German** federal and regional governments consist of subsidies, low interest rate loans, capital sourced assistance and various warranty. Federal and regional investment subsidies are given with in the “Improving of Regional Economic Structure”. As a matter of principle, continuously and immediately earning additional income is required to receive subsidies of an investment project. Other condition of get the investment subsidy’s is employment that is created because of investment has to continue for 5 years. Investor has to put a certain amount of capital (at least 25%) to entitled to investment subsidy’s. Investment subsidies’ are usually given on the condition of the investment project to be completed within 36 months. Maximum amount projected for investment subsidies are 500,000 Euros for the creation of new business opportunities; 250,000 Euros for the protection of existing business (TDIHK, 2004, pp.13-15).

Investment projects location is the main determinant of the subsidy amount in Germany. These regions are grouped as follows.

Table 2: German Regions for Incentives

A and B Regions	East German States	Berlin, Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt Thüringen
C and D Regions	Infrastructure Not All West German Federal States	Passau, Bad Kissingen (Bayern), Bremerhaven, Bremen, Kassel, Vogelsbergkreis (Hessen), Emden, Braunschweig (Niedersachsen), Dortmund, Mönchengladbach, Kaiserslautern, Bad Kreuznach (Rheinland-Pfalz), Saarbrücken (Saarland), Flensburg, Kiel (Schleswig-Holstein).
E Regions	It is designed to reduce the tension between high induced zones and low or no incentive zones in 1 January 2004.	Weiden (Bayern), Fulda (Hessen), Wolfsburg (Niedersachsen), Herzogtum Lauenburg (Schleswig-Holstein)

The investment helping rates are seen follows as regards the developing regions:

Table 3: The Investment Helping Rates

Category	Small And Medium Sized Enterprises	Others
A	%50	%35
B	%43	%28
C	%28	%18
D and E	%15 Assets of Small Sized Enterprises, %7,5 Assets of Medium Sized Enterprises,	Maximum 100.000Euro – for 3 years

Source: (TDIHK, 2004, p.17)

Low-interest loans are provided by many public financial institutions. Made by private financial institutions are imperative to apply for these loans. The maturity date of the loan usually between the 10 and 20 years; maximum loan rate 500.000 Euro and 5 million Euro. There are also loans for start-up companies. The amount of loans to companies ranged from 25.000 Euros to 2 million Euros. Capital sourced assistance is given by public financial institutions. Applying by private financial institutions for this type of financing is imperative and type of aid is in the form of the low interest rate loans. The maturity date of this aid is up to 10 years and the amount of aid is up to 1 million Euros. The guarantees are accepted by both the public financial institutions as well as some private guarantee banks. In many cases it is guaranteed up to 80% of the amount of credit (TDIHK, 2004, pp.19).

Ireland's tactics for tax incentives are usually tax credits. The R&D tax credit starting for the first time in 2004, was applied to 20% until 2009, since then from 1 January 2009, it has being applied to 25%. Before 2009, administration was in the form of a tax credit of 20% which

is depending on the increased amount. The average of the last three years was taken as the base level of practice. 20% of the expenditure in excess of this amount was deducted from corporate tax. These practices did not only cover the domestic companies but also foreign companies in the country. From 1 January 2009, all companies in Ireland can benefit from the R&D tax credit for R&D expenditure that is done both in Ireland and European Economic Area. In addition, if these expenditures have been made in Ireland, there are entitled to a tax deduction of 12.5%. Thus, the effective rate of tax incentives for R & D as increases to 37.5% (Çelebi & Kahriman, 2011, p.37).

3. Financial Incentives in Turkey

One of the most important applications for financial incentives in Turkey is the R&D deduction that is formed under the Article 10 of law numbered 5520 Corporate Tax Law. The said paragraphs (a) in accordance with subparagraph; "R & D discount" is calculated of the rate of 100% for the amount of new technology and research and development expenditures for information. R&D discount is not calculated for expenses that is not directly related to the research and development activities. The amount that cannot be deducted due to an insufficient tax base transfer to the following accounting period. The Ministry of Finance is responsible to determine the scope of expenditure benefit from R&D discounts and procedures with the necessary documents to using.

Law on Supporting Research and Development Activities No. 5746 is one of the most comprehensive regulations about financial incentives in Turkey. Some of the provided supports and incentives scope of the related law:

- R&D discount,
- Income tax withholding incentive,
- Employer's national insurance contribution support
- Stamp duty exemption
- Techno-initiative capital support program

Provided supports and encouragements to Technology Development Zone are described in Law No. 4691 on Technology Development Zones. The companies must be located in the specified Technology Development Zone in the defined law in order to benefit from such support and encouragement. According to that law, Technology Development Zone is defined as: "*shall refers to a site where academic, economic and social structures become integrated or a technopark which has these characteristics, where, by benefiting from the opportunities of a particular university or higher technology institute or R&D centre or institute, companies using high/advanced technology or companies that aim at new technologies produce/develop technology or software, where the companies work to transform a technological invention into a commercial product, method or service, thus contributing to the development of the zone, which is in the premises or close to the same university, higher technological institute or the R&D centre or institute*". Accordingly, The revenues gained by the managing company via the applications of this Law and the revenues gained by the taxpayers that reside in the Zone via R&D practices is exempt from Income and Corporate Tax until 31.12.2013.

Besides, according to Provisional Article 20 of Value Added Tax Law, entrepreneur's who is operating in Technology Development Zone that is defined in Law No. 4691 on Technology Development Zones earnings -that is delivery and service in the form of system management, data management, business applications, industry, internet, mobile and military command and control application software- exempt of VAT.

4. Conclusion

The debates about the active or passive role of the government in economy have been proceeding since the first emergence of economics. In this context, when some mainstream economists like Classical Economics advocate minimal state, Socialist Economists have argued that the state should have all the means of production. Keynesian economics is argued that the government should create demand when necessary. At the present time, the governments are increasingly applying to financial incentives. If examining the implemented financial incentives especially in OECD countries, it can be seen that the majority of financial incentives are usually given to R&D. The most important reason to this, R&D expenditure requires a large amount of investment and their financial returns can be achieved only in the long term. In this context, taxes are the most important financial instrument.

Tax, which was completely serving to financial purposes at first taken periods, has increased its importance with growing role in changing history. Within this framework, taxes are used variety of concepts like Increasing production, capital accumulation, withdrawal of foreign capital into the country, ensuring the development of the industry, supporting technological development. These reasons have led to become one of the most important means of financial incentives to tax.

Implemented financial incentives in Turkey are usually tax incentives. However, Turkey cannot use to a large amount of tax incentives. The most important reason is that, Turkey, which has the efforts to ensure compliance with the EU acquis for EU membership, is not possible to completely independent and voluntary decision.

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The Mediating Role of Organizational Trust on The Effects of Leader-Member Exchange to Work-Family / Family-Work Conflict

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1. Introduction

There has been a transformation lately which has caused the organizations focusing on efficient sourcing with the high quality- low cost production principle to change their production centers intercontinentally. While these organizations, under the influence of this new global system forcing the transformationhave been trying to adapt to by-laws and international laws, they have also been trying to find ways to increase the earnings of the shareholders and reduce their losses (Özmete & Eker, 2013).

One of the inevitable problems that members of an organization will be experiencing due to this transformation is that they will be unable to keep the 'work and family life balance' referring to the time during when individuals have to fulfill their responsibilities in their work and family life (Guest, 2002). In other words, this may be explained as not being able to balance the norms and roles due to responsibilities resulting from work life [the fear of losing one's job, long working hours, business trips, workload, work stress, etc.] and family life [the effort of trying to keep the family safe and happy, fulfilling their spouse's desires and disagreements, etc.] (Greenhaus & Beutell, 1985; Frone, 2003; Cheung & Wong, 2013).

The theoretical background of WFC and FWC is explained through Kahn and his friends' (1964) Role Theory as a two-sided problem that results from conflicts of time, behavior and stress (Netemeyer, Boles & McMurrian 1996; Grant-Vallone & Donaldson, 2001). WFC states a conflict which is experienced when work life interferes with family life and FWC states a conflict when family life interferes with work life (Frone, Russell & Cooper, 1992). In organizations where WFC and FWC are experienced and a great deal of time and energy is spent to solve these problems, being unable to use this time and energy for production is considered as a severe problem (Taylor, DelCampo & Blancero, 2009; Westring & Ryan, 2011).

The managements which aim to reduce the levels of WFC and FWC consider the efficient use of leadership approach at the right time and place as a significant tool in increasing their members' satisfaction as well as organizational success (Burke & Greenglass, 1999; Harris, 2004). Among studies in literature done to determine the most efficient and valid leadership style, it is found out that only leader-focused approaches don't recognize the dimension of the exchange quality between two sides.

Leader-Member Exchange (LMX) is a leadership approach which emphasizes the importance of interaction between the sides by Social Exchange Theory (Blau, 1964) and Role Theory (Kahn et al., 1964) among plenty of studies done on leadership (Scandura & Graen, 1984). LMX is explained by the presence of high quality [in-group] exchangebased on mutual trust and respect between the leader and the members or poor quality [out-group] exchange based on legal contracts only (Scandura & Graen, 1984; Kang et al., 2011).

The followers of LMX approach focus on the vertical dyad linkage approach to leadership and the quality of exchange and they suggest that high quality interaction supports attitudes and behaviors encouraging their positive business manners (Dansereau, Graen & Haga, 1975). The prerequisite of building an effective interaction and settling the conflicts easily is that the workers should respect and trust their leaders (Bromiley & Cummings, 1996), their colleagues, managers and organizations and they should feel confident that this positive process will continue (Bauer & Green, 1996).

Organizational Trust (OT) is explained by Trust (Taylor, 1989) Reciprocity Rule (Gouldner, 1960) and Role Theory (Kahn et al., 1964) as a business manner. OT is the beliefs

of workers about the presence of organizational justice, the support of the management (Mishra & Morrissey, 1990; Neves & Caetano, 2006), the fulfillment of their needs and expectations, maintaining inter-organizational social relations as desired and the presence of cooperation as a result of adaptive behaviors based on respect and kindness (Demircan & Ceylan, 2003). The most important gain of the organization with OT perception is that the workers are devoted to their organizations emotionally, they share the objectives and values of the organization and they are always willing to work in that organization (Straiter, 2005; Perry & Mankin, 2007).

In this study how to eliminate the barriers while training knowledgeable members is valued. The target audience of the study is teachers who have a great deal of significant contributions in educational institutions of Turkish Republic which has lately been affected by new economic, political and geopolitical problems, similar to the situation explained above. Therefore, the aim of this study is to determine whether LMX approach focused on effective interaction between leader and members has a direct effect on reducing the level of WFC-FWC, one of the problems leading to negative business manners. Besides, it is also aimed to determine whether OT perception, which reflects the trust of the workers to their organizations, has an indirect effect in the relationship of LMX with WFC-FWC.

2. The Critical Outlook to the Related Literature

The OT perception, which enables the teachers to feel themselves peaceful in their organizations by the help of the efficient LMX that they maintain with their managers, is assumed to be forming a strong barrier regarding WFC and FWC (Karcıoğlu & Kahya, 2011; Erdamar & Demirel, 2014).

The concepts of WFC and FWC which leave the managers in a difficult situation are believed to be significant types of conflict and they may trigger several negative business manners (Netemeyer et al., 1996; Boyar, Maertz Jr. & Pearson, 2005; Turunç & Çelik, 2010; Casper, Harris, Taylor-Bianco & Wayne, 2011). According to some study results, there is a positive relationship between both WFC and FWC and job stress, bornout, intention to leave and inefficiency (Boyar et al., 2005; Efeoğlu, 2006; Turunç & Çelik, 2010) and a negative relationship between life, and job satisfaction and commitment (Cheung & Wong, 2013).

Leaders are proved to have a significant effect on the experiences of workers' family and business lives (Kacmar, Zivnuska & White, 2007; Bass et al., 2008; Casper et al., 2011 Tunçer, 2011). It is suggested that when leaders help the members' efforts to reach their common goals and appreciate them, the high-quality social exchange to be experienced will have positive effects on family and business lives (Major & Lauzun, 2010; Michel et al., 2011; Tummers & Bronkhorst, 2014; Walumbwa, Peterson, Avolio & Hartnell, 2010; Zhang, Wang & Shı, 2012). Bernas and Major (2000) reported a negative relationship between leadership and WFC as a result of his study done on women working 30 hours a week. Workers' OT perceptions on the organization, leader and managers are determined to lead to positive business manners, including high performance.

3. The Methodological Map

A literature study was done assuming LMX quality will affect the prevention methods with WFC and FWC directly and OT perception indirectly, and as a result, the hypotheses and the results of the analysis done by the collected data and the suggestions are presented below.

3.1. The Model of the Study and the Hypotheses

In the study there is a general concept involving two different situations: WFC/FWC. And they are considered as two different dependent variables. WFC and FWC are considered as variables. In this respect, the model of the study designed in accordance with the aim of the study is presented in Figure 1. Besides, to be tested in terms of teaching profession, the results and suggestions gathered in the analyses done by the hypotheses and the gathered data are presented below:

H_1: The LMX of the employees has a significant and negative direct effect on WFC.
H_2: The LMX of the employees has a significant and negative direct effect on FWC.
H_3: There is a mediating role of OT on the effect of LMX to WFC.
H_4: There is a mediating role of OT on the effect of LMX to FWC.

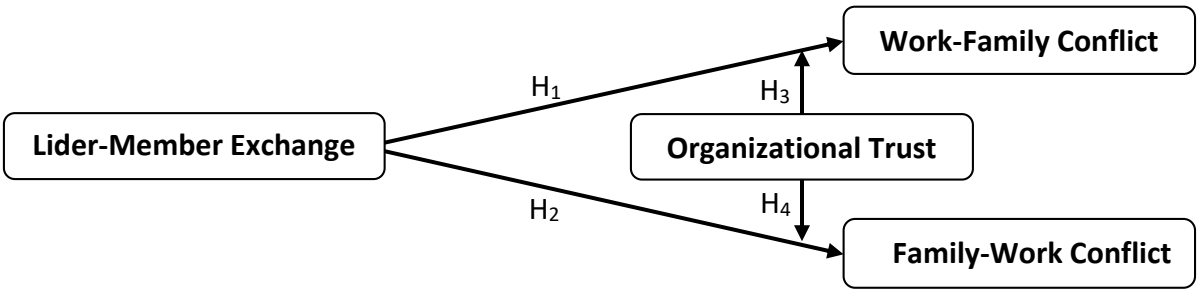

Figure 1: Research Model

3.2. Sample

As the target population of the study aims the teachers in Turkey, financial and control restrictions were taken into consideration and as a result, 13.343 teachers who were teaching in government and private high schools in the city of Ankara according to the statistical data of the Ministry of Education regarding 2015-2016 academic year were determined.

Instead of reaching the whole population, the sample size (α=0.05, H=±0.05 and rates p=0.5; q=0.5) is stated be at least 191. Prepared surveys were handed to 400 teachers and 50 administrators on 7 March 2016 and it was announced that they were to be collected on 21 March 2016. The process of data gathering was completed on 18 May 2016 with 373 people, including the completion of the missing surveys.

According to the participants' demographic features which are offered, the sample size consisting 373 participants who answered the questions is thought to be sufficient. 37.2% of the participants are male, 85.3% of the participants are married, 7.3% are managers, 67.1% have a license degree, 75.1% of them are 40 or under, 53.8% of them have a occupational experience of 1-5 years and 60.7% of them have a job experience of 5 years or less.

3.4. Measures

In the first part of the survey, information is presented regarding the aim of the study and how to fill in the form. In the second part, there are questions regarding the participants' demographic features. In the third part there are statements concerning LMX. In the fourth part there are statements concerning OT and in the fifth and the final part, there are statements concerning WFC/FWC.

Leader-Member Exchange (LMX) Scale, to measure the LMX levels of the participants, LMX7 Scale, prepared by Scandura and Graen (1984) and adapted into Turkish by Özutku,

Ağca and Cevrioğlu (2008) was used. The scale consists of 7 statements each prepared for the leaders and the seniors. The participants determine how much they agree with the statements by the help of a 5 point likert-type scale.

Work-Family Conflict and Family-Work Conflict Scales; WFC/FWC Scales type of scale consisting of 5 statements in each dimension was used to measure the WFC/FWC levels of the participants and it was developed by Netemeyer and his friends (1996) and adapted into Turkish by Efeoğlu (2006).

Organizational Trust Inventory (OTI), OTI was used to measure the levels of the OT perceptions of the participants which was designed by Bromiley and Cummings (1996) and adapted into Turkish by Tüzüncü (2006). This scale consists of 12 phrases. The 7 Likert-type scale used in the study consisted of options ranging from "I do not agree at all=1" to "I certainly agree=7".

3.5. Testing the Validity and Reliability of Scales

To test the validity of the scales used in the study, AMOS 22 software program was used; a single factor analysis was done for the LMX and OT scales and first order confirmatory factor analysis was done for the WFC/FWC scale.

As the adaptive values measured in the models which were prepared to test the validity of the scales weren't in between the acceptable limits, certain modifications suggested by the AMOS 22 were done. As a result of these modifications, the changes made on the scales and adaptive values measured in the models are shown in Table 1.

Table 1. The Adaptive Values of the Scales

Scales	X^2	df	X^2/df	GFI	CFI	RMSEA
LMX	140.055	43	3.257	0.89	0.95	0.080
OT	99.492	34	2.926	0.90	0.91	0.079
WFC/FWC	84.840	34	2.495	0.92	0.95	0.80
Well Adaptive Values*			**≤3**	**≥0.90**	**≥0.97**	**≤0.05**
Acceptable Adaptive Values*			**≤4-5**	**0.89-0.85**	**≥0.95**	**0.06-0.08**

p>0.05

As it may be seen in Table 2, 5 statements were removed from the scales, 3 of which from the LMX scale and 2 of which from the OT scale. As it may be seen in Table 2, as the values are within the acceptable limits, the single dimensional structure of LMX and OT scales and two dimensional structure of WFC/FWC scale are verified.

Table 2. Testing the Validity and Reliability of Scales and Descriptive Statistics

Scales	Items	Removed Items	Cronbach Alfa	Mean	SD
LMX	14	3	**0.87**	3.67	0.83
OT	12	2	**0.79**	**4.24**	1.07
WFC	5	---	**0.91**	3.38	1.11
FWC	5	---	**0.88**	2.48	0.98

p>0.05

The Cronbach's alpha coefficients calculated by SPSS 22 regarding the reliability of the scales are presented in Table 2 (LMX α=0.87; OT α=0.79; WFC α=0.91; FWC α=0.88). When coefficients about the variable scales are analyzed, they were found to be highly trusted and sufficient for this sample. When the average scores of the participants' responses are analyzed, it is found out that the highest average belongs to the scale of OT with 4.24 and the lowest average belongs to the scale of FWC (Table 2).

4. Findings

4.1. Structural Equity Model (SEM)

The SEM formed to test the hypotheses of the study is presented in Figure 2. The adaptive values of the model presented in Figure 2 are shown in Table 4.

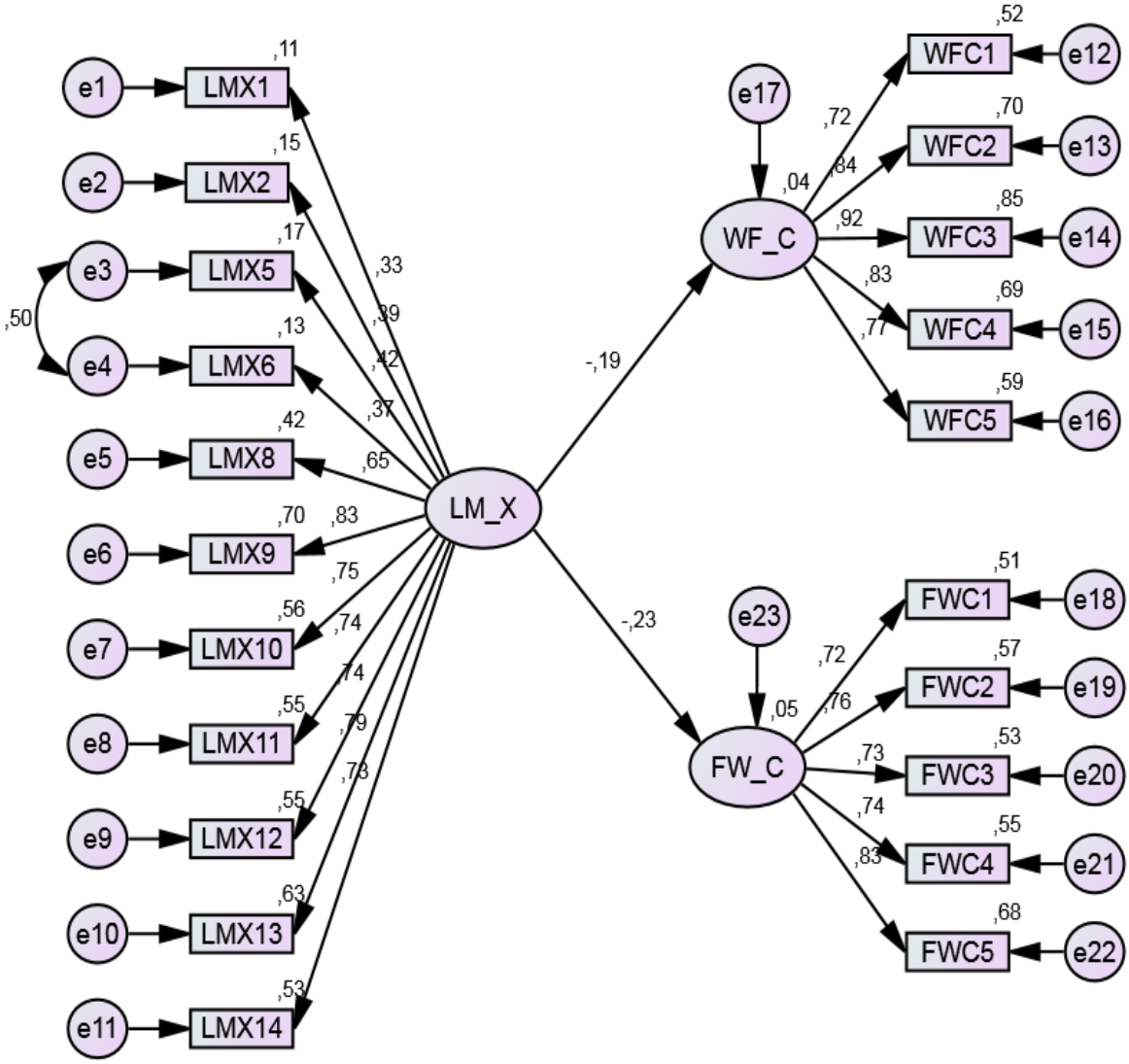

Figure 2. Structural Equity Model

The values in the Table 4 show that the adaptive values of the model formed are within the acceptable limits and that enough evidence was gathered to prove that the model is structurally appropriate.

Table 4. Structural Equity Model Adaptive Values

Scales	X^2	df	X^2/df	GFI	CFI	RMSEA
Adaptive Values	**398.483**	**186**	**2.142**	**0.85**	**0.90**	**0.078**
Well Adaptive Values*			≤3	≥0.90	≥0.97	≤0.05
Acceptable Adaptive Values*			≤4-5	0.89-0.85	≥0.95	0.06-0.08

p>0.05

The standardized β coefficients among the variables according to the designed model, standard error, p and R^2 values are shown in Table 5.

Table 5. Structural Equity Model Coefficients

Scales			Standardized β	Standard Error	p	R^2
LMX	**–**	**WFC**	**-0.19**	0.260	0.034	0.04
LMX	**–**	**FWC**	**-0.23**	0.256	0.015	0.05

p>0.05

LMX affects WFC (β= -0.19; p<0.05) and LMX affects FWC (β= -0.23; p<0.05). According to these findings, the first and the second hypotheses of the study are supported (H_1= +), (H_2= +).

4.4. The test of Mediating Effect with Structural Equity Model

The mediating role of OT in the relationship between LMX and WFC/FWC is tested with a three-stage method introduced by Baron and Kenny (1986). In the first stage suggested by the writers, the effects of the independent variable on the dependent variable are presented (Figure 2). The SEM designed to analyze the second and the third stages is presented in Figure 3.

Tablo 5. The Adaptive Values of the SEM Used to Measure the Mediating Effect

Scales	X^2	df	X^2/df	GFI	CFI	RMSEA
Adaptive Values	**792.530**	**427**	**1.856**	**0.85**	**0.94**	**0.067**
Well Adaptive Values*			≤3	≥0.90	≥0.97	≤0.05
Acceptable Adaptive Values*			≤4-5	0.89-0.85	≥0.95	0.06-0.08

p>0.05

The adaptive values of the model presented in Figure 3 are shown in Table 5. The values in the Table 5 show that the adaptive values of the designed model are within the acceptable limits and enough evidence was gathered to prove that the model is structurally appropriate. According to the SEM, the standardized β coefficients among the variables, standard error and p and R^2 values are shown in Table 6.

Table 6. The SEM Coefficients Used to Measure the Mediating Effect

Scales			Standardized β	Standard Error	p	R^2
LMX	**–**	**OT**	**0.39**	0.506	***	0.15
OT	**–**	**WFC**	**-0.36**	0.063	***	0.14
LMX	**–**	**WFC**	**-0.04**	0.247	0.608	
OT	**–**	**FWC**	**-0.23**	0.057	0.011	0.10

LMX	**–**	**FWC**	**-0.14**	0.249	0.138

p>0.05

In the relationship between the dependent and independent variables, p<0.05 proves that the independent variable has a significant effect on the mediating variable statistically. As Baron and Kenny's (1986) second stage is confirmed, the third stage is tested to determine the mediating effect.

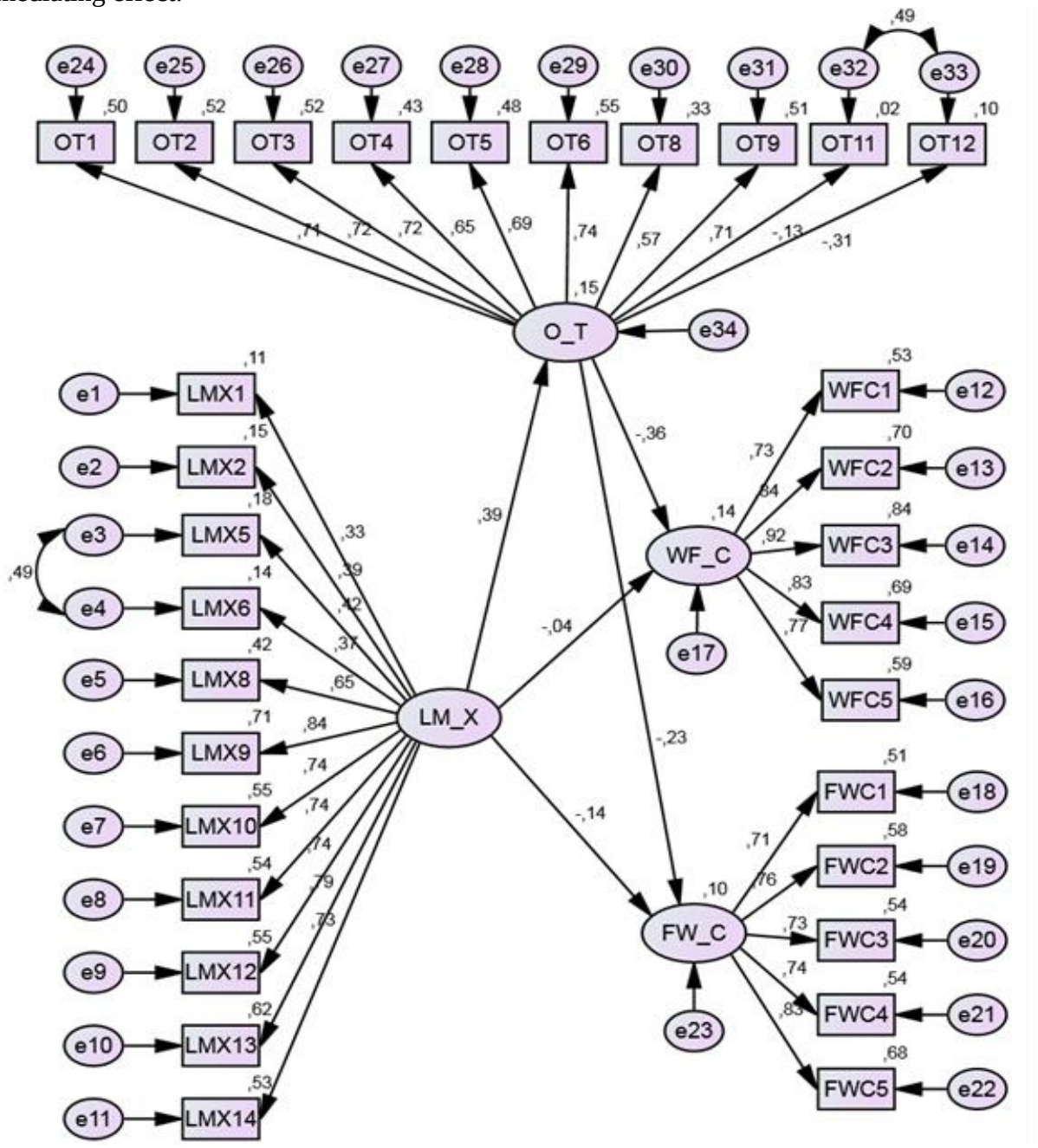

Figure 3. The Structural Equity Model Designed for the Mediating Effect

When the mediating variable (OT) is included in the model, in the relationship of mediating variable and the dependent variable, sub dimensions, p<0.05 and the effects of LMX on WFC/FWC dimensions becoming insignificant shows that there is an entire mediating effect.

In this respect, as Baron and Kenny'nin (1986)'s third stage is completed, the third and the fourth hypotheses of the study are supported ($H_{3=}$ +), (H_4= +).

5. Discussion and Conclusion

In this study the relationship between LMX which is perceived by the teachers and WFC, FWC and OT and their effects are studied. Therefore, an applied research was done on 373 teachers who work in government and private high schools in the city of Ankara and the effects of LMX on WFC and FWC were determined. With this study, findings concerning the problems and the situations the qualified teachers teaching in the modern educational sector face with regarding the mentioned variables have been gathered.

When the results are analyzed, it is determined that the high quality LMX levels to be maintained when teachers' perceiving a close relationship with their leaders has a positive and significant effect on their WFC and FWC levels. Besides, in the relationship between LMX and WFC/FWC, OT is proved to have a negative, indirect relationship. This result is similar to the results of the previous studies (Netemeyer et al., 1996; Boyar et al., 2005; Turunç & Çelik, 2010; Casper et al., 2011). In conclusion, when there is high quality LMX, there is less WFC/FWC and when there is poor quality LMX, OT causes less WFC/FWC (Major & Lauzun, 2010; Michel et al., 2011; Tummers & Bronkhorst, 2014; Walumbwa et al., 2010; Zhang et al., 2012).

Teachers' caring more about their work lives than their family livesand giving priority to their jobs unbalance the roles, cause them to ignore their family lives most of the time and therefore, set the ground for conflicts. This conflict of roles affects the individual's work in time, causing him to get less satisfaction from work and get stressed. In addition, it is inevitable that workers having the significant role and power of organizational success to have more needs and expectations in the light of the innovations and opportunities of modern life. For this reason, raising the LMX quality of the workers is of crucial importance for the prevention of the conflicts and to increase the job performance. It is believed that managers and leaders' paying attention to this issue during their management process will contribute to organizational success.

Moreover, according to the gathered results, it is assumed that when teachers who experience high quality LMX believe that there is justice ongoing in their workplace and when they perceive more OT in their leaders they interact with, their colleagues and management, they will face less negativities. People who spend most of their daily lives in their workplace and work a lot to fulfill their needs have an expectation of a comfortable and safe organization. And OT is the individual gains based on inter-organizational relations and behaviors. The organizations which are affected by the social and economic values in our time are having difficulties in forming OT as much as keeping it at the same level. This dynamic structure of OT concept makes us see it as a fragile and a usually painfully growing fact. For this reason, it would be beneficial to form a high quality OT, certain organizational forms, organizational structures, strategic partnerships, compatible and sensitive teams and an effective crisis management.

In the light of empirical studies and theories, this study is considered to be partially different from the other studies as it was applied in a different culture, a different sector and in terms of research methodology. This study would be useful for future studies as it analyzed hypotheses tests with structural equity model and determined the mediating role of another variable in the relationship of two variables.

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Authorized Capital System Within the Context of Measures to be Taken in Capital Market

Hediye Bahar Sayın

1. Introduction

Capital market is the market in which fund supply and demand are longer than a year, where financial assets are registered with a method defined as securization and purchased-sold, where the funds and this purchase and sale change hands due to supply-demand. Capital market has significant contributions to economy beginning with increasing of savings (Adıgüzel, 2016:3 ff.). For these contributions to be stable, the market has to be in reliance. In maintaining stability and reliability in capital market, it is significantly important to supervize whether market regulating rules have been followed or not. Due to Capital Market Law (CML) and other related legislation, Capital Markets Board (CMB) has been assigned with supervision of activities and transactions of capital market and Board exercises this authority by means of proffessional crew. Board is authorized to take measures related with violations and transactions against legal arrangements determined during the inspections undertaken by professionals (CML art. 91-100). These measures can be separated in various aspects (Memiş/Turan, 2016: 180; Gündoğdu, 2016: 145). In CML, separation is based on the subject of such measure. Within this context, there are also measures takan by CMB also in authorized capital market system.

In the companies subject to authorized capital system, board of directors of company may be authorized to take decisions on subjects such as increasing of capital, presentment of share register above the par, presentment of preferred shares, limiting of shareholders to purchase new shares and limiting of rights of privileged shareholders, exporting of other debiting bonds with the qualification of means of stock and capital market. In order to monitor this wide range of authorization of board of directors, it is possible to file an nullity action. Capital Market Board is given complainant title in this nullity action. Thus, the scope of the individuals with the title of complainant in nullity action is extended and the possibility of decisions of board of directors remained out of legal supervision is minimized and in the capital market, actions in competence with law are considered as basis. Furthermore, the Board also determines methods and principles of getting inside and outside the authorized capital system of publicly held company (CML art. 18/10). Thus, by giving the Board the authority to arrange the related area, the Board is allowed to take protective and preventive measures. In this study, information is given subject to authorized capital system, then within the scope of measures to be taken capital market, measures of nullity suit and getting out of system.

2. Authorized capital System

Authorized capital system is a system that allows increasing the capital representing the totally paid shares of joint stock company, with the condition of being estimated in the main contract, notwithstanding provisions of Turkish Trade Code related with increase of capital, with the decision of board of directors, up to the authorized capital[1] amount defined in trade registry (Moroğlu, 2015: 313). This system is accepted in many legal orders. Authorized capital system is also accepted in Turkish law. This is because the system serves capital increase of joint stock company subject to Turkish Trade Code realizing in competence with competitive and dynamic markets (Tanör, 1999: 197). With the condition of taking permission from Capital Markets Board, all publicly held companies may get benefit from this system (CML art.18). Transition to authorized capital market is arbitrary[2] in principle. For transition to authorized capital market and decancellation of authorized capital cap[3], application should be made to CMB (Authorized capital reg. art. 5,7,8). Not only publicly held companies, but also due to article 332 of 6102

numbered TTC, companies that are not publicly held are eligible to access to authorized capital system[4].

In case a joint stock company accepts authorized capital system, the main capital of company takes the name of issued capital[5], board of directors may issue new shares up to authorized capital amount and increase the capital. Thus, the authorized capital is not the committed or the real capital but the capital indicating the maximum limit which the board of directors may exercise its capital increase authority. For the capital increase in authorized capital system, board of directors does not have to follow the provisions of TTC subject to capital increase (CML art.3/1-b and 18/2). In the authorized capital system amendment of main contract is not necessary for capital increase. In transition to authorized capital increase, amendment of contract is necessary only for increasing of authorized capital cap and getting out of the system. Thus, in the main capital increase, capital increase transaction is realized without following the provisions of TTC. This, composes the basis of the system (Bahtiyar, 2016: 352).

In case the board of directors makes capital increase in a way exceeding the authorized capital cap defined in the main contract, since it violates the non transferable and irrevocable rights of general assembly, decision of board of directors becomes null (TTC art. 391) (Şener, 2015: 547). This measure ensures board of directors to operate within its jurisdiction. Similarly, in case board of directors takes decisions without the necessary assignment of general assembly such as issuing shares exceeding the value, issuing privileged shares, these decisions will also be subject to nullity enforcement. Since it is related with public order, each related party may apply for action for voidance (Bahar Sayın, 2015: 198 ff.). This sanction may be interpreted as a measure foreseen by TTC in companies taking place in authorized capital system.

In article 18/10 of CML, the phrase "for publicly held companies, methods and principles of transition to authorized capital system, getting out of the system are determined by the Board", supervision and arrangement authorities of the Board are underlined. Thus, Capital Markets Board makes active arrangement and supervision in accessing authorized capital system, for the decisions of board of directors during the period in the system and getting out of the system.

3. Arrangement in eCapMB

ECapMB[6] which came into force in 1982, arranged the transferring of some important authorities of general assembly to board of directorss of joint stock company that are subject to authorized capital system (eCapMB art. 12). But despite these authorities granted to board of directors, the law does not include any provisions related with cancellation of decisions of board of directors. This issue is left to general provisions due to article 2 of eCapMB[7].In the previous CapMBL, with the amendment with 3794 numbered Law[8], 4th clause was added to article 12, it was accepted that nullity suit might be raised related with decisions against law (decisions on limiting purchasing of new shares and breaking the equality). Such arrangement has been cancelled by 13.11.1995 date 95/45 Principle and 95/58 Decision of Constitutional Court and then cancelled article was rearranged with 4487 numbered Law[9]. With the new arrangement, it was accepted that against all decisions of board of directors within the scope of this article (issuing shares over privileged and nominal par or decisions limiting the rights of privileged shareholders), members of board of directors, inspectors and shareholders whose rights had been violated might have raise nullity suit within thirty days following the announcement of decision (eCapMB art.12/6)

In art. 46/b of previous CapML, the rights of raising nullity suit and postponing of implementation of decision were granted to CMB against the decisions of capital increase decisions of the companies subject to authorized capital system within the principles defined in

article 12 of the Law. In the Law, eTTC art. 381/1 was referred related with reasons that require nullity of Law (Çamoğlu, 2010: 86).

The issue of getting out or being taken out of system has been arranged with the phrase "Joint stock company may get out of authorized capital system upon permission of the Board and in case they lose necessary qualifications required to be in the system, they may be discharged from the system by the Board" (ecapML art. 10).

4. Measure within the scope of art. 18/6 of CapMBL arrangement

4.1. Generally

Publicly held company and joint stock company that applied to Board for offering their shares to public, may accept authorized capital system with the condition of taking permission of the Board (CapMBL art. 18/1). In the company that adopted authorized capital system, board of directors may be granted the rights of increasing capital (CapMBL art. 18/2);with the condition of having provisions in the main contract, issuing shares over and below nominal par, limiting the shareholders purchasing new shares and limiting the rights of privileged shareholders(CapMBL art. 18/5). Except these situations, with the condition being authorized by the main contract, board of directors may export other debiting bonds with the characteristics of means of bonds and mills market (CapMBL art. 18/9). Thus, in case corporation accepts authorized capital system, general assembly transfers some of important decision authorities to board of directors. For board of directors which is empowered with this authorization not to violate the rights of shareholders and creditors and not to undertake actions that harm the order of market, various measures have to be taken. With the purposes of realization of capital market activities in line with law and maintaining of trust towards market stability, measures to be taken are specially arranged in CapML art. 91-102. In art. 93 of CapML, special arrangement has been brought with title "Measures to be taken in authorized capital system".

In art. 18/6 of CapML, nullity suit is arranged against the decisions of board of directors in publicly held companies which adopt authorized capital system. In this arrangement, the term "*against the decisions of board of directors taken within the principles defined in this article…."* takes place. Due this phrase, nullity suit is only possible against the decisions taken within the scope of CapML art. 18, not against all decisions of board of directors (Bahtiyar: 2014: 49; Türkoğlu Utku, 2016: 239). This determination coincides with the purpose of preventing the locking of activities of board of directors with unnecessary nullity suits lying under the arrangement of nullity of board of directors decisions defined in art. 391 of TTC (Bahar Sayın, 2015: 243). Thus, decisions of board of directors related with increasing of capital, issuing privileged shares, issuing shares over and below nominal pars, limiting of shareholders purchasing new shares and limiting the rights of privileged shareholders, are subject to nullity. For the reasons of nullity reasons, TTC art. 460/5 and CapMBL art. 18/6 and TTC art. 445 related with nullity of decisions of general assembly, are referred. Thus, nullity reasons can be lined up as illegitimacy, irregularity of main contract, breach of good faith, breach of principle of equal treatment (Türkoğlu Utku, 2016: 248).

Members of board of directors and share holders whose rights have been violated, have the title of complainant in the nullity suit within the scope of art. 18/6 of CapMBL. In the art. 93 of CapMBL, special complainant title is granted to Capital Markets Board (Memiş//Turan, 2016: 185). According to related article, Capital Markets Board is authorized to file nullity suit or to demand postponement of implementation of these decisions without assurance before commercial courts of first instance at places of headquarters of joint stock company are located, within the principles defined in art. 18 of CapMBL against the decisions of board of directors

within thirty days following the announcement of decisions. In the justification of article, the reason of authorization is explained with the phrase “measures to be implemented to joint stock company that adopt authorized capital system, are determined”. Due to the risk derived by large authorizations granted to board of directors in authorized capital system, the need of special arrangement is tried to be fulfilled with this provision. Within the scope of measures implemented subject to capital market, the opportunity to monitor the increasing authorizations of board of directors in authorized capital system, is arranged with art.18 of CapMBL and additionally in article 93 of CapMBL within the assignment of arranging and monitoring of markets, CMB is granted with the opportunity to be complainant in nullity suit.

4.2. Necessity of annulability measure in authorized capital system

Transparency in capital markets is one of the most important actors for protection of investors. This transparency is realized with disclosure to public principle. In capital markets, with the purpose of protection of investors, the need of monitoring, arrangement and intervention of independent administrative authorities rises. These authorities are granted to Capital Markets Board in Turkey (Tekil and Turan, 2015: 36 ff.). The reason of existing of authorized capital system in countries which have developed capital markets, it to ease increasing of capital and issuing and sale of new share certificates. Thus, companies may easily meet their equity capital needs in appropriate market conditions (Moroğlu, 2015: 318). In authorized capital system, the authorities granted to board of directors with main contract, are the authorities of general assembly in principle. Decisions of board of directors as result of exercising these authorities have the possibility to threat the rights of shareholders. Against this threat, the possibility of implementing nullity and responsibility suits against members of board of directors are very restricted and it is difficult to protect the rights of shareholders. In case general assembly has the authority to take decisions defined in CapMBL art.18/6, shareholders may participate to decision making process, may vote against the decision and when necessary, may file a suit against the decision of general assembly. Thus, in case these authorities are transferred to board of directors with main contract, there is the necessity to grant additional rights to shareholders in order to protect their rights. As a result, nullity suit is the means of monitoring of authorization granted to board of directors due to authorized capital system (Bahtiyar, 2014: 47; Türkoğlu Utku, 2016: 235 ff.). This issue has to be underlined that, since Capital Markets Board which has a function of monitoring in capital market has to file a suit within thirty days following the announcement of decisions, it is a very slight possibility to make the necessary inspection and to file the suit (Manavgat/Kırca/Şehirali Çelik; 2014: 343). Even so, in terms of companies operating in capital markets, it can be interpreted that, CMB exercising the right to file a nullity suit in terms of company that function in capital market, is an arrangement which serves the purposes of investors making equal transactions in the market, avoiding injustices and operating of the market in equal conditions.

4.3. Issues of Concern in Nullity Suit of CMB

Art. 18/6 of CapMBL only allows for nullity measure. This arrangement should not be interpreted as only nullity suits can be filed against the decisions of board of directors exercising the rights deriving from authorized capital system. Against related decisions, declaratory lawsuit can be filed due to nullity and dearth clauses defined in art. 391 of TTC, as well as these issues may be used for making plea (Moroğlu; 2014: 212 ff.; Manavgat/Kırca /Şehirali Çelik, 2015: 342). In the suits that will be filed by shareholders, the file condition of “decision subject to file should have the characteristics of violating the rights of shareholders” is required while

there is no necessarily for CMB to have even indirect interest in order to file a suit against the decisions of board of directors (Moroğlu, 2015: 398). CMB is granted this right as a precautionary measure and due to art. 93 of CapMBL. CMB may open a new nullity suit based on the same legal reasons with shareholders and members of board of directors. But the purpose of delivering CMB this authority is to realize the legal supervision in case shareholders or members of board of directors file nullity suit (Manavgat/Kırca/Şehirali Çelik, 2014: 343).

Filing an nullity suit is principle does not hinder the implementation of decision of board of directors. Transactions continue unless decision is not taken on suspension of execution. Suspension of execution is allowed with the purpose of decision subject to suit does not cause decrease or totally remove the efficiency of targeted legal protection. Thus, CMB is granted with the authority to demand postponement of execution without assurance while raising a file suit (capMBL art. 93).While announcement date of decision of board of directors is taken as basis for beginning of filing nullity suit, for CMB to file suit, public announcement date of decisions are taken as basis (CapMBL art. 18/6; CapMBL art. 93) (Cenkci, 2015: 427).

Complainant may be asked to present assurance by also presenting the evidences justifying "possible damages" due to corporation nullity suit (TTC art. 448/3). In the nullity suit of CMB, assurance should not be demanded from CMB due to 448/3 provision of TTC. Because CMB files this suit due to authority of arrangement and supervision of capital market granted by law (Cenkci, 2015: 427; Türkoğlu Utku, 2016: 254).

5. Measures within the scope of notice

5.1. Nullity suit

The objective of authorized capital system is to arrange the principles of accessing to authorized capital system, the rules which have to be followed in the system and principles of getting out of the system via CMB (Notice art. 1). Within this scope in the art. 13/1 of Notice, against the decisions taken by board of directors, within the provisions of TTC subject to nullity of decisions of board of directors, members of board of directors or shareholders whose rights have been violated, may file suit at the commercial courts of first instance and the arrangement has been realized in line with the art. 18/6 of CapMBL and even the phrase in the law is unnecessarily repeated in the Notice. In 13/2 of the Notice, according to art. 93 of the Law, it is stated that against the decisions of board of directors, suits may be filed within thirty days following the registry of the decisions to trade registry and thus this arrangement coincides with CapMBL art.93 indicating that suits may be filed within 30 days following the announcement of decisions to public. In the art. 3 of Authorized capital System Notice, it is clearly stated that ground of the Notice is art. 18 of CapMBL. Due to the hierarchy of norms, Notice should not be against Law. The term of litigation in CapMBL begins from the day of announcement and in Notice begins with registration to trade registry.

In the Notice, there is also an arrangement subject to informing CMB related with cases and processes. In case nullity suits have been filed against the decisions of board of directors within the context of this Notice, Board has to be informed about the opening of file, postponement of execution about the decisions of board of directors, within five days following the notification of the court (Source Not. Art. 14) Thus, Board has information even is disputes it is not involved and tries to establish a monitoring over the market.

5.2. Taking out of system

In art. 18/10 of CapMBL, there exists the phrase "CMB determines methods and principles of publicly held company accessing to authorized capital system, their taking out of the system, conditionally capital increase" and CMB is granted with authorities subject to taking out of the system. In the Authorized capital System Notice, it is also arranged that joint stock company open to public lose their conditions for accessing the system in a way they use authorized capital system out of purpose or in a way to abuse partners and other account owners, may be taken out of the system by CMB (Notice art. 10/2). Thus, there are two reasons of removing decision; using the system out of purpose or in an abusing way and losing the eligibility to access the system.

When we evaluate the first reason in the Notice, it is understood that, the behaviors and activities that cause using the system out of purpose or causing abuse are not clearly explained. Since there is not any special arrangement o this subject, it is understood that CMB will be authorized to determine whether a corporation included in the system, uses such system out of purpose or in an abusing way. CMB may initiate this procedure either upon the request of shareholders or ex officio (Türkoğlu Utku, 2016: 145). The corporation losing its eligibility to stay in the system is another reason of removing from the system in the Notice. In art. 18/1 of CapMBL, the conditions of accessing into system are arranged: According to this, publicly held company and companies which apply to CMB for offering their shares to public, may access into system. Thus losing of these specifications may be a reason of removing from the system. In the previous CapMBL, the only reason of removal from the system is the loss of conditions of access while the Notice has added using the system out of purpose and using the system in an abusing manner. Thus, CMB is allowed to take measures in case the system is used out of the purposes.

Upon the removal decision of CMB, the corporation has to undertake a main contract amendment (Notice art. 10/2). About the company which did not make main contract amendment and did not make main contract in line with capital system, CMB may decide administrative penal fee despite removal decision (CapMBL art. 103/1) (Yasin, 2002: 232 ff.)

6. Result

In CapMBL there are several measures for proper and reliable operation of capital markets. One of these measures is nullity and removal arrangement considering authorized capital system. CMB may open nullity suit against the decisions of company within the authorized capital system. In a system where opening of nullity suit against the decisions of board of directors is not accepted, filing nullity suit against the decisions of board of directors exercising the authorities of general assembly and granting CMB the title of complainant, is a proper approach subject to arrangement and monitoring missions and may function as deterrent. Another measure that the Board may take within the system is "removing from the system". The issue is arranged in art.93 of CapMBL. Decision of removing from the system is a significant measure subject to maintaining the order of the system. Removal is clearly defined in art. 10 of the Notice. Thus, company that lose eligibility or abuse the system may be removed from the system by CMB and trust and stability is tried to be reestablished.

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[1] Authorized capital Authorized capital system is a system that allows increasing the capital representing the totally paid shares of companies, with the condition of being estimated in the main contract, notwithstanding provisions of Turkish Trade Code related with increase of capital, with the decision of board of directors, up to the authorized capital amount defined in trade. Authorized capital system Notice art. 2/d (II-18.1) 28862 numbered and 25.12.2013 dated Official Gazette.

[1] In investment trusts accessing to system is obligatory (CapMBL art. 49). For limited trusts authorized capital system is not accepted. In this company structure with less partners increase of capital is easy and classic capital increase principle is maintained (Tekinalp, 2011: 343).

[1] Par determined by board of directors by issuing new shares, composes the authorized capital. Authorized capital is not a capital that is actually brought to corporation, but is the maximum amount board of directors may increase the capial in line with main contract (Bahtiyar, 2016: 349 ff.). Inıtial capital is the minimum capital which is considered mandatory for joint stock company with authorized capital (CapMBL ar. 3/b). Inıtial capitals of companies which intend to access authorized capital system, can not be less than 100.000TL. Par of authorized capital may not exceed five times of paid or initial capital (which is more) (Reg. Cap. Not. Art. 5/4).

[1] In the publicly held company that are not open to public, Notice on Principles of Authorized capital System 19.10.2012 dated and 28446 numbered Official Gazette.

[1] Issued capital defines represents the shares of authorized capital joint stock company which are sold (Reg. Cap. Notice art. 4/b). Issued capital is the concrete amount that increase at every issuing of shares by board of directors of which amount should be brought to corporation (Bahtiyar, 2016: 351).

[1] 2499 numbered 28.07.1981 dated (30.07.1981 dated and 17416 numbered Official Gazette RG). This law was repealed with 06.12.2012 dated and 6362 numbered Capital Market Law (30.12.2012 dated and 28513 numbered Off. Gazette).

[1] In his article subject to this Law, Aytaç, assets that against the new authorities of board of directors in registered system, shareholders and other related parties are not properly protected and even it brings some sort of challenges opportunity of filing nullity suit will be beneficial. (Aytaç, 1986: 263).

[1] Law on Making Amendment in Capital Market Law, Changing of One Article of Banking Law and Repealing of Some Articles of 35 numbered Decree having the Force of Law (03.06.1986 dated and 19126 numbered Off.Gazette).

[1] Law on Making Amendment in Capital Market Law and Changing One article of the Law on Commercial and Industrial Chambers, Trade Chambers, Chambers of Shipping, Commodity Exchanges Law (18.12.1999 dated and 23910 numbered Off. Gazette).

Belıever Transactıons

Yasemin Durak

I- Introduction

The concept of believer transaction isn't a legal institution which was regulated in Turkish Code of Obligations. On the other hand this concept has taken its source from Roman Law and has come until today also by being accepted by doctrine. Therefore sides can do believer transactions provided that it is not contrary to the mandatory rules of the law.

To be distinguished from the collusion cases against law, simulation and pseudonym of the believer transactions which contain the principle of trust has great importance. To be determined of whether that can be had together of both simulation and believer transaction or whether that can be applied against the code which is not suitable by the law to fraudulent way by believer transaction also is required in a legal action. However it also should be noted that the pseudonym leaves its location to indirect representation or believer conveyance institutions no longer in to be earned of immovable property (Gürsoy, Kemal Tahir, Eren, Fikret and Cansel, Erol, 1984, p. 488).

II- The Concept Of Belıever Transactıon

Believer transactions can be made providing it is not contrary to the mandatory provisions of the law in Turkish Law, public order, ethics and rules of good manners, personality rights according to the principle of freedom of contract which is contain in article 19 of the Turkish Code of Obligations although believer transactions aren't take part in the law (Özkaya, 2004, p. 26; Saymen, 1950, p. 180; Feyzioğlu, 1967, p. 165).

Believer transactions which take source from Roman Law was named as "Fiducia". Believer transactions was serving assurance purpose and similar many purposes because real security institution is recognized (Özsunay, 1968, p. 9 – 10). A different aspect from the believer transactions today of the "fiducia" also isn't found. Believer transactions are a legal institution which is regulated only in the Roman Law (Oğuz, 1990, p. 225).

Concept has emerged because of the doctrine and practice because believer transaction institution doesn't take part in the Turkish Code of Obligations. Believer transaction is a legal transaction which is made by being based on relationship of mutual trust between the parties and which give rise to liability of movement that is suitable this agreement when foreseen conditions happen (Kılıçoğlu, 2011, p. 171; Saymen, 1950, p. 179; Feyzioğlu, 1967, p. 163; İnan, 1979, p. 191; Özmen and Özkaya, 1993, p. 439; Öztürk, 1998, p. 44). Believing transfers a right to believed with believer transaction in order to use a certain style and with purpose and in order to give back this right when aim also come true (Eren, 2015 p. 365; Tekinay, Akman, Burcuoğlu and Altop, 1993, p. 415).

To undertake transfer to a third person or person which transferred himself this property when it is necessary and to use according to aim which is appointed between them with transferor this property of the person who win by transfer a real property and also to transfer by relying on that commitment of the believing person has been defined as believer conveyance (Oğuzman, Seliçi and Oktay-Özdemir, 2013, p. 381). However to have been made a formal way of the belief agreement which gives rise to this debt is necessary in order to express provision of the restitution debt. For all that to be possible against clause 2 article 16 in the Land Register Regulations which notifies that it can't be subjected to condition and record which disruptive registration or make void of the requests of the believer conveyance which doesn't lurk behind of the seeming transaction is seemed suspicious (Oğuzman, 1953, p. 659; Ertaş, 2006, p. 291;

Oğuzman and Öz, 2010, p. 113; Reisoğlu, 2011). However sale is made official way via to recognize the right of redemption (Oğuzman and others, 2013, p. 384; Hatemi, Serozan and Arpacı, 1991, p. 617).

The two sides which are called believing and believed exist in believer transactions. Believing is called person who transfers a right or object to a person that trusts as believer. Believed is called person who uses right or object that is transferred as believer as a right of his own, but for his own benefit or without for his own benefit (Özsunay, 1976, p. 99; Tekinay, 1979, p. 365; Tekinay and others, 1993, p. 416 – 417).

Right and object which make believed person gain as believer of the believing person also is qualified as "belief subject" (Özsunay, 1976, p. 99). Believed person may be both real person and legal person in believer transactions. Believer transaction is based on a contract and only is on the carpet in the saving processes.

III- The Legal Qualıty Of The Belıever Transactıon

Any rule of law which bans providing stay within the limits of freedom of contract or which organizes believer transactions absents in the Turkish Law. The concept of believer transaction is indebted its existence to teaching and practice (İnan, 1979, p. 190; Eren, 2015, p. 366; Özsunay, 1968, p. 2 and others.). According to opinion which is accepted generally those which come together to form a whole of the debt-inducing transaction with a saving transaction which shows generally itself in the form of a saving transaction are seen in the believer transactions (Tandoğan, 2010, p. 543 - 546; Özsuay, 1968, p. 85 and others.).

Believer transactions are made with the purpose of hiding the identities of the parties, the purpose of miss goods from creditors, the purpose of avoiding unfavorable provisions of the law, the purpose of the being brought a safer situation of legal actions by being strengthened the legal status of the believed and the purpose of the assurance for credit (Özsuay, 1968, p. 39 and others; Özmen and others., 1993, p. 440 – 441). As a result to be interpreted of the legal action which is made is necessary to understand whether it is on the carpet of a belief contract (BGE 85 II 97=JdT 1960 I 142. Kaneti, 1968, p. 20).

According to the dominant view belief agreement is an independent contract and constitutes the legal reason of the possession transfer and claim right (Eren, 2015, p. 366 – 367; Tandoğan, 2010, p. 546). Belief agreement is a legal transaction which is couple appearance. This agreement on the one hand when it forms the legal reason which formed by the sides and independent, distinctive of the believer transfer in the within the boundaries of the will autonomy on the other hand it determines the debt and obligations of the believed (Eren, 2015, p. 367; Tekinay, 1979, p. 366; Tekinay and others, 1993, p. 417).

Belief agreement forms the legal reason of the transfer to believing again, of believed that right, then when the conditions come true, of the right which transfers of believing to believed. This agreement contains the using shape and obligations this right of the believed. With this aspect belief agreement limits the right of the believed as relative (Özsunay, 1976, p. 115). Believer transactions can be distinguished more easily from simulation if it should be accepted that it forms legal reason which is distinctive of the believer transfer of the belief agreement (Eren, 2015, p. 367).

Belief agreement subjects to shape in the believer transactions which is concerning the transfer of the immovable property with the transfer of claim. Therefore to be made official way in title-deed of the belief agreement is necessary in the believer transactions which is concerning immovable. Belief agreement is proved with written evidence [Eren, 2015, p. 367; Kılıçoğlu, 2011, p. 173. 14. HD. 08.11.1999 T. and E. 7572, K. 7736 (YKD, 2000, 27 (9), p. 1391 – 1392); HGK. 28.12.2005 T. and E. 14–677, K. 774 (YKD, 2006, 32 (3), p. 367 – 369); 24.02.2004 T. and E. 2003/8686, K. 2004/1141 (YKD, 2004, 30 (8), p. 1239 – 1241]. If belief

agreement is between siblings it can be proved with all kinds of evidence (14.3.1989 T. and E. 1474, K. 2661 Karahasan, 1992, p. 220 – 221). Comprising the signature of the those who are party to the contract of the written evidence is necessary and to be organized subject of the contract on the transaction date at the latest [21.11.2001 T. and E. 11449, K. 12572 YKD. 2002, 28 (7), p. 1009 – 1014].

The legal nature of the belief agreement is debatable in the believer transactions. According to an opinion in doctrine (Yavuz, 2007, s. 636) belief agreement is power of attorney contract or it is a power of attorney-like relationship. According to another view belief agreement is a unique to itself contract due to the legal nature. All the same time to be applied by analogy of the provisions of the power of attorney is possible in the extent which is suitable this agreement which is distinctive itself (Eren, 2015, p. 367; Tandoğan, 2010, p. 545; Antalya, 2012, p. 213; İnan, 1979, p. 192; Yung, W., 1959, p. 335). According to another view to create law of the judge also is possible by being based on article 1 Civil Code (Özsunay, 1976, p. 115).

IV- To Compare Wıth Sımulatıon And Pseudonym Of The Belıever Transactıon

A) Simulation and Believer Transaction

Aspects which look like each other and separate of the simulation with believer transaction are found. (Postacıoğlu, 1947, p. 1011 and others; Özsunay, 1968, p. 221 – 222). Sides are agreed with subject of the forming a view against outer in both processes. Person who is passed the right and the property on both believer transaction and simulation again is owner actual power on transferred thing. Internal relationship is established with belief agreement in believer transaction, simulation also is established with simulation agreement in both processes. Another similar side, believed side is under obligation to transfer to subject of belief in believer transactions after the realization of the purpose of belief. There is a commitment which is relating to be used properly to agreement of the belief subject and to give back after come true certain conditions in this place. The same situation also is valid for simulation (Eren, 2015, p. 369; Feyzioğlu, 1967, p. 164; Esener, 1969, p. 112 – 113; Tunçomağ, 1976, p. 321; İnan, 1979, p. 194; Schwarz, 1948, p. 297; Öztürk, 1998, p. 80; Özsunay, 1983, p. 102; Özkaya, 2004, p. 999).

The differences of the simulation with believer transaction (Özsunay, 1968, p. 219 and others; Edege, 1968, p. 565 and others) can be listed in that: Firstly although sides want transfer seriously in believer transaction, they don't want this in the simulation seriously. Secondly believer transactions only may be issue at saving transactions; whereas simulation may be issue at both saving transactions and promissory transactions [Eren, 2015, p. 370. For opinion which isn't to be simulation of the believer transaction vide Tandoğan, 1976, p. 77; Ayan, 2015, p. 183; Ataay, 1981, p. 207 – 208; Tekinay, 1979, p. 364; Aybay, 1975, p. 46 – 47; Feyzioğlu, 1967, p. 163; Tunçomağ, 1976, p. 321; Esener, 1969, p. 112 – 113; İnan, 1979, p. 194 – 195; Potacıoğlu, 1947, p. 1023 – 1025; Tekil, 1980, p. 72 – 73; Erzurumluoğlu, 1977, p. 31; Schwarz, 1948, p. 298; Öztürk, 1998, p. 81 – 82; Kayaoğlu, 1953, p. 101; Sarıgöllü, 1989, p. 678 – 679; Selçuk, 1989, 675 – 676; BGE 85 II 97=Jdt 1960 I 142 (Kaneti, 1968, p. 20 and others); Yung, 1959, p. 333; Özsunay, 1983, p. 103; Özkaya, 2004, p. 1000] There isn't the aim of the deception third persons as in simulation in the believer transactions (Tekinay, 1979, p. 364; Tekinay and others, 1993, p. 416; Sarıgöllü, 1989, p. 678; Selçuk, 1989, p. 676).

Sides may go to way of the making the legal transaction by putting in a third person between for some reasons which are considered valid in the believer transactions. This agreement which is made is valid unlike the simulation (Sarıgöllü, 1989, p. 679).

Another difference also emerges in case of bankruptcy of the person who takes over a thing or right. There isn't the right to remove from the bankruptcy desk, thing which transfers

to the other side of the believing in case of bankruptcy of the believed person, because freehold passes to the other side fully in the believer transaction; believing may make register for desk the right to personal demand only. Real owner of the right can remove goods and right from the bankruptcy desk in case of to be proved against third parties who aren't valid of the transaction in the simulation transactions (Özsunay, 1968, p. 224; Postacıoğlu, 1947, p. 1025; Özsunay, 1983, p. 103).

Finally requests which are concerning retrocession of the believer subject are dependent on 10-year period of limitation on article 145 in Turkish Code of Obligations in the believer transactions when negative declaratory action which will be filed isn't dependent on any period of limitation in order to prove that simulation of the transaction (Özsunay, 1968, p. 225; Postacıoğlu, 1947, p. 1025; Özsunay, 1983, p. 103; Sarıgöllü, 1989, p. 679). As a result believer transactions are valid as a rule, but if it also has a simulation in its own structure transaction in this case invalidity is in question.

B) Pseudonym and Believer Transaction

It also wasn't mentioned pseudonym like believer transaction clearly in the Turkish Code of Obligations. However both doctrine and implementation also has given place to these two institutions which get the source from Roman Law (Ayan, 1984, p. 388).

To may arise as believer transaction of the pseudonym was defended according to some authors who don't accept pseudonym as a legal institution of itself. For example there is pseudonym which emerges in the form of believer transaction in case of to be transfer to (A) when certain conditions come true only and to preserve and to manage himself for more or less a long period according to agreement between them as a person who believes and trusts of the (A) also this immovable, but purchases from (B) a immovable account of the client (A), on her behalf, of the (C) proxy of the (A). Trusted person status (C) has acquired the property of the immovable and he will transfer this property which won to client (A) as a result of the paragraph 1 article 508 Turkish Code of Obligations, when certain conditions come true (Özsunay, 1968, p. 228 and others).

Saving operation which passes to the right with sides of the promissory transaction are the same people in the believer transaction. Realization between the same people of the borrowing transaction with disbursement transaction is necessary in order to can mention from believer transactions (Hatemi, 1976, p. 132; Özdemir, 1994, p. 83; Öztürk, 1998, p. 88). Therefore to emerge of the status of the a pseudonym which bases on believer transaction is impossible (Ayan, 1984, p. 388 – 389).

Pseudonym arises with in side simulation, believer transaction or descriptions of indirect representation in general in the doctrine and application (Yavuz, Nihat, 2000, p. 16; Akipek and Akıntürk, 2009, p. 471. For example on the issue vide Sungurbey, 1978, p. 158). Believed has the owner of the right or goods which takes over from third person in the believer transactions and he gives back goods or right until aim which is decided comes true or time expires. To be transferred to origin holder of a right which is acted in the name of without time is spent of the goods or right which is taken over from third person is necessary in the pseudonym (Özkaya, 2004, p. 1002).

As a result pseudonym is dependent on provisions which are relating to either side of simulation or believer transaction or indirect representation by being taken into consideration features of the concrete case (Yavuz, Nihat, 2000, p. 18; Erdönmez, Güray, 2006, p. 85 and others). Pseudonym gives place to indirect representation or believer conveyance institutions no longer in the to be acquired of immovable property (Gürsoy, Kemal Tahir, Eren, Fikret and Cansel, Erol, 1984, p. 488).

V- The Elements Of The Belıever Transactıon

Essentiality is confidence in the believer transaction. A person transfers the right of possesion or claim to another anyone by basing on a certain time or purpose by being based on this confidence. However there is transfer debt to believing again freehold or claim according to believer agreement of the believed, when time expires or aim comes true (Eren, 2015, p. 368; Aybay and Hatemi, 2010, p. 184.) In this case believer agreement and conveyancing forms basis of believer transaction.

A) Belıever Agreement

Believer agreement is a promissory transaction which includes in conditions of the return to believing, to be managed, to be used by believed of the right which is transferred and expiration causes of the believer transaction, which determines right and debts between believing and believed person [Eren, 2015, p. 366; Özsunay, 1976, p. 114 – 115; Esener, 1969, p. 108; Tunçomağ, 1976, p. 320; İnan, 1979, p. 192; Antalya, 2012, p. 211. 14. HD. 24.03.2006 T. and E. 2005/10174, K. 2006/3443 (YKD, 2006, 32 (6), p. 931 – 932)].

Three functions certain of the belief agreement be found (Özsunay, 1968, p. 121). Firstly belief agreement creates legal reason of believer transfer. In this regard it also can be used expression of the aim agreement instead of belief agreement. Secondly it is determined control and to be used conditions of the belief subject and influence and power on the belief subject, of the believed with belief agreement. Third and finally belief agreement shows the reasons for termination of the believer transaction, refund conditions and legal reason of the transfer again to believing person of the belief subject. To be constructed at the same time with conveyance transaction of the belief agreement isn't necessarily.

B) Conveyance Transactıon

Conveyance transaction is acquisitive transaction due to the nature. Freehold and claim devolves on believed person with conveyancing. This procedure is act of disposal because it provides transfer to believed from believing of the right.

Conveyancing and belief agreement is intertwined situation in the believer transactions. On the one hand conveyance from believing to believed of the belief subject; on the other hand to be limited comparatively with a obligatory agreement of this conveyance forms a wholeness (Özsunay, 1968, p. 85).

Conveyance of the belief subject is constructed appropriately to the normal cycle way, because conveyancing becomes a dispositionar transaction (Eren, 2015, p. 367; Özsunay, 1968, p. 87). According to this to be transferred by transfer of possession of the belief subject is necessary, in case of question conveyance for the purpose of guarantee of the movable thing.

To be found a believer transfer also is possible by delivery of vehicles which supply rights which have on the subject of belief transferee, besides of the transfer of possession. Fiduciary assignments which are made with transactions which replace delivery only for the purpose of guarantee are valid. Fiduciary assignment is valid because the rights which have of the debtor expire on the subject of belief in the remittance of possession by the short hand delivery; however possession without delivery is topic. Normal transfer or endorsement is necessary for transfer of right in the believer transfers of the receivables and commercial papers. (Özsunay, 1976, p. 112).

Believer saving breeds all legal consequences of the normal saving. Believed is in the position true owner or creditor of belief subject. Belief subject includes in wealth of the believed. Believed can make saving which is all kinds of legal on the belief subject. Opinion

which is dominant in the believer savings in the Turkish Law bases on theory of to be acquired exactly of the right. Right on the subject of belief is transferred to believed exactly with believer saving (Özsunay, 1976, p. 114).

Belief subject includes in its desk in case of the bankruptcy of the believed as it might be pursue by enforcement by creditors of the believed because of to be acquired by believed exactly of the right. In this case believing hasn't supersession right. Again right of the action for recovery of property to seized goods on the subject of belief which suffer attachment proceedings by creditor of the believed of the believing isn't possible (Özsunay, 1976, p. 114).

To be acquired by believed of the belief subject may come true in various ways. As believed obtains belief subject from believing directly; he also obtains from a third party (Özsunay, 1976, p. 114).

VI- Termınatıon Of The Belıever Transactıon

A) Reasons For Termınatıon

1- Realization of the Purpose, Lapse of the Projected Time and Resumption of Power of Attorney

Reason of the most natural ending of the believer transaction is actualization of the aim which is wanted to be obtained with this transaction. For example, belief agreement comes true with cession to believing sum which collects of the believed in the transfer of claim in order to collection and believer transaction ends.

Believer transaction also ends at the end of this period because sides predict a certain time in the believer transactions which are made for the purpose of management especially (Özsunay, 1968, p. 185).

Promissory transaction which forms a basis to saving is a attorney agreement often in the usual believer transactions. Therefore all causes which terminate at attorney agreement also come to an end believer transaction. Believing recovers power of attorney always in the usual believer transactions (Özsunay, 1968, p. 187). On the contrary not of the believing only from the believer transactions, but power to withhold power of attorney may be constricted in the cases which also benefit of the third persons.

2- Death of the One of the Parties or Lose One's Legal Capacity

Belief subject devolves to heirs in accordance with rules of the total subrogation in case of death of the believed. The death of the believed terminates believer transaction, since the basic relationship will be a power of attorney or contract of service often in the usual believer transactions. In this case heirs of the believed person are responsible for to return belief subject to believing and to give an account of. To consider a reason for termination requires death of the believed in case of doubt in the usual believer transactions, because the basis of transaction base on trust in the believer transactions. On the other hand believer transaction will continue between believing and heirs of the believed, because belief subject devolves upon heirs of the believed in accordance with the rules of total subrogation in the mixed-believer transactions (Özsunay, 1968, p. 187).

Death of the believing doesn't terminate believer relation in case of doubt. In addition right to claim which for granting of the thing which is belief subject also devolves upon heirs of the believing in accordance with the rules of the total subrogation together with other rights (Özsunay, 1968, p. 188). Explicit or implicit wills which on whether to maintain transaction of the heirs of the believing are important rather than the quality of the job, in the case of death of

the believing person in the believer transactions. If heirs don't want to resume the process, they must end the business of the believed person and they must allege claims which is for to be granted of those which is taken against believed. A believer transaction which gives rise to claim for the benefit of third person doesn't end without being fulfilled this receivable even if believing dies. Believer transaction must end due to nature of the business in case of death of the believed. Believer transaction requires a special trust at believed person, because believed is right owner fully on the belief subject. Whereas believing person doesn't recognize heirs of the believed often. If believing person wants continvation of the believer transaction after death of the believed, he must appoint authorized proxy or a substitution proxy more than one, alone or together. More than one believer proxys have title holder in case of cooperation on belief subject and death of the each one increase the rights of others (Oğuz, 1990, p. 281).

Believer transactions also expire with losing subsequently the operation license of the one of the parties therewithal. Promissory transaction which forms a basis saving is an attorney agreement often in the usual believer transactions. Therefore all the legal reasons which terminate attorney agreement also come to an end believer transactions therewithal (Özsunay, 1968, p. 187).

3- Mutual Termination Agreement

Mutual termination agreement (mutual rescission) is agreement of the parties about to abolish completely debt relationship which exists between the parties (Ayan, 2015, p. 398). Mutual termination agreement is a act of disposal with regard to legal nature. Therefore, having of the power of appointment is necessary on claim which will be eliminated of the payee. Mutual termination agreement is dependent on any shape (Ayan, 2015, p. 398).

Believer agreement also may be terminated according to mutual termination agreement within the framework of the freedom of contract. Believer transactions will disappear as retrospective, because they is an agreement which is sudden exectional.

B) Sunset Provısıons Of The Belıever Transactıon

Debt of restitution belief subject of the believed arise in case of expiration of the relationship of the believer transaction for reasons like realization of the belief aim, payment of debt, passage of certain period. There is need a new legal action, in order to fulfill this debt. This conveyancing comes true with a legal transaction which is suitable for the conveyancing of right like delivery, transfer of claim, endorsement (Özsunay, 1968, p. 188).

To extradite of the believed requires belief subject in case of termination for any reason or discharge of debt of believer transaction. However giving of things which replace of the belief subject also may be possible sometimes (Özsunay, 1968, p. 188 - 189). Refund of the belief subject must be fulfilled in case of nonredemption of a debt or termination for any reason immediately. Civil Code article 944 may implement by analogy in this place (Özsunay, 1968, p. 189).

If believed doesn't fulfill duty of restitution, there isn't real right to claim of the believing about return himself of belief subject. A right to claim which is relating to Law of Obligations which arises from belief agreement only in here of the believing is subject (Özsunay, 1968, p. 189).

To be fulfilled fully of debt or the end as a whole of the relationship requires, in order to can be asked belief subject from believed (Özsunay, 1968, p. 190). This acquisition is considered to be made from a anyone which is entitled to in case of the to be acquired from believed by third parties of the belief subject. According to the acquisition of full right theory this situation arises spontaneously for to take possession of the claim or owner of the believed.

From this point of there isn't to claim from third parties of the believing. In this case believing may be filed a claim for compensation only against believed. On the other hand if third party acted for the purpose of to harm only to believing in this case the right seeking damage against a third party of the believing must be (Özsunay, 1968, p. 190 - 191).

VII- Nullıty Of The Belıef Agreement, Cancellatıon Capabılıty And Absence Of A Valıd Reason

The causes of invalidity belief processes aren't different from the reasons of the invalidation in the Law of Obligations. Therefore belief agreement becomes invalid for reasons like the absence of legal transaction license, to doesn't give the necessary approval of the legal representative, failure to comply with the necessary form requirements, simulation, locandi cause, illegality and immorality and objective impossibility from the beginning of the contract subject (Özsunay, 1968, p. 185 – 186; Aybay and others, 2010, p. 185).

If the belief agreement is disabled with one of the will disabilitys, to mention from cancellation capability is possible. It can be mentioned in a sense from invalidity which is disruptive contingent of the belief agreement, in a sense validity which is deleterious contingent in the case lapse, deception and intimidation, will disabilities which are on the carpet. In this case pending invalidity status is subject. Therefore belief agreement isn't binding for failing, deceived or intimidated party. However pending invalidity status of the belief agreement terminates after failing, deceived or intimidated party learned to be stumbled or duped or eliminating to be scared off in a year if he don't report that it isn't connected with belief agreement other party (Özsunay, 1968, p. 186).

The presence of a valid legal reason is necessary for the validity of the believer saving, because conveyance of right depends on the reason in both movables and immovables. Therefore to be existed deprived from a valid reason of the acquisitive transaction entitles to right to claim believing for return of the agreement subject. If return is not possible, a right to claim which arises from unjust enrichment of the believing person will be (Özsunay, 1968, p. 186 – 187).

VIII- Result

To have an increasing importance of the believer transaction is seen in the legal action day after day. The importance shows itself not only in the field of Law of Obligations but also in the Commercial Law. Especially it is refer applied to believer transactions in the stock companies. Believer transactions can be made for guarantee, collection and similar purposes and they serve to many aims. Again involvement which is with attorney agreement of the believer transactions also is very important with regard to be made determination of the whether to be implemented of the provisions of the attorney agreement to believer transactions.

Because of the specified reasons to be drawn more clearly of the scope of this legal institution requires. This sharpness also is possible to take part in the Turkish Code of Obligations of believer transactions. It isn't given place to believer transactions in the numbered 6098 Turkish Code of Obligations which enters in force on 1 July 2012 despite the controversial case.

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Return From Liquidation (Revival) in Corporations

Diğdem Göç Gürbüz

1. Introduction

With the dissolution of corporation, company goes into liquidation. Legal personality continues to exist until the end of liquidation. The purpose of the company is not to profit anymore, it is to finish liquidation. Authorities of the company's organs are restricted and liquidators follow liquidation proceedings. At this level, even if the company is in liquidation, a decision for the continuation of the company by shareholders might be required for certain reasons. This way company returns from liquidation and its purpose is again to profit. This institution which is named as return from liquidation, is a disappearing company's turning back to business.

Although not present in pTCC (previous Turkish Commercial Code numbered 6762), return from liquidation was recognized and practiced through scholars (Yasaman, 2013; Ansay, 1970; Ansay, 1986; Eriş, 2014; Pulaşlı, 2014; Tekinalp & Poroy& Çamoğlu, 2014; İmregün, 2000; Arslanlı, 1961; Çevik, 1987) and court decisions [11th Civil Chamber's decision dated 28.06.1994, beginning number 470/decision numbere 5602 (Eriş, 2014); 11th Civil Chamber's decision dated 6.07.2000, beginning number 3170/decision number 6471 (Banka ve Ticaret Hukuku Araştırma Enstitüsü, 2000)]. This institution which was accepted by practice was articulated first with the article 548 of Commercial Code numbered 6102 and problem in this matter was solved. Source of this enactment is German § 274 AktG (German Stock Corporation Aktiengesetz) numbered 1965.

In Swiss law, there is no consensus on how to interpret Art. 736 Abs. 2 provision. In a decision of Swiss Federal Court dated 1965 regarding cooperatives, it was ruled that general assembly which has resolved for the dissolution has no authority to revert this later (BGE 91 I 438 ff.). In another decision dated 1997 which was accepted by scholars (Steiger, 1965; Bürgi, 1969; Böckli, 1996; Budliger, 1954), amended its view and accepted that general assembly could revert its resolution of dissolution (BGE 123 III 473 ff.). Federal Court interpreted the Art. 736 Abs. 2 OR provision in accordance with its wording, systematic and purpose, and ruled that dissolution resolved by general assembly could be reverted if distribution of company's assets has not started yet (BGE 123 III 483).

2. Causes of Dissolution in which Return from Liquidation is Possible

According to article 548/1 of TCC (Turkish Code of Commerce numbered 6102), in cases when company dissolves with expiration or general assembly resolution, as long as distribution of company's assets among shareholders has not started, general assembly may resolve for the continuation of the company. According to this provision, return from liquidation can only be resolved in two cases of dissolution. First is the expiration of time promulgated in the articles of association of the company, second is the dissolution with general assembly resolution. Only in these cases return from liquidation is possible through general assembly resolution.

When corporation dissolves due to occurrence of other causes of dissolution, company cannot be revived through return from liquidation resolution of general assembly (Legislative Intent, art.548). For instance according to the code, when company dissolves due to realization of business purpose, realization of business purpose becoming impossible or occurrence of a reason prescribed in articles of association, it's not possible for general assembly to resolve for return from liquidation. Due to restricted enactment of dissolution reasons in TCC art. 548, opportunity to return from liquidation is criticized by scholars (Kendigelen, 2016; Bilge, 2012; Kervankıran, 2015; Yıldırım, 2013).

While in some of the causes for dissolution of corporation, amendment of articles of association is required to prevent dissolution; in others, dissolutions happens with a court ruling. In these cases, general assembly cannot be authorized to halt liquidation proceedings and continue the company (Karaman Coşgun, 2015). In a company which was dissolved by a court ruling, it's not possible for general assembly resolution to supersede court ruling. Whether it's possible for general assembly to resolve for continuation of company by amending articles of association when a dissolution cause prescribed in articles of association happens, which is not counted among causes of dissolution required by TCC art. 548 for general assembly resolution, is discussed among scholars. According to a view, a provision of dissolution in articles of association is an acquired right for shareholders, and thus it's not possible to amend it without unanimity (İmregün, 1989). Another view holds that it's not necessary to be strict about this standard, that resolutions which require unanimity are numerus clausus in code, that requiring unanimity would be legally groundless, that unanimity is not required in realization of purpose or business subject, these becoming impossible and in expiration of time prescribed in articles of associations, that by considering conflicting interests, provision regarding dissolution through general assembly resolution could be applied in comparison and that company could be saved from dissolution through amendment of articles of association with %75 affirmative vote of shareholders or their representatives (Pulaşlı, 2014). Another view asserted in this subject holds that in terms of natural law it should be possible to return from liquidation procedures entered due to occurrence of dissolution reasons prescribed in articles of association or them becoming impossible, that however according to current provisions it's not possible to resolve for return from liquidation in these cases, that even if it's deemed possible %60 affirmative vote of shareholders instead of %75 should suffice for return from liquidation (Bilge, 2012).

What should be discussed here is not return from liquidation, it's the moment of amending articles of association. Because in which cases of dissolution it's possible to return from liquidation is clarified in the code. What matters is when it's possible to amend articles of association. General assembly can continue the company by removing a reason which causes the company to dissolve from articles of association through resolving for amendment. However is the amendment to articles of association, which is sought by general assembly to continue company's business activities, possible before or after company gets into liquidation procedures?

In our opinion, a reason for dissolution prescribed in articles of association can be removed by a general assembly resolution in accordance with the quorum requirements foreseen in TCC art. 421 before company enters into liquidation procedures. However if the dissolution reason prescribed in articles of association occurs, because the company will enter into liquidation (TCC art. 533/1), the cases for a company in this condition to return from liquidation are prescribed numerus clausus in TCC art. 548. According to current legislation, if company dissolves due to a reason other than prescribed, it's not possible for general assembly to continue the company through resolving. In this case, general assembly can only resolve on this matter before the beginning of liquidation procedures. In cases of dissolution by company business subject being realized or being impossible to be realized or dissolution by occurrence of dissolution reasons prescribed in articles of association, until the beginning of liquidation procedures, it's possible to ensure continuation of company by general assembly through amendment of articles of association. As also stated by Karaman Coşgun (2015), this period can be extended to the moment when general assembly approves first inventory and balance sheet at the latest. However if this date passes, company would be entered into liquidation. After entering into liquidation, TCC art. 548 provision should be applied and continuation of company should be possible in cases of dissolution according to the provision.

Enactment that expiration of period prescribed in articles of association is one of the dissolution reasons required for general assembly to resolve for return from liquidation is criticized by scholars (Kendigelen, 2016; Moroğlu, 2016). According to TCC art. 529/1(a), despite expiration of period prescribed in articles of association, it's possible for a corporation to become indefinite through de facto continuation of business activities. Therefore it's asserted that setting out with the assumption that corporation dissolves immediately upon expiration of period creates discrepancy (Kendigelen, 2016). In terms of unclarity in the wording of this article, this is an acceptable criticism. Wording of the article could have been in more detail. Return from liquidation is only possible when company dissolves with expiration of period prescribed in articles of association and when company does not continue de facto operation of business activities. However despite expiration of period prescribed in articles of association, if business activities of company continues de facto, then company does not dissolve, it becomes indefinite and it's not possible to return from liquidation in terms of TCC art. 548/1 for a company that did not dissolve. In case company dissolves due to expiration of period prescribed in articles of association, to be able to resolve for return from liquidation, board of directors should have registered the dissolution of company with such reason at trade registry (Kendigelen, 2016).

3. Moment of Returning from Liquidation

3.1. Distribution of Assets Did not Begin

According to TCC art. 548/1, for the general assembly to resolve for return from liquidation, distribution of company's assets among shareholders shouldn't have begun. After a distribution to shareholders according to their shares begins, it's not possible for general assembly to resolve for return from liquidation. This way as legislative limits the dissolution reasons for a company to be able to return from liquidation, it also limits when a dissolved company can resolve for return from liquidation. This is an outcome of the asset protection principle leading in corporation law, otherwise it would be in a violating nature to rights of third parties (Legislative Intent, art. 548).

Assets of corporation constitutes a guarantee for claims of creditors. As the minimum capital prescribed in the incorporation of company must be brought in to company, after incorporation assets must be protected as well. Creditors of company try to recover their debts from the assets of company, they can't claim against the personal assets of shareholders. In the code there are many enactments for the protection of capital for the benefit of third parties. For instance; minimum capital requirements set by the code, prevention of the issuance of shares below nominal value, regulation of reduction of capital with special provisions, prevention of the distribution of dividends unless there is actual profit. One of these is return from liquidation.

Among scholars, it's asserted that this provision guarantees that protection of assets principle is not bypassed and serves protecting creditors (Spindler & Stilz, 2010). While there is no risk in terms of third party interests before distribution of assets begins, with the beginning of distribution possibility of risk could occur (Riek, 2003). When return from liquidation is applied, as stated above company will be incorporated again as before without being bound by the provisions that serve formation and protection of capital as in incorporation. If it was possible to return from liquidation after distribution of company assets began, because there is no obligation of capital commitment, this would be bypass of incorporation provisions (Riek, 2003).

After company goes into liquidation, first things liquidators would do is to seize company's assets and its records and documents. After invitation by liquidators to creditors of company debts of company must be paid and claims of company must be collected. All these

procedures are not effective to resolving for return from liquidation. All values belonging to company along with assets and liabilities are sold and turned into cash. In other words, even if these procedures ae followed, general assembly of company can resolve for return from liquidation.

In the following stages of liquidation, liquidators must return the share values they paid to shareholders and if there is any balance remaining it must distributed among shareholders as liquidation balance. To be able to resolve for return from liquidation, payment of share values or liquidation balance to shareholders must not have started. The stage of liquidation is irrelevant. At every stage of liquidation, even when all values belonging to company are sold along with assets and liabilities, and turned into cash and made ready for distribution to shareholders, if there is no distribution return from liquidation is possible. Even in a situation like this company may want to attain a new trade name and continue its operations in a different business field. However, because attaining a new trade name and business field require amendments to articles of association, amendment to articles of association is necessary.

In TCC art. 548 it's enacted that after distribution of company assets to shareholders begin, resolving for return from liquidation is not possible. As stated in the legislative intent of the article, term of company assets include both return of share value and distribution of liquidation share to shareholders. If share values are paid to shareholders, but liquidation balance is not paid yet, return from liquidation is not possible. There is no enactment regarding amount of distribution. The fact that an insignificant and meaningless amount of share value or liquidation share payment is made to shareholders would indicate that distribution began and return from liquidation will not be possible after this stage.

Return of deeds paid to shareholders would not enable return from liquidation. If general assembly resolves for return from liquidation nevertheless, then this resolution is void. Whether shareholders, who received liquidation shares, return it or not would change anything (Legislative Intent, art.548). After distribution began, if general assembly resolves for return from liquidation and liquidators (Şener, 2015; Karaman Coşgun, 2015) register this resolution to trade registry, registration would not have a curative effect and general assembly's resolution would not gain validity. In cases when return from liquidation is possible, liquidators do not have any obligation to notify that distribution will start. However if notification obligation is brought by legislation, it'd be appropriate for notification to be made to general assembly or board of directors (Karaman Coşgun, 2015).

3.2. Other Conditions Prescribed by Articles of Association

In TCC art.548/1, it's enacted that other measures for the resolution of return from liquidation could be prescribed by articles of association. It would be appropriate to perceive the concept of "measure" here as "conditions" (Bilge, 2012; Karaman Coşgun, 2015; Kervankıran, 2015; German Companies with Share Capital Law § 274 AktG). In the code it's not clarified what these conditions could be. However provisions which ease the requirements of return from liquidation promulgated by the code couldn't take place in articles of association. For instance it's not possible to prescribe with articles of association a quorum lighter than quorum promulgated in the code for return from liquidation as it's also not possible to permit with articles of association a new reason for return from liquidation which is not promulgated by the code. Provisions on return from liquidation which could be prescribed in articles of association would be in the form of conditions additional to those in the code. Because it would constitute a violation of imperative provisions principle enacted at TCC art.340, articles of association cannot include a provision that completely prohibits return from liquidation (Spindler & Stilz, 2010). On the other hand, in articles of association it's possible to prescribe unanimity

requirement for return from liquidation. However a situation like this would create consequences that complicate or even prohibit return from liquidation (Spindler & Stilz, 2010)

4. Return from Liquidation with General Assembly Resolution

The organ which would resolve for return from liquidation is general assembly. Although those who are effective in liquidation process are liquidators, they don't have the authority to resolve for return from liquidation. Resolution of general assembly is final. With the resolution a new legal position occurs and company goes back to normal course of business. Only legal remedy against the resolution by general assembly is action for annulment.

Resolution of return from liquidation is not an amendment to articles of association. Amendment to articles of association is not required (Legislative Intent, art.548).

4.1. Call for Assembly

The authority of calling for general assembly belongs to liquidators or board of directors (Bilgili & Demirkapı, 2013; Pulaşlı, 2014). Although there is reference to auditors in the legislative intent of provision, in new enactment audit of corporations is carried out by independent auditors and because independent auditors do not have organ status, they don't have the authority to call for general assembly. It should be accepted that expressions about auditors calling for general assembly in legislative intent are overlooked (Kendigelen, 2016).

There is no special provision in the code regarding call method for general assemblies in liquidation phase of company. Therefore general provision must be applied for call method for general assemblies on return from liquidation. Accordingly, as per the call method prescribed in articles of association, announcement is made on company's website and Turkey Trade Registry Gazette at least two weeks prior to assembly. Date of assembly, agenda and gazettes on which announcement is or will be made are notified by sending out certified mail to the shareholders recorded in share ledger and shareholders who gave their addresses to company before (TCC art.414).

Resolution of return from liquidation could be adopted in both ordinary and extra ordinary general assemblies. What matters is that return from liquidation is on agenda in terms of both assemblies. Agenda is set by the authority who calls for assembly (TCC art. 413/1). If return from liquidation will be resolved in ordinary general assembly, agenda topic on this matter takes place in agenda and in relevant invitation. If it will be resolved in extra ordinary general assembly, return from liquidation is the agenda. General assemblies could convene without call. For this, all shareholders or their representatives, if no one has any objection among them, could convene without complying with the procedure foreseen for call and in general assembly convened without call, topics could be added to agenda with unanimity (TCC art.416). Return from liquidation could be discussed and resolved through the topic added to agenda with unanimity in general assembly convened without call.

Because resolution of return from liquidation is not an amendment to articles of association in principle, there is no need for amendment to articles of association. However in case of dissolution by expiration of company's term, amendment to articles of association could be required for return from liquidation. In cases where company dissolves due to not staying in business and expiration of company's term, to be able to return from liquidation articles of association provision regarding company's term must be amended (Kervankıran, 2015).

4.2. Quorum for Assembly and Resolution

For the resolution of return from liquidation, there is a special enactment which asks for qualified majority. Sixty percent of principal capital must be present in assembly and they must vote affirmatively. Otherwise return from liquidation cannot be resolved. Also with articles of association heavier quorums could be prescribed. Shares held by the company itself and its subsidiaries do not count in determining quorum (TCC art.389). Among scholars, deeming sixty percent affirmative vote sufficient for return from liquidation, while seventy five percent affirmative vote is required for dissolution of company, is criticized (Kendigelen, 2016). It's asserted that this is not clarified in legislative intent and that the quorum resolving dissolution of company in general assembly must be the same with the quorum resolving return from liquidation (Kervankıran, 2015).

In general assemblies convened for the resolution of return from liquidation, privileged votes would not be counted (Pulaşlı, 2014; Bilgili & Demirkapı, 2013; Tekinalp, 2015). Cases in which vote privileges cannot be exercised are amendment of articles of association and resolutions regarding release and suing for liability (TCC art.479/3).

5. Nullity of General Assembly Resolutions regarding Return from Liquidation

Regarding non-existence, voidness and annulment of resolutions adopted in general assemblies of corporations, general TCC art.445 ff. provisions apply. Because there is no special provision in the code regarding nullity of general assembly's return from liquidation resolution, conditions stipulated in these general provisions will be applied.

Action for annulment could be filed against resolution of return from liquidation adopted in general assembly, on grounds that it is against laws, articles of association or principles of good faith, in three months from the date it was adopted, by shareholders, board of directors and board of directors members, at the commercial court of first instance where company is registered.

Regarding return from liquidation, general assembly resolutions that do not contain the conditions promulgated in TCC art.548/1 are void. In a company dissolved with a reason other than dissolution reasons allowing for return from liquidation, resolution adopted by general assembly is void. Also resolution of return from liquidation adopted by general assembly after distribution of company assets began is void, the fact that resolution is registered would have no effect. Voidness of resolution of return from liquidation could be asserted by everyone without being limited with time.

In cases that general assembly to resolve for return from liquidation is called by unauthorized person or organs and it adopts a resolution and that general assembly convenes without call and adopts resolution, resolutions adopted do not exist. General assembly resolution adopted with complying with quorum of capital's sixty percent also do not exist (Pulaşlı, 2014; Karaman Coşgun, 2015). For the voidness or non-existence of general assembly resolutions adopted for return from liquidation, type of lawsuit to be filed is declaratory action.

6. Effect of Dividend Payments during Liquidation on Return from Liquidation

Effect of dividend payments during liquidation on resolution of return from liquidation is explained in legislative intent of TCC art.548. Accordingly, if dividends are paid during liquidation, with the condition that resolution to pay dividends is adopted before the dissolution of company, it would not prevent resolving for return from liquidation (Legislative Intent, art.548). Therefore dividends could be paid during liquidation, as resolution of return from liquidation could be adopted. What matters is that resolution to pay dividends is adopted before

liquidation. During liquidation company can do limited things with the purpose of liquidation and liquidation is trying to be completed as soon as possible. Both liquidators' and organs' duties and authorities are limited to the purpose of liquidation. It's not possible for general assembly to resolve for dividend payment at this stage. Such a resolution does not comply with the purpose of liquidation and it also violates asset protection principle (Pulaşlı, 2014). A company which dissolves with a reason specified in TCC art.548, if it adopted a resolution of dividend payments in general assembly before dissolution, this resolution would not prevent resolution of return from liquidation.

Based on resolution of dividend payment adopted before liquidation, dividend payments made during liquidation would not violate asset protection principle. Also dividend payments to shareholders would not mean distribution of assets to shareholders promulgated in TCC art.548. Because resolution of dividend payment is adopted before liquidation, in the amount of dividends to be distributed, claims for shareholders have risen. In cases where general assembly resolves for dividend payment and sets the payment date, dividend claims become due and payable with general assembly's resolution in this respect (Tekinalp & Poroy & Çamoğlu, 2014; Pulaşlı, 2014). Distribution of gains obtained during liquidation as dividend would prevent return from liquidation.

7. Cases when General Assembly Resolution is not Required (Implicit Return from Liquidation)

Derived from TCC art.548/2 provision, another form of return from liquidation happens when company dissolves by going into bankruptcy and bankruptcy is removed later or bankruptcy ends with the application of concordatum. In these cases company shall continue. These cases are deemed to be implicit return from liquidation (Legislative Intent, art.548).

Legislative acknowledges that in a company dissolving through bankruptcy, if bankruptcy is removed, company returns from liquidation without general assembly resolution. However, in this case as well, distribution of company assets must not have started. To the registry transaction which will be carried out by liquidators to trade registry, document indicating that distribution of share values and liquidation shares among shareholders has not started (TCC art.548/3). In case of bankruptcy, authority belongs to bankruptcy management, liquidation procedures are carried out by bankruptcy management. The expressions in the code that registry request in this respect shall be made by liquidators, are inappropriate (Kendigelen, 2016; Moroğlu, 2016; Bilge, 2012; Kervankıran, 2015). After liquidators register the ruling that bankruptcy is removed, announcement must be as well (Bahtiyar, 2015).

Among scholars, while general assembly resolution is required for the return from liquidation of a company dissolving with general assembly resolution, whether general assembly resolution is required or not for a company, which bankrupts with court ruling and this bankruptcy is removed, to return from liquidation. An opinion states that company cannot revert back with removal of bankruptcy or confirmation of concordatum and to achieve this general assembly must be authorized to resolve for the continuation of company (Arslanlı, 1961; Ansay, 1986). Another opinion states that a company that goes into liquidation due to bankruptcy cannot get out of liquidation only with the removal of bankruptcy; although the bankrupt paid all its debts, all of its capital could be lost; that completion of bankruptcy is not the completion of capital; that a balance sheet must be prepared by calculating the real value of assets, according to this balance sheet if it's understood that two out of three of capital is lot, general assembly must be called and resolution of settling with the remaining capital or resolution of consummation must be adopted, if any of these two resolutions could not be adopted then company dissolves (İmregün, 2000). Another opinion states that in case of

removal of bankruptcy without starting liquidation or confirmation of proposed concordatum, dissolved status of company shall end as if it never bankrupted and it continues with its business activities, as this view is based on BEL (Bankruptcy and Enforcement Law) art.182 and it's stated that general assembly resolution is not required because this is a legal consequence of the removal of bankruptcy (Pulaşlı, 2014; Eriş, 2014).

However in TCC art.548/2, it's clearly stated that if bankruptcy is removed or bankruptcy ended with the application of concordatum, company continues. Here bankruptcy of company is based on court ruling and later removal of bankruptcy is again ruled by court. In the code it's enacted that for return from liquidation in this case, general assembly resolution is not required as distinct from other case. What matters is distribution of company assets has not started. However in the stage before going to the court, general assembly could resolve for the status of bankruptcy and concordatum.

8. Registration and Announcement

If company returned from liquidation with general assembly resolution, then this resolution or if it ends with removal of bankruptcy or application of concordatum, then court ruling must be registered and announced by liquidator to the trade registry where company is registered (TCC art.548/1,3). However in bankruptcy, because liquidation procedures are carried out by bankruptcy management not the liquidators, removal of bankruptcy could be registered by bankruptcy management (Kendigelen, 2016; Moroğlu, 2016; Kervankıran, 2015).

Registration for the return from liquidation is of foundational nature (Legislative Intent, art.548). Because company gets out of liquidation with registration, duty of liquidators end.

According to TRR (Trade Registry Regulation) art.88/2, while applying for registration, notarized copy of general assembly resolution regarding return from liquidation and report prepared by liquidator that distribution of company assets among shareholders has not started, must be given to trade registry. Upon request, trade registry head examines the situation and if he deems appropriate registers the general assembly resolution regarding return from liquidation, the trade name from which the expression of "in liquidation" is removed, the necessary changes to persons authorized to represent and bind (TRR art.88/3). If we look closely, this provision regulates the case of return from liquidation with general assembly resolution. Documents to be presented to registry in case of removal of bankruptcy are enacted with TCC art.548/3. While the court ruling of removal of bankruptcy is registered to trade registry, document indicating that distribution of share values and liquidation shares among shareholders has not started, must be attached. This document could be a report prepared by liquidator, or as stated in the legislative intent of provision, other evidence indicating that distribution of share values and liquidation shares among shareholders has not started (Legislative Intent, art.548).

Trade registry head examines whether legal conditions required for registration is present or not (TCC art.32/1). Upon this examination if he deems that conditions are not met, registry request is denied. Those concerned may object to this denial in eight days from date of notification, at the commercial court of first instance where trade registry is (TCC art.34/1). When in doubt, trade registry head may register resolution of return from liquidation temporarily upon request of those concerned (TCC art.32/4). In this case if those concerned do not apply to court in three months or do not prove with other evidence that they have consensus between them, temporary registration is deleted ex officio.

9. Consequences and Effects of Return from Liquidation

General assembly's return from liquidation resolution, amends company's purpose. Company which adopts the "purpose of liquidation" and which is called liquidation company during liquidation, turns from this passive purpose to an active purpose of gaining profit and conducting business activities (Legislative Intent, art. 548).

With corporation going into liquidation, authorities of company organs are restricted to liquidation purpose and company's purpose turns to ending liquidation as soon as possible (TCC art.533/2). Transactions carried out by liquidators as representative of company during liquidation, are valid after company returns from liquidation. Rights and debts derived from these transactions bind company.

With the registration and announcement of return from liquidation resolution, liquidators' rights and authorities to manage and represent the company end. Liquidators must be released by general assembly for the transactions carried out during liquidation.

Because company goes out of liquidation purpose, gets back to purpose of gaining profit, authorities of general assembly and board of directors which were restricted due to liquidation returns in the way prescribed by laws and articles of association before liquidation. As duty and authorities of liquidators end, board of directors members who do not have the capacity of liquidator undertake the duty of representing and managing company again. Even in cases when capacity of liquidator is given to board of directors by law, with registration capacity of liquidator shall end, board of directors or board of directors member shall continue their duties without the need for another transaction. In cases when board of directors' term end during liquidation and new members are not appointed by general assembly, with the registration of return from liquidation resolution, general assembly must appoint the new board of directors as soon as possible.

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Privitization of Turkish Electricty Market

Nur Kaman

Introduction:

The privatization of state enterprises is on the agenda in Turkey which has been implementing liberal economic policies since the 1980s. However, it can be said that privatization practices existed in the pre-1980 period and even in the pre-Republic period. Concession agreements, which are now accepted as a privatization method and are a method of public services being exposed by to private legal persons are also found in the Ottoman Empire. In the first years of the Republic as well, private enterprise has never been rejected, even though statist politics have been pursued because of the coercion of economic conditions.[1].

Legal arrangements for the privatization of public services in the form of monopolies were first made for certain sectors. The first of these is the electricity. Electricity privatization studies have started with the Law No. 3096 dated 1984 on the Assignment of Electricity Generation, Transmission, Distribution and Trading of the Institutions Outside the Turkish Electricity Administration. As of 1994, the Law on Privatization Practices No. 4046, which is the basic law for privatization applications, entered into force.

I. Legal History of Electricity Operations in Turkey

In the Ottoman Empire, electricity service in Turkey was first realized through foreign companies which were given privilege. Until the 1930s during the Republican period, energy activities were carried out by the German, Belgian, Italian and Hungarian companies which had the privileges remaining from the Ottoman period. [2].
Between 1938 and 1944, all concessionary foreign-funded electricity partnerships were nationalized. The first Turkish private electricity company that made the concession agreement was established in 1926.[3,4]

In the Republic period, besides the private sector, mainly the electrical activities were offered by the state in accordance with the public service principles. With the Municipal Law No.1580 dated 1930, municipalities were authorized to establish and operate electricity facilities. Various establishments have been established to provide electricity service in the central administration [5]. By 1953, it was decided that electricity generation, transmission and distribution should be carried out by a central institution. In 1970, the Turkish Electricity Administration (TEK) was established with the Law numbered 1312. Until 1993, all production, distribution and transmission activities were gradually transferred to TEK.[6].

Parallel to the developments in the world, new legal works have been carried out in order to fulfill the electricity services by the private legal persons rather than the state within the framework of the privatization policies which have been on the agenda since the 1980s. In the old concession contracts based on the Law No.1326 (Menafii Umumiyeye Müteallik İmtiyazat Hakkında Kanun) dated 1910, when public law and public service principles are in the forefront, it is now on the agenda that the activity is subject to the provisions of private law and in accordance with free market principles.

The first of the new regulations is the Law on the Assignment of Electricity Generation, Transmission, Distribution and Trading of the Institutions Outside the Turkish Electricity Administration, dated 1984 and numbered 3096. According to the Law No. 3096, domestic and foreign capital companies subject to private law can be assigned with electricity generation, distribution, transmission and trading. In addition, the Council of Ministers has been granted the authority to transfer the operating rights of publicly owned electrical installations to the

private sector. In case of establishing a capital company for the purpose of generating electricity, the Ministry of Energy and Natural Resources may grant permission even without the decision of the Council of Ministers. Contracts to be made within the framework of Law No. 3096 can be up to 99 years. However, Council of State have interpreted the contracts made under the Law No. 3096 as concession contracts and canceled them as they have not been examined by the Council of State.

After the Council of State interpreted the agreements made in accordance with the Law No. 3096 as a concession agreement, it was stated with the amendment made in the Law on Privatization No. 4046 on1994 that the agreements on the energy field were subject to the provisions of private law and would not constitute a privilege. However, this arrangement was canceled by the Constitutional Court this time. In summary, the Constitutional Court stated that electricity is a public service and that private persons can fulfill this service only by means of a concession method.[7] Article 5 of the Law on the Implementation of Some Investments and Enterprises with the Build - Operate - Transfer Model No: 3996 of 1994 has also been canceled by the Constitutional Court due to similar reasons.[8]

On these decisions of the higher judicial bodies, the legislator changed the Constitution in 1999 to preclude court decisions that prevent public services from being carried out under the provisions of private law. With the Paragraph 3 of the 47th Article of the Constitution, privatization has entered into the Constitution. And with Paragraph 4, the power to determine which of the public services can be carried out in accordance with the provisions of the private law was given to the legislator.

"*The principles and procedures relating to the privatization of enterprises and assets owned by the state, public economic enterprises and other public entities are shown by law."*

"Which of the investments and services operated by the state, public economic enterprises and other public entities will be assigned to legal entities or real persons with private law agreements is determined by law."

The amendment made in Article 125 of the Constitution also made it possible to apply for arbitration:

'*In concession, conditions and contracts concerning public services and national or international arbitration may be suggested to settle the disputes arising from them. Only those disputes involving an element of foreignness may be submitted to international arbitration. The acts of the President of the Republic in his/her own'*

II. Privatization Process of Electricity Activities

After the amendments made to the Constitution, the Electricity Market Law No. 4628 entered into force in 2001. The purpose of the Act is set out in Article 1: 'Establishment of a financially strong, stable and transparent electricity energy market that can operate in accordance with the provisions of private law in a competitive environment in order to provide consumers with sufficient, high quality, continuous, low cost and environmentally friendly electricity and the accommodation of an independent regulation and control on the market '. The Energy Market Regulatory Agency (EPDK) was established for the purpose of realizing the legal motives. The same purpose and structure was preserved in the Electricity Market Law No. 6446 dated 2013, which was put into effect later.

In the Law No. 4628, we see that the electrical activities in the vertical integrated structure are divided as production, distribution, transmission, wholesale and retail sales by being subjected to horizontal decomposition. The compulsory condition for operating in the electricity market is to obtain a license from the Energy Market Regulatory Agency [9].

Transmission activity, which is a natural monopoly, is carried out by Turkish Electricity Transmission Company (TEIAS). The transmission license was granted to TEİAS for 49 years by EPDK, effective from 2003. For this reason, there is no privatization related to the transmission activity. The privatization in electricity market is related to production and distribution activities.

1. Privitization of the Distribution Sector

The distribution activity carried out by the Turkish Electricity Authority, which is state monopoly in Turkey, was organized under the name of Turkish Electricity Distribution Company (TEDAŞ) with the decision of the Council of Ministers in 1993. The assignment of the distribution activity, which is the monopoly as network and facility in the region, to the private sector has resulted from the allocation of distribution facilities connected to TEDAS to 21 different regions. In each of these regions distribution companies were established under the status of incorporated companies.

In the privatization of the distribution areas, the Share Sales Model based on the Transfer of Operating Rights has been implemented. According to this model, the investor is the only company with a distribution license in the region where the privatized distribution company is located. However, the distribution facilities to which the investor has inherited the operating rights and the ownership of the obligatory elements in the operation of these facilities will continue to be owned by the Turkish Electricity Distribution Company (TEDAS),which is a public institution. The investor obtains the operating rights of the distribution assets within the framework of the Transfer of Operating Rights Agreement (İHD Agreement) signed with TEDAS. According to the Electricity Market Law No. 4628, distribution sector is operated as regional monopolies by distribution licenses issued by EPDK.[10] By 2013, the first distribution areas were all privatized. [11]

2. Privatization of the Production Sector

In the privatization process, priority is given to the distribution sector. The presence of the state is still maintained in production, but private sector is encouraged for new production plants. The total power of the power generating plants to be privatized is over 16 GW. The total of facilities to be privatized constitutes 68 percent of the installed power of the Electricity Generation Corporation (EÜAŞ) and 39 percent of the installed power in Turkey. [12].

In the electricity generation sector, privatization works are carried out by the Privatization Agency in coordination with the Ministry of Energy and Natural Resources under the Electricity Market Law No. 6446 and the Law No. 4046 on Privatization Practices. In the 10th Development Plan, the share of the private sector which has enhanced its interest in energy investments increased from 41.5 percent at the end of 2006 to 56.6 percent at the end of 2012 in the already installed power and from 51.9 percent to 62.6 percent in the electricity generation. Privatization in the electricity generation sector started with river basins, which have small installed capacity. Within this scope, the tenders for privatization of 9 power plants in 2008, 50 in 2010 and 17 in 2012 were realized. The privatization process in the sector continues with thermal power plant tenders. [13]

The privatization of the thermal power plants with the sale of ownership rights and the hydraulic power plants with the right of transferring the operating rights are envisaged. High-capacity hydraulic power plants are concentrated in the inner and eastern regions of Turkey. The majority of the 18 thermal power plants are located in the western region of Turkey and the largest of them use natural gas. [14]

Conclusion:

Policies supporting the private sector in the Turkish electricity market are ongoing. In order to secure the security of the supply, while the privatization of the state-owned production plants continues, on the other hand, the necessary facilities are provided to the private sector to establish new production facilities. Legal infrastructure and administrative organization required for privatization have been prepared. However, when we look at the application, renewal of the electricity infrastructure, reduction of external dependence on electricity, increase of resource diversity, reduction of loss and leakage rates have not been realized. There has been no decline in consumer benefit at prices considered as a result of the competitive electricity market, either.

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Production Models of Pre-Capitalism and Process of Capitalist Accumulation

Sahin Karabulut

1. Introduction

According to anthropologists, life on Earth is nearly a billion year. However, humankind could have been located in the world in this long-life adventure by nine hundred thousand years. Starting of the adventure of human life on the world has revealed the production models.

In order to keep living, people have variety of needs such as eating, dressing, sheltering and in order to providing these, there are required commodities like food, clothes and shelters. It leads to using physical assets in nature by people to their own needs for living and/or using to them for production.

This is why it is not possible to continue people's existence by stopping production. Some goods may attend in nature and people can meet their needs by using these same goods[*]. However, satisfying all human needs is not possible only through the use of goods that exist in nature. Thus, it must be converted to goods that serve the different needs of its natural resources; this conversion process is called "production"[**]. Of course, it is possible to make production of people single-handed but it is so difficult. Hence, production converts to social production with collaboration.

People use the power they have when the production of goods. Consequently, consumed energy in the production process which means the conversion of natural resources into goods is called "labor". Obtaining labor in any way other than the human force, thus, producing without labor is not possible. That is why; labor is the most essential element in the production.

The combination of the means of production and human labor generates "forces of production" definition. In addition, during the productive activity, means of production can be interchanged when it is necessary due to the fact that production is a social event. In this way, relations between people while producing are called relations of productions. Factors that determine the shape of the relations of production is the ownership of the means of production. If ownership of the means of production belongs to the whole society, that is, the means of production is in the common property position, production is made for the community and produced goods are shared in a way to meeting requirements. In contrast, the ownership of the means of production belongs to specific sectors or individuals, the owners of goods are who have the means of production in the hands of those, despite the fact that workers produce. "Mode of production" that defining as property relations, naturally, depends on the relations between the productive forces and relation of production.

In summary, combination of the labor object and the means of labor gives us means of production and then the inclusion of labor to means of production reveals creates forces of production definition. Mode of production is determined according to the relation between the forces of production and relations of production. In literature, mode of production is gone into division as pre-capitalist and the capitalist mode of production.

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[*] Expressed as to reach the natural resources is called as "primary production". Hunting and gathering, logging, drilling oil are examples of primary production.

[**] Processing and conversion of natural resources to another good is called as "secondary production. Desiccating fish, producing table from wood, converting to gas from oil are examples of secondary production.

2. Production Models of Pre-capitalism

Pre-capitalist modes of production can be classified under three headings: as the primitive production, slaver production and feudal production. Explaining how the process of this mode of production is important to identify the differences with the capitalist mode of production.

2.1. Primitive Mode of Production

People have faced many problems in nature to continue their existence. People, of course, are much more vulnerable against the nature at the ancient time, when compared today's world. The first question that comes to mind regarding this matter is, "If so, how have humanity continued their existence?". This question leads us to the primitive mode of production.

There is no private property in primitive societies because of living together and collectivization. So, there is collective ownership. This means production relations improve with the development of the means of production. With the development of agriculture and livestock farming day by day, some communities specialized in the field of livestock, while others have specialized in agriculture. Efficiency and thus output increased because of specialization in production. Consequently, people, who have surplus property, have begun to interchanging them with the products they need. Along with this decomposition in the Agriculture & Livestock, great sense of social division of labor has emerged for the first time (Nikitin, 1966:32-33). It came to the forefront of personal labor and social labor has deactivated, due to the starting of the specialization and overproduction from people needs. Personal labor also requires that private property because of this abandoned communal property. This event eliminated the ownership equity and it has led to the enrichment of someone's and the impoverishment of others. Because of the increase of wealth and property, the poor persons have been become indebted to the rich and eventually they began to be slaves. Furthermore taken captive by means such as wars have been made slaves and people have begun to exploit each other in ways like these. The emergence of slavery revealed to the slave mode of production.

2.2. Slave Mode of Production

With the losing of validity of the primitive mode of production, slave mode of production, which is actually an undeveloped capitalist model, has started. Slave mode of production, comes one of the most brutal period in human history.

Production means were being made of stone in the primitive production periods; processed metal has begun to using in the slave production period. In this period, because metalworking is not an easy process, crafting has emerged and other social division of labor even occurred. In addition, traders emerged with the using money for exchange of products and thus it created other social division. Made of metal means have led to the development of forces of production. And also increasing the social division of labor has led to the disintegration of society. Accordingly, while someone who keeps the hands of the means of production getting richer; whose do not have anything else on the labor even more impoverished. In addition, costs of dead loans have been slavery which has no right and no control. Slaves, whose have no humanitarian importance of factors outside of work and services, were bought and sold like a commodity, were forced to live under the same conditions with the animals, were tortured or even killed in order to protect the interests of the owners (Nikitin, 1966:35).

For the system, slave mode of production's that there was no legal control over slaves; most problematic aspect has been management. The losing of the war and often experienced

slave rebellion led to the loss of validity of slavery and consequently, a new economic system has emerged.

2.3. Feudal Mode of Production

Economic relations between the regions of the empire have weakened gradually and political crisis has increased by The Roman Empire split into two parts. Landowners, columns and slaves satisfying with the products produced in their location and having a closed economy is the main cause of the weakening of economic relations. Highly development of the column in itself began to prevent the continuance of slavery production and the growth of land ownership led to the extinction of small peasant farms (Zubritsky, Mitorpolsky & Kerov, 1992:144-145). Established new mode of production is feudal production after the slave mode of production fallen into disuse for reasons such as less developing the relations of production in spite of the development of the means of production, growing slave revolts.

Slaves were emancipated in conjunction with the transition to feudal production model but even so they could not completely get their freedom. Because the lands were divided into plots and while giving them ownership to the feudal lords, cultivation was left to the serfs. When compared with slave mode of production and feudal mode of production, there is no right to kill the serfs of the feudal lords, who have land ownership, in feudal mode of production. However, feudal lords have the right to sell serfs with land. Because serfs have to live where they cultivate.

Working time of serfs, who have take a share part from lands product, is divided into two parts as the period of working for the feudal lords who is the owner of the land and the period of working for themselves. Acquiring by the feudal lords of surplus value, which is created by the serfs, was named as “ground rent” and at that time ground rent was collected as, (i) forced labor*, (ii) rent in kind** and (iii) money.

In progress of time, society was split in two classes as "feudal lords" and "peasants" in the process that is dominated by the feudal mode of production. In addition, the system was enlarged especially with the participation of craftsmen and traders living in cities. However, consumer goods diversified and self-enclosed feudal system began to shake because of the development of the city day by day. Because feudal lords demands has shifted to increasingly diversified product and it has emerged to need more money to obtain that products. Although that have reduced to part of ground rent as forced labor and rent in kind, it increased the section of received in money. As constantly finding money to villagers was very difficult at that time, feudal mode of production has accelerated its end and it has emerged capitalist mode of production.

3. Capitalist Mode of Production

The mode of production that’s fundamental production factor is capital, is called capitalist mode of production. Capitalist mode of production has been defined like that by the Mandel (Mandel, 2002:28):

> *“[…] it is a regime in which the means of production have become a monopoly in the hands of a social class and in which the producers, separated from these means of production, are free but are deprived of all means of subsistence and consequently must sell their labor-power to the owners of these means of production in order to subsist.”*

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* Forced labor is the working of the peasants on feudal lords’ land to pay the ground rent.

** Rent in kind is the giving a part of product to feudal lords by the peasants.

Aforementioned capital; can get the forms of money -to get production materials or labor force-, in the physically and narrow sense machine or products and inventories in the processing process (Yakut, 1999:88). Capitalist who constitutes a very small part of society in the capitalist mode of production, is the person who holds capital in his hands. In the capitalist system, capitalist is increasingly richer, others must be poorer. As the capitalist mode of production is a zero-sum game.

The main reason of the emergence and spread of capitalism is "Industrial Revolution". Due to industrial revolution that began in England in the 18th century and spread to other European countries, the machine power has supplanted by the arm strength and high efficiency production model has emerged with the invention of various machines. Although capitalist system started with the industrial revolution, it has undergone a long development process until today. The commercial capitalism, which emerged with the collapse of the feudal system, and the industrial capitalism, which emerged with the Industrial Revolution, can be given as the stages of its development.

With the emergence of commercial capitalism, handcrafts, which gained importance in the feudal era, began losing blood and instead of woolen textiles, especially shipping trade and in the banking sector have emerged the new organization. With losing the importance of craftsmanship, the capital owners purchased craftsmen's workshops and craftsmen had been turned the wage workers around here in time. Production has risen considerably because of the through a combination of the craftsmen to work in these workshops and joint-stock companies have been established because special loans was not enough to be able to sold these products to foreign markets. In addition to these changes in the industry and trade order, large enterprises have taken over the small businesses in the agricultural sector (Yakut, 1999:90).

In the middle of 1700's after the commercial capitalism, the period of industrial capitalism has begun and capital accumulation has come into prominence. The main slogan of Physiocracy "*laissez faire laissez passer*" has created to the basis of industrial capitalism. According to Adam Smith who is the leader of the liberal economics, precious metals are not source of wealth as claimed in Mercantilists during the commercial capitalism, the main source is labor and production therefore enrichment of countries is possible to increase the efficiency of labor. He also argued that labor productivity just can be increased by division labor (Smith, 1776:6-7).

Capitalist mode of production since it emerged, in other words starting nearly 250 years ago from today, has found a comfortable diffusion area and quickly begun to dominate to economic life. According to Mandel, decisive factors in that development are (Mandel, 2002:25-27):

- First characteristic of capitalist system is separation of the producer from his means of production. Accordingly, serfs do not have to sell their labor to continue their lives because they have necessary land to obtain the products to meet their needs, in feudal system. Therefore, capitalism couldn't develop when this is the case. People must work as a wage worker at least a few hours per days or a few months per year for the sake of earn the necessary money for starting the capitalism.
- A second origin and characteristic of the capitalist mode of production is this concentration of the means of production in monopoly form and in the hands of a single social class, the bourgeoisie. This concentration is virtually impossible unless a continual revolution is taking place in the means of production, in which the latter become increasingly complex and more costly, at least so far as the minimum means of production required for launching a big business are concerned. And by virtue of this same fact, the class without capital is

condemned to remain perpetually in the same state of deprivation and consequently under the continuous compulsion to labor for somebody else.

- The third origin and characteristic of capitalism is the appearance of a social class which has no possessions save its own hands and no means of subsistence other than the sale of its labor-power, but at the same time, is free to sell this labor-power and does so to the capitalist owners of the means of production. This is called as the modern proletariat.

Shortly, secret of capitalism is hidden in these three conditions. People who have to continue their lives with the separation of the means of production and labor is the only factor that can create value on its own, have to work at the disposal of the owners of capital who have no different from the self even basic needs. It is also possible with the emergence of the working class referred to in the third condition. In capitalism to enrichment and even monopolized is the most important objectives. This is possible only with a lot more run and run. On the other hand, this fiction is not enough. As in the capitalist mode of production products have to have been bought on the market. This is leads us to "Money – Commodity – Money" cycle. Otherwise it is blockage of the system i.e. crisis.

3.1. Commodity – Money – Commodity Cycle

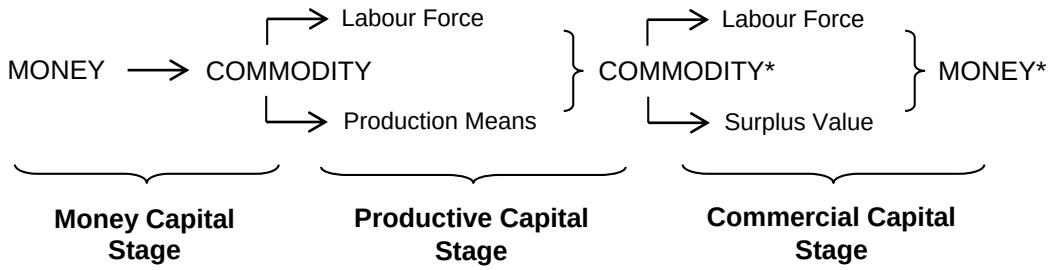
Before pass on to "Money – Commodity – Money" cycle, examination of the "Money – Commodity – Money" cycle is necessary to understanding the integrity of the system operation. A commodity is, in the first place, an object outside us, a thing that by its properties satisfies human wants of some sort or another (Marx, 1887:27). Based on that definition commodity can be used directly to meet human needs apart from this that can also be used for required production to generate capital. If we set aside the general situation of the circulation of commodities, that is the exchange of the various use-values, and consider only the created economic forms by this process of circulation, we reach second section of this cycle: money. Cycle is completed with the conversion of acquired money to the supply of provisions i.e. new commodity (Marx, 1887:104).

In the simple commodity circulation in other words "Commodity – Money – Commodity" process, money is used as money, not as capital. Because existing commodity is converted to money to reach the other commodity towards requirements in beginning and then other commodities are bought with using that money. Briefly here "sell to buy" is main purpose and ultimate aim makes sense in "relations of consumption". This is why, money is used here only as a medium of exchange, i.e., this is not store of value.

3.2. Money – Commodity – Money Cycle

The first and most important value is the capital in order to carrying out the capitalist production process. Capitalist production is based on the separation of producers from the means of production. This separation involves as its most important aspect the forcible expulsion of labor from the land. Once this separation occurs the necessary conditions for capital's birth are present. In the "freeing" of labor from the land, capital is set free by allowing money to be a claim on wealth in general. Once labor is no longer in possession of the means of production, it can only be united with those means of production through the initiative of capital (Weeks, 1985:416-417).

Figure 1: Total Cycle of Capital



Source: (Alçın, 2009:5)

Cycle, which is used as money capital, has a completely different structure, although it seems similar to simple commodity circulation. The main purpose is ensuring the growth of the money (i.e. capital) because the main trend of capital is constantly increasing itself in the form of capitalist production (Ercan, 2005:3). For this, the "buy to sell" is required and the cycle has a meaning in the "relations of production". In “Money – Commodity – Money” cycle, the money in the hands of the capitalist (i.e. the first phase of "money capital") firstly is transformed into a commodity. Capital, which turned into commodity, transforms into a new commodity with using labor and means of production from this commodity. This stage is the "productive capital" stage. Afterwards, money turns into first version with the sale of commodity in the “commercial capital” stage and cycle completes. The money that is obtained at the end of the process must be more than money at the beginning of the process in order to achieve the purpose of the capitalist. Otherwise, capitalist has taken risks uselessly. While a part of the money on hand at the end of the process to accumulate as capital is included into the process, other part of money is used as money due to the medium of exchange feature for obtaining the necessary commodities to meet the needs of the capitalist.

Because "buy to sell" is the main purpose in “Money – Commodity – Money” process, the buyer, as a seller, lays out money in order that recovering more money. By the purchase of his commodity he throws money into circulation, in order to withdraw it again by the sale of the same commodity. He lets the money go, but only with the sly intention of getting it back again. The money, therefore, is not spent, it is merely advanced (Marx, 1887:105). On the contrary, M-C-M does not work smoothly though as capitalist. If commodity on hand cannot be converted to money in the commercial capital phase that is the third and final phase of the capital cycle and if this takes to the form of continuity, the provision of capital accumulation, which is the main purpose of capitalism, becomes impossible. Even aside from the accumulation of capital, capitalism comes inevitably face to face with the "crisis" concept, since this situation means the dissolution of the current capital accumulation.

4. Conclusion

Capitalist system consists of laborer who has nothing wherewithal to meet his needs without in the hands of labor and capital owner who demands this labor. Capitalist performs production process by using the demanded labor from the labor market. While laborer is making production for a fee, he produces in excess of his needs and so surplus value emerges. Capitalist appropriates the emerged surplus value because laborer functions in behalf of capitalist, not on his behalf, and this is the main objective of the capitalist mode of production. Capitalist converts into actual money this sequestrated surplus value, which arises at the end of the manufacturing process, at the market. As a consequence, capitalist meets his needs with using a part of money

in hand as a means of payment and grows by adding to the remaining capital and thus manufacturing process restarts. Such attitude of capitalist is not temporary. He adds a part of money that is obtained from the surplus-value results to his capital and this continuity called as "capital accumulation".

To be able to earn income to capitalist, when he puts upon the market to surplus value, it must be demanded of these products. Well, who demand these products, is there another part outside the labor and capital at capitalist system? Of course, not. The people demanding the goods on the market are still labor owners. Workers give back the fee, which is collected from capitalist, in order to buy goods produced by themselves. This means that the resumption of the production process, demanding more labor by the growing capital and more production. If the process works consistently like this, capitalist economy achieves its objective and there is no problem in terms of capitalism. However, it may not always be able to find buyers for the surplus product in the market due to various reasons such as the inability income, psychological factors, social movements, wars etc. In this case, capitalist, whose sole purpose is gaining profit and keeping going continuously capital accumulation, cannot reach his main objectives and capitalist production process deadlocks.

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Asymmetric Effect of Inflation on the Relative Price Variability in Turkey

Fatma Kolcu, Nebiye Yamak

1. Introduction

In free market economies, the price mechanism plays an important role in the conduct of economic activities. In these economies, market prices are the main indicators which guide the allocation of the economic resources. As predicted by economic theory, disruptions in the function of the price mechanism prevent the efficient allocation of the resources. In periods of high inflation or deflation, the effectiveness of the price mechanism is further weakened and the structure of relative prices in the economy deteriorates. In such an environment, necessary and sufficient information needed by agents for making rational decisions cannot be obtained due to deterioration of the structure of relative prices in the economy. In other words, signaling functionality of relative prices disappears in these periods. Thereby, when inflation leads to changes in relative prices, the efficient allocation of resources is prevented and welfare losses arise.

The relationship between inflation and relative price variability (RPV) bases on theoretically two main approaches. The first approach is the signal extraction model of Lucas (1972, 1973) and Barro (1976). This model predicts a positive effect of unexpected inflation on relative price variability. In other words, unexpected inflation creates relative price variability due to suppliers' misperception about relative and general price variability. The main idea of the signal extraction model is based on the suppliers' inability to distinguish price movements due to relative price and aggregate price changes. In the case of price movements resulting from relative price changes, it is expected that suppliers should respond to new prices. If the price movements are due to aggregate price changes, they should not respond to new prices. The second theoretic approach bases on the costs of price adjustment, the so-called menu costs. The menu cost model developed by Sheshinski and Weiss (1977) predicts a positive link between expected inflation and relative price variability. According to this model, relative price variability arises because of firms' different price adjustment behaviors in respect to timing and frequency.

Theoretical models predicting relation between inflation and relative price variability are broadly supported by a large number of empirical evidences. The studies of Vining and Elwertowski (1976) and Parks (1978) are pioneering studies in this subject. Following the relevant pioneering studies, a large number of works have empirically investigated the relationship between inflation and relative price variability for different economies and periods. The most of empirical studies, including Cukierman (1979), Fischer (1981), Lach and Tsiddon (1992), Domberger (1987), Parsley (1996), Aarstol (1996), Chang and Cheng (2000), Nath (2004) and Banerjee, Mizen, and Russell (2007) found a positive relationship between inflation and relative price variability. On the other hand, a number of studies such as Reinsdorf (1994), Fielding and Mizen (2000), Silver and Ioannidis (2001) and Nejad (2009) supported a significant negative relation between both variables.

Ever since Parks (1978) first noted that relative price variability increases more in periods of price decreases than in periods of price increases, the asymmetric effect of inflation on relative price variability has attracted considerable attention in the literature. At a theoretical level, Ball and Mankiw (1994) outline a model of asymmetric price adjustment in which positive inflation shocks trigger larger price responses than negative inflation shocks. Jaramillo (1999) showed that in the U.S., although the effect of inflation on relative price variability is always positive, the effect is stronger when the inflation rate is below zero. In other words, both positive and negative rates of inflation have positive and significant effects on RPV, but the

effects differ in magnitude. Caglayan and Filiztekin (2003) also found a significant difference between low and high inflationary periods. During low inflationary periods, inflation positively affects relative price variability. However, this relationship disappears during high inflationary periods indicating a nonlinear relationship. Nautz and Scharff (2006) estimated that expected inflation significantly increases RPV if inflation is either very low (below -1.38 % p.a.) or very high (above 5.94 % p.a.). The findings of Fielding and Mizen (2008), Akmal (2011) and Choi and Kim (2010) support the U-shaped relationship between inflation and relative price variability. Also, Choi (2010) demonstrated that the relationship between two variables takes a U-shape for countries and periods with low inflation rates, U-shaped relationship vanishes in a high-inflation environment. Yamak and Erdem (2016) found a time varying U-shaped relationship between inflation and cross-sectional relative price variability in Turkey. Further, Tommasi (1992) and Debelle and Lamont (1996) reported a symmetric V-shaped relationship between inflation and RPV.

Knowing of the existence of asymmetric effect of inflation on RPV will be important for implementing economic policies, because asymmetry requires different policy responses to different inflation shocks. Hence, the purpose of this study is to determine whether the effect of inflation on relative price variability is symmetric or asymmetric in Turkey for the period of 2005:01-2016:04. This paper is structured as follows. After this introduction, section 2 describes the data used in the study and gives the methodology. Section 3 analyzes probable asymmetrical effect of inflation on the relative price variability by presenting empirical findings. Section 4 concludes paper.

2. Data and Methodology

The data used in this study are monthly consumer price index of 12 expenditure groups and cover the period of 2005:01-2016:04. All data come from Turkish Statistical Institute and were seasonally adjusted by using the Census X12 method. Aggregate and sub-aggregate inflation series were defined as the monthly log difference of series. RPV variable was constructed by using the aggregate and sub-aggregate inflation series as follows:

$$RPV_t = \sqrt{\sum_{i=1}^{12} w_i \left(INF_{it} - INF_t \right)^2} \qquad (1)$$

where INF is inflation rate and RPV is relative price variability, *i* and *t* represent expenditure group and time, respectively. In equation (1), $INF_{it} = \ln P_{i,t} - \ln P_{i,t-1}$, $INF_t = \ln P_t - \ln P_{t-1}$, $\ln P_t$ is the logarithm of the consumer price index level at time t , $\ln P_{i,t}$ is the logarithm of the price index level of expenditure group i at time t and w_i is the weight of the expenditure group i in the aggregate index that sums to unity.

The econometric process used in this study is as follows: First of all, stationarity tests were performed to determine whether INF and RPV variables have a unit root. In the study, the augmented Dickey-Fuller (ADF) and Phillips-Perron (PP) test procedures were employed for implementing stationarity tests. Then, effect of inflation on the relative price variability was investigated by decomposing inflation as positive and negative. Cover (1992)'s methodology was used to decompose inflation rates. In this sense, there are two methods which give the same result. The first one is the equations of positive and negative inflation which are formulated as follows:

$$pos_t = \frac{1}{2}\left[\left|\inf_t\right| + \inf_t\right] \quad (2)$$

$$neg_t = -\frac{1}{2}\left[\left|\inf_t\right| - \inf_t\right] \quad (3)$$

In equations (2) and (3), $\inf_t$ refers inflation rate at time t, pos_t and neg_t represent positive inflation rate and negative inflation rate at time t, respectively. The second method takes into account the sign of inflation rate. Accordingly, the series of the positive inflation equals inflation rate if it is positive, otherwise it equals zero. The series of the negative inflation equals inflation rate if it is negative, otherwise it equals zero.

After decomposing inflation, in order to investigate whether the effect of inflation on the relative price variability is symmetric or asymmetric, the following regression equation (4) was constructed.

$$RPV_t = \alpha_0 + \sum_{i=0}^{p} \beta_i^{+} pos_{t-i}^{\inf} + \sum_{i=0}^{q} \beta_i^{-} \left|neg_{t-i}^{\inf}\right| + \varepsilon_t \quad (4)$$

where RPV_t is relative price variability at time t; β_i^{+} and β_i^{-} represent parameters of positive and negative inflation rates, respectively; p and q are optimal lag lengths of positive and negative inflation, respectively; $pos^{\inf}$ is positive inflation, $\left|neg^{\inf}\right|$ is the absolute value of negative inflation, and ε_t is residual of the equation. Optimal lag lengths of the variables in equation (4) were determined by using the Akaike Information Criterion (AIC). Finally, the presence of asymmetrical effect has been tested within the framework of four different hypotheses by using Wald test. The hypotheses are as follows:

First hypothesis tests the joint significance of each of the positive and negative inflation coefficients in equation (4). The null hypotheses are as below:

$$H_0 : \beta_0^{+} = \beta_1^{+} = ... = \beta_n^{+} = 0$$

$$H_0 : \beta_0^{-} = \beta_1^{-} = ... = \beta_n^{-} = 0 \quad (5)$$

If one of the null hypotheses which are proposed for positive and negative inflation is rejected and the other is not rejected, it is concluded that inflation has an asymmetrical effect on the relative price variability. If both null hypotheses are rejected, it is concluded that both positive and negative inflation rates have a statistically significant effect on the relative price variability. Finally, if both null hypotheses are not rejected, it is concluded that both inflation rates have not a statistically significant effect on the relative price variability. In this case, neither the asymmetric nor the symmetric effect can be mentioned.

Second hypothesis tests whether the coefficient of a contemporaneous positive inflation is equal to the coefficient of a contemporaneous negative inflation. Here, the null hypothesis of symmetry is tested against the alternative hypothesis of asymmetry. The null hypothesis is as follows:

$$H_0 : \beta_i^{+} = \beta_i^{-} \quad (6)$$

If the null hypothesis of symmetry is rejected, in other words, if the alternative hypothesis is accepted, it is concluded that inflation has an asymmetrical effect on the relative

price variability. If the null hypothesis is not rejected, it is decided that the effect of inflation on the relative price variability is symmetric.

Third hypothesis tests whether the sum of coefficients on the current and past period values of positive and negative inflation is statistically significant. The null hypotheses are as follows:

$$H_0 : \sum_{i=0}^{n} \beta_{t-i}^{+} = 0$$

$$H_0 : \sum_{i=0}^{n} \beta_{t-i}^{-} = 0 \qquad (7)$$

If one of the null hypotheses is rejected and the other is not rejected, it is concluded that inflation has an asymmetrical effect on the relative price variability. If both null hypotheses are rejected, it is concluded that both positive and negative inflation rates have a statistically significant effect on the relative price variability. If both null hypotheses are not rejected, it is concluded that both inflation rates have not a statistically significant effect on the relative price variability. In this case, neither the asymmetric nor the symmetric effect can be mentioned.

Fourth hypothesis tests whether the sum of coefficients on the current and past period values of the positive inflation equals the sum of coefficients on the current and past period values of the negative inflation. In other words, it investigates that whether cumulative effect of positive inflation equals cumulative effect of negative inflation. The null hypothesis is as follows:

$$H_0 : \sum_{i=0}^{n} \beta_{t-i}^{+} = \sum_{i=0}^{n} \beta_{t-i}^{-} \qquad (8)$$

If the null hypothesis is rejected, it is concluded that inflation has an asymmetrical effect on the relative price variability. If the null hypothesis is not rejected, it is decided that the effect of inflation on the relative price variability is symmetric.

3. Empirical Findings

Before testing whether inflation has an asymmetrical effect on the relative price variability, stationarity tests were performed for each of the relevant variables. The results of Augmented Dickey-Fuller (1979, 1981) test and Phillips Perron (1988) test for inflation rate and relative price variability are presented in Table 1.

Table 1. Unit Root Test Results for INF and RPV

Exogenous	ADF		PP	
	INF	RPV	INF	RPV
Intercept	-5.476234*** (11)	-10.63050***(0)	-10.33853***(10)	-10.61793***(2)
Trend and Intercept	-5.690911***(11)	-11.05777***(0)	-10.37294***(10)	-11.05204***(4)
None	-1.139626 (7)	-0.856435 (9)	-5.229473***(5)	-3.793732***(5)

Note: For ADF test, numbers in parenthesis show the optimal lag length determined according to AIC. For PP test, numbers in parenthesis show the truncation lag determined according to Bartlett Kernel. ***denotes statistical significance level of 1 %.

As seen from Table 1, the calculated ADF and PP test statistics reject the null hypothesis which implies the presence of the unit root in inflation rate and RPV at the 1 % level, except in none form for ADF. For both variables, the absolute values of the calculated ADF and PP test statistics are greater than the critical value. According to results of ADF test, INF and RPV variables are not stationary in their levels in none form. But, in examining the graphics of the relevant variables, it is seen that these variables certainly contain an intercept. Therefore, it has been accepted that the INF and RPV variables are stationary in their levels. Thus, both series were used in their levels in following analysis.

After determining stationarity properties of the series, aggregate inflation rate was decomposed as positive and negative inflation rate. Positive inflation and negative inflation series were constructed by utilizing Cover (1992)'s methodology: The series of the positive inflation equals inflation rate if it is positive, otherwise it equals zero. The series of the negative inflation equals inflation rate if it is negative, otherwise it equals zero.

In order to determine optimal lag length for equation (4) that was constructed to test probable asymmetric effect of inflation on RPV, maximum lag length has been chosen as twelve because the data used in this study are monthly. The optimal lag length was selected by utilizing AIC. Equation (4) was estimated from first lag length to twelfth lag length and results are presented in Table 2. According to Lagrange Multiplier (LM) statistics for serial correlation, the null hypothesis of no residual serial correlation was not rejected for all lag length. It was determined that optimal lag length is seven because the smallest AIC value is computed for the seventh lag.

Table 2. Statistics for Selection the Lag Length

p	AIC	χ^2	Prob. Value of χ^2
1	-7.7233	0.6260	0.4288
2	-7.6953	0.6490	0.7229
3	-7.6602	0.7398	0.8638
4	-7.6829	0.8444	0.9324
5	-7.6584	3.1261	0.6806
6	-7.6291	4.5159	0.6072
7	**-7.7717**	**3.3791**	**0.8479**
8	-7.7518	4.2452	0.8343
9	-7.7382	7.9942	0.5347
10	-7.7090	11.4799	0.3214
11	-7.7146	13.0767	0.2883
12	-7.6988	17.0532	0.1476

Note: p and χ^2 denote lag length and Breusch-Godfrey Serial Correlation Lagrange Multiplier tests statistics, respectively.

After determining optimal lag length, regression equation (4) was estimated to test the possible asymmetric effect of the inflation on the relative price variability. The results of the estimated regression equation (4) are given in Table 3.

Table 3. Estimation Results of Regression Equation (4)

VARIABLE	Coefficient	t-Statistic
C	0.0062	3.1271***
$pos_t^{\inf}$	0.5068	5.0910***
$pos_{t-1}^{\inf}$	-0.0815	-0.8041
$pos_{t-2}^{\inf}$	0.0190	0.1870
$pos_{t-3}^{\inf}$	0.0070	0.0696
$pos_{t-4}^{\inf}$	-0.0306	-0.3041
$pos_{t-5}^{\inf}$	-0.0286	-0.2847
$pos_{t-6}^{\inf}$	-0.0640	-0.6346
$pos_{t-7}^{\inf}$	0.0078	0.0788
$neg_t^{\inf}$	2.2350	4.3160***
$neg_{t-1}^{\inf}$	0.4915	0.9377
$neg_{t-2}^{\inf}$	-0.4616	-0.8651
$neg_{t-3}^{\inf}$	0.1950	0.3192
$neg_{t-4}^{\inf}$	1.7137	2.7884***
$neg_{t-5}^{\inf}$	0.6841	1.1124
$neg_{t-6}^{\inf}$	-0.1815	-0.2972
$neg_{t-7}^{\inf}$	0.6894	1.1379
R^2=0.3307	F=3.4282***	$LM_{(1)}$=0.3715 $LM_{(6)}$=3.2953 $LM_{(12)}$=16.2142

Note: ***denotes statistical significance level of 1 %.

Based on estimation results in Table 3, hypotheses which have been purposed to test asymmetric effect of inflation on the relative price variability and the results of Wald test for these hypotheses are given in Table 4.

Table 4. Results of Wald Test

NO	HYPOTHESES		χ^2 - Statistic	Reject /Accept
1	$pos^{\inf} = 0$	$H_0 : \beta_i^+ = 0$	27.7952***	Reject
	$neg^{\inf} = 0$	$H_0 : \beta_i^- = 0$	31.9496***	Reject
2	$pos^{\inf} = neg^{\inf}$	$H_0 : \beta_i^+ = \beta_i^-$	26.7768***	Reject
3	$sumpos^{\inf} = 0$	$H_0 : \sum_{i=0}^{n} \beta_{t-i}^+ = 0$	1.5699	Accept
	$sumneg^{\inf} = 0$	$H_0 : \sum_{i=0}^{n} \beta_{t-i}^- = 0$	11.9315***	Reject
4	$sumpos^{\inf} = sumneg^{\inf}$	$H_0 : \sum_{i=0}^{n} \beta_{t-i}^+ = \sum_{i=0}^{n} \beta_{t-i}^-$	11.1583***	Reject

Note: $sumpos^{\inf}$ and $sumneg^{\inf}$ denote the sum of positive and negative inflation coefficients in equation (4), respectively. ***denotes statistical significance level of 1 %.

As shown in Table 4, the results of Wald test for hypothesis (1) show that both null hypotheses are rejected at the 1 % significance level. For both null hypotheses the calculated χ^2-statistics are greater than the critical value. This means that both positive and negative inflation rates have a statistically significant effect on the relative price variability.

According to the result of Wald test for hypothesis (2) that measures contemporaneous effect, the null hypothesis of symmetry is rejected at the 1 % significance level. The rejection of the null hypothesis means that the effect of inflation on the relative price variability is not symmetric. In other words, the effect is asymmetric.

According to the results of Wald test for hypothesis (3), the null hypothesis which implies the sum of coefficients on the current and past period values of the negative inflation has not a statistically significant effect on the relative price variability is rejected at the 1 % significance level. On the other hand, the null hypothesis for insignificance of cumulative effect of positive inflation cannot be rejected. These findings mean that while the cumulative effect of negative inflation on the relative price variability is statistically significant, that of positive inflation is not statistically significant. These results indicate that inflation has an asymmetrical effect on the relative price variability in the case of Turkey.

Finally, according to the results of Wald test for hypothesis (4), the null hypothesis which implies the sum of coefficients on the current and past period values of the positive inflation equals the sum of coefficients on the current and past period values of the negative inflation is rejected at the 1 % significance level. This finding indicates that the cumulative effect of positive inflation is not equal to the cumulative effect of negative inflation. This result implies that inflation has an asymmetrical effect on the relative price variability.

4. Conclusion

There is a growing unanimity that inflation has real effects on the economy through its impact on the relative price variability. Therefore, the relationship between inflation rate and relative price variability has recently attracted considerable interest. Most of empirical studies have found a statistically significant and positive association between two variables. Empirical results implying the existence of the relationship between two variables have also come up the question of whether the effect of inflation on relative price variability is asymmetric. The purpose of this study is to determine whether the effect of inflation on the relative price variability is symmetric or asymmetric in Turkey. In other words, this paper addresses two questions: Do price decreases have any effect on RPV? , Is this effect the same as the effect of price increases if price decreases have any effect on RPV?

The data used in this study are monthly and cover 12 expenditure groups for the period of January 2005-April 2016. Within relative price variability equation that contains both price increases and decreases as separate explanatory variables, whether inflation has an asymmetrical effect on the relative price variability has been tested within the framework of four different hypotheses. Empirical results indicate that the effect of inflation on relative price variability is not symmetric. Namely, the effects of positive and negative inflation on the relative price variability are asymmetric over time. While positive and negative rates affect differently relative price variability in some lags, those affect similarly in some lags. On the other hand, while the cumulative effect of negative inflation on the relative price variability is statistically significant, the cumulative effect of positive inflation is not statistically significant. Finally, the cumulative effect of positive inflation is not equal to the cumulative effect of negative inflation. Consequently, all of these results imply that inflation has an asymmetrical effect on the relative price variability for the case of Turkey.

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Constructing the Idea of Neighbourhood Shopping in Themed Environments: The Case of Themed Indoor Markets

Gizem Sazan, Feray Unlu

1. Introduction

Themed environments are continuously being integrated to our daily lives. The idea of theming may be used for touristic, economical, political and cultural purposes. Shopping environments hold an important place in daily life practices and it is possible to observe that different design approaches are being employed to attract more people, which include theming. Theming can be considered as one of the ways to include fun and fantasy in shopping environments. Themed indoor marketplaces can be understood as a representative of this. In this study, it is aimed to discuss the construction of outdoor marketplaces and the idea of neighbourhood in themed environments.

Urbanization in Ankara introduced new practices to the daily lives of people, which include large shopping malls and indoor marketplaces. The idea of neighbourhood in Ankara is gradually being lost specifically outside its center area. The shops used to be separate and included the outdoors market, the bakery, the greengrocer, the butcher and more. It is possible to see the fading of this street shopping culture in the process of urbanization, and it is being replaced with indoor marketplaces. Some of these indoor marketplaces reconstruct the idea of neighbourhood shopping through theming. Two marketplaces from Ankara, Marketplace of Kentpark Shopping Mall and the Marketplace of Yaşamkent Beğendik are selected in this study to exemplify this situation.

In Turkey, imitative approaches to design are being applied to contemporary everyday spaces. It is important to question the relevance of meta-narratives, which imitates historical fragments, in contemporary environments.

1.1. Theme and Consumption

The idea of theming is often understood in the context of theme parks, however themed environments are continuously being integrated more to our daily lives. The themed environments people experience include a wide variety of restaurants, hotels, shopping places and so on. Theming can be understood as "single motif according to which the interior and exterior of an organization's physical structure are executed" (Sallaz, 2012, p. 108). Fırat and Ulusoy (2009) define thematization as "the patterning of space, activity or event to symbolize experiences and/or senses from a special or a specific past, present, or future place, activity or event as currently imagined" (p.777). Bryman (2004) explains the process of theming as the following; "Theming consists of the application of a narrative to institutions of locations. Typically, the source of the theme is external to the institution or object to which it is applied" (p. 15).

Beardsworth and Bryman (1999) classifies theming in to four different categories: reliquary theming, which uses the display of precious artefacts to create an entertaining and appealing setting; parodic theming, where the ambience is created through the use of fake artefacts and decorative devices; ethnic theming, which use ethnic art, décor, music, external façade, name and various stereotyped signals that claims to be a reflection of an exotic but recognizable culture; and reflexive theming, where the corporate décor, logos and architectural motifs become the theming devices in themselves.

Gottdiener (2001) explains that themed environments can be understood as the material product of two social processes. Firstly, they can be viewed as "large material forms that are

socially constructed which serve as containers for human interaction" (Gottdiener, 2001, p. 4) and secondly, they are "products of a cultural production process that seeks to use constructed spaces as symbols" (Gottdiener, 2001, p. 5), therefore they convey meaning to people.

The concept of theming can be discussed in relation to the term "disneyization" which is defined as "the process by which the principles of the Disney theme parks are coming to dominate more and more sectors of American society as well as the rest of the world" (Bryman, 2004, p. 1). It is possible to observe the integration of theming principles of Disney theme parks with everyday spaces, which is closely related to the culture of consumption.

Theming can be understood as an important marketing strategy, which offers the element of entertainment in routine activities such as shopping. Hannigan (1998) uses the term "shopertainment" to explain the convergence of retail and entertainment activities. It is possible to state that adding a certain amount of entertainment through theming offers a different type of experience to the consumers, which may result in making an activity or space more attractive. McGoun et al. (2003) define themed environments a "place for the entertainment of its visitors in which everything has been designed to tell a story in which the visitor is encouraged to play a part" (p. 647). Therefore, themed environments allow consumers to be actors in a narrative in whichever activity they perform.

Gottdiener (2001) states, "Whether people live in the central city or suburbs, themed experiences increasingly characterize their daily life" (p. 3). According to Beardsworth and Bryman (1999, p. 244), "here are tremendous advantages associated with the use of certain powerful meta-narratives". They also add that theming has been conceptualized as a marketing device. Bryman (2004) explains that we live in an experience economy where consumers seek out services along with entertainment. He explains the relationship between theming and entertainment as the following:

> Theming provides a veneer meaning an symbolism to the objects to which it is applied. It is meant to give them a meaning that transcends or at least is in addition to what they actually are. In infusing objects with meaning through theming, they are deemed to be more attractive and interesting than they would otherwise be (Bryman, 2004, p. 15).

According to Lang (1987) consumption can be understood as a symbol. Theme of the design can be considered more successful if the design conveys meaning by transforming consumer demands into symbols. Commodities provide the richness and circulation of economy. Furthermore, they serve economical and cultural purposes (Fiske, 1999). Accordingly, the economical purpose of themed shopping environments is to offer shopping needs. Their cultural purpose is associated with meanings and values. All commodities can generate meanings of individuality; social identity; and social relations by consumers. The relationship between the design of the themed shopping environments and consumption may evolve through the symbolic meanings that consumer goods carry. Therefore, the differences in the design of the space offer different types of interactions with its users.

In the configuration of themed shopping environments, one of the main design factors is the consumer. Therefore, the elements constructing popular culture can be understood to have an important role in the design process. Accordingly, themed shopping environments may need to offer popular narratives to become a part of the popular culture.

According to Bourdieu (1984), a popular text is defined as a tool that provides a selection of culture, class and the class differences and the positioning of these choices within the universal aesthetic or universal acceptance values and hide the social nature of them. In other words, commodities, which are formed by the culture industry and transformed into popular culture, are those that are not controlled and disciplined (Fiske, 1999). People generate popular culture in the common ground of everyday life and the products of culture industries.

According to Certeau (1984), popular culture is the art of handling things produced by the system. Even though the truth of the system has cultural and material gains that cannot be understood as material consumption cycle as 'single type materialized cycle' (Fiske 1999).

Visual satisfaction, which is achieved through visual effects in the design of the space, can be explained through aesthetics that reflect formal and symbolic values. Values, which provoke thought, that can be interpreted and discussed, can aesthetically attract people by the affect it creates. To understand symbolic aesthetics, social factors and positive or negative reactions to symbolic meanings should also be evaluated. Aesthetic approach can be defined as an attitude, which connects the beliefs – that are acquired through perceptional and conceptual processes - and values that define them (Tunalı, 1984).

Themed shopping environment can reflect a specific user group, time and the subjective approach of the designer through the configuration of space, through the use of symbols that convey meaning, and through connections with common values. The process of the signification of culture can be reflected in spaces, which also include themed environments, if it is advanced in a proper manner. This situation is directly related with the way people live their lives. The advancement of the concept used in an environment is also related with the lifestyle and with cultural changes that occur. Accordingly, the concepts that construct the design can become forms and with the correct use of symbols they can be recognized. The visual effects used in an environment turn into concepts in the mind of its users and produce conceptual space. Therefore, it is important for an environment to convey the cultural values that are proposed as concept by the designer.

1.2. Transition from the Streets to Marketplaces

The activity of shopping is essential to our everyday practices and people inhabit shopping environments in their daily routines. Urbanization is "a complex and multifaceted process involving population migration from rural to urban areas, rural and urban land conversions, spatial reconfiguration of settlements, and changing governance and management" (Gu & Wu, 2010, p. 1). It is important to note that the process of urbanization has an impact on many things including society, culture and economy.

According to Keles (1966, p. 163), "Urbanization is one of the preconditions of development, as well as the source of various problems in developing countries". This definition can be considered reflective regarding the urbanization process of Turkey. Rapid industrialization has caused urbanization in Turkey since 1950 (Keles, 1980). Ankara had an important place in the process of urbanization as the capital and it was a pioneer regarding the developments in the city (Keleş & Duru, 2008). During the process of urbanization, Ankara had both physical changes such as its modern city plan; and social changes in the way people live. It is important to note that due to the increase in population and the crowding of the city, new settlement areas emerged outside the city center of Ankara.

Tokatli and Boyaci (1998) states that "Since the late 1980s, the retail industry in Turkey has gone through major changes which are related to the dynamics operating at the national and even international level" (p. 345). They also add that this resulted in the emergence and strengthening of domestic and international corporate power within the industry, which created a drift towards large businesses in retailing. According to Erkip (2003, s. 1075), "Demand to consume more, and more distinctively, has created a new consumption style that required new consumption and leisure spaces rather than small retailers and streets".

In the case of Ankara, it is also possible to observe this transition from the small-scale retails such as local shops located in the neighborhoods to large-scale retail environments. In Ankara, shopping centers coexist with traditional shopping areas, streets and bazaars (Porcel, 2016). However, traditional shopping areas, streets and bazaars are mainly located in the

crowded areas of the city alongside large-scaled retailers. For this study, it is necessary to explain the transition from neighbourhood shopping areas to large-scale retail shopping areas in suburban areas. Accordingly, in our study, we examined how the culture of neighborhood shopping, which is an outdoor experience, is reconstructed through the use of fake design elements in Marketplace of Kentpark Shopping Mall and the Marketplace of Yaşamkent Beğendik.

Culture can be defined as a worldview of people whom acknowledge specific values and have certain beliefs, and this worldview plays an important role in making sense of the world (Rapoport, 1980). The way people perceive the built environment is also related to this process. In connection to the above mentioned human being became social within a culture, and shaped by the culture and the personal eidolon that developed by the understanding of surrounding. In spatial formation, it is important to evaluate phenomenological reality to produce meaning or to make interactions possible. According to Gür-Öymen (1996), knowledge on manners and traditions, as well as knowledge on the period, nation, social class needs to be acquired and interpreted. This interpretation process is connected to the image of built environment.

Interior design of the Marketplace of Yaşamkent Beğendik, tried to reconstruct the idea of a street or neighbourhood shopping by using imitative design elements in its theme. The imitative elements in this environment are building facades with traditional Turkish houses' wooden windows; iron barriers; balconies; balcony flowers (artificial); imitation bricks on the walls; greengrocery display area as in a traditional street marketplace; a clock tower; imitative street signs that define the sections; a bakery, which is named as street bakery; a small water fountain; meat section, which is located in an area named street market; milk section, which is named as milkman; café and restaurant located near an area named as the coffee street; fish section, which is named as the fisherman; display elements which are located around natural trees; and also watermelon section, that is showcased on lorry (see Figure 1 and Figure 2).

Figure 1 and Figure 2. Marketplace of Yaşamkent Beğendik (Photographs taken by the authors, Ünlü and Sazan, 2016)

The design of the Marketplace of Kentpark Shopping Mall interior space tried to provide the impression of a neighbourhood green grocer. The imitative design elements used in this environment are traditional facades with wooden windows; greengrocery display area as in a traditional street marketplace; ceramic and wooden design elements applied in various areas (see Figure 3 and Figure 4).

Figure 3 and Figure 4. Marketplace of Kentpark Shopping Mall (Photographs taken by the authors, Ünlü and Sazan, 2016)

According to Sahil (1999), meaning can be understood as a phenomenon that connects the past and today, while adding them into tradition. The realities of today may be objective, however the meaning of a work that belongs to the past is understood through the questions of today. In the encounter between the vision of designer and tradition, concept of the design provides a common ground.

According to Mead (1959) reality is at the present. An environment, where the past is continuously being reconstructed, only exists in contemporary times. Connection that appears gives meaning to the transformation of the past and the future. The human beings and the environment create this situation. If the reality is the present, the past and the future can be considered representational and they occur in the minds of people. Accordingly, the imitations of the past in themed shopping environments are in relation with contemporary design elements and principles. Evaluation of the cognition map theme of the change of markets must be analyzed when the human beings, ideas and the ways of living differ the theme changes.

The themed environments in our case study, Marketplace of Kentpark Shopping Mall and the Marketplace of Yaşamkent Beğendik, were selected due to their use of fake design elements that are based upon culture and tradition. In this study we have analyzed the situation appeared as lack of pleasure and representative environment behind it connection to the troubled positions came to surface as separation of subject and object in connection to space design aspect.

2. Method

2.1. Scope of the Study

Two market places from Ankara, Turkey - Marketplace of Kentpark Shopping Mall and the Marketplace of Yaşamkent Beğendik – were selected as the research environment. The research group consisted of 65 participants, who were randomly selected from a large population representing 27 different professions. Regarding the characteristics of the participants; 75.4% of the participants were female (49 people), and 24.6% of the participants were male (16 people). The age of the participants were divided into three groups: 14% of them between the ages of 18-29 (9 people); 32% of them were between the ages of 30-45 (21 people); and 54% of them were 46 or older (35 people).

2.2. Questionnaire Design

In the design of the questionnaire both open-ended and close-ended questions were included. The questions in the first stage of the questionnaire were designed to understand the general knowledge and tendencies of the participants. The questions in the second stage were designed to examine how people viewed the selected environments in terms of its theme.

2.3. Application of the Questionnaire

The questionnaire was developed in line with the aim of the study, which was to examine how participants viewed and understood the theme of the selected environments. The questionnaire was applied to participants in August (2016) at different times on weekdays and weekends. Participants completed the questionnaire within approximately 20 minutes.

3. Results

In the questionnaire, we used likert scale in our close-ended questions to be able to evaluate the views of participants regarding the theme of the selected shopping environments. We have benefitted from the prior Bigne et al. (2003) survey for the below mentioned survey. The results of 9 questions can be found in Table 1, where we present the percentages of each answer and also the percentage of the average result.

Table 1. Results of the close-ended questions in the evaluation of themed shopping environments

No	Questions	Strongly Disagree	Somewhat Disagree	Neutral / No opinion	Somewhat Agree	Strongly Agree	Average
1	I feel like shopping in the neighbourhood in this environment.	30.8	9.2	35.4	16.9	7.7	**52.4**
2	I usually prefer to do shopping in my neighbourhood.	3.1	21.5	23.1	38.5	13.8	**67.6**
3	I usually prefer to do my shopping from larger stores such as markets or supermarkets.	1.5	26.2	21.5	38.5	12.3	**66.8**
4	In this environment, I feel like shopping in an environment with a contemporary design.	10.8	13.8	24.6	38.5	12.3	**65.6**
5	I enjoy the design of this environment.	15.4	12.3	23.1	32.3	16.9	**64.6**
6	This environment reminds me of the past.	27.7	20	21.5	23.1	7.7	**52.6**
7	Shopping in this environment is entertaining.	18.5	15.4	20	30.8	15.4	**61,8**
8	Shopping in the neighbourhood is entertaining.	1.5	6.2	26.2	36.9	29.2	**77.2**
9	In my opinion, the culture of shopping in the neighbourhood is being lost.	1.5	4.6	13.8	21.5	58.5	**86.2**

Note: All numbers are given percentage values (%)

According to the results in Table 1, the participants were divided regarding them feeling like shopping in the neighbourhood in the selected environments. An important number of the participants preferred to do their shopping in their neighborhoods. In addition to that, many of them also preferred to do their shopping from larger markets. In the selected themed shopping

environments a large number of participants felt like shopping in an environment with a contemporary design and many of them enjoyed the design. Some of the participants thought this environment reminded them of the past and an important group of people did not agree. Even though a large group of people thought that shopping in the selected environment was entertaining, the average score of this question was lower than the one asking about the entertainment of neighbourhood shopping. Therefore, even though theming aims to make a place more attractive, in our questionnaire neighbourhood shopping was viewed more entertaining than our selected environments. Finally, our participants mainly agreed that the culture of shopping in the neighbourhood is being lost.

In the scope of the research, we also used open-ended questions in our questionnaire to receive detailed information regarding the theme of the selected environments. The answers of 65 participants were grouped. In the first of these open-ended questions, we asked about the characteristics of design people did or did not enjoy. According to the answers, 41 participants out of 65 expressed the characteristics they enjoyed. A large group of them – 8 people (19.5%) – stated that they enjoyed the nostalgia. In the same question, 29 participants out of 65 expressed the characteristics they did not enjoy. The largest group of people who did not enjoy the environment – 13 people (44.82%) – defined these spaces as artificial.

The second open-ended question was designed to understand if our participants thought that the selected themed environments reminded them of the past or not. 32 people out of 65 specified characteristics that reminded them of the past. A large group of them – 8 people (25%) – stated that the environment reminded them traditional houses. 32 people out of 65 expressed characteristics stating that the environment did not remind them of the past. The largest group among them – 10 people (31.25%) stated that the environment did not remind them of the past because it felt modern.

In the third open-ended question, we aimed to understand if the selected themed environments were entertaining to our participants or not. 63 people out of 65 mentioned characteristics that are entertaining. The largest group among them – 12 people (19.04%) – stated that the environment was entertaining because it reminded them of the past. 32 people out of 65 expressed the characteristics they did not find entertaining. The largest group among them – 9 people (28.12%) – stated that the environment was not entertaining because it felt artificial.

In the last open-ended question, we expected our 65 participants to define the concepts of both Marketplace of Kentpark Shopping Mall and the Marketplace of Yaşamkent Beğendik. The most mentioned concept for the Marketplace of Kentpark Shopping Mall – 15 people (23.07%) – was nostalgia. Similarly, the most stated concept for the Marketplace of Yaşamkent Beğendik – 14 people (21.53%) – was also nostalgia.

4. Conclusion and Discussion

In this research, in our study we received mixed answers regarding how people viewed these environments. These environments imitated the idea of neighbourhood in their design, which was read in all sorts of ways by our participants. They stated that they enjoyed the nostalgia whereas they did not enjoy the artificial characteristic of the environment. They mentioned that the applications on the walls reminded them of traditional houses but also the modern characteristic of the environment did not corresponded to that. They thought the nostalgic characteristic of the environment was entertaining but its artificiality was not.

It is possible to see that the design of the environment, which was created through some well-known cultural images, were not coded clearly and that resulted in an eclectic environment. Also the selected themed shopping environments might be shifting the meanings

that were originally associated with idea of neighbourhood replacing those with other ones by offering too many meanings at the same time.

The selected themed shopping environments from Ankara, Turkey; Marketplace of Kentpark Shopping Mall and the Marketplace of Yaşamkent Beğendik, can be understood in the category of parodic theming since they use fake symbols that are based upon traditional culture. These environments may be defined as spaces, where traditional and global forms are connected. The connection between object and subject in the examined spaces are problematical due to their formal characteristics. This problematic situation is due to the reconstruction and consumption of historical meanings in a short period of time.

The selected themed shopping environments coded the space through formal imitations and text, such as "bazaar" which is the traditional farmers market of Turkey. These spaces are limited to imitative forms of traditional Turkish houses and elements from the neighbourhood or streets in their designs. This design approach does not represent the past and yet it does not belong to the present. The forms used in these environments are constructed to convey symbolic values and yet they do not correspond with the symbols or meanings. Therefore, the selected environments only fulfill their function of shopping. Even though imitation can be acceptable in some contexts, in our selected environments the imitations used in the design can be defined as poor imitations.

It is important to state that as our participants agreed, the culture of shopping in the neighbourhood is being lost and while these environments may be trying to reconstruct that idea through design elements, they are limited to just imitating some cultural images in an eclectic way.

A strong connection between meaning and form would provide a common interpretation between the designer and user. Therefore, it would convey the theme of the environment. In themed environments, the reconstruction, representation and interpretation of culture through forms, can be understood in a different context where the boundaries between imitation and reality is surpassed. It is possible to observe a conflict of identity in themed shopping environments of the contemporary times. This conflict occurs between the built environment, use of themed image of the neighbourhood, and meaning. The limitless use of design elements results in an unbalanced environment, which makes it difficult to make sense of the theme and construct a connection with the identity of the space.

The advantages brought by the critical approach, have the potential to place design in Turkey in a creative position. Avoiding imitation can pave the way for a strong connection between time and space in contemporary designs. When we can carry out the space to creative platforms, we may reach the meaning of the theme. Distancing from poor imitations, kitsch, pastiche and parodic theming, creation of new and creative information will mean to get closer to transformation.

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Terrorism and Economic Growth: An ARDL Bounds Testing Approach for Turkey

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1. Introduction

Terrorism is an important threat to humanity. However, depending on the interests of the countries, the point of view against the terrorism may change. A terrorist organization on the terrorist list of a country may not be on the terrorist list of another country. A terrorist organization that causes terrorism for some can be seen as the freedom fighter for others. Therefore, there is no globally accepted definition of terrorism. However, there are several definitions of terrorism in the literature. Combining the key features of the definitions in the literature, Enders and Sandler (2000, 309) describe terrorism as "the premeditated use or threat of use of extranormal violence or brutality by subnational groups to obtain a political, religious, or ideological objective through intimidation of a large audience, usually not directly involved with the decision making."

Terrorism has a wide range of causes and consequences. In addition to political, social and religious factors, economic factors can also play crucial role in the emergence of terrorism. However, terrorism not only has economic causes, it also brings economic consequences. Various macroeconomic factors such as inequality, poverty, economic growth, inflation, and unemployment can be the cause or consequence of terrorism. Therefore, these factors can play important role on combating terrorism.

The Republic of Turkey has been exposed to various threats of terrorism since its establishment. In Turkey, terrorism has caused thousands of people to be killed, more people to be injured or disabled, and serious economic losses (TBB, 2006). According to the 2016 Global Terrorism Index (GTI) report published by the Institute for Economics and Peace (IEP), when the September 11, 2001 attacks in the United States were excluded, Turkey is the country with the highest number of deaths from terrorism in OECD countries since 2000 (IEP, 2016). In the period from the beginning of 2000 to the end of July 2016, 1,071 deaths occurred in Turkey due to terrorist attacks and 57% of these deaths occurred between January 2015 and July 2016 (IEP, 2016). In recent years, the number of deaths due to terrorist attacks has increased significantly in Turkey.

The GTI, produced by the IEP based on the data from the Global Terrorism Database (GTD) collected by the National Consortium for the Study of Terrorism and Responses to Terrorism (START), analysis the impact of terrorism in 163 countries. To measure the effect of terrorism, the GTI gives each country a score between 0 and 10. According to this scale, the higher score indicates that the country is more affected by terrorism. According to the 2016 GTI report, the GTI score of Turkey has realized as 6.738 and Turkey was ranked 14th among 163 countries with this score (IEP, 2016).

Economic growth can be measured by gross domestic product (GDP), gross national product (GNP), per capita GDP, GDP growth rate or per capita GDP growth rate. According to the data published by the Turkish Statistical Institution (TURKSTAT), as of the end of 2015, nominal gross domestic product (GDP) of Turkey has realized at USD 719.6 billion with a 10% decrease over the previous year. In the same year, annual real GDP growth rate of Turkey has realized at 4%. Additionally, nominal GDP per capita has amounted to USD 9.2 thousand with a 10.9% decrease over the previous year (TURKSTAT, 2016).

The purpose of this study is to investigate the impact of terrorism on economic growth in case of Turkey. In this context, the rest of the study is organized as follows. In the following section of the study, some of the existing studies in the relevant literature are reviewed. The

third section introduces the data and methodology used. Empirical findings are discussed in the fourth section, and the final section concludes the study.

2. Literature Review

Investigation of the relationship between terrorism and economic growth has attracted the attention of many researchers in recent years. As a result of the literature review, it has been determined that studies examining the relationship between terrorism and economic growth have achieved different results. By using unbalanced panel data of 177 countries for the years 1968 through 2000, Blomberg, Hess, and Orphanides (2004) have analyzed the macroeconomic consequences of international terrorism and found that the incidence of terrorism may have an economically significant negative average effect on growth. Nevertheless, it appears that this effect is considerably smaller and less persistent, compared to the effects of external war or internal conflicts. Additionally, the findings of this study suggest important differences regarding both the incidence and the economic consequences of terrorism across geographic areas and political governance.

Gaibulloev and Sandler (2008) have investigated the growth consequences of domestic and transnational terrorism for 18 Western European countries during the period from 1971 to 2004. The results of the study indicate that both transnational and domestic terrorism negatively influence growth in Western Europe, but the marginal negative effect of transnational terrorism is much greater. After this study, Gaibulloev and Sandler (2009) have also conducted panel data analysis for 42 Asian countries using data from the 1970-2004 period to quantify the effect of terrorism and conflicts on growth. The results of the analysis indicate that transnational terrorism has a significant growth-limiting effect. Another finding of the study shows that this growth-limiting effect of terrorist attacks can be eliminated more rapidly in developed countries.

In Turkey, Araz-Takay, Arin, and Omay (2009) have investigated the macroeconomic effects of terrorism during the period from 1987:1 to 2004:4. In this study, the data set for the terrorism variable is gathered from the archives of a newspaper. The results of the study indicate that the effect of terrorism on economic activity is negative and significant. Furthermore, the negative effect of terrorism on the aggregate economy is much stronger during the expansionary periods. However, the effect of economic activity on terrorism is significant only in times of recession. In another study conducted for Turkey, by employing geographically weighted regression approach and the data at provincial-level for the period 1987-2001, Öcal and Yildirim (2010) have analyzed the regional effects of terrorism on economic growth. The results of the analysis show that terrorism has a negative impact on economic growth in Turkey and this effect is more pronounced in the Southeastern Anatolia Region where terrorist attacks are more concentrated.

In the period 1970-2007, using the data of 18 Latin American countries, Meierrieks and Gries (2012) showed that terrorist activities have no causal impact on economic growth. The study conducted by Gaibulloev, Sandler, and Sul (2013), based on the data of 99 countries in five regions (America, Asia, Middle East and North Africa, sub-Saharan Africa, and Western Europe) during the period 1970–2009, has also revealed that the effect of terrorism on economic growth is insignificant.

By employing the ARDL bounds testing approach, Shahbaz, Shabbir, Malik, and Wolters (2013) have analyzed the cointegration relationship between terrorism and economic growth for Pakistan in the period of 1973-2010. The results of the cointegration analysis show that there is a long-run relationship between terrorism and economic growth. Additionally, the VECM Granger causality approach is employed to determine the direction of causality between

terrorism and economic growth. According to the findings of the Granger causality analysis, economic growth is Granger cause of terrorism.

Akıncı, Akıncı, and Yılmaz (2014) have examined the relationship between terrorism, inflation and economic growth in developed, developing, and underdeveloped countries by using the data of 152 countries for the period 2002-2011. According to the results of the analysis, in all three group of countries, terrorism negatively affects economic growth by raising inflation level. Moreover, this effect is stronger in developing and underdeveloped countries.

Focusing on 120 developing countries for the period 1976-2008, Younas (2015) has investigated whether globalization limits the adverse effects of terrorism on economic growth. The findings of the study suggest that all types of terrorism have a negative effect on growth and globalization mitigates the negative effects of terrorism on growth.

Although the results of the studies investigating the relationship between terrorism and economic growth may differ, most of the studies in the relevant literature suggest that terrorism negatively affects economic growth. Another remarkable point in the literature review is that the effect of terrorism on economic growth can be varied according to the geographical region, level of economic development, business cycle, and types of terrorism.

3. Data and Methodology

3.1. Data

This study aims to investigate the relationship between terrorism and economic growth using quarterly data over the period from 1999:1 to 2015:4 for Turkey. In this study, economic growth is measured by GDP growth rate. Quarterly GDP growth rates of Turkey are obtained from the TURKSTAT.

When analyzing the cointegration linkages between terrorism and economic growth, the natural log of a terrorism index is used to measure the effect of terrorism in Turkey. Following Eckstein and Tsiddon (2004), the terrorism index is calculated for each quarter using the following equation:

[*Terrorism Index = 1 + the number of terrorist attacks + the number of fatalities due to terrorist attacks + the number of injuries due to terrorist attacks*]

The data employed in the calculation of the terrorism index is drawn from the GTD (Lafree & Dugan, 2007). Figure 1 shows the log of the terrorism index for Turkey.

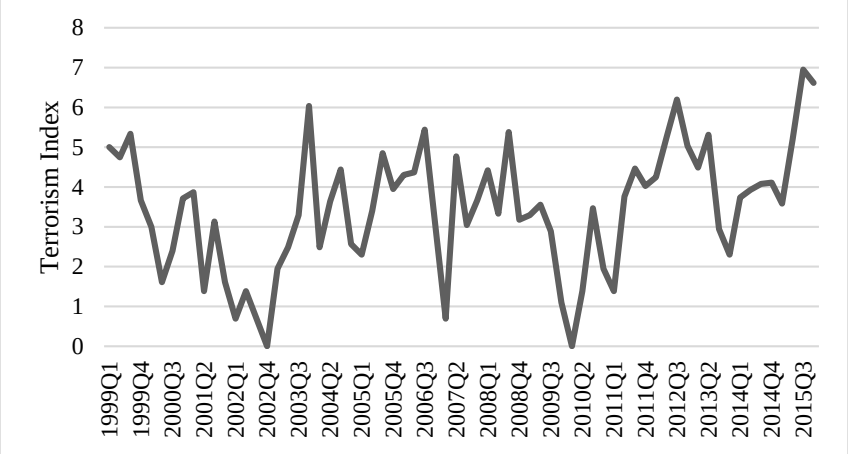

Figure 1. The Terrorism Index

3.2. Unit Root Test

First, the order of integration of the variables needs to be examined. To determine the order of integration of the variables, the study begins with the application of the Augmented Dickey-Fuller (ADF) unit root test developed by Dickey and Fuller (1979; 1981). The results of the ADF test are presented in Table 1.

Table 1. ADF unit root test results

	t-Statistic (In levels)		**t-Statistic (In first difference)**	
Variable	**Constant without Trend**	**Constant with Trend**	**Constant without Trend**	**Constant with Trend**
GDP	-1.612	-2.498	-6.894***	-10.345***
MacKinnon (1996) critical value for *GDP*				
1%	-3.532	-4.103	-3.533	-4.110
5%	-2.906	-3.479	-2.906	-3.483
10%	-2.591	-3.167	-2.591	-3.169
	t-Statistic (In levels)		**t-Statistic (In first difference)**	
Variable	**Constant without Trend**	**Constant with Trend**	**Constant without Trend**	**Constant with Trend**
lnTER	-4.026***	-4.505***	--------	---------
MacKinnon (1996) critical value for *lnTER*				
1%	-3.532	-4.101	-3.535	-4.106
5%	-2.906	-3.478	-2.907	-3.481
10%	-2.590	-3.167	-2.591	-3.168

Note: * significant at 10%, ** significant at 5%, *** significant at 1%.
Source: Results obtained using EViews (Version 9.5).

According to the results in Table 1, *lnTER* is stationary at level or *I*(0), while *GDP* is stationary at first difference or *I*(1). Thus, the variables used in the analysis are different order of integration.

3.3. Methodology

The empirical model used in the study can be expressed as follows:

$$GDP_t = \alpha_0 + \alpha_1 lnTER_t + \varepsilon_t \quad (1)$$

where GDP_t is the GDP growth rate; $lnTER_t$ is the natural log of the terrorism index; and ε_t is the error term.

Autoregressive Distributed Lag (ARDL) bounds testing approach developed by Pesaran and Shin (1999) and Pesaran, Shin, and Smith (2001) is employed in this study to examine cointegration relationship among the variables. The ARDL cointegration approach can be applied irrespective of whether the underlying variables are *I*(0) or *I*(1) (Pesaran, Shin, & Smith, 2001). The ARDL bounds testing approach was applied in this study, because the variables used in the analysis were different order of integration [*I*(0) and *I*(1)]. Another reason for using the ARDL bounds testing approach is that this approach can be applied in small sample size studies (Narayan & Narayan, 2004). The ARDL model used in the study may be expressed as:

$$\Delta GDP_t = \beta_0 + \sum_{i=1}^{p} \beta_{1i} \Delta GDP_{t-i} + \sum_{i=0}^{p} \beta_{2i} \Delta lnTER_{t-i} + \beta_3 GDP_{t-1} + \beta_4 lnTER_{t-1} + \varepsilon_{1t} \quad (2)$$

where ε_{1t} is the white noise term, Δ is the first difference operator; and p is the lag order. Additionally, β_{1i} and β_{2i} are the short-run dynamics, and the second part of the equation represents the long-run relationship.

In the ARDL bounds testing approach, the existence of cointegration between the variables is determined by comparing the calculated F-statistics with the critical value bounds reported by Pesaran, Shin, and Smith (2001) for large samples and by Narayan (2005) for small samples (ranging from 30 to 80 observations). If the calculated F-statistics is above the upper bound of the critical values, the null hypothesis of no long-run relationships exist ($H_0: \beta_3 = \beta_4 = 0$) is rejected. This result indicates the existence of cointegration between variables. If the calculated F-statistics is below the lower bound critical value, the null hypothesis cannot be rejected. Lastly, if the calculated F-statistic is between the upper and lower bounds of the critical values, a definite interpretation cannot be made and other cointegration methods need to be used.

After determining the existence of cointegration between variables, the error correction model used to estimate short-run relationships can be specified as follows:

$$\Delta GDP_t = \beta_0 + \sum_{i=1}^{p} \beta_{1i} \Delta GDP_{t-i} + \sum_{i=0}^{p} \beta_{2i} \Delta lnTER_{t-i} + \psi_1 ECT_{t-1} + u_{1t} \quad (3)$$

where ψ_1 is the error correction term (*ECT*) coefficient. A negative and statistically significant *ECT* coefficient indicates how quickly any short-run disequilibrium between the variables converge back to the long-run equilibrium.

4. Empirical Findings

Since neither of the variables used in the study are *I*(2), the long-run equilibrium relationship between the variables is examined by ARDL bounds testing approach. After finding the order of integration of the variables, the second step is to choose the optimal lag length. In this study, Schwarz's Bayesian Information Criteria (SBC) was used to select the optimal order of lags in the ARDL model. Following the determination of the optimal lag length, the next step is to investigate the existence of a long-run relationship between variables. Table 2 demonstrates the results of the bounds testing approach for cointegration.

Table 2. The results of ARDL bounds test

ARDL Model		F-statistic	*k*	CV Bounds 1%		CV Bounds 5%	
				***I*(0) bound**	***I*(1) bound**	***I*(0) bound**	***I*(1) bound**
F_{GDP}(GDP|lnTER)	ARDL(5, 0)	7.424	1	5.350	6.017	3.787	4.343

Note 1: ARDL model selected on the basis of SBC, restricted intercept and no trend for *k* = 1; k is the number of independent variables.
Note 2: The critical value (CV) bounds are extracted from Narayan (2005, Appendix: Case II) for *k* = 1 and *n* = 65.
Source: Results obtained using EViews (Version 9.5).

According to the results of the cointegration test, because the F-statistic is higher than the upper bound critical value at 1% significance level, the null hypothesis of no long-run relationships is rejected for Turkey when GDP is the dependent variable. This situation yields sufficient evidence that there is a cointegration relationship between the variables of the model.

Following the establishment of the cointegration relationship, the long-run and short-run coefficients are estimated. Table 3 presents the estimated long-run and short-run coefficients. According to the long-run coefficients in Table 3, the coefficient of terrorism is negative and

statistically significant at the 1% level. This indicates that terrorism has a negative long-run effect on economic growth and a 1% increase in terrorism index will lead to 0.0745% decrease in GDP variable in the long-run.

According to the results of the error correction model in Table 3, the short-run coefficient of terrorism is also negative and significant at 1% level. The coefficient of ECT_{t-1} is negative (-0.1386) and statistically significant at the 1% level. The coefficient of ECT_{t-1} indicates that 13.86% of the deviations from the long-run equilibrium between variables are corrected in the next period and convergence of variables occurs after about 7 periods.

Table 3. Estimated coefficients

Long-run coefficients		
Variable	**Coefficient**	**t-Statistic**
lnTER	-0.0745	-3.3448***
C	0.3714	4.8238***
Short-run coefficients		
Variable	**Coefficient**	**t-Statistic**
ΔGDP(-1)	0.0197	0.2366
ΔGDP(-2)	-0.0720	-0.8906
ΔGDP(-3)	-0.1090	-1.3603
ΔGDP(-4)	-0.4211	-5.2125***
ΔlnTER	-0.0096	-3.0686***
ECT(-1)	-0.1386	-5.4527***
$ECT_{t-1} = GDP - (-0.0745 * lnTER + 0.3714)$		
Diagnostic tests		
R^2	0.5589	
Adjusted R^2	0.5202	
D-W stat	1.6495	
Serial Correlation	0.6711 (0.6471)	
Normality	1.3750 (0.5028)	
Heteroscedasticity	0.9003 (0.5013)	
Functional Form	0.3930 (0.5333)	

Note 1: *** significant at 1%.
Not 3: *p*-values in ().
Source: Results obtained using EViews (Version 9.5).

The estimated model was also subjected to a series of diagnostic tests, namely the Breusch–Godfrey (Breusch, 1978; Godfrey, 1978a) Lagrange multiplier (LM) test for serial correlation, the Jarque–Bera test (Jarque & Bera, 1980) for normality, the Breusch-Pagan-Godfrey (BPG) (Breusch & Pagan, 1979; Godfrey, 1978b) test for the presence of heteroscedasticity, and the Regression Specification Error Test (RESET) proposed by Ramsey (1969) for functional form, and the results of these tests are reported at the bottom of the Table 3. The results of the diagnostic tests suggest that the estimated model is correctly specified.

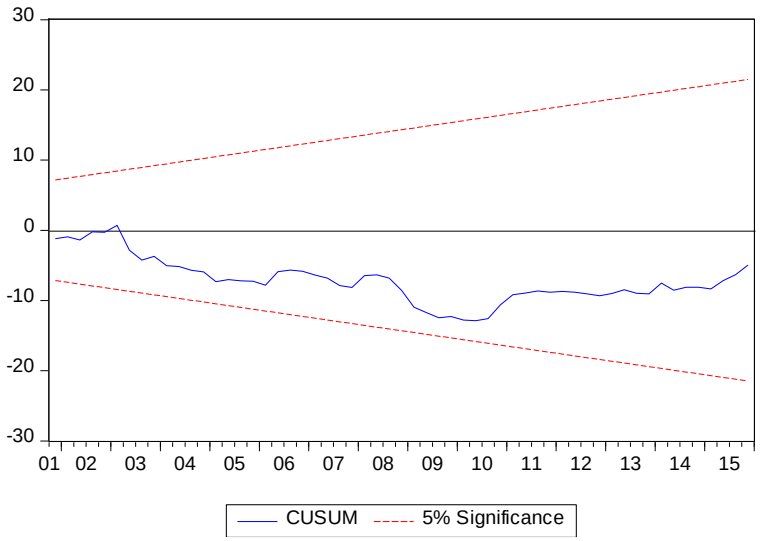

Figure 2. Plot of Cumulative Sum of Recursive Residuals
Source: Results obtained using EViews (Version 9.5).

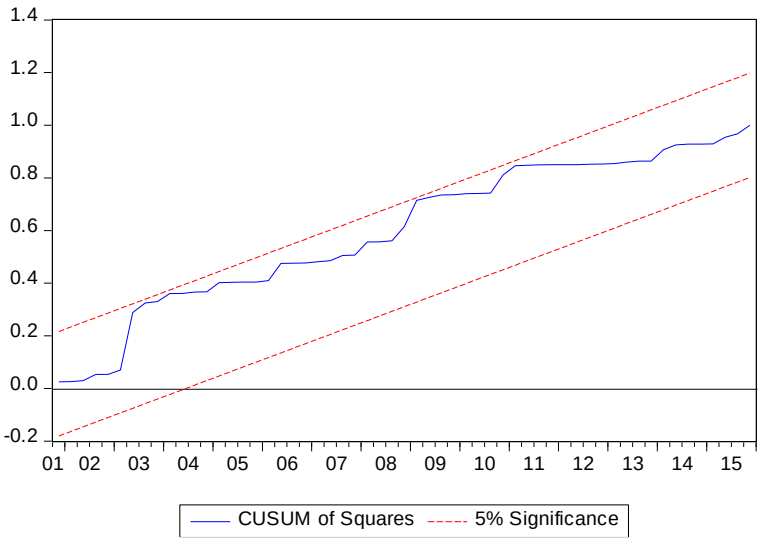

Figure 3. Plot of Cumulative Sum of Squares of Recursive Residuals
Source: Results obtained using EViews (Version 9.5).

Finally, in order to check the stability of the estimated model, the cumulative sum (CUSUM) and cumulative sum of squares (CUSUMSQ) tests by Brown, Durbin, and Evans (1975) are conducted. As depicted in Figures 2 and 3, since the plots of CUSUM and CUSUMSQ statistics are within the critical bounds, all coefficients in the model are stable.

5. Conclusion

The main purpose of this study is to investigate the effects of terrorism on economic growth using quarterly data over the period from 1999:1 to 2015:4 for Turkey. The ARDL bounds testing approach to cointegration has been applied to determine the relationship between terrorism and economic growth. The results of the analysis confirm the existence of a cointegration relationship between terrorism and economic growth. Moreover, terrorism has a negative and significant impact on economic growth in both the short-run and long-run, as expected. The obtained results in this study, support the findings of the studies conducted by Blomberg, Hess, and Orphanides (2004), Gaibulloev and Sandler (2008), Gaibulloev and Sandler (2009), Araz-Takay, Arin, and Omay (2009), Öcal and Yildirim (2010), Akıncı, Akıncı,

and Yılmaz (2014), and Younas (2015). This result reveals the importance of combating terrorism in the economic growth process of Turkey.

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Interest-Investment Relatıons: Developed And Developıng Country Comparısons Wıth Turkey

Haldun Soydal, Duygu Baysal Kurt, Sema Yaşar

1. Introduction

In traditional literature of economics, it was put forward that low interest rates will encourage the investments (because, in traditional literature of economics, there is a negative i.e inversely proportional relationship between investment and interest rates) and that saving, largely accepted that it was determined by the income level, would not be affected from this. For, in these approaches, saving is dealt with as a dynamic variable. According to this, as a consequence of investment, income increases and, with increase in income, saving rate rises (Demirbaş, 2000, p.81).

According to Keynes, in making investment decisions, two factors become effective: interest and, marginal efficiency of capital. Again, according to Keynes, in the formation of investment decisions, although market interest rates, are taken into consideration, the expectations related to marginal efficiency of capital determines the result of investments. For, Keynes, for a given expectation set, points out interest rates as the main determinative of investment. When a difference occurs between profit expectation, defined by marginal efficiency of capital, and current interest rates, and when this difference is evaluated by the entrepreneur as "satisfying", the decision of investment is made. In short, investment decisions are determined in the dimension of profitability expectation (Fisunoğlu & Köksel Tan, 2009, p.37).

The main point Keynes differentiates from the classical economists is that investment decisions are not only based on the current marginal efficiency of capital but also depends on the expected return of capital in the future. In making the decisions of investment, future expectation plays important role. When the uncertainty of future is considered, Keynes, in making the investment decisions, suggested that a behavioral tendency he called "animal spirits" would play role (Fisunoğlu & Köksel Tan, 2009, p.38).

According to neoclassic approach, that the press on savings releases by interest rates increases the financial instruments, provides financial deepening, and brings effectiveness to the financial sector; on the other hand, fund costs falls, and investments increases. According to approaches criticizing this, interest rate is a factor determining to make a preference between real investments and financial investments and the fact that the return of financial instruments plays a role reducing real investments (Yentürk, 2003, p.10).

In neoclassic approach, McKinnon-Shaw Hypothesis is valid. This hypothesis argues that the developing countries, financially opened to foreign countries, increasing the diversity of financial instruments in economy, and saving and investments, will make a contribution to economic growth (Atamtürk, 2007, p.76).

McKinnon-Shaw Hypothesis accepts savings as a main variable of economic development. In the developing economies, as a main factor limiting the development, it was put forward that the savable and investable funds are insufficient that are necessary to finance instruments, not that the profitable investments are limited. Thus, high interest policies encouraging savings will also encourage the investment and growth (Demirbaş, 2000, p.82).

The effects of financial liberalization policies on macroeconomic structure were first examined by McKinnon and Shaw under the name of the hypothesis of "financial liberalization". The hypothesis mentioned is expressed in the literature as complementarity hypothesis of McKinnon. As McKinnon argued in his complementarity hypothesis, in the

policies applied for the aim of liberalization of financial system, interest rates are used as a maim instrument. Interest rates have two kinds of effects on providing the economic growth. The first of these is that interest rates created on economic growth, with moving from national saving level, while the second one is it created on economic growth, with moving from investments (Hepsağ, 2009, p.64).

According to complementarity hypothesis of McKinnon, increasing real interest rates provides increase in savings of economic units, because increasing real interest rates, an increase occurs in the borrowable funds. On the other hand, together with the increase in savings, an increase is recorded in the existing deposits in banking sector and this increase creates positive effect on investments (physical capital) and economic growth (Hepsağ, 2009, p.65).

According to McKinnon-Shaw hypothesis, the limits imposed on the rates of deposit and credit interest will have negative effects. Limits on nominal interests will reduce the financial depth and negatively affect the growth. It is put forward that interest limits leading to negative or low interest rates will reduce lendable funds and make inefficient the distribution of investment funds that will negatively affect the rate of marginal efficiency (Altıntaş & Arıçay, 2010, p.74).

In this context, the claim of McKinnon- Shaw Hypothesis about private manufacturing industry, the main difficulty on the private investments, are the financial growth of borrowing, not its cost. Under these conditions, the higher interest rates in banking sector attracts the savings of more households and increases the lendable funds. With this result, high investment actualizes. Thus, in contrast to the traditional theory, between private investment and interest rates, there is a positive relationship (Demirbaş, 2000, p.82).

The criticisms toward Mc Kinnon- Shaw Hypothesis can be put in order as follows (Er, 2007, p.13);

- For saving increase to promote investments, it is necessary for economy to act in neoclassic style and the investments remaining from consumptions to be equal to savings. However, the decisions of saving and investments are the decisions made independently from each other.
- Even though theory views the increase of investment as a precondition for increase of saving, it is also possible to increase it by means of modifying the factor rates at the given capital level
- Even if the policies of real interest to be applied increase the savings, transformation of savings into investments may not be enable investments to be made on the most effective and necessary areas.
- Voluntary individual savings forms only one part of savings in the modern economies. Company profits that cannot be distributed with alternative forms of saving (social security and retirement contributions, programs of obligatory savings) are also of the important sorts of saving. Especially in the sample of Japan, it is seen that the company profits that are not distributed play important role in financing the investments.

In the developing countries, it is argued that there is no definite evident regarding that financial liberalization raises the saving tendency. Financial liberalization attempted in the environment, where the income falls confirms the Keynesian theory in the way that saving volume first of all depends on income. In response to this, interest rate affects the composition of saving. The rise of interest rate leads savings to go toward the domestic actives, coming untied from financial markets, organized with the physical and domestic actives. Due to the fact that the effects of income and substitution that works in opposite direction are seen together, it is impossible to make and exact judgement at which direction the net effect of the increase in interest rates on savings will be (Er, 2007, p.14).

Smith (2014) accounts for that the low interest rates leads to deflation and high interest rates to inflation with the concept of Neo-Fisherizm. Fisher equation indicates that nominal interest rate consists of the addition of real interest rate and inflation rate. Setting out from this, without regarding to what FED has done in Neo-Fisherism, it is expressed that in long term, real interest rate will return to real equilibrium value and, in view of this, when FED keeps the real interest rates as low as necessary, in turn, that inflation will fall. As seen, this thought takes place in just opposite side of monetarist thought, because, in monetarist thought, the fact that FED keeps the nominal interest rate at the low level in long term will urge inflation to the tendency of rise takes place.

2.Literature

Baillie and Birmingham (1981), using Box- Jenkins models, for the period of 1960-1978, examined the data of the investment, three series of interest rates and output of East Germany. They concluded that investments were inelastic against nominal and real interest rate. Investments, rather than the government controls monetary policies, even if after operating direct interest rate, are affected with long termed interest rates.

Demirbaş (2000), for the period of 1980-1997, studied the effect of the interest rates in Turkey on the investments. The effect of interest rates on private sector manufacturing industry and total investments of fixed capital of private sector were examined by means of regression analysis. As a result of the analysis it was identified that there was a negative directional relationship between the investments of manufacturing industry of private sector and total fixed capital investments of private sector. It was suggested that the effect of interest rates on the investments were insignificant. It is put forward that this states the private sector investments in Turkey was affected by the factors other than interest rates.

Bo & Sterken (2002), for the firms being in active in Germany, in the period of 1984-195 examined the effect of the fluctuation of interest rate and debts on the investments of firm, using panel-data methods (randomly methods). According to the results, the fluctuation of interest rate and debts have positive effect on the investments of firms. This effect is import for the firms under the debts, rather than the firms having less debt.

Pazarlıoğlu & Gülay (2007), in order to present the relationship of net foreign capital investments made on Turkey with the real interest, dealing with the period covering the first quarter of 1992 and fourth quarter of 2005, applied ARDL boundary test. As a result of analysis, it was found that there was a significant relationship in long term between portfolio investments and three lagged values of the real interest rates and, in addition, that the coefficient of interest rate had a positive sign and was statistically significant.

Öztekin & Erataş (2009), in order to determine the relationship between the portfolio investments in Turkey and real interest, for the period of 1990-2008, applying the method of ARDL, carried out an analysis. When the results of the analysis are evaluated, as the difference between interest rates increases, it was concluded that the portfolio investments coming to Turkey increase.

Albu (2010), in order to study the relationship between interest rate, investment and growth, formed a set of model, being based on statistical data. In order to the effect of investments on the growth and the relationship between interest rate and growth, two partial models were referred to. Lastly, the general model obtained shows the complex dynamics. In addition, it makes it possible to calculate interest rate and the other macroeconomic decisions.

Bader & Malawi (2010), for Jordan economy, tested the effects of real interest rates on investments by the methods of least squares and integrations. The findings revealed that there was a long termed relationship between real interest rates and investments and that an increase of 1 % in interest rates reduced the investments in the rate of 44%.

Yurdakul (2009), in order to reveal the factors accounting for the difference between the effective interest rates of Turkey and USA, conducted an analysis, dividing the years of 1994-2006 into four different periods, by means of Eeagle Granger Two Staged Estimated Method. In analysis, as the variables the difference of interest rates, the general level of prices, gross domestic product, exchange rate, reliability index, international reserve level, foreign trade deficit, and budgetary deficit were used and, as a result of analysis, it was determined that, also in four period, the variable reducing the interest differences was gross domestic product.

Gümüş Kurt, Duru & Güngör (2013), for the period of 2006-2012, in Turley, in order to reveal the relationship between foreign portfolio investments and macroeconomic factors, carried out the various applications. As a result of applications, at the significant level of 5% and 10%, it was identified that there was not any relationship between foreign portfolio investments and interest rates. In addition, at the significant level of 15%, while the variations in foreign portfolio investments affect the interest rates, it was reached the conclusion that the variations in interest rates did not affect the foreign portfolio investments.

Kredler (2013), in the economy of United Kingdom, analyzed the relationship between total investment belonging to six industries and the rates of real interest rates, using feasibility based Bayesian methods for 2001. The results showed that the streams in the rates of real interest accounted for a part of about 2% of the variation occurring on the investment in this sector.

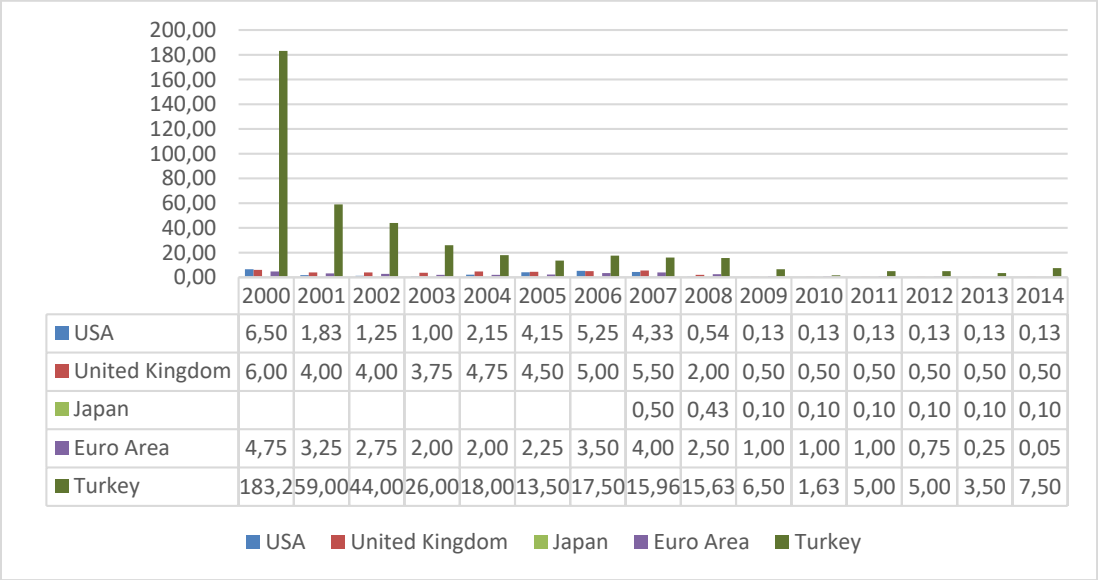
Osundina & Osundina (2014), in the economy of Nigeria, for the period of 1980-2010, analyzed the relationship between interest rates and investment decision, using multiple linear regression model. In testing the relationship between the interest rates and investment decision, a modified Mundell-Flemming model, in which interest rate was dependent variable, and GDP, investment level, public expenditures were descriptive variables, was utilized. The findings showed that, in Nigeria economy, there were no strong empirical evidences between investment decision and interest rate.

3. The Comparison Of The Developed And Developing Countries With Turkey

3.1. Developed Countries -Turkey

As seen in Graph 1, when the developed countries and Turkey are compared in terms of interest rates, in the period of 2000 -2014, it is possible to say that Turkey has high interest rates in respect with the years. It approached to Eurozone with the interest rate of 1.63% in 2010, but in 2011, margin was again opened.

Graph 1: Interest Rate (%)

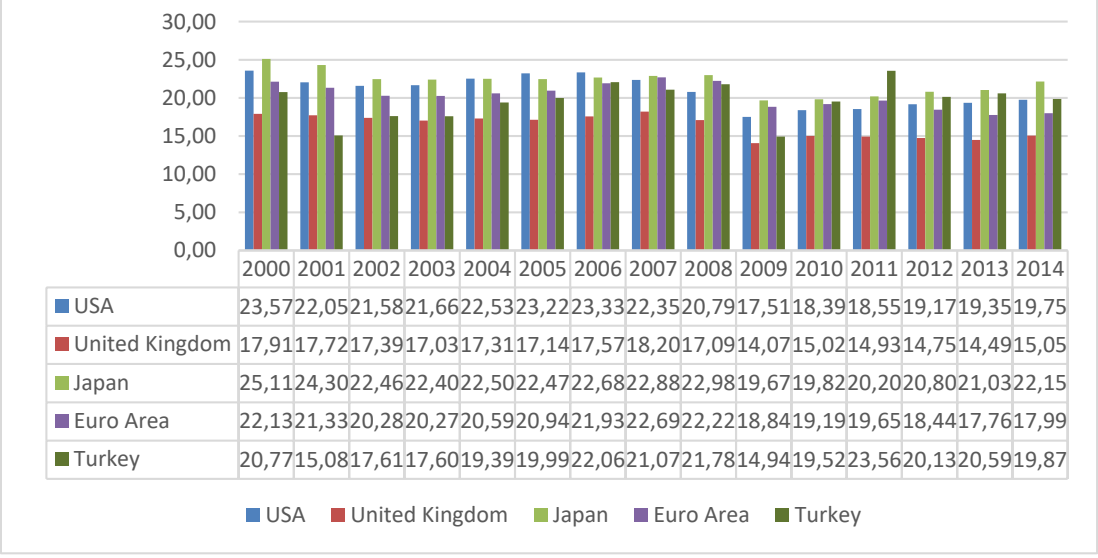


	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
USA	6,50	1,83	1,25	1,00	2,15	4,15	5,25	4,33	0,54	0,13	0,13	0,13	0,13	0,13	0,13
United Kingdom	6,00	4,00	4,00	3,75	4,75	4,50	5,00	5,50	2,00	0,50	0,50	0,50	0,50	0,50	0,50
Japan								0,50	0,43	0,10	0,10	0,10	0,10	0,10	0,10
Euro Area	4,75	3,25	2,75	2,00	2,00	2,25	3,50	4,00	2,50	1,00	1,00	1,00	0,75	0,25	0,05
Turkey	183,25	59,00	44,00	26,00	18,00	13,50	17,50	15,96	15,63	6,50	1,63	5,00	5,00	3,50	7,50

Resource: www.imf.org, Accessed:15.04.2015, www.fxstreet.com, Accessed:11.05.2015.

When Graph 2 is examined, it is seen that between Turkey and developed countries there are no very high differences in terms of the rate of total investment to GDP. Moreover, in terms of this rate, it takes place before United Kingdom in the period of 2002 – 2014. In 2011, it is possible to say that Turkey takes place before Japan having the highest rate among the developed countries

Graph 2: The rate of total investment to GDP (%)

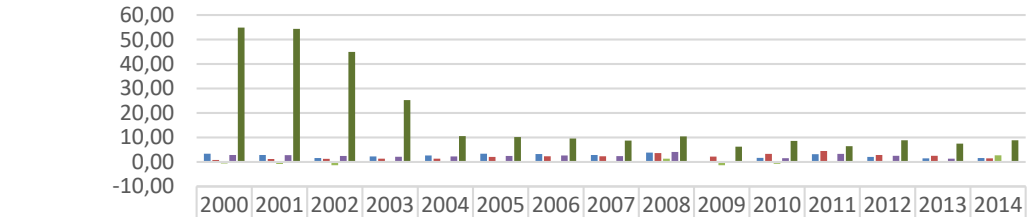


	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
USA	23,57	22,05	21,58	21,66	22,53	23,22	23,33	22,35	20,79	17,51	18,39	18,55	19,17	19,35	19,75
United Kingdom	17,91	17,72	17,39	17,03	17,31	17,14	17,57	18,20	17,09	14,07	15,02	14,93	14,75	14,49	15,05
Japan	25,11	24,30	22,46	22,40	22,50	22,47	22,68	22,88	22,98	19,67	19,82	20,20	20,80	21,03	22,15
Euro Area	22,13	21,33	20,28	20,27	20,59	20,94	21,93	22,69	22,22	18,84	19,19	19,65	18,44	17,76	17,99
Turkey	20,77	15,08	17,61	17,60	19,39	19,99	22,06	21,07	21,78	14,94	19,52	23,56	20,13	20,59	19,87

Resource: www.imf.org, Accessed: 15.04.2015.

As seen in Graph 3, although in Turkey, the falls in inflation rates are experienced in respect with years, it is a realty that it could not catch the developed countries. In the developed countries, in 2009, the fall experienced in the inflation rates was also experienced in Turkey.

Graph 3: Inflation Rate (%)



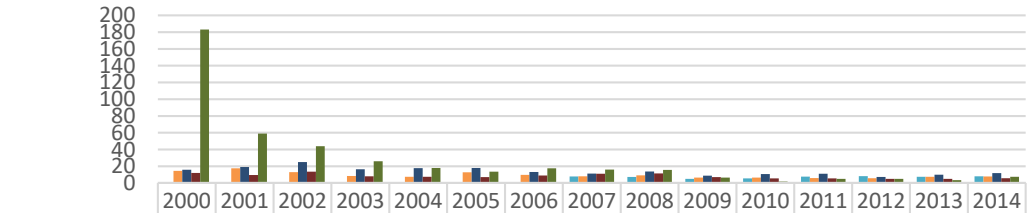
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
USA	3,38	2,83	1,59	2,27	2,68	3,39	3,23	2,85	3,84	-0,36	1,64	3,16	2,07	1,46	1,62
United Kingdom	0,79	1,24	1,26	1,36	1,34	2,05	2,33	2,32	3,61	2,17	3,29	4,48	2,82	2,55	1,46
Japan	-0,65	-0,80	-1,31	0,17	-0,01	-0,27	0,24	0,06	1,37	-1,35	-0,72	-0,28	-0,03	0,36	2,74
Euro Area	2,85	2,79	2,46	2,11	2,23	2,48	2,68	2,37	4,08	0,37	1,53	3,29	2,49	1,37	0,24
Turkey	54,92	54,40	44,96	25,30	10,58	10,14	9,60	8,76	10,44	6,25	8,57	6,47	8,89	7,49	8,85

Resource: www.worldbank.org, Accessed: 15.04.2015

3.2. Developing countries -Turkey

In Graph 4, the interest rates of developing countries are given together. As also seen from graph, the interest rates in Turkey are higher than Indonesia, Brazil, and South Africa for the period of 2000- 2004. In the period of 2009 -2014, the country having the highest interest rate is Brazil. In 2009, in each of developed countries, the falls in interest rates were experienced.

Graph 4: Interest rate (%)

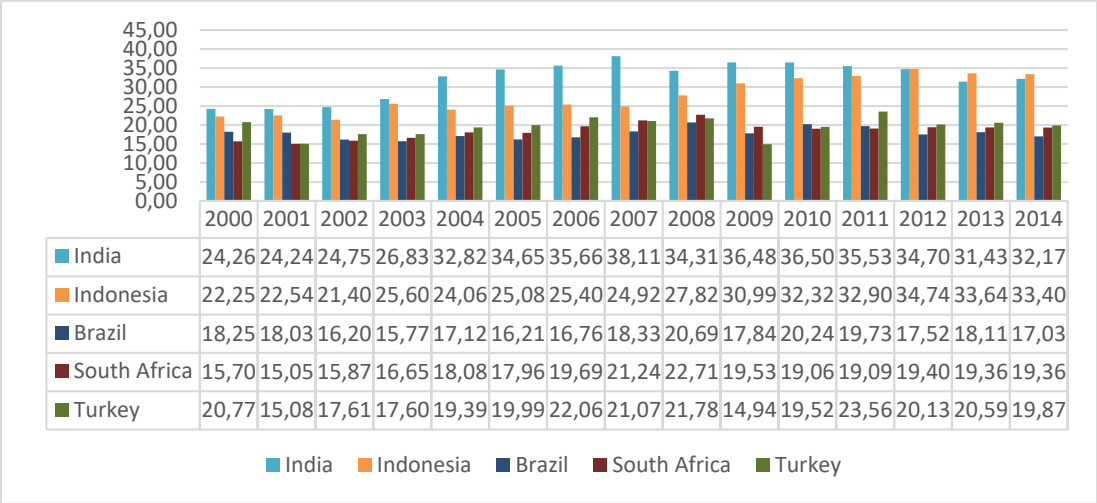


	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
India								7,75	7,27	4,89	5,48	7,56	8,12	7,52	8,00
Indonesia	14,53	17,62	12,93	8,31	7,43	12,75	9,75	8,00	9,25	6,50	6,50	6,00	5,75	7,50	7,75
Brazil	15,75	19,00	25,00	16,50	17,75	18,00	13,25	11,25	13,75	8,75	10,75	11,00	7,25	10,00	11,75
South Africa	12,00	9,50	13,50	8,00	7,50	7,00	9,00	11,00	11,50	7,00	5,50	5,50	5,00	5,00	5,75
Turkey	183,2	59,00	44,00	26,00	18,00	13,50	17,50	15,96	15,63	6,50	1,63	5,00	5,00	3,50	7,50

Resource : www.imf.org, Accessed: 15.04.2015, www.fxstreet.com, Accessed: 11.05.2015

In Graph 5, the rate of total investment belonging to the period of 2000-2014 of the developing countries to GDP are shown together. From this rate, the best two countries are South Africa and Indonesia. The investment rates of Brazil, South Africa, and Turkey generally exhibit closeness to each other. In addition, in 2009, except for India and Indonesia, in the other countries, a recession was experienced in terms of this rate.

Graph 5: The of total investment to GDP (%)

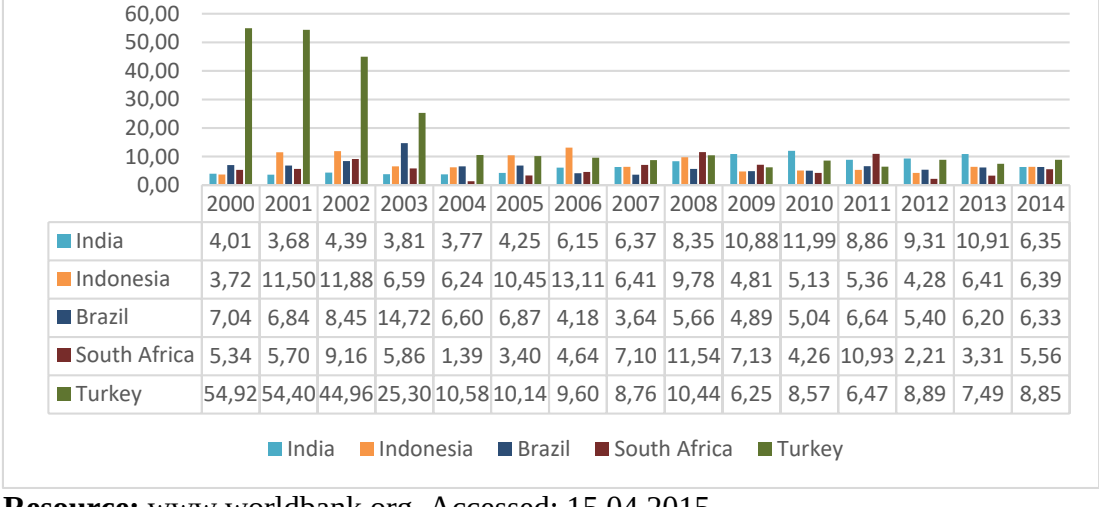


	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
India	24,26	24,24	24,75	26,83	32,82	34,65	35,66	38,11	34,31	36,48	36,50	35,53	34,70	31,43	32,17
Indonesia	22,25	22,54	21,40	25,60	24,06	25,08	25,40	24,92	27,82	30,99	32,32	32,90	34,74	33,64	33,40
Brazil	18,25	18,03	16,20	15,77	17,12	16,21	16,76	18,33	20,69	17,84	20,24	19,73	17,52	18,11	17,03
South Africa	15,70	15,05	15,87	16,65	18,08	17,96	19,69	21,24	22,71	19,53	19,06	19,09	19,40	19,36	19,36
Turkey	20,77	15,08	17,61	17,60	19,39	19,99	22,06	21,07	21,78	14,94	19,52	23,56	20,13	20,59	19,87

Resource: www.imf.org, Accessed: 15.04.2015

In Graph 6, inflation rates belonging to the period of 2000- 2004 of developing countries are shown together. In the period of 2000-2004, the country having the highest inflation rate is Turkey. In 2009, except for India, in the other countries, in inflation rates, a fall was experienced.

Graph 6: Inflation rate (%)



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
India	4,01	3,68	4,39	3,81	3,77	4,25	6,15	6,37	8,35	10,88	11,99	8,86	9,31	10,91	6,35
Indonesia	3,72	11,50	11,88	6,59	6,24	10,45	13,11	6,41	9,78	4,81	5,13	5,36	4,28	6,41	6,39
Brazil	7,04	6,84	8,45	14,72	6,60	6,87	4,18	3,64	5,66	4,89	5,04	6,64	5,40	6,20	6,33
South Africa	5,34	5,70	9,16	5,86	1,39	3,40	4,64	7,10	11,54	7,13	4,26	10,93	2,21	3,31	5,56
Turkey	54,92	54,40	44,96	25,30	10,58	10,14	9,60	8,76	10,44	6,25	8,57	6,47	8,89	7,49	8,85

Resource: www.worldbank.org, Accessed: 15.04.2015

Conclusion

It is known that there is a relationship between interest rates and investments and that interest rates affect the investments. In the traditional literature of economics, it is argued that there is a negative directional relationship between interest rates and investments. It was argued that the low interest rates would encourage the investments and that saving was not negatively affected from this. According to Keynesian approach, the factors determining the investments are the marginal efficiency of interest and capital. In the formation of investment decisions, although market interest rates are taken into consideration, the results of investments are determined by the expectations related to the marginal efficiency of capital.

Another view related to the the relationship of interest and investment is McKinnon-Shaw Hypothesis. According to this hypothesis, in contrast to the traditional approach, there is a positive directional relationship between interest rates and investment. Increasing the real interest rates provides increase in savings of economic unites. These increases make positive effect on the investments and economic growth.

Neo-Fisherism approach examined the relationship between interest rate and inflation and it put forward that low interest rate led to deflation and high interest rate to inflation.

In this study, the developed and developed countries were individually examined, considering the data of interest rate, investment, and inflation. As the developed countries, the data of Eurozone, Japan, and United Kingdom. We can say that, in these countries, a fall occurred in the rates of the interest, investment, and inflation rates in the periods of crises and, in post-crisis years. In these developed countries we deal with, in general, it is possible to say that interest rates and investments are in a relationship in the same direction. That is, in the periods, when interest rates increase, in investments, an increase i is seen. When we examine these countries in terms of inflation, after crisis, in 2009, we have seen that sharp decreases occurred in all countries. As seen in the relationship between interest rates and investment, it is also to say that there is a relationship in the same direction between investment and inflation.

As the developing countries, in terms of Turkey, Brazil, India, Indonesia, and South Africa, the relationship between interest rate, investments and inflation was examined. In respect with the countries we discuss, it is possible to say that interest rates range at the higher levels than the interest rates of the developed countries. When we examine these countries in terms of investment, we can say that investments are not seriously affected from the crisis; especially, in terms of India and Indonesia;, that there are increases at the levels of investments in the crisis periods; but in Brazil Africa, and especially in Turkey, that investment are affected from crisis; and later that they enter a recovery process. When we regard to the inflations rates, in general, in these countries, it is possible to say that inflation rate is high and, that it showed increase in the crisis periods

When we compare Turkey to the developed countries, although it is at the high levels in terms of interest rates, in 2010, it approached the interest rates of Eurozone; but in the next years, it opened the gap again. When we regard from investment point of view, there are no very serious differences between the developed countries and Turkey. Moreover, in some periods, Turkey has higher investment rates higher than United Kingdom and Japan. Finally, when we examine in terms of inflation, we can say that in Turkey, inflation rates are higher; although some falls are experienced in respect with years, that it cannot catch the developed countries.

When we make a comparison between the developed countries and Turkey, it is possible to say that in the early 2000s, the inflation and interest rates are higher compared to the other developing countries; that in the next years, the gap is gradually closed and almost arrives to the same levels; but, in terms of inflation, that Turkey generally has the higher rates. When we compare in terms of investment rates, in India and Indonesia, we can say that the investment rates in India and Indonesia are relatively higher than in the investment rates in Turkey, Brazil, and South Africa, while the investment rates of Turkey, Brazil, and South Africa are almost at the same level.

As a conclusion, we have seen that in the developed countries, there is an inflation or deflation problem near zero: While the inflation rates in US and United Kingdom are at the level of 1.5% and in Eurozone at 0.2%, in Japan, they are at the negative level. Therefore, central banks of these countries determined the policy interest rates at the levels near zero. Especially following 2008 financial crisis, due to the fact that they enter the recessions, the central banks of developed counties, in order to be able to get over this process, lowered the

interest rates at the record levels. We see that as a result of the phenomena such as that the interest rates are at the low level, reliability, and stability, they are at the high levels.

In the developing countries having the problem of high inflation, central banks, raising the interest rates, increase the cost of reaching money and, depending on this, they want to reduce the monetary supply in economy and increase its value and thus to reduce inflation rate.. As also seen from the data of the developing countries we discuss, inflation rates ate at quite high level. Depending on this, policy interest rates, determined by central bank are also quite high, compared to the developed countries. When we examine the investment rates and compare them with the developed countries, although the interest rates are high, we see that investment rates are high. When we also evaluate the developed countries among themselves, we can say that India and Indonesia differentiate from the other developing countries.

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The Energy Source Selection by Fuzzy AHP and Fuzzy MOORA Method in a Textile Firm

Arzu Organ, Engin Yalçın

1. Introduction

Energy source necessity has increased since industrial revolution. Since then energy sources are of vital importance for firms. Because it would be impossible product goods without energy sources. The consumption of energy sources should be carried out carefully as most of the energy sources are exhaustible. As most energy sources are exhaustible and firms should decide which one to use thoroughly. If firms don't use energy sources properly, these sources can be depleted sooner. There are a lot of criteria while evaluating energy sources for firms. For this reason, the staff taking charge in purchasing energy sources should take into consideration different features of alternatives. Because one alternative may be better when considering a criterion compared with other alternatives but it may be worse than other alternatives considering another criteria. Because of these reasons, energy source selection contains difficulties and its consumption should be carried out attentively. To tackle these difficulties, decision makers can apply to different approaches. One of these fields is multi-criteria decision making methods. Multi-criteria decision making methods can be used when there are lots of conflicting criteria. Energy source selection is one of those topics as it has different conflicting criteria.

Multi-criteria decision making methods are one of fields used to rank, evaluate the alternatives. There are many multi-criteria decision making methods that decision makers utilize when choosing or evaluating an alternative. Some of these are AHP, TOPSIS, SAW, VIKOR, and MOORA. These methods can be adapted into fuzzy sets too. In this study fuzzy AHP integrated fuzzy MOORA method is used to find the most proper energy source for a textile firm.

2.1 Fuzzy AHP

AHP method, introduced by Saaty, aims to simplify the solution of the multi- attribute, multi-person, multi-period structural problems.

The analytic hierarchy process (AHP) is a popular method for solving multi criteria analysis (MA) problems involving qualitative data. However, this method is often criticized due to its use of an unbalanced scale of judgments and its inability to adequately handle the inherent uncertainty and imprecision of the pairwise comparison process. This paper presents a fuzzy approach for tackling qualitative MA problems in a simple and straightforward manner. As a result, effective decisions can be made based on adequate modeling of the uncertainty and imprecision in human behavior (Deng, 1999: 215).

In crisp AHP, a discrete scale of one to nine is used to decide the priority of one decision variable over another whereas in fuzzy AHP fuzzy numbers or linguistic variables are used. In practice, decision makers usually prefer triangular or trapezoidal fuzzy numbers (Kilincci and Onal, 2011: 9658).

The fuzzy AHP method, suggested by Buckley, is used to determine criteria weights in the study, and the method is carried out as follows (Hsieh et al., 2004: 576-577).

Step 1: Construct pairwise comparison matrices among all the elements/criteria in the dimensions of the hierarchy system.

$$\begin{bmatrix} 1 & \tilde{a}_{12} & \dots & \tilde{a}_{1n} \\ \tilde{a} & 1 & \dots & \tilde{a}_{2n} \\ . & . & & . \\ . & . & & . \\ . & . & & . \\ \tilde{a}_{n1} & \tilde{a}_{n2} & \dots & 1 \end{bmatrix} = \begin{bmatrix} 1 & \tilde{a}_{12} & \dots & \tilde{a}_{1n} \\ 1/\tilde{a}_{12} & 1 & \dots & \tilde{a}_{2n} \\ . & . & & . \\ . & . & & . \\ . & . & & . \\ 1/\tilde{a}_{1n} & 1/\tilde{a}_{2n} & \dots & 1 \end{bmatrix} \quad (1)$$

$$\tilde{a}_{ij} = \begin{cases} \tilde{1}, \tilde{3}, \tilde{5}, \tilde{7}, \tilde{9} \; i \; criterion \quad more \quad impor\tan t \quad than \quad j \quad criterion. \\ 1, \; i = j \\ \tilde{1}^{-1}, \tilde{3}^{-1}, \tilde{5}^{-1}, \tilde{7}^{-1}, \tilde{9}^{-1} i \; criterion \quad less \quad impor\tan t \quad than \quad j \quad criterion. \end{cases} \quad (2)$$

Decision makers used fuzzy five level scales to evaluate criteria. The linguistic variables and is reciprocal fuzzy scale are given in Table 1.

Table 1. The Linguistic Assessment Variables and its Corresponding Scale in Terms of Triangular Fuzzy Numbers

Linguistic Variable	Triangular Fuzzy Scale	Triangular Fuzzy Reciprocal Scale
Equal	(1,1,1)	(1/1, 1/1, 1/1)
Moderate	(2,3,4)	(1/4, 1/3, 1/2)
Strong	(4,5,6)	(1/6, 1/5, 1/4)
Very Strong	(6,7,8)	(1/8, 1/7, 1/6)
Extremely Preferred	(8,9,9)	(1/9, 1/9, 1/8)

Step 2: To use geometric mean technique to define the fuzzy geometric mean and fuzzy weights of each criterion by Buckley as follows:

$$\tilde{r}_i = (\tilde{a}_{i1} \otimes \dots \otimes \tilde{a}_{ij} \otimes \dots .. \tilde{a}_{in})^{\frac{1}{n}} \quad (3)$$

$$\tilde{w}_i = \tilde{r}_i \otimes [\tilde{r}_1 \oplus \dots . \tilde{r}_i \oplus \dots \oplus \tilde{r}_n]^{-1} \quad (4)$$

Step 3: The result of the fuzzy synthetic decision reached by each alternative is a fuzzy number. The procedure of defuzzification is to find Best Nonfuzzy Performance value (BNP). To utilize the Center of Area (COA) method to find BNP is a simple and practical method.

$$\text{BNP}_{\text{wi}} = \frac{(U_{wi} - L_{wi}) \oplus (M_{wi} - L_{wi})}{3} \oplus L_i \; ; \; \text{i=1,2,……,n} \quad (5)$$

Lwi , *Mwi* ,*Uwi* values are triangular fuzzy numbers and respectively represent the lower, middle and upper values in the equation.

2.2 Fuzzy MOORA

MOORA is a multi-objective optimization by ratio analysis technique firstly used by Brauers and Zavadskas (2006). Their application was about privatization in a transiton economy. Since then the applications about MOORA method have increased more and more as it is easy to use. There are many advantages using MOORA method compared with other multi-criteria decision making methods. Due to these advantages, MOORA method has been used more and more within last years.

Table 2 shows that comparative performance of some multi criteria decision making (MCDM) techniques with regard to computational time, simplicity, mathematical calculations, stability and information type (Brauers and Zavadskas, 2012: 5).
Table 2. Comparative Performance of MCDM Techniques

Fuzzy MOORA, composed of fuzzy set and MOORA method, is a multi-criteria decision making method to evaluate alternatives. The steps of fuzzy MOORA are as follows:
Step 1: Based on the expert opinions of the decision makers, develop the fuzzy decision matrix in which each criterion value is measured by using triangular membership function **(**Vatansever and Uluköy, 2013: 283).

$$\begin{bmatrix} \left[x_{11}^{\,l}, x_{11}^{\,m}, x_{11}^{\,n}\right] & \left[x_{12}^{\,l}, x_{12}^{\,m}, x_{12}^{\,n}\right]\ldots & \left[x_{1n}^{\,l}, x_{1n}^{\,m}, x_{1n}^{\,n}\right] \\ \left[x_{21}^{\,l}, x_{21}^{\,m}, x_{21}^{\,n}\right] & \left[x_{22}^{\,l}, x_{22}^{\,m}, x_{22}^{\,n}\right]\ldots & \left[x_{2n}^{\,l}, x_{2n}^{\,m}, x_{2n}^{\,n}\right] \\ \ldots\ldots\ldots & \ldots\ldots\ldots & \ldots\ldots\ldots \\ \left[x_{m1}^{\,l}, x_{m1}^{\,m}, x_{m1}^{\,n}\right] & \left[x_{m2}^{\,l}, x_{m2}^{\,m}, x_{m2}^{\,n}\right] & \left[x_{m2}^{\,l}, x_{m2}^{\,m}, x_{m2}^{\,n}\right] \end{bmatrix} \quad (6)$$

Table 3. Linguistic Variables Used to Evaluate the Alternatives

Linguistic Variables	Triangular Fuzzy Numbers
Very Weak	(0, 0, 1)
Weak	(0, 1, 3)
Moderate Weak	(1, 3, 5)
Moderate	(3, 5, 7)
Moderate Good	(5, 7, 9)
Good	(7, 9, 10)
Very Good	(9, 10, 10)

Step 2: Normalize the fuzzy decision matrix using vector normalization procedure.

MCDM Techniques	Computational Time	Simplicity	Mathematical Calculation	Stability	Information Type
MOORA	Very Less	Very Simple	Min.	Good	Quantitative
AHP	Very High	Very Critical	Max.	Poor	Mixed
TOPSIS	Moderate	Moderately Critical	Moderate	Medium	Quantitative
VIKOR	Less	Simple	Moderate	Medium	Quantitative
ELECTRE	High	Moderately Critical	Moderate	Medium	Mixed
PROMETHEE	High	Moderately Critical	Moderate	Medium	Mixed

$$r_{ij}^{\,l} = \frac{x_{ij}^{\,l}}{\sqrt{\left[\sum_{i=1}^{m}\left[(x_{ij}^{\,l})^2 + (x_{ij}^{\,m})^2 + (x_{ij}^{\,n})^2\right]\right.}} \quad (7)$$

$$r_{ij}^{\,m} = \frac{x_{ij}^{\,m}}{\sqrt{\sum_{i=1}^{m}\left[(x_{ij}^{\,l})^2 + (x_{ij}^{\,m})^2 + (xij)^2\right]}} \quad (8)$$

$$r_{ij}^{n} = \frac{x_{ij}^{n}}{\sqrt{\sum_{i=1}^{m}(x_{ij}^{l})^2 + (x_{ij}^{m})^2 + (x_{ij}^{n})^2}} \quad (9)$$

Step 3: Determine the weighted normalized fuzzy decision matrix employing the following equations;

$$v_{ij}^{l} = w_j . r_{ij}^{l} \quad (10)$$

$$v_{ij}^{m} = w_j . r_{ij}^{m} \quad (11)$$

$$v_{ij}^{n} = w_j . r_{ij}^{n} \quad (12)$$

Step 4: Calculate the overall ratings of beneficial and non-beneficial criteria, the overall ratings of an alternative for lower, middle and upper values of the triangular membership function are computed as follows for benefit criteria,

$$s_i^{+l} = \sum_{j=1}^{n} v_{ij}^{l} \mid j \in J^{\max} \quad (13)$$

$$s_i^{+m} = \sum_{j=1}^{n} v_{ij}^{m} \mid j \in J^{\max} \quad (14)$$

$$s_i^{+n} = \sum_{j=1}^{n} v_{ij}^{n} \mid j \in J^{\max} \quad (15)$$

For non-benefit criteria;

$$s_i^{-l} = \sum_{j=1}^{n} v_{ij}^{l} \mid j \in J^{\max} \quad (16)$$

$$s_i^{-m} = \sum_{j=1}^{n} v_{ij}^{m} \mid j \in J^{\max} \quad (17)$$

$$s_i^{-n} = \sum_{j=1}^{n} v_{ij}^{n} \mid j \in J^{\max}$$

Step 5: Determine the overall performance index (S_i) for each alternative. For this, the defuzzified values of the overall ratings for beneficial and non-beneficial criteria for each alternative are computed using the vertex method as follows:

$$S_i(s_i^{+}, s_i^{-}) = \sqrt{\frac{1}{3}[(s_i^{+l} - s_i^{-l})^2 + (s_i^{+m} - s_i^{-m})^2 + (s_i^{+n} - s_i^{-n})]} \quad (18)$$

Step 6: Based on the descending values of overall performance index, rank the alternatives from the best to worst. The alternative with the highest overall performance index is the most favorable choice (Karande and Chakraborty, 2012)

2.3 Literature Review of Fuzzy MOORA Method

There are lots of studies carried out by MOORA and fuzzy MOORA. Some of them are listed:

Brauers (2008) used MOORA method to rank contractors**.** Uygurtürk (2015) applied this method to evaluate internet branch of banks. Uluköy and Vatansever (2013) used this

method to select ERP system. Balezentis et al. (2010) used fuzzy MULTIMOORA for personnel selection. Akkaya et al. (2015) used fuzzy MOORA to select industrial engineering sector for students and graduates. Dey et al. (2012) utilized this method to determine supply chain strategy. Perez-Dominguez et al. used this method to choose supplier. Karande and Chakraborty (2012) used this method for material selection. Chakraborty used MOORA method for manufacturing system selection. Matawale et al. (2016) used fuzzy TOPSIS and fuzzy MOORA to select supplier.

3. Application

Our aim is to find proper energy resource for firm.. We have four alternatives and five criteria. The alternatives used in this study are natural gas, coal, diesel, electricity. The criteria used in this study are eco friendly level, cost, attainability, calorific value and machinability. We firstly determine weights of criteria by fuzzy AHP Then we rank the alternatives by fuzzy MOORA. The computations are carried out via Microsoft Excel.

Fuzzy pairwise comparision matrix used to determine weights is as in Table 4.

Table 4. The Fuzzy Pairwise Comparison Matrix of Criteria

	Eco friendly level	**Cost**	**Attainability**	**Calorific Value**	**Machinability**
Eco friendly level	1,00 1,00 1,00	0,11 0,11 0,125	0,125 0,142 0,166	0,16 0,20 0,25	0,125 0,142 0,166
Cost	8,00 9,00 9,00	1,00 1,00 1,00	1,00 1,00 1,00	1,00 1,00 1,00	0,11 0,11 0,12
Attainability	6,00 7,00 8,00	1,00 1,00 1,00	1,00 1,00 1,00	4,00 5,00 6,00	1,00 1,000 1.000
Calorific Value	4,00 5,00 6,00	1,00 1,00 1,00	0,16 0,20 0,25	1,00 1,00 1,00	0,25 0,33 0,50
Machinability	6,00 7,00 8,00	8,00 9,00 9,00	1,00 1,00 1,00	2,00 3,00 4,00	1,00 1,00 1,00

Fuzzy weights are obtained for each criteria group by using equation (3).

$$\tilde{r}_1 = (\tilde{a}_{11} \otimes \tilde{a}_{12} \otimes \tilde{a}_{13} \otimes \tilde{a}_{14} \otimes \tilde{a}_{15})^{\frac{1}{5}}$$

$$\tilde{r}_1 = (1*0{,}11*0{,}125\ldots*0{,}125)^{\frac{1}{5}}, (1*0{,}11*0{,}142\ldots*0{,}142)^{\frac{1}{5}}, (1*0{,}125*0{,}166\ldots 0{,}16)^{\frac{1}{5}}$$

$\tilde{r}_1$ =(0,1940, 0,2135, 0,2437)

$\tilde{r}_2$ = (0,976, 0,997, 1,011)

$\tilde{r}_3$ = (1,888, 2,036, 2,168)

$\tilde{r}_4$ =(0,693, 0,802, 0,944)

$\tilde{r}_5$ = (2,491, 2,852, 3,103)

Criteria weights are calculated by using equation (4).

$$\tilde{W}_1 = \tilde{r}_1 \otimes (\tilde{r}_1 \oplus \tilde{r}_2 \oplus \tilde{r}_3 \oplus \tilde{r}_4 \oplus \tilde{r}_5)^{-1}$$

$$= (0.1940,\ 0.2135,\ 0.2437) \otimes \begin{pmatrix} 1/(0.2437 \oplus 1.011 \oplus ... \oplus 3.103 \\ 1/(0.2135 \oplus 0.997 \oplus ... \oplus 2.852 \\ 1/(0.1940 \oplus 0.976 \oplus ... \oplus 2.491 \end{pmatrix}$$

= (0,1940, 0,2135, 0,2437) ⊗(0,133, 0,144, 0,160)

= (0,0258, 0,0309, 0,0389)

$\tilde{W}_2$ = (0,1303, 0,1446, 0,1627)

$\tilde{W}_3$ = (0,2525, 0,2950, 0,3475)

$\tilde{W}_4$ = (0.0927, 0,1160, 0,1512)

$\tilde{W}_5$ = (0,3332, 0,4133, 0,4972)

Best non-fuzzy performance values are obtained from defuzzifying fuzzy criteria weights with Center of Area (COA) method by using equation (5).

$$BNP_{w1} = \frac{(U_{wi} - L_{wi}) \oplus (M_{wi} - L_{wi})}{3} \oplus L_i$$

$$BNP_{w1} = \frac{(0,0389 - 0,0258) \oplus (0,0309 - 0,0258)}{3} \oplus 0,0258$$

BNP_{w1} = 0,0319

BNP_{w2}= 0,1458

BNP_{w3}= 0,2983

BNP_{w4}= 0,1200

BNP_{w5}= 0,4114

After determining weights, now we apply fuzzy MOORA method to select the most proper energy source for the firm operating in textile industry.

Fuzzy decision matrix about energy selection is formed in line with the opinion of decision makers, shown in Table 5.

Table 5. Fuzzy Decision Matrix

	Eco friendly level	**Cost**	**Attainability**	**Calorific Value**	**Machinability**
Coal	0,00 0,00 1,00	9,00 10,00 10,00	9,00 10,00 10,00	7,00 9,00 10,00	3,00 5,00 7,00
Natural Gas	5,00 7,00 9,00	7,00 9,00 10,00	7,00 9,00 10,00	3,00 5,00 7,00	7,00 9,00 10,00
Diesel	0,00 1,00 3,00	0,00 1,00 3,00	0,00 0,00 1,00	7,00 9,00 10,00	7,00 9,00 10,00
Electricity	9,00 10,00 10,00	5,00 7,00 9,00	5,00 7,00 9,00	0,00 1,00 3,00	0,00 1,00 3,00

Normalized fuzzy decision matrix is obtained from vector normalization process by using equations (7), (8), and (9).

Table 6. Normalized Fuzzy Decision Matrix

	Eco friendly level	Cost	Attainability	Calorific Value	Machinability
Coal	0,00 0,00 1,00	0,5369 0,5965 0,5965	0,5369 0,5965 0,5965	0,4616 0,5934 0,6594	0,3293 0,5488 0,7683
Natural Gas	0,4016 0,5623 0,7229	0,4616 0,5934 0,6594	0,4616 0,5934 0,6594	0,3293 0,5488 0,7683	0,4616 0,5934 0,6594
Diesel	0,00 0,3162 0,9487	0,00 0,3162 0,9487	0,00 0,00 1,00	0,4616 0,5934 0,6594	0,4616 0,5934 0,6594
Electricity	0,5369 0,5965 0,5965	0,4016 0,5623 0,7229	0,4016 0,5623 0,7229	0,00 0,3162 0,9487	0,00 0,3162 0,9487

	S+	S-	S	Ranking
Coal	0,3521 0,4768 0,6077	0,0783 0,0870 0,0870	0,4074	2
Natural Gas	0,3815 0,5070 0,5855	0,0673 0,0866 0,0962	0,4142	1
Diesel	0,2468 0,3274 0,6812	0,0000 0,461 0,1384	0,3806	4
Electricity	0,1370 0,3559 0,7420	0,0586 0,0820 0,1055	0,4026	3

Weighted normalized fuzzy decision matrix is obtained by calculating weights obtained from fuzzy AHP, and normalizing fuzzy decision matrix components, using equations (10), (11) and (12).

Table 7. Weighted Normalize Fuzzy Decision Matrix

	Eco friendly level	Cost	Attainability	Calorific Value	Machinability
Coal	0,0000 0,0000 0,0320	0,0783 0,0870 0,0870	0,1602 0,1780 0,1780	0,0554 0,0712 0,0791	0,1365 0,2276 0,3186
Natural Gas	0,0128 0,0180 0,0231	0,0673 0,0866 0,0962	0,1377 0,1771 0,1967	0,0395 0,0659 0,0922	0,1914 0,2461 0,2734
Diesel	0,0000 0,0101 0,0303	0,0000 0,0461 0,1384	0,000 0,000 0,2984	0,0554 0,0712 0,0791	0,1914 0,2461 0,2734
Electricity	0,0172 0,0191 0,0191	0,0586 0,0820 0,1055	0,1198 0,1678 0,2157	0,0000 0,0380 0,1139	0,0000 0,1311 0,3934

Each alternative ranks are obtained with regard to benefit and non-benefit criteria using equations (13), (14), (15), (16) and (17), and finally performance scores are obtained by equation (18). The ranking alternatives are shown in Table 8.

Table 8. Ranking of Alternatives

4. Conclusion

Energy sources are indispensable for firms in globalized world. It is one of the most important sources when manufacturing. Therefore its consumption should be carried out properly. These sources shouldn't be wasted as some of energy sources aren't renewable. Each energy source has some unique advantages but firms and decision makers have to evaluate different criteria at the same time. This isn't easy case at all for decision makers. Multi-criteria decision making methods are essential contributories for firms and decision makers that struggle to find the best alternative. Fuzzy MOORA method is one of these contributories for decision makers. In this paper, the most energy source for a textile firm is tried to find by fuzzy AHP weighted fuzzy MOORA method.

According to results of the study, natural gas is the best alternative for the firm to use. When we take a look at features of natural gas. It can be seen that its cost, attainability and machinability is highly preferable. After natural gas, coal takes the second rank. Its cost and attainability is proper for the firm. After coal, electricity is the third energy source the firm can

select. Electricity is more eco-friendly compared with other alternatives. Diesel is the worst alternative for the firm.

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The Penal Treatment of Foreigners in the time of Globalization

Enrico Lanza

1. The different juridical approaches to the penal treatment of foreigners

Some years ago Otfried Höffe wrote a very interesting book from a penal point of view, analysing the possible relationships between foreigners and criminal law. Specifically, he distinguished different approaches that juridical systems could adopt to address the problem constituted by the presence of foreigners in their territories (Höffe, 2001).

First of all, he said it's possible to equate foreigners to barbarians, as people without dignity and human quality. This approach expresses a refusing strategy: the relegation of foreigners in closed spaces, to keep them separated from citizens. In the past it justified the Nazi doctrine of race and laws against Jews.

A second model proposed by Höffe is the assimilation one, widely used in France and substantially shared in the Italian context. The assimilation model is considered democratic being based on the principle of equality: foreigners loose their identity, because society requests them to behave as citizens, but, in change of this loss, they gain the belonging to the new community. The strategy used this time can be defined anthropophagic (Lévi-Strauss, 1960), because otherness is absorbed, incorporated, swallowed into a unified whole.

In countries that had a lasting colonial experience, cultural diversity is often considered as a value, the relationship with foreigners is based on intercultural rights and integrative legal solutions are frequently adopted: it is affirmed the essentiality of some basic principles for community life, while, for the rest, the compromise is preferred. So the Indians Sikhs in England, driving a motorbike, are allowed to wear turbans instead of helmets to observe their own religion.

In addition to the just mentioned models, representing the most significant ones from a historical point of view, Höffe identified other possible relationships between legal systems and foreigners, which can be substantially considered abstract, theoretical. Foreigners as well could be treated like citizens, in systems whose object is the person, the human being; or the state could apply the legislation of foreigner's country.

Finally, according to Höffe, it could be used a federal model, in which the central authority has reserved the monopoly of the main choices concerning community life and the suburbs have a large autonomy, especially administrative one: this model is more suitable for contexts where cultural diversity is due to the presence of national ethnic minorities, rather than in immigration cases. This was the solution adopted by the Roman Empire to exercise the maximum control in the provinces. The main choices were made by the centre (Rome), and provinces could manage their administrative autonomy in the other fields. The choice of Pontius Pilate of "washing his hands" had a precise legal meaning, which the responsibility for the death of Jesus Christ, that Catholic Religion asserted against the prosecutor of the province of Judea, derives from. Pilate, in fact, abdicated in his exclusive prerogative (the choice of condemning the crucifixion), allowing it to be exercised by the Pharisees, who could not decide for the lives of individuals as part of their administrative autonomy.

2. Italian juridical system and foreigners: the criminalization of third-country nationals illegal entry and stay

What solution has been adopted by Italian system? Italian legislation seems inspired to assimilation model, because the main law in the field of immigration issued in 1998 (Legislative

Decree No 286/1998) recognises to foreigners fundamental rights and pretends from them the respect of national legislation.

To understand Italian system true approach to the problem represented by the relationship with foreigners, politicians and scholars consider fundamental the relatively recent choice of criminalizing third-country nationals illegal entry and stay in Italy.

In the original version of Legislative Decree No 286/1998, removal from the territory of the state constituted the appropriate (administrative) sanction for illegally entering and staying third-country nationals.

Repression limited to administrative field was consequent to ideological and economical considerations, deriving, the first, from Italian experience of emigration, the second, from the costs of celebrating trials if illegal entry and stay was qualified as a criminal offence. It was also underlined the uselessness of a criminalization that would have substantially determined the same effect of administrative sanction: the expulsion of illegal immigrant.

More than ten years later Legislative Decree No 286/1998 entering into force, the crime of illegal entry and stay was introduced by Law No 94/2009, which amended Legislative Decree No 286/1998 inserting Article 10-bis.

The choice of criminalizing illegal immigration was preceded by lively debates involving politicians, scholars and public opinion, and was the consequence of a pragmatic necessity, rather than of a new global approach to immigration problem. In 2008 European Directive 2008/115/EC "on common standards and procedures in Member States for returning illegally staying third-country nationals" (the so-called *Return Directive*) was issued and these rules made more difficult the execution of removal procedures. In Directive 2008/115 the prescribed system of return is opposite to the Italian one contained in Legislative Decree No 286/1998 as amended by Law No 189/2002, where enforceable removal of illegal migrants was ordinarily allowed: nowadays the return procedure must *normally* consist in the voluntary departure of illegal immigrant from the territory of the state in a time limit fixed between seven and thirty days; only in the most serious cases (for example, when the third-country national has not complied with the obligation to return within the period for voluntary departure, or when the return is provided in the national law as a criminal law sanction or as a consequence of a criminal law sanction) it is possible to physically deport the immigrant out of the territory of the state.

After European normative contest change, Italian legislator decided to introduce the criminal offence of illegal entry and stay, rather than punishing illegal migrants, to let immediately enforceable a return decision that, for the operation of Directive 2008/115, should have been delayed. As said above, according to Return Directive, immediate deportation of illegal migrants could survive, if provided as a consequence of a criminal sanction: that is the case of criminalizing illegal entry and stay.

Firstly, the evidence of this intent is in the words used by Italian Minister of the Interior at that time, who openly declared the motivations for the introduction of the new provision, secondly, in the structure of the illicit fact as a misdemeanour, a minor crime (in Italy we call it *contravvenzione*), a very light criminal offence whose penalty is a fine of not less than € 5,000 and not exceeding € 10,000. Of course illegal immigrants will never have this money available, neither the minimum; so the goal of the provision is to allow immediate removal of third-country nationals, that is stated in the law as an alternative penalty for who doesn't pay for the fine.

It's clear that the provision of a fine is not really effective to fight against illegal immigration also for structural aspects (a fine stimulates less than detention the respect of rules, especially if the negative effects of respecting rules are so relevant as in the case of immigrants escaping from misery and civil war). For these reasons the provision can be considered symbolic.

The present Italian legislator has provided the abrogation of the criminal offence of illegal entry and stay in Law No 67/2014, even though the abrogation is not still executive.

This choice has been motivated by the idea that decriminalizing illegal entry and stay means openness, acceptance, reception of migrants, but, above all, it seems determined by political reasons, of electoral consensus, rather than an attentive examination of the complex migratory problem.

The idea that the abrogation of the crime of illegal entry and stay in 2014 expresses openness towards migrants may not be shared. First of all, this kind of criminal offence exists in a lot of countries, such as France, Germany, the United Kingdom, Switzerland, Belgium, Denmark, Greece, Ireland, Sweden: countries where, most often, integration level is very high compared with Italian one. Nevertheless, in most of these countries the penalty provided for illegal entry or stay is imprisonment, even though in different measures: for example, in Greece and Belgium for not more than three months, in Ireland and Sweden for not more than one year.

However, in some systems the higher hardness of punishment is balanced by the discretion of public prosecutor in the decision of prosecuting foreigners, differently from Italian system where Article 112 of Constitution compels the prosecution of all crimes. In that way it's possible to make opportunistic choices, which allow the prosecutor not to proceed against illegal immigration facts if specific historical situations suggest this solution. This is the case of arrival of a huge number of illegal migrants crossing by sea the external border of the state, as it often happens in Italy, making very difficult the work of Agrigento judicial authorities, that are competent for the events in Lampedusa.

3. Foreigners and globalization

Nowadays, taking account of certain cultural, institutional, economical and social tendencies is necessary to make an informed political choice about the legal treatment to reserve to foreigners.

From a cultural standpoint, it seems unexceptionable that Western societies are increasingly multicultural, and not only for the presence of immigrants, but rather as a result of globalization. Scholars often look at this phenomenon with diffidence. Although there are those who appreciate the benefits of multiculturalism, in terms of knowledge of diversity, on the other hand, there are those who consider globalization an expression of Western culture imperialism and an instrument to suppress local identities.

From an institutional point of view, it may be noted that the role of the national state is consistently reduced. The great problems of society – ecology, nuclear energy, immigration – can not be effectively addressed unless adopting a shared strategy. And the migration issue appears paradigmatic: the ability to perform expulsion measures depends, in most cases, on the prior existence of readmission agreements.

From an economical and social perspective, it can be recognized, on the one hand, as the true economical and financial power lies in multinational enterprises, whose choices can affect the stability of the States (leaving them the responsibility to address problems related to Welfare State) (Bauman, 2002); on the other hand, as Internet has revolutionized the perception of distance, which is no longer intended in physical sense: the example of the two lovers who, though living at the antipodes of the country, having breakfast together via skype are "neighbors" more than the person who lives in front of us and goes in and out in hours different from ours (Beck and Beck-Gernsheim, 2012).

So the distance is no longer defined by the material measure that separates us from the object of our desire, but it depends on media technology: it's no more quantitative but qualitative. The role of foreigner is also changed: he/she is no longer a person who comes from a different world to "ours" and then returns in his/her own reality, but he/she is an individual

who wants to remain as a part of "us" with his/her starting identity, contaminating our supposed "purity" (Escobar, 1992).

Globalization has influenced in this way the sense of identity, that was exclusive and is becoming inclusive. In the past, in societies considered homogeneous, identity meant common language, customs, history, territory: those who didn't possess characters of membership were excluded from the social forum, defined as strangers. The Berlin Wall constituted the symbolic representation of the – cultural, political, social, economical and physical – separation between the ones and the others. Today, after the fall of the Wall, the situation is completely different since societies have become more complex (the dissolution of power blocs has stimulated the creation of new political entities, expressive of local interests, claiming for autonomy even though not provided of the military, economical and cultural sources that national sovereignty needs) and the relationship with otherness can be defined as inclusive, fluid (Bauman, 2011): there are some aspects of life that unite us to others and aspects of life that separate us from others. Beck expressed this ambivalence with an example. He met a Danish manager who considered himself a global citizen: because he perfectly spoke English, and so he could break all language barriers; because he preferred, for his trips, international hotels, which ensured consistency of services in any part of the world he was; because he used the same "language" and had the same interests of his business partners. During the conversation, however, the "cosmopolitan" manager admitted that in Denmark he sustained a restrictive immigration policy (Beck, 2003).

4. Conclusion

Of course, the choice concerning the juridical treatment of foreigners is political. There are not theoretical reasons to exclude the legitimacy of a closed position even towards otherness, in fact consistent with the logic of national sovereignty.

This approach, even though abstractly legitimate, at least suffers of myopia. In a text of Beck is another really explanatory example. In the airport Berlin-Tegel, in Germany, at 9 p.m. the speaker of the flight to Hamburg is not an icy Valkyrie but a blonde tanned Californian girl, Internet connected from the US West Coast. Why? Because, while it is night in Germany, it is day in California and so the German airport board is not obliged to pay the extra-wage for night work (Beck, 1999, p. 36).

This simple example shows how the logic of national sovereignty is outdated and will hardly be able to face the challenges that globalization poses.

Already Francisco de Vitoria in the sixteenth century proposed the ideal of cosmopolitanism (Trujillo Pérez, 1997).

Certainly de Vitoria was motivated by the necessity of justifying the campaign of conquest of Spain in the New World (the Spanish, according to his idea, had the "right" to migrate in the Americas). It was the need of national states to have a reference territory as its constituent element to force the so-called *ius peregrinandi*.

While at the origin of the national state ideology the affirmation of citizenship constituted claim against inequality and means of combating social exclusion, today the nationality requirement is the last means, for the inhabitants of rich countries, to maintain privileges related to their status: privileges that favor the exclusion of others and develop a sense of inequality, in deviations from values stated in international documents of protection of fundamental rights. Thus the resistance to recognize as universal (to every human being) rights of residence and movement is the ultimate surviving protection for Westerns.

As said by Luigi Ferrajoli, at de Vitoria times those rights (of residence and movement) were abstractly proclaimed as equal and universal when they were concretely unequal and asymmetric, being unbelievable migration of the Indians in the West, and served to legitimize

the colonial occupation and war of conquest of new world by our rising national states. Today the situation is reversed. Reciprocity and universality of those rights have been denied. Those rights have turned into citizenship rights – exclusive and privileged – as soon as we had to take them seriously and pay for their cost (Ferrajoli, 1993, p. 75).

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Organizational Commitment Levels of Personnel Working in 4-Star and 5-Star Accommodation Businesses: The Case of Alanya

Ates Bayazit Hayta

1. Introduction

The importance of tourism has been increasing in the service industry in Turkey and across the world. According to 2013 data, the sectors relevant to tourism provide 9% of the world's employment, with an employment figure surpassing 250 million (World Travel Tourism Council, 2013). In Turkey, the 2013 data from the Social Security Institution indicate that there are 11,111 accommodation businesses in total across the country, with 289,467 personnel with insurance working in these businesses. As understood from these figures, the most important production factor of the accommodation businesses that play a vital role in the development of tourism sector is human resources. In other words, the key factor that helps accommodation businesses make a difference in the fierce competition environment is their personnel.
It is important to administrative success to choose qualified personnel to work in an accommodation business and keep personnel in the same business for a long time. Thus, it is of crucial importance for businesses to employ qualified personnel, provide improvement opportunities, and ensure their commitment to the business. Organizational commitment is the most important driving force behind the success of a business (Bozkurt & Yurt, 2013).

1.1. The Concept of Organizational Commitment

Organizational commitment is one issue that has been extensively studied for the last 30 years in the administration and organizational behavior fields. Various definitions of organizational commitment exist due to the fact that researchers in such different disciplines as sociology, psychology, social psychology, and organizational behavior approach the matter from their own perspective (İnce & Gül, 2005). When the literature is investigated, several definitions of organizational commitment can be found, such as:

- Organizational commitment relates to personnel feeling psychologically committed to the job that they do, whether it is satisfactory or not (Rusbult & Farrel, 1983).
- Organizational commitment is the adoption of the characteristics or perspective of an organization by the employees (O'Reilly & Chatman, 1986).
- Organizational commitment is a psychological state that characterizes the employees' relationship with the organization she/he works for and which has implications for the employee's intention to remain with the organization (Allen & Meyer, 1991).
- Organizational commitment is the combined power of identification individuals have with an organization and their commitment to it (Leong et all., 1996).
- Organizational commitment relates to the adoption of the targets and values of an organization by its personnel and their making an effort to be an important part of it, considering that organization as a family and themselves as a member of this family (Özdevecioğlu, 2003).

These definitions can be categorized into two groups. Researchers such as Becker, Staw, and Salancik defined the concept of organizational commitment based on its behavioral dimension while Allen, Meyer, March and Simon, Mowday, Steers and Porter, and Boulian brought the attitudinal dimension of the concept. According to behaviorists, organizational commitment can be proven with an evident demonstration of commitment. Personnel continue their job and take on more responsibilities. The increased responsibilities make it difficult to leave the workplace.

As for the attitudinal approach, it suggests the association of personnel's identity with the organization and argues that personnel develop affective commitment to the employer (Çetin, 2004). Scientists working on organizational behavior focus on attitudinal commitment while those working in social psychology focus on behavioral commitment (Örs et al., 2003).
In order to determine the significance, scope, and degree of influence of the concept of organizational commitment in terms of businesses, researchers developed multiple scales. Mowday, Porter, Steers, and Boulian (1979) developed a 7-point Likert scale consisting of 15 questions that has commonly been used to measure organizational commitment. Measuring the attitude of the personnel related to belonging to an organization and participation, this scale aims to demonstrate the attitudinal dimension of the concept of commitment rather than its behavioral dimension. After this scale, attempts were made to develop multi-dimensional scales due to the insufficiency of those handling only one dimension of the matter. In this regard, the scale developed by Allen and Meter aimed to measure organizational development by dividing the concept into three components (affective, continuance, and normative commitment) (Doğan & Kılıç, 2007). Affective commitment, one of the components of the model, relates to being committed to an organization due to both intentions to stay in that particular organization and emotional reasons. Continuance commitment relates to personnel sustaining their commitment to a business considering their personal expectations and interests (Bergman, 2006). Meanwhile, normative commitment occurs when the personnel believe that loyalty is important and continuing to work in the same business is a moral imperative (Dordevic, 2004).

1.2. Personal Factors Affecting Organizational Commitment

Personnel have different personal characteristics, such as age, gender, educational background, marital status, and period of service in the sector. These characteristics affect their organizational commitment level as well as indicate individual differences (Obeng & Ugboro, 2003).
Age: The studies focusing on the relationship between the age variable and organizational commitment pointed to an increase in organizational commitment with age. Studies carried out by Angle and Perry (1981), Durna and Eren (2005), Güçlü (2006), Bozkurt (2007), Seymen (2008), Kuusio (2010) and Khan and Ziauddin (2010) indicated that the organizational commitment levels increased in parallel to the increase in age.
Gender: The literature highlights some differences of opinion about whether female or male personnel show more commitment to their organizations. Some researchers argue that the organizational commitment level of female personnel is lower than that of male personnel because the former are more sensitive to family roles. Similarly, Cushmir (1982), Graddick and Farr (1983), Aranya, Kushmir, and Valency (1986), Aven (1993), Karatepe and Halıcı (1998), Abdulla and Shaw (1999), Cheng and Stockdale (2003), Güçlü (2006), Yalçın and İplik (2007), and Gündoğan (2009) have demonstrated that the organizational commitment of male personnel is higher than that of female personnel. The researchers suggesting that female personnel show a higher level of organizational commitment than male personnel argue that women do not like to change jobs frequently and the challenges they encounter increase their motivation. The results of the studies carried out by Angle and Perry (1981), Mathieu and Zajac (1990), Kamer (2001) and Kuusio (2010) also support this opinion.
Education Level: A negative relationship exists between the education level and organizational commitment of personnel. As an individual's education level increases, his or her organizational commitment decreases because personnel with a high level of education have higher expectations and demands that sometimes cannot be met by enterprises (Sökmen, 2000). The studies carried out by Karaca (2001) and Gündoğan (2009) also support this finding.

Marital Status: Married personnel have a higher level of organizational commitment because they face a bigger financial burden, have family members for whom they are responsible, and must think about the future of their family (Dolu, 2011). Cohen (1993), Benkfoff (1997), Erdoğmuş (2006), Çakır (2007), and Nartgün & Menep (2010) also found that the organizational commitment of married personnel is higher.
Period of Service in the Sector: As the period of service in a business increases, organizational commitment increases as well because the period of service has a value of an investment in that business (Pekmezci, 2010). The findings of the studies carried out by Angle and Perry (1981), Cohen (1993), Beck and Wilson (2000), Yazıcıoğlu and Topaloğlu (2009), Kaya (2012), and Düz (2012) also support this argument.

2. Purpose of the Study and the Sub-Problems

Organizational commitment is a concept about the attitude and behavior of personnel toward their jobs. The present study aimed to determine the organizational commitment levels of personnel working in 4- and 5-star accommodation businesses located in the Alanya district of the Antalya province in Turkey as well as the variables affecting their organizational commitment levels. Within the scope of this main purpose, answers to the following questions were sought:

- What is personnel's level of organizational commitment?
- Is there a significant difference between personnel's organizational commitment levels based on their gender?
- Is there a significant difference between personnel's organizational commitment levels based on their educational background?
- Is there a significant difference between personnel's organizational commitment levels based on their marital status?

3. Method

This section deals with universe and sample, data collection, and analysis.

3.2. Universe and Sample

The universe of the study includes personnel working at 4- and 5-star accommodation businesses located in the Alanya district of Antalya province. According to data from the Alanya Chamber of Commerce and Industry, in 2015, there were 58 5-star and 94 4-star accommodation businesses in Alanya. Accessing all these businesses within the scope of the study was not possible due to time and cost restraints. Hence, this study was carried out with 10 5-star and 9 4-star accommodation businesses that were willing to participate. The total number of personnel working in the aforementioned businesses in May 2015 was 4,214; to ensure a 5% reliability interval, we needed to gather data from 514 individuals. The sample of the study consisted of 554 randomly selected personnel working in 4- and 5-star accommodation businesses operating in the Alanya district. Prior to the study, a pilot study was carried out with 110 personnel.

3.3. Data Collection and Analysis

A survey form with two sections was used to collect data for the study. The researcher administered a face-to-face survey with 554 personnel. The first section of the survey included

questions about participants' demographic data and socio-economic status (i.e., gender, age, marital status, educational background, level of income, department in which they work, period of service in the sector, and period of service in their most recent workplace). The second section used Allen and Meyer's Organizational Commitment Scale, consisting of 18 items and 3 components (affective, continuance, and normative). The items were measured using a five-point Likert scale: (1) strongly disagree, (2) disagree, (3) undecided, (4) agree, and (5) strongly agree. Reliability analyses of the questionnaire were conducted following the pilot study carried out with 110 people. The Cronbach's alpha value of Allen and Meyer's Organizational Development Scale was calculated as .804. The Cronbach's alpha values for the individual components of the scale were calculated as .922 (affective commitment), .896 (continuance commitment), and .826 (normative commitment).

SPSS 22 for Windows was employed to analyze the data of the study. In order to reveal the differences of data in terms of independent variables, *t*-test and Kruskall–Wallis analyses were conducted for independent groups after descriptive statistical values obtained from the organizational commitment scale were assigned. Following the Kruskall–Wallis analysis, the Mann–Whitney U test was administered to determine between which groups statistical differences occurred.

4. Findings and Discussion

4.1. General Details about Participants

Of the personnel working in 4- and 5-star accommodation businesses studied within the scope of this study, 55% were male while 45% were female; 54.5% were married whereas 45.5% were single. In addition, 31.6% of the personnel were between 24 and 34 years old, and 31.8% had graduated from college/university. Finally, 29.4% of the personnel had an income ranging between ₺1000 and ₺1499. The majority of the personnel worked in housekeeping (22.0%), food and beverage service (15.5%), the front office (15.3%), and other services (11.5%) (human resources, technical service, bellboy, security, and gardener). Regarding their period of service, 31.4% of the personnel had 6 to 10 years of service. The period of service at their most recent workplace was mostly 1 to 5 years (34.6%).

4.2. Participants' Organizational Commitment Levels

With regard to the descriptive statistical values about the sample group's organizational commitment levels, it was determined that the statement "I consider myself as part of a family in the business I work for" got the highest value ($\bar{x}$ =3.55) while the statement "It is an obligation for me to continue to work in this business" got the lowest value ($\bar{x}$ =2.99). The results of research shows that 31.0% of the individuals in the sample group agreed with the statement "I am happy to spend the rest of my career life in this business" in the affective component of the scale; 27.0% agreed with the statements "It is not something I want but rather an obligation to continue to work in this business" and "One of the important reasons why I continue to work in this business is that leaving a job requires self-sacrifice" in the continuance component of the scale while 31.9% of the individuals agreed with the statement "I don't feel an obligation to work in this business" in the normative component of the scale.

4.3. Relationship between Participants' Organizational Commitment Levels and Gender

According to the analysis results in Table 1, no significant difference exists in the affective commitment level—one of the components of organizational commitment—according to

individuals' gender [t(302)= -.175; p>.05]. As for the scores regarding the continuance commitment level—another component of organizational commitment—no significant difference exists based on participants' gender [t(302)= .689; p>.05]. The scores regarding the normative commitment levels do not show a significant difference by gender either [t(302)= -.570; p>.05]. Lastly, the participants' scores in the entire organizational commitment scale do not reflect a significant difference by gender [t(302)= .012; p>.05].

Table 1. *T*-test Results Regarding the Difference Between the Sample Group's Organizational Commitment Levels by Gender

	Gender	**N**	$\bar{X}$	**S**	**sd**	**t**	**P**
Affective Commitment	Female	249	3.39	.96	302	-.175	.861
	Male	305	3.41	.99			
	Gender	**N**	$\bar{X}$	**S**	**sd**	**t**	**P**
Continuance Commitment	Female	249	3.15	.99	302	.689	.492
	Male	305	3.06	1.01			
	Gender	**N**	$\bar{X}$	**S**	**sd**	**t**	**P**
Normative Commitment	Female	249	3.20	.87	302	-.570	.569
	Male	305	3.26	.87			
	Gender	**N**	$\bar{X}$	**S**	**sd**	**t**	**P**
Organizational Commitment	Female	249	3.25	.70	302	.012	.990
	Male	305	3.25	.67			

4.4. Relationship between Participants' Organization Commitment Levels and Educational Background

According to the analysis results in Table 2, the affective commitment levels of the individuals in the sample group showed a significant difference based on their educational backgrounds [$x^2_{(2)=}$ 32.864; p<.01]. According to the results of the Mann–Whitney U test administered in order to determine the source of difference between the groups, the range of difference fell between the organizational commitment scores of participants who received postgraduate education and the scores of primary school graduates. The continuance commitment levels of the individuals in the sample group indicate a significant difference by educational background [x2 (2)= 12.291; p<.01]. The normative commitment levels of the individuals in the sample group indicate a significant difference by educational background [x2 (2)= 11.496; p<.01]. The organizational commitment levels of the individuals in the sample group indicate a significant difference by educational background [x2 (2)= 14.641; p<.01].

Table 2. Kruskall–Wallis Test Results Regarding the Difference Between Sample Group's Organization Commitment Levels by Educational Backgrounds

	Educational Background	N	Mean Rank	X^2	p	Significant Difference
Affective Commitment	Primary School	133	104.35	32.864	.000	Postgraduate Degree—Primary School
	Secondary Education	173	151.54			
	College/University	176	176.32			
	Postgraduate Degree	72	195.71			
	Educational Background	**N**	**Mean Rank**	**X^2**	**p**	**Significant Difference**
Continuance Commitment	Primary School	133	160.02	12.291	.006	Secondary Education—College/University
	Secondary Education	173	171.38			
	College/University	176	131.23			
	Postgraduate Degree	72	141.35			
	Educational Background	**N**	**Mean Rank**	**X^2**	**p**	**Significant Difference**
Normative Commitment	Primary School	133	123.66	11.496	.009	Postgraduate Degree—Primary School
	Secondary Education	173	167.46			
	College/University	176	152.34			
	Postgraduate Degree	72	173.85			
	Educational Background	**N**	**Mean Rank**	**X^2**	**p**	**Significant Difference**
Organization Commitment	Primary School	133	120.07	14.641	.002	Postgraduate Degree—Primary School
	Secondary Education	173	169.26			
	College/University	176	152.14			
	Postgraduate Degree	72	178.12			

4.5. Relationship between Participants' Organizational Commitment Levels and Marital Status

According to the analysis results in Table 3, the scores regarding the affective commitment levels of the sample group do not indicate a significant difference by marital status [t(302)= 1.345; p>.05]. The scores regarding the continuance commitment levels of the sample groups do not indicate a significant difference by marital status [t(302)= -2.499; p<.05]. The scores regarding the normative commitment levels of the sample groups do not indicate a significant difference by marital status of the participants [t(302)= -.136; p>.05]. The scores regarding the organizational commitment levels of the sample groups do not indicate a significant difference by marital status of the participants [t(302)= -.625; p>.05].

Table 3. *T*-test Results Regarding the Difference Between Sample Group's Organization Commitment Levels by Marital Status

	Marital Status	N	$\bar{X}$	S	sd	t	P
Affective Commitment	Married	302	3.47	.93	302	1.345	.180
	Single	252	3.31	1.04			
	Marital Status	**N**	$\bar{X}$	**S**	**sd**	**t**	**P**
Continuance Commitment	Married	302	2.98	1.04	302	-2.499	.013
	Single	252	3.27	.93			
	Marital Status	**N**	$\bar{X}$	**S**	**sd**	**t**	**P**
Normative Commitment	Married	302	3.23	.84	302	-.136	.892
	Single	252	3.25	.91			
	Marital Status	**N**	$\bar{X}$	**S**	**sd**	**t**	**P**
Organization Commitment	Married	302	3.23	.63	302	-.625	.532
	Single	252	3.28	.75			

4.6. Explanation of the Relationship between Affective, Continuance, Normative, and Organizational Commitment Levels of the Sample Group

A significant positive relationship (r=.715, p<.01) was determined between the organizational commitment levels of the individuals in the sample group and their affective commitment while a moderate positive relationship was found between the organizational commitment levels and continuance commitment (r=.628, p<.01) and a significant positive relationship was found between the organizational commitment levels and normative commitment (r=.840, p<.01) (Table 4). It was also determined in the present study that a moderate positive relationship (r=.554, p<.01) existed between affective commitment and normative commitment levels of the individuals in the sample group.

Table 4. Correlation Results Regarding the Relationship among Affective, Continuance, Normative, and Organizational Commitment Levels of the Sample Group

		Affective Commitment	Continuance Commitment	Normative Commitment	Organization Commitment
Affective Commitment	r	1	.012	.554**	.715**
	p	-	.838	.000	.000
Continuance Commitment	r	.012	1	.319	.628
	p	.838	-	.000	.000
Normative Commitment	r	.554**	.319**	1	.840
	p	.000	.000	-	.000
Organization Commitment	r	.715**	.628**	.840**	1
	p	.000	.000	.000	-

**. Correlation is significant at the 0.01 level.

5. Conclusion and Implications

The present study aimed to determine the relationship between the organizational commitment levels of the personnel working in 4- and 5-star accommodation businesses in the Alanya district of the Antalya province and variables such as gender, educational background, and marital status of the participants. The results indicated no statistically significant difference in terms of participants' scores on the entire organizational commitment scale and the gender and

marital status variables. However, a statistically significant difference was found between participants' educational background and their organizational commitment levels.

In this regard, business managers have important duties to increase the affective, continuance, and normative commitment levels of personnel in a business. Several formulas can be used to ensure the commitment of personnel to an organization, such as enriching the personnel in terms of administrative skills and training them as well as giving them authorization. Knowing and managing the elements that motivate personnel and increase their job satisfaction are critical for ensuring organizational commitment. In addition, managers should give personnel the message that they are valuable members of the business, encourage them to participate in decision-taking, and maintain a healthy communication within the organization because these all are essential factors for organizational commitment. In order to instigate the perception of a supportive organization among personnel, their creative ideas, recommendations, and criticisms should be taken into account; an effective reward system should be established—and an objective attitude displayed when implementing this system—and a participative, humanist, and liberal administrative approach should be adopted.

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History of Sustainability

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1. Introduction

In this chapter, how the sustainability concept has evolved in the historical process is addressed. In this direction, the change this concept which emerged in the 15th century has experienced until today is explained with the important milestones which take place in the literature.

2. Historical Roots of Sustainability

The emergence of the sustainability concept is based on rather past times (Chappells and Trentmann, 2015). The humankind has always had to consider what effects the activities it performs have on forests, plants, waters and other natural resources. For many agricultural societies, managing common areas has become a part of the daily life. Besides, this situation has become a matter which also draws states' and administrators' attention. For example, Venice in the 15th century put the forest conservation laws into effect in order for deforestation to be prevented and timber scarcity not to be experienced in the future. The term "sustainability" is first encountered in the work named *Sylvicultura Oeconomica* which was written in 1713 by Carl von Carlowitz who was a Saxon forest and mine authority (quoted by, Chappells and Trentmann, 2015). In this work, some determinations and suggestions within the context of sustainable forest management were given place. In the 1700s, for the fear of timber scarcity in Europe, the timber usage of especially the poor people was being tried to be hindered; the state and the rich landowners were stockpiling timber in pretty big amounts. Carlowitz was thinking that wiping off forests for short term benefits would have a negative effect on the prosperity and development of the Saxons in the future. From this point of view, he suggested in his work to move to a consistent and sustainable forest management by preserving forests and planting new trees in place of the cut ones. In addition to this, he stated that the measures which would be taken for forests had a vital role in making a living of new generations. Carlowitz had gathered these measures in three categories. These are; (1) ensuring more efficiency in consumption, (2) growing trees and saplings in a planned way and (3) reducing tree usage by heading towards different alternatives like peat (marsh coal). The importance of Carlowitz's book became to be understood more and more by the governors of Central Europe in the 18th century. In this era, forest lands were calculated and recorded and tree cutting was begun to be taxed. These measures can be evaluated as the first examples of the sustainable consumption (Warde, 2011).

On the other hand, the 18th century became a period when the limits of growing started to be discovered. In this period, the gradual growth of empires and increases in population resulted in foods, arable lands and natural resources failing to satisfy the demand. Therefore, there happened migrations from villages to large cities. In the solution of this problem, two approaches adopting quite opposite points of view emerged. These are the liberal market and the state-oriented approaches. The liberal market approach argued taking off all obstructions in front of trade, mitigating taxes and colonizing overseas. Thus, it was thought that the problems arising from migrations and increase in population would be eliminated this way. The state-oriented approach argued internal colonization instead of investing in overseas colonies. It was argued that the investments and incentives made by the state in rural areas would increase the production of the important agricultural goods of the era like tobacco and sugar beet and problems could be overcome this way (Jonsson, 2013). While Adam Smith, one of the famous highbrows of this period, was asserting that the natural resources and the market widely

completed each other, he believed that the poles apart balanced each other. However, the naturalists of the period were not as optimistic as Smith. According to them, nature was indurable, it could easily be destroyed and it had to be managed. Hence, the food scarcities which were experienced in the 1790s and which to a large extent arose from the soil becoming non-fertile proved the views of the naturalists right. The emergence of the food scarcity brought the fear together with itself that a scarcity in coal which was the most important mineral of the period might be experienced too. John Williams in the year 1789 determined that there were no mines other than the available coal mines in England. The number of the available coal mines, according to Williams, was sufficient only for 80 years more. That determination of Williams has passed into history: "The way things are going, coal will run out and the new generations will have to make a living only by hunting and fishing like the primitive man" (Jonsson, 2013, p. 174). After this determination, England stopped the coal export to Canada. Stopping the coal export to Canada is, with respect to acting worried about new generations, seen as the most important milestone of the sustainability and it sheds light on the sustainability studies of today from many aspects (Chappells and Trentmann, 2015). As for the first of them, it can be said that as a result of the uncontrolled industrialization like in England, the sustainability paradigm has come into existence. From another point of view, it can be considered that the sustainability concept has emerged simultaneously with the economic development and industrialization. That is to say, the resource crises (like in timber and coal) which were experienced in the economic development ensured to be focused on stopping the destruction of the natural resources. Thus, it can be said that sustainability is a crisis-based concept. Secondly, understanding that the natural resources are limited has caused different political suggestions to emerge. The first of them is to preserve the available resources and be contented with them instead of providing a flow of sources to long distances. Another one is providing a flow of sources even from long distances by the way of colonization. The roots of the subjects like sustainable transportation and using domestic products which are one of the most important indicators of the sustainability today are based on these arguments. Similarly, for nature and the economic development to be balanced and for the prosperity of new generations, the building stones of the sustainability theory like bearing responsibility and the sustainability ideas of the first period show rather a parallelism with each other. However, contrary to today, all the approaches expressed above have looked at the subject only from a regional perspective. That is to say, the effects of the subject on the global scale have not been taken into consideration. For example, the solution which Williams proposed for the predicted coal scarcity was not heading towards renewable energy sources but extracting coal from the copper mines in Nova Scotia. That is to say, sustainability was not seen as an objective. This situation continued until the global dimensions of the environmental problems started to be understood after the discovery of the biosphere by Vernadsky in the 1920s (Robin et al., 2013).

The Brundtland Report, which was published by the World Commission on Environment and Development (WCED) approximately ten years after the Rome Club in 1987, set forth the principles of the international environmental policies which are directed towards the sustainable development (WCED, 1987). In this report, the source allocation, natural resource stocks, and productivity were accentuated. Besides, many new concepts and terms explaining these subjects took place in this report for the first time. According to Chappells and Trentmann (2015), the Brundtland Report has been interpreted as a suggestion for preserving the environmental resources and widely accepted in the world. Besides, it has passed into history as the first study in which the natural resource amounts were calculated at national, regional and global levels.

In the year 1992, the Agenda 21, Conference on Environment and Development, was implemented in Rio de Janerio by the United Nations. With this conference, it was aimed to materialize the Brundtland report and draw attention to the environmental damages based upon consumption. Within this context, the solid initiatives and targets consisting of the

environmental and social sustainability principles oriented towards the management systems and consumer implementations were determined. In the 4th chapter of the published conference report, under the heading 'Changing Consumption Habits'; the global, national and local sustainability action plans were explained (UN, 1993). In that chapter, it was emphasized that the excess source demand arising from the unsustainable lifestyles of the affluent societies should be managed. Besides, it was set forth that the excess resource usage of the industrialized societies should be limited and the resources should be used for satisfying the fundamental needs of the poorer regions of the world. The view which supposes that the resources should be distributed more equitably ensured the sustainability approaches which at the beginning were addressed only on a regional basis to be seen as a global problem. Besides, the Agenda 21 drew significant attention to the subject of material flow. It was accentuated that the resource requirements and environmental effects of the products and services during the lifecycle should be evaluated and the sustainable production and consumption approach should be adopted. This approach was repeated in the Oslo Roundtable on Sustainable Production and Consumption which was organized by the Ministry of Environment of Norway in 1994 and defined as the essential point of the national and global sustainability policies by the Sustainable Consumption and Production Framework Programme (SCP) which is affiliated to the United Nations Environment Programme (UNEP). The principles of the sustainable production and consumption approach were determined with the Marrakech Process (Processus de Marrakech) (UNEP, 2012). According to this, the essential principle of the sustainable production and consumption approach is dissociating the economic growth from the environmental impairment. Within this context, the nations should move to systems which can produce the products and services in a way that they shall not cause environmental impairment, misuse of resources, wastes, and pollution. This situation is expressed as “green growth vision” (UNEP, 2012).

20 years after the Agenda 21 Conference on Environment and Development, the United Nations Conference on Sustainable Development (Rio +20) was organized. This conference has a quality to cover the preceding conferences and reports. Therefore, it was thought that, in order to determine the last point towards the sustainable development target to which the world public opinion had come to, it is important to elaborately treat the final declaration which was published in the consequence of the conference.

According to the final report, the commitments intended for sustainable development and incentivizing a sustainable future for new generations with respect to social, environmental and economic aspects were repeated. It was expressed that poverty is one of the most important global difficulties which the world encountered today and the sustainable development is an indispensable requirement. In addition to this, it was stated that there are some essential necessities for a sustainable development. These are; incentivizing the sustainable production and consumption models and fighting the poverty and preserving and managing the natural resources in the economic and social development. Besides, it was accentuated that, while ensuring the ecosystems to be protected against new problems; sustainable development policies which support the social, economic and human development and incentivize their management are needed. Finally, it was declared that the sustainable development can be provided only with the collaboration of the states, societies, the private sector and the civil society (UNDP, 2012).

On the other hand, the sustainable production and consumption are a source-based economy approach. That is to say, calculating the environmental effects of the production and consumption, it takes developing the technologies and processes which provide efficiency as a basis. Here, the objective is to limit the resource usage in production and consumption, reduce the amount of wastes which emerge and to manage the demand which is oriented towards the supplier and the end users. In order to reach this objective, multi-directional strategies have

been developed (Yapraklı and Bayramoğlu, 2014). Some of these are; eco-labelling, green recipes, measurement of resource usage in production and consumption and environment taxes (UNEP, 2012). With the implementation of these strategies, the producers and consumers reduce the environmental effects of the activities which they realize. The report with the heading "Towards the Sustainable Household Consumption" which was prepared by OECD in 2002 published these strategies with the objective to inform the households which constitute the main arterial road of consumption and provide them the opportunity to make more environmentalist choices (OECD, 2002).

The sustainable production and consumption paradigm has being examined since the 1970s in the research field of social and human sciences. While the sustainable production and consumption paradigm develops policies which are directed towards economy; the social scientists have examined the relations of the subject with the concepts such as more status consumption, symbolic meanings, power and identity (Brewer and Trentmann, 2006). However, the household consumptions like heating, cooling, transportation, and housekeeping which take place in the sustainable production and consumption paradigm have generally been neglected. Therefore, what effects the attitude and behaviors of the household have on the sustainable consumption still remains uncertain (Chappells and Trentmann, 2015).

3. Discussion

Briefly, in this chapter, the change which the sustainability concept has gone through in time is addressed within the historical context. It is emphasized that the sustainability at the beginning developed in the form of measures taken against scarcities and crises especially in the developed countries; and how the subject later took a place for itself in the world public opinion under the light of the developments in science and technology. Finally, the ways the subject is discussed by social scientists and the points where they contradict to the today's paradigm of sustainable production and consumption are tried to be expressed.

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The Effect of Organizational Justice on The Organizational Commitment

Pınar Başar

Introduction

The study concentrates on medical doctors. A medical doctor is a person who holds a medical degree, practices medicine, and is concerned with maintaining or restoring human health through the study, diagnosis, and treatment of disease and injury. This is accomplished through a detailed knowledge of anatomy, physiology, diseases and treatment (the science of medicine) and its applied practice (the art or craft of medicine) (Van Der Weyden, 2005).

Organizational justice and organizational commitment are all attitudinal issues in organizational theory. Behavior issues such as interpersonal relations and absenteeism and turnover are neighboring issues to organizational justice and organizational commitment. There are close relations between organizational justice and organizational commitment. However these relationships are not clear as they are so by definition and these relationships dependent on some factors and their constructs. The model designed for this study proposes that the quality of interpersonal working relationships create perceptions about organizational justice, which refers to people's perceptions of the fairness of treatment received from healthcare organizations.

Organizational Justice

The field of organizational justice can be defined as the study of people's perceptions of fairness in organizations (Greenberg and Cropanzano, 2001). In other words, organizational justice concerns issues of fairness in the workplace (Nabatchi, Bingham, and Good, 2007). The field of organizational justice which is the study of people's perceptions of fairness in organizations is devoted to understanding these issues (Greenberg and Cropanzano, 2001). The justice issue focuses on the receipt or non-receipt of some valued outcome by one person as a consequence of a decision made by another person, group, or institution. Organizational justice deals with the ways in which employees determine if they have been treated fairly in their jobs and the ways in which those determinations influence other work-related variables (Moorman, 1991). The individual reactions to the distribution of outcomes and the psychological processes that account for these reactions are important for organizational justice perception in the organization.

Fairness is the basic concept in regard of justice from organization justice point of view. Besides fairness, legitimacy is another concept which is related to justice. Legitimacy concept is shaped how people evaluate (either at personal level or institutional level) the fairness of the procedures used by the authority involved. Therefore, the roots of legitimacy lie in justice for procedural nature (Tyler, 2004). The study aims at presenting of the determinants and consequences of normative beliefs about justice in organizations.

Organizational justice although is a plain concept, it is studied for long time and its constructs were investigated for analytical purposes. Organizational justice has developed to include distributive, procedural, and interactional theories (Scandura, 1999). Actually the study of organizational justice constructs were two at the beginning of literature development. These two constructs were distributive justice theory and procedural justice theory. The breakdown of organizational justice into its constructs is only for analytical purposes. Actually they are all interrelated and no one pure construct exist in the real organizational world. Folger and Konovsky suggest that procedures can be interpreted at two levels-instrumental (as means) and

ends (as symbolic outcomes): "Instrumentally, procedures are means to the ends of distributive justice as when procedures used for allocation decisions about raises include ways of accurately measuring performance" (1989, p. 126). Interactional justice theory is then added to them. From these three fold theories, further two classes of interactional justice, specifically, informational and interpersonal justice may lead to take a four-factor model of organizational justice instead of three-factor model mentioned above (Greenberg, 1993 in Nabatchi et al, 2007). However such a detail (four-factor model) is to be ignored in this study. The study will be contended with three fold theories of organizational justice.

Procedural Justice

Procedural justice is the first construct in organizational justice context. It could be defined as the perception of the fairness (focus on process) of the means used to achieve the ends (Greenberg, 1990). Procedural justice refers to the perceived fairness of the means used to determine those amounts and is more closely related to the evaluation of the organizational system or institutional characteristics (Folger and Konovsky, 1989).

In general, research suggests that if organizational processes and procedures are perceived to be fair, then organizational participants will be more satisfied, more willing to accept the resolution of that procedure, and more likely to form positive attitudes about the organization (Nabatchi et al, 2007). Examples of procedural justice are the degree of contribution of the person has in decision making and whether or not consistent rules are followed in making decisions.

Distributive Justice

One of other constructs of organizational justice is distributive justice. It can be defined as the perception of the fairness (focus on content) of the ends achieved (received by individuals) (Greenberg, 1990). Distributive justice emphasizes fairness in the distribution or allocation of outcomes. Distributive justice refers to the perceived fairness of the amounts of compensation employees receive and is more highly related to the evaluation of specific outcomes (Folger and Konovsky, 1989). Distributive Justice is the perceived fairness of the outcomes that an employee receives from organizations.

Interactional Justice

The notion of interactional justice was developed in the 1980s. Interactional justice is what distinguishes a procedure from its enactment (Cole, 2004). Interactional justice refers to (1) The social aspects of procedural justice and (2) The quality of interpersonal treatment people receive during the performing of organizational procedures (Beugre, 1998).

In general, interactional justice concerns about the fairness of the non-procedurally dictated aspects of interaction. These two subcategories of interactional justice: (1) informational justice and (2) interpersonal justice overlap considerably (Nabatchi et al, 2007).Empirical evidences indicate that employees show much concern for the treatment they receive from authority figure and the adequacy which formal decision making procedures are explained with. Perceptions of interactional justice are important over time and are unaffected by the individual's self interest.Interactional Justice clearly means that authority figures are often in risk of being held responsible for their decision with negative outcomes (Folger and Cropanzano, 2001). Interactional justice is considered as an important variable for understanding organizational commitment (Barling Si Phillips, 1993 in Bies, 2001).

Organizational Commitment

The stereotypical view of commitment is loyalty and willingness to work toward organizational objectives (Meyer and Allen, 1997). Over a period of time certain costs accrue that make it more difficult for the person to disengage from a consistent pattern of activity, namely, maintaining membership in the organization. The threat of losing these investments, along with a perceived lack of alternatives to replace or make up for the loss of them, commits the person to the organization (Becker, 1960). Organizational commitment is a strong belief in and acceptance of the organization's goals and values, a willingness to exert considerable effort on behalf of the organization, and a strong desire to remain in the organization (Porter et al, 1974). These commitments constrain the behavior of participants in any given organization unavoidably and strongly influence it in some instances (Scott, 2003). Goals and plans make possible employees' identification with the organization and support them by reducing ambiguity and clarifying what they should achieve. Deficiency of a clear goal can harm employee commitment (Daft, 2000).

Organizational commitment is a multifaceted construct and terms like allegiance, loyalty and attachment should be considered in its context as well (Meyer and Allen, 1997). Organizational commitment represents an employee's orientation toward the organization in terms of his or her loyalty to, identification with and involvement in the organization (Robbins and Decenzo, 2004). Committed employees identify with and agree to pursue the company's mission (Dessler, 2004). Committed employees ensure that the products or services which are involved with are of a high quality can respond to changes in customer demands, contain innovative features and will have no negative impact on the wider community as well (Newell, 1995). Commitment means that workers will share the leader's viewpoint and willingly fulfil instructions Commitment is hold as resource for organizations, contributing for to foster the organizational effectiveness and efficiency. The overall success is high as much as commitment level is high (Ofenloch and Madukanya, 2007). Employee commitment and involvement are vital for companies to compete in today's speedily changing world.

Three Components Model of Meyer and Allen

Based on different approaches in defining organizational commitment, it has been viewed in three components as follows (Meyer and Allen, 1997): (1) reflecting an affective orientation toward the organization, (2) a recognition of costs associated with leaving the organization, and (3) a moral obligation to remain with the organization.

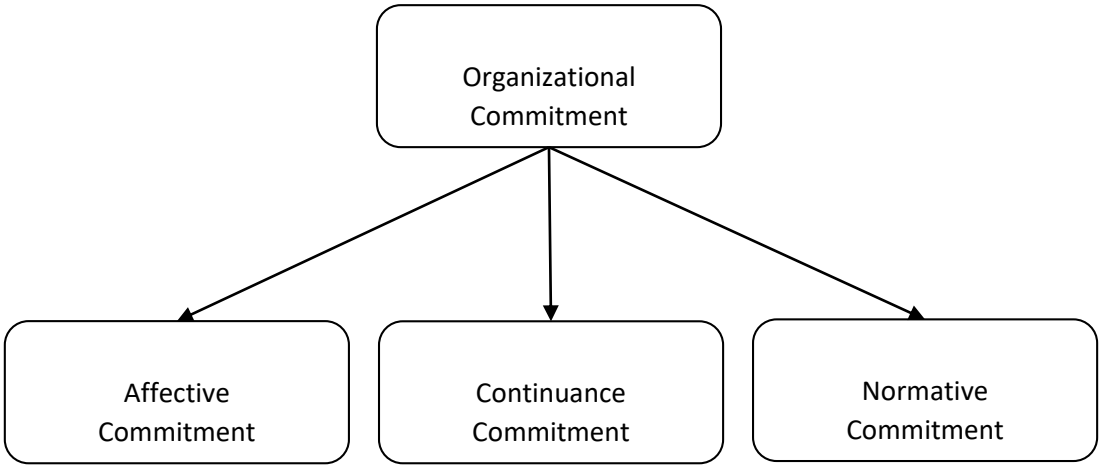


Figure 2.1. Three-Component Model of Organizational Commitment

Source: Meyer, J.P. and Allen, N.J. (1991). A three-component conceptualization of organizational commitment, *Human Resource Management Review*, 1 (1), p. 67.

Affective commitment refers to the employee's emotional attachment to, identification with, and involvement in the organization. Employees with a strong affective commitment continue employment with the organization because they *want* to do so (Meyer and Allen, 1991).

Continuance commitment refers to an awareness of the costs associated with leaving the organization. Employees whose primary link to the organization is based on continuance commitment remain because they need to do so (Meyer and Allen, 1991).

Normative commitment reflects a feeling of obligation to continue employment. Employees with a high level of normative commitment feel that they *ought* to remain with the organization (Meyer and Allen, 1991).

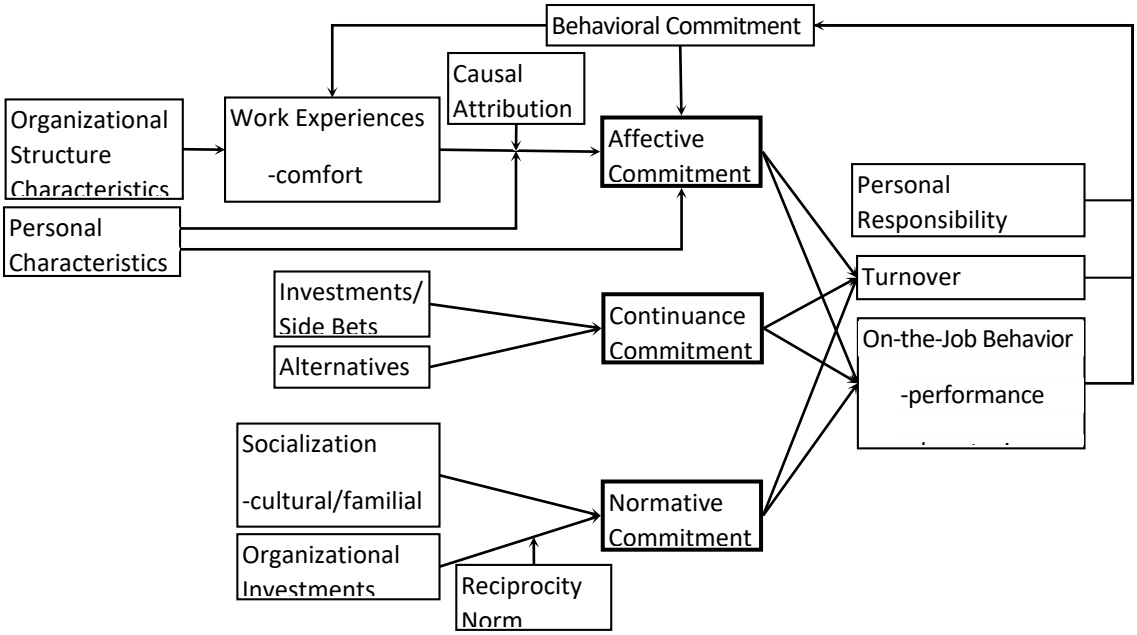


Figure 2.2. Antecedents and Consequences of Three-Component Organization

Source: Meyer, J. P. and Allen, N. J. (1991). A three-component conceptualization of organizational commitment. *Human Resource Management Review*, 1 (1), p. 68.

The affective, continuance, and normative commitment should be considered as components, of commitment rather than types of it. If they would be types of commitment it would imply that the psychological states characterizing the three forms of commitment are mutually exclusive. To the contrary, an employee can experience all three forms of commitment to varying degrees (Meyer and Allen, 1991).

Focusing exclusively on turnover as a consequence of commitment is shortsighted (Meyer and Allen, 1991) what employees do on the job is arguably as important as whether they stay or leave (Meyer and Allen, 1997).

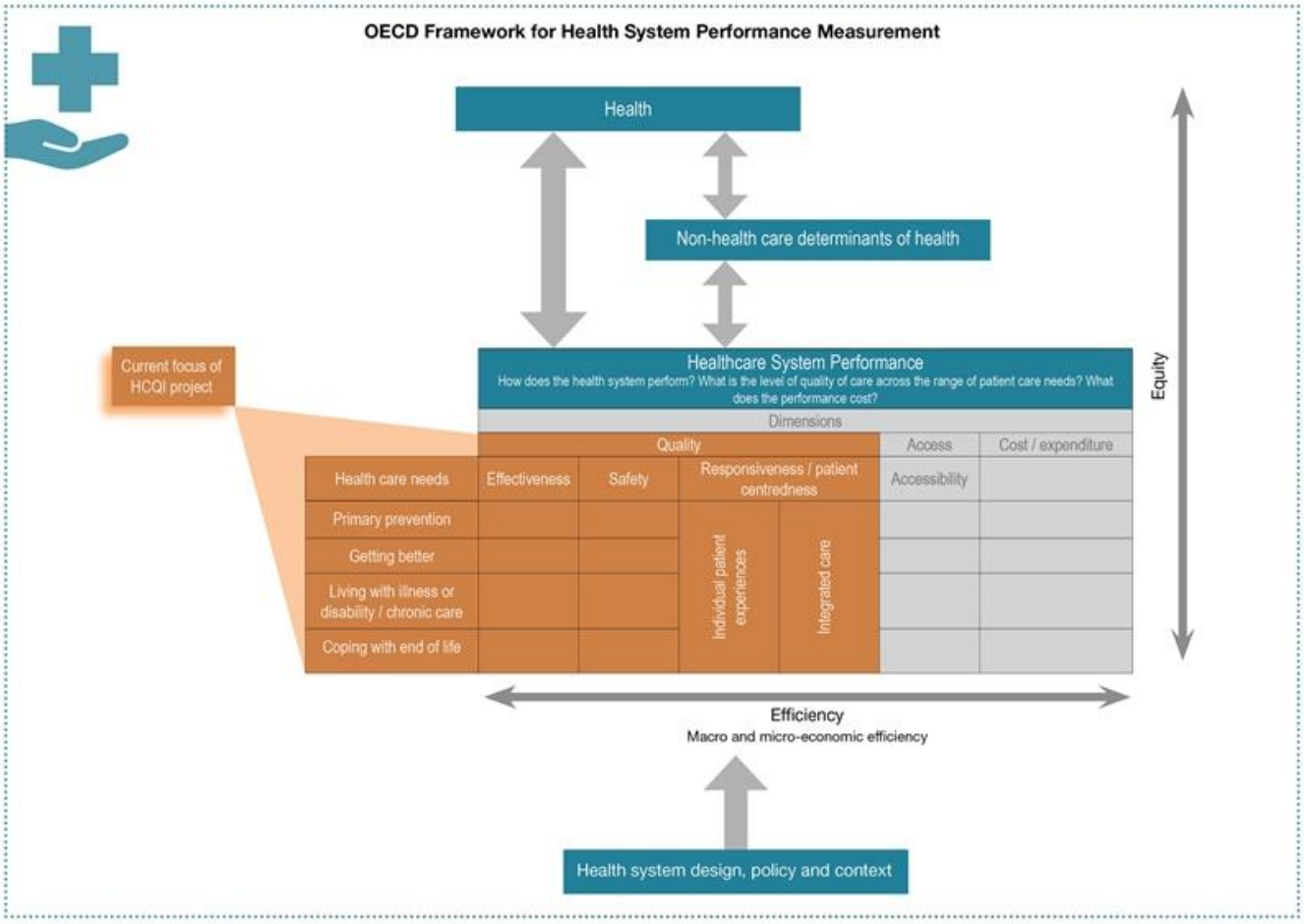
Healthcare Sector

The Health spending forecast can reach almost 9% of GDP by 2030 and 14% by 2060 expenditure in OECD countries. The sustainability of the system is difficult to finance from public resources without major reform. The welfare of the public and economic growth and jobs depends on these improvements (https://www.oecd.org/health/Health-Brochure.pdf s.16).

Health spending had fallen in 2010 following the economic crisis and risen again in the last few years across the OECD. OECD, Eurostat and WHO are collecting expenditure and financing information from OECD and EU countries since 2005 (https://www.oecd.org/health/Health-Brochure.pdf s.10, 06.02.2017).

The health spending in Turkey increased by 5.4% per capita in 2013. The share of GDP allocated to health spending in Turkey was 5.1% in 2013, compared with an OECD average of 8.9%. Turkey's health spending per person is USD 941 in 2013. OECD 's health spending per person is USD 3453 in 2013 (OECD Health Statistics 2015, s.1, https://www.oecd.org/els/health-systems/Country-Note-TURKEY-OECD-Health-Statistics-2015.pdf, 07.02.2017). The Number of health professionals in Turkey is 760.322. The number of Physicians in Turkey is 135.616 (http://ec.europa.eu/eurostat/documents/7330775/7339623/Turkey+_in_statistics_2015.pdf/317c6386-e51c-45de-85b0-ff671e3760f8, 07.02.2017).

The OECD Health Care Quality Indicators project has started in 2002. The purpose of the project is to measure and compare the quality of health service provision in the different countries. An Expert Group has advanced the quality indicators at the health systems level. The particular factors on the quality of health services can be evaluated to complement and coordinate efforts of national and other international organizations. The quality can be measured and analyzed for new improvements by policy makers and other stakeholders (https://www.oecd.org/health/Health-Brochure.pdf s.10, 06.02.2017 Access the original OECD Health Care Quality Framework (OECD Health Working Paper No. 23.03.2006).



(http://www.oecd.org/els/health-systems/health-care-quality-indicators.htm, 06.02.2017)

The model is achieved to develop the performance of health care through benchmarking. The most important parameters are used to measure quality of care. The governing principles of health systems are to provide patients effective, safe and responsive care in all OECD countries. The continuous improvement is targeted for the quality of health care services and so the welfare of the community. The OECD has been collecting comparative statistics on the quality of care for: • acute hospital care • primary care • mental health care • cancer survival after diagnosis • patient safety • patients' reported experience of care. Program continues to refine and develop these measures of health care quality (https://www.oecd.org/health/Health-Brochure.pdf s.12, 06.02.2017).

The employee is very important for the quality of service. The healthcare sector has a different character, because the role of a medical doctor needs higher intellectual characteristics to be accomplished through a detailed knowledge of anatomy, physiology, diseases and treatment and its applied practice (Van Der Weyden, 2005). Interactional justice is more complex and composite organizational justice dimension. It shades procedural and distributive justice dimensions with its high context content. Literature points to the fact that interactional justice is considered as an important variable for understanding organizational commitment (Barling Si Phillips, 1993 in Bies, 2001). Mikula et al.'s (1989) findings explain that people give more importance to interactional justice than they do to procedural or distributive justice.

It is also worth to investigate the roles of a doctor in a health care institution from organizational commitment point of view. The roles played by doctors in health care institutions are construed in a manner by considering two arguments. First, doctors are important and rare. "Despite increasing numbers of doctors in recent years, Turkey continues to have the lowest number of physicians per capita among all OECD countries. In 2006, Turkey had 1.6 physicians per 1000 population, two times less than the OECD average of 3.1" (OECD, 2008, p. 2). Second, doctors have critical and creative thinking abilities obviously and in easily observable manner (intellectual properties of doctors) (Edwards, 2006). The first argument leads to the point that doctors do not acquire normative commitment comparatively (relatively). They have great occupational mobility. The second argument leads to the point that doctors do not acquire affective commitment comparatively (relatively). They used to take position depending on facts (factual approach). Both arguments drive to the fact to be questioned that organizational commitment genus of doctors should better be continuous commitment, if any. Besides, continuance commitment is the central issue and the most reliable dimension in organizational commitment (Griffin and Hepburn, 2005).

4.Conclusion

The organizational justice and the organizational commitment are attitudinal issues in their nature The distinction between the attitudinal and behavioral approaches is important and they should be held carefully not to cause any confusion. In the attitudinal approach, issues are directed largely at identification of the antecedent conditions that contribute to the development of commitment and at the behavioral consequences of this commitment. In the behavioral approach, issues are used to be focused primarily on identifying conditions under which a behavior (if it is exhibited) tends to be repeated, as well as on the effects of such behavior on attitude change. This study employs attitudinal approach.

The fairness feeling is important in the organizational world and it is held under the concept of justice in this study. A three component model of organizational justice is used in the study. These components are distributive, procedural, and interactional theories. These theories are based on some social theories held in the study. Theories of Procedural Justice are held for followings: (a) Referent Cognitions Theory, (b) The Self-Interest Model, (c) The Group-Value Model, (d) The Value-Expressive Approach and (e) The Procedural Preferences Model. Theories of Distributive Justice are held for: (a) Equity Theory, (b) The Justice Judgment Model, (c) The Justice Motive Theory and (d) Relative Deprivation Theory.

The justice approach is based on principles of equity, fairness, and impartiality. Three types of justice are of concern to managers. Distributive justice refers that different treatment of people not is based on arbitrary characteristics. Procedural justice refers that rules be administered fairly. Rules must be obviously stated and impartially enforced. Interactional justice refers to the social enactment of that procedure (Greenberg and Cropanzano, 2001). Individuals take action to the quality of their interpersonal treatment as much as structural

aspects of the process. The three-component conceptualization of organizational justice is regarded as the dominant model in organizational justice research.

The organizational commitment level of the medical doctors is related to their organizational justice level in parametric terms and are alike in absolute terms. In details, the organizational justice level of medical doctors is slightly bigger than their organizational commitment points, in arithmetic absolute terms. The relatedness of organizational justice and the organizational commitment levels of the medical doctors are in accordance with the organizational theory literature.

The second mind expanding and hypothetical issue is that the continuance commitment is better defined (among other organizational commitment constructs like normative commitment and affective commitment) by organizational justice constructs significantly by the procedural justice and the interactional justice. This result justifies the construing efforts showing that medical doctors have greater occupational mobility and they depend on factual thinking. Besides, this may imply that medical doctors have high expectations from hospitals, the health care organizations which employ them. Medical doctors invest much in those hospitals.

Lahiry's study (1994) of a large public sector undertaking attempted to establish a relationship between organizational culture and the three components of organizational commitment, namely, affective continuance and normative commitment. It was found that while a high level of continuance commitment may keep an employee tied to an organization, it is unlikely to produce a high level of performance. In line with the culture-commitment relationship, Odom et al. (1990) examined the concept of organizational culture, employee commitment, job satisfaction and work group cohesion among executives. The results indicated that the respondents perceived their organization as primarily bureaucratic. Over 85 per cent reported that terms like procedural, structured, orderly, established and regulated described their organizations most or a fair amount of the time. Commitment, satisfaction and cohesion were identified with supportive and innovative cultural dimensions and their work, not with the bureaucratic aspect.

Conceptually as well as in terms of predictive power, whether sector type and management sector (public vs. private) has any bearing on organizational commitment was investigated by Steinhaus and Perry (1996). The results suggest that the sector categorization (its nature) is better at predicting organizational commitment than is the public/ private categorization. The presence of organizational commitment may be a function of factors that are more micro in nature than either of these categories.

In a similar line of research, Balfour and Wechsler (1991) used samples from public organizations to establish the connection between commitment and organizational performance. The results indicated that employees develop a sense of attachment to an organization mainly on the basis of whether they perceive it to be supportive of their values and a hospitable and socially satisfying place to work. This finding implies that employee commitment and attachment to the organization can be increased through efforts to improve the organization's social environment and purposiveness and does not require pay hikes. Although significant benefits may be gained from efforts to increase employee commitment, enhanced productivity may not be one of them.

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Entrepreneurship Concept in 21. Century and A Research About Entrepreneurship Perception of University Students

Esma Gorkem Ersoy

1. Introduction

Entrepreneurship is an undeniable fact for rising and developing countries. And due to its economic importance, entrepreneurship has been subject of enormous studies. In today's conditions, it won't be adequate to define entrepreneurship just only laying out a new business idea by observing opportunities or as a usual definition like just only taking risk. Now a days entrepreneurship becomes a phenomenon that involves creativity beside innovation. The aim of this study is to identify the basic characteristics of entrepreneurship in the light of 21. Century point of view. According to support the subject a research has been done on a private university students. It has been investigated that how they understand entrepreneurship phenomenon, their perception about entrepreneurs properties and entrepreneurship. Also the students have asked to create a business idea and to define it. By this way it has been tried to put forward their perception better and tried to make more detailed definitions about research. University's Faculty of Administrative Sciences, Faculty of Architecture and Engineering and Faculty of Health Sciences third class students and Vocational School last term students has been taken the scope of the research. The sample of this research is also composed of people who are called as Y generation. The main characteristics of this generation is being used to with technology and being independent. So that it has been thought that their perception and point of view will be important for the future of the entrepreneurship phonemenon.

2. A General View on the Concept of Entrepreneurship

Entrepreneurship is a significant area focused by various researchers and pragmatists in recent years. It is hard to mention a generally accepted theory within this field. Studies conducted in different disciplines such as economy, finance, anthropology and education have contributed to the literature on entrepreneurship

An entrepreneur is the individual who brings together all the production factors to meet human needs (nature, labor, capital) and takes risk as being one of these production factors. However, at the point where this is realized, they need to look out for the interests of society while trying to keep their own interest high. Because, while transforming the possibilities into opportunities, they also direct the economy. Various examples indicate that this is a significant equilibrant for long term success.

Drucker (1986) defines the entrepreneur as someone who creates an order in blurred and variable world, who brings and arranges the resources together for wealth generation. Recently, in parallel with the development of entrepreneurship, the concept of entrepreneur has also gained a new dimension. Entrepreneur is defined as the person who reaches beyond the existing resources and abilities, who dreams about the opportunities, seeks for them, follows them with insistence and who waits to seize the opportunities (Ertürk, 2013).

The concept of risk appears as one of the important concepts related with entrepreneurship. Entrepreneurs frequently focus on the tendency towards risky alternatives and how they should be managed (Busenitz, 1999:40). Researches about entrepreneurship also shows that, entrepreneurs have higer level job satisfaction against employees (Benz and Frey, 2004).

Entrepreneurship is the subject for many areas and it can be explained through three scientific fields. These are "Economy", "Psychology" and "Sociology". (Patır and Karahan, 2010), (Top,2006). Economic approaches try to describe entrepreneurship by risk, uncertainty and novelty; and they also consider the entrepreneur's tendency to the activities that motivate his/her self-interest. Psychological approaches have entered into the literature via testing the entrepreneur's observed and perceived personal traits. This approach tries to examine the native characteristics that exist in limited number of people, the impact of education and environment on individual and makes explanations by concepts such as personality, intelligence and success. Sociological approaches focus on environment and culture; and make explanations towards entrepreneurship by using the concepts of ethics and trust.

The characteristics for entrepreneurship is evaluated as another issue on which various works have been done in literature. The common characteristics of entrepreneurs are taking risk, creativity and initiative (Çetin, 2012). As there are many characteristics being mentioned; the point that majority has reached a conclusion at is that the entrepreneur should be an individual with foreseeing, who seizes the opportunities, follows the developments in the world, creative, innovative and high analytical skills. However, it should also be remembered that entrepreneurship has a socio-cultural aspect and that the local characteristics are as effective as universal ones (Bozkurt et al., 2012). From this point of view, it is said that Turkey has a vast entrepreneurship capacity and the economy is dynamic thanks to this spirit. Even though this potential of entrepreneurship is not fully utilized, (Tekin, 2004) the interest on entrepreneurship has increased since the beginning of 21st century. The improvements in information and communication technologies (specifically Internet) has turned entrepreneurship into a rising value. Entrepreneurship is considered as a concept that brings solutions to the problem of unemployment, and a concept which is at the grassroots of economic growth. Globalization, improvements in information technologies, rapid increase of the possibilities of education on entrepreneurship and business, demographic and economic trends and franchising offer new opportunities for entrepreneurs (Örücü, 2013).

According to Schumpeter, who made great contribution to the concepts of enterprise and entrepreneurship, there are four behavioral indicators of entrepreneurship. These are; apprehending a gap of unrealized demand, providing new product and/or services to the market, establishing a new business in an existing industry branch and to develop e new method for production (Patır and Karahan, 2010). These four behavioral indicators also express the business idea, which is the fundamental aspect of the concept of entrepreneurship. The Business Idea is examined under two titles as "New Business Ideas" and "Business Ideas Derived from Existing Ones" (Müsiad).

New Business Ideas is examined under two titles; first one is "Invention Based" business idea which is based on invention of a new product or service; and the second one "Business Idea Based on Transfer and/or Adaptation", which is the business idea that is based on transferring a product or service in another region or country to the market.

Business Ideas Derived from Existing Ones is examined under two titles; first one is the "Business Idea Based on Improving the Existing One" in which there is market entry by creating a difference on the existing product or service and the second one is "Business Idea Based on Copying the Existing One", in which the existing product or service remains the same.

3. Research About Entrepreneurship Perception Of University Students

Entrepreneurship is a concept on which various studies have been conducted; however, the majority of those studies have been towards determining the entrepreneur characteristics of individuals or to examine the examples of successful enterprises. This study aims to contribute to this issue from a different perspective. Therefore, the concept of entrepreneurship is

considered with the evaluation of students, the future entrepreneurs. Also, the concept of "Business Idea", the main aspect of entrepreneurship is evaluated and students were asked to develop a business idea. By doing this, it was aimed to make evaluations on the idea of enterprise in addition with the characteristics of an entrepreneur.

The study was implemented on the students of a private university in Istanbul. A total of 183 students have participated in the study. Students were selected among those who have taken the Entrepreneurship course in the academic year of 2015-2016. In this context, the students who have taken a course related with Entrepreneurship in the academic year of 2015-2016 who are enrolled at the Faculty of Administrative Sciences, Faculty of Architecture and Engineering, Faculty of Health Sciences and Vocational School.

As the study covers 2015-2016 academic year, this can be evaluated restriction in terms of time. However, due to the content of study, restrictions on time and other tangible limitations are indispensable. The study was implemented on 183 students, which also appears as a restriction. However, in order to examine the opinions in more detail, to conduct one-on-one interviews and to include those students who are informed about this subject; the students who were enrolled in the Entrepreneurship course within the process of study dates were considered within the scope of study.

The semi structural interview method is used in the study. Open-ended questions were asked for the interviews conducted according to this method and an in-depth analysis was aimed. Also, the researcher has conducted one-on-one interviews with the students who were involved in the study, thereby it was possible t make a detailed assessment. The sample of study consists of 183 second grade students taking the Entrepreneurship course in the academic year of 2015-2016 at a private university in Istanbul. In this context, the students who have taken a course related with Entrepreneurship in the academic year of 2015-2016 who are enrolled at the Faculty of Administrative Sciences, Faculty of Architecture and Engineering, Faculty of Health Sciences and Vocational School were included into the study. The students who are not enrolled in Entrepreneurship course were excluded.

4. Findings

Study consists of two sections. In the first section, students were asked questions about Enterprise and Entrepreneurship, and their perception on these terms were examined. In the second section, students were asked to develop a Business Idea. Students were not subjected to any limitations while developing this idea and their own ideas were tried to be evaluated. This is significant in terms of evaluating the students' innovation and creativity potentials. After the students have determined their own business ideas, they have prepared and submitted a work plan about it.

The information about the students included in research is as follows: 50 students from Faculty of Administrative Sciences (15 female/35 male), 30 students from the Faculty of Architecture and Engineering (17 female/ 13 male), 73 students from the Faculty of Health Sciences (49 female/24 male) and 30 students from the Vocational School (12 female/18 male).

A total of 93 female and 90 male students were within the scope of study. All of the students are enrolled in the second year. 153 students are faculty students, whereas 30 students are vocational school students. All of the students are single, and they do not have their own income, all are financially supported by their families. All of the students within the scope of study are between the ages of 18-24 and they are named as the Y generation.

The generation born between the years of 1980 and 1999 is named as the Y generation. Their most important characteristic attribute is being libertarian and addicted to technology. The best words describing the Y generation are narcissist, individualistic and entrepreneur. They use their technological skills in order to execute their tasks in a creative way and obtain

results. They are against the authority. Freedom and flexibility are their life philosophy. They are unsatisfied and they have unlimited requests. The most significant disadvantage of Y generation is their impatience. It is claimed that Y Generation will request higher salaries, flexible working hours and more financial power in business life. As Y Generation can utilize the technology and Internet in a very good way, they can communicate with others, either online or off line, in a very smooth way. Also, they have a creative character and they are open to change (Zempke et. al., 2013), (Türk, 2013), (Adıgüzel et. al, 2014). These attributes are used as a supportive statement in order to express the characteristics of the aforementioned students and to know them.

Within the scope of this study, the students have defined the entrepreneur as "business builder", "risk taker" and as someone "who has the ability to administer people". They have answered the question why they think that entrepreneurship is important as providing a new product and/or service (to meet the requirement), to contribute for the employment in country and to monitor the novelties in the country and playing a role in the development of country. Majority of students (165) have expressed that capital is not required to be an entrepreneur, and this can be met from other resources. Other 18 students think that having capital is significant. Again, majority of students (113) think that having an idea is the most important issue for entrepreneurship. 18 students state that capital is important, 32 students think that the characteristics of entrepreneur is important and 20 students consider that environment is important. All of the students have stated that education on entrepreneurship is important. The answers to the question of "is being an entrepreneur a native trait or will you be able to acquire it by time?" indicate that characteristic of personality is considered as important for the entrepreneur, but they also added that anyone can be an entrepreneur. The students were asked "Would you think of establishing your own business?" and 150 students have answered Yes, whereas 33 of them said they did not consider that. It was seen that the students who consider to establish their own business are motivated with the "will to work independently" and "the idea to gain more". This overlap with the Y Generation traits stated in literature. The students who do not wish to establish their own business have said that they consider this process as risky or they have said that they intend to continue with the already established family business.

According to the opinions of students, the characteristics of an entrepreneur are;
Ambitious,
Hard-working
Decisive
Opportunity seeker
Difference maker
Self-confident
Innovative and Energetic
Ability to tolerate the uncertainty
Open to communication
Obtaining leadership skills

Students have first discussed the entrepreneur as the reason of failure for an enterprise. They say that the entrepreneur is the most important factor for the success of a business, because he/she has an integrative impact. Then, they have considered the trial of wrong business idea, mistakes during the preparation of work plan, crises that might occur within the country, elements in business (employees, resources, management etc.), rapid changes in consumer choices and the strong competitors in the market as the reasons of failure in an enterprise, consecutively.

The students were requested to make a SWOT analysis for themselves. When most of the students have evaluated their strong and weak sides, they considered themselves as having the potential of entrepreneurship. This is evaluated as a subjective idea. However, considering

the evaluation of individuals' opportunities and threats; it has been concluded that they consider having university education, ability to use technology, Internet and the developing market structure as opportunities; whereas the problem of foreign language, lack of work experience, crises and the major businesses dominating the market are considered as threats.

Table 1. The Business Idea Types and Students' Choises

	Invention	Transfer Adaptasyon	Copying the Existing	Improving the Existing
Faculty of Administrative Sciences	-	5	13	32
Faculty of Architecture and Engineering	-	2	4	24
Faculty of Health Sciences	-	8	-	65
Vocational School	-	-	11	29

As the Table indicates, the business ideas developed (150 students) is mostly about improving an existing idea and re-submitting that. Students have expressed that they wanted to act without taking too much risks and by creating a difference on the existing product and/or service in the market.

None of the students have developed a business idea as an invention. This reveals that the students need to be improved in terms of innovation and creativity. 28 students have developed business ideas which is based on copying the existing. The students who have selected this type of business idea have stated that almost zero risk is the main reason for this at the initial stage. 11 students have stated that they prefer to continue with the family business as they have indicated in their thoughts about entrepreneurship.

15 students have wanted to bring a product or service in another market (country, region or sector etc.) into their market and developed a business idea based on adaptation. These students have stated that they tended to this business idea as they wanted to be the first in this field. They think that they will have more benefit.

Table 2 The Business Idea Types and Students' Choises According To Gender

		Improving the Existing		Copying the Existing		Transfer/Adaptation	Invention
Faculty of Administrative Sciences	15 girl	12	Total 32	-	Total 13	3 2	Total 5
	35 boy	20		13			
Faculty of Architecture and Engineering	17girl	15	Total 24	- 4	Total 4	2 -	Total 2
	13 boy	9					
Faculty of Health Sciences	49 girl	44	Total 65	-		5 3	Total 8
	24 boy	21		-			
Vocational School	12 girl	9	Total19	3	Total 11	- -	
	18 boy	10		8			
TOTAL	93 girl	80	140	3	28	10 5	15
	90 boy	60		25			

The business idea based on copying the existing is mostly preferred by the male students. None of the students from the Faculty of Health Sciences have preferred this business type. This business type has the minimum uncertainty and risk, and as it is mostly preferred by male students; we can say that the male students have a lower tolerance about such issues.

The Business Idea Based on Invention was not preferred by any of the students. According to this result, interviews were conducted by students and it was concluded that the students do not think that their circumstances as well as the circumstances in the country are not sufficient, that they refrain from uncertainty, they aim to have profits in short term and that they did not have the courage.

It is seen that female students prefer the Business Idea Based on Transfer/Adaptation more when compared with male students. It is seen that none of the students of Vocational School have preferred this business type. The interviews conducted with students who have preferred this business type has revealed that students' main inspiration for idea was Internet. Only 3 of the students have stated that they aimed to adapt a business idea they witnessed while they were abroad into their own country and this is how they have developed the business idea.

There is no significant difference in terms of gender for the Business Idea Based on Improving the Existing One, which is preferred by the majority. Students have stated that their reason to choose this business idea was that they already know it and have ideas about how to improve the missing parts. Also, they have stated that this was preferred because they aimed to create a difference with their existing competitors in this business area. They mostly state that a subject they have needed has become their source of inspiration. Also, it was seen that the students enrolled in the Faculty of Health Sciences have had an idea in the business field about which they receive education.

All the business ideas except the business ideas based on Transfer/Adaptation were towards the service sector. The ideas that necessitate the widespread use of Internet are very intense among those. The idea of building a virtual organization is very much preferred by the students. This confirms the characteristics of Y Generation. All of the students have stated that they consider the use of government support and/or bank credit in order to put their business idea into effect.

The business idea types preferred by students and their perception of entrepreneurship were compared and below results were obtained: Students who prefer the business idea based on Transfer/Adaptation have answered the question related with the importance of entrepreneurship saying that it has a crucial role to monitor the innovations and to improve the country. It was seen that the students who consider having capital is important for entrepreneurship have developed a business idea based on Copying the Existing. 15 students who have developed business idea based on transfer/adaptation have said that "Idea" is important in entrepreneurship; whereas 18 students among those who preferred te business idea of Copying the Existing (28 in total) have said "Capital" and 10 said "Entrepreneur" is important. On the other hand, 98 students among those who preferred the business idea based on Improving the Existing have said "Idea", 22 of them said "Entrepreneur" and 20 have said "Environment" When we consider on the basis of faculties where students are enrolled, it is an interesting finding that none of the students in the Faculty of Health Sciences, which has the highest scores and success average have chosen the business idea based on Copying the Existing. Faculty students have developed more innovative business ideas than the Vocational School students; whereas Faculty of Health Sciences students had more innovative ones than the rest. It has been observed that the students enrolled in faculties were more enthusiastic, investigative, innovative and successful than those who were enrolled at the vocational school.

5. Conclusion

Entrepreneurship is one of the greatest economic and social forces today. As technology has become an indispensable part of our lives, the concept of entrepreneurship gained a new dimension. Internet appears as a platform where all entrepreneurs can execute their activities and it is preferred more by the new generation of entrepreneurs. The new generation of entrepreneurs are named as Y Generation.

This study has examined the perception of this generation about entrepreneurship. According to the findings of the study, the students describe the entrepreneur as ambitious, hard-working and decisive. Entrepreneurship is considered as important because it creates innovation and contribute to the development of country. The students have said that the most important aspect of entrepreneurship is having a good business idea.

Considering the business ideas developed, it has been seen that the business idea based on Improving the Existing was preferred and this business idea was mostly towards the service sector. This can be interpreted as that the students are in an effort to make innovations. However, it is being observed that a structure is needed to support the students within the education system and after graduation in terms of incentives.

It is suggested that future studies should focus on determining the perception of students in similar ways and to reach a larger sample.

It should always be kept in mind that the students who will shape the future are the potential entrepreneurs and their needs should be met. Because their development will also develop the country. It is considered that if universities, government and the existing businesses take measures to support entrepreneurship and if families will motivate their children, this will have very positive impact.

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The Relationship among Work Accidents and Human Capital: Decent Work

Melahat Öneren, Harun Demir, Tayfun Arar

1. Introduction

Recently, high industrialization swift and increasing technological investments have resulted in production capacity, product variety and employment. Because transformation from labor intensive technology to capital intensive one occur in our country as a weaker basement than developed countries, there has been some considerable issues faced. Especially, high speed mechanization in industry sector may cause problems at the point in which machine and human meet. These issues seem to occur more than usual at places called "Small and Medium Enterprises" (SMEs) where for desire for growth, increasing competitive profitability or decreasing costs, human-machine harmony is not achieved and results in work accidents. There are practices ignoring employee health and job security, lack of attention or regulations at the basic of these accidents which sometimes results in injures, loss of limb or even death. Thus workplace safety issue has gained a considerable importance in both literature and practical life (Sider, 1985: 47).The main purpose of this study is to relate the reasons of work accidents with human capital components, suggest solutions for this issue and a work conditions those are more decent.

There are number of definitions of work accident in labor and social security regulation in our country. According to 11/ath dam numbered as 506 of Social Security Code introduced in 1964; an accident can be counted as a work accident only occurred during the time when the insured is in the workplace, the insured is transferred to the place where the insured is dispatched by the employer for the work being carried out by the employer, during the time left for when a mother employer feeds her baby or during the time when the insured is transferred to somewhere provided by the employer as a group; and in any of these situations if any event occurred resulting in injuring physically of psychologically for the employee (01 August 1964 11766 coded Official Gazette: 2). For event to be counted as a work accident, factors those are expectation, avoidness and intention should have lower degrees (barisbuyukterzi.com, 2014). In the 2015 human capital report of World Economic Forum, in one country, the sum of ability and talent of individuals to be used in production process should complete the gaps in education and employment, identify the demographic tendencies and unused talents, focus on governments, business world, educators and non-governmental organizations and identify key fields to invest (http://ref.sabanci.univ.edu.tr/, 2014). According to data of International Labor Organization, today, there are 3 billions of people as a workforce of which 1.2 billion are women. Every day, approximately 1 million of work accident takes away 4 % of worldwide total gross national product. Due to work accident and occupational diseases, approximately 5000 people die daily (Karimlou et al., 2015: 280); every year, 2.3 millions of people die, more of them become disable for work. Furthermore, daily 700.000 employees, annually 260 million of employees are injured because of work accidents world-wide (Probst et al., 2013: 383). Only even these statistics should indicate the importance of any improvement for human capital (6331 Coded Regulation Presentation, 2012: Preface).

Establishing a healthy and secure workplace is a must for a successful business life and a common responsibility for whole economic-social parts. When evaluating 2010 year statistics of Social Secure Corporation, there were 1.325.749 workplaces in Turkey and in those places 10.030.810 employees were employed. When it is handled in view of occupational health and secure, in those places there were 62.903 work accidents reported and 533 occupational diseases occurred; 1.454 employee had died at total. Year 2010, lost work days due to work accidents and occupational diseases are 1.516.024 and permanently become disabled employees are 2.085. It is estimated that work accidents and occupational diseases have taken away 50 billion

of our gross national product so far. Even monetary losses can be compensated, lost lives cannot. For this reason, precautions taken for occupational health and job secure should not be seen as a cost; instead should be taken as a priority for employees to be happier and for companies to be more efficient (6331 Coded Regulation, 2012: Preface).

In the purpose of measuring the effects of work accidents in regards of human capital, differences of anxiety and depression are tried to be evaluate among the employees who experienced work accident and employees who have not. Results show that there are multi-dimensional differences. For example in a study, it is aimed to identify the approaches to work of employees who experienced a work accident. Based on results, while 83% of employees indicated more attention, 17% of them kept working in the same way (Çolak, 2010: 48).

For the first time, decent work concept was defined as adequate income, secure workplace which provides social secure for families, personal development and integration, empowers employees in worries and decisions affecting their private lives and provides quality employment opportunities based on opportunity and women-men equality in the report prepared by ILO (International Labor Organization) and presented by ILC (International Labor Conference) in 1999. In this concept, “humanity work” does not only mean improving social rights but also providing job security for employee’s all rights. “Decent” word is used here for more “humane work” where considering not only the index of the job itself, but also the whole social rights covered by job security. According to ILO, “humane or decent work” of which principle was first introduced in 1948 Universal Declaration of Human Rights (Athanasou, J. A., 2010: 36), has four basic components those are employment, labor rights, social security and social dialogue (Khan and Sandhu, 2014: 490).

One of the constitutional rights of employees is to be able to work adequately and humane. In this concept, it is important to detect the formations and reasons of them in the aim of defect and responsibility criteria clearly. In particular, in order for the employer to get rid of the responsibility, the attitude of the employee must have reached the intensity at which it will cut off the appropriate illusion. Here, it is not necessary that the employee has acted deliberately in order for the behavior to be considered to have reached a certain density. In cases where there is a serious negligence of the employee, causality may be cut off and the employer should be freed from responsibility. But the flaws that are not at a level where the intensity cannot be cut off the appropriate circle of the illusion does not save the employer from responsibility. Only the reason for the reduction of the material compensation to be paid by the employer is accepted. As a matter of fact, in a case that has been brought to justice, a resultant fight between two employees has lost their lives. As to the case, the Court of Cassation gave the following decision: "*Death has not happened during the sight of the work. The employee killed the other employee for personal reasons. In this case, the defendant cannot be held responsible for employing the institution.*" As it turns out, two employees in the incident had quarreled in the workplace, causing the death of one person. However, even if the employees had their own faults, the faults of the employees caused the dismissal of the causality, even though it occurred in the workplace, and the Court of Cassation decided that the employer could not be held responsible for the employer (Naneci, 2008: 19-20). In Turkish law, the criterion used to determine the disability status of the worker and the occupational diseases is the loss of operating power. According to this, at least 2/3 of the operating power is lost and the person is considered not to be able to work continuously. In order to determine the loss of operating power, deficiencies or deficiencies in the person are made only from a medical point of view, making it difficult or obstructing the person to work in any profession. Indeed, the Social Insurance Health Transactions Regulation states that the illnesses and malfunctions that are considered to have reduced the work force by at least 2/3 of the person are counted in a list as a legal presumption. It is accepted from the beginning that diseases and malfunctions in this list reduce the operating power by at least 2/3. Accordingly, the insured is no longer obliged to

prove that he / she has been reduced by at least 2/3 of his / her operating power if the illness or disorder present in the list is determined in the manner prescribed in the law (Kerimoğlu, 2004: 22).

The human capital elements of business accidents are accepted in all legal and economic systems that are in close contact with the occupation, and after the scientific examinations, the reasons, formation, sides and consequences of this phenomenon have been revealed in detail and the findings of human resources have been found to be the dominant actors. It is possible to say that the factors which are important in terms of the causes of occupational accidents and which fully contain the elements of human capital concept are the factors that we can explain for reasons of accident connected to human resources. In this respect, in order to be able to explain the relationship between the factors in full meaning; we need to understand the integrity of personal characteristics such as age, gender, marital status, social status, work experience, education and culture level, habits, knowledge, education, health, experience and demographic characteristics of the concept of human capital. Choosing the most appropriate personal protectors and knowing how to use them will increase the level of knowledge and productivity of the worker, reduce the turnover of staff, reduce health expenditures as well as compensation payments to a minimum and protect the organization from entering an entropic process. Age and experiences have considerable effect on work accidents. Employees may be exposed to work accidents even if they have started work after the necessary informing and training work. Another cause of accident that puts the health and safety of the worker at risk is the alcohol and drug addiction which is one of harmful habits. Body repair, synthesis of various substances and hormones, memory restructuring, psychological relaxation occur during certain periods of sleep. One person needs an average of eight hours sleep a day to be able to perform normal functions. This need is even greater for teenagers. When the number of hours of sleep at night is reduced, these hours accumulate as sleep deprivation. Sleep is the only way to get rid of debt is sleeping. Problems arise about thinking about someone who cannot sleep. Learning new things happens more slowly, problems related to memory and decision-making processes can occur. From this point; even those who are knowledgeable, experienced and healthy thinkers are exposed to accidents and have serious problems (Baş, 2015: 8). In the studies conducted, the top three causes of worker accidents are carelessness (50%), inexperience (17%) and hastiness (13%). The most common causes of workplace accidents are lack of protective measures (30%) and workplace physical disabilities (26%). According to (Oliver et al., 2002: 473); the reasons are mainly work related and employee related characteristics and features. Work-related causes are often shown on the frontline in studies that investigate the causes of work accidents. Smith and his colleagues have reported that the most important reason for work accidents is that safety precautions are not strictly observed (Dağlı and Serinken, 2012: 170). From the same study, we see that Kalemoğlu and his friends argued that job accidents were caused by inexperience, lack of education, haste, insomnia, neglect and indifference.

2. Method

In this study, two qualitative data collection methods are used. First is interview which has been made with Social Security Corporation's representatives who are inspectors, solicitor etc. in Kayseri city in Turkey. Second is document investigation for gathering statistical data such as accident and injuring rates. Document investigation is made to validate the objectivity of the data collected by interviews.

Interview technique is one of the most-used qualitative methods of social sciences (Geray, 2014: 150). As dividing into three sub-categories as structured, semi-structured and unstructured (Karasar, 2013: 166), semi-structured interview which has previously prepared questions and spontaneously asked questions existing is used in this study.

Document investigation technique is investigating written and visual documents deeply for gathering more extensive data and validating that data collected in interview (Baş ve Akturan, 2008: 117).
While in interview process the important points are being objective and asking unbiased questions to interviewer; in document investigation process, the important thing is the originality and reliability of the documents.

3. Findings

Based on the results of interviews and document investigations, there are some considerable findings as follows. In the workplace, there is a significant relationship among organizing of the way work done and occurrence of work accidents. One example for this issue is; when the work flow is speeded up out of its ordinary process, when it is repeated, when there is no job rotation among employees, when on-job orientations are not sufficient, when there is not any training given after changes of work indexes, when job field or site is not appropriate for working securely or when necessary safeguards are not taken, work organizing serve in increasing work accidents. Further, nature of the work done is another factor related with organization structure causing work accidents (Mamatoğlu, 2001: 23). In our country, it is obviously seen that work accidents affect efficiency and effectiveness of production and human capital in a negative way named as a “danger”. For this reason, it is important to understand what decent work means and what it covers.

4. Discussion

Throughout the history, the lofty goals of societies are modernization, have a word in world nations and become a country having a strong and sustained economy. To do that, wars took place, new continents discovered, borders are re-drawn, colonialism became the most important economic system and at final; capitalist-homo economist structure had appeared. In this system, any liberalism provided to produce and create added-value; today’s productions systems those are basically labor supply and demand established, policies and methods developed to increase efficiency and effectiveness of human capital resource; but on the other hand labor-machine conflict could not be prevented. In this study work accidents due to labor-machine conflict is clarified and relationship between work accidents and human capital is tried to explain. The following suggestions are based on work accidents and human capital relations:

- Educative practices by government and employers should be existed more for employees to have more information about occupational health and job secure; quality of health services should be increased.
- Employers should pay more attention on taking precautions about job secure and employee health.
- Education and rehabilitation practices given by government and employers should take places more for making employees back-to-work process easier.
- Intensively experienced work accidents result in either death or injures in our country. Especially high risky companies, to decrease the number or work accidents to minimum level, auditing and investigations should be made more often and systems to evaluate denunciations and complaints about employers faster should be developed.
- Employers need to provide necessary physical conditions for job secure and occupational health; government should not allow non-secured work tools and systems to be online.

- Expert and consultancy practices about job secure and occupational health should be covered by independent corporations audited by government which leads to lowering commitment to the employer.
- Social consciousness should be created about job secure and occupational health. Both written and visual media can be used effectively for this purpose.
- Operations for overcoming deficiencies in regulations for job secure and occupational health, following practices in developed countries and adapting those practices for our country are important.
- Providing co-ordination among organizations and policies as solutions for any conflicts are important for job secure and occupational health concept.
- Raising awareness of employers about practicing job secure and occupational health and asking for a government support is important.
- For the purpose of decreasing out of record work accidents at minimum level, necessary regulations should be practiced.
- Required support should be provided for executing motivators by employer and government, for employees obeying job secure and occupational health issues.
- First aid and emergency response centers should be established nearby huge industrial corporations and workplaces after work accidents.
- Children and youths need to be aware of job secure and occupational health, topics about those issued should be syllabuses.
- In decreasing work accidents, developing policies increasing experience of human capital would decrease brain drain and transform this negativity to a country-wide opportunity.
- To increase the effectiveness of human capital, educational capacities of employees need to be raised.
- Increasing on-the-job trainings and informing occupational health and job secure are significantly important.
- Practices for terminating every factor that is negative for physical and psychological health of employee need to be done.

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Evaluation of Patient Satisfaction from Centralized Hospital Appointment System in The Anatolian Side of Istanbul Province

Gamze Kağan, Mehmet Zelka

1. Introduction

With the advancement of science and technology, alongside the importance given to culture and humanity, people now have higher standards and therefore, expect health services to be good, or maybe even better than they are. That is why, in order to keep the quality of health services of hospitals intact, we need to make sure that the health services provided are always kept under scrutiny and improve their quality using systematic research rather than based on luck.

The aim of our research is to analyze patients' satisfaction with health services-provided by public hospitals – based on the evaluation of the Merkezi Hastane Randevu Sistemi-MHRS (Central Hospital Appointment System-CHAS) used by patients in order to obtain appointments from any doctor at public hospitals throughout Turkey. In our study we attempt to determine the benefits of the CHAS, and improve any discrepancies the system may have, so that we may help increase patient satisfaction. Therefore, in our study, we asked patients questions about the CHAS in order to understand if a statistically significant relationship existed between the following variables: satisfaction level, gender, relationship status, age, level of education, type of healthcare plan, number of times applied to the system, type of system used, type of outpatient clinic and hospital chosen.

From previous studies in this area, such as the Alagöz (2013) study, waiting time and the problems that arose- when waiting on line- were evaluated at public hospitals. Whereas, the study by Şahin (2013), evaluated the awareness of CHAS among dentists who work at the Ağız ve Diş Sağlığı Merkezi- ADSM (Mouth and Dental Health Center-MDHC) and patients who use CHAS, as well as, the effects CHAS has on the doctors' and patients' satisfaction and waiting time. The most important factor that separates our study from the aforementioned ones is that we evaluated the CHAS at both a general hospital and a specialized branch hospitals and both types of hospitals have a broad patient population.

In this paper first, we briefly describe: the patient appointment systems, the condition of the appointment systems of all public hospitals throughout Turkey, general information about the CHAS and patient satisfaction in regards to the health services provided. Then, we conclude by explaining our research method, and the results from our research.

1.1. Hospital Appointment Systems

According to Tekin (2012, p.5), in our daily lives, for certain reasons we end up waiting in lines, whether it is in traffic, at banks or at hospitals. Even though the basic foundation models of most lines may look alike, when we take the system of the line into consideration as a whole, we can see that the system is made-up of various structures (Aydın, 2003, p.8). An example in regards to health services can be seen in the different lines there are such as: a different line to receive treatment, a different line to have an operation, and another different line to get X-ray filming done (Tekin, 2012, p.5). These line models can be found at all businesses that require waiting. These waiting areas differ according to the type of business, as well as, show similarity based on general structure (Aydın, 2003, p.7). But, the lines formed by patients at hospitals are not the same as those formed by people waiting in line to buy tickets to the theatre or complete a transaction at the bank (Alagöz, 2013, p.29) because in health services, people's lives are at stake; the losses that may occur while waiting on line can mean the loss of someone's life. The

most important study done about patient appointment systems is Soriano's study. Soriano divides the patient appointment systems into four different classes: Single Block appointment systems, Individual Block appointment systems, Block appointment systems and Individual-Block appointment systems (Alagöz, 2013, p.40). The accessibility of appointment systems is very important for hospitals. In order to decrease the waiting times and utilize their sources effectively, hospitals need to make sure that the appointment system they choose to use is the most productive appointment system; it should provide all patients the opportunity to obtain appointments from various sources at all times of the day, it should be able to utilize the servers effectively, and decrease the amount of time patients wait in lines (at outpatient clinics or other therapy units of the hospital) to the bare minimum. Currently, in Turkey, appointments can be made by using the telephone, internet, kiosk machines and personally at the hospitals (Alagöz, 2013, p. 48).

1.2. Current Condition of Appointment Systems at the Public Hospitals of Turkey

According to the Regulation for Inpatient Therapy Institutions[1] patients who apply to outpatient clinics receive a number to wait in line and are treated when their number is called. Patients who are: in critical or emergency condition, are elderly, are disabled or handicapped or have forensic cases, have priority over all others and are treated first. In Turkey, until the end of the 1990s, people needed to visit the hospital personally to get appointments and hospitals would treat patients according to the FCF[2] discipline. Before 1999, people applied to the hospitals for appointments personally and the Single Block appointment system was mostly used. In those years, there were very long lines at the SSK[3] hospitals and things were very intense. For this reason, in 1999, the telephone appointment system was executed using the SSK Health Information Project so that people could get appointments using the telephone. In 2001, the Turkish Ministry of Health put together a directive to help decrease the lines at health institutions. In 2005, all health services were combined under the heading of General Health Insurance. This way, patients could receive health services from any health institution no matter what their healthcare plan covered. Because of this, the number of lines and waiting time at hospitals began to decrease. However, by the end of 2006, the electronic information systems-called HBYS[4]- was formed in all public hospitals. Along with HBYS, the hospital appointment system worked as a whole and made it easier for patients to get appointments (Alagöz, 2013, pp. 79-81).

1.3. The Central Hospital Appointment System – CHAS(MHRS)

CHAS can be stated in the following three items:

i. Increasing patient satisfaction by decreasing lines at hospitals through better planning of sources,
ii. Improving quality and presentation of health services by measuring the use and distribution of sources at hospitals and
iii. Supporting the development of health politics by using data gathered from the Hospital Appointment Center (http://www.mhrs.gov.tr, March 24, 2014).

In September of 2009, the Turkish Ministry of Health agreed to and signed a protocol with the telephone company Türk Telekom in order for 144 employees to work for the CHAS Call Center- ALO 182. After signing this protocol, pilot studies were executed on February 23, 2010 at the provinces of Erzurum and Kayseri (Alagöz, 2013, pp.86-87) to test the telephone

[1] "Yataklı Tedavi Kurumları İşletme Yönetmeliği" (YTKİY)
[2] First-come, First-serve
[3] Social Insurance Institution
[4] Hastane Bilgi Yönetim Sistemleri: Hospital Information Administration Systems

appointment system. By the end of 2010, the CHAS Call Center was used at seven other provinces around Turkey. In the year 2010, nine more provinces applied for the system and by the beginning of 2011, they began to use the CHAS Call Center as well. On March 26, 2012, the province of Istanbul was added and now the CHAS Call Center is available in all eighty-one provinces of Turkey (Şahin, 2013, p.3). To get an appointment online using CHAS, patients enter the system from the website (www.hastanerandevu.gov.tr). On the other hand, to get an appointment using the telephone system, patients can call the CHAS Call Center by dialing 182 using either a home, work or mobile phone. While people can get appointments for free from the website, they are charged a certain fee per minute- which changes according to the operator- for the length of the phone call, when they call the CHAS Call Center.

1.4. Patient Satisfaction in Health Services

In general, patient satisfaction is considered to be the patients' perception of health services received or whether the patients' expectations were met. Throughout the literature on patient satisfaction, there are nine dimensions of the hospital that are the most important. These dimensions are: the patient-doctor relationship, the patient-nurse relationship, the patient-other hospital personnel relationship, providing the patient efficient information, the nutrition services provided, the physical and environmental condition of the hospital, bureaucratic functions, reliability of the healthcare services provided and the fee (Şeremet, 2013, p.41). Other factors that effect patient satisfaction are: factors based on the patient, factors based on the healthcare service provider, and physical, environmental or business factors.

2. Method

Our study aims to understand the following measures of the CHAS used in the Anatolian side of the Istanbul province: how it effects patient satisfaction, the advantages and if they exist, the disadvantages of the system. This way, suggestions can be made in order for the system to be developed and/or improved to further increase patient satisfaction.

As a research method, we used the quantitative method of research for our study. The quantitative method was supported using the survey which we developed based on our research questions. The following are the eight research questions which we used to prepared our survey:

1- Does gender significantly differ based on the General Satisfaction Level of the participants?
2- Does the relationship status significantly differ based on the General Satisfaction Level of the participants?
3- Does age significantly differ based on the General Satisfaction Level of the participants?
4- Does the level of education significantly differ based on the General Satisfaction Level of the participants?
5- Does the type of healthcare plan significantly differ based on the General Satisfaction Level of the participants?
6- Does the number of times applied significantly differ based on the General Satisfaction Level of the participants?
7- Does the type of appointment system used significantly differ based on the General Satisfaction Level of the participants?
8- Does the type of outpatient clinic chosen significantly differ based on the General Satisfaction Level of the participants?

Our survey was tested in a pilot study and then reorganized based on the preliminary results that we obtained from the pilot study. Between July 1 and 10, 2014, we conducted our survey with 302 participants at three of seven different hospitals which are part of the General Secretariat of the Association for Public Hospitals of the Northern Anatolian Side of the Istanbul Province, in relation to the Republic of Turkey's Ministry of Health Foundation for

Public Hospitals of Turkey. These three hospitals were: the Dr. Siyami Ersek Hospital of Thoracic, Heart, and Vascular Surgery; the Haydarpaşa Numune Education and Research Hospital; and the Zeynep Kamil Education and Research Hospital for Illnesses in Women and Children. Because our study is a descriptive research, we considered the seven hospitals belonging to the area to be the population, and from that population we randomly chose three of those seven hospitals as our sample. From this sample, we chose each of our 302 participants at random to conduct our survey with. For our evaluation of patient satisfaction with the CHAS, we defined 5 independent variables and 1 dependent variable. The independent variables were: participants' age, participants' gender, participants' relationship status (married, divorced, single, etc.), participants' level of education and participants' type of healthcare plan. The dependent variable was the participants' satisfaction level with CHAS.

In our survey, we asked participants about their experience using CHAS. Our survey consisted of two parts. The first part had quantitative questions which asked participants demographic information about themselves. The second part consisted of a total of 20 questions: the first 10 questions asked about the quality of service and measured the level of patient satisfaction with the telephone appointment system and the next 10 questions asked about the quality of service and measured the level of patient satisfaction with the online appointment system. We used a Likert-type scale (1-5) to measure the level of patient satisfaction using the following as choices of responses: "5: Absolutely Agree," "4:Agree," "3:Undecided," "2:Disagree," and "1:Absolutely Disagree." In this section, scores for the responses for questions 4 and 5 were reversely-scored.

Our study was approved by a decision (# 2014/001) made at the meeting (#2014/7) of Üsküdar University's Ethic Committee for Non-Invasive Clinical Studies on May 14, 2014. Our study was declared to be an appropriate research study in an official report (#77517973-770-23258), written on June 6, 2014, by the General Secretariat of the Association for Public Hospitals of the Northern Anatolian Side of the Istanbul Province of which the hospitals our survey was conducted at belong to.

3. Findings

Our study was done with 302 people between July 1 and 10, 2014. The ages of the participants in our study varied between 12 and 78 years old with a mean of 35,77±12,26 years. Of the 302 participants, 33,8% (n=102) were male and 66,2% (n=200) were female.

We found that the distribution for type of healthcare plan was as follows: 69,9% (n=209) of participants had SGK[5] health insurance for working people, 15,4% (n=46) of participants had SGK health insurance for retired people, 3,0% (n=9) of participants had a Green Card,[6] 1,3% (n=4) of participants had private health insurance, 4,0% (n=12) of participants did not have any type of health insurance and 6,4% (n=19) of participants had other types of health insurance.

When we analyzed participants' level of education, we found that 37,7% of participants were elementary and middle school graduates and only 29,5% of participants were high school graduates. While it was the first time for 25,2% (n=76) of participants to use CHAS, it was not the first time for 74,8% (n=226) of participants to use CHAS. While 75,1% (n=226) of participants obtained their appointments on their own, 15,0% (n=45) of participants had their relation obtain an appointment for them and 10,0% (n=30) of participants did both these things. While 45,4% (n=137) of participants used the CHAS Call Center to get their appointment, 24,5% (n=74) of participants used the CHAS internet website to get their appointment and 30,1% (n=91) of participants used both systems to get their appointment. Of the participants,

[5] Social Security Institution

[6] Health insurance offerred to people who are under the poverty line

49,7% (n=150) applied for an appointment at a general hospital, 50,0% (n=151) applied for an appointment at a specialized branch hospital and 1 person (0,3%) applied for an appointment at a Mouth and Dental Health Hospital. We also found that the distribution of the types of outpatient clinics the participants got appointments from was as follows: internal medicine (n=76), gynecology and obstetrics (n=76), cardiology (n=59), and eye diseases (n=53).

For the question: *If you weren't able to get an appointment for the time you requested, when were you able to get an appointment for?*[7] the participants gave the following responses: 2,3% (n=7) got an appointment for 1-23 hours later, 20,5% (n=62) got an appointment for 1-4 days later, 13,2% (n=40) got an appointment for 5-9 days later, 6,0% (n=18) got an appointment for 16 or more days later and 33,1% (n=100) got an appointment for the time they had requested.

When asked: *If you weren't examined by the doctor at the time of your appointment, how long did you wait until you were examined by the doctor?*[8] 8,6% (n=26) of participants responded that they waited 1-4 minutes, 13,0% (n=39) responded that they waited 5-9 minutes, 9,6% (n=29) responded that they waited 10-14 minutes, 23,6% (n=71) responded that they waited 15-29 minutes, 17,6% (n=53) waited 30 minutes or more to be examined and 27,6% (n=83) responded that they didn't wait at all to be examined; they were examined on time.

When asked the question: *When you applied to the CHAS for an appointment, was your application ever turned down?*[9] 15,7% (n=47) of the participants said yes and 84,0% (n=252) said no, they weren't turned down.

When asked: *If your appointment was canceled, how were you notified?*[10] 63,5% (n=40) of participants responded that they were notified by telephone, 6,3% (n=4) said they were notified by e-mail, 3,2% (n=2) said they were notified by both telephone and e-mail and 27,0% (n=17) said that they were not notified.

We found that for the 10 questions (which had the responses "1:Absolutely Disagree" up to "5: Absolutely Agree") where we asked participants about their satisfaction with the telephone appointment system and the online appointment system, the lowest score was 10 and the highest score was 50. Statistically, we did not find a significant difference ($p>0,05$) between the patients' satisfaction with the telephone appointment system and the type of hospital they chose. However, it was interesting to find that while there was statistically no significant difference between gender and satisfaction, the level of satisfaction was considerably lower in male participants when compared to female participants ($p=0,092$; $p>0,05$). We did not find a statistically significant difference ($p>0,05$) between the relationship status of the participants and their satisfaction level. Also, we did not find a statistically significant difference ($p>0,05$) between the age of the participants and their satisfaction level and there was also no statistically significant difference ($p>0,05$) found between the participants' level of education and satisfaction level. We did not find a statistically significant difference ($p>0,05$) between the participants' type of healthcare plan and satisfaction level, just as we did not find a statistically significant difference ($p>0,05$) between the number of times participants applied to CHAS and satisfaction level.

We found a statistically significant difference ($p=0,001$; $p<0,01$) between the type of appointment system the participants used and the participants' satisfaction level. Based on the double-comparison we did; we found the satisfaction level of participants who used the online appointment system compared to the satisfaction level of participants who used the telephone appointment system or used both appointment systems to be significantly lower ($p=0,001$; $p=0,001$; $p<0,01$). The satisfaction levels between groups did not show any statistically significant difference ($p>0,05$).

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[7] *"Randevunuzu talep ettiğiniz zamanda alamadıysanız ne kadar zaman sonraya bulabildiniz?"*

[8] *"Randevunuzu aldığınız saatte muayene olamayıp, bekletildiyseniz ne kadar bekletildiniz?"*

[9] *"Daha önce Merkezi Randevu Sistemi'ne başvurup da, başvurunuz iptal edildi mi?"*

[10] *"İptal edildi ise nasıl bildirildi?"*

While we didn't find a statistically significant difference (p>0,05) between the satisfaction scores of participants who used the telephone appointment system and the type of outpatient clinics they applied to (internal medicine, gynecology and obstetrics, cardiology and eye diseases), we did find that the relationship between the satisfaction level scores of participants who used the telephone appointment system and applied to the ENT outpatient clinic had a high statistically significant difference (p<0,05).

Also, we found a statistically significant difference (p=0,031; p<0,05) between participants who used the online appointment system and the type of hospital they applied to. Based on the results of our double-comparison test, the satisfaction level of participants who applied to the Haydarpaşa Numune Education and Research Hospital had a high statistically significant difference (p=0,048; p=0,036; p<0,05) compared to the satisfaction level of participants who applied to the Dr. Siyami Ersek Education and Research Hospital of Thoracic, Heart, and Vascular Surgery and the Zeynep Kamil Education and Research Hospital for Illnesses in Women and Children. We did not find a statistically significant difference (p>0,05) between the other hospitals participants applied to and the satisfaction levels.

There was no statistically significant difference (p>0,05) found between the gender of the participants and the satisfaction level scores. Also, there was no statistically significant difference found (p>0,05) between the relationship status of participants and satisfaction level. However, we found that there was a statistically significant difference (r=-0,270; p=0,001; p<0,01) at a level of 27,0%, for the weak inverse relationship between the participants' age and satisfaction level.

We found a statistically significant difference (p=0,019; p<0,05) between the participants' level of education and satisfaction levels. According to the results of our double-comparison test, the relationship between the satisfaction level of participants who were elementary/middle school graduates or below, compared to the satisfaction level of participants who were university graduates was significantly low (p=0,030; p<0,05). There was no statistically significant difference (p>0,05) found between the other levels of education and satisfaction levels.We did not find a statistically significant difference (p>0,05) between the participants' type of healthcare plan and the satisfaction levels. There was also no statistically significant difference (p>0,05) found between the number of times participants applied and the satisfaction levels.

We found a statistically significant difference (p=0,001; p<0,01) between participants who used the online appointment system and satisfaction level. Based on the results of our double-comparison test, we found that the statistically significant difference between the participants who used the telephone appointment system and satisfaction levels was low compared to the satisfaction levels of participants who used the online appointment system. But, we also discovered that, the relationship between both groups was at a considerable level (p=0,092; p>0,05) and that the satisfaction levels of participants who used the online appointment system was significantly higher (p=0,018; p<0,05) than the satisfaction levels of participants who used both types of appointment systems. We did not find a statistically significant difference (p>0,05) between other groups of participants and satisfaction level.

While we did not find a statistically significant difference (p>0,05) between the satisfaction scores of participants who used the online appointment system and the type of outpatient clinics they applied to (internal medicine, gynecology and obstetrics, cardiology and eye diseases), we did find that the relationship between the satisfaction level scores of participants who used the online appointment system and applied to the ENT outpatient clinic had a high statistically significant difference (p<0,05).

We used the statistical program SPSS 15 for Windows in order to statistically evaluate the results of our study. We also used the Number Cruncher Statistical System (NCSS) 2007 and Power Analysis and Sample Size (PASS) 2008 statistical software programs to analyze the

results of our surveys. Along with the descriptive statistical measures (Mean, Standard Deviation, Median, Frequency, Range, Minimum and Maximum), we used a Student T-test- which shows the normal distribution of variables for comparison of two groups- in order to compare the quantitative data. In order to compare the normal distribution for groups of three and above, we used the Oneway Anova test and the Welch test. However, in order to find the group that caused the significant difference we used the Tukey HSD test and Tamhane test. For groups of three and above, that did not have normal distribution, we used the Kruskal Wallis test. Finally, we used the Pearson Correlation Analysis, with significance levels of $p<0,01$ and $p<0,05$, to show the relationships between parameters.

In the sub-section of our survey, in which we asked participants about their satisfaction with CHAS, we found that: the inner-reliability value of the ten questions that asked about patient satisfaction with the telephone appointment system was $\alpha = 0,783$ and the inner-reliability value of the ten questions that asked about patient satisfaction with the online appointment system was $\alpha = 0,817$. This shows that our questions about patient satisfaction with the online appointment system were reliable.

Finally, for the last section of our survey we asked participants any suggestions they might have about CHAS. Of all the participants (n=302), only 77 of them answered this section, and only 14 of these participants responded that they were satisfied with CHAS and the rest of the participants (63) responded that they had the following complaints about CHAS: they couldn't get appointments, dates for the appointments were given at a much later date than requested, they couldn't get appointments from the doctors they requested, they weren't examined by the doctors they got their appointment from, they got the wrong appointment from the telephone appointment system, all the appointments already filled up on the online appointment system, appointments given online were already filled by the telephone appointment system and the telephone appointment system is not toll free; people do not want to be charged for the phone call.

4. Discussion

From our results, we discovered that the variables: participants' gender, participants' level of education, participants' type of healthcare plan, and number of times participants applied, did not have a statistically significant effect on satisfaction level. As shown in one study, gender and the type of healthcare plan do not have an effect on patients' satisfaction (Thompson et al., 1996). Likewise, another study found that age and gender do not have an effect on patients' satisfaction (Yıldırım et al., 2005). On the other hand, Dölek et al. (2005) found that gender and the type of healthcare plan effects overall satisfaction; women were found to be more satisfied than men and patients who had social security from pension had the highest level of satisfaction. Also, relationship status was found not to have an effect on the satisfaction level (Dölek et al., 2005, p.126). In the study by Toğun, a statistically significant difference was found between the overall satisfaction level and the type of healthcare plan patients have. Toğun also found that patients who did not have a healthcare plan were not satisfied because they had to pay for the healthcare services they received and this caused them to have higher expectations of the health services they received (Toğun, 2007, p.51), leading them to dislike the services even more.

From our study, while we did not find a statistically significant difference between participants' gender and satisfaction level for either appointment system, it was intriguing to find out that for the telephone appointment system, the satisfaction level of male participants was higher than the satisfaction level of female participants ($p=0,092$; $p>0,05$). This was also the case in Dölek's study, in which the overall satisfaction of women was found to be higher than men (Dölek et al., 2005; Emhan et al., 2005). Some other studies also show that women

are more satisfied, while others explain that men are more satisfied. Yet other studies state that there is no relationship found between gender and satisfaction level. When studies on patient satisfaction are analyzed, various results can be found between the socio-demographic variables belonging to each patient (Yılmaz, 2001).

From our results, we found that as participants' age increased, their satisfaction level with the online appointment system decreased. Similarly, a study done in China discovered that younger people use the web-based appointment system more (Cao et al., 2011). Some studies show that as age increases, so does satisfaction with health services. Whereas, some other studies show that age does not have an effect on the satisfaction level in regards to health services received (Özer and Çakıl, 2007). According to a study by Emhan et al., in regards to satisfaction, elderly people re-visit the hospital more than younger people do (Emhan et al., 2010). Yet, Dölek et al. (2005), found that there is a statistically significant difference between different age groups, such that; 18-28-years group and the 62+ years group are different compared to other age groups.

When we analyzed participants' level of education, we found that there was a statistically significant difference ($p=0,019$; $p<0,05$) between the participants who used the online appointment system and their satisfaction levels. Furthermore, we found that the satisfaction level of participants who were graduates of elementary/middle school or lower was significantly lower ($p=0,030$; $p<0,05$) compared to the satisfaction level of participants who were graduates of university. Özer and Çakıl (2007) also found this to be the case in one of their many studies; as the level of education increases, the satisfaction level decreases.

In regards to patient satisfaction, waiting time is a very important factor. In fact, it has been shown that the shorter waiting time is, patient satisfaction increases. In one of their studies, Davis and Vollmann found that there was an inverse relationship between patient satisfaction and waiting time (Thompson et al., 1996). But, in a study done at Bristol University, it was found that appointment systems and the length of appointments are related to patient satisfaction (Sampson et al., 2008). Yet, another study found that the main reason patients are not satisfied is because of the waiting time (Yıldırım et al., 2005). In Toğun's study (2007), the total amount of time patients wait in the emergency room effects satisfaction and waiting time causes patient satisfaction to decrease. In our study, when we asked participants about how long they waited to get their appointment, more than half of the participants said that they did not wait- or they only waited one minute- when they used the telephone appointment system. From this finding, we understood that our participants were not dissatisfied with waiting time.

Based on the results of a study done in China, the waiting time for patients who used a web-based appointment system was shorter (Cao et al., 2011). But, in our study, we found a statistically significant difference ($p=0,001$; $p<0,01$) between patients' satisfaction level and the type of appointment system they used. Based on the findings from our double-comparison, the satisfaction level of participants who used the online appointment system was significantly lower ($p=0,001$; $p=0,001$; $p<0,01$) than the satisfaction level of participants who used both appointment systems. We did not find a statistically significant difference ($p>0,05$) between the other groups and satisfaction level.

From the analysis of our research results, we found that; when satisfaction levels are evaluated based on hospitals chosen, there was a statistically significant difference ($p=0,031$; $p<0,05$) between the satisfaction levels and participants who used the online appointment system. From the double-comparison, the satisfaction level for the Haydarpaşa Numune Education and Research Hospital was significantly higher than the satisfaction level for the Dr. Siyami Ersek Hospital of Thoracic, Heart, and Vascular Surgery and the Zeynep Kamil Education and Research Hospital for Illnesses in Women and Children. Based on this, we can say that the overall satisfaction level of participants who chose general hospitals was higher than the satisfaction level of participants who chose specialized branch hospitals.

Consequently, of the many results from our study, one result which is of more interest was the significant relationship between the type of appointment system used and the satisfaction level of participants who used the online appointment system. We found that the satisfaction level of participants who used the online appointment system was higher than the satisfaction level of participants who used the telephone appointment system. Likewise, we found that the satisfaction level of participants who used the online appointment system was statistically significant compared to the satisfaction level of participants who used both systems. Based on this finding, we think that the online CHAS increases satisfaction level.

5. Limitations & Further Research

Based on the results of our research, while the CHAS application can give appointments to all public hospitals throughout Turkey, we found that the satisfaction level was higher in participants who chose general hospitals. Even though the satisfaction level with CHAS is generally high, there are still some discrepancies that can be improved upon.

We also found that the satisfaction level was higher in participants who used the online appointment system than in those who used the telephone appointment system, or who used both systems simultaneously. From this we can deduct that the online appointment system works well, and because it is used via the internet it is accessible to anyone. But, in regards to the use of the online appointment system, we found that the satisfaction levels of participants with lower levels of education compared to the satisfaction levels of participants with higher levels of education was lower. That is why we recommned that the online appointment system be made more accessible to people with lower levels of education.

Even though the satisfaction level, in regards to waiting time, with CHAS is high, users who have lower satisfaction levels with CHAS have problems about waiting time. If we consider that waiting time effects patients' satisfaction levels the most, and that people are dissatisfied with long waiting times, then, we feel that updates need to be made to CHAS in order to improve the issues with waiting times.

Our research was conducted at one general hospital and two specialized branch hospitals. From the results, we discovered that participants' satisfaction levels for specialized branch hospitals was lower and the number of CHAS who choose specialized branch hospitals is lower compared to those who choose general hospitals- such as the Haydarpaşa Numune Education and Research Hospital. That is why we also recommend that improvements be made for specialized branch hospitals.

According to Şahin (2013), satisfaction level was found to be low for dentists. For this reason, we believe that it would be useful to analyze the satisfaction level of doctors at both general hospitals and specialized branch hospitals throughout Turkey, which have the CHAS. Our research method can be duplicated in order to do this and the results of both studies can be used in order to help improve the CHAS.

In conclusion, according to the results of the last part of our survey- in which we asked participants about any suggestions they had for CHAS- we found that there were many shortcomings of the CHAS that need to be addressed. We think that these problems should be investigated further and preventive measures should be taken to alleviate them. One such complaint was about how the telephone appointment system charges the caller for the phone calls made to the CHAS Call Center and that the fees charged are too high. We believe that such an extensive appointment system made by the government would be easier to use and would be more accessible to a wider audience if it was made toll free; without any charges to the patients.

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Neoliberal Rule and the Working Class in Turkey in the 21st Century

Canberk Koçak, Ezgi Cengiz

1. Introduction

Neoliberal agenda of the 1970s was introduced to Turkey in the early days of 1980 in a package of free-market policies, known as 24 January Decisions. The application of the neoliberal policies, however, required a military coup that would clear the current state of institutions in the country. Under the name of National Security Council, Turkish Armed Forces started to rule the country for three years until a desirable institutional ground is set for the neoliberal order. AKP government followed the same path that their neoliberal predecessors had developed until 2002, the year they came to power.

In this research, we explore the class nature and the consequences of social and economic policies adopted by the AKP governments. In particular, we concentrate on the impact of these policies on the condition of the working class.

We make a list of hypotheses. First, we show the worsening of the condition of the working class in the last fourteen years due to the various neoliberal actions performed by the AKP administration. The growing oppression on unions and left-wing political parties has severely damaged the resisting potential in the working class. Second, we argue the public expenditures that are supposedly devoted to solve poverty and inequality in fact ensured the survival of them. The poorest, getting more and more dependent on the social benefits provided by the central and local administrations, became the source of the electoral vote for the AKP government. Lastly, we believe AKP government have sustained a more profitable environment for the capital in Turkey. Hence, one of the main explanatory factors behind their stay in power for almost fifteen years, we think, is their mutualism with business circles and their representation of capital at the expense of labor.

2. Data collection and structure

We gather our data mainly from TURKSTAT, the ministries in Turkey and OECD to travel the evolution of the condition of the working class under the AKP rule. As the data permit, we look for patterns in our main indicators over time, and then across regions in which we compare our findings between Turkey and the other OECD countries.

Inspired by the information that our data reveal, we decided to organize our chapter such that assigning each sub-section of our findings an indicator of interest that, we think, is crucial to explore the condition of the labor in Turkey. We start with occupational safety and continue our research by surveying wages, the pension reform, employment, unionization and inequality parameters from 2002 to 2016.

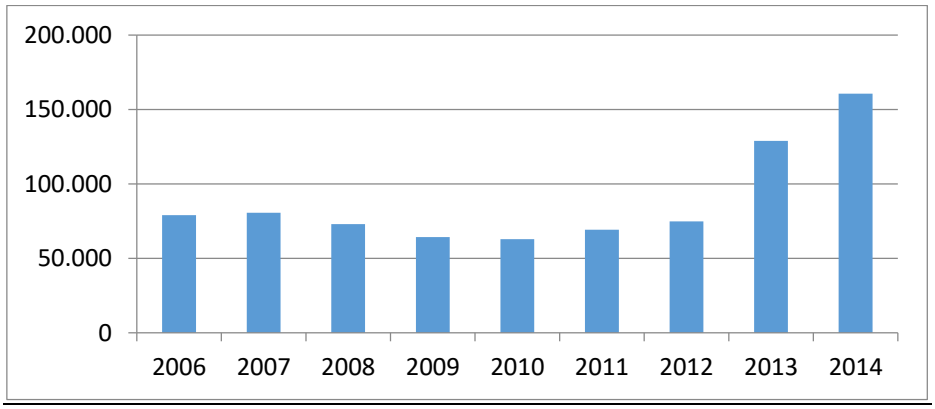
3. Findings

3.1. Occupational Safety and Health

According to the International Labor Organization (ILO), the ratio for the number of labor inspectors per 10 thousand workers is slightly decreased from 0.4 in 2011 to 0.3 in 2013 and remained at 0.3 in 2015. Comparing this low ratio with the ratios of other countries such as Mexico (0.2 in 2015), Colombia (0.4 in 2015), Portugal (0.8 in 2013) and Norway (1.3 in 2013) gives us as a clear idea about the standing position of Turkey on the grounds of job safety (ILO Country Profiles).

The incidence of the high number of accidents (see Figure 1) and of fatal accidents at work (see Figure 2) provides support to our initial remark. In 2010 nearly 63 thousand work accidents took place in Turkey. In only four years, this number is almost tripled resulting in more than 160 thousand work victims of which 1,626 were fatal. Trying to delink this trend from the government's approach towards the labor issues would be too naïve. On the contrary, the frequent occurrence of mortality and accidents among workers bear a direct connection to the privatization of mines and of interrelated sectors which effectively produced a flexible labor market as subcontracting became increasingly prevalent.

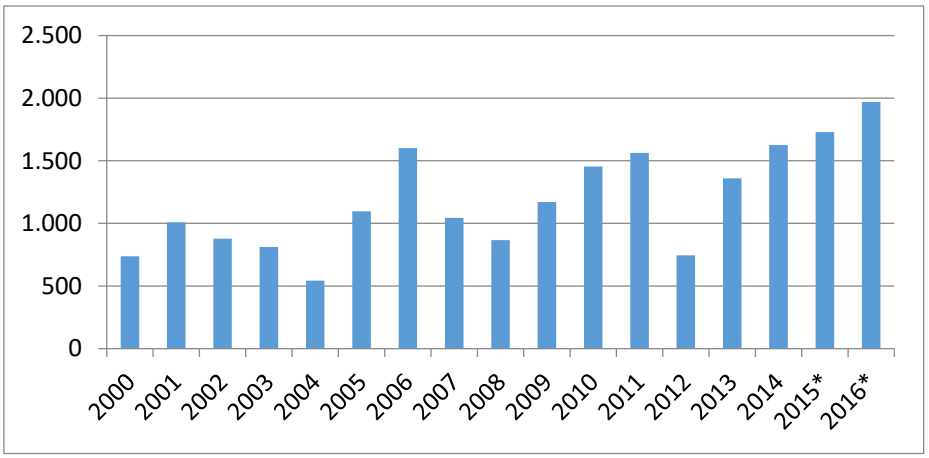
Figure 1: Number of accidents at work



Source: SGK data taken from TMMOB Makina Mühendisleri Odası *İşçi Sağlığı ve İş Güvenliği Oda Raporu* (The Report of Worker Health and Work Security), February 2016.

When we look at the condition of occupational safety in Turkey's European counterparts, what we see is quite striking. According to EUROSTAT, in 2013 the countries with the most fatal work accidents in the European Union are France, Italy and Germany with 553, 517 and 444 deaths. All these figures correspond to approximately one third of the fatal accidents at work in Turkey over the same year.

Figure 2: Fatal accidents at work

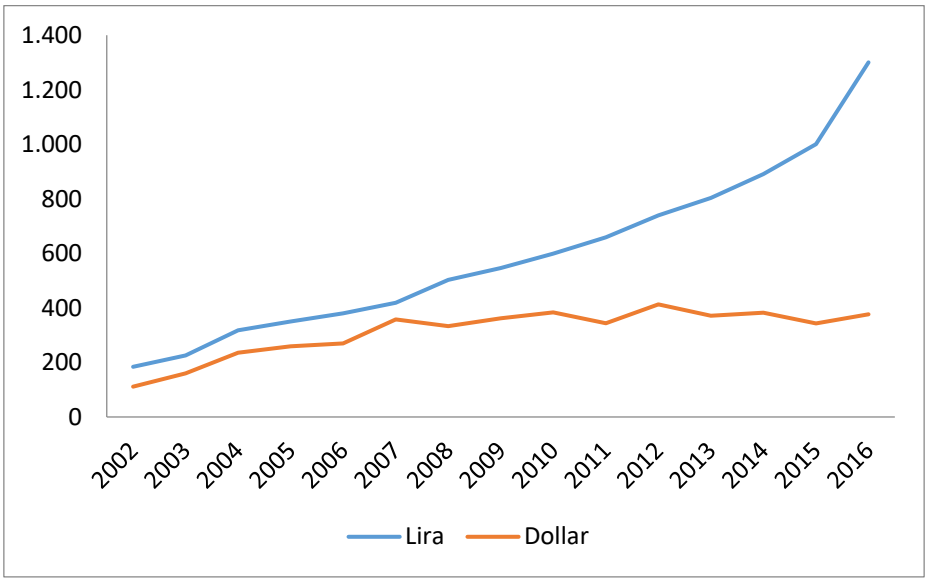


Source: SGK and ISIG Assembly data taken from TMMOB Makina Mühendisleri Odası *İşçi Sağlığı ve İş Güvenliği Raporu* (The Report of Worker Health and Work Security) February 2016. *ISIG Meclisi (ISIG Assembly) data

3.2. Wages & Pensions

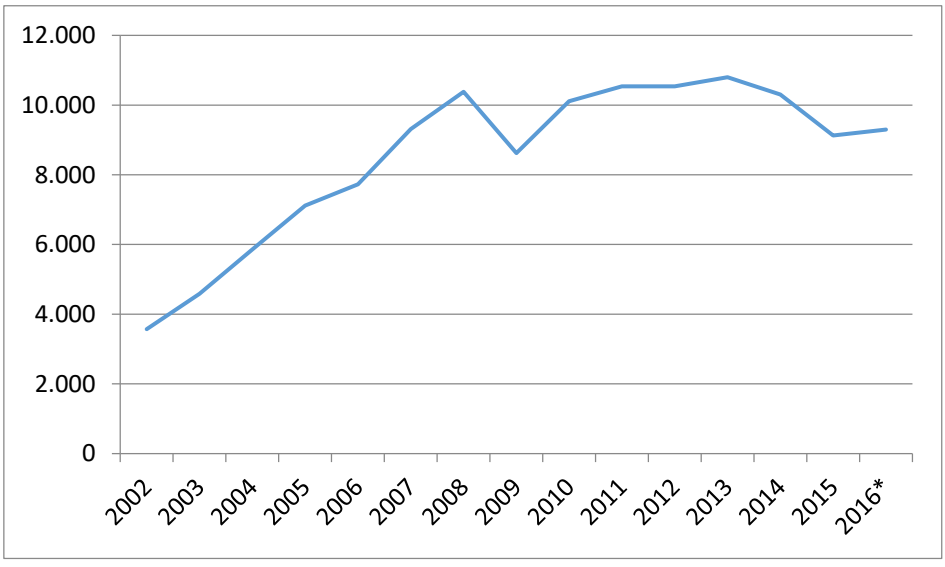
In 2001, Turkey was struggling with a serious economic crisis and designated Kemal Derviş, former vice president of the World Bank for the Middle East and North Africa Region, as the new minister of economic affairs. The recovery from the economic crisis is coincided with the arrival of AKP coming to power in 2002: GDP per capita (current US dollars) kept rising until 2007 on a regular basis and almost doubled in accordance with the increase in the minimum wage (see Figure 3). However, following the 2008 financial crisis, both the GDP per capita -around 10 thousand dollars- (see Figure 4), and the minimum wage -around 350 dollars per month- turned stable with limited variation.

Figure 3: Minimum wage through years



Source: Authors' calculations using the ÇSGB (Ministry of Labor and Social Security) data on minimum wage and the exchange rates in the month of December for the period 2002-2016.

Figure 4: GDP per capita (current US$)



Source: World Bank *Estimated value for 2016.

The government efforts to improve the purchasing power of the people produced extremely poor results that we can capture looking at the spatial differences between Turkey and other OECD countries. Among 34 countries, Turkey is ranked 33rd in the income category of the OECD regional well-being survey which is mainly calculated through the household net adjusted disposable income and household net financial wealth (OECD, 2016). Furthermore, Turkey occupies the last position when it comes to the regional income inequality.

The evaluation of the condition of the labor is even more depressing when we take account of the long working hours in the country. Using OECD (2017) data we see that in 2014, the average usual weekly hours worked in the main job broken down by full-time dependent employment is 50.5 hours in Turkey, compared to 41.6 in Portugal, 38.2 in Norway, 50.8 in Colombia and 48.5 hours in Mexico. OECD Better Life Index (2017) notes that "some 39% of employees work very long hours, by far the highest rate in the OECD where the average is 13%", and Turkey "occupies the last place in the time devoted to leisure and personal care with around 12.2 hours per day."

The pension system reform put an extra burden on the shoulders of the working class. In its *Pensions at a Glance* report OECD (2015, 364) summarizes what the pension reform essentially brings: "the AKP government decided to increase gradually the retirement age in 2008. The current pension age is 60 years for men and 58 years for women with at least 7200 days of contributions. The pension age is gradually rising to 65 for men from 2036 to 2044 and to 65 for women from 2036 to 2048." Moreover, the government initiated the privatization of the social security system through Individual Pension System (BES) which is a mandatory individual contribution system just came into force on January 1st 2017.

3.3. Employment

The employment issue stands as one of the biggest failures in the AKP administration. Not only we have more dreadful unemployment rates but also we cannot employ the educated (see Table 1). By 2016, youth unemployment rate went up from 19.1 percent to 22.6 percent only in a year. Furthermore, female labor force participation rate cannot exceed 32.7 percent, tough the overall labor participation levels increased following the 12-year compulsory education (TURKSTAT, 2017).

Table 1: Main indicators on employment in Turkey (2003-2016) (in percentages)

Year	Labour force participation rate	Unemployment rate	Non-agricultural unemployment rate	Employment rate
2003	47.1	10.3	14.6	42.3
2004	46.3	10.8	14.1	41.3
2005	44.9	9.5	12	40.6
2006	44.5	9	11.1	40.5
2007	44.3	9.2	11.2	40.3
2008	44.9	10	12.3	40.4
2009	45.7	13.1	16	39.8
2010	46.5	11.1	13.7	41.3
2011	47.4	9.1	11.3	43.1
2012	47.6	8.4	10.3	43.6
2013	48.3	9	10.9	43.9
2014	50.5	9.9	12	45.5
2015	51.3	10.3	12.4	46
2016*	52.1	12.1	14.3	45.8

Source: TURKSTAT *November data

ILO country profiles show, the share of unemployed receiving regular periodic social security unemployment benefits in Turkey was as low as 7.7 percent in 2012. Not surprisingly, as the OECD regional well-being (2016) report indicates, Turkey is ranked 31st out of 34 member countries in the jobs category which is mainly calculated based on employment rate, average earnings, job security and long-term unemployment rate. Furthermore, evaluating job inequalities across regions, Turkey is in the position of 32nd out of 33 countries.

The promotion of the subcontracting and outsourcing through government incentives is an equally frustrating aspect of the labor market. Although the data are contradictory, subcontracting is becoming the standard not only in the private sector, but also in the public sector at a rapid rate between 2002 and 2016. In 2016, the outsourcing companies are legally authorized to contract workers outside of their businesses, in addition to their initial function of matching employers with employees (Özel İstihdam Bürolari Yönetmeliği, 2016).

3.4. Unionization & Strikes

When evaluating the evolution of unionization, i.e. workers' main organizational instrument to defend their rights, two aspects deserve special attention. First, AKP government raised the tone of their antecedents' policies in ruining the class-prioritized combative unions and, as the numbers display, they succeeded. Relevant data, the number of strikes, the number of workplaces involved and the number of workdays not worked, show that the struggle among workers practically vanished in the public sector and drastically declined in the private sector during the AKP years compared to that of in the second half of the 1980s and 1990s (see Table 2).

Table 2: Number of strikes, workplaces involved and workdays nor worked

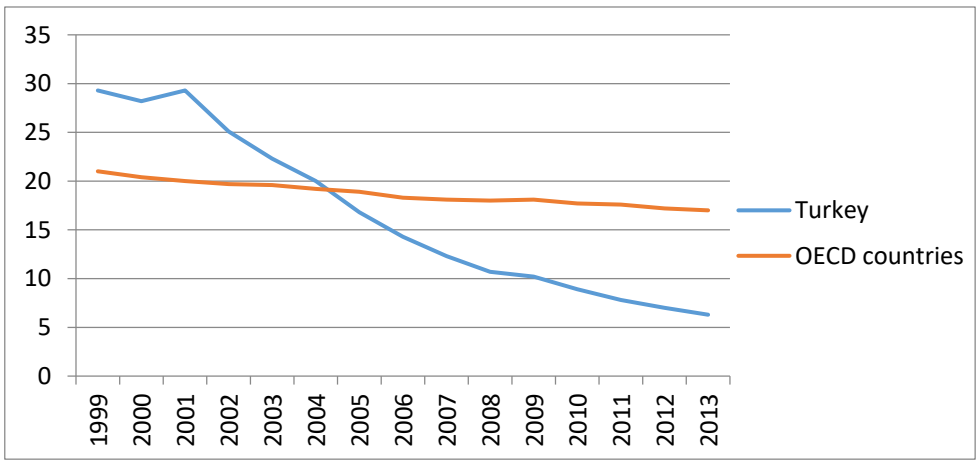
YEARS	NUMBER OF STRIKES		NUMBER OF WORKPLACES INVOLVED		NUMBER OF WORKDAYS NOT WORKED	
	Public	Private	Public	Private	Public	Private
1985-1986	0	42	0	49	0	10,336
1987-1988	12	451	115	497	19,357	40,434
1989-1990	27	602	344	842	88,769	116,972
1991-1992	70	426	1,558	536	119,992	107,165
1993-1994	21	64	251	93	4,907	6,783
1995-1996	77	81	3,292	135	181,973	23,355
1997-1998	10	71	56	119	7,473	11,054
1999-2000	21	65	190	99	11,946	10,022
2001-2002	12	50	51	77	3,472	11,057
2003-2004	3	50	6	71	291	4,801
2005-2006	5	55	27	74	1,385	4,205
2007-2008	3	27	10	821	878	30,082
2009-2010	1	23	10	61	406	3,503
2011-2012	0	9	0	26	0	557
2013-2014	3	28	115	193	186	23,326
2015-2016	3	24	75	120	276	7,664

Source: Authors' calculations from ÇSGB data

Union density data document how Turkey distinguishes itself from other OECD countries (see Figure 5). It would be too naïve to put the blame only on the failure of the union leaders in attracting workers towards their organizations if we are to explain the drastic fall in the number of strikes.

One can argue that the decline in unionization and the number of attendees in strikes would be an outcome of an improvement in the living conditions of the working class in Turkey over the last 14 years. However, as we try to show with various macro indicators, what really goes on is rather the opposite.

Figure 5: Union density



Source: OECD

The second aspect that we think worth pointing is that the government incentivize some confederations—Memur-Sen in the public sector and Hak-Is in the private sector— in detriment of the others (see Table 3). AKP-backed confederations are in full collaboration with the employer organizations and with the Ministry of Labor. We argue that the mutualistic efforts made by the AKP government, their ministries and the favored confederations had raised the repression on the left-wing unions to a considerable degree. With this segregating move, The AKP government revealed the class they represent and the class they stand against.

Table 3: Union membership in the public sector (2002-2016)

	2002	2004	2006	2008	2010	2012	2014	2016
KESK	262,348	297,114	234,336	223,46	219,195	240,304	239,7	221,069
Türkiye Kamu-Sen	329,065	342,921	327,329	357,841	369,6	418,991	447,641	420,22
Memur-Sen	41,871	137,937	203,851	314,701	392,171	650,328	762,65	956,032

Source: ÇSGB

Table 3 implies Memur-Sen's favored position at the expense of the others, particularly of the left-wing KESK, from 2002 to 2016. The share of the unionized public sector workers had increased following the upward trend in the number of members joining to Memur-Sen. An identical tendency exists in the private sector too. Pro-government Hak-Is, a relatively weak confederation before 2002, became an important figure in July 2016 with 447 thousand members, whereas the left-wing confederation DISK have witnessed the melting of their base, with only 140 thousand members (ÇSGB).

3.5. Inequality

The increasing income inequality we observe in the Table 4 is worth noting. Gini coefficient raised from 0.391 in 2014 to 0.397 in 2015. In one year, the income share held by all four lowest quintiles which represent the 80 percent of the population reduced between 0.1 percent and 0.4 percent while the income share held by the highest 20 percent increased from 45.9 percent to 46.5 percent.

Table 4: Distribution of annual equivalised household disposable income by quintiles ordered by equivalised household disposable income, 2014-2015*:

		Quintiles				
	Total	First quintile(1)	Second quintile	Third quintile	Fourth quintile	Last quintile(1)
2014						
Percentage (%)	100,0	6,2	10,9	15,3	21,7	45,9
Mean (TL)	14 553	4 515	7 894	11 157	15 792	33 417
Median (TL)	11 108	4 661	7 863	11 108	15 576	27 388
2015						
Percentage (%)	100,0	6,1	10,7	15,2	21,5	46,5
Mean (TL)	16 515	5 065	8 850	12 520	17 785	38 368
Median (TL)	12 492	5 306	8 812	12 492	17 558	30 993

Source: TURKSTAT, Gelir ve Yaşam Koşulları Araştırması, 2015 (Income and Living Conditions Survey)
*Figures in table may not add up to totals due to rounding, reference period of incomes is the previous calendar year. (1) When the individuals are sorted in ascending order by equivalised household disposable income and divided into 5 parts, the bottom income group is defined as "the first quintile" and the top income group is defined as "the last quintile".

Also, the extreme material deprivation rate which is defined as "the proportion of persons who cannot afford to pay for at least four of the following items: having arrears on mortgage or rent payments, utility bills, hire purchase installments or other loan payments; not being able to afford one week's annual holiday away from home; not being able to afford a meal with meat, chicken, fish (or vegetarian equivalent) every second day; not being able to face unexpected financial expenses; not being able to buy a telephone (including mobile phone); not being able to buy a color television; not being able to buy a washing machine; not being able to buy a car; not being able to afford heating to keep the house warm boosted around one percent" (EUROSTAT), affect 30.3 percent of the population as of 2015.

4. Conclusion

Throughout the chapter, we intended to show the class nature of the AKP's neoliberal policies. Increasing unemployment, decreasing job security, repressions on unions, the pension reform, long working hours, depressed wages, and high within inequality levels with a sensitivity to the regional and gender inequalities were among our main interests. We aimed to show that the worsening of the condition of the working class in Turkey over the 14 years under the Justice and Development Party rule, that the increasing social expenditures were far from solving the problems of the poorest, and that the economic and social policies of the AKP governments served only to benefit the capital.

Irrespective of whether AKP stay in power, a deviation from the ongoing tendency towards labor is very unlikely in the near future of Turkey. The political debates confine themselves to topics such as terrorism, national security and Kurdish- and religion-oriented "identity" issues, neglecting the question of class. In such an environment where the AKP government impose a restrictive control mechanism over the means of communication, we are essentially deprived of discussing the economic issues, especially those that are closely connected to the condition of labor. Yet we bear hope to voice the condition of labor as against to capital not only in a survey of the miseries that the working class endures but also of the victories.

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Vegans' Expectations from Restaurants and Their Thoughts about Vegan Restaurants

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Introduction

In today's age, consumers are grouped based on the various criteria of goods and services. Moreover, special marketing and product creation effort is done to the consumer groups. Even some businesses go one step further and carry out customized boutique production. According to the consumer behavioral models of Rosenberg (1977), there are three types of modeling. It is assumed that all the consumers of the first type have similar characteristics whereas the second type of consumers has different characteristics. Also, the third type model, which is the most realistic and the most appropriate model for today, assumes that consumers have both similar and different characteristics (Rızaoğlu and Hançer, 2013: 62).

Restaurants need to take advantage of three type model approach and consider different types of consumer groups. One type of the consumer groups is considered as vegans. For instance, Rızaoğlu and Hançer (2013: 179) mention that there is a tendency to add vegetarian food options to menus in recent years. As a next step after that, it is considered to add vegan food options to menus.

Vegan nutrition is a way of eating nutrients which are animal-derived ingredients free. As an example, vegans do not consume honey which is production of bees as well as chocolate containing milk which is produced by cows (Karabudak, 2012: 7). Based on the universal definition of International Vegetarian Union (IVU), veganism "*is to consume no animal products, not to use products produced from animals and not to engage in or not to cause any activity restricting animal freedom"* (TVD, 2016a). In other words, veganism is not only a nutrition type, but also life style. Vegans do not consume food derived from animals, do not wear wool, silk, leather, etc. produced from animal materials, do not use cosmetic products containing animal fat, and do not even watch films used live animals (Karabudak, 2012: 7; Son and Bulut, 2016: 832).

Since an individual is not vegan when he is born, there are different kinds of reasons behind adopting vegan life style (Kansanen, 2013: 7). While the people in undeveloped or developing countries like India prefer vegan life style due to the religious belief, the humans in the developed countries adopt veganism due to personal preferences (Çetiner, 2015: 26). Moreover, some people think that veganism projects human rights. There is also a consumer group believing that eating vegan is healthier (Toral, 2016: 2).

Based on 2014 data of Turkey Vegan and Vegetarian Association (TVD), the highest population of vegetarians and vegans in the world are in India. (Forty percent of Indian population is vegan or vegetarian.) Besides that, the ratio is high for the countries as Taiwan (%10), Brazil (%8), Germany (%8-9) and Italy (%6-7) (TVD, 2016b). There is not clear statistical research on the vegan population of Turkey yet. However, it is stated that TVD and Turkish Statistical Institute will make a research to determine vegan-vegetarian population in Turkey in 2017 (www.onedio.com, 2016). Since the researches made about vegans are quite new now, it might not possible to reach statistical data yet. Only, it is known that there is a consumer group named as vegans and the number of vegans is increasing day by day (Janssen et. al, 2016: 643). According to the study conducted in America in 2013, it is suggested that % 7 of its population is vegan (Graham and Keech, 2014: 3). It is estimated that % 12 of the food and beverage demand in the global market is vegetarian whereas % 2 is vegan (Waters, 2016: 3). The vegan restaurants number in Germany was 75 in 2013, it has reached 122 in 2015 (Janssen et. al, 2016: 643).

Bayrakdaroğlu, Marangoz and Fırat (2016) have stated that both vegetarianism and veganism is a numerically increasing life style as well as a growing economy in product and service industry. It has been also emphasized that this consumption form, decision criteria and nutrition culture should be investigated. Therefore, it is significant to make consumer research on veganism. Although there are some studies on veganism in literature, there are quite few researches focusing on this group.

In literature, the important part of recent researches on vegan nutrition and life style is to examine the underlying motivations of vegan nutrition (Greenebaum, 2012; İzmirli and Phillips, 2013; Dyett et. al, 2013; Radnitz et. al, 2015). Toral (2016) has determined that there are few vegan menus in the restaurants of cruises and the most part of vegan tourists bring their own foods in his study on the vegan tourists attending a cruise tourism. Also, some of the vegan tourists have to consume non-vegan foods during their journey. As in Toral's study, it is quite possible to encounter many problems while vegan people want to eat outside. Thus, in this research, it is aimed to evaluate both the vegans' expectations from restaurants and their thoughts about vegan restaurants.

Methodology

In this study, qualitative research method has been used as well as content analysis method has been applied to user comments. In order to present a descriptive and realistic picture to a reader and to transfer user experiences as directly as possible, qualitative research method has been used (Yıldırım and Şimşek, 2011: 48).

The data was collected through sharing of the open ended questionnaire with vegan groups in social media in May 2016. 84 observations were analyzed in total. As a research method, descriptive analysis and content analysis methods were used in qualitative research methods to reflect individuals' feelings and thought in a realistic way to a reader. In qualitative researches, the important point is to provide comprehensive knowledge about the subject to a reader and this requirement could be met by open ended questionnaire forms.

In this study, data collection and data analysis processes were explained in detailed. Thus, external reliability were tried to be increased. Within the scope of internal reliability, time based reliability was achieved since researchers coded the same case in a same way at different times. Also, observational reliability was achieved since more than one researcher coded one case in a same way.

Internal validity in qualitative research depends on conveying the case as is (via direct quotation if possible) and as objective as possible (Yıldırım and Şimşek, 2011: 257). In order to increase the internal validity of this study, direct quotations were made from the consumer comments. However, external validity depends on generalizing the results which is one of the weak points of qualitative researches. But, it is possible to say that external validity was also achieved in this study. Because, a reader can make inference which is valid for his environment even if the results cannot directly generalized and then the validity of studies is increased (Yıldırım and Şimşek, 2011: 259).

FINDINGS

Demographic Findings

The demographic characteristics of the participants are shown in Table 1.

Table 1: Demographic Characteristics of the Participants

Age	Number
Between 16-24	39
Between 25-35	34
Between 36-55	10
Gender	
Male	17
Female	63
Unwilling to indicate	2
LGBT	2
Education Level	
Primary and Secondary Education	11
College or University	62
Master Degree	10
Unwilling to indicate	1
Home City	
Ankara	13
İstanbul	35
Izmir	11
Other	25
Revenue	
Between 0-1500 TL	21
Between 1501-3000 TL	15
3001TL and above	19
No revenue	5
Unwilling to indicate	24
Durations of Being Vegan	
Less than 2 years	62
More than 2 years	22

Table 1 demonstrates that the greater part of the participants is in young and middle age range, female and at undergraduate level. Moreover, the participants mostly live in metropolises. The results show that the participants mostly have a low income level or high income level even if there are so many participants who are unwilling to indicate their revenue. The most of the participants state that they are vegan for less than 2 years. In Table 2, underlying reasons of veganism are demonstrated.

Table 2: Underlying Reasons of Veganism

Themes	Frequency
Sensitivity to Animals - Be against torture (12) - Respect to right of life (11) - Animal love (9) - Be against to exploitation (4)	31
Moral Values - Ethics (35) - Ideology (3) - Equality and Justice (6)	44
Psychological Factors - Clear Conscience (6) - Previous Experiences (2)	8
Health	7
Environmental Conscience	6

Table 2 demonstrates that the underlying reasons of veganism are collected under five main themes. Based on the results, the most effective reason is identified as moral values whereas sensitivity of animals is also determined as one of the most important reasons. Moreover, it is seen that psychological factors, health and environmental conscience are effective to become vegan. Vegans' expectations from restaurants are demonstrated in Table 3.

Table 3: Vegans' Expectations from Restaurants

Vegans' Expectations from Restaurants	Frequency
About Menu - Having vegan options(48) - Not to use animal-derived nutrients (8) - Availability of ingredients on menus (4)	60
About Staffs - Having knowledge (14) - Respect to different habits (11)	25
General - Affordable price (7) - Adopting to vegan philosophy (6) - Honesty (3) - Others as cleanliness, health etc. (4)	20

According to Table 3, the expectations of participants are mostly related to restaurants menu. While the most significant element is defined as having vegan options, the other options are determined as not using animal-derived nutrients and availability of ingredients on menus. Based on the participants' expectations, the second theme is about restaurants staffs. The specified points are that staffs do not have knowledge about veganism and do not respect veganism even if veganism is explained to them. The other expectations of the participants are determined as general subjects related to restaurants as price, honesty and cleanliness. Some of the opinions of vegans about their expectations from restaurants are shown below:

''Can restaurants at least cook lentil soup or something without meat broth? Then, I will not have any other expectation.''

''Restaurants should stop to use animal derived products and prepare balanced and healthy foods as well as offer affordable prices to consumers. Then, everybody can have a chance to eat these foods and restaurants can gain continuity.''

''Restaurants should teach 'vegan' word to waiters and to cooks, add available vegan nutrition to menu and prevent contamination of vegan and non-vegan products.''

''I'm not saying just because I'm vegan. However, restaurant staffs should have knowledge about the people having different nutrition types and produce alternatives or adopt meals based on costumers' wishes. Of course I wish they respected life and converted all menus to vegan.''

''Now, the number of vegans is increasing. By taking this into account, restaurants must create opportunity. They both add vegan options to the menu and add ingredients as milk, egg etc. to vegan foods. Please learn what animal derived ingredients are and do not them into vegan meals!''

''First of all, restaurants should know what 'veganism' is. In order to protect contamination of vegan foods and animal products as knifes, plates, spoons etc., they should not use the same materials for vegan and non-vegan foods.''

''According to many special nutrition types, not only veganism; there should be different menu alternatives or costumers should have a chance to adopt their meals.''

''Ultimately, restaurants belong to service sector and their main aim is to provide service in a best way. I think that the restaurants or cafes offering vegan options gain a reputation day by day. Also, the prices should not be so high since restaurants are again service providers.''

The findings related to the participants' thoughts about 'vegan restaurants' which are considered as restaurants meeting vegans' expectations are demonstrated in Table 4.

Table 4: Thoughts about Vegan Restaurants

Themes	Frequency
Negative Thoughts	
Limited number of restaurants	33
High price	17
Not to be accessible	7
Not to have rich menus	4
The problems about taste and portion	3
Not to use local foods	2
Positive Thoughts	
Satisfactory	15
Should be supported	5
Successful	3
Provides public welfare	2

Based on Table 4, in addition to positive opinions on vegan restaurants, there are also some negative thoughts. The negative thoughts are identified as limited number of restaurants, high prices, not being accessible, not having rich menus, and not using local foods and the problems about taste and portions. On the other hand, positive thoughts are that restaurants are

satisfactory, successful, should be supported and provide public welfare. Some instances of these opinions are given below.

"The number of restaurants is very few."

"Restaurants should spread even faster."

"I wish there were more vegan restaurants."

"The idea of vegan restaurant is like this: Hımm this is meatless thing! While we produce vegan alternatives; we should not only produce our alternatives, we should also produce meals which non-vegan people would like to eat. Then, vegan eating habits can spread in society."

"It is a problem for us that the number of vegan restaurants is very few and they are in certain places. However, of course, it is normal that they prefer to be located in the places where vegans are concentrated."

"Vegan restaurants are unnecessarily expensive, they exploit us."

"I think that vegan restaurants are generally expensive. The non-rich vegans also must have a right to eat delicious foods."

"Generally, the vegan foods in all vegan restaurants are the same. It is difficult to find a different one."

"Commercial profit is not prioritized in vegan restaurants. Mostly, they belong to the people who want to share their philosophy."

"I think that in addition to imported products, using local vegan foods might be better and more cost effective for vegan restaurants."

Conclusıon And Suggestıons

According to the research sample, individuals are mostly female, highly educated, and young as well as have high income level except students. By considering the similar findings of other studies, it is possible to state that potential customers of vegan restaurants generally have these characteristics.

The underlying reasons of vegan life style are determined as moral values, sensitivity of animals, physiological factors and health and environmental awareness. Therefore, vegan individuals can be generally specified as oversensitive people for nature and world.

Based on the research findings, restaurants do not mostly take the people having different nutrition habits into account and have knowledge about them. Moreover, one of the most important points disturbing vegans is that restaurant staffs have judgmental attitudes and behaviors against veganism. One of the most significant vegans' expectations is to win the respect of restaurant staffs on their own life style. According to the other expectations of vegans, more vegan meal options should be added to menus as well as staffs should be more helpful and thoughtful towards their wishes. Finally, being sensitive about cleanness and hygiene and avoiding unnecessary expensive prices are shown as the other expectations of vegans. In addition not to consume animal derived products, vegan people certainly expect not to contact with these products during the preparation of vegan foods.

Since vegan consumer groups have a sensitive structure, they demand respectful and sensitive management approach to them, their thoughts and their eating habits from restaurants and staffs. Of course, it is a utopian situation that all restaurants become 'vegan restaurant'. However, it is an important step for restaurants to add vegan food options to menus when veganism is evaluated as a growing market. These vegan food options can be presented to customers with a label as 'V-Label'. In order to take a share from vegan consumer group, restaurants should also have knowledge about vegan philosophy and reflect their adoption to their behaviors which are quite necessary and important. It is thought that restaurants having vegan concept might be opened especially in metropolitans and specified areas where vegans

are concentrated. According to the underlying motivations of vegan consumption, different themes can be created in these vegan restaurants. Here, it would be beneficial to talk about an example: 'It is stated that Didim, the district of Aydın will be the second vegan city in the world after Barcelona. In Didim, there will be a vegan festival welcoming guests both domestically and from abroad in April. Therefore, vegetarian and vegan options will be added to the menus of hotels and restaurants.' (www.onedio.com). Even only this instance presents that veganism is a growing market and can be considered as a touristic phenomenon. It is thought that the number of this kind of activities and their quality should be enhanced.

As a result, veganism is a movement having philosophy and the people adopting this philosophy are increasing day by day (Ulusoy, 2015: 420). People may express their social class, culture, gender or personality with their nutrition style (Beverland et. al, 2015: 145). Lee et. al (2014: 73) state that the consumption forms of vegans are shaped based on vegan life style. By considering the nutrition and life style of vegans, it should be provided to increase possibility of eating in their own style as well as to create an environment enabling them to express themselves.

This study contributes to the relevant literature which is about veganism and quite few. For the further researches, it is suggested to approach veganism in terms of businesses instead of consumers. Other possible topics might be to evaluate the management perspective of vegan restaurants and their applications as well as to investigate what other restaurant businesses think about veganism.

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Ownership Structure and Firm Performance: Evidence from Turkey

Gulhan Suadiye

1. Introduction

The conflict of interest between principals and agents has always been an interested subject in modern corporation literature since Berle and Means (1932) reveal the issue of principle-agent problem exiting between managers and shareholders under the contractual framework of a firm. Berle and Means (1932) suggest that the separation of ownership and control in modern corporations reduces management incentives to maximize corporate efficiency. They argue that the authority of the shareholders to control managers is minimized with increasing ownership diffusion.

In 1976, Jensen and Meckling introduced agency costs and it sources based on the principle-agent relationship which is called agency theory which originated in Berle and Means (1932) work. In terms of the agency theory, separation of ownership and control gives rise to agency costs, which worsen firm's performance. Jensen and Meckling (1976) put their model on agency costs and ownership structure. They classified shareholders into two categories; internal shareholders and external shareholders and describe how lower managerial (internal) stake lead to increases in non-pecuniary spending be the managers as they don't fully internalize the cost. They also presume that large shareholders would monitor the management better than small shareholders as they internalize larger part of the monitoring costs and have sufficient voting power to influence corporate decision. Jensen and Meckling (1976) concluded that the value of a firm depends on ownership structure and the more the internal shareholder's stake the higher firm value.

Ownership structure is generally accepted as one of the essential mechanisms of corporate governance and distinction between ownership and management is a common practice in contemporary governance mechanism. Jensen and Meckling (1976), Fama and Jensen (1983) and many scholar agreed that corporate governance mechanisms are developed to minimize agency cost and enhance firm value.

After this seminal study of Jensen and Meckling (1976) various theoretical and empirical studies have been done trying to explain the relationship between ownership structure and firm value and the most efficient ownership structure to maximize firm value. However, Demsetz (1983) suggests that ownership structure of the firm is an endogenous outcome of a maximizing process in which more is at stake. Contrasting the theory Jensen and Meckling (1976), he argues that it cannot be supposed that the diffused ownership structure reduces profit maximization objective. He asserts that reshuffling of ownership structure has potential to enhance firm performance when the requirement of capital is large for achieving scale rapidly. Demsetz (1983) argues that high managerial (insider) staked could decrease firm performance as they intent to maximize their welfare. Demsetz and Lehn (1985) empirically examine the effect concentrated ownership on firm performance and find no relationship. They conclude that the structure of ownership varies in ways that are consistent with value maximization. Demsetz and Villalonga (2001) extend this analysis to a simultaneous equation setting, where both ownership and firm performance are determined endogenously and find similar results. According to Barclay and Holderness (1989) and Bebchuk 1999, owners with high ownership share might use their position to acquire private benefits. If these benefits have adverse effects for firm performance, either by outsiders (external shareholders without ballot right) or insiders (shareholder with management right), might actually hurt performance. Hence the agency problem does not only occur between owners and managers, but also occurs between large and small shareholders too.

Theoretical, practical and empirical researches that addressed the relationship between firm performance and ownership structure based on the dimensions of ownership structure, namely ownership concentration and owner identities. Ownership concentration is about the proportion shares owned by a number of the major shareholder (share percentages of the top five or 10 holders). Owner identity is about the types of owners such as government ownership, managerial ownership, foreign ownership and institutional ownership.

According to Shleifer and Vishny (1986, 1997), ownership concentration creates stronger incentives and better opportunities for large shareholders to exercise control over the firm's management than small shareholders. Large shareholders could use variety methods range from informal and formal for monitoring and intervening over the management to maximize their profit. Thereby monitoring from large shareholders force managers to better aligned towards the objective of maximizing shareholder value which resulted in greater firm performance. On the other hand ownership concentration may create large shareholder to expropriate minority shareholder (Shleifer & Vishny 1997, Bebchuk, 1999). Similar arguments are also expressed by Fama and Jensen (1983). They stated that high levels insider (managerial) ownership may cause to entrenchment of management and thus lead to agency problems Expropriation is defined as the process using one's control powers to maximize own welfare and redistribute wealth from minority shareholder. Expropriation of minority shareholders theory suggests that when control rights exceed ownership rights the incentives for expropriation exist and are especially strong (Claessnes et al.1999). Lemmon and Lins (2003) stated that large shareholders with strong controlling power have the incentive to expropriate minority shareholders, and in response; the market would evaluated the ownership concentration negatively.

The more recent empirical studies regarding to the relationship between ownership concentration and firm's performance indicate mixed and inconclusive results. For example Jandick and Renie (2008), Singh and Gaur (2009), Mandacı and Gumus (2010), Obiyo and Lenee (2011), Khan et al. (2011) and Karaca and Eksi (2012) find a positive association between ownership concentration and firm performance. However, Belkhir (2005), Millet-Reyes and Zhao (2010) and Sanchez-Ballesta J.P. and Garcia-Meca E. (2011) find a negative association between ownership concentration and firm performance. Besides Earle et al. (2005), Sanchez-Ballesta J.P. and Garcia-Meca E. (2007,) Bektas and Kaymak (2009), Wahla et al.(2012), and Karaca and Eksi (2012) find no relationship between ownership concentration and firm performance. Empirical studies that examined the relationship between managerial ownership and firm performance also reveal mixed and inconclusive findings. For example, while Morck et al. (1988), Sanchez-Ballesta J.P. and Garcia-Meca E.(2007), Dey (2008) and Bauer et al. (2010) find a positive relationship, Belkhir (2005), Irina and Nadezhda (2009), Mandacı and Gumus (2010), Liang et al. (2011) and Wahla et al. (2012) find a negative relationship between managerial ownership and firm's performance. Chang (2009) and Sanchez-Ballesta J.P. and Garcia-Meca E. (2011) find no relationship between managerial ownership and firm's performance.

Since the ownership structure is a core of corporate governance mechanisms and the empirical evidences on this issue are mixed and inconclusive, it would be very valuable to do more research to understand the effects of ownership structure on firm value. Differences in the results of empirical studies might depend on many factors, for instance, variables included in research models, assumed relationship between variables, years of research, sample selection and country. In this context, this study conducts to provide additional empirical evidences on whether ownership structure has influence on firm performance. Consequently, this study focuses on the role of ownership concentration and ownership identity on Turkish listed firm' financial performance based on panel data from 2010 to 2015.

2. Research Methodology

2.1 Sample Selection and Data

The dataset used in this study includes 107 listed firms on Star Market of Borsa Istanbul (BIST), formerly known as Istanbul Stock Exchange (ISE) for the period from 2010 to 2015. In the end of 2015, BIST structure and the share market names were changed with the announcement. According the announcement, The National Market and Second National Market were abolished and replaced by to new markets, namely Star Market and Main Market. BIST Star Market refers to the shares included in BIST 100 index and the market value of free float more than 100 million TL. BIST Main Market refers to the market value of the free float between 25 million TL and 100 million TL. There are 120 companies listed on BIST Star Market as of 31.12.2015. The selection of companied that are traded on the BIST stems from theoretical relevance of this study. Listed firms do have ownership structure that consists of insider and outsider shareholder and shares are traded in free market

The sample is constructed on the basis following criteria: First it is eliminated 4 companies having different reporting date from the financial year end (31 December). Second 9 listed companies excluded due to missing data. The final sample consists of 107 listed companies which operated in a range of industries. The data for each of 107 companies has been collected from their activity annual reports available on the companies' own website, Public Disclosure Platform (KAP)'s website and Borsa Istanbul website.

2.2. Variables and Models

The research goal of this study is to examine the relationship between ownership structure and firm performance for Turkish listed firms. Hence, dependent variable is firm performance and independent variable is ownership structure. Ownership structure is defined by the distribution of equity with regard to votes and capital but also by the identity of the equity owner. This study focused on two implication of ownership structure namely, ownership concentration and managerial ownership as a one of types of ownership identity. Regarding to firm performance, it is used three different financial performance measures. One is Tobin's Q, the ratio of the market value of the firm assets. This ratio represents the ratio of the market value of a firm's existing shares (share capital) to the replacement cost of the firm's physical assets (replacement cost the share capital). Second is Return on Assets (ROA) ratio and third is Return on Equity (ROE) ratio. Therefore ownership concentration and managerial ownership are hypothesized to influence firm performance, i.e., Tobin's Q, ROA and ROE. Firm size and leverage are chosen to be control variables. Measurement of dependent, independent and control variables are summarized in Table 1.

Table 1. Summary of variables Measurement

VARIABLES	DEFINITION	MEASUREMENT
Dependent Variables		
TQ	Tobin's Q	Total Market Value of Firm/Total Asset Value
ROA	Return on Assets	Net Income /Total Assets
ROE	Return on Equity	Net Income /Shareholder's Equity
Independent Variables		
OWNC	*Ownership concentration*	The proportion of shares held by the largest shareholder
OWNM	*Managerial Ownership*	The proportion of shares owned by insiders and board members
Control Variables		
FSIZE	*Firm Size*	The logarithm of book value of total assets
LEV	*Financial leverage*	Ratio of total debt divided by equity

In order to examine the effect of ownership concentration and managerial ownership on firm performance, the following three regression models are developed:

Model 1: $TQ_{it} = \alpha_0 + \beta_1 OWNC_{it} + \beta_2 OWNM_{it} + \beta_3 FSIZE_{it} + \beta_4 LEV_{it} + \varepsilon_{it}$

Model 2 :$ROA_{it} = \alpha_0 + \beta_1 OWNC_{it} + \beta_2 OWNM_{it} + \beta_3 FSIZE_{it} + \beta_4 LEV_{it} + \varepsilon_{it}$

Model 3: $ROE_{it} = \alpha_0 + \beta_1 OWNC_{it} + \beta_2 OWNM_{it} + \beta_3 FSIZE_{it} + \beta_4 LEV_{it} + \varepsilon_{it}$

Where, TQ_{it} is the Tobin's Q ratio for firm i at time t; ROA_{it} is the return on assets ratio for firm i at time t; ROE_{it} is the return on assets ratio for firm i at time t; $OWNC_{it}$ is the ownership concentration for firm i at time t; $OWNM_{it}$ is the managerial ownership for firm i at time t; $FSIZE_{it}$ is the firm size for firm i at time t; LEV_{it} is the financial leverage for firm i at time t; α is the intercept; β is the regression coefficient and ε is the error term.

3. Data analysis and results

3.1. Descriptive Statistics

Table 2 presents descriptive statistics for related variables. As shown in the table, the average firm performance for research firms is 1.56 under Tobin's Q, 5 % under the ROA and around 8 % under the ROE. For sample firms, the mean of Q is 1.56. The average of Tobin's Q (1.56) implies that stocks of companies subject to the research are more expensive than replacement cost of their assets, which implies that stocks are overvalued. Descriptive statistics for ROA show that the research companies are using the 5 % of the total assets to generate net income with ranging from a minimum around -38 % to a maximum 37 %. Similarly the research companies are using around 9 % of the total equity to generate net income. The average ratio of the share of the largest shareholder is 50 % with a standard deviation of around 21 % and ranging from a minimum of 6.7 % to a maximum 98.8%. The average ratio of managerial ownership is 8 % with a standard deviation of around 18 % and ranging from a minimum of 0 to a maximum of 89.27 %. The mean ratio of leverage is around 54 % with a standard deviation of around 24 %. And finally, the mean ration of firm size is 9.3 with a standard deviation of around 0.74.

Table 2. Descriptive Statistics

	Mean	Median	Max.	Min.	Std. Dev.
TOBIN'S Q	1.5618	1.3141	143.44	-422.23	17.867
ROA	0.0526	0.0448	0.3724	-0.3763	0.0742
ROE	0.0887	0.1168	18.219	-17.968	1.2258
OWNC	0.5050	0.5	0.988	0.067	0.2086
OWNM	0.0836	0	0.8927	0	0.1791
LEV	0.5357	0.5404	1.0385	0.0239	0.2398
SIZE	9.3840	9.3191	11.447	7.5716	0.7390

3.2. Correlation Analysis

Table 3 represents Spearman correlation analysis between the research variables. The results spearman rank correlation indicates that there is significantly positive relationship between Tobin's Q and ownership concentration and leverage, while there is significantly negative relationship between Tobin's Q and managerial ownership and firm size. The results also indicate that ownership concentration, managerial ownership, firm size and leverage are negatively and significantly associated with ROA. Regarding ROE, correlation results show that there is significantly negative relationship between ownership concentration and

managerial ownership. Leverage is negatively and firm size is positively associated with ROE but not significantly.

Table 3. Results of Spearman Correlation

CORRELATION Probability	TOBIN'S Q	ROA	ROE	OWNC	OWNM	LEV	SIZE
TOBIN'S Q	1						

ROA	0.219	1					
	0.000	-----					
ROE	0.276	0.818	1				
	0.000	0.000	-----				
OWNC	0.079	-0.099	-0.103	1			
	0.047	0.012	0.009	-----			
OWNM	-0.077	-0.148	-0.161	-0.150	1		
	0.050	0.000	0.000	0.000	-----		
LEV	0.120	-0.501	-0.022	0.013	0.075	1	
	0.002	0.000	0.577	0.746	0.059	-----	
SIZE	-0.228	-0.264	0.0291	-0.062	-0.006	0.510	1
	0.000	0.000	0.4571	0.117	0.8732	0.000	-----

3.3. Multiple Linear Regression Analysis

The regression models are estimated by Panel EGLS method. Table 4 presents the findings of the regression models which are regressed financial firm's performance (Tobin's Q, ROA and ROE) on ownership structure and control variables. The table also shows the explanatory power of multiple linear regression models with adjusted R square and F statistic value. The estimation results indicate that estimated models give explanation the variations in Tobin's Q, ROA and ROE quite well. The adjusted R square value is approximately 52 % for first regression model, where Tobin's Q is the dependent variable, 65 % for second regression model, where ROA is the dependent variable and 12 % for third regression model, where ROE is the dependent variable. These results indicate that 65 % of the variance in ROA, 47 % of the variance in Tobin's Q and 12 % of the variance in ROE is explained by ownership structure dimensions, i.e., ownership concentration and managerial ownership other independent variables. Furthermore, the value of F statistic is also statistically significant at the 0.01 level for all the three estimated models. According to the estimation results, explanatory variables are linearly and significantly related to three measures of financial performance.

Table 4. Regression Results

	TOBIN'S Q		**ROA**		**ROE**	
Variables	Coeff.	t-Stat.	Coeff.	t-Stat.	Coeff.	t-Stat.
C	3.503	12.403*	0.109	10.257*	-0.075	-1.674**
OWNC	2.332	18.854*	-0.012	-2.490**	-0.188	-7.212*
OWNM	-1.527	-13.089*	-0.027	-3.714*	-0.004	-0.152
FSIZE	-0.946	-9.625*	-0.130	-29.011*	-0.125	-6.912*
LEV	-0.275	-8.159*	0.003	2.062**	0.037	6.837*
	TOBIN'S Q		**ROA**		**ROE**	
R-squared	0.52		0.65		0.13	
Adj. R-squared	0.52		0.65		0.12	
F-statistic	173.79		297.66		23.05	
Prob(F-statistic)	0.000		0.000		0.000	

Significance is indicated by *,**, and *** for the 1%, 5% and 10% level respectively.

Estimation results of the first regression model show that ownership concentration has 2.33 coefficient value and significantly positive relationship with Tobin's Q at the 0.01 level. This means that a 1% increase in ownership concentration increases stock value by 2.33. This implies that firms that subjected to analysis are earnings 2.33 more than their replacement cost of their assets. However, there is a significant negative relationship between ownership concentration and ROA, as well same results for ROE with coefficient values 0.012 and 0.188 respectively. It means that a 1% increase in ownership concentration reduced to generate net income from total assets and shareholders' equity by 1 % and around 19 % respectively. Regarding managerial ownership the estimation results show that managerial ownership has a significant negative effect on Tobin's Q and ROA with coefficient value 1.527, 0.027 and but insignificant negative effect on ROE with 0.004 coefficient value. It could be inferred that a 1% increase in managerial ownership reduced to produce net income from total assets by around 2 % and from shareholders' equity by 0.4 %. Regarding Tobin's Q, a 1% increase in managerial ownership reduced stock value by around 1.53. Firm size has a significant negative association with both market and accounting based performance measures. The results also show that leverage is significantly and negatively associated with Tobin's Q but positively associated with ROA and ROE. It can be concluded that a 1% increase in debt reduced the market value of a firm's existing shares by around 0.28 but rise to generate net income from total assets by 1 % and from shareholders' equity around 19 %.

4. Conclusion

This study investigates the relationship between ownership structure and financial performance for listed Turkish companies in BIST over the period of 2010 to 2015. In order to provide a better understanding about the relationship between ownership structure and financial performance, various variables are used in this study. More precisely, three financial performance measures, which are Tobin's Q, ROA and ROE; two dimensions of ownership structure; ownership concentration and managerial ownership, and other control variables, which are firm size, and leverage. The results are not consistent for all firm's performance measures. Results generated from the regression analysis indicate that there is a significant positive relationship between ownership concentration and Tobin's Q which is market based performance measure. The average of ownership concentration for Turkish listed firms which are in research sample is about 50 % ranging from a minimum of 6.7 % to a maximum 98.8%. However the estimation results for accounting based performance measures (ROA and ROE) are differ. Ownership concentration has a significant negative effect on ROA and ROE. The results regarding ownership concentration refer that the market values the participation of large owners in controlling and monitoring the management of firms. However large ownership seems to be failing in enhancing performance for return on assets and return on equity. On the other hand estimation findings show that managerial ownership has negative effect on both market and accounting based performance measures. According to results, managerial ownership has statistically significant association with Tobin's Q and ROA but has no significant association with ROE. It can be stated that low managerial ownership in Turkish listed firms decrease firm performance (the average of managerial ownership for research firms is 8 %). Small ownership stake might lower managers' incentives to maximize firm performance. Additionally leverage has a significant negative effect on both market and accounting based firm performance measures. The leverage ratio for research firms decreases the firm performance according the estimation results.

This study conducted to contribute to the knowledge of the agency theory and give empirical insight to corporate governance mechanisms. The findings are not free from

limitations which give opportunities for further investigation in future research. First, this study does not use the whole population in the BIST, therefore the generalization is not possible for all listed Turkish firm. Second, the data underlying this study is collected exclusively in Turkey thereby it limits the possibility of generalizing the findings to other countries too. Third, since Turkish capital market is not efficient because of some economic, politics and institutional dynamics and low rate of publicly listed firms, market based firm performance ratio have some negative implications for drawing conclusions from the results. Forth this study examines only two dimension of ownership structure and results vary across different measures of firm performance. Thereby more extensive research based on large data base either in Turkey or in other countries could provide better insights on the subjects.

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Future of Non-Muslim Minorities in Turkey

Murat Cagri Tuna

1. Introduction

System of minority rights, run under the protection of major states and defined in proportion to powers of such states, was maintained till The World War I. For new states emerged as a result of World War I, borders were re-drawn and the war ended just recently, League of Nations (LN), an intergovernmental organization, was founded under the guidance of USA, England and France in order to settle any dissatisfaction amicably, at least through negotiations. Thus, through the execution of bilateral and multilateral agreements, "protection of international organizations" system was adopted instead of "protection of major states" system which was stipulated in Peace of Westphalia. (İnanç, 2004, 18)

During the aftermath of World War II, multilateral agreements and guarantor system were abolished, and United Nations (UN) system was established instated of LN. Protection of minority rights under UN system was discussed within the scope of rights granted to all individual in the context of human rights. Along with UN system, "state-based" perception, regarded as one of the key factors of international law, was gradually renounced, and "individual-based" arrangements were preferred. (Thornberry, 1991, 149)

Due to the events and genocides that took place during the post-Cold War period, issues related to minorities became the problem of international community. The understanding that dealt with minority rights within the scope of human rights was started to be questioned, and the idea supporting the arrangements specifically intended for minority groups, rooted. As the problems of minorities gained importance at international arena, it was aimed that minority groups would have the same rights as the rest of the society and that discrimination against such groups would be prevented through various conventions and documents accepted by European Council and Organization for Security and Co-operation in Europe in order to maintain security and stability of Europe in particular and to eliminate disunity in Europe.

2. Definition of Minority

International law does not consist of a generally accepted definition for the "minority" term. This is because the states tend to reject the existence of minorities in their countries or strictly interpret the rights of minorities, whose existence is accepted, in line with their political interests. Furthermore, the concern regarding that defined rights of minorities such as right to self-determination may turn out to be a collective right of minorities is also a reason for not making such definition. Thus, the states do not want to undertake any liability by making a legal definition for minorities. (Duvan, 2004, 193)

Although there is no generally accepted definition of minority in international law, there have been some attempts to define it with the purpose of specifying the scope of such notion. Among all, the most commonly known definition is the one made by UN Special Rapporteur, Francesco Capotorti in 1977 in order to clarify the terms given in Article 27 of UN's International Covenant on Civil and Political Rights (ICCPR), the only general provision in the entire UN system which is legally binding in terms of minority rights. According to the definition:

> *"A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."*

is defined as the minority group. (Capotorti, 1991, 96)
Taking the content of definition into consideration, in order to define a group as a minority, such group should be numerically inferior to the rest of the society and have different characteristics; a sense of solidarity should be among the members of the group (minority consciousness/subjective criterion); the group should hold a non-dominant position in the society (in need of protection) and the members of the group should be the nationals of the state in which they live. Furthermore, the definition mentions about 3 main types of minority group: linguistic, religious and ethnic minorities.
Making minority-specific definitions and thus, specifying the factors related to the notion of minority are of importance to reveal the analysis of and perspective towards the minorities in Turkey. In this respect, in Turkey, where a deep-rooted state tradition prevails and which appears in the international platform as a substantial player thanks to her high potential and developing economy, the way how the rights of minorities are shaped may be specified either in international conventions to which Turkey is a party and by examining judicial regulations, or by understanding whether such rights can be exercised in daily lives or not.

3. Minority Perspective in Turkey and Turkish Legislation

Considering the Turkish judicial system, it is apparent that there are basically two issues related to minorities. The first is Peace Treaty of Lausanne, the most significant reference and starting point for the minority rights in Turkey; the second is the regulations regarding minorities, executed through the constitution and laws.

3.1 Minority Rights in Peace Treaty Lausanne

In 19th century, the discrimination between Muslims and non-Muslims in particular was tried to be eliminated through various legal arrangements such as Imperial Edict of Reorganization, Imperial Edict of Reform, and Ottoman Basic Law against rebellions and independence desires arising from the nationalism movement caused by French Revolution and the changes in the understanding of nation. However, despite these attempts, the collapse of Ottoman Empire could not be avoided.
Signed after the War of Independence, Treaty of Lausanne, an essential document which is still valid, arranged the liabilities of Republic of Turkey towards the minorities in Turkey. Furthermore, as the Treaty is binding, it should be abided by in terms of the constitution and the laws.
The rights related to the minorities were arranged under Articles 37-45 of Section 3 “Protection of Minorities” in Peace Treaty of Lausanne, signed in July 24th, 1923. In parallel with the legacy of Ottoman Empire,[1] the minority groups were discussed as “religious minority groups” during the Lausanne negotiations. (Bozkurt, 1994, 49) The main reason that there was no other discrimination except for the one towards religious minorities in Turkey and other groups in Turkey were not regarded as minority groups is suggested that such groups had no “minority consciousness” which is a subjective factor of being minority and they were integrated with the society. (Kenanoğlu, 2004, 33)
To mention about the arrangements of Lausanne in general; Article 37 of the Treaty regulates the binding nature and validity of the articles of Treaty related to the minorities in Turkish judicial system; Article 38 regulates the principle of not making any distinction of “…birth, nationality, language, race or religion…” and the issues such as freedom of movement and emigration.
Article 39 covers the issues of “equality” and “languages of minorities.” It was stated that non-Muslim nationals would enjoy the same civil and political rights as Muslim nationals, and they

would be equal in admission to public employment and before the laws. It was specified that no restrictions would be imposed on the "free use" by any national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings. Furthermore, it was stipulated that people, whose native language was not Turkish, would use their own native languages before the Courts.

Article 40 of the Treaty regulates the principles regarding that non-Muslim groups would establish any institutional structure and perform any activity as Muslims do in order to provide them with a "legal personality."

Article 41 consists of rights of the non-Muslims to access education wherever they live through the medium of their own language and to benefit from general revenue. According to Article 42, family or personal status of the non- Muslim minorities would be settled in accordance with the customs of those minorities; they might benefit from arbitration for potential conflicts, and full protection to the churches, synagogues, cemeteries, and other religious establishments of the minorities would be granted with full protection. Article 43 emphasizes that non-Muslim nationals would be treated by observing their faiths and religions and their weekly resting day would be accepted; they shall be subject to other provisions imposed on all nationals regarding other issues.

According to Article 44, in the event that conflicts cannot be settled through arbitration, Permanent Court of International Justice shall be competent under the guarantee of LN. Finally, Article 45 states that the rights conferred to the non-Muslim minorities of Turkey will be similarly conferred by Greece on the Muslim minorities in her territory.

Although the legacy of Ottoman Empire, related that the minorities were accepted as non-Muslim minorities and limited to Armenian, Greek and Jewish communities in general, was protected, the Treaty stipulated that 4 groups would be granted with rights for the purpose of protecting minorities. These groups consist of "non-Muslim Turkish nationals", "Turkish nationals speaking another language than Turkish" and "anyone residing in Turkey." In this context, it may be concluded that arrangements cover not only the non-Muslim minorities but also people whose native language is different. (Oran, 1994, 286)

Although it is a contradictory issue that how the rights stipulated in Treaty of Lausanne are allowed to be exercised by the constitution and laws, it is necessary to examine the legislation to clarify the issue.

3.2 Minority Rights in Turkish Judicial System

In Turkey, protection for a specific group of minority has not been discussed through any constitution or law. Thus, article 10 of 1982 Constitution states that "everyone is equal before law without any discrimination of language, race, colour, sex, political opinion, religion, sect and any other reason." Furthermore, issues such as granting equal rights and liberties to all citizens and non-discrimination were regulated by the statement "everybody has their own basic rights and liberties which are inviolable and cannot be transferred."

Non-existence of special arrangements related to minorities in the Constitution and restrictiveness of the respective legislation were based on the following statements given in paragraph 1 of article 3 in the Constitution: "The State of Turkey, with its territory and nation, is an indivisible entity. State's language is Turkish."[2] The provision "The State of Turkey, with its territory and nation, is an indivisible entity" was integrated to the specific parts and other provisions of 1961 Constitution through the amendments on the Constitution in 1971 and 1973. It may be stated that such amendments in 1971 and 1973 aim the prevention of violence and separatism. (Koçak, 2002, 139)

The statement in article 3 of 1982 Constitution "State's language is Turkish" was rejected on the grounds that a state cannot have a language but only have an official language. However, it

is remarkable that while the phrase “official language” was used in 1961 Constitution, the phrase “state’s language” was used in 1982 Constitution. (Oran, 2004, 85) Nevertheless, paragraph 3 of article 26 in 1982 Constitution states in relation with the language prohibition that “A language banned through laws cannot be used for expression and dissemination of thought.” According to paragraph 2 of Article 28, “Publication in a language banned by laws is not allowed.”

According to Law No. 2932 enacted basing on the new Constitution: “It is prohibited to express, disseminate and publish thoughts in any language other than first official languages of countries recognized by State of Turkey.” The same was applicable for Law on Associations and Law on Political Parties within the framework of “indivisible integrity of the state with its territory and nation” and “prohibition of composing minorities” during the lawsuits of Constitutional Court regarding the closure of political parties. (Koçak, 2002, 144)

Within the scope of Law on Foundation , all foundations were asked to submit a declaration of property which listed all the immovable they own. Later on, in 1970s and with the effect of Cyprus Issue, (Öktem, 2005, 88) it was stated that the declarations of immovable stated in this list would be accepted as a deed. It was announced that immovable acquired after declarations of property in 1936 were not registered in these declarations, and such immovable would be seized on the grounds that no regulation existed in relation with the immovable acquisition of these foundations.

The aforementioned practice, which explicitly contradicts to Treaty of Lausanne and abolishes the rights of minorities, was substantially abandoned through the amendments on the legislation in 2000s and the amendments on the constitution and laws executed for compliance with the EU Political Criteria which were specified in Helsinki Summit in 1999.

Law No. 4778, dated 2003, related to the properties of foundations that belong to non-Muslim minorities, identified a right to apply for registering the immovable property of minority foundations without any title deed. (Oran, 2004, 103) Furthermore, as per Provisional Article 7, which was added to Law on Foundations No 5737 enacted in 2008, the immovable property of the community foundations, which were registered in 1936 Declaration or acquired later on and were currently registered to Treasury and General Directorate of Foundations, would be registered to the names of community foundations upon such application. Through such arrangements, immovable issues were substantially resolved.

Through the amendments on beginning section of 1982 and 32 articles of the Constitution conducted by Grand National Assembly of Turkey in October 2001, constitutional restrictions were significantly removed by means of arrangements made within the scope of human rights. The provisions of articles 26 and 28, which prohibit the use of any language other than constitution’s official language Turkish, were abolished. This arrangement allowed that nationals can use different languages, dialects and accents in their daily lives except for public places. (Oran, 2004, 114)

The amendment on article 33 related to the freedom of establishing associations rearranged the procedures for association establishment and membership; thus, it was allowed that anyone can establish a association and be a member of a foundation and leave membership without obtaining any prior approval.

However, through the amendments in 2004, Article 90 with title “Consenting International Treaties” adopted the provision “The international treaties which are duly executed and related to basic rights and liberties... the provisions of such international treaties constitute the basis.” This ensured that Treaty of Lausanne would prevail in case of any conflict between Treaty of Lausanne and any instrument of domestic law.

4. European Union Harmonization Process and Minority Policy of Turkey

Cultural diversity within EU necessitated member states to pay special attention to the protection of minority rights. Considering the policies adopted in this respect, attitudes towards human rights and rights of minorities became prerequisite of not only accession to EU but also commercial treaties executed with EU. (Saraçlı, 2007, 47) It may be concluded that the main reason for making protective arrangements for minorities is to prevent ethnic and social conflicts that may arise due to expansion, and to guarantee security and stability. (Kurban, 2005)

Furthermore, EU membership process is a period during when Turkey tried to comply with EU Acquis in terms of human rights and rights of minorities. The preparations, performed during European Union harmonization process, revealed the necessity of adapting amendments on the Constitution to the legislation and changing many laws. In particular, through "Harmonization Packages"[3] which improved many legislative provisions related to individual rights and liberties, a substantial progress was also achieved in terms of non-Muslim minorities. Evaluation of such packages with regard to their content:

Right to privacy, communication and immunity of domicile were assured. One of the significant changes is related to hate speech against someone else, and prohibits "insulting a section of a society in a way to humiliate and tarnish one's honour" as per article 312 of Turkish Criminal Law.[4]

Law on Associations and Law on Assembly and Demonstrations were changed, and restrictions related to such issues were minimized. Closure of parties became difficult, and the "prohibited language" phrase in Press Law was removed.[5]

Third harmonization package consists of the arrangements that shall remove the obstacles in acquisition of immovable properties by Minority foundations and shall ensure them acquire immovable through the resolution of Council of Ministers. In addition, regulations related to broadcasts in Kurdish on radios and television channels were made. Furthermore, it was regulated that broadcasts might be in different languages and dialects traditionally used by Turkish nationals in their daily lives.[6]

Later on, Law on Foundations was re-amended in terms of property acquisitions by community foundations, and it was decided that non-Muslim community foundations would acquire immovable through the permission of General Directorate of Foundations, not Council of Ministers.[7]

Nevertheless, through the amendments on the law in 2003, it was allowed that public and private sector radio and television institutions could make broadcasts in different languages and dialects traditionally used in daily lives. Besides, amendments on Law on Population Registration and Law on Foundations removed the prohibition which stipulates that some names could not be given to children.[8]

An amendment of Law on Associations regulated that legal person would also establish associations. Furthermore, courses within the scope of general education services could be organized to teach different languages and dialects traditionally used by Turkish nationals in their daily lives.[9]

4.1 Turkey in EU Progress Reports

The reports, annually prepared within the framework of EU membership negotiations and evaluating the qualifications in terms of European standards, consist of legal specifications and suggestions related to such issues as whether to be a party to an international covenant or not and conformity of local legislation to such covenants as well as measuring the feasibility of arrangements, stipulated in standards, in daily lives.

Considering the findings in Regular Progress Reports, which may be regarded as the photograph of developments in Turkey during the EU harmonization process of Turkey, related to the non-Muslim minorities between 1998 and 2017, it may be understood that some issues became prominent. Examining 19 Regular Progress Reports having been published by now, we may conclude that there are negative and positive findings regarding the "freedom of thought, religion and conscience, property, cultural rights, education, hate speeches and discrimination, legal personalities, religious liberties, international covenants and status of Assyrians."

The findings, related to freedom of thought, religion and conscience, state that religious beliefs of non-Muslim minorities and their practice of religious duties are respected, however, negative speeches towards non-Muslim minorities are mainly targeted to their outbound activities, missionary activities or various other activities of non-Muslims abroad.

Regarding the right to property, it is stated that issues related to immovable of non-Muslim community foundations are started to be substantially resolved. However, the issues regarding that the properties transferred to 3rd persons would not be taken back, and what the status of properties that belong the merged foundations would be are among the issues still not resolved.

Under the title of cultural rights, the rights of non-Muslim minorities include the rights to benefit from means of communication, to establish association or foundation, to use their own language and to disseminate their own right. In this respect, it was specified that the cultural rights of non-Muslim communities were restricted at the beginnings and such restrictions were removed through legal amendments later on; and this practice was accepted by the society.

Regarding the use of Turkish language, it was stated that the arrangements related to Turkish language were restricted; and the use of media tools in languages other than Turkish language first locally and then internationally was allowed through legal arrangements and reconstitution of Radio and Television Supreme Council.

It was noted that the obstacles related to establishing associations and foundations were removed.

The practice of appointing a deputy principal by Ministry of National Education (MNE) who shall be more authorized than school principal is regarded as a problem. Furthermore, the fact that compulsory religion lessons generally cover Islam and that the adopted course books, especially history books, consist of discriminating discourses towards non-Muslim communities at the schools of MNE were criticized. On the other hand, it was stated that the government made regulations to change the books of religion courses in a way to cover other religions, and to make students exempt from such course upon request. It was also emphasized that although not completely, discriminating discourses in books of other lessons were removed from the books through application to the Ministry.

Examining the reports in terms of hate speech, it was concluded that the society generally adopted such discourse towards the missionary activities Such discourse was stated to stem from the fact that the society did not have tolerance and respect towards non-Muslims for disseminating their religions.

Hate speech towards the outbound activities are not targeted to religious authorities but cover the whole non-Muslim community. The most specific example in this respect is that intervention of Israel to Gaza turned out to be a hate speech towards Jewish community in Turkey with an antisemitic approach. However, for the solution of this problem, only the sanctions of hate crime were increased in Turkish Criminal Code through legal arrangements.

One of the most important issues in the Regular Progress Report is the "legal personality" issue. Non-Muslim community enjoys its mobility as a group with the title "community" under official terms thanks to legal personality. Non-Muslim community must have a legal personality in order to register its property holding in the name of community, to defend legal rights before courts as a community, to employ foreign man of cloth and collect aid on behalf of the

community. In this respect, it was stated that legal grounds should be prepared and non-Muslim community would have its own legal personality.

As there are no legal grounds in Turkey, non-Muslim minority groups cannot educate their own men of cloth. By men of cloth, it is referred to senior men of cloth who have undergone a high level of religious education. Regular Progress Reports regards the fact that Theological School of Halki in Istanbul, where Greek Orthodox Church is based, is still close as a deficiency in this respect.

In the Regular Progress Report, it was stated that Assyrian community could not provide education for official language; thus they provided training for unofficial language; and they experienced problems in registering the immovable of Assyrians. Furthermore it may be concluded from the Reports that contrary to Armenians, Greek and Jewish communities, granted with rights through legal regulations, Assyrians earned their rights to register their immovable, establish schools and provide language education through lawsuits filed and won by Assyrians.

This indicates that the regulation, extensively discussed in Treaty of Lausanne and covering the Assyrian community, were not consulted in practice for Assyrians as for other communities, and Assyrian community obtained such rights through legal means at the end of a complex process.

4.2 Turkey From Non-Muslim Communities Point of View

Rights of non-Muslim minorities were tried to be evaluated from their points of view through interviews with authorities of Greek, Armenian, Jewish and Assyrian communities. During the interviews, questions related to promotion and physical existence of their communities as well as legal problems they experience and ways of application were directed. Furthermore, such issues that we deal with as a matter of debate as “return of foundation properties”, “education in native language”, “use of minority language” and “exposure to discrimination were asked. In addition, questions related to the course of governmental policies from their points of view and their expectations were addressed.

During the interview with Greek Community’s official,[10] it was stated that the problems experienced by Greek community stemmed from two causes: structure of the community and the state. It was expressed that the community did not experience any problem in terms of religious duties. In addition, some problems were experienced due to the fact that population was 120,000 people during the Treaty of Lausanne decreased to approximately 2,000 people today. The reason of the state-related problems was said to be the fact that religious communities were regarded as just belief-based entities, and their corporate structures and operations of these communities were disregarded.

It was expressed that they did not experience any problem in terms of using means of press; however, they could not cover the expenses of publication expenses as the circulation was low due to small number of population.

When it is asked how they evaluated the governmental policies, he stated that they were really content with these policies and the process of returning foundation properties continued positively; furthermore, the community members became self-confident in terms of claiming their rights.

The official emphasized the most significant difference of Greek Community from other communities was that as Ecumenical Patriarchate of Constantinople located Istanbul was the base of Orthodox Christianity, the church served not locally but “Ecumenically.” Furthermore, he underlined the importance of opening Theological School of Halik, training high level of men of cloth, in order to ensure someone who is a Turkish national, knows Turkey’s sensitivities and is more acquainted with Turkey becomes the head of this Patriarchate.

Furthermore, when it is asked whether they were exposed to any kind of discrimination, official answered that they were facing discrimination but it was not harsh; such discrimination was in the way of treating the minorities as if they were guests. In this respect, Greek Community were not treated as a stakeholder or title holder but as foreigners. He stated that such approach was apparent in the headlines saying "Property For Greeks" during the period when foundation properties were returned. In this respect, he emphasized that the perception of nationality should prevail the perception of minority.

In the interview with the representative of Armenian Community,[11] it was stated that legal arrangements removed many bureaucratic obstacles. In addition to this, however, the decisions taken by municipalities especially during the return of foundation properties resulted in the non-functionality of the foundation properties transferred, or return of the properties were obstructed by transferring such properties to 3rd persons via front people.

The representative of Armenian Community expressed that problems were experienced with the deputy principals appointed by MNE, and the fact that all expenses necessary for the continuation of education at their schools were covered by their community was a heavy burden.

It was noted that due to events resulting from historical background, Armenian community easily became infamous, and such negative outcome made them the center of more attention. It was emphasized that although graded improvements were performed, such improvements should be well inspected. Representative stated that deterrent penalties should be imposed for hate crimes especially through legal arrangements, and strict measures should be taken for the prevention of stealing activities by those who were engaged in professional misconduct at public sector.

During the interview with Jewish Community's official,[12] it was similarly stated that legal arrangements were in positive progress and almost eighty percent of the foundation properties were returned.

The official expressed that they had no problems in practicing their religious duties, and they experienced corporate problems as they were not granted with legal personality; and the most important problem they were facing was hate speech.

The official noted that as the antisemitism was at its peak, deterrent legal arrangements related to hate crimes should be made. Instead of increasing the punishment for a hate crime already committed, the arrangements focusing on the prevention of such crime before it is committed should be made. He underlined that such discourses should be punished in order to prevent crimes.

During the interview with the Assyrian Community's official,[13] it was stated that the status of Assyrian did not change remarkably despite of the arrangements. The official expressed that Assyrian community became affined to Armenian Patriarchate as they were too far away from Istanbul, the capital city of Ottoman Empire; thus only Greek, Armenian and Jewish communities were perceived as included in the scope of non-Muslim minorities. Yet, although rights related to minorities were discussed in Treaty of Lausanne in general, they could not solve their problems before administrative authorities, and they had to seek legal remedies to obtain such rights continuously.

The official noted that they were not given any information about the return of foundation properties. Official also emphasized that legal arrangements related to discrimination would not be sufficient, and such arrangements should be carried out on the basis of individuals.

5. Conclusion

It is concluded that the rights, obtained in Treaty of Lausanne, have only been discussed in terms of religious rights up until today; the rights granted in relation with "language"

differences and "nationality" have not been defined within the scope of the constitution and law until the very recent history.

Within the scope of Turkey's EU membership and the policies adopted by the government, especially together with the 2000s, huge progress has been made for the return of minorities' rights, the use of native languages by the groups with a native language other than Turkish and democratization of the rights.

Taking the criticisms and suggestions related to Turkey, which were put forward during the EU membership process in EU Progress Reports to ensure Turkey's conformity to EU standards in terms of human rights, democracy and liberties into consideration, we may conclude that Turkey made a huge progress in this respect.

As foundation properties of non-Muslim minorities were returned, this foundations were allowed to acquire properties, groups with a native language other than Turkish could make publication and receive education in their own native languages and the bureaucratic problems experienced were solved by means of governmental arrangements, it may be stated that the rights stipulated in Treaty of Lausanne were substantially restored.

The interviews with the non-Muslims indicate that developments related to the rights of non-Muslim minorities in Turkey proceeded positively in a way to enhance the self-confidence of non-Muslim minorities. In this respect, the fact that governmental policies have positive outcomes is verified both by non-Muslim community and by the progress reports.

Apart from these, there are two issues are still due to be resolved. First, policies need to be made in order to deal with the discriminating attitude of Turkish people towards non-Muslim community, resulting from the idea that they are "foreigners." Second, discriminative speeches such as insults towards non-Muslims should be prevented within the scope of hate crimes, and political parties and the media, in particular, should avoid treating non-Muslims as an object of black propaganda.

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[1] In Ottoman Empire, as a must of a state system taking Islamic law as a basis, the society is only discriminated as Muslim or Non-Muslim. In this context, it is the religious minorities referred when one makes discrimination towards minorities.
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[4] Harmonization Package I (06.02.2002).
[5] Harmonization Package II (26.02.2002).
[6] Harmonization Package III (03.08.2002).
[7] Harmonization Package IV (02.01.2003).
[8] Harmonization Package VI (15.07.2003).
[9] Harmonization Package VII (30.07.2003).
[10] Interview with Yorgo Benlisoy, (23.01.2014).
[11] Interview with Jerry Hırimyan, (24.01.2014).
[12] Interview with Ester Zonana, (23.01.2014).
[13] Interview with Gabriyel Akyüz, (21.01.2014).

Transition of Government System In Turkey In The Context of The Presidential System and Its Relationship with the Democratic Regime

Cengiz Gül

1. Introduction

It is watched for today that the relations between individual and state and state organs have been acquire more difference dimensions and therefore political power has been increase effectiveness on society. This effectiveness necessitates that the state should take responsibility of the role in which the state itself interferes in and directs everything. However, this intervention mustn't be prevent the individuals from being more free. This fact establishes a display of a good ruling system in view of political regimes. However, it's expressed that a good government must be an effective too in this subject. The thought that *"the least government is the best government"* for freedoms regime, its place leave the best government is an effective, stability and powerful government in our time. In this point of view, powerful executive approach too, is emphasized more by free masses (Gül, 2017).

As is known, governance systems are categorised in terms of the relationship between legislative and executive powers. The presidential, parliamentary, and semi-presidential systems are all samples of the representative democracy. It is surely beyond doubt that the presidential system is accepted as one of democratic governance systems. The presidential system reflects definitely a democratic regime since it allows electing the executive and legislative organs by the public; enables to repeat a just election periodically; and provides an opportunity to be in power for opposition parties (Uçum, 2017). This democratic governance model can be identified as follows: The presidential system completely separates powers of executive and legislative organs from each other. In this system, neither the executive power nor the legislative power can discharge one another. In this system, the president is directly elected by the people (Lijphart, 1997; Turhan, 1989). The separation of powers does not mean to the disconnection between the executive and legislative powers; otherwise, state affairs would deadlock and the system would not improve and progress.

The Proposed Package of constitutional amendments which will be held a referandum, generally focuses on the amendments in respect of the governance system apart from reducing age to be elected as a PM, increasing number of General Assembly member, and amending the number of members and the form of the supreme board of judges and prosecutors (Uçum, 2017). The governance system that is aimed to adopt by the constitutional amendments is more likely a unique presidency system based on Turkey than the presidential system of the USA. Basically, the new governance system would have some deviations from the complete presidential system. Those deviations can be deemed as necessity to adopt a unique governance system. However, it cannot be claimed that the new system will be completely different from the presidential system (Eren, 2017; Gözler, 2017). The president possesses the capacity of both head of State and head of government thanks to the new system. Namely, it is predicted that the executive power will turn into a monist system from a dualist system. Additionally, in the monist system, the president, which was elected by the legislative power in the dualist system, will be directly elected by the public (Gül, 2017; Gözler, 2011). These points are definitely accepted as a requirement of the complete presidency system. However, there would be a deviation from the complete presidential system to get a decision for election by both legislative and executive powers (Gözler, 2017). This deviation, as mentioned above, is a result of enforcing the socio-political conditions belong to Turkey.

2. The Package of Proposed Constitutional Amendments' Effects Over The Democratic Regime and The Government System

The package of proposed constitutional amendments which currently occupies the political agenda of Turkey, passed by the required quorum of decision (minimum three fifths) for a constitutional amendment after being held of first and second rounds voting in the Turkish Grand National Assembly. The President offered to hold a referendum since he did not turn aforementioned package back to the National Assembly within the framework of Article 175 of 1982 Constitution. Therefore, the Supreme Committee of Elections officialised that this inevitable referendum will be held in 16 April 2017. In the wake of the referendum, following issues will be evaluated: the legal analysis of proposed innovations respecting Turkish political life and constitutional issues; the relationship between democratic regime and government system; the concepts of the President's responsibility and irresponsibility; and an ordinance power of the President.

The major axis of the package of proposed constitutional amendments is seen as converting the current government system (Altun, 2017; Uçum, 2017). After the 2007 Constitutional amendment which adopted the principle regarding the election of the President by the public and the implementation of this principle in 2014, Turkish government system can no longer be accepted as a parliamentary system. The Turkish government system may be deemed as a semi-presidential system even if not seen at the same level of the government system of France. Regarding the constitutional doctrine, this system may be described as depotentiated parliamentarism or president-parliamentary system; however, this system has already accepted as the semi-presidential system. The semi-presidential system is likely to cause a dual executive system in future. Potential dangers of the dual executive system, such a possible conflict within the government and socio-politic and economic disadvantages, should be staved off. For reaching this aim, this Package of Proposed Constitutional Amendments aims to change an ineffectual and cumbersome current government system which particularly invites coalition governments and military dominations to rule. This package does not aim to amend the democratic regime of Turkey (Look at for counterview: CHP, 2017).

It cannot be claimed that the Package of Proposed Constitutional Amendments contains any provision that aims to amend Turkish political regime which can be characterised with following terms: republic, democracy, secularism, and unitary (Gözler, 2017). The presidential and the presidency of the republic are also deemed as government systems such parliamentary or semi-presidential within the domain of the representative democracy. In fact, the democratic understanding of the presidential system may be regarded as superior than other systems in respect of following features of the presidential system: an executive power is elected by public; it is loud and clear that who forms a government; and the president is directly accountable before the public. In short, converting the dual executive system (president and prime minister) to single headed executive system and holding executive power by the president should not imply that the system turns into an anti-democratic system. This conversion should be perceived as a selection one of government systems.

2.1. Proposed Constitutional Amendments from the Perspective of the President's Authority and Responsibility

Considering the current constitution, the president of the republic is politically accepted full non liable. Furthermore, the president can be held neither criminal nor judicial liable in respect of the current constitution. S/he can only be charged with treason. To charge the president with treason is possible only if three quarters majority of the votes at the Grand National Assembly is held. It is all but impossible to realise that. Obtaining such majority of votes necessitates that

two or more political parties including the ruling party must come to an agreement to charge the president with treason. In the proposed package of the constitutional amendments, required majority rate for referring to a supreme court is diminished from three quarters to two thirds. Furthermore, in the package, other crimes including treason are embodied to the constitutional amendments. The constitutional amendments will also hold the president criminally liable. Furthermore, the president will be politically responsible to both public and general assembly thanks to the proposed constitutional amendments. That is to say, the re-election of the president can be rendered possible by the referendum; if the president cannot be re-elected by the referendum, this situation shows that the president is unseat by the public that entails the sovereign power. Therefore, the president becomes politically liable to the public. Furthermore, the president becomes politically responsible to the general assembly and s/he can be withdrawn from the duty by an election decision which can be hold by the assembly (Gözler, 2017). By the constitutional amendments, implementation of all check-control tools such as written questions, parliamentary research, parliamentary inquiry, and general debate will continue from the perspective of new governance system (Küçük, 2017/1; Look at for counterview: Tezkan, 2017/1). By the amendments, there will be a transition from an authorised but free of liability presidency system to both authorised and liable presidential system. Moreover, the universal norm of the public law, which based on the parallelism between authorisation and liability, requires both liable and authorised system.

Converting the dual executive system to single headed executive system will grant all executive powers to the president. This situation is manipulated (Mert, 2017) as the president will turn into a dictator; but, it can be observed that the dictatorship is not a matter for the presidency system when this system is properly and clearly analysed. This system will not change the competent authority of legislative and executive powers. Furthermore, the issue of selecting members for the constitutional court and the supreme board of judges and prosecutors by the president will be remained in new system. Abolishing the distinction between civil and military in the judicial organ provides independent judiciary and emphasises this independency is deemed as complementary parts of the judgement. The executive power remains in the executive organ, likewise, the legislative power remains in the legislative organ and the judicial power remains in the judicial organ. Moreover, the delegated legislations and the authorisation to make a regulation will be abolished by the new constitutional amendments. By the proposed constitutional amendments, the executive power will be diverged from the legislative and judiciary powers and, considering the monist executive system, the diminished executive power will be hold by only the president. In this sense, claiming the new presidency system will pave the way for the dictatorship does not comply with the objectivity of law (Look at for counterview: Ataklı, 2017).

2.2. Legal Analysis: An Ordinance Power (Executive Order) of The President

Article 8 of the proposed package of the constitutional amendments authorises the president with the ordinance power. Regarding this article, an ordinance, which cannot be issued in the field of issues openly regulated in the law and in the field of fundamental rights, individual and politic rights, will be issued to regulate the issues regarding the execution and socio-economic rights. If the legislative power observes any illegitimacy in respect of aforementioned fields, the legislative power can adopt a resolution or make law to abolish the ordinance. Namely, when a conflict occurs between the law and ordinance, the law becomes superior to the ordinance and the ordinance becomes defunct. It can be seen that the ordinance cannot have a power to abolish or amend the law (Küçük, 2017/2; Kütahyalı, 2017).

In the current system, by the delegated legislations, a provision of law can be abolished; but, in the new governance system, the ordinance power which will be hold by the

president cannot abolish any provision of the law. Considering this situation, it must be pondered that whether this system will strengthen the president's position or not. The proposed constitutional amendments will authorise the president with the ordinance power but it cannot be claimed that this power will pave the way for the dictatorship otherwise this claim cannot be legally advocated (Gülener, 2017; Küçük, 2017/1). The ordinance power for the executive order (Küçük, 2017/3; Gülener, 2017) is also hold by the president in the USA and France; however, people overreacts to this situation in Turkey. It shows that developments and amendments are taken personally rather than objectively in Turkish political culture.

Article 107 of the 1982 Constitution currently expresses the presidential decree as one of two autonomous powers to regulate of the executive power. Even the domain of this power is limited with the secretariat general of the presidency, the ordinance power regarding the ministries conducted by the president who holds the executive power should not be exaggerated (Küçük, 2017/1; Look at for counterview: Tezkan, 2017/2). That is to say, considering that an ordinance, issued by the president, cannot abolish any provision of the law, the socio-political conscience of Turkish society and the positive law do not allow turning the president into a dictatorship.

2.3. The Issue of The President as A Party Member

A prime minister or president can become a party member and this situation is very common political practice in respect of the presidential systems. In the USA, the president cannot become a president of a part but can become a party member (Gözler, 2017). For the parliamentary system, the requirement of resignation from the party is the legal precaution to maintain the impartiality of the president. The president has politically no liability in the dualist system and s/he should act as an arbitrator for political parties. Therefore, the impartiality is accepted as *sine qua non* for the new system. In the presidential system, on the contrary, the president becomes a party to a political part and excluding the president from the parties is against the system's nature (Küçük, 2017/1); because, the president is seen as both the head of State and head of government. During the transitional stage for the presidential system, some part of the society claims that '*the president should break away from his political party*'; however, this discourse does not comply with the new system and belongs to the parliamentary system (Kongar, 2017).

3. Presidential System In The Context of An Effective and Stable Governance

The most important aim of adopting the presidential system is to form a powerful, stable, and responsible governance (Altun, 2017/3). There are several of advantages of the presidential system: The decision process would become more effective and quicker if the presidential system is properly applied. Improving the democratic culture in the society and adopting an independent and powerful judicial system will increase the anticipated benefits from the presidential system and diminish political crisis and conflicts (Gözler, 2011).

Political instability of the government has always become an essential problem in Turkey. Turkey was governed (more precisely ungoverned) by coalition governments in the past particularly between the years of 1961-1980 and 1990-2002 (Törüner, 2017). One-party government can have more advantages to have more powerful governance system and to have enough time periods for realising forward programs for the benefit of the state. The country, in one-party terms, has always leapt forward in terms of economy, politics, and foreign politics. However, it can be observed that coalition parties could not make any move for development of the country. They displayed faltering governance in the national and foreign politics (Törüner, 2017; Sobacı, 2017). The presidential election, apart from the issue of coalition governments, has always become as a political problem in Turkey. In 2007, a constitutional amendment was reactively made in order to cease those

problems and ultimately it was ruled that the president should be elected by the public. Stepping back from this rule which is the most important condition of the presidential system cannot be anticipated. In this case, considering the current constitution, there is no sense to maintain a multi-authorised but complete free of liability presidential system. In that case, it is undeniable that Turkey should adopt a unique presidential system which can provide both authorised and liable presidency.

4. Discussion and Conclusion

Since 1970's, the presidential system which have occupied the political agenda of Turkey is certainly one of democratic governance systems such as parliamentary and semi-presidential system. It must be noted that perceiving such attempts and efforts on amendments of the current governance system as the transition to an anti-democratic regime can be accepted as an unwarranted discourse. Furthermore, some part of the society is concerned about that this transition may cause leaving the unitary system and adopting the federative system and this situation may make inroads into splitting the country. In fact, the presidential system can be applied in both federative and unitary system (Gözler, 2017). In this respect, Chile, Costa Rica, Peru, and South Korea become prominent sample countries which apply the presidential governance in the unitary system. Therefore, there should not be looking for an indispensable relationship between the presidential and the federative system.

It has been also observed that the pursuit of the presidential system has always been reflected as a personal matter of Necmettin Erbakan, Turgut Özal, Süleyman Demirel, and the President Recep Tayyip Erdoğan. Indeed, this governance transition has been intended for having stable, powerful and more democratic governance in Turkey (Altun, 2017/2; Altun, 2017/3). The presidential system can also provide following advantages: having a literal separation of powers; having a powerful parliament which is not under the guidance of executive organ; and establishing a complete check and balance system (Akyol, 2017). However, it must be noted that the presidential system has also some disadvantages (Kütahyalı, 2017). Provocative factors (originating from our country) of those disadvantages should be identified and taken necessary precautions. Preventing those disadvantages is crucial for availing from the presidential system. In this context, avoiding or at least warding off possible legal, political, institutional, and socio-cultural obstacles is of vital importance in order to adopt and sustain the presidential system in Turkey.

Expected utility from the Presidential system reveals itself only when elements of the socio-cultural background are maintained. Extreme multi-party system, which cannot embrace reconciliation on essential political values, the proportion election system that induces the multi-party system can be seen as prominent disruptive elements for adopting the presidency system. In addition, difficulties for having an ideal, independent, powerful and objective judicial review and problems on adopting an entrenched democracy tradition and conciliation culture in political system are other disruptive elements.

5. Recommendations: *"The Necessity of Establishing Viable Socio-Cultural Background for The Presidential System"*

It must be considered that the political majority is held by various political parties in the legislative and executive organs; and this situation may produce a risk of preventing and locking the system. Establishing the political and legal mechanisms is very important to deal with aforementioned risk. For example, in case of deadlocking between legislative and executive power, the *simultaneous election* regulation which provides for renewing both the presidency and assembly elections removes or diminishes such risk (Gülener, 2017).

Within the scope of the proposed constitutional amendments in the national assembly, applying the simultaneous election for the presidency and assembly elections can be accepted as an

important step to eliminate this risk. The simultaneous election system can be evaluated as a safety valve in order to avoid the blockage between the legislative and executive powers.

Furthermore, the current proportion election system, multi-party political regime based on this system, and the political polarization which is caused by ideologically separated parties are determinant for the presidential system. To provide expected maximum benefit from the presidential system, following steps should be considered. It must be noted that the presidential system cannot comply with neither multi-party system nor the proportion election system. For this reason, the current elections system should be turned into either the *narrow district majority* system (single candidate), which can be held in one or two round elections, or the *narrowed district majority* system (5 or 6 candidates). This amendment can be deemed as an urgent condition.

The presidential system can be properly implemented as long as aforementioned election system is applied for at least 3 or 4 terms. And, the presidential system can be effective only when a political structure, which is formed by two party system and emerged by a socio-political supply demand equilibrium, is established. Moreover, such an election and party system can be able to carry out an effective, strong, stable, and more democratic governance. In case of adopting a presidency system without changing the election and party system, this situation can be assimilated to a case of driving a luxury car on rough road. The productivity and performance are negatively affected by road conditions for both the presidency system and luxury car. Ultimately, to establish a proper background for the presidency system, aforementioned deficiencies must be overcome as soon as possible.

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The Effects of Soma Mining AccidentOn Coal Miners In ZonguldakWithin To Context Of Industrial Accidents Appeared On Media

Mustafa Yağbasan, Oğuzhan Baygeldi

Introduction

Several different factors play a role during the process of reporting the incident as news and have an impact on the creation of those. Some technical elements such as layout undoubtedly have importance in designing the news. However, it can be said that the ideology has a profound effect in the editorial process apart from these technical processes without a question. The news built in the line of these codes within the cultural context incorporates a good few sub-texts. The purpose of this fundamental philosophy here is to create the agenda and awareness in public and social life. The 'Soma Mine Disaster', which occurred on 13 May 2014 in Turkey, keeps up to date as an issue that needs to be analyzed in terms of journalism. The question whether the reporting forms and contents of the news related to the topical issue in national printed media in Turkey, especially during those days, has been produced as aiming to build the agenda or create awareness or with the anxiety of the mere news forms a favorable sample for "manipulative news analyses".

The excess of casualties numerically and public indignation caused by the incident after the disaster necessitate the incident to be assessed within the context of absolute news. However, to what extent such these social incidents affect the perception and what kind of chaotic settings they have caused appears as an open ended question. The most fundamental factor having an effect on such directions is the political ideology of the news. For that purpose, the study was comparatively toanalyze the headlines of the front pages of Cumhuriyet, Milliyet and Yeni Şafak Newspapers dated 14, 15 and 16 May 2014 after the Soma mine disaster. In addition,the aim here was also to support the research with a questionnaire implementation in Zonguldak, which has been identified with coal mine and mentioned with periodic deadly accidents

Literature

Definition of Occupational (Industrial) Accident

The term 'accident' is used for the incidents thatlead to the unexpected results without intention or malicious intentions. Nevertheless, it does not seem possible to mention the same thing for the 'occupational accident'. The occupational accident can be defined as a term referring to the problems (issues) arising as a result of misconduct or technical faults in a workplace. In order to avoid these unfavorable issues, all of the methodical works conducted in respect of measures taken and preventing the losses in the workplace is defined as 'occupational safety'. Some factors that cause to occurrence of the occupational accidents can be specified as follows:

* The employees are not being trained in respect of occupational health and safety,
* The protective safety measures are not available on the device and benches or the existing measures are not considered,
* Personal protective equipment suitable for the work specification is not provided for the employees or the given ones are not used.
* The employer is unfamiliar with or pays no attention to the occupational Health and safety,
* The installation and design errors of the device and benches,
* Not inspecting the health requirements of the workplace.

The studies conducted reveal that the percentages of the accident in the deadly accidents for each tone produced have dramatically dropped due to increasing mechanization. 90% of these accidents can be preventive. At least one and other half of the accidents respectively occur through lack of attention, unwillingness or ignorance and carelessness of co-workers, equipment and organization. The issues (problems) arising out of the change of economic structure of society and industrial development require the legal arrangement in the occupational accidents. Therefore, the Labor Law compulsorily appears. The Labor Law mediates the relationship between workers (employees), employers and the government. In addition, the relationship between the business and employer's institutions is included in the scope of the Labor Law (Buzkan, 1990:340).

Occupational Accidents in Turkey: Mines

When examined the occupational accidents and the numbers of employees who died in the accidents, in on a sectoral basis, it is understood that 10-12% of the occupational accidents, which happened in 2010-2012 and 33-34% of the numbers of the workers who lost their lives, have appeared in construction activities. In other words, one out of every three employees who died due to the occupational accident works in the construction activities. In the same years, while 12,5% of the total accidents happened in coal mines, 4,5% of total workers' deaths took place in the accidents of coal mines. In other respects, it is known thatthe percentage of the ones who had occupational accident is 10.4% in mine and quarry, 4,3% in construction sector in accordance with the research based on the questionnaire, where all the accidents with physical injury have been assessed as 'occupational accident' regardless of whether it leads to labor loss or not, and holds the qualification of an occupational accident legally, conducted by Turkish Statistical Institute in 2007 and 2013 (Güneş, 2013:6).

The Problems Encountered and Deficiencies Determined During The Soma Mine Disaster

After evaluating the analyses on site and data obtained, the following outlined circumstances have been determined: Despite the fact that the Soma Mine Disaster occurred on the date of 13 May 2014, at almost 15.10, the death toll has been announced as 2 workers firstly, and as time progressed, the authorities have stated that it has been climbed to '17 workers'. Although a considerable period of time passes, it has been seen that the public authorities have misinformed the public for the purpose of hiding the incident or introducing the disaster insignificant. The dimension and seriousness of the disaster have been able to be recognized by arrival of the press and media organs on-scene, and as a result of the interviews conducted between the local resident and mine labor who survived.

After the public authorities recognize the dimension of the disaster, the search and rescue team has been burst on the scene. However, it has been realized that the team personnel who has not been adequately trained and has not had an experience in the search and rescue activities regarding the very risky areas such as underground coal mine cannot get involved in the evacuation activities. Accordingly, the personnel called or assigned have not been able to go beyond to be 'useless crowd' and 'audience in coal mine area and seem like to hinder the works carried out for the area. In addition, it has been also recognized that the company having a large number of employees has not a public relations department, and even the firm, where the coal mine accident happened, has not any unit to inform the public. It has been observed that the tracking-control and inspection to be carried out within the establishment have not been adequately conducted and performed healthfully, and without taking measures, this process ignored have been increasing in time and lead to a disaster.

In accordance with the service procurement agreement made for the coal enterprise where the disaster occurred; although taking out of total 18 million tone reserves within 10 years has been concluded to the agreement, it has been determined that the company, without considering this process, has made production over 3 million tone, and this ratio of production has caused to vulnerability respecting the occupational security (Alan, 2014:19)

The Analysis of the Deadlines and News of Cumhuriyet, Yeni Şafak and Milliyet Newspapers in Three Days after the Soma Mine Accident

Wednesday 14May 2014 The Headlines

Cumhuriyet Newspaper

In the Cumhuriyet Newspaper published in the first day after the Mine Accident, by referring to the coal mine accident news using the theme color of the page, and by giving the headline called 'Our brothers are under the wreckage', the Newspaper gives clues that coal miners who have trapped in the coal mine are alive. The Newspaper also gives a message that the community expects good or bad news from the mine accident by its heading 'Please inform us' in subheadings. The photographs of the search and rescue activities have been taken place in the page due to being the first day. By including the words 'CHP: AKP rejected our resolution for SOMA', it is shot a message that the main opposition party has forewarned the government before these events occurred and the government has led to these incidents regardless of the view of CHP in the side headings.

Yeni Şafak Newspaper

The Yeni Şafak Newspaper, which is one of the most interesting newspapers in the next day after the coal mine accident, has given the news about Soma disaster a place in a small poston its upper section. Although it has attempted to create a fait accompli atmosphere considering the accident by using simple past tense in its heading 'our heart tear out' in the headline, the truths are beyond of those. Besides, by the caption of '20 deaths and 200 miners trapped', unreal numbers related to these statements have been included in the news. In the main headline of the newspaper, 'Document of Coup D'état' has been written. The newspaper informs its readers that it has obtained the documents about the parallel structure' attempted to coup d'état under the pretext of corruption allegations such as in 27 May.

Milliyet Newspaper

The Milliyet Newspaper has delivered the information about the mine disaster's balance sheet to its readers by using the headline 'Black Table: 157 deaths/200 trapped/75 injured' in the top heading in the first day after the incident. It has stated that the coal mine accident resulted from transformer explosion; the death toll led to a chaos, and also presented the Attorney General and Soma Mayor as the reason factor. The newspaper has given place to the heading of 'the shift (job rotation) explodes' in the headline appeared in the middle of the page. It has put the word out that the fire broke out during the shift change, consequently revealed that the claim about two times more miners have been found in the mine coal.

Thursday 15 May 2014 Headlines

Cumhuriyet Newspaper

It is seen that the Cumhuriyet Newspaper has attempted to tear into the government with its headlines in the second day of the accident. Thus, the newspaper has clearly accused the government, by stating that *'the government, who has asserted as 'these incidents are ordinary' and the employers, who has sought profit, and company unions are responsible from the death of hundreds of coal miners in Soma'*on the top section of the front page of the newspaper. In

the main headline of the newspaper, the newspaper has given place to the numbers of workers and chain of negligence by giving a headline of *'stop drawing the longbow, you are murders'*

Yeni Şafak Newspaper

After the newspaper has reported the Soma mine accident in the first day, the dimension of the incident has been revealed in the second day. The Yeni Şafak newspaper has dedicated the main page in itself to this disaster and spread a photo of a coal miner who has plumbed the depths to the entire page. The main headline was *'Turkey cries for their 245 sons lost in Soma Disaster'*, and it has captioned the *'Mourning'* written with big front size. While the newspaper gives place to the headings *'The celebrations cancel, the knells for Soma'* and *'The World shares our pain'* in the other sections of the page, it has not given place to any other news in the main page.

Milliyet Newspaper

By giving place to the writings *'The Tragic Record: 270 deaths, 120 trapped'* on the top headline of Cumhuriyet Newspaper in the second day after the accident, the Milliyet Newspaper has assessed the balance sheet as record. By being photographed the plaintive facial expression of a coal miner, whose face was coal black, the newspaper has given a headline of 'Hand in Hand for Soma' under the same heading. The content of the news involves that Turkey has been shocked by the mine blast. It has been taken place that the Milliyet Newspaper is launching a campaign for the sufferers of the disaster.

Friday 16 May 2014 The Headlines

Cumhuriyet Newspaper

While the Cumhuriyet Newspaper comes out against the government in the third day of the disaster again, it has given place to the bodyguards of the Prime Minister visiting the scene beaten a citizen, the reproaches of the relatives of the miners and the statements of the politicians. In the upper section of the newspaper, it has given a headline of *'Beating by the Prime Minister'*, and given place to the photo frame related to the event on the right of the heading. Under the heading, it has given to the words referring to *'it has been revealed that The Counsellor of the Prime Minister Yusuf Merkel has kicked a citizen and then the Prime Minister Erdoğan has cuffed an individual. Considering the camera records related to the incident, it is seen that Erdoğan and his bodyguards have kicked and smacked a person they let inside the market. Taner Kuruca who was attacked said: 'The Prime Minister smacked me, the bodyguards hit me'.*In the middle section of the newspaper, it has given wide coverage to the heading of *'Give me my son, now!'* and according to the other headings, the mentioned heading has been written with big front sizes. It has given place in the news that the relatives of the coal miners revolted to take the funerals of the workers. It has given place to the words and statements of CHP Chairman Kemal Kılıçdaroğlu under the heading of *'They say that this is a natural incident'* in the final section of the newspaper,

Yeni Şafak

While the Yeni Şafak Newspaper has not given place to the incident related to the beating including in the other newspapers in the third day of the accident, it has given place to the criticisms of the government and tried to be obtained to break the ice and included the a father-son from a family has passed away together. The heading of *'He is Cuddling Up Together with His Son Under The Ground'* has been taken place in the upper headline. The main headline in the middle section of the newspaper was as follows; *'They did not come back'*. In the sub-section, it has drawn attention to the usage of 'martyr' instead of the term 'death'. In the subchapter of the newspaper, it has been critically approached to the photograph of the President

of The Turkish Republic with a relative of a coal miner. It has been given place to the writing *'We should review the rules'* in the headline.

Milliyet Newspaper

By giving place to the campaign that it launched in the second day in the upper section of the page again, by giving a headline of *'Come on, Turkey'*, it has been unreasonably given account numbers for the people who wish to support the campaign. In the middle part including the headlines *'283 deaths and No one comes back from Shift 2'*, it has been narrated that 14 coal miners residing at Köseler Village went to the 2 Shift but did not come back. In the bottom section, it has given the headline of *'The Body Numbered 141'*. Since the body numbered 141 is beyond recognition, it has been reported that DNA test will be conducted in the content of the news. It has been revealed about how serious and depressing coal mine accident is in the news.

Research

Research Objective

The purpose of the research is to reveal how the statements and ideological impression affect the newspapers over the headlines of the newspapers specified. The pages of the newspapers are designed to draw attention of the reader, and the headlines primarily consist of this section. The headlines are the most important factor to have the newspaper to sell and read and gain importance to increase the circulation of the newspapers. Therefore, when opened the page of each newspaper, the firs news faced by the reader is extremely important, and the editorial makes tiny distinctions for the process design and regulates the news content considering its mentality. The headlines breaking the news based on the news content and subject play a determining role on whether the reader continues to read the news or not in accordance with its attraction and strikingness (Özkır and Şişman 2014: 70)

Hypotheses

The hypotheses specified after the literature review are as follows:

- The news and headlines of the newspapers have been followed by the coal miners in the days when the Soma mine disaster occurred.
- The coal miners have followed the headlines of the left-wing newspapers published after the Soma mine accident and found those convincing.
- The coal miners have followed the headlines of the neutral newspapers published after the Soma mine accident and found those convincing.
- The coal miners have followed the headlines of the right-wing newspapers published after the Soma mine accident and found those more convicting.
- In accordance with the reports disclosed by the State about the accident, the coal miners have assessed the headlines of the leftist (left-wing) newspapers as the falsified news.
- In accordance with the reports disclosed by the State about the accident, the coal miners have assessed the headlines of the neutral newspapers as the falsified news.
- In accordance with the reports disclosed by the State about the accident, the coal miners have assessed the headlines of rightist (left-wing) the newspapers as the falsified news.
- The coal miners have been affected and scared by the news and headlines appeared on the leftist newspapers after the accident.

- The coal miners have been affected and scared by the news and headlines appeared on the neutral newspapers after the accident.
- The coal miners have been affected and scared by the news and headlines appeared on the rightist newspapers after the accident.

METHOD

Research Model

The layout form of the ideology within the deadlines has been analyzed within the axis of the deadlines of 3 newspapers (Yeni Şafak, Milliyet, Cumhuriyet). The headlines specified have been cited from the newspapers date as 14, 15 and 16 May (as a sample). The 3 newspapers selected have been determined by casting lots; the Cumhuriyet, Milliyet and Yeni Şafak Newspapers represent the leftist, neutral and rightist newspapers, respectively.

This aim of research is to comprehend the ideological reactions of the coal miners in Zonguldak within the Soma disaster. For this purpose, the survey model (questionnaire), which is a scientific method, has been found favorable, and 5 point Likert scale has been implemented (Kaptan 1993: 150). Within the framework of the conditions foreseen, it has been reached to 384 subjects (since the survey (questionnaire) is conducted to at least 384 individuals stipulated for the settlements with population of 75 thousand and 1 million citizens) (Krejcie and Morgan 1970: 607-610), however, the number of the subjects has been come up to 241 due to the workers and those who have been disposed to fill out the survey.

Population, Sample and Limitations

The coal miners in Turkey consist of the population of the research. The province of Zonguldak has been selected as the sample for the study. The excess of the coal mines and density of the coal miners in Zonguldak is the reason to select this province as a sample. The research is limited to the coal miners in this province. The subjects are over the numbers of coal miners and 18 ages. Those have been determined as the limitations of the study.

Implementation of Questionnaire, Data Collection and Method of Analysis

The questionnaires have been conducted by the face-to-face interview method with the coal miners. In order to assess the questionnaire objectively, the identity information of the citizens has not been asked. The questionnaire has been conducted to 241 subjects by being used the random method and the questionnaire forms have been immediately collected. The data obtained have been assessed by using the 16.0 version of SPSS program on internet environment and tried to be interpreted.

ANALYSIS OF DATA

Table 1: Demographical Findings of Zonguldak Coal Miners

	a		**b**		**c**		**d**	
	f	**%**	**f**	**%**	**f**	**%**	**f**	**%**
Age	56	23,2	27	11,2	91	37,8	67	27,8
Education	2	0,8	76	31,5	98	40,7	65	27,0

Age :a- 18-25 b- 26-35 c- 36-50 d- 51 and older
Education :a- Illiterate b- primary school c- High School d- University

The average of age of the participants; the participants between 36-50 age rank first with 37,8 (91 persons), the participants with 51 years and older are ranked as the second with 27,8%; and the participants with 18-25 ages rank number three with 23,2%. Respecting the educational statues of the subjects; the high school education is ranked as the first with 40,7%, and the primary education is ranked as the second with 31,5%.

Table 2: The Percentages of Reading Newspapers for Coal Miners in Zonguldak

	f	%
I read	116	48,1
I don't read	18	7,5
I read occasionally	107	44,4
Total	241	100,0

The percentage of the coal miner, who has read newspaper, is ranked as the first with 41,8% according to the survey results. The percentage of the coal miner, who has from time to time read newspaper, is ranked as the second with 44,4%. The percentage of the worker, who never read newspaper, is ranked as the last with the lowest rate of 7,5%.

Table 3: The Number of Coal Miner Reading the Newspapers (Yeni Şafak, Milliyet and Cumhuriyet) Determined after the Soma Mine Accident

	f	%
Yes	138	57,3
No	16	6,6
Sometimes	87	36,6
Total	241	100,0

The percentage of the coal miners reading the newspapers determined is 57,3 in the research. The choice of 'sometimes' is ranked as the second with 36,1%. These percentages show that the majority of the coal miners have followed the newspapers published in next days after the Soma mine accident.

Table 4: The Findings About Whether the Headlines of Leftist Newspapers Published After the Soma Mine Accident Are Found Convicting or Not

	f	%
I agree absolutely	104	43,2
I agree	88	36,5
I am undecided	30	12,4
I don't agree	11	4,6
I strongly disagree	8	3,3
Total	241	100,0

43,2 of the workers, who participated in the survey, have strongly agreed that the leftist newspapers have used more convincing headlines; 36,5 of the coal miners have stated that they found the headlines of the leftist newspapers more convicting.

Table 5: The Percentage of Coal Miners Who Found the Headlines of Neutral Newspapers Published After Soma Mine Accident Convincing

	f	%
I agree absolutely	13	5,4
I agree	31	12,9
I am undecided	70	29,0
I don't agree	120	49,8
I strongly disagree	7	2,9
Total	241	100,0

When considered the choices of *'I strongly agree and I agree'* together, the percentage of the coal miner, who found the headlines of the neutral newspapers after the Soma mine accident, is

18.3%. But however, the numbers of the coal miners, who have not found the headlines of the neutral newspapers convicting after the Soma Mine accident, are 49,8% with *'I disagree'*and 2,9% with *'I strongly disagree'*. The percentage of the coal miner with 'neither agree nor disagree' is 29,0%. According to these results, it seems possible to state that a substantial percentage of the coal miners have not found the headlines of the neutral newspapers convicting.

Table 6: The Percentage of Coal Miners Who Found the Headlines of Bien Pensant (Right Wing-Rightist) Newspapers Published After Soma Mine Accident Convincing

	f	%
I agree absolutely	8	3,3
I agree	15	6,2
I am undecided	36	14,9
I don't agree	91	37,8
I strongly disagree	91	37,8
Total	241	100,0

The percentage of the coal miners who found the headlines of the rightist newspapers after the soma mine accident is only 9,5% with the ones who defend the choices of *'I strongly disagree'* and *'I disagree'*. After all, the percentage of the coal miners who did not found the headlines of the rightist newspapers is 75,6% with the participants saying '*I agree'*. In accordance with these results, it seems possible to mention that the Zonguldak coal miners have not found the headlines of the rightist newspapers.

Table 7: The Percentage of Coal Miners Who Considered the News of The Left-Wing (Leftist) Newspapers as Falsified News In accordance With the Reports about the Accident Disclosed by the State

	f	%
I agree absolutely	9	3,7
I agree	3	1,2
I am undecided	42	17,4
I don't agree	35	14,5
I strongly disagree	152	63,1
Total	241	100,0

While the percentage of the coal miners who considered the leftist newspapers as a position giving a false color is only 4,9%, the percentage of who thinks that they reported accurate news is 77,6%. Accordingly, the workers think that the leftist newspapers have reported true news after the reports of the state.

Table 8: The Percentage of Coal Miners Who Considered the News of the Neutral Newspapers as Falsified News In accordance With the Reports about the Accident Disclosed by the State

	f	%
I agree absolutely	10	4,1
I agree	3	1,2
I am undecided	96	39,8
I don't agree	81	33,6
I strongly disagree	51	21,2
Total	241	100,0

In accordance with the reports disclosed by the State after the Soma accident, the percentage of the coal miners who assessed the neutral newspapers as giving true news is dominant with 54,8%.

Table 9: The Percentage of Coal Miners Who Considered the News of The Rightist Newspapers as Falsified News In accordance With the Reports about the Accident Disclosed by the State

	f	%
I agree absolutely	128	53,1
I agree	12	5,0
I am undecided	76	31,5
I don't agree	12	5,0
I strongly disagree	13	5,4
Total	241	100,0

In line with the reports disclosed by the State after the Soma accident, the percentage of the coal miners who have thought that the rightist newspapers report falsified news is 58% with the participants who select the choices of *'I strongly disagree'* and *'I disagree'.* In spite of that, the percentage of the coal miners thinking that the rightist newspapers have reported true news remains 10,4% with the participants saying *'I strongly disagree'* and *'I disagree'.* According to these results, the great majority of the coal miners have assessed the news of the rightist newspapers as falsified news.

Table 10: The Percentage of the Coal Miners Affected and Scared by the News and Headlines Appeared on the Leftist Newspapers afterthe Soma Accident

	f	%
I agree absolutely	136	56,4
I agree	21	8,7
I am undecided	54	22,4
I don't agree	4	1,7
I strongly disagree	26	10,8
Total	241	100,0

The percentage of the Zonguldak coal miners who were affected and scared by the news and headlines taken place in the leftist newspapers after the Soma mine accident is 65,1% with the attendants representing *'I strongly disagree' and 'I disagree'.* However, the percentage of the miners who were not being affected and scared by the news and headlines of the leftist newspapers is 12.5%. According to these results, it can be said that the great majority of the coal miners have been affected and scared by the Soma incident.

Table 11: The Percentage of the Coal Miners Affected and Scared by the News and Headlines Appeared on the Neutral Newspapers afterthe Soma Accident

	f	%
I agree absolutely	70	29,0
I agree	93	38,6
I am undecided	66	27,4
I don't agree	4	1,7
I strongly disagree	8	3,3
Total	241	100,0

67,6% of the Zonguldak coal miners (with the those stating as *'I strongly disagree and 'I disagree'* declared that they have been affected and scared by the news and headlines of the neutral newspapers. On the other hand, %5,0 coal miners stated that they have not been affected and scared by the news and headlines with the those selecting the choices of *'I strongly disagree'* and *'I disagree'.* In accordance with these results, it seems possible to say that the great majority of the Zonguldak coal miners have been affected and scared by the headlines of the neutral newspapers related to the Soma mine disaster.

Table 12: The Percentage of the Coal Miners Affected and Scared by the News and Headlines of the Rightist Newspapers afterthe Soma Accident

	f	%
I agree absolutely	7	2,9
I agree	17	7,1
I am undecided	127	52,7
I don't agree	8	3,3
I strongly disagree	82	34,0
Total	241	100,0

10,0% of the Zonguldak coal miners stated that they have not been affected by the headlines of the leftist newspapers, 37,3% mentioned that they have been affected and scared by the headlines. In spite of that, it has been determined that 52,7% of the subjects are undecided. According to these results, the great majority of the coal miners are undecided to be affected and scared by the deadlines of the rightist newspapers after the Soma mine accident.

Conclusion

According to the responses of the coal miners who are working in Kozlu and Kilimli Mines Zonguldak, the research conducted reveals that the majority of the coal miners have found the headlines of the leftist newspapers more convicting, and also they have been affected by the news and headlines of the leftist newspapers. The findings obtained show that the news and headlines used in issues no 14, 15 and 16 May of the Cumhuriyet Newspaper have been mostly followed by the coal miners compared to the Yeni Şafak and Milliyet Newspapers. A great majority of the occupational accidents in our country is occurred in the mine accidents. 301 coal miners died in the mine accident of Soma District, Manisa, on 13 May 2014. This incident has become a very hot issue of the country. In accordance with the State's reports appeared after the disaster, the producing company has been found guilty as a result of the deficiencies and negligence. However, 301 deaths have become the largest lost. In this research conducted to find out which newspapers the coal miners have followed and are affected ideologically; it has been precipitated that the coal miners working in Kozlu and Kilimli mines has found the newspapers reflecting the leftist political ideology more objective, followed and affected by those. It can be said that the subjects, in any case, think that the neutral and rightist newspapers have reported falsified news and acted biased and manipulative.

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The Effect of Personality on Moral Behavior

Neşe Aral, Nuran Bayram

1. Introduction

Moral behavior is pried from the rigidity of personality temperament and put into the realm of learnable behavior (Narvaez, 2005). Moral development research base on Piaget's work on moral judgment (Astington, 2004). Moral standards represent an individual's knowledge and internalization of moral norms and conventions. People's moral standards are dictated in part by universal moral laws, and in part by culturally specific proscriptions. Of primary interest are prohibitions against behaviors likely to have negative consequences for the well-being of others and for which there is broad social consensus that such behaviors are wrong (Tangney, Stuewig, & Mashek, 2007). According to Reber (1985) moral behavior is the internalization of standards of right and wrong and adaptation of these standards by an individual, society, and a special group (Kapıkıran, 2007). Kuhn, Cheney, and Weinstock's research (2000) clearly demonstrates that beliefs about the physical world, the social world, moral values, aesthetics, and personal tastes are differently regarded as objective or subjective at different stages of development (Astington, 2004).

Taylor (1975) defined ethics as "inquiry into the nature and grounds of morality where the term morality is taken to mean moral judgments, standards and rules of conduct". Another variation of the concept is that ethics is the study and philosophy of human conduct with an emphasis on the determination of right and wrong. The term ethics commonly refers to "just" or "right" standards of behavior among individuals in a situation (Fraedrich, 1983).

Personality has been defined as a set of traits that assure individual continuity, as the motivated core of human behavior, as a self-regulating system designed to maximize adaptation to life's challenges, and on and on. In the last decade there has been a remarkable resurgence of interest in studying moral rationality within the broad context of personality, selfhood and identity (McAdams, 1992). Modern ethical theory draws a tight connection between personhood, identity, and moral agency (Navraez & Lapsley, 2009). The personality trait that may be most closely associated with moral reasoning and thought is openness to experience. People who are dispositional high on openness tend to be highly imaginative, reflective, intellectual and broadminded. They welcome change and complexity in life, and they show high levels of tolerance for ambiguity (McAdams, 1992).

Most people feel anxious or depressed at times. Losing a loved one, getting fired from a job, going through a divorce, and other difficult situations can lead a person to feel sad, lonely, scared, nervous, or anxious. These feelings are normal reactions to life's stressors (ADAA, 2016). Anxiety and depression is one of the most widely diagnosed disorders in the world. There are many indicators showing an increase of students' mental health problems (Andrews, Hejdenberg, & Wilding, 2006). Many studies have revealed that students' performance in school, college and university are affected by symptoms of depression and anxiety. Early prevention of mental health problems among young adults in the universities is important. Understanding their psychological distress such as depression, anxiety and stress, as well as their correlates, would allow appropriate screening and intervention programs to prevent mental health problems about students (Shamsuddin et al., 2013).

We used HAD anxiety and depression scale the present study. The HADS was originally developed as a screening tool for patients in a hospital setting for anxiety and depressive symptoms (Langvik, Hjemdal, & Nordahl, 2016). The HADS found it to have good psychometric properties and to perform well in assessing symptom severity and anxiety and

depressive disorders in health settings and in the general population (Bjelland, Dahl, Haug, & Neckelmann, 2002).

There are a few studies about ethical behavior and personality traits (Kalshoven, Hartog & Hoogh, 2011; Cardy & Selvarajan, 2006). Kalshoven, Hartog and Hoogh (2011) found the positive relation between ethical leader behavior and personality traits. Cardy and Selvarajan (2006) had found statistically significant relationship between moral behavior and personality traits about university students. Metzer, De Bruin, and Adams (2014) have used personality traits in their study about undergraduate university students in the South Africa. They have found that personality characteristics were negatively correlated with anxiety and depression.

The aim of this study was to demonstrate whether the personality characteristics and emotional states are effective in terms of students' moral behaviors. To address this aim, the following null hypotheses were investigated:

- ✓ There is no statistical significant difference between male and female students in terms of moral behavior
- ✓ There is no statistical significant difference between male and female students in terms of personality characteristics
- ✓ There is no statistical significant difference between male and female students in terms of anxiety and depression
- ✓ There is no statistical significant relationship among moral behavior, personality characteristics and emotional states
- ✓ Students' moral behavior does not explain by their personality characteristics and emotional states

2. Method

Study participants

Our study was based on voluntary participation. Students filled out questionnaires anonymously. There were 463 public university students in our study group and 65.2% of them were female. Their ages were between 18-24 with a mean age of 20.35 ± 1.35 years.

Instruments

In our study, we used tree different scales; moral behavior scale, hospital anxiety depression scale (HAD) and personality characteristics scale.

To measure student's moral behavior, The Ethical Behavior Rating Scale (EBRS) developed by Hogan, 1973 and Blasi, 1980 and further evaluated by Hill and Swason (1985) was used. The Turkish version and validation of the EBRS was performed by Kapıkıran (2007). In terms of global moral behavior, the EBRS has fifteen items, which are rated on a 5-point scale. Higher scores indicate a higher degree of moral behavior. In this study we found the internal consistency reliability (Cronbach's alpha) of this scale to be 0.77.

Basic Personality Traits Inventory (BPTI) developed by Gençöz and Öncül (2012). The scale evaluates personality characteristics. BPTI revealed six separate personality factors, named extraversion, conscientiousness, agreeableness, neuroticism, openness to experience and negative valence. The inventory consists of 45 items rated on a 5-point Likert-type scale from 1, "this characteristic does not represent me at all," to 5, "this characteristic represents me very well". In this study, the Cronbach alpha coefficient was .87, .79, .83, .82, .79 and .70 in extraversion, conscientiousness, agreeableness, neuroticism, openness to experience and negative valence respectively.

Hospital Depression and Anxiety Scale (HAD) developed by Zigmond and Snaith (1983). We used the Turkish version of HAD scale which was formerly translated and validated for the Turkish language by Aydemir, Güvenir and Küey (1997). The HAD scale contains anxiety and depression subscales. The scale had fourteen items. Anxiety subscale has got 7 items and

depression subscale has got 7 items. All items are rated on a 4-point scale. Higher scores indicate a higher degree of anxiety and depression. In this study, the Cronbach Alpha coefficient was .76 and .70 in the anxiety and depression subscales, respectively.

Data Analyses

Statistical analyses were performed by SPSS version 18.0. We used reliability analysis, student *t* test, correlations and hierarchical regression analysis.

3. Findings

Our study group was consisted of 463 public university students in our study group and 65.2% of them were female. Their ages were between 18-24 with a mean age of 20.35 ± 1.35 years.

Table 1. Means (M), Standard Deviations (SD) and Cronbach α values

Variables	Item	Mean ±SD	C.Alpha
Ethical Behavior Rating Scale	15	59.58±6.02	0.77
Extraversion	8	28.90±6.31	0.87
Conscientiousness	8	31.36±4.94	0.79
Agreeableness	8	34.90±3.52	0.83
Neuroticism	9	24.79±6.86	0.82
Openness to experience	6	22.70±3.56	0.79
Negative valence	6	8.90±2.81	0.70
Anxiety	7	8.59±3.67	0.76
Depression	7	5.33±3.10	0.70

The scales we used showed a good reliability with Cronbach alpha values >0.70.

Table 2. Mean (mean ± SD) latent variables and *t*-test for gender

Scales	Female (n=302)	Male (n=161)	*t*	p
Ethical Behavior Rating Scale	3.99±0.38	3.93±0.44	1.515	.131
Extraversion	3.65±0.78	3.55±0.80	1.333	.183
Conscientiousness	3.98±0.61	3.80±0.62	2.963	.003**
Agreeableness	4.41±0.41	4.27±0.48	3.141	.002**
Neuroticism	2.76±0.78	2.75±0.72	.160	.873
Openness to experience	3.72±0.57	3.91±0.62	-3.175	.002**
Negative valence	1.39±0.40	1.66±0.53	-5.512	.000**
Anxiety	8.77±3.68	8.25±3.63	1.453	.147
Depression	5.11±3.04	5.75±3.18	-2.091	.037*

* $p < 0.05$; ** $p < 0.01$

We found a difference between male and female students in terms of conscientiousness, agreeableness, openness to experience and negative valence of personality characteristics. Female students were more conscientiousness and agreeableness than male students, but openness to experience and negative valence of male students was higher than female students. On the other hand, we found a difference between male and female students in terms of depression. Male students were more depression than female students.

Table 3. Correlations for Ethical Behavior Rating Scale, Basic Personality Traits Inventory and Hospital Depression and Anxiety Scale

	Ext.	Cons.	Agree.	Neuro.	Open	Nega.	Anx.	Dep.
EBRS	.376**	.403**	.593**	-.253**	.459**	-.365**	-.156**	-.294**
Ext.		.193**	.359**	-.335**	.579**	-.312**	-.418**	-.438**
Cons.			.413**	-.287**	.285**	-.324**	-.078	-.144**
Agree.				-.261**	.384**	-.472**	-.037	-.206**
Neuro.					-.233**	.369**	.450**	.274**
Open						-.239**	-.403**	-.395**
Neg.							.150**	.205**
Anx.								.585**

EBRS: Ethical Behavior Rating Scale; Ext.: Extraversion; Cons.: Conscientiousness; Agree.: Agreeableness; Neuro.: Neuroticism; Open: Openness to experience; Neg.: Negative valence; Anx.: Anxiety; Dep.: Depression
* $p < 0.05$; ** $p < 0.01$

Students' moral behavior was correlated significantly with personality characteristics, anxiety and depression. We found the highest positive relationships between moral behavior and agreeableness of personality characteristics (r=.593; p<.01). We found the lowest negative relationships between moral behavior and neuroticism of personality characteristics (r=-.253; p<.01). Similar negative relationship was found between anxiety (r=-.156; p<.01) and depression (r=-.294; p<.01) with moral behavior.

Table 4. Hierarchical regression analysis for the moral behavior predicting personality characteristics, anxiety and depression domains

	Predictors	Moral Behavior	
		Step 1	Step 2
Personality Characteristics	Extraversion	.058	.039
	Conscientiousness	.143**	.141**
	Agreeableness	.401**	.392**
	Neuroticism	-.018	-.023
	Openness to experience	.213**	.205**
	Negative valence	-.054	-.050
Anxiety and Depression	Anxiety		.048
	Depression		-.106*
	F	59.44**	45.68**
	R^2	0.44**	0.46**

* $p < 0.05$; ** $p < 0.01$; All coefficients are standardized coefficients

The regression analyses were conducted by entering the personality characteristics (extraversion, conscientiousness, agreeableness, neuroticism, openness to experience and negative valence) as controls in the first step, followed by the predictor, all the anxiety and depression in the second step. In the first and second steps of the regression model, extraversion, neuroticism and negative valence of personality characteristics did not exhibit significant relationships with moral behavior. We found a statistically significant positive effect among conscientiousness, agreeableness, and openness to experience of personality characteristics with moral behavior. On the other hand, we found only a statistically significant negative effect between depression and moral behavior in the second step. %44 of variance of students' moral behavior measure could be explained by conscientiousness, agreeableness, and openness to experience of personality characteristics in the first step. %46 of variance of students' moral behavior measure could be explained by personality characteristics and depression in the second step. Indeed, we can say that depression has a very small effect on the moral behavior.

4. Discussion

Students' moral behavior was correlated to personality characteristics, anxiety and depression. In terms of moral behavior there was no significant difference between male and female students. In present study, we found that female anxiety level was higher than the male students. On the other hand, there was statistically significant difference between female and male students for depression. We found that female depression level was lower than the male students. Andrea et al. (2004) and Langvik, Hjemdal, and Nordahl (2016) had found similar results in their study.

In terms of conscientiousness, agreeableness, openness to experience and negative valence of personality characteristics there was statistically significant difference between male and female students. By the way, we did not found a significant difference between male and female students in terms of extraversion and neuroticism of personality characteristics. But, Langvik, Hjemdal, and Nordahl (2016) had found statistically significant difference significant difference between male and female students in terms of extraversion and neuroticism of personality characteristics in their study.

We found statistical significant effect among moral behavior, personality characteristics and emotional states. In this regression analysis students' moral behavior was explained mostly by students' personality characteristics, followed by depression. This means that the development of students' moral behavior is mostly affected by students' personality characteristics. Hierarchical regression analysis for moral behavior predicting personality characteristics, anxiety and depression domains showed statistically significant explanations of the variance for first step (44%) and second step (46%). Conscientiousness, agreeableness, openness to experience and depression found to be important variables for students' moral behavior.

We found significant positive relationships between moral behavior and conscientiousness ($\beta = 0.12$, $p < 0.05$). Kalshoven, Hartog and Hoogh (2011) and Cardy and Selvarajan (2006) had found similar results revealed significant positive relationships between conscientiousness and the ethical behavior ($\beta = 0.12$, $p < 0.05$) and ($\beta = 0.39$, $p < 0.05$) respectively.

We found negative relationship between anxiety and depression with moral behavior. As Metzer, De Bruin, and Adams (2014) have found that ethical behavior was negatively correlated with anxiety and depression.

According to findings of this study extraversion, conscientiousness, agreeableness and openness had significant negative correlations with depression and anxiety. This finding is similar to the findings of study done by Gençöz and Öncül (2012). They also find that extraversion, conscientiousness, agreeableness, and openness dimensions of personality had significant negative correlations with social anxiety, depression and trait anxiety. Tatalović, Dadić-Hero and Ružić (2013) and Langvik, Hjemdal, and Nordahl (2016) found similar results anxiety and depression with personality characteristics.

Our results illustrate relationships that appear to exist among moral behavior, personality characteristics and emotional states. We can say that there is a difference between male and female students in terms of conscientiousness, agreeableness, openness to experience and negative valence of personality characteristics and depression. Also, we can say that students' moral behavior measure could be explained by conscientiousness, agreeableness, and openness to experience of personality characteristics and depression.

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How Much Is Public Opinion Influenced By Attitudes Of The Accountancy Profession Members In The Issue Of Business And Profession Ethics?

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I. Introduction

Ethical standards of accounting profession in our country are commonly based on laws and statutory rules orders regarding to them from the establishment of the republic till 1950's. State Auditing Board for Public Economic Enterprises of Finance Ministry had significant contributions on improving accounting and audit standards and ethical standards of the profession. Also ethical measures involved in the Turkish Commerce Law enforced after 1937 had significant contributions to the area (Aysan, 1998:31).

. First study in our country in order to enhance effect of ethical rules, to generalize applications, to assure adopted and popularized and implemented in private sector is the work of a few professionals gathered in Turkey Accounting Experts Association established in 1942. 14. In Turkish Accounting Congress gathered by the cooperation of this association with universities, professional and ethical rules for accounting was arranged in a similar way to the western countries (Yıldırım ve Çukacı, 2002:15).

The most important developments about business ethics and rules emerged years following the profession law enforced in 13 June 1989. After TÜRMOB established it managed to unite chambers and professionals under same professional and ethical rules. Because this responsibility directly belongs to Turkish Independent Accountant and Financial Advisors and Sworn-in Certified Public Accountant Chambers Associate (TÜRMOB). Item 29 of law numbered 3568 clearly appoints the task to organization in subject (Güredin, 1997:119).

"Disciplinary Regulations" of TÜRMOB published in 24216 numbered Official Journal in 31 October 2000, is about disciplinary boards' operations. Another institution does its share about regulating profession law is the Capital Markets Board. Inside the advice by the board called "General Principles for Independent Audit Firms and Auditors" there are rules regarding professional ethics (Yıldız, 2001:39).

Expectations of service providers and service receivers are different about ethical behaviors of accounting professionals. Entire public have encountered with accounting some point of their lives. But who does the accounting job are the accounting professionals. It is important how this professionals are perceived by the service receivers. Thoughts of other parts of society, meaning the public opinion, were tried to be analyzed with this study conducted in Çorum.

2. Disclosure For Public Who Will Use The Info Presented By Accounting Professionals

In a general manner public involves all society that can be listed as such interest parties; administrators, partners, stock investors and capital market corporations, creditors and money market corporations, tax collecting and several types of auditing organs of government, laborers and labor unions, consumers and consumer protection organizations. But all parts of the society; intelligentsia, laborers, poor, rich, paid workers, capital holders, retirees, public servants, are interested according to activity reports of businesses. Even though an individual is not within the groups in subject regarding specific businesses feels the urge to watch activity reports and financial status of companies forming economy because or reasons like; future of the economy, environmental cleanness, prosperity of upcoming generations titles concerning future of the country (Aysan, 1978:29-32).

Disclosure is one of the most important responsibilities of accounting and auditing profession. Because public who needs to be illuminated is comprised of fractions on decision making positions (Pekdemir, 1997:268).

A professional in our country must follow accepted ethical rules along with national and international laws all through the disclosure process and provide independent, objective information regarding social responsibility and public interest about the business within professional care. Considering that accounting professionals provides public service it is inevitable for them to have all characteristics of this service (Yıldırım ve Çukacı, 2002:5).

Along with the variety and different expectations of parties that are accountants answer, they should know that working independence, for an employer or for public on their service area does not change anything when it comes to ethical behavior and disclosure. In other words, it should not be forgotten that acting according to ethical principles and rules anytime-anywhere has a significant role on public disclosure. Public disclosure principle can be summarized as gathering real financial info of corporations and businesses, ensuring the credibility of the information and announcing to the public (Marşap ve Akbulut, 2002:213).

Economies based on information made it possible collect more financial information more freely than ever. Information has gain much more importance for capital markets after economic developments where is highly competitive.

Old economy created basic values of the profession is also is a foundation for the new economy. Professional impartiality and integrity has become the most important indicator of thrust building accounting profession. But keeping professional thrust won't be enough by its own. There are some changes needed to be done (Wyman, 2002:23).

While presenting information to the public it is not enough for accounting professionals who has ethical responsibilities to see themselves independent, impartial and honest. Others should see them independent, impartial and honest. Otherwise credibility of the information presented decreases significantly (Özocak ve Baş, 2001:200). In that circumstances professionals should find answers for questions; how does our customers see credibility of our information, how does government see, what is the public opinion? This is a requirement of the responsibility ethics stand on.

3. A Survey About Public Opion On Accounting Professionals And Analyze

3.1. Purpose, Content and Method of the Study

Purpose of this study is to understand public opinion about accounting professionals and public perspective about accounting profession.

Survey technique which is a scientific research method was used in this study. There are two parts of survey questions. Demographic features are placed on the first part and statements according to measure public opinion about accounting professionals are on the second. Survey was conducted in Çorum city center between 1 March – 31 May 2016 and 283 interviews provides sufficient data are included in the study.

Frequency distribution was observed via SPSS 18 software during survey data analyzes.

3.2. Findings of the Study

Findings of the study are shown in tables.

Table 1: Demographic Features

Demographic Features		Frequency	Percent (%)
Gender	Female	96	33,9
	Male	187	66,1
Age	20-29	61	21,6
	30-39	91	32,2
	40-49	89	31,4
	50-59	34	12,0
	60 and above	8	2,8
Educational Level	Primary Education	22	7,8
	High School	85	30,0
	Associate Degree	38	13,4
	University	121	42,8
	Graduate- Post graduate	17	6,0
Monthly Income Level	1300 TL and below	38	13,4
	1301–2000TL	51	18,0
	2001-3000 TL	72	25,4
	3001-4000 TL	82	29,0
	4001TL and above	40	14,2
Job	Self-employed	62	21,9
	Laborers	32	11,3
	Tradesman	61	21,6
	Businessman	17	6,0
	Public Servants	73	25,8
	Unemployed	38	13,4

There are total 283 people (96 women, 187 men) participated in our research. When we look at the age distribution of these sample we see the density is between 30-49 ages (%63.6). We see 121 bachelor degrees, 85 high school graduates, 38 associate degrees, 22 elementary graduates and 17 post graduate degrees on educational status. When we evaluate monthly revenue levels, there were no big differences between groups. 82 people had 3001-4000 TL, 72 people had 2001-3000 TL monthly income. Density is between 2001-4000 TL with %54,4. When we look at professional distribution, we found 62 self-employed, 32 laborers, 61 tradesman, 17 businessman, 73 public servants and 38 unemployed.

Table 2: Working Status with an Accounting Professional

	Frequency	Percent
Yes	163	57,6
No	120	42,4
Total	283	100

163 of our 283 participants stated that they have worked with an accounted at least once. 120 said never.

Table 3: Type of Accounting Professional Worked With

	Frequency	Percent
Independent Accountant	51	31,3
Independent Accountant and Financial Consultant	81	49,7
S-CPA	31	19,0
Total	163	100

Table 2 shows 163 people at least worked with an accounting professional. Table 3 shows which accounting professional groups that 163 people worked with. 51 worked with an independent accountant, 81 worked with an independent accountant and financial consultant and 31 worked with a sworn-in certified public accounted.

Table 4: Working Period With Accounting Professional

	Frequency	Percent
1-5	51	31,3
6-10	64	39,3
11-15	28	17,2
16-20	15	9,2
21 and above	5	3,1
Total	163	100

Table 4 shows the number of years worked with the same accounting professional. 51 people said between 1-5 years, 64 people said between 6-10 years, 28 people said between 11-15 years, 15 people said between 16-20 years and 5 people said more than 20 years.

Table 5: Numbers of Accounting Professional Worked with

	Frequency	Percent
1	76	46,6
2	58	35,6
3	27	16,6
4	1	0,6
5	1	0,6
6	0	0
Total	163	100

We determined that people works with the same accounting professional for long years. There were 76 who worked with 1 accounting professional, 58 who worked with 2 accounting professionals and 27 who worked with 3 accounting professionals during activity period of their businesses. There were only 2 people worked with 4 or more accounting professionals.

Table 6: Determination Causes for Working with an Accounting Professional

	Frequency	Percent
Hide Commercial Secrets	6	6,2
Not to be Honest and Impartial	11	11,3
Incompatible Behavior Profession with Honor	31	32
Disagreeing in Fee	29	29,9
Professional Inadequacy	20	20,6
Total	97	100

6 of the people who are not working with the same person and working with another accounted said her/his previous accountant revealed commercial secrets, 11 said She/he wasn't acting honest and impartial, 31 said she/he had shown behavior conflicts with business ethics and 20 said professional inadequacy.

Table 7: Reasons for Accounting Professional Choice

	Frequency	Percent
Graduated School	24	8,5
Professional Experience	164	58,0
Positive References	95	33,6
Total	283	100

We asked 283 people who worked with accounting professional or going to work with one about what they are looking for during their choice of accounting professional. 24 said they look for the school accounting professional graduated from, 164 said they are looking for professional experience and 95 said positive references effects their choice.

Table 8: Attitude against Rumors about the Accounting Professional They Work With

	Frequency	Percent
Determine the Contract	72	25,4
Donot Mind	61	21,6
Behave with Doubt	150	53,0
Total	283	100

When we study reaction of people after hearing a rumor about the accounting professional they work with, 72 said they would immediately determine the contract, 61 said they would not mind and 150 said they will always doubt person in subject's work.

Table 9: Expectations from Accounting Professionals

	Frequency	Percent
Less Price Demand	41	14,5
Pay Less Taxes	37	13,1
Following up all her/his work	121	42,8
Don't Consider them	84	29,7
Total	283	100

People working with accounting professionals have different expectations. In our study 41 stated less price demand, 37 stated making him pay less taxes, 121 stated following up all his work is the most important factor. 84 said these three points has no meaning for them and they don't consider them.

Conclusion

With our previous studies on approaches of accounting professionals on importance of ethics on public disclosure like relationship between customer satisfaction and ethics within total quality management in accounting business we tried to understand professionals' opinion. But accounting service receivers' idea on professional ethic is as important as service providers' opinion. Because generally there is a there an inequality regarding information between accounting service provider and receiver. One side presents the information and the other receives. Being legal is not always being ethical. Just like not everything legal is ethical. Also when it comes to accounting and auditing business what is important is not how ethical you act but how it is perceived by the information users we call the public. This study aims to analyze public opinion about accounting professionals. In order to that a survey study was conducted in Çorum between the dates 1-31 March 2016 with 283 participants. %33.9 of the participants were women, %66.1 were men, %63.6 was between the ages 30-49, %48.8 had bachelors or post graduate degrees. Highest income group was 2001- 4000 TL with %54.4. When we look at job or business situation of the participants we see; %6 businessmen, %11.3 laborers, %21.6 tradesmen, % 21.9 self-employed and %25.8 public servants. %86,6 are information users of accounting. We can consider %13.4 unemployed as potential users. 163 people said they worked at least with one accountant. When we look at the distribution, %31.3 worked with an independent accountant, %49.7 worked with an independent accountant and financial consultant and %19 worked with a sworn-in certified public accounted. When we examine working periods, %31.3 worked 1-5 years, %39.3 worked 6-10 years, %17.2 worked 11-15

years, %9.2 worked 16-20 years and %3.1 worked more than 20 years with the same accounting professional. Density is between 6-10 years working period. When we look at first 10 years we see a %70. 6 rate. This drops after. Number of accounting professional worked with are; 1 for %46.6, 2 for %35.6, 3 for %16.6 and 3 or 4 for %0.6. Rating is the most for working with 1 or 2 professionals with %82.2. When we analyze terminating causes we see the ratings; %32 behaviors conflict with professional ethics, %29.9 wage dispute, %20,6 professional inadequacy problems, %11.3 not being honest and/or impartial, %6.2 not keeping secrets. We saw that accounting service receivers care most about behavior conflicts with professional ethics. While choosing accounting professional ratings are %58 for experience, %33.6 for positive reference and %8,5 for graduated school. Positive reference means recognition and it is important. How you are recognized is more important than how you are. When we question behavior after hearing a rumor about the accounting professional we saw ratings; %53 doubt, %25, 4 termination of contract and %21.6 not paying attention. When we asked expectations from accounting professionals we found keeping up with one's all business is in the first place with %42.8 This shows the importance of the self-confidence. %14.5 said lesser wage expectation and %13.1 said paying less taxes. %29.7 said other.

Information users want to trust professionals, them to stay away from acts conflicts professional ethics, them to be professionally adequate, honest impartial, them to keep their secrets, them to make themselves pay less taxes and them to leave a good impression on public.

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A Structural Equation Modeling About Life Satisfaction

Nuran Bayram, Mine Aydemir

1. Introduction

Human nature does not have a static structure. People might give different reactions to the events and situations. People's reactions form their own lives. Life can be satisfied or not living a fulfilling life. It is important that a person satisfying life and this process can be affected by many variables. These variables; located within the environment of the person, age, family status, economic status, stress, fears, decision making patterns and so on. Thus, in this study, we discussed the stress, fear of negative evaluation and spontaneous decision making style that can be considered to be associated with life satisfaction.

Life satisfaction is defined as a general judgment or evaluation of a person regarding his or her own life (Pavot, Diener, Colvin & Sandvik, 1991). According to Frisch (2000), life satisfaction describes a subjective evaluation of an individual's most important needs, goals, and wishes. In other words, life satisfaction is the subjective evaluation of a person's judgments of general life satisfaction or life quality inclusive of specific living areas (Marques, Pais-Ribeiro & Lopez, 2007; Bayram, Aytaç, Aytaç, Sam & Bilgel, 2012).

The stress assessed difficulty relaxing, nervous arousal, and being easily upset or agitated, irritable, or over-reactive and impatient. Stress provides the means to express talents and energies and pursue happiness; it can also cause exhaustion and illness, either physical or psychological. When stress is perceived negatively, it may become linked to physical and mental illness. Stress can affect both health and academic performance (Campbell, Svenson & Jarvis, 1992). On the other word, characteristics of stress sources may gather in three groups; daily events, life events and specific life events. People shows some physiological, psychological and behavioral reactions when they face of a stressful event or situation. Stress is a compelling experience for the person most of the time (Tuğrul, 2000). At the same time, stress can affect life satisfaction.

Decision-making is identified as the ability to choose alternatives based on the values and preferences for a given object. It is also a process of making choices among competing courses of action. The ability to make decisions is the criterion for taking responsibility for actions and making independent decisions about the future (Masureik, Roman, Roman & Toefy, 2014). Decision making style is described by Drive et al. (1990) "the learned, habitual response pattern exhibited by an individual when confronted with a decision situation" (Spicer & Sadler-Smith, 2005). Spontaneous decision making means impulsive and prone to making "snap" or "spur" of the moment. This style characterized by a feeling of immediacy and desire to come through the decision making process as quickly as possible (Moghadam, Tehrani & Amin, 2011; Thunholm, 2004).

The creators of the scale to measure fear of negative evaluation defined the construct as "apprehension about others' evaluations, distress over their negative evaluations, avoidance of evaluative situations, and the expectation that others would evaluate oneself negatively." This does not necessarily mean that the subject believes they are performing badly, just that they are afraid of having performance evaluated negatively by others (Watson & Friend, 1969, p. 449; Crawford, Leuzinger, Brannon & Hamner, 2015). On the other hand, fear of negative evaluation is defined as apprehension about others evaluations. The predisposition of fear of negative evaluation exacerbates the possibility that individuals will become high in public self-awareness (the state form of self-consciousness) in a pressure situation (Mesagno, Harvey & Janelle, 2012).

When we research in the literature, there are many studies for these four concepts used in the study. But we could not find any studies that together these four concepts. This aspect is important in this study. Studies have shown that the positive relation between stress and fear of negative evaluation (Talhat & Aslam 2012; Karakashian, Walter, Christopher & Lucas, 2006; Mounce, Keogh & Eccleston, 2010; Nonterah et al., 2015). Some studies even have shown that fear of negative evaluation is positively correlated with psychological distress (including anxiety and depression). Wu Tsui-Feng & Wei Meifen (2008) have found positively correlated between fear of negative evaluation and DASS-Depression and DASS-Anxiety.

There are a few studies about decision making style and predicted stress (Riaz, Riaz & Batool, 2014; Allwood & Salo, 2011 - 2012; Thunholm, 2008). Allwood & Salo (2012, 2011) found that avoidant style and dependent style were significantly associated with higher perceived stress in their study. Bavoľár & Orosová (2015) had found statistically significant relationship between avoidant decision making style and stress.

Researchers found negative relation between stress and life satisfaction. For example, Barnes & Lightsey (2005) had found a negative and significant relationship between life satisfaction and stress (-0.42). Extremera, Duran & Rey (2009) had found negative correlation coefficient (-0.49) between stress and life satisfaction. Mahmoud, Staten & Lennie (2012) had found negative correlation coefficient (-0.39) between stress and life satisfaction in their study. Alleyne, Alleyne & Greenidge (2010) had found negative correlation coefficient (-0.28) between stress and life satisfaction.

The objective of this study is to examine the relationships among life satisfaction, stress, fear of negative evaluation and spontaneous decision making among university student in Turkey. In order to find the relations between variables the structural equation model was used.

2. Method

Study participants

500 public university students participated in the study. Our study was based on voluntary participation. Students filled out questionnaires anonymously.

Instruments

Four scales were used in the study.

To measure life satisfaction, the satisfaction with life scale (SWLS) developed by Diener, Emmons, Larsen, and Griffen (1985) and further evaluated by Pavot and Diener (1993) was used. The Turkish version and validation of the SWLS was performed by Durak, Durak, and Gençöz (2010). In terms of global life satisfaction, the SWLS has five items, which are rated on a 7-point scale. Higher scores indicate a higher degree of life satisfaction. In this study we found the internal consistency reliability (Cronbach's alpha) of this scale to be 0.81.

The decision making style scale (DMS) developed by Scott and Bruce (1995) was used for measuring decision making style in this study. Scott and Bruce's decision style scale that is the most encompassing among the different decision style scales. It includes the following five styles: Rational (exhaustive information search, systematic evaluation of alternatives), Intuitive (unsystematic information processing and reliance on premonitions and feelings), Dependent (dependent on advice from others), and Avoidant (tries to avoid making decisions), and Spontaneous (wants to reach a decision quickly). According to Scott and Bruce, individuals generally have different levels of all five styles, although one style is usually dominant. (Allwood & Salo, 2012). The Turkish version and validation of the DMS was performed by Taşdelen (2002). This scale had 24 questions. Dependent DMS subscale has got 4 items and the other subscales have got 5 items. All of the items are rated on a 5-point scale. In this study, we used only spontaneous decision making style. The reliability coefficient of spontaneous DMS (Cronbach's alpha) was 0.85.

To measure fear of negative evaluation, fear of negative evaluation scale (FNES) developed by Leary (1983) and adapted into Turkish by Çetin, Doğan and Sapmaz (2010). Fear of Negative Evaluation Scale (FNES) is a self-report scale designed to measure tolerance of the individuals in case of others' negative or hostile evaluations about themselves (Karabulut & Bahadır, 2013). In other word, the scale measures the degree to which people experience apprehension or anxiety at the prospect of being negatively evaluated by others. FNES has eleven items, which are rated on a 5-point scale. Higher scores High scores indicate that the participant tends to behave in ways designed to avoid being evaluated unfavorably. In this study we found the internal consistency reliability (Cronbach's alpha) of this scale to be 0.89.

The Depression Anxiety Stress Scale (DASS) is a 42-item, single, self-report measure of depression, anxiety and stress, developed by Lovibond and Lovibond (1995). The DASS-42, translated into Turkish by Uncu, Bayram and Bilgel (2007) and further evaluated by Bilgel and Bayram (2010). The DASS is a 42-item instrument measuring current (within the past week) symptoms of depression, anxiety, and stress. Each of the three scales consists of 14 items answered by using 4-point likert - type, ranging from 0 (did not apply to me at all) to 3 (applied to me very much, or most of the time). Higher scores on each subscale indicate higher levels of depression, anxiety and stress. The total scores of each sub-scale were calculated by summing up the points of relevant items. Each sub-scale is scored separately. In this study, we used only stress scale, and the reliability coefficient of stress scale (Cronbach's alpha) was 0.88.

Data Analyses

Structural equation modeling (SEM) was performed. SEM was used to show the effects of fear negative evaluation, spontaneous decision making style and stress on life satisfaction. SEM specifies the direct and indirect effects among latent variables and is used to describe the amount of explained variance for each variable. The adequacy of the model was assessed by (1) Goodness of Fit Index (GFI), which shows the amount of variances and covariance explained by the model and should be greater than 0.90 for an adequate fit of the model; (2) Comparative Fit Index (CFI), which should be also greater than 0.90 for an adequate fitness; (3) Root Mean Square Error of Approximation (RMSEA), which should be below 0.05 for a good fit; and (4) Standardized Root Mean Square Residual (SRMR) which should be below 0.05 for a good fit model (Steiger, 1990; Bryne, 2001; Hoyle, 1995; Bayram, 2013). For data analysis, we used IBM SPSS Amos ver.16 and SPSS 18 for Windows Evaluation Version.

3. Findings

Of the 500 respondents, 273 (55%) were female and 227 (45%) male students. 66% of participants have the economic status as moderate. 19% of participants have last year student.

The covariations between the error terms that were allowed in this model. These are not shown in the figure, and arrows indicate hypothesized paths. The results were $X^2/df=1.839$; GFI=0.90; CFI=0.94; RMSEA=0.04; SRMR=0.05. The goodness of fit provided evidence that the hypothesized model was stable. To estimate the direction and magnitude of the effects among latent variables identified, a recursive SEM was fitted using the maximum likelihood estimation method. The best fitting solution is illustrated in Figure 1. The path coefficients are the standardized estimates of direct effects which are interpreted as standardized regression coefficients. All estimated path coefficients were significant.

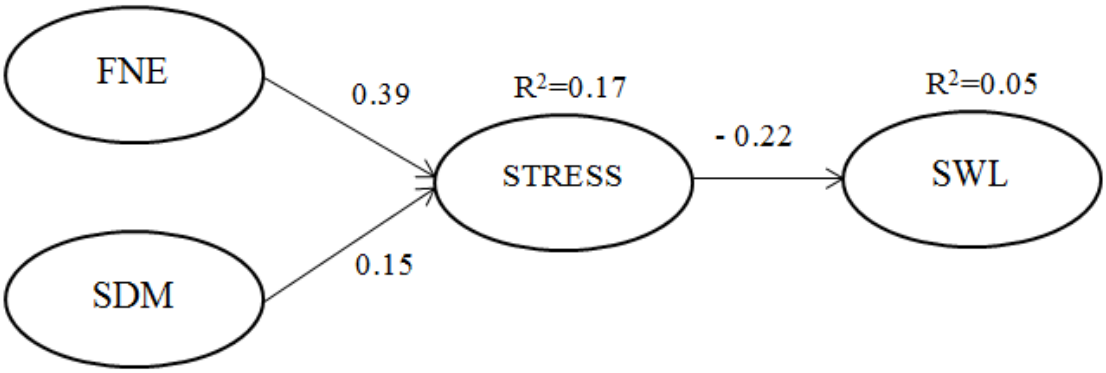

Figure 1. Structural Equation Model for Life Satisfaction

The R^2 value for stress was 0.17. Fear of negative evaluation (β=0.39; p<.05) and spontaneous decision making style (β=0.15; p<.05) had a strong positive effect on stress. On the other word, 17% of the variance in stress was explained by the direct effect of fear of negative evaluation and spontaneous decision making style. The R^2 value for life satisfaction was 0.05. Stress (β= -0.22; p<.05) had a direct negative effect on the life satisfaction measure. On the other word, the stress explains 5% of the variation in the life satisfaction. This finding indicates that the fear of negative evaluation and the spontaneous decision making were affecting the stress. With increasing the stress there was a decrease in the life satisfaction. At the same time, the stress plays a mediating role for fear of negative evaluation and spontaneous decision making style on the life satisfaction.

4. Discussion and Conclusion

This study was to examine the relationships among life satisfaction, stress, fear of negative evaluation and spontaneous decision making among university student in Turkey. In order to find the relations between variables the structural equation model was used. This model shows that stress is positively affected by fear of negative evaluation and spontaneous decision making style. As Talhat & Aslam (2012) have found that fear of negative evaluation was positively correlated with psychological distress (i.e. depression, anxiety and stress). Karakashian, Walter, Christopher and Lucas (2006) and Mounce, Keogh and Eccleston (2010) have shown the positive relation between stress and fear of negative evaluation. Also, Nonterah et al. (2015) have found that using by structural equation modeling in their studies for students that fear of negative evaluation was positively affected by stress.

Riaz, Riaz and Batool (2014) have found that spontaneous decision making style positively predicted stress. But, Allwood & Salo (2011, 2012) in their study have found that no statistically significant relation between stress and spontaneous decision making style. They have found statistically positive significant relation between stress dependent and avoident decision making styles (Salo & Allwood, 2011). Thunholm (2008) was found to be associated with avoidant decision style and perceived stress.

On the other hand, the model showed that life satisfaction is negatively affected by stress. Researchers found negative relation between stress and life satisfaction (Extremera, Duran & Rey, 2009; Barnes & Lightsey, 2005; Mahmoud, Staten & Lennie, 2012; Alleyne, Alleyne & Greenidge, 2010). By the way, stress plays a mediating role for fear of negative evaluation and spontaneous decision making style on the life satisfaction in the model.

Our results illustrate relationships that appear to exist between psychological conditions and decision making processes. Thus, individuals with disorders such as depression, stress may

have a particular pattern of decision styles. Our results show that relationships among life satisfaction, stress, fear of negative evaluation and spontaneous decision making.

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The Relationship Between Tourism Education and Career Intensions in the Industry: A Research Study on Undergraduate Students

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1.Introduction

The tourism sector is one of the fastest developing economic sectors around the globe. Its contribution to a country's economy makes it a very important market and source of income. The tourism sector has an important effect on a country's balance of payments and contributes to the economy by increasing foreign currency income. For this reason, both developed and developing countries want to take a big share of this market. To achieve this, it is necessary to adapt rapidly to changes in the industry and to create new services to meet newly-emerging demands in the market. In the light of this situation, it is important to choose the best way to increase competitive advantage with regard to such aspects as: creating customer- focused strategies to keep ahead of the opposition; seeking out opportunities to extend product range and maintaining flexibility and performance (Eleren & Kılıç, 2007).

As tourism is part of the service sector, and the person receiving the service and the person offering the service are in regular face to face communication, the education of the workers employed in the industry is crucially important (Pehlivan,2008). The tourism sector involves two types of education formal and informal. Formal education is normally associated with education programs and involves a multiple-staged process, starting with secondary education and continuing with a bachelor's degree, post graduate degree and doctorate. Informal education usually takes the form of short certificate programs which are offered by government agencies and private institutions. Formal or informal, the main goal is to give people the required vocational education and to provide a skilled workforce (Hacıoğlu, 1992).

While developed countries benefit from the income effect of the tourism sector, developing or under-developed countries want to share the benefit of the economic and job creation opportunities of this sector (Yıldız, 2011). Employment is a significant problem for developing countries. As tourism is a labor intensive sector, it can alleviate this to a certain extent. Because tourism is a product which is consumed where it is produced and with it, besides others is the least autonomous sector that brings service element into the forefront. In this way, the tourism sector is differs from others. It involves hard working conditions as much as it offers career possibilities. These conditions detract from the appeal of the industry to students and others who otherwise may have a career goal in this sector, and also serves to increase employee turnover rates.

2. Research

2.1. The Purpose and Method of the Research

The purpose of the study is to determine the perspective of undergraduate tourism students with regard to tourism education. The aim is to determine which career direction these students want to progress towards and their ambitions in this sector. As part of the research part that has been created with the theoretical information provided with the information to this part, field work has been included. With this purpose research hypothesis population and sample information is useful in order to explain the forms and scales used in this research.

The population for this study consists of students from several cities in Turkey whose universities offer undergraduate education in tourism. The research sample is made up of a

total of 818 undergraduate students who were chosen from 11 universities using the random sampling method.

The focus group of the study comprises 3rd and 4th grade tourism students, and the research is limited by the answers of this sample group.

The following assumptions are made in carrying out this research:

- Participants are giving true and sincere answers.
- The chosen sample group adequately represents the universe/sample size.
- Generalization can be applied to the universe via the sample.
- The measuring instrument is sufficient to measure the research questions.

A questionnaire form was created using the scales found in the study of Pehlivan (2008) &Çeribaş (2012). A review of the literature has been carried out …and additional articles were added to cover some important aspects before the questionnaire reached its question form. The first part of the questionnaire consists of questions which collect demographic data such as age, gender, education department, grade, apprenticeship time, entrepreneurship and academic career aims of students. The second part of the questionnaire comprises a Likert - type 37-statement question form.

The entries regarding tourism undergraduate students' career intentions in the sector consist of 37 Likert- type statements which use a method of scoring from 1 to 5, as in "1: Strongly Disagree" and "5: Agree Strongly".

The SPSS 20.0 statistical package program was used for the evaluation and analysis of the data collected from the field research. The frequency and percentage distribution of the answers given to every question in the questionnaire and propositions were calculated, and the benefits of scales such as fair average, standard deviation, mod, median, minimum and maximum values were taken. The data were subjected to factor analysis and sub-dimensions that explain the research have been determined. Researched was carried out to see if there were meaningful statistical differences between the obtained sub-dimensions and demographic variables. The results were evaluated with the "Independent Samples T-test", "One Way ANOVA" and "TUKEY" tests. The factor sub-dimensions' relationships with each other and their relationship with the Rank Order data groups (age and experience in years) were subjected to "Spearsman's Rank Order Correlations"

We must know whether or not the scale is giving reliable results for the answers given. For this, a reliability analysis was carried out and Cronbach's Alpha value was calculated. From the analysis results it is evident that the scale is highly reliable (0.775). Alpha value at (0.775) shows the scale is in the reliable category. From this, the answers given to the questions in the scale were found to be consistent and therefore these data could be used. The sample's sufficiency (reliability) in this factor analysis has been scaled with the Kaiser-Meier-Olkin (KMO) and Bartlett tests. Depending on the results of Kaiser-Meier-Olkin (KMO) test, it has been determined that the sample sufficiency of the factor analysis has high reliability (.846).

2.2. Factor Analysis

With regard to the committed factor analysis, i the statements are gathered under five factors. In the analysis, the articles were subjected to rotation via the Varimax method and i it was ensured that the related articles came together under the same factors. The Varimax method is the most commonly used rotation method. In order to reveal the construct validity of this questionnaire, the articles were first subjected to article total correlation. After the Varimax rotation the articles which were below the .20 load value at the factor analysis were removed from the scale. As a result 5 factors were obtained with eigenvalue higher than 1. These factors, (sub) dimensions and the articles that form the factors, are presented in the chart below. As a

result, the formed factor groups were named as: working conditions, pay grade, received tourism education, working in alternative sectors and gaining respect.

The variance explanation percentages of the five factors obtained by factor analysis are given in the chart below. From this, the total research explanation percentage of these 5 factors was found to be 54.587%. The first factor, **"Working Conditions",** explains the variance with a total of 14.670%. It was found that the research explanation percentages of the factors were close to each other. The total variance explanation percentage of the explanation was 54.587%.

Table.1 Factor Analysis

		1	2	3	4	5
WC Working Conditions 14.670%	s28I think the working conditions in the tourism sector are stressful.	.832				
	s29I believe workers in the tourism sector are being loaded with more than they should be.	.798				
	s27 I think the work hours of the tourism sector are long and irregular.	.796				
	s31 I think it's hard to sustain a family life while working in this sector.	.737				
	s30I don't find the days off per week are enough.	.668				
PL Payment Level 11.288%	s25I think I can generate a good amount of income in a short time in the tourism sector.		.858			
	s24The tourism sector offers an opportunity to earn a good income.		.803			
	s26I think I can have a good standard of living by working in the tourism sector.		.718			
	s22I think rising up the ranks is much easier than in other sectors.		.609			
RTE Received Tourism Education 10.779%	s9I think the education I'm getting supports my working life adequately.			.746		
	s5I think the education I'm getting has a good impact on my intention to work in this sector.			.742		
	s11I think the tourism education I'm getting is improving my technical skills, which this sector needs.			.716		
	s4I think the undergraduate tourism education given by the universities is adequate.			.654		
	s16I'm thinking about working as a lecturer at a tourism high school or university.			.475		
WAS Working in Alternative Sector 8.973%	s10I could have improved my skills much more if I had been educated in another area or profession.				.794	
	s23I think it would be better for my career if I had education in another field.				.786	
	s20I don't know what work I will do after I graduate.				.592	
	s7I think the apprenticeship I have done has destroyed my willingness to continue in this sector in this sector.				.496	
GR Gaining Respect %8.877	s17It is one of your goals to become a manager in the tourism sector.					.639
	s37Tourism education is a must in order to become a respected worker.					.636
	s36I believe I will have more respect because of the tourism education I had.					.588
	s35I think working in the tourism sector will have important benefits for my social life.					.570
	s3I think there should be more applied rather than of theoretical courses.					.512

2.3. Correlation Between Factors

The closest relationship between factors is in the case of PL- payment level and GR- gaining respect. It can be seen that there is a medium level of correlation and a positive relationship between these two factors (.435**). In the study, students think that a rise in their payment level will also increase their level of respect in the sector. It is also understood that there is a medium degree of correlation and a positive relationship between RTE- received tourism education and WC- working conditions (.304**). It is believed that an increase in the amount of education taken in the sector will be rewarded with a rise in payment. There were also found to be low level positive relationships between GR and WC, and between WAS and WC.

Different negative- oriented relationships were found as follows: negative and weak between PL-payment level and WAS- Working in Alternative Sector –(.290**), also negative and weak between WAS- Working in Alternative Sector and GR- Gaining Respect (-.250**), negative and very low between AD-apprenticeship duration and WC-working conditions. (-.153**), negative and very weak relationship between RTE- received tourism education and

WAS- working in alternative sectors.(-089*) It was also noted that with a reduction in salary in the sector, interest in other sectors tends to rise.

2.4. Gender Differences of the Students

We investigated whether or not there were any gender differences amongst the participants of the study using the Independent T test. The results show that there is no meaningful difference with the "alternative sectors" factor but there are meaningful differences in other factors ($P<0.05$). The results obtained for the female students regarding "Working conditions" are placed between agree and strongly-agree (4.15) while male students' answers are between agree andundecisive (3.93). Both male and female students think working conditions are hard, but female students perceive them to be harder. As for the payment level factor, both male and female students gave answers close to indecisive, but female students' scores (3.22) are closer to agree than those for male students. (3.08) Again with this factor, it is observed that the female students are much more positive towards payment levels in the sector than male students. With the Received Tourism Education factor, two parallel results were found , showing that female students (3.17) find the education they get is perceived to be much more beneficial towards achievement of their career goals than male students.(3.02) With the Gaining Respect factor, it is observed that the female students (3.67) scored closer to the "agree" line than the male students. (3.52) So female students believe that they will be in a more respected rank in their social life when they work in the tourism sector.

2.5. Payment Level

According to the "Independent T-test" which was carried out to understand if there is a statistically meaningful difference based on participants' grades, no meaningful difference is indicated between the "Working in Alternative Sectors" and "working conditions" factors, but there is a meaningful difference for other factors ($P<0.05$).

It can be seen that the analysis results for "payment level" show 3rd grade students (3.29) and 4th grade students (3.08) lie between agree- indecisive, but 4th grade students scored closer to indecisive. Therefore, 3rd grade students perceive the payment level in this sector more positively than 4th grade students.

Similar results were obtained for the Received Tourism Education factor and it is evident that 3rd grade students (3.22) find their tourism education more beneficial towards their career goals in the sector than 4th grade students(3.02).

For the Gaining Respect factor, 3rd grade students (3.69) scored closer to the "agree" line than 4th grade students.(3.54). So 3rd grade students are more confident that they will gain respect in this sector.

2.6. Ambition or Inclination to be an Entrepreneur in a Different Sector

Our factors were analyzed with the Independent T-Test to detect if there were any meaningful differences with regard to the students' ambitions to be entrepreneurs in other sectors. When we examine the chart showing group values, the averages of the students who are keen about being entrepreneurs in other sectors have given answers closer to "indecisive" for the "Payment Level" factor (3.06) than the other students (3.26). From this, it is confirmed that the students who think the payment level is adequate, and that the tourism sector provides the opportunity to earn a good income, do not choose to have a career plan to be entrepreneurs in other sectors.

At the same time there are differences with regard to the "alternative sectors" factor ($p<0.05$). When we look at the averages the averages with regard to awareness of opportunities in alternative sectors the students who believe they can use their skills in other sectors (3.25) show that they can be entrepreneurs in other sectors as a career plan after graduating. There are no statistically meaningful differences between averages for the other factors.

2.7. Undergoing Education Department Variable

When the reliability of the analysis is tested and the homogeneity of the variances are inspected using the Levene Test, it is found that all the factor variables are homogeneous and reliable ($p>0.05$). The average difference between departments is statistically meaningful ($p<0.05$). The average differences between departments are only found to be meaningful for the Payment Level factor. The average of the departments for "Working Conditions" (4.03) is close to the agree option. All departments chose the "agree" option for this factor. In other words, all students studying in all departments find the working conditions in the tourism sector hard.

The average of the departments (3.15) between the indecisive-agree options is close to indecisive. The Tourism Guide department's average answer to the payment level factor is closer to agree (3.61), while that of the accommodation department (3.08) is closer to indecisive. From this, it is understood that the tourism guide students see the tourism sector as an opportunity for a good income while the accommodation department students are more indecisive on this issue. In general, the students think they will have a good income when they work in this sector. When the Anova chart is examined, it is evident that there is a meaningful difference between departments only for the payment level factor. ($p=.015$)

Based on the TUKEY test chart which reveals the differences between departments, it can be seen that the accommodation, travel and other departments reveal lower averages than the tourism guide department, and this difference is meaningful. The other average differences between departments are not found to be meaningful.

The average for the Received Tourism Education factor is (3.09),which is close to indecisive. When we look at the alternative sectors factor , the average (3.09) is also close to the indecisive option. In general, it appears that all students have an indecisive attitude. When we look at the gaining respect factor, the average (3.59) is between the indecisive-disagree options. All departments have similar averages for this factor, confirming that students believe they will gain respect in the tourism sector.

2.8. Effective Reasons in Students' Choice of Tourism Department

From the Levene test results it is evident that all factors ANOVA results are reliable ($p>0.05$). Based on the ANOVA test results, the differences between the groups for the Payment Level, Alternative Sectors and Gaining Respect factors are statistically meaningful. ($p<0.05$)

The group average for the Payment Grade factor (3.15) is between agree and indecisive but they are closer to the indecisive option. The "My university grade was enough" and "other" groups' averages are meaningfully lower than "I wanted this department" and "career possibilities". For the tourism department, the averages of the students' "I wanted this department" and "career possibilities" groups are meaningfully closer to the agree option than the

"My University grade was enough" and "other" groups. This indicates that, in other words, they think they can make a good profit in the tourism sector.

The group average for Working in an Alternative Sector (3.08) is very close to the indecisive option. The lowest average was given to the "I wanted this department" option (2.66) and between indecisive-disagree, while the highest average was given to "My University grade

was enough" (3.29). So the students who willingly chose this department are not thinking about working in alternative sectors. According to the ANOVA test result there are meaningful differences in the group averages.

From the Tukey test, the averages given to the "I wanted this department" option are significantly lower than those for "My University grade was enough". The students who preferred the "I wanted this department" option gave averages which were closer to the "disagree" option than the students who chose the "My University grade was enough" and the "other" options. When the Tukey chart is examined, the average given to "career possibilities" is closer to the "disagree" option than that for "My University grade was enough". Again, the "I wanted this department" option is Significantly lower than the "It's a popular department" option. The analysis results show that the "My University grade was enough" and "career possibilities" options are getting significantly closer to the "agree" option.

The group average given to the gaining respect factor (3.60) is between 'agree' and 'indecisive' and is closer to the 'agree' option. It can be seen from the ANOVA test that the differences between the groups are Significant. The averages given to the "I wanted this department" and "career possibilities" options are Significantly higher than those for the "My University grade was enough", "close friends" and "other" options. So the students who willingly choose the department, and who think that the career possibilities are considerable in this sector, also believe that this sector will gain them respect. It is seen that the working conditions factor (4.04) is very close to the agree option. The group average for the "Gained Tourism Education" factor (3.10) lies between agree and indecisive, and is closer to the indecisive option.

2.9. The Target Working Area in the Tourism Sector

The Levene Test results verified that the variance analysis is reliable ($p>0.05$). Based on the ANOVA analysis results, it was found that the students do not differentiate between working areas on the basis of the level of tourism education factor ($p>0.05$). It is understood that other factors' averages differentiate according to the students chosen work area ($p<0.05$).

It was found that the group average for the working conditions factor (4.03) is very close to the agree option. The lowest is the accommodation option (3.88) and the highest is the food and beverage working area (4.18). It can be deduced from this that the students who want to work in the accommodation area find its working conditions easier than the students who want to work in the food and beverage area, but in general it is believed that every area in the tourism sector has hard working conditions. The average of the students who want to work in the accommodation area is higher. The differences between the averages of other work area are statistically meaningless with regard to the payment level factor, the highest group average (3.13) is found in the case of the accommodation area, and the lowest average (2.93) in the other area. The students who participated in this questionnaire think that the accommodation area workers have a better payment level. For the payment level factor, the averages of the students who want to work in other areas are significantly lower than for those who want to work in the accommodation area.

The average found for the received tourism education factor is (3.08). Students who want to work in the accommodation area think that the education provided is better than that provided to students who want to work in other areas. In general, there is a disparity in the levels of education offered. According to the ANOVA test results there is no meaningful difference between the groups.

There was found to be an average of (3.09) for the alternative sectors factor .The lowest average is for the accommodation area (2.94) and the highest average is for the other areas. So the students who want to work in the accommodation area tend to make a permanent career

plan, unlike those students who want to work in other areas and who have lower inclination to work in alternative sectors In general the tendency to lean towards alternative sectors for the students who will work in the tourism sector is high. For the alternative sectors factor, the averages of the students who want to work in the food and beverage and accommodation areas are significantly lower than those for students who want to work in other areas.

With regard to the gaining respect factor, the average was found to be (3.58), The highest average (3.67) is found for the accommodation area and the lowest average is (3.40) for the other areas. In general, most of the students who want to work in the tourism industry believe that they will gain respect from working in the sector.

Finally, for the gaining respect factor, the averages of the students who want to work in other areas are significantly lower than those for the students who want to work in the accommodation area.

3. Results Obtained and Proposal

In this study, five factors are selected for investigation with regard to students' attitudes towards the tourism sector. These are: working conditions, payment level, received tourism education, alternative sectors and gaining respect. From this, using results obtained by correlation analysis , the strongest relationship found between the factors is between payment level and gaining respect. Therefore the students believe that, as their payment level rises, so too will their professional and social respect.

In this study, the students do not show the students do not show confidence in the quality of the received tourism education, and they do not think the education is sufficient. From this it is understood that there are some concerns with the tourism education given by the universities. Also the will of passing on to alternative sectors of the students who chose the tourism education willingly is getting lower. But it is seen that generally the students chose their departments just because their university grade was good enough. The students who consider the tourism sector as an opportunity for a good payment level do not plan to make an entrepreneurial career in other sectors. From this data, it is evident that students' thoughts about the payment level are inconsistent but closer to positive, and this is combined with a strong belief that good payment levels will bring respect and social status.

Our study indicates that both male and female students find working conditions in the tourism sector hard for their career goals, but female students find this harder than male students. When inspected generally, as the work conditions get harder, the inclination to transfer to alternative sectors increases. It was found that female students care more about the payment level in tourism sector than male students and they are also more likely than male students to think the tourism education they are receiving is satisfactory and in line with their career goals. When the data is analyzed for the attitudes of different grades, it is found that both 3rd and 4th grade students find the working conditions in the tourism sector hard, but the former group finds it harder than the latter. 3rd grade students are more likely to think the tourism education they are receiving is satisfactory in terms of their career goals than 4th grade students. These findings indicate that, in order to achieve the goals set for the tourism sector, there must be an urgent focus on solving the key problems of the sector. Meeting the needs of the new qualified labor force taking their place in the sector is one of these key problems.

The tourism sector faces a number of issues which need to be resolved. For example: the general perception that jobs in the sector are low-paid and low status; tourism-educated staff working side-by-side with unqualified workers under the same conditions; insufficient guarantees of job security and the low priority generally assigned to education in the sector. Tourism is a predominantly private sector industry based on service. There is a tendency for organizations in this sector to favor low payment levels over the education levels of their staff.

The effect of this is that well-educated, highly-capable people who enter the industry become easily frustrated when they encounter such attitudes and are pushed away from the sector.

4. Referances

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"Inequality" As a Keyword to Understand International Community Assets in 21st Century: Changing Patterns in Social Sciences and International Law.

Daniela Fisichella

1.Introduction. An international legal approach to State sovereignty and global inequality from 20th to 21st century

International relations currently trigger a strong debate on State sovereignty issue in international law as well as on States' goodwill in sovereignty implementation measures. State sovereignty is may be the first and most important international legal order pillar, leading to its whole consistency and balance and conducive to restoring peace when threatened. Strictly linked to sovereignty and its inherent powers it's a broad – limitless, indeed – use of the force to assert State authority beyond its borders; according to classic international law, wars of conquest, land occupation and a wide range of military operations are lawful. Similarly but differently, a strict control on national territory and human community settled in it, on national citizens first and foreigners then, is executed to apply internal law to the former and international rules to the latter - by legal instrument of diplomatic protection.

International law rapidly changed during 20th century: rather slowly after the Great War and quite fast after the World War II, since United Nations Charter in 1945, out of that tragic conflict, bans the use of force in international relations, [i] at the same time recognizing the sovereign equality of all its Member States.[ii] This prohibition dramatically turns States dynamics in their mutual relations, unveiling sneaky endeavours to jeopardise other States sovereignty through their own weakness and affecting established patterns in primacy/dependency roles. Trade and economic relations therefore become the ground for States' race on international arena, instead of open wars fought to restyle wide balance among nations. In the seventies, New International Economic Order (NIEO) fully remarks State sovereignty primacy worldwide; NIEO paves the way to some developing countries' proposals aimed to empower themselves in trade subsidies and tariff reductions and United Nations Conference on Trade and Development provides the proper institutional forum to debate.

Since 1945 to 1989, international community is portrayed by State's normative role in new geopolitical features and assets: the birth of many new States brings with it new inputs, calls, claims and tensions. Up to 1989, international community's life and growth lays on bipolar political system, where each out of the two single area feeds itself inside to translate its political powers beyond its boundaries. Use of force among States is forbidden, but State sovereignty is unquestionably strong and assertive. Lack of balance and equity in international community is seen either as an historical consequence of long-lasting colonialism and patent new States' inexperience in management of independence and self-government - or at least it's so explained. International organizations (IO's) play a pivotal role by seconding either States coming out from decolonization, most of them still underdeveloped after decades of independence and new States stemming from former Soviet Union and Yugoslavia breakthrough.

At the turning point to nineties and since 1989, next to *State sovereignty* as a basic principle of international law, *inequality* between States becomes a new issue either for IO's and scholars. Alongside this, new needs and aspirations coming out of international human rights law strongly buttressed critics to classic tenet of State sovereignty: this new branch of international law, developing after the end of World War II, definitely challenged State attitude to people, national citizens included. In the nineties, international community

strongly redefines itself by flourishing of many new States, born on older ones' ashes, hopefully looking at its future: a promising and thriving one only if responsibilities are shared among all international actors and States above all – many more than before. Emphasis must be given on 20th century last decade for several reasons: world enter into dynamics of globalization, certainly unaware of plenty of meanings it was going to have for the human mankind and at the same time opening new ways for States rivalry, often very aggressive too. Meantime, new actors emerge in world community scenario besides States and IO's, by a relevant influence on global policy notwithstanding their private nature, like multilateral corporations.

Currently, a long time seems to have passed from 20th century international community features: State sovereignty, first formal requirement to exercise public powers, looks rather blurred under several threats, challenges and attacks, often coming from incumbent non-State actors. Developing countries' main purpose was then to play sovereignty just achieved in order to redress international relations and international law accordingly; they were also aimed to reduce broad and patent inequalities, given by long lasting dependence from another country, firstly on a formal way (colonialism) and secondly by economic, financial and cultural interference. In the seventies and further, inequalities were the apparent outcome of colonial government, enforced from outside in place of non-existent domestic powers. Effective disparity between States come along to their formal equality, so global inequality is the ultimate outcome in a globalized world: where facts always overrule the law and consequent inequalities have to be redressed in order to restrict most powerful States' sovereignty.

Therefore inequalities emerge as a new paradigm to drive current international relations and involve new international law as well.

Levels of development among nations are not questioned in this paper nor it has the purpose to draw a map of each single developing State's improvement along decades. For fact-figures and tables, reference will be made either to 2016 UNESCO Social Science Report, Challenging Inequalities: Pathways to a Just World [iii] and to 2017 Oxfam Briefing Paper, An Economy for the 99%. [iv]

'Inequalities' are here at stake as potential factors of conflict and, consequently, as possible preconditions to violation of use of the force prohibition, more than as criteria to measure domestic society's wealth. The global justice issue will also be barely dealt with, since relationship between sovereignty and inequality is here investigated to focus more on a new legal view than an ethical one.

I firmly believe that to international legal approach, relationship between State sovereignty and inequalities *within* each single State is crucial to grasp the comprehensive scope worldwide. A stunning asymmetry can be perceived in State behaviour and policy when facing with contemporary problems: high control is implemented on borders, either to migration flows and security matters, in order to daily reaffirm State powers. The more the State fears contemporary threats, external ones above all, the less it seems to pay attention to incidence of transnational issues on a domestic level – apart from sensitivity to political consensus. It happens since States look at their own stability more on sovereign unilateral powers than on a global size and consequent alleged cooperation. Notwithstanding dramatic changes in 21st century international relations, States' attitude has little changed. To guarantee peace and restore it, use of the force has been banned by UN system first and customary law then, driven to a *jus cogens* principle binding any States and compelling all to find out peaceful solutions to international problems. 'Peace' is a golden target, deserving any efforts from everyone concerned, but two comments can't be neglected: 1) peace can't be held and managed only banning the use of force, as international sanctions against violations are not prompt in most of cases and they are possible but not sure in many of them.

Moreover, many attempts to legitimate use of force are successful; 2) international actors in 21st century are not only States and IO's, since non-state actors multiply complexity and troubles within international relations. Their unforeseeable behaviour weakens diplomatic action, dealing with invisible enemies.
To draw a conclusion and mark a starting point to think about a shift of paradigm in social sciences and international law, State sovereignty should be focused – whether not revised – to current international dynamics. The crucial question is: "What kind of sovereign state if it's unable to properly manage both external and domestic pressures?".

2. Challenging State sovereignty: are we sure State guarantees order and stability? Sovereignty v. Inequality

Outstanding changes in international community challenge State sovereignty adequacy as the proper tool to manage global assets. The ban of use of force should make world a safer place for all, States and people, but it goes differently since States are often unable to have control on events and find extremely difficult to tackle daily complexity. Financial crisis, terrorist attacks, natural disasters and immigration are ordinary issues in 21st century international summits agenda, involving national institutions engagement to solve them. Few steps have been taken: financial crisis, concerning both developed countries and developing ones, increases unemployment therefore fostering social complaints; terrorist attacks can't be prevented no more as they are executed by single terrorist units often, but not ever, linked to a structured transnational association and implemented suddenly, very fast and by non-conventional tools; [v] natural disasters (earthquakes, floods, frosts, drought, famine, sand storms, tsunami) often worsen States' extremely bad conditions, compounding other recurring grieves as children disappearance and bribery; with regard to immigration, it has become one of the main concerns for States, even though only those involved as land destination are really coping with dramatic issue of migration.
On the threshold of the new millennium and regretting global insecurity, by Millennium Declaration UN General Assembly (GA) pointed out fundamental values to be reached in 21st century: Freedom, Equality, Solidarity, Tolerance, Respect for nature, Shared responsibility and 8 Millennium Development Goals (MDG's) were adopted. Aiming to meet needs of world's poorest and ushering in a working agenda with governments, civil society and private actors, their purpose was to reach in 2015 at last very ambitious goals struggling poverty. [vi] Crucial item in 2000 was to end extreme poverty and little attention was devoted to inequality, since it wasn't meant as a priority. A reference was made to equity and equality at the global level, entitled to a collective responsibility. [vii] MDG's have been further rescheduled in 2015, putting inequality at the core of agenda. UNGA's awareness of troubled consequences if inequalities going to be deepened, took it to a new framework in development agenda since 2000; an evidence of inequality pivotal role in place of poverty is found in 2015 new development plan. [viii] In fifteen years (2000-2015) target to globally reduce poverty has been reached, but it's not enough. A single goal is provided on inequality by the 2030 Agenda for Sustainable Development, and Goal 10 (Reduced Inequalities) declares: "the most vulnerable nations ... continue to make inroads into poverty reaction. However, inequality still persists and large disparities remain in access to health and education services and other assets.". [xi] Moreover "while income inequality *between* countries may have been reduced, inequality *within* countries has risen." and "there is growing consensus that economic growth is not sufficient to reduce poverty if it is not inclusive and if it does not involve the three dimensions of sustainable development – economic, social and environmental.". [x]

The new agenda mainstream is not to eradicate poverty, but to curtail global inequalities, increasing world instability. Goals to be attained within 2030 are not only more than in 2015 - 17 instead of 8 - but strictly intertwined in a global approach agreed to undermine inequalities. [xi]

Back to State sovereignty, it has to be questioned how it fits to current global governance management and if equality between States is still the proper keyword to tackle transnational issues. Of course State sovereignty can't be overcome and it certainly is the first legal international principle, but singularly taken it's not able to restore safety and stability any more as both endangered by external threats and internal pressures. In the past, worldwide land was under few States control and a balance was attained by intergovernmental agreements among peers and equal entities: sovereign States, entitled to do everything but what forbidden by international binding rules. Order was kept by belligerent means or wars of conquest, and belligerence was ruled by international law of war, as it is now when it occurs. Peace was a gift of winners to losers, signed by a treaty founded on unequal conditions. This kind of balance stood on strong inequality between dominant States and subjected territories, where success and fortune of the former laid on exploiting rich supplies of the latter. Still now, international relations often work quite well if grounded on patent inequalities, proposing ever new patterns of international order rooted on unequal system. Ended colonization doubly reshaped international community, since many new independent States emerged, trying to learn as quick as possible how to exercise sovereignty profitably for them; and it redressed intergovernmental relations, mainly inspired to trade agreements and cooperation within IO's. The second half of 20th century is marked by IO's activities, played in every field worldwide. [xii] Notwithstanding bipolar asset, or may be thanks to it, since fifties up to 1989 international community developed a veritable new order, rather peaceful or, at least, leaving serious troubles far away from Western countries: based on inequalities between developed countries and developing ones – without going any further in development scale – global governance was assured by imbalance due to inequalities. Therefore, order and balance somewhere in the world was the outcome of persisting imbalance elsewhere. At the turn to 21st century these dynamics can't be settled anymore, because a) the international community is fully interconnected, and tensions somewhere induce reactions elsewhere; b) no State is currently immune from negative impact of external threats within itself; c) inequalities between developed and least developed countries don't guarantee wealth and stability to the former, therefore translating disparities into national spill over effects; d) world supplies are scarce and exhaustible; costs of monopolist roles are today too high and supplies shortage worsen disparities instead of reducing them. The only way to remove inequalities is a better use of available resources and, above all, a shift from a monopolistic to a largely inclusive use of supplies and capitals.

To draw some conclusions, international community is now crossed by too many State behaviours in many respect inconsistent with their survival in the long run. The prohibition of the use of force should be supported by a true obligation to cooperate in any relevant field sensitive to international community well-being and share some crucial responsibility: to save environment and slow down climate change, to step by step restore peace where collapsed, to introduce human being needs replacing an empty – or weak at least - State sovereignty unable to express an effective authority beyond State borders as well as giving citizens a safe and enduring inclusion.

3. Inequality as the new paradigm of international relations

Since 2001 – 9/11 attacks to New York City Twin Towers marks a starting date - and in less than twenty years, international community has been called to cope with many different and

serious issues, compelling States to cooperate and find out a balanced reply to instability due, first of all, to international terrorism. *Ex post* it can be argued that it failed: terrorist attacks have become more frequent, gradually shifting to a sort of permanent and invisible worldwide war and prompting States concerned by these new forms of terrorism to adopt urgent measures; they began to enforce lawful restrictions of individual freedoms as national emergency, then limitless extended. National policies adopted by single States to face terrorism then worsened decline and definitely opened the way to inequalities between and within countries. The pretended self-defence, sole exception to the use of force ban, quickly spread over many other States territories, often in the pre-emptive form taken as invalid by prominent international law.

It can actually argue that State sovereignty let fear prevailing on political strategies: States are expected to use public authority aiming at restoring order and stability behind borders as well as stability and peace beyond them. Neither the former nor the latter can be envisaged now in international community and increasing inequality is recorded all over the world. If lots of events changing it are not surprising and often biased by actors different than States, nonetheless State sovereignty bears main responsibility on international political trends and agreements. Inequality as a fact seems to be the starting point of State political and normative powers in 21st century: State sovereignty can't neglect the huge role inequality plays unbalancing current international relations and a compromise has to be reached to change strategies and make them successful. A growing tension between sovereign States equality and human inequality gives emphasis both on States weakness and hostile reactions from left out people from national non inclusive policies. In 2003, international law Professor Michael Glennon said: "Treating states as equals prevents treating individuals as equals.". [xiii] It's worth noting that exploitation of poorest States' supplies by richest ones, makes the latter richer than earlier and increases inequalities within the former, strengthening empowered elites usually in business affairs with developed States. Inequality key analysis always reports a broad social asymmetry in capital distribution within a State economy rooted on commodities, raw materials and energy export. Developed States keep benefits from global inequalities, driving resources from the least developed countries, therefore they don't find profitable changing *status quo*. As a consequence of increased State development, national citizens are expected to improve their quality of life style, but it recently seems to go differently since poverty indicators often depict a growth instead of a decrease. Linked to State sovereignty obligations to its citizens, there's a duty to increase people's wealth and well-being and not to emphasize already existing inequalities or create new ones. Among State commitments to citizens also responsibility to protect (R2P), largely explored by social science, philosophy and international law, which is relevant to State sovereignty effective powers but not really to inequality. [xiv]

International human rights law provides for many obligations, both negative and positive, compelling States to refrain from actions endangering individuals meant as human beings (*non facere* obligation) and to promote its own citizens' life conditions enhancement (*facere* obligation). International human rights law entails an obligation not to affect enjoyment of human rights for people living in other States, but also an obligation – calling upon most on developed States as they owe proper means to be effective – to fight poverty of national citizens and to promote human dignity by a fair distribution of food, water and basic services. [xv] With regard to least developed State powers, they are entitled by same obligations but their formal authority lacks effectual means to be implemented: they are equals to any other States but their sovereignty is somehow empty or flawed. According to a political interpretation of State international legal personality, hegemonic tendencies clarify State sovereignty extension, wondering to what extent it has to be protected for failed or outlaw States.[xvi]

Looking at figures, [xvii] decrease in global poverty is sided by inequalities higher than in the past, because life conditions in some huge countries like India and China improved their rates, [xviii] but development is not keeping away new inequalities within those countries. Therefore reducing global poverty, as called upon by MDG's, doesn't guarantee itself some more equality in the world. This issue is not only an ethical one, even though from this side it concerns international law of human rights, but it strictly refers to legal equality of States as primary responsible of international community well-being and reminding that international law addresses individuals too. [xix] International human rights law plays a leading role to promoting a fair global distribution by national policies oriented to people-centred development, as focused by this branch of international law. [xx]

State sovereignty therefore deserves to be emphasized in its responsibility asset, to be shared among equals – States, indeed, no matter their development. [xxi]Dealing with sovereignty and inequality tenets many years ago, international law Professor Benedict Kingsbury declared that "State sovereignty as a normative concept is increasingly challenged, especially by a functional view in which the state loses its normative priority and competes with supranational, private, and local actors in the optimal allocation of regulatory authority. ... but in the absence of better means to manage inequality it remains preferable to any of the alternatives on offer.". [xxii]

A limited level of global inequality can help national economic growth, but it should be temporary and reduced step by step. The last UNESCO Social Science Report clearly shows how many and intertwined single inequalities there are [xxiii] and how world is converging around increasing inequalities. If they are lowering between countries, boosting individual living standards, nonetheless many export-based economy countries aren't benefitting yet. Not only income average matters, since inequalities undermine social and cultural sustainability as well as health and education services access; wherever they emerge, inequalities are everyone's concern. Following UNESCO Social Science Report's pattern and involving all relevant stakeholders - public and private - international activities should be consistent to the same pathway, focusing on current trends in inequalities first and on consequences of inequalities as well as transformative responses later. [xxiv]As stated before, international law explores inequalities from outside and by a systemic perspective dealing more with founding legal principles than with figures. Both social sciences and international law are nevertheless converging on a unique scientific opinion classifying methods against inequalities within an holistic and interconnected framework. [xxv] Intersection between single inequalities increases global ones whereas trends between countries are going to remit. Rational exploitation of natural resources is needed since they are not inexhaustible and the planet Earth will face their depletion sooner or later.[xxvi] Levels of economic inequalities are still higher in developing countries than in developed ones, notably in Africa and Latin America; in poor countries, development mechanisms still work slowly even where economy should be flourishing on raw materials export-centred. [xxvii]Remarkable capital flows from developed countries to developing ones aren't converted in wealth equally distributed within recipient countries, since they are often steered to governing elites holding them in a monopolistic system. Prominent inequality is also recorded in developed countries, since different distribution of wages and paid employment concern all countries. [xxviii]

To sum up, tailored intervention on inequality should be implemented focusing either on single State distinctiveness and each inequality item specific nature. Solving approach can only be set on a large pathway ever reminding that "no one will be left behind", an ethical imperative of new development agenda and a key to make international relations efficiently run.

4. Conclusions. State sovereign equality and shared responsibility

Recalling the crucial question asked above, concerning States' powers and attitude both to external and domestic threats, it's worth noting that in 21st century international legal order is still grounded on States sovereignty and equality: complying with Prof. Kingsbury's opinion, no alternative is offered to State sovereignty, since international relations are so far driven by formal political and legal acts unilaterally adopted by States or mutually agreed. Other non-state actors – multinational corporations, [xxix] terrorist groups - play a direct or indirect role in multilateral decision-making, triggering hidden changes within international community. Actors other than States affect international relations according to their own interests, often bringing severe instability States and people have to deal with. Non-state actors are not committed to act in conformity to people's interests and needs, whereas this duty is not questionable upon States. Admitting State sovereignty limits in current management of international relations and fully aware of inequalities raising worldwide, fair and proper methods to cope with contemporary trends are a broad approach built up on intersection dimensions of inequality variety.

Inequality becomes the new paradigm to understand international relations and to promote an international legal order restyling, which can't underestimate State sovereignty pivotal role in current times, but shall shape it under inequality key factor. Shared responsibility among States should be the golden rule to guarantee States leading role in international community balance, preventing at the same time a decline already set up by globalisation that can be stopped yet: none but States can prevent inequalities to broaden instead of curbing.

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[i] UN Charter, art, 2, § 4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.".

[ii] Art. 2, § 1 of UN Charter.

[iii] ISSC, IDS and UNESCO (2016), *World Social Science Report 2016, Challenging Inequalities: Pathways to a Just World*, UNESCO Publishing, Paris, retrieved from http://en.unesco.org/wssr2016, referred as *UNESCO Social Science Report* hereinafter.

[iv] Written by D Hardoon on helpful assistance of other experts, published by Oxfam International, it has been delivered in January 2017 and it can be retrieved from https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-economy-for-99-percent-160117-en.pdf. Hereinafter referred as *Oxfam Briefing Paper*.

[v] 'Conventional' tools are any kind of weapons.

[vi] UNGA Resolution 55/2, United Nations Millennium Declaration, 18 September 2000, http://www.un.org/millennium/declaration/ares552e.pdf, introducing 8 goals to be reached: 1) eradicate extreme poverty and hunger; 2) achieve universal primary education; 3) promote gender equality and empower women; 4) reduce child mortality; 5) improve maternal health; 6) combat Hiv/, malaria and other disease; 7) ensure environmental sustainability; 8) global partnership for development.

[vii] Millennium Declaration, art. I, § 2.

[viii] UNGA Resolution A/69/L.85, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields. Follow up to the outcome of the Millennium Summit, 12 August 2015, http://www.un.org/ga/search/view_doc.asp?symbol=A/69/L.85&Lang=E (Draft) and A/RES/70/1, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E. On post-2015 development agenda see also http://gfmd.info/en/site/post2015/757/UN-Post-2015-Sustainable-Development-Goals-Schedule-of-General-Assembly-Debates--Discussions.htm; on latest debates within 71st (2016) UNGA session https://www.un.org/press/en/2016/ga11880.doc.htm,21 December 2016.

[ix] http://www.un.org/sustainabledevelopment/inequality/: Goal 10 is fragmented in several targets to single out thorough inequality elements, therefore helping States and IO's towards proper policies adoption.

[x] Ibidem, italics added.

[xi] MSDG's are the following: 1) no poverty; 2) zero hunger; 3) good health and well-being; 4) quality education; 5) gender equality; 6) clean water and sanitation; 7) affordable and clean energy; 8) decent work and economic growth; 9) industry, innovation and infrastructure; 10) reduced inequalities; 11) sustainable cities and communities; 12) responsible consumption and production; 13) climate action; 14) life below water; 15) life on land; 16) peace, justice and strong institutions; 17) partnership for the goals. See also Kroll, C. (2015, September). Sustainable Development Goals: are the rich countries ready?. Bertelsmann Stiftung, retrieved from www.sgi-network.org/docs/studies/SDGs_Are-the-rich-countries-ready_2015.pdf .

[xii] IO's never jeopardise State sovereignty as they never could, but they often influence international framework either by their binding acts and opinions expressed by plenty of resolutions.

[xiii] Glennon, M. J. (2003, May/June). Why the Security Council Failed. *Foreign Affairs*, 82(3),16-35, doi: 10.2307/20033576, retrieved from https://www.foreignaffairs.com/articles/iraq/2003-05-01/why-security-council-failed.

[xiv] R2P entitles State intervention abroad to prevent and protect population from mass atrocities, like genocide, ethnic cleansing, war crimes and crimes against humanity. The principle counters to State's non-intervention duty and prohibition of interference in other State's internal affairs. On the core of the principle consent is recorded, but its extent is widely disputable. Main UN organs, AG and Security Council (SC) paid a lot of attention to R2P, promoting plenty of resolutions. Since 2006 by Resolution 1674, 28 April 2006, SC states that "development, peace and security and human rights are interlinked and mutually reinforcing.", § 3, and reaffirms "that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians. ", § 9. Since then, lots of resolutions were adopted by SC on R2P, devoted to each single critical situation: Global Centre for the Responsibility to Protect, R2P References in United Nations Security Council Resolutions and Presidential Statements, http://www.globalr2p.org/, updated to 21 December 2016. On R2P, Moslemi, B. & Babaeimehr, A. (2015, December). Principle of Sovereign Equality of States in the Light of the Doctrine of Responsibility to Protect. *International Journal of Humanities and Cultural Studies*, Special Issue, 687-697, retrieved from http://www.ijhcs.com/index.php/ijhcs/index.

[xv] Nijman, J. E. (2013, March 27). Human inequality puts sovereign equality to the test. *The Broker*, 1-6, retrieved from http://www.thebrokeronline.eu/Articles/Human-inequality-puts-sovereign-equality-to-the-test.

[xvi] Simpson, G. (2004).*Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*, Cambridge University Press.

[xvii] From *UNESCO Social Science Report*.

[xviii] Bourguignon, F. (2016). Global versus national inequality. In *UNESCO Social Science Report*, 44: "it is quite remarkable that the accelerated fall of inequality in the 2000s is to a large extent due to better growth performances in other developing regions, for example sub-Saharan Africa and Latin America.The roots of the increase of the within-country component of global inequality are in the rise ofinequality observed in several countries with a significant weight in the global economy: the USA in the first place, but also China and India, and to a lesser extent several European countries.". Moreover, "to keep global inequality falling, National inequality must be prevented from rising and must be cut down in countries where it is high.", ibid., 45.

[xix] Kooijmans**,** P. H. (1964). **The doctrine of the legal equality of states; an inquiry into the foundations of international law, Leiden: A W Sythoff.**

[xx] Salomon, M. E. (2011). Why should it matter that others have more? Poverty, inequality, and the potential of international human rights law. *Review of International Studies*, *37*(5), 2137-2155, doi: https://doi.org/10.1017/S0260210511000362, retrieved from https://www.lse.ac.uk/collections/law/wps/WPS2010-15_Salomon.pdf. The Author explains why a minimal approach to fight poverty have to be reconsidered, overcome by internation cooperation.

[xxi] Nijman, J. E., quoted in footnote 15, 5: "Today, the subjection to the rule of International law includes a subjection to well-developed International human rights law." and "sovereign equality is no longer the sole basis of international organisation … nor is human equality. Moreover, both principles are used by the powerful to legitimize imperialist behaviour.".

[xxii] Kingsbury, B. (1998). Sovereignty and Inequality. *European Journal of International Law*, *9*(4), 599-625, doi: https://doi.org/10.1093/ejil/9.4.599, retrieved from http://www.ejil.org/article.php?article=714&issue=50. Nijman, J. E. (footnote 15), 4: "The way in which states deal with their citizens and all forms of human inequality has thus become relevant to international politics to a greater extent than before. Be this as it may, sovereign equality should not be discarded too easily. It is also a very valuable principle of International law as it helps counter hegemonic acts by the great poker vis-àvis other states.". A more recent comment on States sovereign equality in Ansong, A. (2016, January). The Concept of Sovereign Equality of States in International Law. *GIMPA Law Review*, *1*(2), 14-35, retrieved from http://works.bepress.com/alex_ansong/2/.

[xxiii] *UNESCO Social Science Report*, 3: "Inequalities are multi-dimensional, multi-layered and cumulative.".

[xxiv] Ibid., Part I, II and III. Part IV is devoted to a social science agenda for the next ten years.

[xxv] Among many valuable contributions to *UNESCO Social Science Report*, some of them have to be notably mentioned by relevance to international law approach: Leach, M., Gaventa, J., Justino, P., Caillods, F, & Denis, M. Challenging inequalities: Pathways to a just world. Key messages and main contributions, 26-31; Justino, P., & Martorano, B. Drivers and dynamics of inequalities worldwide, 34-40; AA.VV. in Chapter I, Inequalities: many intersecting dymensions, 41-81; AA. VV., Chapter II, Inequalities in different parts of the world, 83-109; Gaventa, J. Consequences and futures of inequalities (an introduction to Part II), 111-117, proposing an interesting figure of interaction between Inequality Goal 10 and other SDG's, at 113; Jolly,R. Inequality: a historical issue within the United Nations System, 118-120; Østby, G. Inequality and political conflict,126-128, investigating on relationship between inequality, both vertical (between individuals) and horizontal (between identity groups), and conflicts and observing how the former doesn't affect the risk of conflict, while the latter indeed does; Leach, M. Inequality and sustainability, 132-134 and Transformative Pathways (an introduction to Part III), 184-190;

[xxvi] Reducing inequalities requires a different and better use of available resources.

[xxvii] *UNESCO Social Science Report* urges to look beyond economic inequality and highlights seven dimensions of it, economic one included: social, cultural, spatial, political, environmental and knowledge inequality, 22. They are the key intersection dimensions of inequality.

[xxviii] Belser,P. Wage and income inequality. *UNESCO Social Science Report*, 49.

[xxix] *OXFAM Briefing Paper*, 2.The engines driving exclusive growth, The role of corporations in driving the inequality crisis, 16-21.

Benefits of an Alternative Dispute Resolution

Özgür Oğuz

Introduction

Today, rapid development of technology has brought about the development of human relationships. The increasing relationships between people also develop the judicial and economic relationships and thus eventually increase disputes. Overcoming disputes is necessary to maintain bilateral economic and social relationships and to provide social order and peace.

The primary and main way of overcoming disputes is the court. Article 36 of the constitution put into force in 1982, saying “everyone has the right to be on fair trial either as a demandant or as a defendant by making use of legitimate ways and tools”, claims independent courts to be the primary and main authority to overcome any dispute.

However, among the issues that almost all legal experts complain about is the workload of courts and the length of the judicial process. The desire to overcome all kinds of disputes in courts is the main cause of these problems. Since our society does not tend to reach a compromise, people bring almost all issues to the court and prefer to solve the problem in the court even if they are really likely to reach a compromise. For this reason, the judicial process lasts longer, which contradicts with the principle in Article 6/1 of the European Convention of Human Rights stating that "everyone has the right to want their case to be solved in a reasonable period of time”. In addition, overcoming disputes late could also lead to loss of certain rights.

Bringing disputes to trial not only lengthens the process and increases the workload of courts but also loads heavy financial costs on the state and on individuals and increases enmity among individuals. Rather than solving the disputes in courts, alternative ways of solving these disputes will help overcome the problems mentioned above to a great extent. Spread of organizations of mediation and reconciliation based especially on individuals’ agreement is of great importance to maintain social peace.

Due to the fact that our society is not familiar with alternative ways of solving disputes and that there are several biases and doubts regarding these alternative ways of solving disputes, it is sometimes possible to make alternative ways of solving disputes obligatory. Compulsory application to the Arbitration Committee for Consumer Problems, mediation organizations in collective labor law, and compulsory mediation institutions for solving individual labor disputes are all examples for these compulsory alternative ways of solving disputes.

As alternative ways of solving disputes are essentially based on voluntariness, I think, despite several criticisms regarding compulsory mediation, compulsory mediation will be a fairly regulation considering the structure of our society and the problems experienced in practice.

Today, there are rapid developments in science and technology and an increasing interaction and communication between people. Parallel to this, economic and social relationships between people develop and vary. These rapid changes and developments have brought a number of new problems as well. As one result of this situation, new questions for solving legal disputes have started. Dispute occurs due to the break-up of the balance of benefits or to the violation of a current benefit preserved by law as a ‘right’. I order to protect the social peace and to maintain the social order, it is necessary to re-establish the balance in question. This balance is re-established with different ways of solving disputes.

Dispute is a type of disagreement which occurs in legal problems likely to be prosecuted, and it is possible to solve this dispute with negotiation, with mediation or with the intervention of a third party.

It is essentially the state's duty to solve any dispute, and this is even one of the reasons for the existence of a state. In addition, parties of dispute can solve the dispute with the help of different methods. These methods differ from one another depending on such criteria as the degree of formality of the process of solving the dispute, the third party's being active in the process, the third party's roles in the process, and the legal status of the agreement reached at the end of the process. Resorting to jurisdiction to solve the disputes seems to be natural in the flow of usual life, yet this should be the last resort. The reason is that the functioning of the jurisdiction system refers to a process which not only influences individuals psychologically but also leads to a social and financial burden. In addition, resorting to jurisdiction worsens the dispute which primarily involves two parties and transforms the dispute into a relationship involving three parties. Since those living in industrialized countries have had big problems in seeking for justice in recent years, jurisdiction has lost its function of being the basic and primary way of solving disputes.

Parties can apply alternative dispute resolutions only for special law relationships that they can freely dispose. Therefore, alternative dispute resolutions will not be put into force in such cases as divorce, separation, validity of marriage, guardianship, ward, personality, refusal of recognition of the child, annulment of the child relationship, determining the marital status, maintenance, ex parte proceedings and bankruptcy, which are all considered to be related to public order (Ildır, 2003, p. 41). Such disputes related to public order can only be solved via trials in courts.

In their private legal affairs which parties not concerning public order can freely dispose, parties will be able to try alternative dispute resolutions rather than civil procedures. Why should parties favor alternative dispute resolutions (ADR) instead of proceeding? Related responses to this question will be provided under headings below.

As a Term of Dispute

Dispute refers to a process experienced by parties in relation to its results though it is virtually related to a situation which both parties are not satisfied with regarding the issue of argument and which they have failed to overcome by themselves. With the involvement of the juridical bodies in the process, the rules especially regarding the legal procedure are determined by an authority which does not party to the dispute, and the decisions are made by this authority. Eventually, an authority unfamiliar with the dispute will actively influence the process. Consequently, it will be less likely to obtain a result satisfying both parties.

The Law on Trade Unions and Collective Bargaining Agreements, which uses the term dispute does not provide any definition explaining this term. The disputes in question are those arising between the employer and the employee or between the employer and the labor union or the employer union.

When the employer violates the rights of his or her any employee or when the employees talks to the employer to express their demand for the improvement of the working conditions, the concept of dispute occurs. In general sense, labor disputes refers to disagreements that occur between the employer or the employer unions and the employees or labor unions in relation to the arrangement of the working conditions, putting this arrangement into practice, interpreting and changing the arrangement, and expanding the scope of the arrangement.

Dispute occurs between more than one party when the disagreement between the parties cannot be solved. The individual who thinks he or she will fail to seek his or her right against the other party and who believes he or she is right in relation to the dispute is supposed to apply to an authority which has the power of sanction on individuals to solve the problem. The need for social policy has appeared in line with industrialization. Therefore, such problems experienced as a result of industrialization as determining the working hours, the wage policy,

protection of poor women and child labor, and the obligation to get organized under the body of a union occurred in 1930s in our country when statist policies were first put into effect.

To talk about the existence of a dispute, there should be discrimination between demands, expectations and viewpoints. This dispute is grouped under various names. The categories examining the disputes arising from the labor relationships between the employer and the employees include disputes regarding rights and benefits as well as individual and collective labor disputes.

If parties themselves solve the problems in relation to their rights and benefits, then the social peace, order and relationships will naturally be maintained. It is not always possible to overcome disputes via agreement of parties. The reason is that each party prefers their own rights and benefits to the other party's rights and benefits and that their demands are not approved or met by the other party.

These disputes can be divided into two especially in the field of labor law either as rights dispute and benefits dispute or as collective dispute and individual dispute. If the dispute occurs due to the use of a right gain deserved via a law, collective agreement or labor contract, then this can be regarded as a rights dispute. If the dispute occurs as a result of conflict between benefits and demands in the phase of singing a collective contract or a labor contract, then this can be considered to be a benefits dispute.

The difference between collective dispute and individual dispute is basically related to the positions of parties. Individual or collective disputes could also occur as rights and benefits dispute. A dispute involving employers and employees as a whole is called collective labor dispute, in which unions generally constitute of the parties. However, disputes that occur between the employer and one or more than one employee are referred to as individual labor disputes.

Dispute Solving Methods

After classifying these disputes, they should be solved. Otherwise, relationships cannot be maintained, and the social structure could be damaged. Though the present study focuses more on labor disputes, solving all the disputes is necessary to preserve the social structure and to maintain social peace.

There are several ways of solving disputes as an alternative to jurisdiction. These alternative ways of solving disputes are primarily based on solving the dispute with the involvement of both parties or of impartial third parties rather than courts. Alternative ways of solving disputes mainly include conciliation, mediation and arbitration.

Alternative ways of solving disputes have not been much popular and common within the Turkish Law System. As the main reasons for this, it could be stated that people have doubts about alternative ways of solving disputes; that people are not much familiar with them; and that our society is not liable to agreement.

In our law system, for the spread of alternative ways of solving disputes, several arrangements have been made. Among these main arrangements is the compulsory conciliation for collective labor law and the compulsory mediation for individual labor disputes.

The spread and development of alternative ways of solving disputes have a number of benefits both for the state and for individuals. The spread of alternative ways of solving disputes has such benefits for the state as decreasing the work load of courts, decreasing the budget allocated to jurisdiction, maintaining social peace and increasing the confidence in jurisdiction. As for individuals, maintaining economic and social relationships brings about numerous benefits such as reaching the solution in a shorter period of time, decreasing the financial cost, finding the opportunity to take a more part in the solution process, avoiding the risk of being a loser, preserving the privacy and having expert focus on the dispute.

Parties should apply arbitrarily to the mediation authority in law disputes. Even during this application, mediation requires parties to reach an agreement. Parties agree on mediation and determine the mediator together and start negotiations. Selecting the person together who will manage the mediation process and help maintain the relationship between parties will allow the process function better.

It is not always easy for parties to agree on the dispute and find a solution. In this respect, in order for parties to find a compromise, the mediator is supposed to suggest solutions without any judgment so that the process can function better and more productive results can be obtained. In this respect, for the purpose of dealing with the differences in practice and with the discussions in the doctrine, the mediator should certainly be provided with such an authority to suggest related solutions.

In addition, it is also important for mediators to obey the ethical rules and to consider the obligations required by law, which is extremely important for the success of the process and for the benefits expected from the alternative ways of solving disputes. Lastly, for the success of the process, it is also important to check whether these obligations and ethical rules are taken into account or not.

Benefits of ADR

a. ADR is Less Costly

Among the most criticized aspects of proceeding, which constitutes the most important mechanism for securing the justice and for overcoming disputes, is the highest cost of proceeding.

Proof and notification advances and legal fees paid at the beginning of proceeding are regarded as obstacles to the freedom of seeking for justice and rights (Kekeç, 2011, p. 85). Besides these expenses, other new expenses likely to occur in the process of proceeding can frustrate parties. In addition, if proof advances are not paid, then that proof is accepted to be abandoned (Civil Procedure Code (CPC) Art. 324/2), which is considered to be the biggest obstacle to justice. The fact that the loser of a case has to meet the proceeding costs is another obstacle in front of resorting to proceeding.

ADR are alternative ways of solving any dispute instead of proceeding. ADR does not lead to as big costs as proceeding does (Tanrıver, 2006, p. 158). First of all, at the beginning of the process, there are no expense items like legal fees and costs of notification, witnesses and experts. Therefore, the expense advances undertaken by the claimant at the beginning of proceeding to overcome the dispute do not exist in ADR. Unless there is an agreement on the payment rendered to the arbitrager, parties do avoid great costs based on the principle of equal payment.

In addition, spread of ADR is also beneficial in terms of procedural economy. Decreasing the work load of courts will help avoid the cost of overcoming the dispute and thus save money and time. As mentioned by Özbek (2009) in his book, there are concrete and strong examples of saving time and money due to use of ADR in USA (p. 206-207).

At the end of the process of ADR, in line with the Minimum Wage Tariff for Arbitrager announced and updated every year by the Ministry of Justice, parties mostly make a more reasonable payment when compared to the costs of proceeding. Unless otherwise agreed, equal payment of the arbitrager’s wage by parties not only makes this expense more reasonable but also helps avoid the fear of being obliged to undertake the costs of proceeding at the end of the process.

b. ADR Lasts Shorter

The lawsuit process is a long and troublesome process especially in Turkish judicial system. The work load of courts, negligence of experts and witnesses, difficulty of substitution of proofs, and failure of public institutions to respond to written writs are all among the most important factors that lengthen the process. The long process of proceeding and the long time spent securing the justice leads to a decrease in trust in proceeding, to the fear of seeking one's rights as well as to unjust treatments (Pekcanıtez, 1987, p. 23). Therefore, in cases of disputes, citizens do not want to be involved in the long process of proceeding, which could last years.

Although it was mentioned in the 1982 Constitution that proceeding should end rapidly (Art. 141/4), not just for the above reasons but also for others, proceedings in today's Turkish judicial system require long processes. When the appeal process is added to those long proceeding processes in local courts, proceedings lasting years occur. In order to shorten the appeal process and to decrease the work load of Supreme Court, such precautions were taken as applying to Arbitration Committee for Consumers' Problems. However, the intended success has not yet been achieved at all.

As mentioned before, the basic cause of the long process of proceeding is the work load of courts. If individuals can afford the costs without agreeing with each other even in case of trivial disputes, they then prefer to resort directly to proceeding. Since ADR means overcoming disputes via parties' agreement in the phase of proceeding or even without resorting to proceeding, it will not only help parties avoid suffering from frustration due to long processes of proceeding but also lead to a decrease in the work load of courts.

Putting ADR into practice before proceeding will not keep courts busy and will allow parties to solve the dispute in a shorter time through their own means. Even if parties reach an agreement during ADR, disputes will become more concrete during later probable proceedings. Moreover, some of these disputes will be solved, and one party will know the other's claims and understand each other better.

If ADR is put into practice during proceeding via an agreement between parties, the court will not do any related examination. If parties reach an agreement at the end of the process, the court will not have to give a verdict regarding the dispute. If parties fail to reach an agreement at the end of the ADR process, the court then will make an examination and give a verdict. However, even in such a case, parties will probably overcome some disputes or agree on certain issues. As a result, the court will not need to examine that case, which will eventually shorten the case to a great extent.

c. ADR Allows Parties to Take a More Active Part

The process of proceeding is a process which parties are not directly involved in and which allows them to communicate with each other via the judge or the lawyer. Parties cannot ask questions directly to one another. However, they can either direct the questions they have informed the lawyer about or ask questions via the judge during proceeding in the way the judge approves (Özbek, 2009, p. 209). This is such a case that really restricts parties' participation in the process of proceeding. In addition, parties cannot even present their proofs freely in the proceeding program determined in advance.

Since ADR involves parties' voluntary participation, they have a better command of every phase of the process when compared to proceeding (Tan, 2010, p. 152; Tanrıver, 2006, p. 158). ADR is an unmediated, direct and easier process which allows parties' direct participation. Parties can freely bring and make use of their own proofs. As they have the chance to ask questions directly to each other, their hostility towards each other does not increase. In addition,

they try to solve the problem via communication. At the end of the process of proceeding, relationships coming most of the time to an end could continue reasonably thanks to ADR.

Since it is possible to overcome the dispute via mutual agreement between parties in ADR, they have direct control over the resolution process. Instead of meeting an undesirable verdict, it is more satisfactory for them to end up with their own resolutions (Özbek, 2009, p. 210). Therefore, hostility between parties reaches a solution in a more peaceful manner, and both parties' trust in proceeding is not damaged. In addition, their relationships are likely to continue without any breakdown.

d. ADR Allows Specialist Examination

Another important deficiency in proceeding system is the issue of specialization. Judges, who have the leading role in proceeding, mostly fail in issues that require specialization. Committees or judges in courts dealing with disputes requiring specialization in such areas as business, trade, consumer's rights and intellectual and industrial rights are mostly those who are not expert or experienced in these areas.

Although there is an obligation to apply to an expert in relation to issues requiring specialization and technical knowledge (CPC Art. 266) so that this deficiency can be overcome, such several reasons as negligence in practice, selection of inappropriate experts and application to experts regarding legal issues have made the situation worse (Taşpınar, 2001, p. 347; Yılmaz, 2001, p. 539). Therefore, a number of claimants and defendants experience the fear of failure to see the issues that constitute the main problem in disputes and thus the fear of losing their rights and ending up with irrelevant verdicts (Kekeç, 2011, p. 86-87).

Mostly, specialists or individuals with good knowledge of disputes make examination regarding the issue of disputes in ADR. This is one of the most important benefits of ADR. In this way, there is a third unbiased party to make an examination regarding the dispute and to make recommendations. In addition, correct examination by a specialist will save time and decrease the costs in relation to such issues as application to an expert, selection of an expert, expert's exploration and listening to witnesses. Also, the referee does not have the chance to make a recommendation, yet in ADR, the specialist can make recommendations in relation to solving the dispute and put forward impartial views regarding the parties' demands and the dispute in question.

e. ADR Protects Parties' Relationships and Prevents Hostility

Juridical disputes arise from daily relationships of parties. The ultimate purpose is to solve the disputes with good faith. Permanency of relationships is fairly important for the parties of the dispute. Especially in business relations, it is absolutely necessary to solve the dispute without damaging the communication and relationships between the parties for their own benefit.

In the process of proceeding, it is not always possible to find a compromise to protect the benefits of both parties. As there is generally a competitive environment, one party is the loser while the other is the winner. Therefore, only one party gets pleased with the result, while the other does not. The time wasted in the process of proceeding and the high cost of proceeding constitute another burden on the loser, which could then cause the loser to develop hostility towards the other party since the latter brings the dispute to trial.

In any case, ADR creates a less competitive environment when compared to the juridical system (Özbek, 2009, p. 224). Since ADR is based on an agreement between parties, it is more likely to produce resolutions in a way to protect the common benefits of parties. In fact, there is no loser in ADR. If parties hold the belief that their benefits are not protected, they will have

the chance to reject the resolution. Therefore, in ADR, there is no case of becoming a loser. If parties reach an agreement, their relationships will continue without being damaged, which will eventually prevent the birth of any hostility.

In addition, ADR is important in terms of labor disputes between corporates, for which especially business relations are extremely important. Since permanency of business relations between corporates is also important for their future businesses, solving a dispute without turning into hostility is of vital importance for corporates. Besides, permanency of business relations is also important for both employers and employees. When business relations turn into hostility and cease, the employee will start looking for a new job and the employer will lose a skilled employee and seek for a new one. For all these reasons, in juridical disputes, solving the dispute without turning into hostility is also necessary in social relationships for the sake of an economy in a country.

Spread of this agreement environment provided by ADR is important to maintain social peace and to avoid any damage to economy. When compared to the structure of the proceeding process that provides benefits only for one party, ADR provides advantages for both parties, helps maintain relationships and prevents hostility.

f. ADR is a Voluntary Process

Alternative Dispute Resolution is basically a voluntary process. Parties are not obliged to apply to or take part in alternative dispute processes. The basis of ADR requires both parties to reach an agreement; therefore, if parties end up with a disagreement in the process, they will not be forced to accept any resolution.

In the process of proceeding, if one party makes an application, the other unavoidably has to accept it to protect his or her rights. In ADR, despite exceptions, both parties take part in the process on voluntary basis. Arbitration (which is a controversial issue in terms of whether it is an alternative dispute or not (Özbek, 2009, p. 144-145), arbitration committee for consumers' problems, and compulsory arbitration (which is currently a draft law) for labor disputes could be given as examples of exceptions of this rule. However, these institutions and applications do not constitute a contradiction to the agreement between parties, nor do they give obligatory verdicts in cases of disagreement. As an exception of this, special situations related to compulsory arbitration regarding labor disputes will be mentioned in detail below.

Even though the process of application for alternative dispute resolutions is obligatory, it does not constitute an obstacle in front of the right to seek legal remedies. For instance, for disputes regarding issues with a low economic value, even Protection of Consumers Code, which makes it obligatory to apply to the arbitration committee for consumers' problems, provides parties with the right to apply to the Consumers Court in 15 days to oppose the arbitration committee's verdicts. The Constitution Court rejected the request for cancelation of the fifth and last clauses of the Article 22 of the related Law with the claim that these clauses cannot be regarded as an obstacle to the right to seek legal remedies or as a transfer of juridical power[11]. Likewise, even the fact that ADR is made obligatory does not abolish the right to seek legal remedies or the principle of agreement, which constitutes the basis of ADR. At the end of ADR, even if parties fail to find a way out, they can freely seek their rights in juridical ways.

[11] Verdict of the Constitution Court (Date: 20.03.2008, 2006/78 E., 2008/84 K.), Official Gazette: Date: 01.07.2008, Number: 26926.

g. ADR Allows Privacy

One basic aspect of ADR is the privacy it allows. One of the most important reasons for the popularity of ADR is that the process is conducted paying attention to privacy issues. In Article 141 of the Constitution and Article 28 of CPC, it is pointed out that the proceeding should be explicit and public. This situation is likely to cause parties to abstain themselves from the process. Especially in terms of business relations, big corporates do not want their business-related secrets to be disclosed via the proceeding. These big corporates' fear of any damage to their reputation and prestige and their fear of being offended in their environment prevent them from resorting to jurisdiction and cause them to hesitate whether to present important issues in the process of proceeding.

It is one of the basic principles of law to make proceeding explicit; in this way, the proceeding could become fair without causing any doubt, and public trust in proceedings increases since arbitrariness is avoided (Alangoya, Yıldırım, & Deren Yıldırım, 2009, p. 189; Özbek, 2009, p. 211; Öztürk, 2006, p. 3; Pekcanıtez, Atalay, & Özekes, 2013, p. 399 et al.; Ulukapı, 2015, p. 125-126). Due to the fact that proceedings are open to public and that parties can participate in the proceeding during the examination of the proofs and make related statements (CPC Art. 197/3), issues that parties find private could be revealed. The judge, secretaries, ushers, parties, lawyers and audiences could learn all these documents, which is sometimes likely to damage the prestige and reputation of parties.

The process in ADR is conducted with the participation of an impartial and independent third person. Privacy is essential in the process. Therefore, private issues are open only to parties and to the third person conducting the process, and they will not be made public. For this reason, parties will act more freely in ADR, and they will not have the fear of being threatened in future by others who would otherwise use these private issues, if made public, against them.

ADR provides parties with freedom thanks to the privacy it allows. Parties can freely express issues that they would normally avoid telling to third persons, and they will be able to make use of these issues to reach an agreement for their own benefits. In addition, parties can participate more sincerely and eventually reach agreements, which establish and maintain relationships between parties and make them happy.

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Ecological Balance, Ethical Arguments And Law in Terms Of Human Rights[12]

Zeynep Özlem Üskül Engin

Introduction

The World has never been under such a clear and present danger since the very first day of its existence. The ecological crisis is certainly global and anthropologically-emitted, thus it brings along political, ethical and human rights issues and waits for urgent solutions. Besides, it has started to threaten the original existence of the living beings.
Unfortunately, this crisis has been created by the very own human being himself (Eden, 2015). On one hand, the West has developed a way of thinking that is extremely human-centred and has improved a lot technologically and geographically (Eisenstadt, 2007), and on the other hand capitalism has become globalised (Boratav, 2000), which all have definitely led to nature being kept in the background. Consequently, adverse ecological factors endangering the sustainability of human race have arisen.

Methods

The deterioration of the ecological balance and the advent of its adverse effects led to the emergence of a current issue on what necessary precautions are to be taken against this. This situation threatening the existence of human being in this world appeared by the very first hands of human, thereof brings some ethical discussions. Consequently, the identification of how to establish the ecological balance and to determine what the "valuable" lies in the understanding of these ethical discussions. As law is basically a fair order design towards "protecting a value", these discussions are important in terms of law as well. Because of this, the subject is explained in this article by giving place to these discussions in order.

Ecological Crisis

The deterioration of ecological balance does not merely cause the extinction of the polar bears that we are familiar from the pictures: It causes the climate change, droughts and floods. Warming is one of the most important problems (Jouzel, 2015). The experts and scientists working on this serious subject have long been putting forward disaster scenarios unless the warming is limited by 2 centigrade (Eden, 2015).
It has also been pointed out that due to the climate change –caused by warming-, problems related to food and clean water would emerge, and this would affect bio-diversity negatively. There are also very serious predictions that it would initiate considerable migration waves (Eden, 2015).

The Importance of Ethical Discussions in Terms of Law

As the deterioration of ecological balance has emerged as a social problem, it has become the interest area of law as well. The issues related to the ways of establishing a legal system, has inevitably activated the ethical approaches. These discussions do not only take the climate crisis and ecological balance into consideration but are also related to the value concept which has to be identified by law in this sense.

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The provision of ecological balance and the discussions related to respecting the nature is new and emerges as ethical acts. Nevertheless, the novelty of these discussions has not prevented the emergence of conflicting eco-approaches. These approaches try to understand the harms caused by the destruction towards nature by highlighting the value they prioritize, and bring along a series of political, economic, legal and social suggestions (Garrard, 2016).
Ethical discussions, above all, serve to bring a new way of thinking instead of anthropocentric understanding, and thus provide some guidance to a new legal system.

Ethical Discussions

1. Shallow Ecology

Shallow ecology, sees human as the highest value in the universe, and if there is a need to choose between human and nature, it favours the human. As a result of this understanding, "environmental law" emerges. They have been defending the idea that nature shall be protected by favouring the human (Lambert, 1997).
Shallow ecology does not see the issues holistically, and thus is interested in seeing the tip of the iceberg. Warning people to stay inside when there is air pollution because of the excessive use of coal fuel can be given as a perfect example to the shallow ecological approach. Radical ecologists defend the idea that the use of fossil fuels must be banned altogether.
Apart from this, shallow ecologists accept that diversity in nature is a source for human. They strongly believe that any value that is not for human should not be accepted in whatsoever. As long as the plant species are beneficial in agriculture or medicine, and animal species are crucial in transportation and nutrition, they are considered. If pollution threatening ecological balance favours any economic development, the ways of reducing this are searched, and if it affects human health, then the whereabouts are examined. If there is a waste disposal problem occurring due to some productions that are made by the Westerners in less developed countries, the ways of ignoring this are searched; whereas, if the similar problem occurs in the West, every kind of publicity is used so to attract the attention of the whole world (Naess, 2005).
Another characteristic of shallow ecology is that it shreds the issues to tiny pieces through adopting a minimalist approach and tries to reach a solution by bringing the useful pieces together. Nature is approached in the same way: Fields, rivers and mountains are divided to specific geographical pieces, and in time the whole picture is missed. The natural resources that are divided have become issue of human ownership. Benefits and harms are taken into consideration only from the human's side. The expectation that the adverse results shall only be solved by technological developments leads to the connivance of the problems. The utmost attempt is the preparation of the infrastructure for the people who are educated for this. As human is the master of nature, when there is a failure there is a need for technical staff to solve this problem (Naess, 2005).
The understanding that is based on the protection of environment but not of the nature brings short-term solutions to the ecological problems. The deteriorated nature can only be fixed through keeping the existing human relations and social structure, protecting the existing institutional and economic structure and implementing some legal regulations. That is the reason why it would not be utterly wrong to claim that shallow environmental approach is conservative (Garrard, 2016). This approach has been criticised because it has negotiated with the dominant socio-economic order and has not brought a fundamental solution to the problems.

2. Ecofeminism

Ecofeminism is a strong eco-philosophy combining two battle fields such as women liberty and ecological justice. As women feel themselves responsible to protect the nature they act accordingly, and thus stand against capitalism, other patriarchal social structures and the exploitation of nature (Mellor, 2016). From this perspective, it has an interesting side.

The visible emergence of ecological movements in the beginning of 1960s was in accordance with the feminist movement called as the second wave feminism, and so it led to the integration of political ecology and feminism. By this way, feminism and ecology movements have come together feeding each other ever since (Biehl, 2008).

For environmental ethics feminism is important; similarly for feminism the environment is so. When there were questions raised by women, a new social and cultural dimension is added to environmental ethics. In consequence, ecofeminism is a trend that gives not only environmental criticism but it also offers feminist criticism to the environmental trend (Larrere, 2016).

Certainly, the interest of feminism to green is under the frame of its own view of the world and although there are various other feminist trends, the damage of nature and the dominance of men on women are melted in the same pot. In the recent years, feminists have pointed out that they are more "green" compared to men, that they build stronger relations with nature and that they are more sensitive towards ecological problems and that they are the most fragile group affected by the ecological crisis (Biehl, 2008). After they have made this observation, various feminist trends have evaluated the issue under their own point of view.

All the ecofeminist trends are based on the regulation of human and nature, and the termination of male dominance on women (Berktay, 2010). Together with this, it is possible to mention the existence of a feminist approach that takes the issue in four different ways: Even though liberal, cultural, socialist ecofeminism is segregated within, it aims to bring an elimination of the disintegration between nature-human, culture-nature and women-men.

3. Social Ecology

Social ecology is a new thought system that was put forward by a Russian-American contemporary anarchist and social thinker Murray Bookchin and suggests an ecological utopia. Like the other anarchists, he refused hierarchy, and besides he desired the establishment of an ecological society and elimination of not only the dominant relationship between human and human, and also the dominance of human on nature. Social ecology embodies radical features as it starts with a social criticism and takes it to envision of a social transformation (Kovel, 2005).

Bookchin saw human as the sole responsible of ecological crisis, and instead of putting individual responsibility on a person, he considered the society being responsible for all. He claimed that social relation network that had been founded since the ancient times created the ecological crisis (Bakır, 2010).

Bookchin was nourished from anarchy, Marxism and ecology in order to establish his own ecology policy. Taking social and environmental problems together, he criticised the dominance of human over human, and human over nature (Lamy, 2016). He pointed that the prior action that should have been taken is the elimination of the dominance problem by the ecological problem, and he also added that unless this problem is solved the ecology problems would not be understood and a solution would not be found. Understanding that our role in this world is being creative, supportive and that nonhuman lives are as important as human lives, and that it would keep us away from human-centred approaches, and adduct us comparatively to a more naturalistic approach, and would help us to establish a healthier relationship with nature (Bookchin, 2013).

Whenever human lost the connection with nature, the history of civilization has become a process of alienating from nature and started to think only his interests and needs, and then it has gained the quality of the only species that has been harming nature very seriously. Human has become a species that is dangerous for not only its own being but also for other beings. Human has realised social development for its own expense and failed to interpret development and nature as a whole. Human has not respected nature, and has caused the deterioration of ecological balance reaching to the level that nature has been regarded as a fearful being (Bookchin, 2013).

Social ecology is "among the first contemporary ecology theories demanding a radical change in existing moral values". Bookchin melted polluting the nature and the exploitation of the labour in the same pot (Bookchin, 2013). Bookchin said that in case ecology movement got stuck only to the reforms related to pollution and protection, that is only to "environmentalism" without taking a need for radical and comprehensive revolution into consideration, the existing nature and human exploitation would not go further from a safety pin of acting through the mystical and romantic idea that mother nature would know the right way (Bookchin, 2013). It can be conveniently said that Bookchin's point of view is holistic and that it differentiates from the shallow environmentalists. Besides, through this approach, it can also be said that ecofeminists are close to Bookchin with this feature as some "green" solution has been found also from the side of the inferior women because of patriarchal order.

4. Deep Ecology

Deep ecology is one of the original branches of environmentalist point of view and was conceptualised by Arne Dekke Eide Naess.

On the basis of deep ecology there lies a re-comprehension of ecological integrity among the beings in the way that a philosophical and a scientific approach are compulsory. It is stated that Naess formed his philosophy getting the inspiration from Spinoza, Gandhi and Buddhism (Vinez, 2011). The idea that all living beings could sense pain and pleasure like human kept Naess from violence; and from this point of view it is clear that he was extremely inspired by Gandhi (Naess, 1989).

Compared to the shallow ecological approaches it has been observed that he put forward a holistic view and that it included all the areas from life philosophies of societies to daily lives (Ceritli, 2001). Naess laid emphasis on the emergence of the intellectual and social dynamics in the basis of harms committed against environment by a deeper environmentalist view and on the necessity of finding a more radical solution (Vinez, 2011).

On the basis of this view, the initial step is the awareness of the human himself and a realisation accordingly. This awareness is related to the re- and righteous establishment of human and nature. Human should be aware that he is a modest part of the nature (Naess, 2005). By this way, nature could be independent and saved from a being an instrumental existence merely looking for a source for himself. Harming the nature means not only harming thyself but also harming the other beings.

This understanding requires, above all, the termination of the approach of the classical value philosophy prioritizing the human and putting a border between the other subjects and lifting the artificial intellectual borders between human and other beings. When these borders are lifted there emerges a relation that has to be regulated between human and nature. If the nature does not have an instrumental value, nature is no longer the subject matter of ownership, and there requires a need for an execution of a new legal system that is suitable for this. Hence, the ones adopting deep ecology think that respect to the biosphere must exist concretely in legal texts and administrative level (Turgut, 2001).

Basically, deep ecology starts out to break the scientific understanding that is based on the dominance of human on nature and that the legal revolution has been serving to its foundation (Turgut, 2001). Naess, was more against to the indifference to the harm given to the nature due to the technological advances than the scientific advances or the science itself. In the essence of this approach, there is the acceptance that human is not different from the other beings and exist equally as one of the species in this world.

5. Eco-socialism

Eco-socialism is a recent trend that emerged long after socialism. The reason for this is obvious: During the years when socialism emerged ecological problems were not a matter of livelihood. Actually, eco-socialism emerged when the sociologist ideology started to move from red to green. It has some common points with Bookchin's ideas that are mentioned above (in both capitalism is the common target and transformation of the society is urgently needed) and the inclination of the sociologists to ecological problems led to the emergence of eco-socialism. It is in question that both sociology and ecology have been the victims of capitalism, and this caused the imminence between these two trends (Devleeshouwer, 2011). Simply, it is pointed out that extreme consumerism has been the result of capitalism, and that it has caused great inflictions on ecological balance and through the aim of stopping this negative drift a suggestion of a new order is brought to the agenda (Keleş&Hamamcı&Çoban, 2009).

Eco-socialism is rooted from socialism and tries to develop a policy that is vulnerable to environmental problems. They are hoping to draw a new route and apply this by integrating the red of socialism and the green of the environmentalists. Because of this, it would not be wrong to say that eco-sociologists added "alienation to the nature" to Marx's alienation theory (Löwy, 2011).

The common aim of eco-socialism is to realise "ecological socialism in an ecologically rational society founded on the dominance of democratic control, social equality and intrinsic value" (Löwy, 2011). Eco-socialism is taken etiologically as a radical ethics by it supporters and aims to "find the roots of the evil". It is claimed that there is a built connection between ecological crisis and social decadence, and it is stated that as capitalism is the sole responsible it should be ended.

Eco-socialism is a political trend from a basic detection and like all the other trends it aims the protection of the planet's ecological balance and the provision of all the species to live in the habitats of their living conditions. Furthermore, it opposes capitalism's basic foundations, economic development under the control of capital, free competition, and economic system based on profit and interest and the imposed consumerism (Löwy, 2011). Basic principles of capitalism based on market and profit and the factors needed to protect the natural environment are not consistent (Kovel& Löwy, 2016).

Eco-socialism being aware of the other ecological ethical approaches finds them incomplete and wrong and thinks that international meetings like the one in Rio is not to produce efficient solutions. The solution would bring along a new paradigm a new civilization model and a revolutionary transformation. The ethics of eco-socialism not only thinks of the next generations but also the current generation as ecological problems affect many people adversely. It embodies an ethical understanding that reminds everyone to act responsibly starting from the current generation (Löwy, 2011).

Conclusion

All the ethical approaches above try to create a fairer and a greener world under their own way of thinking. All of them talk about what is urgently needed, shows political approaches;

however, fails to explain the correct steps to be taken despite giving some clues how to succeed this. Alongside with other instruments, laws are needed to transfer the ideologies to life itself. The ethical principles that would become concrete rules would only exist by this way.

Legal rules need to re-visit the meaning of the value that needs to be protected in the frame of the emerging ecological problems. Until today, "environmental law" formed with human-centred shallow ecological approaches is inefficient to solve the ecological problems. Environmental law has been taken as a human right after the 1950s. The environmental law that has been taken as a human right against these current problems has not brought any solutions, and plus; on the contrary deepened the problems. The concept of right should be re-taken into consideration and extended. The ones who have not yet understood how nature shall have the right can be persuaded only by explaining how the concept is extended in favour of women, children and abolition of slavery.

The "Mother Nature" concept that is now in the Constitutions of Bolivia or Equator is a definite product of the ethical understanding that is revolutionary. This understanding is reflected on the legal system and the protection of the ecological balance is ahead of just protecting human. It is needed to accept nature as a subject of right in order to surpass this dangerous period.

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Mediation In Civil Disputes According To Turkish Law[*]

Nur Bolayır

Introduction

In recent years, many countries make various arrangements in their laws on settlement of disputes by alternative dispute resolution methods. Concluding the disputes by settling with the own wills of the parties instead of settling through remedies is considered more preferred in terms of protection of social peace. These solutions becoming effectively more functional shall make contribution in reducing workload of the courts. There are many methods on resolution of disputes by coming to an agreement. One of these methods is mediation. Legal regulations are made also in Turkish law on mediation which is one of the alternative dispute resolution methods, in parallel with these developments in the world. In Turkish Law, institutional mediation is regulated by the Law on Mediation in Civil Disputes. The Law on Mediation in Civil Disputes was passed in 7 June 2012 by the Parliament and it has come into effect in early 2013.

Methods

In our study, we'll introduce mediation practices in Turkish law in general terms in the light of the Law on Mediation in Civil Disputes. Within the scope of studying the Law of Mediation in Legal Disputes, we will first talk about the content of the Law and put forward which disputes are suitable for mediation. Then, we will treat the mediation system and explain the meaning of mediation, which mediation system is adopted in our legal system, what are the conditions required in order to be a mediator. Once determined the basic principles related to mediation, we will study how the mediation process evolves and we will treat in detail when the process will start, the rights and obligations of the mediator during this process, how the process can end and whether the agreement document has an executive nature in case an agreement is reached at the end of the process.

Scope of the Law on Mediation in Civil Disputes

As stated in Article 1 of the Law, it is possible to settle special civil disputes arising from matters which parties may freely act by mediation including the ones that involve a foreign element. But, disputes that involve a domestic violence claim are not eligible for mediation. It is not possible to settle disputes by mediation on issues where wills of the parties are out of question and which are not within the area of savings of the parties and dispute should absolutely be resolved by judicial remedy. For example, mediation agreement may not be made for actions for divorce and judicial separation, actions for paternity and for non-contentious jurisdiction. However, although court decision is required on divorce, the parties may come to an agreement by mediation on issues which are within the savings fields of the parties as division of properties, alimony and indemnity (Pekcanıtez, 2007; Şıpka, 2007; Pekcanıtez &Atalay & Özekes, 2013). On the other hand, mediation agreement may be concluded if there is subject where the parties may independently make their savings and which may be resolved by peaceful means; within this frame work; for instance, disputes on action of debt, indemnity claims or disputes on movable properties may be subject to mediation (Taşpolat Tuğsavul, 2012).

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Mediation System

According to Article 2 of the Law, mediation is the dispute resolution method that is carried out voluntarily with the involvement of a neutral and independent third person received a specialty training brings the parties together in order to discuss and negotiate, and enables the communication process between the parties to ensure that parties understand each other and thus create their own solutions with resorting to systematic techniques. Mediator is the natural person providing the service of mediation and enlisted in the registry of mediators managed by the Ministry of Justice. In accordance with Article 19 (5) of the Regulations on Mediation in Civil Disputes, mediator may not give legal advices to the parties during the performance of the process; may not create solution suggestions or impose such suggestions to the parties or force them to come to an agreement on a solution offer created during negotiations. This arrangement shows us that "facilitative mediation" model in Turkish law is adopted (Özmumcu, 2013, p. 1388).

Voluntary Mediation Regime

In our law "mandatory mediation regime" is not accepted; within the framework of Article 3 of the Law, the parties are left free for consulting to a mediator before or during a case; besides, the parties are free to continue the mediation process; finalize the process or waive from this process. Accordingly, as set forth in Article 3 article of the Law, in mediation principle of "being voluntary" is accepted. The parties are free to consult the mediator and continue, finalize or abandon the mediation process. But, "mandatory mediation regime" is accepted in foreign systems of law. For example, in Italian law, "a categorical mandatory mediation regime" is accepted for disputes in real property; insurance, banking and financial agreements; division of assets; inheritance; family law; tenancy law; neighbor disputes; gratuitous loans for use; compensation claims for car or boat accidents; medical negligence claims; and defamation in the press and other media. This regime came into effect on 20 March 2011 (Hanks, 2012). On 12 December 2012, the Constitutional Court declared the unconstitutionality of mandatory mediation, due to over delegation of the government, not, as requested by lawyers' associations, the breach of the citizen's right to defense. Because, the government had not been expressly delegated by the parliament to introduce the mandatory pre-trial mediation system (Matteucci, 2015). Law decree 69/2013, reintroduced mandatory mediation starting September 20th, 2013. Pre-trial mediation remains compulsory in this listed category of cases; but civil liability for damage caused by vehicles or ships was exempted from mandatory mediation (Morek,2013; Matteucci, 2015). In French Law on the other hand, with the decree dated March 11, 2015 with number 2015/282, it has become obligatory to try amicable solutions before bringing a lawsuit. Within this framework, it is accepted as of April 1, 2015, that amicable solutions have started and lawsuit shall by no means be brought unless certifying that the subject trying is resulted unsuccessfully. As stated in Article 127 of the French Law of Civil Procedure, unless the plaintiff states in his lawsuit petition that he has attempted for amicable solution means, the judge shall assign a mediator or reconciler. The plaintiff or his counsel should prove when bringing a lawsuit that they have made the best effort to solve the dispute amicably or should set forth the valid grounds to ignore amicable means on the basis of existence of an emergent situation or a dispute relevant to public order (Lopez-Eychénié, 2015).

Mediation method finding a mandatorily practicing field specifically in disputes arising between employers and employees for reducing workload of labor courts has become a current

issue in Turkish law recently. In Article 3 of Labor Courts Law Draft (see http://www.adalet.gov.tr/tasarilar/20160323-isMahkemeleriKanunuTasarisi-ikiliTABLO-istinaftan sonra. pdf), mandatory mediation regulation takes place; applying for mediation before bringing a lawsuit has become compulsory in lawsuits to be brought for the worker's receivables either individual or based on collective labor agreement or reemployment lawsuits. In general reason of the draft, it is stated that approximately 18% of almost 3,400,000 civil disputes at the courts of first instance and approximately 30% of 750,000 civil disputes at the Supreme Court are arising from labor law as of the end of 2015; and 72% of the total civil disputes led to mediator as of the date the Law on Mediation in Civil Disputes is put into effect was arising from employee-employer disputes and almost 100% of those are settled by coming to an agreement; approximately 85% of business disputes led to mediator are settled by negotiations lasting one day or less and necessity of the mandatory mediation practice is emphasized. According to Article 3 of the Draft, in case the parties of the dispute bring lawsuit instead of applying to mediation before bringing a lawsuit, lawsuit shall be dismissed without prejudice because of the lack of procedural requirement pursuant to Article 115 of the Code of Civil Procedure.

Obligation of applying first for mediator accepted by the draft is thought to help solving business disputes in a shorter time and lower cost and accordingly, the principle of trial in reasonable time which is a factor of the right to fair trial is being fulfilled. As stated in the decree dated 10/07/2013 with number 94/89 of the Constitutional Court, alternative dispute resolution methods are not the complement of the processes which is an alternative of jurisdiction and tried to replace the judicial system or is in competition with the judicial system. On the contrary, it is a group of complementary methods added to the methods stipulated for the settlement of disputes. In respect with disputes stipulated in the draft, it is mandatory for the parties to consult a mediator before bringing a lawsuit but there is no obligation of settlement at the negotiations on mediation conducted with the free will of the parties. It is possible for the parties to seek for their rights at the court if they can not come to an agreement at the end of the mediation. For this reason, obligation of consulting a mediator before bringing a lawsuit does not mean a violation of the right to legal remedies regulated in Article 36 of the Constitution (On the subject indicating that applying for alternative dispute resolution methods being mandatory shall not violate right to legal remedies see Ildır, 2003, p.48. On the subject indicating that in case mandatory mediation fails, the parties may seek their rights at the court and that if they end mediation activity whenever they wish, mandatory mediation shall not restrict right to legal remedies, see Yazıcı Tıktık, 2013, p. 40-41. On preferring mandatory mediation in some specific subjects in terms of reducing workload of courts, speeding up settlement of dispute and reducing cost, also see Yıldırım, 2007, p.355. As the alternative dispute resolution methods are based on voluntariness, for issues on obligation to apply these methods constituting intervention to right to legal remedies, see Tanrıver, 2006, p.154. As going directly to law everyone is legally subject to according to Constitution is a fundamental right assured by Constitution, on the subject that no one shall be deprived from this right, no one shall be invited before a court other than the court he is legally subject to or forced to be attended, see Karacabey, 2016, p. 468. On not giving the party right to make a choice between jurisdiction and mediation constituting contradiction to right to legal remedies and legal judicial process, see Namlı, 2016, p. 158; Özmumcu, 2016, p. 835). In our point of view, accepting mandatory mediation do not prevent the parties' right to access to courts. It is possible to go to law if the parties cannot come to an agreement at the end of mediation and seek for their rights at courts[13]. Although applying for mediation is accepted as mandatory, there is no legal

[13] It should be significantly indicated that, with the Labor Courts Law Draft, a provision as "in case the parties come to an agreement before the mediator, the parties may not bring a lawsuit on the agreed issues" is added

regulation on the parties being obliged to follow this process; accordingly, the parties may release from mediation activity whenever they wish without permission of the other party or the mediator due to the principle of voluntariness, or end the process or request for legal protection.

Requisites of Being Mediator

The mediator must be listed in the registry of mediators and he may commence offering services upon the registration. As of November 2016, there are 3314 mediators listed in the registry (see http://www.adb.adalet.gov.tr/arabulucu). According to Article 19 of the Law, the Department of Mediation keeps a registry of the persons who have received the power to act as mediator in civil disputes. Conditions of being a mediator are listed in Article 20 of the Law. According to the relevant provision, he has to be a Turkish citizen, he must be graduated from a faculty of law and have at least five year of experience in the profession; he must have possession of unrestricted capacity; he shouldn't be convicted regarding a criminal offence that is perpetrated with intention; he should have completed mediation training and he has to succeed in the written and applied examinations carried out by the Ministry of Justice. As it is mentioned in Article 21 of the Law, if the department of mediation determines that the mediator was registered without the required attributes or has lost those after registration the mediator will be delisted from the registry. The mediator may also request to be delisted from the registry at any time.

Mediation Process

Selection of Mediator and Commencement of Mediation Process

As stated in Article 14 of the Law, although mediator is selected by the parties, selection of the mediator may be assigned to a third party or to the court as a result of the agreement of the parties. Besides, although the parties may wish to apply to a mediator during the trial, in case they cannot agree on the identification of the mediator, the mediator may be selected by the court (Taşpolat Tuğsavul, 2012).

According to Article 13 of the Law, it is possible for the parties to agree to consult to mediator before the commencement of the action or during litigation; unless otherwise agreed, if no affirmative answer is delivered within thirty days to the proposal of a party to consult a mediator, the proposal shall be deemed refused. The court may also encourage the parties in every stage of the action to consult to mediator.

According to Article 15 of the Law, after the mediator is elected he invites the parties to the first meeting as soon as possible. The parties may determine the mediation process freely provided that its not contrary to the imperative provisions of law. If not decided by the parties, the mediator shall carry out the mediation process by taking the features of dispute, wishes of the parties and the procedure and principles necessary for the quick resolution of the dispute. According to Article 8 and 15 (6) of the Law, the mediator may interview and communicate with each party individually or in conference. The parties may participate in these meetings and the mediation negotiations personally or through their attorneys. In case the parties state jointly

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to the 20th Article of the Law on Mediation in Civil Disputes. As we have stated in our explanations above, it sets forth that the parties may go to law in case the parties cannot come to an agreement, they may end the mediation process and bring a lawsuit and mandatory mediation does not restrict the right to go to the court. However, if the subject provision become law, either optional or mandatory mediation model is accepted, it removes legal control against settlement agreement; and appears as a significant obstacle avoiding individual's right to go to law and right to legal remedies.

that they wish to consult to mediator after the commencement of the action, the proceedings shall be stayed by the court for a period not exceeding three months; this period may be extended up to three months if the parties request jointly.

As stated in Article 16 of the Law, if mediation is sought before the commencement of litigation, the parties are invited to the first meeting and the parties and the mediator mutually agree to continue this process; the mediation process commences at the date in which a record is prepared documenting the agreement between the parties and the mediator. If mediation is sought after an action is filed, the process commences at the date in which the parties accept the invitation of the court for mediation or inform the court in writing that they have agreed to seek mediation outside the court or the statements of the parties regarding the agreement on seeking mediation is put in to the court record. The duration between the commencement and the termination of mediation process shall not be taken into account in the computation of statute of limitations and preclusive time requirements.

Rights, Powers and Obligations of the Mediator

According to Article 7 of the Law, the mediator has the right to request a fee and his expenses in exchange for the service that he provides. This fee may be agreed upon by the parties and the mediator; however, it must be in accordance with the Tariff on Minimum Fee for Mediators that is in effect at the date in which the process is concluded.

As it is mentioned in Article 9 and 11 of the Law, the mediator must perform his duty with care, in a neutral way and personally; inform the parties regarding significant matters and circumstances that can cause doubt on his neutrality; protect the equality between the parties and inform the parties at the commencement of the mediation process regarding the principles, process and consequences of mediation.

According to Article 15 (4) of the Law, proceedings that must be carried out by the judge through utilizing a judicial power as a result of their features shall not be carried out by the mediator. Within this framework, in Article 19 (4) of the Law on Mediation in Civil Disputes Regulations, it is stated that a judicial power as viewing, applying for expert witness or hearing the witness which may be used only by the judge due to the quality of the procedure may not be used by the mediator.

Within the framework of Article 4 of the Law, unless otherwise agreed by the parties, the mediator is obliged to keep confidential about the information and documents that he was presented or he has gathered in another manner within the scope of the mediation service. Unless otherwise agreed, parties are also obliged to comply with confidentiality regarding the matter. In Article 6 of the Law on Mediation in Civil Disputes Regulations, principle of confidentiality is emphasized by a regulation stating that it is prohibited to take pictures or visual or voice recording during mediation activity.

As it is understood, the mediator shall not disclose information and documents he obtains during the mediation process unless the parties have clear consent or a legal regulation permits. Registered mediators are considered as public officers within the framework of Turkish Penal Code; they are subject to liability of reporting crime; otherwise, they are punished according to Articles 279 and 280 of Turkish Penal Code (Yazıcı Tıktık, 2013). In this case, the mediator may withdraw from being witness referring to obligation to keep secret. The parties shall also have the obligation to keep confidential information they learn or obtain from each other during mediation negotiations. However, some exceptions may be brought to this rule by mutual agreement of the parties. For instance, the parties may decide whether all or part of the mediation process not to be confidential or one of the parties may disclose the content of this agreement to be made at the end of the mediation process to fulfill this agreement, if necessary (Taşpolat Tuğsavul, 2012).

According to article 5 of the Law, the parties, mediator or other third parties involved in the mediation process may not offer statements and documents (invitation for mediation made by the parties or the inclination of a party to participate in mediation process; opinions and proposals by the parties for the resolution of the dispute by way on mediation, opinions asserted by the parties or admission of a fact or claim during the mediation process, documents drawn up solely for mediation process) stated as evidence or testify regarding them, if a civil action is filed or an arbitration proceedings is commenced regarding the dispute. It is recognized from the relevant regulation that not all the documents the parties hold as a result of the dispute and shall be used as an evidence but only the documents parties have prepared only for mediation are held within the scope of prohibition (Taşpolat Tuğsavul, 2012; Yazıcı Tıktık, 2013). Disclosure of the subject information may not be requested by the court, arbitrator or any administrative authority. These statements and documents may not be evaluated as evidence even if they were presented as evidence. However, the information in question may be disclosed if it is required by a statute or to an extent necessary for the application or enforcement of the agreement formed at the conclusion of the mediation process.

Termination of Mediation Process

As stated in Article 17 of the Law, mediation process shall be terminated if the parties have reached an agreement; the mediator determines that making further effort regarding mediation is pointless upon conferring with the parties; one of the parties informs the other party or the mediator that he has withdrawn from the mediation process; the parties jointly terminate the mediation process; the dispute is determined as not eligible for mediation or concerning a criminal offence that is not eligible for conciliation according to the Code of Criminal Procedure. In case the parties suit for damages in crimes subject to conciliation pursuant to the Code of Criminal Procedure if the negotiations do not come to an agreement, the subject of these suits for damages shall be considered as appropriate for mediation (Taşpolat Tuğsavul, 2012; Özmumcu, 2013).

If the process is terminated for any reason, the result of the mediation process and whether the parties have reached an agreement must be documented with a record. Upon the termination of mediation process, the mediator is obliged to keep the application of the parties, documents that he was presented or that he possesses, and the final record for five years. The record, which is to be prepared by the mediator, must be signed by the mediator and the parties of their attorneys. If the parties or their attorneys do not sign the record, it must be signed only by the mediator, and the reason for the absence of signatures must be indicated. The parties may not burden to each other actions against compulsory legal rules or actions against ethics with the agreement document (Semizoğlu, 2008); the mediator should avoid signing this type of documents. The mediator should be careful on whether subjects beside the activity included in the agreement document are adequate for solving by mediation; if they are not adequate for solving by mediation, he should report the parties that these may not be included in the agreement document; he should avoid signing the agreement document if the parties insist and should end the mediation activity, if necessary (Kıyak, 2015).

Agreement Document

According to article 18 of the Law, in case the parties come to an agreement after the mediation activity, the scope of this agreement is determined by the parties and an agreement document

is prepared and signed by the parties and the mediator. The parties may claim from the court[14] to annotate for the enforceability of the agreement document. The agreement bearing this annotation shall be considered as a document that carries the attributes of the execution copy of the judgement. The procedure to be followed for annotation for enforceability is within the scope of non-contentious jurisdiction and the examination on the matter may be carried out on the case file. However, in matters eligible for mediation regarding disputes in family law, the examination must be carried out with holding a hearing. The scope of this examination is limited to the eligibility of the contents of the agreement for mediation and compulsory enforcement. According to the opinion defended in the Doctrine and is an accurate opinion also in our point of view, court investigation should not be limited with only mediation and adequacy for compulsory enforcement; and the court should view other conditions relevant to mediation as whether mediation activity is performed by a mediator registered to the mediators' registry and whether mediation agreement is signed both by the parties and the mediator. As annotation on the enforceability is a non-contentious jurisdiction and as in non-contentious jurisdiction, principle of ex officio examination is valid according to Article 385 (2) of the Code of Civil Procedure, the court should perform investigation independent from the claims of the relevant people and take decisions in compliance with the quality of the work (Taşpolat Tuğsavul, 2012; Özmumcu, 2013; Özbek, 2013).

Conclusion

It is possible to settle special civil disputes arising from works which the parties may do any saving freely by mediation and the parties may agree on consulting a mediator either before the lawsuit is brought or during the lawsuit; and the court shall always encourage the parties to consult a mediator. Mediator's being a lawyer is a must.

"Mandatory mediation system" is not approved in our law; and the parties are left free on consulting a mediator either before or during jurisdiction; besides the parties are free to continue, end or waive from mediation process. In case the parties come to an agreement after mediation activity, scope of this agreement is determined by the parties and an agreement document is drawn up and signed by the parties and the mediator. It is possible for the parties to claim annotation on the enforceability of this document from the court. Agreement including this annotation is assumed as a writ document.

In Labor Courts Law Draft, despite Law on Mediation in Civil Disputes, mandatory mediation regulation is set forth; applying for mediation before bringing a lawsuit has become compulsory in lawsuits to be brought for the worker's receivables either individual or based on collective labor agreement or reemployment lawsuits.

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[14] If the mediation was sought before the commencement of litigation, the request must be made to the proper court regarding the subject matter of the principle dispute with respect to subject-matter jurisdiction and venue. If mediation was sought during litigation, the request for annotation regarding the enforceability of the agreement must be made to the court that is trying the action.

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Business Judgment Rule in Turkish Corporate Law Particularly a Comparison with Selected Legal Systems

Sevgi Bozkurt-Yasar

1. Introduction -Discretionary Power of Board of Directors and Business Judgment Rule

The board of directors is governing and representation body of the joint stock companies. In this sense the management of the affairs of the company is determined as a right and also as a duty of the board members in corporate law. In a broad sense management power includes the competence taking all kinds of decisions and measures or making transactions which devoted to accomplish the scope of company. Therefore board of directors may take decisions on all company matters that are not assigned to general assembly by law or by articles of incorporation in principle by taking board decisions. Taking business decisions by the board of directors or the persons to whom the managerial powers have been delegated implies a preference of the decision maker on which option would be accurate or expedient for the company purpose. The board of directors and in case of delegation the person who engaged in management takes decisions based on their management and discretionary power. Despite the board of directors exercises due care when taking the decisions, they may result in harm to the corporation because of discretion mistakes or some reasons which can not be prescribed at the decisons date. While there is not any objective standard for the assessment of the correctness or impropriety of the decisions, even disinterested and informed directors' business decisions can be reviewed as improvident conduct in hindsight especially after the corporation lose large amounts of money. However it is important to preserve the discretionary power of the management and distunguish misjudgment or inexpedient decisions from the breaches of directors duties. The business judgment rule is accepted in American common law to distinguish misjudgment or inexpedient decisions from the breaches of directors duties. The business judgment rule makes certain that decisions made by directors in good faith are protected even though, in retrospect, the decisions prove to be unsound or inaccurate. This rule prevents courts from second guessing the management decisions of independent and disinterested directors who have acted with due care by placing the focus on the decision-making prosess and protects the management authorisation of the directors.

2. Rationale of The Business Judgment Rule

Firstly, it provides a deference to prevent courts from second-guessing business decisions that were made in good faith. The traditionally justification of the rule is courts are not business experts. Directors are in most cases more qualified to make business decisions than are judges. (Balotti & Finkelstein, 2006, sec. 4.29; Solomon & Palmiter 1999, p. 202; Block &Barton &Radin, 1998, p.15 ff.). On the other hand there is no objective standard to review the business decisions' correctness. In looking at the decisions after the event occurs exposes judges to the problem of hindsight bias. Thus by implementation of rule can be distunguished misjudgment or inexpedient decisions from the breaches of directors duties. (von der Crone& Carbonara& Hunziker, 2006 p. 46).Secondly, the business judgment rule encourages the individuals to become directors who otherwise might decline for fear of personal liability. Business decisions are taken mostly with imperfect information and based on prediction. By acknowledging human fallibility, the rule prevent directors' personal liability of sole wrong business decisions which are taken in good faith. (Block& Radin & Rosenzweig, 1990, p. 490). Thirdly, the rule encourages directors optimal risk taking. The business judgment rule recognizes that business decisions frequently entail risk and uncertanity and encourages directors to engage in ventures

which have potantial for great profit but which may entail some risk. The rule encourages directors to enter new markets, develop new products and take other business risk. The directors can be risk taking with the comfort of knowing that decisions will not be second-guessed by the court if the preconditions of the rule are met. (O'Kelley & Thompson 1999, p. 275; Solomon & Palmiter, 1999, p. 202; Bainbridge, 2002, p.259).Finally, the rule ensures the directors' management authority. The rule makes certain that directors rather than shareholders manage the corporations. (Block & Barton & Radin, 1998, p.17). If shareholders are granted the right to demand frequently judicial review of board decisions, this would be result in transfering the decision making authority from the board to any shareholder. The board of directors as a management and represantative body of the company has some inalienable duties and authority. The senior management power is regarded as one of them. The rule preserve this power from disgruntled shareholders actions. In the contrary case the shareholders can sue every single decision as regard non-suitable their interest, actually taken by directors fullfilling the duties of care and loyalty. The rule preserves management power and decisionmaking authority and ensures the profitable corporate policy. It is also accepted that the shareholders undertake the harmfull consequencies of business decisions voluntarily by invest in the companies. They can reduce risk of loss by diversifying their holdings (O'Kelley & Thompson, 1999, p. 274; Block & Barton & Radin, 1998, p.14; Bainbridge, 2002, p. 259).

3. History of the Business Judgment Rule

Business judgment rule is emerged from the Anglo-Saxon legal system and followed by the countries which are in Continental European legal system. The rule is a benchmark for duty of care of directors and their responsibility in American Corporate Law. In United Kingdom with Charitable Corp. v.Sutton decision in 1742 was expressed the court's reluctance to second-guess the business decisions of corporate directors. This decision is considered to be the first pronouncement of the rule. The court of Chancery in Charitable v. Sutton case observed the following: *"it is by no means just in a judge, after bad consequences have arisen from [any exercise of] power, to say [the fiduciary] foresaw at the time what [would] happen, and therefore [was] guilty of a breach of trust."* (Charitable Corp. v. Sutton, 2 Atk. 400, 405, 26 Eng. Rep. 642, 644 (Ch. 1742). Holland, 2009, 678-679). The business judgment rule is first articulated as a principle of American common law in 1829 by the Louisiana Supreme Court in Percy v. Millaudon case. The Percy court expressed that: *"The occurrences of difficulties… which offer only a choise of measures, the adoption of a course from which loss ensues cannot make the (director) responsible, if the error was one into which a prudent man might have fallen…* The court added that, *the contrary doctrine seems to us to suppose the possession, and require the exercise of perfect wisdom in fallible beings and no man would undertake to render a service to another on such severe conditions.* (Percy v. Millaudon, 8 Mar. 68, 78 (La.1829),Gevurtz, 2000, p. 278.) In 1847 Alabama Supreme Court and in 1850 and 1853 Rhode Island Supreme Court explained the rule with similar grounds. (Goldbold v. Branch Bank 11 Ala. 191 (1847); Hodges v. New England Screw Co 1R I 312 (1850) and 3 R.I. 9 (1853) Block & Barton & Radin, 1998, p.10).The rule has been accepted and improved in subsequent court decisions and by Aronson v. Lewis case in 1984 the rule was stated as *"a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company* ((473 A.2d, 805 at 812. Bainbridge, 2002, p. 269; Block & Barton & Radin, 1998, p.76). The elements of the rule and the circumstances for its application are continuing to be developed by the courts. The fundamental elements were adopted in Model Busines Corporation Act (American Bar Association) sec. 8.31 and the rule was also handled and defined in American Law Instutute Principles of Corporate Governance Art. 4.01 (c).

According to American Law Institute (ALI) Principles of Corporate Governance *"A director or officer who makes a business judgment in good faith fulfills the [duty of care] if the director or officer: (1) is not interested in the subject of his business judgment; (2) is informed with respect to the subject of the business judgment to the extent the director or officer reasonably believes to be appropriate under the circumstances; and (3) rationally believes that the business judgment is in the best interests of the corporation.* The business judgment rule was also enacted in Australian Corporate Law (Art. 180/2) in 1999 and South African Companies Act (Art 76/4) in 2008 that based substantially on the American Law Institude formulation.

4. The Business Judgment Rule in Selected Legal Systems

4.1.The Business Judgment Rule In USA

Duty of care as defined in American common law is the amount of care which ordinarily careful and prudent man would use in similar circumstances (Graham v. Allis-Chalmers Mfg. Co. 188 A 2d. 125, 130 (Del. 1963) Hansen, 1993, p. 1355, 1359, O'Kelley & Thompson, 1999, p. 271).The level of the required care is objectively determined. Bringing the liability suits against the directors about the harmfull consequences of the board of directors' decisions, the judicial review of duty of care is allocated the decision making process through business judgment rule and confined if directors have reasonable information about the decision's subject (Smith v. Van Gorkom 488 A. 2d. 858, 893 (Del. 1985); Citron v. Fairchild Camera & Instrument Corp., 569 A.2d 53, 66 (Del.1989), Hansen,1993, p. 1356; Welch & Turezyn & Saunders, 2009, p. 104). In American common law, the lack of information of the directors must rise to the level of gross negligence if the directors' decisions are to be censured as uninformed and hold the directors responsible for the harmfull consequencies of the decisions (Block & Barton & Radin, 1998, s.76).The business judgment rule establishes a "safe harbor" for directors from liability for their actions when taking business decisions, provided that some preconditions have been satisfied. First of all the rule is relevant only where directors have actually exercised business judgment. A decision to refrain from action is also protected by the rule. Secondly board members must act free from conflicts of interest. The directors must be disinterested and independent regarding to the subject of the decision. This means they do not acting on private interest or irrelevant influences. However in assessing the conflict of interest, it is considered whether the majority of the board members are independent and disinterested regarding to the subject of the decision or not. Thirdly directors must be reasonable informed regarding the decision. The decision taken by directors must be based on all material information reasonably available. The due care and informed judgment requirement refers to the process followed by directors in making a decision and not the merits of the decision. Finally the rule protects directors if they rationally believe that the judgment is in the best interests of the corporation. While the rule is originated from case law, it can not figure out an uniform formulation easily. For implementation of the rule some courts' decisions have stipulated additional pre-conditions. In particularly, it is recognized that the protection of the business judgment rule does not include the decisions by directors that constitute fraud (See Kelly v. Bell, 254 A.2d 62 (Del. Ch. 1969); American Timber & Trading Co. v. Niedermeyer, 558 P.2d 1211, 1219, n.9 (Or. 1976), illegality (See Abrams v. Allen, 74 N.E.2d 305 (N.Y. 1947); Miller v. American Telephone & Telegraph Co., 507 F.2d 759, 764 (3d Cir. 1974) and ultra vires conduct and waste of corporate assets (See Kaufman v. Beal No. 6526 (Del. Ch. 1952); RCM Sec. Fund, Inc. V. Stanton, 928 F.2d 1318 (2d Cir. 1991). Furthermore the rule does not extend when the directors' actions constitute an abuse of discretion, egregious or irrational or reckless indifference to or a delibrate disregard of the stockholders (Hansen, 1993, p. 1369 ff.). The business judgment rule protects conducts by directors when taking business decisions that can be attributed to any rational

business purpose (Hansen, 1993, p. 1366).The rule presumes that each of elements is present and shields directors and their decisions from judicial second-guessing where this presumption is not overcome. Under the traditional application of the business judgment rule the plaintiff carries the burden of rebutting the presumption that directors complied with their fiduciary obligations. The plaintiff must adduce sufficent evidence to show on a preponderance of the evidence that one or more of the elements of the rule should not be presumed. After satisfying the burden of establishing that the conduct of the director is challengeable, the plaintiff in order to hold the director liable has the further burden of establishing that, damages has been suffered by the corporation or its shareholders and the director's challenged conduct was the proximate cause of that harm (Gevurtz, 2000, p. 304.). The plaintiff can fulfill the initial burden of proof by allegations and proffering of fact give rise to a possibility that the business judgment rule will not apply (Aronson v. Lewis, 473 A. 2d 805, 807 (1984), Balotti & Hanks, 1993, p. 1349. Block & Barton& Radin, 1998, p. 27-28). When the plaintiff fails to rebut the presumption, the rule prevent the cours from examining the merits of the business decision and the directors will not exposed to personal liability. However if the plaintiff successfully rebuts the presumption of the rule the burden will shift to the defendant directors to establish the entire fairness of the challenged action (Hansen, 1993, p. 1373, 1375 ff.). Therefore it is mentioned that the rule contains two-stage assesment. Where the plaintiff proves facts sufficient to overcome the business judgment rule presumption, the rule has no applicability and challenged conduct is reviewed by the court under the entire fairness standard to determine whether the conduct is fair to the corporation and its shareholders. In that case the directors must prove that the challenged conduct was approved by disinterested directors or disinterested shareholders or was fair to the corporation and appropriate to corporate benefits for not to be held liable (Williams v. Geier, 671 A.2d 1368, 1378 (Del. 1996), Emerald Partners v. Berlin, 787 A.2d 85, 91 (Del. 2001). Block & Barton& Radin, 1998, p. 28 ff.; Gevurtz, 2000, p. 302).

4.2. The Business Judgment Rule in United Kingdom

The law of the directors' duties was regulated by the common law traditionally in the United Kingdom. The directors owe duty of care, skill and diligence as well as duty of loyalty to the corporation. The traditionally view based upon a low Standard of care while it was based on directors' personal skills and subjectively formulated in largely in nineteenth century cases. In City Equitable Fire Insurance Co Ltd (1925 Ch 407) case the court stated that *"a director need not exhibit in the performance of his duites a greater degree of skill than may reasonably be expected from a person of his knowledge and experience"* ((1925) Ch 407, at 427. Davies& Worthington, 2012, p. 518). Developments in the law imposed the courts more demanded and stricter duty in negligence. The courts decisions particularly which were given in the 1990's adopted more demanding objective standard. In Norman v. Thedore Goddard decision and Re D'Jan of London Ltd decision, the court held that the common law duty was set out in section 214/4 of the Insolvency Act 1986. This means *"the care, skill and diligence that would be exercised by a reasonably diligent person with (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions carried out by the director in relation to the company and (b) the general knowledge skill and experience that the director has."* (Norman v. Theodore Goddard (1991) B.C.L.C. 1027; D'Jan of London Ltd, Re (1994) 1 B. C. L.C. 561; Davies&Worthington, 2012, p. 519). The legislator has considered the changes of the law and enacted the duty of care both objective and subjective aspects in Companies Act 2006 Art. 174. Article 174 is formed as follows: *(1) A director of a company must exercise reasonable care, skill and diligence. (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with— (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried*

out by the director in relation to the company, and (b) the general knowledge, skill and experience that the director has. According to this provision, the director will be expected to act in accordance with the conception of the knowledge, skill and experience that may reasonably be expected of a person who carrying out the duties that he/she is carrying out. The director's subjective level of skill sets the standard required of the director, only to increase the level of care required (Davies&Worthington, 2012, p. 519-520). Related to duty of care in common law the expression of the business judgment rule is not purported explicitly but the policy of not reviewing commercial decisions or not judging directors with the wisdom of hindsight is accepted. However the pre-conditions of the abstention of the judicial review have not been clearly defined. In general the courts refuse to look at an action unless it breaches one of the equitable or tortious duties of the directors. Ever since the decision of court of Chancery in Charitable v. Sutton Case (1742), the courts have consistently expressed the courts reluctance to second guessing the business decisions of corporate directors (Sutton, 2 Atk. 400, 26 Eng. Rep. 642). Holland, 2009, p. 678-679). Same approach was repeated in subsequent court decisions. (*it is not matter of law for the court whether or not a particular alteration is for the benefit of the company nor is it the business of judge to review the decision of every company in the country on these questions* Shuttleworth v. Cox Brothers (1927, 2 KB 9); *"They [the directors] must exercise their discretion bona fide in what they consider – not what a court may consider – is in the best interests of the company"* In Re Smith and Fawcett Ltd. [1942] Ch 304 (CA) at 306; *the court does not interfere the business judgment of directors in the absence of allegations of mala fides* In Re Halt Garage (1964) Ltd (1982) 3 All ER 116, 1039; Devlin v Slough Ltd (1983) BCLC 497, 504.) The arising question if the director's duty of care is made statutory, the Companies Act should also include a business judgment rule be answered negative by the Law Commissions while the courts already adopt the policy of not reviewing commercial decisions or judging directors with wisdom of hindsight and there is certainly a risk with the rule that the courts will come to regard cases where the procedural standards have not been met as presumptively negligent (Davies& Worthington, 2012, p. 523).

4. 3.The Business Judgment Rule in Germany

In Germany joint stock companies are formed two-tier management system called as management board (*Vorstand*) and supervisory board (*Aufsichtsrat*). Members of the board of management and the supervisory board must exercise the standard of care of a diligent and conscientious manager when carrying out their duties (German Stock Corporation Act Art. 93/1; Art. 116). The level of care is determined as an objective standard. In Germany, the rule was codified with adding a sentence in Stock Corporation Act Art. 93/1 by Act on Corporate Integrity and Modernisation of the Right of Rescission Rights in 2005. (*Gesetz zur Unternehmensintegritat und Modernisierung des Anfechtungsrecht-UMAG*). The codification of the rule is considered as necessity to counterbalance facilitating actions by shareholders by lowering quorum. However before this amendment the rule was already applied by German Federal Court of Justice. The first jurisprudence to refrain from the second-guessing the business decisions is Herstatt Bank case in 1979 (BGH., 9.7.1979-II ZR 118/77). Hersatt Bank's court accept the discretionary power of the management board regarding to application for going bankruptcy or an concordatum. According to court decision; *the directors can evaluate risk of continuation of the business activity and recovery of it by taking care as a prudent director. Judicial review must be restricted only the determination of the directors' expectation about the recovery of the company is whether realistic or not. In this determination it can be examined if the effort of the directors to improve the situation of the company wisely.* Additionally the court explained that; it is insignificant whether consideration of directors is objectively proper or not. (Oltmanns, 2001, p. 232-233; Schlimm, 2009, p. 109 ff.). In the

subsequent decision of Federal Court of Justice in 1997 was purported that that supervisory board members who are empowered to instute actions against members of management board should allow them considerable freedom to manage and direct the business of the corporation. And emphasized that without such a freedom it would be impossible for them to manage and direct the business of the corporation in an innovative, business-like or entrepreneurial way (Arag- Garmenback BGH, 21.4.1997-II ZR 175/95, ZIP, 1997, 883 ff.) The court stated that *"the management board will only be liable when its actions are clearly beyond the limits established by reasonable conduct in the best interest of the enterprise; or they have been by far too willing to take business risks; or management board members have acted contrary to their duties in another way"* (Plessis&Großfeld& Lutterman& Saenger& Sandrock, 2007, p. 82; See also Oltmanns, 2001, p. 326, 374 vd.; Roth, 2001, p. 74 ff.). According to Art. 93/(1) 2 *They shall not be deemed to have violated the aforementioned duty if, at the time of taking the entrepreneurial decision, they had good reason to assume that they were acting on the basis of adequate information for the benefit of the company.* Regarding to this provision, business judgment rule shields the directors from liability if five conditions have satisfied. An entrepreneurial decision was taken (*unternehmerische Entscheidung*), the decision was taken in good faith (*Gutgläubigkeit*), not acting on private interest or irrelevant influence (*Handeln ohne Sonderinteressen und sachfremde Einflüsse*), the decision was taken in the best interest of the corporation (*Handeln zum Wohle der Gesellschaft*) the decision reached based on appropriate information (*Handeln auf der Grundlage angemessener Information*) (Gesetzentwurf der Bundesregierung, Drucksache 15/5092, 14.03.2005, p. 11.) In constrast to the US version of the rule, German Stock Corporation Act is not codified the business judgment rule as a presumption. The directors bears the the burden of the proving evidence that the rule's conditions are met and they did not breach their duties. (Gesetzentwurf der Bundesregierung, Drucksache 15/5092, 14.03.2005, p. 12).

5. The Business Judgment Rule in Switzerland

According to Art. 717 of Swiss Code of Obligations the members of the board of directors and third parties engaged in managing the company's business must perform their duties with all due diligence and safeguard the interests of the company in good faith. The level of care is determined by courts in accordance with objective standard. The duty of care requires the director to act in the same way as a diligent and competent director would have acted when placed in the same circumstances. Related to the duty of care the business judgment rule is not codified in Switzerland. However the most of the Swiss authors defend the idea of applicability of the rule in liability suits of corporate directors (Grass, 1998, p. 1 ff; Isler, 2004, p. 42 ff.; Frick, 2003, p. 513 ff; Forstmoser& Sprecher& Töndury, 2005, p. 57 ff.; Ruffner, 2000, 212 ff.; von der Crone, 2006,7 ff.; von der Crone, Carbonara, Hunziker, 2006, s.46 ff. See also Böckli, this author supports the idea of rule's methodically examination but rejected the limitation of the duty of care only making process and procedural review, the decision must be conceivable and justifiable and the activity of the basis of the decision must be best interest of the corporation. Böckli, 2009, p. 1775 ff. Oppesing view: Kunz defended the idea that there isn't any legal basis for application the rule, and adopting the rule and idea of judicial abstention affects adversely to minority interest and protection of them Kunz. 2002, p. 459 ff.). Swiss Federal Court adopted the basic idea of the rule but not remarked the explicit reference in early period decisions. The decision of the Swiss Federal Court decision in 2002 is examined especially that whether the directors have reached an informed judgment with adaquated examination on the obtained information (BGE 4C.201/2001, 19.06.2002). However in the subsequent decisions of Federal Court has explicitly stated that and enforced the business judgment rule (*courts must be abstain from second guessing decisions which were taken on*

basis rationable information and apprioriate decision making process and non conflict interest decisions. (BGE 4A.74/2012 18. June.2012; See also BGE 4A.306/2009, 8. Feb. 2010).

6. An evaluation of applicability of Business Judgment Rule in Turkish Corporate Law

6.1. Rationale of Adoption the Business Judgment Rule in Turkish Corporate Law

First of all according to Turkish Commercial Code (TCC) Art. 374 the board of directors and management to the extent delegated to them shall be authorised to make decision with regard to all business and transactions required to perform the company's scope of activity, excluding the issues which are subject to the authority of the general assembly by law and the articles of incorporation. TCC Art 365 in which is codified the management and represantation authority of the board of directors and Art 375 in which is codified non-delegable and indispensable duties and powers of the the board of directors also concretize the management authority of the directors. These provisions are the dogmatic source of decision making and discretionary power of the board of directors and management and the fundamental idea of the rule. According to TCC Art 369 the board members and the third parties who are involved with the management of the company are under the obligation of performing their duties with the due care of a cautious executive and protect the interests of the company while performing their duties in accordance with the principle of good faith. The hypothetical person who is compared with the director has a quality managing the corporation which is similar size and engaged in same kind of business. Therefore there can be no subjective excuse (e.g. lack of time, ignorance or incompetence). Standard of care is regulated in TCC is determined objectively and high level as such in US, UK, German and Swiss Law which are adopted the rule to determine breach of duties of directors related to business decisions in liability suits. In TCC the rule is not codified but prescribed in the preamble of article 369 as standard while the identify of the cautious director standard. In the preamble of new TCC is also emphasized that the term of prudent man is different from the cautious executive term and added that it is avoided using the term of prudent man at Art. 369. The cautious director term is also meant to be the rule of business judgment (Tekinalp, 2013, p.241), for differences in terms See. Kırca (Şehirali& Çelik& Manavgat), 2013, p. 658). In addition it can be observed that the required elements of the business judgment rule are corresponding to the duties of directors which considered in any liability suits in Turkish Coporate Law. The required duty of care impose the directors the necessity of taking the decisions and measures in the best interest of the company by using their skills properly. Identification of whether required care is applied or not as easy as reviewing the business decisions unlike the other duties of directors (duty of loyalty, duties which imposed explicitly in statutes or resolution of general assembly or in articles of incorporation) while there is no objective standard of reviewing a business decision. In corporate law, the directors' responsibility is not deemed as an outcome responsibility. Due to abovementioned reasons, it is also a necessity that embodying the assessment of the rule's preconditions in liability suits and counterbalancing the high standard of care and facilitating actions by shareholders in Turkish Corporate Law. Allocation of judicial review on the legal issues rather than convenience or propriety of the decision is possible by implementation of the rule's pre-condition considered in liability suits.

6.2. Elements of The Business Judgment Rule

The elements of the rule which should be considered in a liability suits are as follows:

6.2.1. Business Decision was taken

The business judgment rule is considered only if the board of directors or management takes a decision whether to do something or not to do something. (e.g. election of a manager and president, a sale of part of the asset of a company, deciding opening a branch or ceasing an unproductive production, determination of the adequancy of information and reporting systems, investing in a new market)**.** A positive decision to do nothing is also clearly protected by the business judgment rule (e.g. not to bring a suit against any director or manager). Business decisions includes a conscious preference in alternative resolutions which has an economical impact on the company. The right of choosing the alternative transactions is required a discretionary power of the management, that find the source of this power in TCC Art. 374, 365 and 375 in which the duty of managing the company is specified to be a responsibility of the board. For implementation of the rule in a liability suit, the decision ought to be taken in accordance with the provisions of TCC Art. 390, 1527 which are related to order of meeting. In addition the decisions related to the provision of an act or articles of incorporation in which the board's action or decision making is determined clearly, (e.g. the duty of the board calling the ordinary general assembly in TCC Art. 409 and 410) can not be the subject of the rule. In such a case the directors neither make a mental effort to make a decision nor be at risk of misjudgment. The business judgment rule also does not protects decisions which taken by directors that constitute violation of their obligation that are undertaken by law or articles of incorporation or general assembly. In this case, the breach of the obligation can be determined easily by the courts.

6.2.2. Informed Judgment

Regarding to business judgment rule, the due care and informed judgment condition refers to the process followed by directors in making a decision and not the accuracy content of their desicion. The determination whether a business judgment is an informed one is depend on whether the directors have informed themselves prior to making a business decision, of all material information reasonably available to them and explanatory statements. It is important to obtain the necessary documents and adequate negotiation process. The directors can be held liable particularly making decision without any preparation priorly meeting, lack of necessary documentation, lack of explanation about the subject of the decision, lack of assessment of alternative proposals and without reading the documents and reports. Article 392 of the new TCC the right of information of board members is arranged in details considering at the board meetings and outside of the board. However in the Art.392 is not prescribed any obligation about the the necessary information which would be given the directors prior the board meetings that is essential to be taken an informed decision. Such a provision can be formed in the articles of corporation or with a decision of the board on the grounds of Art. 392/6. The board members can find an opportunity to obtain necessary information before the board meetings by making such an arrangement. The courts reviewing by the business judgment rule in the condition of informed judgment should be regarded as an asssessment of whether the directors reached the necessary information taking a rational and justifiable decision at the time of it taken.

6.2.3. Non- Conflict Interest

The rule protects directors from personal liability if they have non conflict of interest. This means the directors when taking decisions are not acting on private interest and their decisions shouldn't be based on irrelavant influences. Their action should be accordance with the duty of loyalty. For having the protection of the rule a director should not expect to derive any personal financial benefit from it in the sense of self dealing. In addition a director's decision should not be based on extraneous consideration or influences rather than the corporate merits. In particular a director who is beholden to or under the influence of an interested party lacks the requisite independence. TCC has some provisions which ensures to directors should avoid conflicts of interest. Prohibition of participation in discussion (Art.393); Prohibition of conducting transaction with company, to become indebted to company (Art.395) and –non-competing obligation (Art.396) ensures that the board of the directors' desicions will be taken objectively. Furthermore according to Art. 394 remuneration rights of board members can be determined by articles of incorporation or general assembly resolution. If the decisions is taken breach of these legal regulations, the judicial review can focus on grounds of business decision, its results and whether the transaction was fair and reasonable regardless of the business judgment rule.

6.2.4. A honest belief that the action taken was in the best Interest of The Corporation/Good Faith

The last condition of the rule is an honest belief that the action taken was in the best interests of the corporation. This condition is stated also as good faith/bona fides in American common law. This is also a component of duty of loyalty which requires directors to put the corporation's interests ahead of their own. Good faith includes both the members honest belief that the action taken was in the best interest of the corporation and the action has a rational business purpose (Balotti & Finkelstein, 2006, sec. 4.30).Thus this condition has both subjective and objective aspects. It is expected that decision which is taken in an honest belief has a rational basis (rational business purpose). From the ex ante point of view the decision must be passed for conceivable and objectively justifiable test. If the decision is so bizarre that no reasonable person would countenance it,the court can examine the merits of decision regardless of the rule. (e.g. deciding any purchase contract on properties which has import prohibitions, a decision to terminate the licence agreement of the company which is the sole field of business is licenced production; a decision to sell the corporate assets so low price that no reasonable person would countenance the price). The requisite element of the rule also correspond to TCC Art. 369 the board members and third parties who are involved with the management of the company ought to protect the interests of the company while performing their duties in accordance with the principle of good faith.

6.3. Differences between US and Turkish Versions of BJR

From my point of view, the business judgment rule's pre-condition can be adopted in liability suits provided that the differences of the legal systems between American and Turkish Law should be taken in consideration. First of all in Turkish Law, there isn't any presumption that the pre conditions of the rule is present. In initial draft of TCC Art.369 was formed a presumption that the members of the board and executives conduct with care in the concept of this clause while fulfilling their duties. However this third parapraph of article was removed by Justice Sub Commission. Therefore the burden of proof of the elements of the rule can be determined based on the the legal basis of the cases (contractual relationship or tort) while the duty of care implies also fault and in contractual relationship the defendant has the burden of

proof that his faultlessness according to Turkish Obligation Act Art.112. The degree of negligence for the responsibility of directors is also different in Turkish Law. According to TCC Art.553 directors' all kinds of negligence (included slight negligence) is sufficient to hold the directors liable. Thus we can not adopt the gross negligence standard which is applied in American jurisprudence. Thereto in American common law the required lack of conflict interest is interpreted a review of whether the majority of the board members are disintrested and independent of the subject of the decision at the resolution process. However in TCC Art.393 prohibits participating each members of the board the discussion of matters concerning their own interest or the interest of the relatives. Therefore the abstention of the court second-guessing the decision only be possible if the all of the decision makers have no conflict-interest of the subject of business decision.

7. Conclusion

According to TCC Art.369 the board members and third parties who are engaged in the management of the company are under the obligation of fulfilling their duties with the due care of a cautious manager and safeguard the interest of the company. The business judgment rule is not codified in TCC however the wording of the TCC Art.369 intended the opportunity of the application of the rule. This opportunity is also stated in the preamble of the Art.369. The rule's pre-conditions are corresponding to the duties of directors. The implementation of the rule and distinguishing misjudgment or inexpedient decisions from breaches of directors duties is also possible for Turkish Law provided that the differences from American Law would be considered.

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The Right To Education In The Constitution

Selda Caglar

1. Introduction

Education took its place in international human rights law for the first time in the United Nations, Universal Declaration of Human Rights as a "right", and was accepted as a human right in the following period following the Universal Declaration although it was the subject of public services. The content and scope of it has been broadened with universal and regional human rights agreements and conventions. Convention against Discrimination in Education, United Nations International Covenant on Economic, Social and Cultural Rights (UN-ICESCR), Convention On the Rights of the People With Disability (CRPD), Convention on the Rights of the Child (CRC), and the 1st Additional Protocol of the European Convention on Human Rights (ECHR) and the European Social Charter (ESC) are the major examples of these agreements.

Parallel to the developments in international law, the right to education has been defined as a basic right at constitutional level in the majority of the countries in the world, and the countries that are the parties of the abovementioned agreements and conventions have had to revise their constitutions and educational regulations, and then take legal, administrative, judicial and other measures.

Turkey regulated education not in a sense of being a specific right but as a duty of the state in a sense of service provided to citizens in Constitution of the Republic of Turkey 1961 on when Turkey was not a party of the majority of the abovementioned conventions (Item 50), and expressed education as a right and as a duty in the Constitution of the Republic of Turkey 1982 (Item 42). So far, Turkey has become the party of all the aforementioned conventions; however, the right to education have been continued based on a regulation that is far from international principles and standards accepted in international laws. This period, in which the efforts are made for a new constitution, must be considered as an opportunity to regulate the right to education in accordance with the international agreements, and necessary evaluations must be made. For this purpose, in this paper, firstly, the right to education will be examined in terms of the general scope; elements and purposes of it, which are regulated in the agreements to which Turkey is a party. Then, the items on the right to education in the Constitution 1982, which is still in power, will be evaluated in the light of the rules and principles accepted in international legal system in a comparative manner, and the issue of what kind of precautions may be taken in the new constitution draft in terms of eliminating the missing points and contrary elements will be discussed and recommendations will be made.

2. The Right to Education in International Law

Education is accepted as a right that brings more burdens for the states than the civil and political rights, which is included in social, economic and cultural rights category (Bulut, 2009). As a matter of fact, it is not possible for the states to perform the protection, the right to education and other social rights as long as states activate the human and financial resources and adopt suitable plans and programs (Tezcan, Erdem, Sancakdar, Onok, 2009; Tezcan, Erdem, Sancakdar, 2004).

On the other hand, the right to education is also evaluated as a right that has to be protected with care and performed in the national and international law systems because of its property of being the pioneer to the protection and use of the other human rights. Because it is not underestimated that education facilitates using many rights such as health, obtaining

information, working, social security, being organized; and is a field that is open for being used as a tool to strengthen or weaken the individual or the society. As a result of this, the right to education is regulated in international human rights agreements not merely as the access to education, but in a manner that includes the rights in education (A Human Rights-Based Approach to Education for All, 2007). In this context, the universal principles and rules that regulate the right to education in the broadest scope will be examined in the light of basic agreements and conventions, which are accepted in this field.

2.1. The Right to Education in International Covenant on Economic Social and Cultural Rights (ICESCR)

ICESCR (General Assembly Resolution 2200A (XXI) of 16 December 1966) attracts attention as the convention of the United Nations (UN) revealing the universal principles and rules of the right to education in the broadest sense. In the 23th Item of the Convention, the right to education has been regulated in a very long text. When the contents of the item are examined, it is observed that education has a rich coverage in terms of the accessibility (including economic and physical access), individual and social aims, and the freedoms given to families and entrepreneurs.

The Committee on Economic, Social and Cultural Rights, which is responsible for the protection and auditing of the convention rights, interprets this item of the Convention by using the classification of Katarina Tomasevski, who is the Special Reporter of the UN, the Right to Education division, which is known as the 4A Rule (Tomasevski, 2001, pp.19-20) (Committee on Economic, Social and Cultural Rights, 1999, para.59). In this context, education consists of 4 elements, which are connected with each other:

- ✓ Availability: It is the element on the quantity of education expressing that there must be adequate and functional educational institutions and programs in the countries of the states, which are the parties of the convention,
- ✓ Accessibility: It expresses that everybody must have access to educational institutions and programs without being discriminated, and is explained with 3 parameters:
  1. Non-discrimination means that it must be ensured that everybody, especially the persons and communities that are in the most vulnerable situations (i.e. disadvantaged), which must have the priority, have the access to education without being discriminated legally or in a *de facto* manner.
  2. Physical Accessibility expresses the positioning of educational institutions in suitable locations in geographical terms, and ensuring that they have safe access; and in addition to these, providing individuals with the opportunity for being educated with modern technological devices.
  3. Economic Accessibility, on the other hand, expresses that education must be affordable by everybody in economic terms, and nobody must be excluded from using the right to education due to financial drawbacks.
- ✓ Acceptability means being at an acceptable quality in education both for parents and students in terms of the materials, educational methods and contents used in education (Tomasevski, 2004).
- ✓ Adaptability is the configuration of education in a flexible manner and its being adaptable to the differences of the students coming from different social, economic and cultural backgrounds and to the differences of students who are in need of special education.

It is accepted that a state, which has configured its educational system in accordance with these 4 elements, which are accepted as being connected with each other in a holistic relation, has fulfilled the right to education in a righteous manner. It is recommended that the 4 elements of education must always be considered in determining the administrative planning

and political preferences and in constitutional and legal regulations that will be performed in the field of education, which is a right and a service (Tomasevski, 2001).

2.2. Convention on the Rights of the Child (CRC)

Convention on the Rights of the Child (CRC), which is another convention of the United Nations, attracts attention as the sole convention regulating the right to education in international field in two items. The first item of the Convention on the right to education (Item 28) includes the liabilities of the state intended to establish educational systems and to ensure access to these systems, which is similar to ICESCR. In this context, it is possible to claim that 28th Item has been regulated in a manner that includes the existence and accessibility elements of education. In the other item of the convention (Item 29), on the other hand, the purposes of education are included, which is different from ICESCR. In this item, in which the individual purposes of education, which bring children to the center of education; and the social purposes are handled together, it has also been stated clearly that the right to education is not only the problem of access to education, but it is also related with the contents of the education (Hodgkin & Newel, 1998). Committee on the Rights of the Child (CRC), which is the auditing unit for the convention, made its first general interpretation on this item, which has a specific importance. According to CRC, Item 29 (1) not only adds a quality direction that reflects the respectability, rights, and the right to education, which is innate and are recognized with the 28th Item of the Convention, but also emphasizes the need in which education must be children-centered, intended for children and must authorize children. In Item 29 (1) of the Convention, it is revealed that educational curricula must be directly related with the existing and future needs of children, and teaching methods must be determined according to different needs of children (General Comment No.1, 2001).

2.3. The Right to Education in European Social Charter (ESC)

In The European Social Charter, which is accepted as the social rights document of the European Council, although the right to education is regulated in a manner that is limited with vocational education, it is similar to the UN Conventions in terms of common principles and standards when considered together with the other items that include the measures on individuals that need special protection. For this reason, the 10th Item of the Social Charter, which regulates the accessibility of everybody from all age groups to vocational education in physical and economic terms, must be considered in a manner that includes the 15th Item, which accepts that education is a tool ensuring that the disabled participate in independent life and social life, and must also be considered together with the 17th Item, which expresses that providing children and the young with free-of-charge primary and secondary education opportunity will be influential in ensuring the attendance to school; and thus, children and the young may be protected in social and economic terms. When these three items are evaluated together, it is possible to claim that ESC accepts the right to education not in a manner that focuses on individual but in a manner that focuses on the society, and considers it as a tool for safe and good life rather than considering it as a right.

European Committee of Social Rights (ECSR) interprets the right to education in a holistic manner together with its elements, which suits a modern and universal understanding in its decisions on the complaints that are made. One of the decisions showing that the Committee accepts the Conditions as a dynamic document that has to be interpreted according to time and changing needs is the decision given by it on the violation of the right to education of the handicapped, who are cared for in institutions in Bulgaria. In an application made in 2007 (Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, 2008)

European Committee of Social Rights evaluated education as a whole consisting of elements like existence, accessibility, adaptability and acceptability, and decided in this concrete event that there was a violation of rights in Bulgaria where the handicapped children could not access education, and those who could access to education could not receive quality and proper education (Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, 2008, para.43-55; For Detailed Info, please refer to Caglar, 2010, pp.94-96).

2.4. The Right to Education in European Convention on Human Rights (ECHR)

European Convention on Human Rights has regulated the right to education not in the main text but in a separate protocol by emphasizing its freedom side because the Convention is the one that regulates civil and political rights are freedoms. However, this item has been interpreted in a wide manner to include all aspects of the right to education in decisions of European Court of Human Rights (ECHR). The case named **Orsus et al. v. Croatia** is one of the best examples on this topic. The case was based on an application with the claim that there was a discrimination because some of the students at 4 primary schools in Croatia in 3 different counties were being educated at classes where only the Romany children were collected for a temporary period or throughout the academic year; and the Grand Chamber of the ECHR revealed that there was a violation based on sound justifications, which is a completely different interpretation of the relevant division of ECHR after the application was made by exhaustion of domestic remedies (File number: U-III/ 3138/2002).

After this decision, the case was brought to ECHR (herein referred to as the Court) again, and the Court made a decision explaining that the right to education was not violated, mostly based on the decision of the Croatian Constitutional Court, and stated that the whole of the suitors did not receive education in separate classes throughout the primary education process, they also received education in mixed classes, and in addition to this, the educational curriculum and the relevant programs were in the same quality and had the same bases in both class types (Case of Orsus and Others v. Croatia, Application no. 15766/03, 2008).

When the case file arrived at the Grand Chamber of the ECHR, the normative examination, the concrete flow of the events, and the difference in the methods and the interpretations used in the evaluation of the evidence and the liabilities changed the result of the case. The first decision of the Grand Chamber was to point out to the obligation of taking special precautions in the field of education and in other fields by emphasizing the disadvantaged position of the Romany society. In addition to this, it also emphasized the meaning of discrimination and the importance in terms of burden of proof. The Grand Chamber considered the placement of Romany children to separate classes due to their insufficient language skills as "different behavior", and mentioned that the purpose of eliminating the language inadequacy of the Romany children was based on a legal basis, added that being educated in different classes was a necessity, and asked the Government of Croatia to prove that the language education that was provided for this purpose was a precaution that was proper and proportionally suitable for the purpose. However the Government of Croatia was unable to present evidence showing that the same regulation was true for the other minority groups other than the Romany children that had language inadequacies, and could not present a legal regulation that would lay the ground for this practice. In addition, a logical explanation was not made for registering some of the Romany children to mixed classes in the first grade of the primary education and registering some of them in classes where there are only Romany children in the 2nd or 10th grades; and it was concluded that there was not a consistent practice in this field (Case of Orsus and Others v. Croatia, Judgment Strasbourg 16 March, 2010).

As it is observed above, the Grand Chamber tried to determine whether or not the intervention of Croatia to the right of education, which is protected with the Convention,

through different practices was within the scope of "margin of appreciation". The Court decided that the practice of education in which the Romany children were placed in separate classes by the state, which is responsible for supplying the special needs of the Romany children, who are the members of a disadvantaged group, on education, was lacking legal basis, and was a practice that was not based on a clear criterion or standard, and evoked arbitrariness; and decided that Croatia failed to pass the test of "proportionateness"; and concluded that the 2nd Item of the Additional Protocol No 1 together with the 14th Item of the Convention was violated.

3. The Right to education in the Constitution of the Republic of Turkey 1982

In order to realize the right to education in Turkey in a full sense, it is necessary that the 4 elements, which are accepted widely in international law, are regulated with constitutional and legal regulations, and the application must be made in accordance. To develop a concrete recommendation in this topic, the items regulating the right to education in the Constitution of 1982, which is still in power, and the basic principles and relevant items related with the protection and applying of this right, must be considered together and assessed within integrity for the changes to be made.

3.1. General Principles Regulating the Right to Education in the 1982 Constitution

In the Constitution, which is still in power, the right to education has been secured with special provisions as well as with general provisions that regulate the ban on discrimination and regulate equality. As a matter of fact, the ban on discrimination is a principle that has received universal acceptance in the quality of jus cogens (Pazarcı, 1997, pp.365-379) in human rights law (Caglar, 2010, pp.195-196). States must care for the right to education in all relevant policies, institutional practices, relevant programs and expenses for the purpose of taking the precautions that will eliminate discrimination and to detect *de facto* discrimination realized by some means or other, and must observe the practices in this context.

In addition to the ban on discrimination, the disadvantaged groups in the society must be enabled to access the opportunities that will allow them to use their rights and these groups must be equalized in this context, because equality is both a basic right and a quality of the other rights and freedoms, and a basic principle that has to be cared for in ensuring that people make use of it. In realizing social rights, on the other hand, equality is considered as a more important concept. Ensuring equality in access to rights generally depends on taking the precautions to reduce or eliminate the conditions that cause discrimination for the groups that are highly possible to experience discrimination, which was explained in 2003 in General Comment decision with the number 5 named "Children's Right Convention General Practice Precautions" of the Children's Right Committee (General Comment No.5, 2003, p.33). In the General Comment with the number 18 released by Human Rights Committee in 1989, there were similar statements (General Comment 18, 1989, p.147). According to the committee, states are responsible for providing equal opportunities and access for everybody to use their rights at the highest level (Caglar, 2012, pp.567-568).

In the 1982 Constitution, on the other hand, the ban on discrimination was referred to in one single provision together with "the equal protection of law" principle, and the general equality guarantee was explained with the following principles (Item10); the equal protection of law; non-discrimination because of the reasons stated in the Constitution; the ban on providing privileges to certain people or communities; and making equal use of the basic rights and freedoms stated in the Constitution (Oden, 2003, p.131). There have been several amendments made in the relevant provision until our present day, and there has been a struggle to develop a more guaranteeing system for the disadvantaged social groups. With the

amendments in 2004, it was emphasized that women and men were equal in terms of rights, and the state was held responsible to ensure that this equality is realized in everyday life. In this manner, the aim was to prevent *de facto* discrimination practices, eliminate inequalities, and provide stronger protection for women. The statement stating that the precautions that will be taken for these purposes cannot be considered to be against the equality principle, which is guaranteed in the constitutional positive precautions. It is also a positive development that the liabilities of the state are expressed in a clear manner in the relevant provision that makes it compulsory to prevent and eliminate *de facto* inequalities and that brings the women-men equality before the equal protection of law principle. This must be protected as an efficient provision in the new constitution to be used to eliminate the negative results like the exclusion of girls from education or their leaving school being at a high level, which is still a *de facto* problem in Turkey.

An addition was made to 10th Item in 2010 for the purpose of protecting the disadvantaged social groups other than women from negative results of discrimination and inequality; however, it is doubtful whether this will produce the same efficient result. Although this additional provision (Item 10/3), which states that the precautions that will be taken for children, the elderly, the handicapped, the widows and orphans of the war and duty martyrs, and the disabled and veterans will not be considered as being against the equality principle may be a positive step, this also has the drawbacks of the limited counting method, and excludes the other people who are in disadvantaged situations. In order to eliminate this drawback, the statement "those who are in similar situations" must be added to the relevant item, which is in Item 10/1 in the Constitution, and it must be emphasized that measures will be taken for all social groups that are unprotected and weak in order to eliminate the obstacles before the comprehensiveness of education.

Another missing point in the relevant regulation is that the groups that are named in it are not mentioned as the subject of the rights. As long as it is not stated clearly that the named groups will be equalized together with the remaining parts of the society in terms of equal rights, which is similar to the case in the guarantee system that was enacted for ensuring the women-men equality, there is a minimal chance for the relevant amendment to bear an expected result in practice. Accepting that these groups are the owners of the rights will not be sufficient, it must be clearly mentioned that the liability of preventing and eliminating the inequalities belongs to the state, which is similar to Item 10/2 of the Constitution.

3.2. The Special Provision Protecting the Right to Education in the 1982 Constitution

In the Constitution, the first remarkable problem in the provisions on the right to education is the fact that the scope of education was kept in an extremely limited manner. The content of education has not been mentioned in Item 42, which regulated the right to education, and the internationally accepted standards and principles are left with a lot of missing points. The minimum liability of the state on the right to education is providing the primary education in a compulsory manner as free-of-charge. In this aspect, although there is an image showing that education is accessible; the requirements of this sole item have not been covered fully. As a matter of fact, there is a contradiction in the statement that gives the right to compulsory and free-of-charge education to citizens in the subsection under the statement "no one may be excluded from education". There is a need for it to be reorganized so as to cover everybody aside from the citizens of the state, which is a universal quality. By so-doing, the legal basis of some educational institutions that are enrolling students solely based on being citizens, which is a discriminative practice, will be eliminated.

On the other hand, the 42nd Item of the Constitution cannot cover the international standards in the full sense in terms economic accessibility to education. The sole precaution

taken in this topic is providing the state support to students who lack financial resources. The support to be given is based on the condition of being successful, which poses another problem, because the scholarship and support that are based on condition represents an approach that ignores the fact that students may be unsuccessful due to other reasons that do not stem from themselves (being obliged to work, living in the streets, working in family business and similar socio-cultural, economic, and domestic, and health justifications). When the fact that the international approach to the economic accessibility on education is in the form of not excluding anybody from education due to economic drawbacks is considered, it must be underlined that scholarships and supports that are based on sole needs as well as the scholarships and supports based on success must be provided, which is another liability of the state (Algan, 2007, p.267).

The 42nd Item of the Constitution also poses a vulnerable guarantee in terms of the "acceptability" and "adaptability" elements of education. The content and method of education has been kept limited with being conducted in the direction of Atatürk's Principles and Revolutions and in accordance with modern scientific and educational principles; and another principle mentions that only education, training, research and examination activities must be conducted in educational institutions, and there is also a ban on the language of education. The regulation of the right to education in such a capacious manner is not consistent with the comments and regulations of the CRC and CESCR, to which Turkey is a party. In this convention, the right to education is interpreted as a right that serves to the purpose of ensuring that the children and individuals are empowered via education, their skills are developed to use and protect their rights and freedoms, and ensuring that they approach the rights and freedoms of others with respect, and also respect the environment and the nature, different cultures and civilizations. Guaranteeing the access of the students to basic education, strengthening their lifelong learning processes and the bases of their humane developments are only possible by emphasizing the purposes of education that are intended for the individuals. In the new constitution, the right to education must be regulated in a clear provision that prioritizes the individual targets of education, and the targets like ensuring full and efficient participation of the individual to society, encouraging and developing tolerance and friendship among all nations, races and religious groups must be added to the social targets of education. Drawing the frame of the right to education according to comprehensive targets will determine the content, standards and methods of the education that will be provided for the realization of the abovementioned targets to a certain extent.

The provisions of the Constitution regulating the targets in the education of the people who are in need of special education must also be revised. Because the provision 42/7, which makes the state liable for taking the precautions that will make people who are in need of special education become beneficial for the society, is a regulation that is contrary to the meaning and scope as well as the targets of special education concept. The primary target of special education is not making the child to become a beneficial person for the society, but providing his/her individual and social development at the highest level in all aspects, empowering him/her in such a way that will make it possible to take part in independent life and making him/her become completely independent. When the issue is considered in this aspect, the target in the education of those who are in need of special education must be equalizing them with their peers in terms of development and other aspects, and the liabilities of the state in this topic must be expressed clearly.

4. Result and Recommendations

When the whole of the Constitution is considered, we believe that the following topics must be considered in regulating the right to education and other relevant rights in the New Constitution:

- The subject of the right to education and other relevant rights is not only the citizens, but everybody.
- The aims of education must be determined together with the principles that are based on high benefit and participation and are based on the method that aims to eliminate the different needs on an approach that is based on these differences, and which takes the child and the individual as the center; and the quality and compatibility of education must be emphasized among the other aims of education.
- The scope of the liabilities of the state must be expanded, and these liabilities must be expressed in a clear and explicit language.
- Proper to the understanding that does not limit education to a certain process, the right to education in the new constitution must be included as an unlimited process to cover the basic education and lifelong education in order to ensure the independent and free life skills and participation of those who cannot make use of compulsory education.
- The ban on discrimination and equality principles, which are connected with the right to education, must be reorganized in such a way that will produce solutions to the critics mentioned before.

In the new constitution, the handling of the right to education with a holistic approach together with the other rights and basic principles, its being regulated in such a basis that will include the 4 elements, which are accepted in international law, will not only ensure individual protection, but also reduce the alleged violations claimed in international field, and increase the reputation of Turkey.

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Mediation as Alternative Dispute Resolution in Trademark Disputes in Turkish Law

Seniha Dal

1. Introduction

Trademark ownership in global world system, where commercial borders disappear day by day and technology progresses with incredible speed, is an important mean in determining competitive power Trademarks which distinguish goods or services of a business from goods or services of other businesses, have become one of the most important intangible assets of companies. In today's world, merchants are recognized with the trademarks related to goods and services they supply to market more than their names. Therefore, effective and equal protection in whole world for trademark right, which is both crucial for national and international commercial competition, is essential. In resolution of disputes occurring in case of trademark right violations, litigation is commonly practiced as principal and preferred resolution method. Litigation is institutional and it means intervention of an authority accepted by society to dispute. As in other countries, lengthy process of trials due to excessive workload of judiciary in our country as well, trial costs etc. prevent an effective resolution. Apart from these, insufficiency of litigation in face increasing disputes causes alternative dispute resolutions which provides a more economic and faster resolution method to be sought. Methods which resolve disputes before going to litigation or adjudication are stated as alternative dispute resolution (Kekeç, 2016). Most known among alternative dispute resolution methods are arbitration and mediation. Different from litigation, mediation is the subject of this study as a voluntary optional dispute resolution method where in general an objective third party participates to help resolve the dispute and support parties to reach a solution. Mediation in Resolution of Civil Disputes Law numbered 6325 came into force at 22.06.2013 in Turkey. In this study, regulations of mediation which is an alternative resolution method to litigation in disputes arising from trademark right in Turkish Law. In the study first concepts of acquisition, exercise and protection of trademark right, then concept of mediation as an alternative resolution method in trademark disputes will be handled.

2. Acquisition, Exercise and Protection of Trademark Right in Turkey

2.1. Trademark Right and Acquisition of Trademark Right

In Turkish Law trademark is enacted distinctively with Statutory Decree on Protection of Trademarks (SD) numbered 556. According to this decree, "With the condition that it distinguishes an enterprise's goods or services from another enterprise's goods or services, trademark includes any kind of mark including names as words, figures, numbers, shape and packaging of goods which could be viewed with drawing or could be stated in a similar way, which could be published and reproduced with print (art. 5)." In our legal system, while each merchant must take and use a trade name, each merchant doesn't have to own and use a trademark right. However, if a merchant wants to distinguish the goods and services he produces from their likes, then he could use trademark for this purpose. In this case if merchant wants it trademark to be protected, he should register his trademark with Turkish Patent Institute (TPI). According to the SD numbered 556, right ownership over trademark is essentially obtained through registration (art. 6). However for the trademark to be registered, it must contain the elements required by legislation (art. 5, 7-8). Otherwise trademark registration application is denied. Because trademark right is obtained with registration, in terms of origination and protection of right registration has establishing effect. A registered trademark

gives its owner the authority to prevent trademark's usage by others without owner's consent. In other words, trademark right provides exclusive rights and authorities to its owner in using, benefiting and disposing trademark. This exclusive authority has two definitive aspects; one of these is the power of disposition similar to property, other is the authority to prevent usage of same or similar trademark, third parties' unfair and unauthorized usage and disposal. In this respect qualification of trademark right is an absolute right with real effects (Tekinalp, 2005). It should be stated that, although SD numbered 556 adopts registration system, there are provisions which protect trademark rights obtained through usage (articles 7, 7/1-i, 25-26, 8/3, 8/5).

2.2. Use of Trademark Right

Use of trademark is not enacted explicitly in SD numbered 556, instead sanction of not using trademark is enacted. Although trademark right is obtained through registration in Turkey, every trademark registered is not protected for ten years. Party who acquires absolute right over trademark with registration, must use trademark as well. In other words, SD numbered 556 brings the obligation to use the registered trademarks and subjected a term for it. Accordingly, a registered trademark must be used in a term of 5 years (art. 14/1). If trademark owner does not use his trademark in this term, he loses the ownership on trademark through litigation. In this case, action for nullity of trademark is filed before competent courts and if in this case it's proved that registered trademark was not used for 5 years, registration is annulled with court ruling and trademark becomes null (art. 42/1-c). Purpose is to prevent a registered but unused trademark from staying in the monopoly of its owner, to prevent a violation of competition rules and competition from being affected negatively (Arkan, 1999). Thus by ensuring that right over trademark which is obtained through registration is only maintained through using the trademark, trademark backup is prevented and trademark registry is saved from unused trademarks. As we stated before, although SD does not explicitly enacts concept of trademark use, it specifies what would constitute trademark use. Accordingly,

A) Use of registered trademark with other elements without changing the distinguishing characteristic of trademark,
B) Use of trademark only for the purpose of export,
C) Use of trademark with owner's consent,
D) Import of the good carrying the trademark

Are enacted as trademark use. In this case, if trademark is used in one of these cases for five perpetual years, it would be regarded as trademark is used (art. 14/2). In addition to serious use of registered trademark in accordance with these cases, it must be used for the goods and services registered. According to the SD numbered 556, trademark must be used for goods and services of the class or classes in which trademark is registered. Trademark owner could use his trademark himself or he could give right of usage to third parties through license agreements. Trademark owner could give right of trademark use on some or all of goods/services included in trademark registration to third parties. If trademark is used by trademark owner or others authorized by owner outside of goods or services it was registered for, or it's used in the class it was registered but without right owner's consent, there is no valid use in these cases.

2.3. Protection of Trademark Right

Obligation to use the trademark is not related to protection of trademark. In Turkish Law, registered trademarks are protected according to SD numbered 556, non-registered trademarks are protected according to unfair competition provisions of Turkish Commercial Code. Because protection according to unfair competition provisions is not subject of this study, only regulations regarding protection of trademarks according to SD numbered 556 will be outlined. SD numbered 556 adopts registration basis for trademark protection and regulates registered trademark owner's absolute right over trademark and right to prevent violations of third parties. For the violation of a registered trademark, trademark's protection term shouldn't have expired and trademark's use by others should not be based on law or license agreement. In other words, if a party uses a trademark's same or similar on the basis of a legal right or license agreement between them and this use is in accordance with the provisions of agreement, there would not be a violation of trademark right. In general, for an act to constitute trademark violation, there must be a registered trademark and use must be unauthorized, without trademark owner's consent. Unauthorized use must be within the country where trademark is registered and protected, within protection term of trademark and with the commercial purposes prescribed in SD. According to SD, acts which violate trademark right are basically regulated under four categories. These are violation of rights arising from trademark registration, imitation of trademark, releasing imitation trademarked goods to market when imitation of trademark is known or it should have been known or keeping them for this purpose and extension of rights given through license without consent or to transfer them third parties (art. 61). Party whose trademark right is violated could request civil or criminal sanctions against these violations. Examples of legal remedies which could requested by trademark owner are termination of acts violating trademark right, elimination of violation and compensation of material and immaterial damages, confiscation and demolition of goods constituting violation (art. 62). Requests of trademark owner are limited to those prescribed in art. 62. Aside from these, if conditions are met, trademark owner could request legal remedies like: compensation articulated in articles 64, 66, 67 and 68; determination that violation is not present articulated in art. 74; determination of evidence articulated in art. 75; interim measures articulated in art. 76; confiscation at customs articulated in art. 79. Along with this legal remedies, trademark owner could request criminal remedies articulated in article 61/A.

3. Trademark Dispute Resolution Methods in Turkey

3.1. Litigation

In resolution of disputes fundamental and primary resolution method is litigation. Function of resolving disputes is essentially a duty belonging to state. State carries out this duty through courts by judicial activities. Because trademark disputes is a field requiring specialty, litigation regarding trademark disputes in Turkey are carried out by specialized courts established in 2001. These courts are not present in all provinces, currently while there are many specialty courts active in İstanbul, Ankara and İzmir, in other provinces, litigation in this nature is heard by civil courts of general jurisdiction in capacity of specialized court. In trademark disputes, trials are carried out according to general trial procedure and in principle written trial procedure is applied. Even though specialty courts were established with the purpose of resolving proceedings in shorter notice by expert judges, due to the heavy workload of specialty courts this purpose could be attained. Today in Turkey, trials take 3 to 20 months in average at specialty courts. Apart from this, appeal procedures are also quite long ranging around 18 to 24 months(Bozkurt Yüksel, 2011). However, because trademark and other intellectual property

rights have an economic value, lengthy trials cause pecuniary loss in significant amounts to right holders. Apart from this, this resolution method aims to determine the real right holder by being bound by laws. As a result of this, one party loses and the other wins. In this case parties lose the control over resolution, but they obtain an enforceable ruling based on laws (Kekeç, 2016).

3.2. Mediation as Alternative Dispute Resolution

Different from litigation, mediation is not a judicial activity. Mediation method was first used in countries adopting Anglo-American legal system. It has been started to be used in U.S. in 1960s, in the last 20 years it gained significance in UK as well. In Continental European countries, with the effect of globalization, in recent years it has been developing and it's being applied (Bulur, 2007). In our country which is part of Continental European legal system, mediation practice is quite new. Mediation in Resolution of Civil Disputes Law numbered 6325 came into force at 22.06.2013 in Turkey. According to the law numbered 6325, mediation is practiced in civil law disputes arising from dealings and transactions on which parties could freely dispose, including those involving foreign elements (art. 1/2). According to this provision, mediation in Turkey is a system outside of trial which resolves subjects, not of public order, on which parties can't agree. Because trademark disputes are of dealings on which parties could freely dispose, it's possible to apply to mediator in these disputes. In mediation, parties get help from an objective third party to resolve the dispute between them. In this respect, mediator do not adjudicate like judge, he helps other parties decide. Decisions made in mediation are not binding, they are in the nature of commitments made by agreement. Because of this agreement nature, there is no winner or losers. In this method practice of win-win is applied.

4. Resolution of Trademark Disputes with Mediation in Turkey

4.1. Trademark Disputes Subjectable to Mediation

Because trademark is a right which parties can freely dispose, in resolution of arising disputes, mediation which is a resolution outside of litigation could be used. Most fundamental function of trademarks is to distinguish product or service from each other. With this feature, trademark saves the product or service in market from being anonymous among its likes, it individualizes them (Dirikkan, 2003). Individualization procures a commitment relationship between trademark and consumers, and trademark becomes an important element of for business. This fastened the branding process for businesses and popularized use of trademark. Popularization of trademark use in commercial life brought forward violation of trademark right in different ways. Therefore there has been increase in the amount of trademark disputes. Trademark disputes could be evaluated under two categories. First of these are the disputes which arise when parties have a previous legal relation between them, in this case trademark disputes are named as trademark disputes arising from agreement. Second is the trademark disputes which arise when parties do not have a previous legal relation between them, these are trademark disputes outside of agreement (İmamoğlu, 2014). Most known form of trademark disputes arising from agreement is license agreements. Trademark owners aim to both gain income and increase recognition of their trademark by letting others use their trademark along with them. The fact that right to use trademark is given to third parties brings forth trademark license agreements. Trademark license agreement is an onerous and synallagmatic agreement in which licensor gives the right to use arising from trademark to licensee pursuant terms of agreement and licensee agrees and undertakes to pay a sum in return. With this agreement right to use

trademark is transferred completely or in part depending on the nature of license agreement. Even if concept of license agreement take place in article 20 and following articles of SD numbered 556, in general there is no regulation in Turkish Law regarding a contract type as license agreement or specifically trademark license agreement. Trademark license agreement is accepted as a sui generis agreement (Çörtoğlu Koca, 2013). Because agreement is not articulated in law as a whole, essential performance obligations of parties are defined according to their wills reflected in license agreements rather than by laws. With this reason, content of license agreement, especially rights and obligations must be articulated with great care. Otherwise disputes arising from scope of right subject to license agreement, price, type of agreement, extension, transfer and expiration of agreement, occur. Examples of agreements other than license agreement which involve trademark right are merger and acquisition agreements of companies, franchising agreements and trademark transfer agreements. As in license agreements, occurrence of disputes between the party owning trademark and the other party which obtains a right over trademark on the basis of an agreement, is inevitable.

What is meant by second category trademark disputes (outside of agreement) is violation of trademark right. To constitute trademark violation, one of the cases specified by SD numbered 556 must be present and one of the legality grounds must not be present. Violation of trademark right is nothing other than tort. SD numbered 556 article 9 articulates when violation of a registered trademark occurs. This article indicates cases of unfair use where trademark owner could prevent use of trademark without permit. Essentially, most of disputes ontrademark violation through unfair use are based on "ambiguity possibility" (İmamoğlu, 2014). Ambiguity possibility is defined as the possibility of those who are buyer of a good or service to purchase a similar or same good or service of another business with the idea that he is buying a good or service he knows or he heard of (Tekinalp, 2005).According to the SD numbered 556 if "trademark for which registration application is made, is same or similar to a trademark for which application was previously made and goods or services, included by a registered trademark or for which registration application was made, are same or similar, if registered or for which registration application made trademark could be confused by public and this ambiguity possibility includes the possibility that it is related to a registered or for which registration application made trademark" ambiguity possibility would emerge (art. 8/1-b). However, a trademark which is the same with a registered or for which registration application made trademark or for same goods/services a trademark indistinguishably similar would not be registered (art. 7/1-b). We consider that the concept of indistinguishable similarity in this provision is related to ambiguity possibility concept. That is to say, ambiguity possibility emerges when public thinks that there is connection between trademarks due to their similarity and that similar trademark is the serial trademark of same business symbolizing other products (Tekinalp, 2005). Resolution of disputes like these would have mediation, which enables to choose informed and experienced experts who have the capacity to interpret consumer perception and market data which require expertise in agreements and trademark rights, preferred (İmamoğlu, 2014). As we stated before, even if specialty courts try cases arising from trademark disputes, reasons like heavy workload of these courts, inadequacy of experts etc. delay trials and increase costs of litigation. When we think that foreign elements are included in these agreements, process would take much longer and it could cause harm which can't be reimbursed. In fact in business life time and cost are the most important two elements. We think that mediation saves both time and money in resolution of disputes and it also provides the opportunities to be involved in and control the process and freely determine the outcome of the process.

4.2. Mediation Process and its Ending

As in other disputes, in trademark disputes for the dispute between parties to be resolved by mediation two fundamental conditions must be present. First is that dispute must be suitable for mediation, second is that parties must have the free will towards resolving the dispute through mediation. We stated before that trademark disputes are of dealings on which parties could freely dispose and they are suitable for mediation. Then, presence of parties' will towards resolution of these disputes is essential. Freedom of will which is dominant in obligations law underlies mediation process. According to Mediation on Civil Law Disputes Law numbered 6325 which adopts this principle, parties of the dispute are completely free to apply to mediator, to continue the process, to finalize it or to abandon it (art. 3). Parties could apply to a mediator before litigation starts or during litigation (art. 13). If another method is not prescribed for beginning mediation process, one or more mediator is selected by parties from mediator list. Mediator list consists of the persons who underwent necessary training and registered (art. 20). Because resolution of trademark disputes requires expertise if the mediator selected is an expert in this field, it would make a resolution likely. Otherwise, nonresolvability of dispute could be faced and benefits of this resolution process would not be attained (Kekeç, 2016). After being selected, mediator invites the parties to the first meeting. Parties could participate mediation negotiations themselves or through their representatives (art. 15). In case of application to mediator before litigation, process of mediation starts to run from the date when parties are invited to first meeting and parties and mediator agree on continuing the process and document this agreement with a report. In case of application to mediator after litigation, this process starts to run from the date when court's invitation of parties to mediation is accepted by parties or when parties declare to the court in writing outside trial or it's recorded in trial minutes that parties agreed on applying to mediator (art. 16). Mediation process ends when parties sign a settlement agreement, when of the parties declares in writing that it unilaterally terminates the process or when mediator sees no benefit in continuing the process. At the end of mediation activity, it's recorded in a report whether parties settled or not or how the mediation ended (art. 17). If parties settled at the end of mediation, then a settlement agreement is drafted and this agreement is signed by the parties and the mediator. Just like in other agreements, fundamental elements, that must be present in an agreement, must be present in this agreement as well, otherwise it would not be applicable. If one of the parties claim that agreement is void and unlawful, it could go to court (Kekeç, 2016). Agreement made at the end of mediation is primarily in force between parties and it's not executable like a court ruling. For this agreement to be executable it must be ratified by court. If it's ratified by court, this agreement would be a document in the quality of an award according to Execution and Bankruptcy Code and it could be subject of an execution with award (art. 18).

4.3. Advantages and Disadvantages of Mediation in Trademark Disputes

4.3.1. Advantages

As we stated before mediation is parties' resolution process of their dispute through negotiation with the help of mediator who is an independent and objective third party. Differing from litigation, because resolution of disputes through mediation do not include official trials, instead of publicity principle in trials confidentiality principle applies. According to confidentiality principle, mediator must keep the information, documents and other records presented to him in scope of mediation or obtained by him in a different way confidential (art. 4). This has a specific significance due to trademark disputes being in question. Because in business life, being a party to litigation could damage a merchant's reputation or a merchant

could choose not to be a party to litigation to prevent being forced to share information which are trade secrets. Also because there is a winner and a loser in litigation, commercial relationships between parties could get damaged beyond repair. However, because mediation is based on parties' free will and interests, it would be effective in continuation of commercial relationships between parties. Another important aspect of resolving disputes through mediation is to save time and money. Because mediation, whether it ends with an agreement or not, takes quite shorter compared to litigation. For instance, 1784 disputes in which mediation is applied, were resolved in 1 day (Arabuluculuk Uygulamalarına İlişkin İstatiski Veriler, 2016). With resolution of trademark disputes in such short notice, rights lost in trials dragging on would be prevented. Resolution of disputes in short notice would mean saving time and also it would mean saving money because costs of mail, expert, viewing etc. would be avoided. Aside from these, most important advantage of mediation is parties' ability to control their interest and because result would be through agreement, result is also in control of the parties. In other words, parties can directly and effectively interfere in the process and define the outcome. With this reason, in case of agreement both parties win. When all this information is considered, we think that preferring resolution of disputes through mediation instead of litigation would be in favor of parties. Besides, opting for mediation process would not prevent from going to litigation. Even if mediation process ends with disagreement, litigation is always possible. .

4.3.2. Disadvantages

As mediation in resolution of disputes has the above mentioned advantages over litigation, it also has disadvantages. Before everything else, in resolution of disputes mediation is completely an alternative method and it never gives the assurance provided by litigation. Because in litigation cases are tried by independent courts which are public institutions and this is a public assurance for parties. It's not possible for mediator to constitute public assurance like courts. Also because resolutions obtained through mediation would not constitute precedent, different resolutions in similar disputes would occur and there would be no unity. Apart from litigation, mediation is only possible with the participation of both parties. With the reluctance of one party, this resolution method would not be applicable. If mediator is insufficient for the dispute, if he can't protect his impartiality or he breaches principle of confidentiality, outcome would be affected negatively. A system in which parties harmed due to this problems would be compensated is not prescribed by Law numbered 6325. Especially in case of disputes in very high amounts, it would not be possible to compensate these damages (İmamoğlu, 2014)).

5. Conclusion

Technological developments bring new problems with them. New problems caused pursuit of new ways in resolution of disputes. One of the most important ways is mediation. Mediation is the process of bringing together of parties in dispute by a third party and creating solution for agreement. In the successful completion of this process objectivity and specialty of mediator have a key importance. As an alternative resolution method, among most important aspects of mediation are its optional nature and lack of mediator's authority to make a decision that is binding for parties. Aside from these, the facts that mediation lighten courts' workload, that it saves time, that it's confidential, that parties can control the process would make it possible to be preferred more. Because rapid progress of trade with the existence of internet, rapid growth of trademark market and convenience of imitating trademarks increase amount of both national and international trademark disputes, resolution of disputes with the least cost is necessary.

Litigation, which is commonly applied for the resolution of trademark disputes, cause parties to lose time and money due to heavy workload, and inadequacy of experts. With this reason we would like to draw attention to parties' awareness that they have the option of mediation as an alternative to litigation and that it is fast and effective in resolution of disputes. We think that because of these features, mediation would take its place in time in Turkish practice as an alternative way to litigation in resolution of trademark disputes in the commercial environment.

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Inheritance Rights of Illegitimate Children in Roman Law

Guzide Burcu Gunveren

1. Introduction:

Addressing to the legal status of child in Roman Law, "Inheritance Rights of Illegitimate Children in Roman Law" is a study that will shed a light upon the historical root of child rights in Roman law. In this study, I have sought answers regarding children's legal status and social status, as well as child rights within this framework.

As part of the aim of my study, I have completed a research that points out the following: the relationships between, especially, "pater familias" and children, children's rights shaping their legal identity, their kinship relations, child care and education, the right to be brought up by parents, and their property rights in Rome, which had a patriarchal structure.

The research has been carried out to put forward the legal status of children in Roman Law, their place within the family, how guardian and ward powers/organisations were established and how these worked, along with children's immaterial rights and property rights. Within the scope of the study, I have analysed the beginning and end of childhood, as well as children's paternity, and also dealt with childcare and education, parents' –especially father's- right to discipline children, children's contractual capacity and right to inherit.

2. The Methodological Map:

I focused on the "children's place in Roman family". Addressing to the difference between parents with children and those without any children, I looked into how they were assessed before the law. I determined the ways in which people were encouraged to have babies by government policies, as a result of the gradually declining population of the Roman state.

I reserved the time remained for the research to stress children's property rights. As could be observed in the summary attached, my explanations in regards to this topic concentrate on children's status in the law of inheritance, since *pater familias* was the only owner of a family estate in Roman Law, and on the ground that children's contractual capacity was limited.

As a result of the research I have realised within this framework, I have reached valuable information, which could be seen from the summary added below.

3. Findings:

3.1. Inheritance Rights in Roman Family:

We see that Roman family established the first step of the Roman state organisation and, specifically at the beginning, was built by the firm authority of *pater familias.* During the first centuries when the Roman state began to be organised, it is observed that the state did not involve in making interventions on the family structure or the family law. Regarding this period, it is significant to characterise Roman family as an economic, religious, and political union gathered around a powerful figure (*pater familias*). *Pater familias* is the eldest male ancestor that keeps this union together with *patria potestas,* and protects those under his domination with the sense and duty of fatherhood. Family members gather around a powerful figure, maintain the family by performing religious ceremonies, provide for themselves especially during the times of closed economy, and keep being protected in unity against external dangers. On the other hand, a child is a family member that passes the name of *pater familias* or the family, the estate of the *sacra,* and the inheritance to the future generations. Therefore, having

a baby or an heir was regarded to be important in Roman family at all times. However, the absolute domination of *paterfamilias* cast a cloud on the acceptance of children as individuals and the striking emphasis on their rights.

Furthermore, regarding the decline in the population of the Roman state observed particularly following the imperial period, certain policies tending to encourage families to offer freeborn Roman citizens to the state were tried to solve the issue. Children, being the object of these policies, started to be addressed with the rights they possessed. Starting from this period, the changes in the Roman family law and its structure (e.g. the generalisation of marrying without *manus* or the increased importance of blood kinship for inheritance etc.) were efficient in terms of drawing the frame of the rights of children as individuals. It is also possible to suggest that, even though *pater familias* had always *patria potestas,* the absolute authority gradually lost the power.

In Roman law, there were two types of heirship: heir institution (*ab intestato*) andheriship by will. The heirship of *ab intestato* was valid when a legator did not create a will, the prepared will was invalid or the assigned heir failed to obtain the inheritance. In the event of an impossible situation for heirship by will, the inheritance would be given to agnatic kin on the condition of complying with certain degrees in accordance with te provisions of the *ius civile.* People who become *sui iuris* following the death of the legator, i.e. those who were accepted to be *sui heredes*, had the right to primarily acquire the inheritance. These persons, who constituted the first degree of agnatic kin and were called *siu heredes,* were the offspring, the adopted and the women under the *manus.* They would become *sui iuris* as a result of the death of the *pater familias.* When *siu heredes* did not exist, the heirs would be the closest agnatic kin. According to the principles of the legal inheritance (*ab intestatio*), if the decedent did not have close agnatic kin, then the estate would be inherited to the gens members. Therefore, only male and female offspring under the domination of the *pater familias* had the right of succession by equally having the half of the inheritance. Privileges such as being a male child or an older child were not acknowledged in the Roman law of inheritance. In this inheritance system, if a woman did not marry being under the manus, her children and her could not be mutually heirs because they were not considered to be under the same domination.

As may be predicted, children who did not have an agnatic tie between them, since they were not born into a legal marriage relationship or were not recognised by the father, would be marginalised in accordance with the *ius civile* based on the agnatic kinship. These children neither had a *pater familias* nor were under *patria potestas.* Their biological siblings were not considered to be their agnatic kin; even if they had the same biological father, these children did not have agnatic kin as they were not under the same domination with the siblings. They were regarded to belong to the mother. Hence, during the Republic period when the blood kinship was ignored in the law of inheritance and within the first century of the Imperial period, they could not expect any inheritance from their biological father or any other person, excluding being inherited assets through will. In other words, the fact that these children had a blood kinship with the biological fathers did not help them be a heir to the father.

This unfairness was caused by the fact that the provisions of the ius civile on the law of inheritance excluded the cognatic kin and was precluded by the praetor law in the end of the Republic period. The Praetor law accorded inheritance rights to some people who were deprived of the legal inheritance right of the ius civile. In order to correct the non-functioning parts of the heirship provided by the ius civile, the praetor heirship vested bonorum possession (the possession of assets) to people from four classes. An heir from one of these classes would prevent the heirship of those from the other three classes. The first class was consisted of unde liberi, which was made of the offspring who failed to be instituted heirs according to the ius civile, because of being sui heredes and excluded from the domination of the father (for example those given up for adoption or the offspring removed from the domination etc.), as well as their

descendants. As can be understood, the regulations for the law of inheritance accepted by the praetor gave the priority to illegitimate children. Even though they did not have an agnatic tie because of not being under the domination, illegitimate children had the same legal share as the heir of the father with other offspring who were under the domination. If there was no heir of the first degree, agnatic kin (those recognised instituted heirs by the ius civile) from the unde legitimi class would constitute the next degree. The unde cognati class took the blood kinship as a basis. According to this, the decedent's kin until the sixth degree and nieces/nephews until the seventh degree could have been the heir. In the event that there was no one from these classes, the inheritance would be given to the living spouse. It can be concluded that the praetor law pushed the ius civile heirs to the background and took the blood kinship (cognatic kinship) to be accepted as a rule in the era of Iustinianus as a basis.

The fact that, although their ties with the pater familias in the event of his death, illegitimate children could have claimed rights over the father's inheritance meant that the blood kinship was taken into consideration; therefore, the new regulation introduced with the praetor edictum is remarkable. It is known that these praetor provisions, which blocked the practice of the law of inheritance provisions accepted by the ius civile and included legitimate children into the unde liberi class, coincided with the middle of the first century BC. While such children were enabled to be heirs to the father from the unde liberi class, it was the praetor declaration issued in the era of Hadrianus that allowed them to be heir to the mother. According to the regulation stated in this declaration, which was probably issued in the 60's following the birth of Christ, it was regulated that they could have the heirship right from male and female siblings born from the mother and the same mother as blood kin (D.38.8.2). Hence, it was accepted that these children had the heirship right both from the mother and the father due to the blood kinship.

Following the praetor regulations that offered priority to the blood kinship in the law of inheritance, the senatus rules issued in the imperial period enhanced this practice. Due to the senatus consultum Tertullianum released in the era of Hadrianus (117-138 AD), when women with the ius liberorum (the privilege excusing a free woman with three children and a freedwoman with four children regarding guardianship) were enabled to be called to their children's legacy, mutual inheritance rights were arranged between legitimate children and the mother. After the privilege given to women with a certain number of children by the ius liberorum was granted to all mother in the period of Constantianus the emperor, all mothers following the death of a child began to benefit from the senatus consultum Tertullianum.

Morevoer, the senatus consultum Tertullianum included a provision that protect young fatherless children below adolescence age. According to this, if a mother wanting to benefit from the legacy of her child could not make sure that a guardian was assigned the newly orphaned child, she would be deprived from the inheritance (D.38.17.2.23).

According to the senatus consultum Orphitianum declared in 178 AD, the inheritance a woman married without the manus could benefit her children before the agnatic kin (D. 38.17.1).

Considering the century when the mentioned senatus rules were issued, it is important to pay attention to the fact that the guardianship of agnatic kin over women was over (with the lex Claudia between 41-45 AD), that women generally married without the manus, and that it was a period when several divorce cases were observed. These developments must have improved the tendency for a woman's own biological children, being more privileged over her siblings or their children, to be her heirs and for the mother to be an heir to her children. Following these improvements in the law of inheritance, it was established that, when women married without the manus, her heirs would be her agnatic relatives, instead of her children, since they did not have the same domination with her children. If a woman was freed, the heir would be the old master.

Children that were not born into a legal marriage approved by the ius civile had neither a pater familias, nor agnatic kin. Even though we considered that such children had known their fathers and had been in contact with them, there was no legal regulation enabling them to have any share from the inheritance. In fact, within and prior to the era of Augustus the emperor, who aimed to have generations coming into the world as the products of legal marriages and issued legal reforms on the law of inheritance and marriage, there were no regulations causing expectations for inheritance for illegitimate children.

With the exception of the event that they were given an asset by will, illegitimate children had not had any expectations to have an inheritance from anyone; however, it was regulated that they might have an heir of the mother and the siblings born to the same mother due to the blood kinship (unde cognati), since the praetor declaration from the era of Hadrianus also included them (D.38.8.4 and Ulpianus, Rules, Book 6). Nevertheless, it should be remembered that, in the event that siblings were the heirs of each other and there were siblings born into a legal marriage, as they would also be agnatic kin of each other, they would only have priorities over the siblings with the blood kinship in terms of being an heir.

At the end of the second century AD when the senatus consultum Tertullianum was accepted to be applied also for illegitimate children's mothers, the mutual heirship was regulated between the mother and the child who was not a product of a legal marriage (D.38.17.2.1). The regulation that was accepted by the senatus consultum Orphitianum and allowed legitimate children to benefit from the inheritance of a woman, who married without the manus, before the agnastic kin covered illegitimate children after a certain period of time (D.38.17.1.2). As a rule, it had not been possible for such children to be heir of the father until the postclassic period, excluding a special regulation accepted by Hardianus for children of soldiers and veterans.

It was the decree issued by Valentiniaus the Western Roma's emperor to be applied in only the western part of the empire in 371 that had enabled illegitimate children to be an heir to their father for the first time (C.Th.4.6.4). Contrary to the legal regulation that prevented illegitimate children born into the relationships called concubinatus from being an heir to their father within the era of Constantinanus, the decree of Valentinianus was a regulation enabling illegitimate children to be an heir of their biological father who had no legal descendants. A child, even if he or she was not legitimate, could be an heir for one fourth of the father's heritage.

3.2. Children's Assets:

In Roman law, children might have been manipulated with various reasons in terms of assets when one of the parents remarried. Considering especially the fact that the pater familias was the authority with the freedom to dispose as the one and only owner of the estate, it would not be wrong to state that the new marriage of the pater familias would institute a risk for children from the previous marriage. Owing to the remarriages of the parents, we understand from Gaius' statements in D.5.2.4, as well as various literary texts, that the parents behaved in a way that might have decreased the inheritance share of the children from their previous marriages in the reality.

3.2.1. The Protection of Children's Assets Deemed Bona Materna

Necessary reforms regarding the protection of disposals made by the mother in favour of the children for the benefit of the children were made during the imperial period. The fact that there was no legal regulation regarding this issue within the previous centuries was undoubtedly related to the autonomy of the pater familias in terms of his power of disposition over the estate.

Moreover, in regards to the issue of the assets required to be protected for the benefit of children and on behalf of them, the equity necessitated the introduction of legal regulations.

As for this subject, only within the period following the Classic law, Constantinus the emperor announced a regulation restricting the the pater familias' power of disposition over the estate with a decree. C.Th. 8.18.1, dated 319, states that the pater familias had the right of domination over the bona materna and the right of property; however, it was regulated that the pater familias did not possess the power of abusus over these assets.

The next decree, dated 379, expanded the scope of the assets deemed bona materna. It was decided that the pater familias owned the right of usufruct over the donations made for the child by the ancestors from the mother's side, bequests or assets deemed bona materna generis –covering the assets left by an instituted will (C.Th.8.18.6), and that the child possessed the right of property. Consequently, with the process that began within the era of Constantianus the emperor, the assets, which the child should have owned, were separated from the pater familias' estate.

3.2.2. The Protection Of Children's Assets Deemed Bona Paterna

In Rome, the death of a child's father leading to the mother's remarriage was a more common phenomenon. During the Classical law period, especially the era of Augustus, it was a legal requirement for widowed women between ages twenty and fifty to remarry within two years as of the death of the husband. In addition, Romans accepted that a widowed woman should have left the estate, which her husband left, to the children from this marriage, and that the new husband or the children from the new marriage should not have had it. This issue, which had been applied as a customary rule for many years, was linked to the legal regulations as of the fourth century AD. Before these legal regulations, it was a moral responsibility for the widowed woman to hand on the children from the previous marriage what she obtained from the previous husband in the capacity of the heir.

In C.6.56.4, issued in 380, and C.5.9.1 from the same year, there were provisions stating that a woman who remarried within the mourning and waiting period was an infamia, and they included those addressed the protection of the estate of the widowed woman's children. The decree regulated that a widowed woman could not benefit from the right of inheritance based on the death of her first husband or acquire the death-related donations made by the previous husband. This way, the protection of the children born into this marriage relation was ensured by means of conserving the heritage. Moreover, regarding the new marriage of the widowed woman, C.5.9.1 acknowledged that she could give only one third of her estate as "dos" to the second husband. The acquirements that the remarried widowed woman would provide to the next husband by means of the testamentary disposition were restricted and it was, however, determined that she could give one third of the estate. With these restricting provisions, rather than preventing the woman from what she could have acquired from the previous marriage, the possibility that she, as a mother, would have decreased the estate was avoided. Hence, in the event of the widowed woman's death, her estates to be given to the children by will as "bona materna" were conserved. Another provision regulated in C. 6.56.4 stresses that Theodosius I forgave widowed women, who remarried before the mourning and waiting period was over, provided that they handed on the half of their estate to the children from the first marriage.

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Equalıty Or Encouragement? Reduced Attorney Fee in Turkısh Insurance Arbıtratıon Proceedıng

Huriye Kubilay

In General

Attorneyship is a kind of *public* service and attorney deserves fee for service, that has been given by her/him[15]. Attoneyship fee represents the amount or value that the legal service is worth (Article 164 (1) of Attorneyship Act). Attorneyship fee may be determined by a "*fee contract"*[16] between principle and attorney. Essentially, attorneyship fee may not be agreed below the Minimum Attorneyship Fee Tariff. If there isn't any fee contract, attorney deserves attorneyship fee according to Art. 164 (4) of Attorneyship Act. Attorneyship fee which is the subject of a fee contract or attorneyship fee, based on relationship between principle and his/her attorney is not in the scope of this Paper.

The subject of this Paper pertains to attorneyship fee, as an expenditure of arbitration proceeding. When attorneyship fee, as an expenditure of arbitration proceeding, is calculated, *fee contract* or relationship between principle and attorney is not considered[17] by arbitrator or arbitral tribunal. Attorneyship fee, awarded by arbitrator or arbitral tribunal has been paid to prevailing party like other expenditures of arbitration proceeding.

Attorneyship fee, as an expenditure of arbitration proceedings is designated in accordance with the Minimum Attorneyship Fee Tariff, in the arbitration awards[18], *ex officio*.

On the other side, reduced attorney fee, regulated by Insurance Act, numbered 5684, is one of the important reasons for insured persons to apply insurance arbitration proceedings, instead of judicial proceedings.

It has been discussed in practice whether the reduced attorney fee is to be applied to only for the benefit of insured party or both of the parties; insurer and insured.

I- Analyze Of The Related Legıslatıon

The common legal sources of attorneyship fee are Article 323 (1) ğ and 441 (1) d of Code of Civil Procedure, Article 168 of Attorneyship Act and The Minimum Attorneyship Fees Tariff, prepared by Turkish Bar Association.

1. Code of Civil Procedure

In the general sense, attorney fee to be determined according to the Statute (Code of Civil Procedure) in actions with party representation is one of the judicial costs (Article 323 (1) ğ of Code of Civil Procedure).

According to Article 441 (1), d of Code of Civil Procedure, Numbered 6100 and Article 16 of Code of International Arbitration, attorney fee, as an expenditure in arbitration proceeding, to be determined by the arbitrator or the arbitral tribunal according to the Tariff on minimum fee for attorneys, for the attorney of the prevailing party if he had one.

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[15] Özkan, 220.

[16] For the validity of attorneyship fee contract, see Özkan, 221-255.

[17] Özkan, 320.

[18] Göksu, 260.

2. Insurance Act

Insurance Act is a specific legal source, which is concerning with only insurance sector. So, attorneyship fee is regulated by this Act specifically. Article 30 (17)[19] of Insurance Act, numbered 5684, states that *"The attorney fee to be charged to those whose request is partially or wholly rejected is one fifth of the attorney fee stated in the Minimum Attorney Fees Tariff*"[20]. The rates of attorneyship fees which will be executed in arbitration proceedings is determined by Article 17 of the Minimum Attorney Fees Tariff. The provisions of the Tariff will be applied in all manner of legal services rendered before an arbitrator (Art.17 (1)). Insurance Arbitration Commission, in case of the claims of applicants have been accepted, awards the attorneyship fee regarding Third Part of the Tariff, not to be under anticipated fee for courts of first instance, in Second Division of Second Part of the Tariff. The awarded fee cannot exceed accepted or rejected amount. Insurance Arbitration Commission, in case of rejection of applicants' claims partially or wholly, awards attorneyship fee, not to be under anticipated fee for courts of first instance, in second division of second part of the Tariff with respect rejected part and provided that one –fifth ratio in Insurance Act, dated 03 June 2007 and numbered 5684. When fixed fee, anticipated for courts of first instance should be applied, one-fifth reduction is made. The awarded fee cannot exceed accepted or rejected fee (Art.17 (2)).

3. Attorneyship Act

According to Article 168 of Attorneyship Act, concerning with preparation of the attorneyship fee tariff, which was amended by the Article 81 of Act, numbered 4667, dated 2 May 2001; *"In the month of September every year, the boards of directors of bar associations each prepare a tariff indicating the minimum limits of the attorneyship fees to be charged for actions in the juridical authority and other actions, and forward it to the Union of Bar Associations of Turkey.*

The tariff to be prepared by the Board of Directors of the Union of Bar Associations of Turkey by taking into consideration the recommendations of the bar associations will be completed by the end of the month of October of the same year and submitted to the Ministry of Justice. The tariff will become final if no decision is made by the Ministry of Justice within one month as of the date of its receipt by the Ministry of Justice or if the tariff is approved by the Ministry. However, the Ministry of Justice will return a tariff it does not deem appropriate to the Union of Bar Associations of Turkey for reconsideration together with the reasons for return. A tariff thus returned will be considered as approved if passed unchanged by a two thirds majority vote of the Board of Directors of the Union of Bar Associations of Turkey; otherwise it will be considered as not approved. The result will be communicated to the Ministry of Justice by the Union of Bar Associations of Turkey.
The provisions of the sixth paragraph of Article 8 will be applied here, as well, by analogy.

The tariff in effect on the date legal assistance was completed or a decision was passed at the end of the suit will be taken as the basis in the adjudication of the attorneyship fee."

[19] Paragraph 17 was added to Article 30 of Insurance Act, by Art.58 of the Act, dated 13/06/2012 and numbered 6327.
[20] The Minimum Attorney Fees Tariff for 2017, prepared by the Union of Bar Associations of Turkey was published by the Official Gazette issue 29936 dated 2 January 2017.

4. By-Laws on Arbitration in Insurance

By-Laws on Arbitration in Insurance was not included any provision related to the fee of Attorneyship, when it was issued in August 17, 2007[21]. So, from this time till the issued date of Amendment of this By-Laws, related provision of Insurance Act (Art.30 (17)) has been applied without any hesitation. Although few opposite view has appeared, during this period, one-fifth attorneyship fee has been applied only on behalf of applicant whose claim partially or wholly was reljected. After By-Laws on Amendement of By-Laws on Arbitration in Insurance entered into force, amount of attorneyship fee has been discussed intensively, in practice.

By-Laws on Amendement of By-Laws on Arbitration in Insurance entered into force in 19th January, 2016[22]. According to Artcle 16 (13) of the By-Laws, when the parties are represented by attorneys, attorneyship fee which will be awarded to the detriment of parties, will be one-fifth of calculated attorneyship fee, in the Minimum Attorneyship Fees Tariff, for each party.

II- Vıew Based On "Equalıty"

This view is based on the "*Principle of Equality in the Proceedings*".A recent decision of 11th Division of Private Law, Court of Appeals (dated 15 February 2016, no.2016/64-2016/1453 stated that attorney fee, which will be charged to those whose request is partially or wholly rejected, is one fifth of the decided attorney fee, according to a provision which was added to Article 30/17 of Insurance Act, numbered 5684, by an Act, numbered 6327. The so-called claim is the claim of parties; plaintiff or defendant. So, the statement of *"whose request is partially or wholly rejected"* indicates persons who take advantage of insurance contract and insurance companies and Assurance Account[23] who undertake risks. Each of the dispute parties claims to be awarded his/her favor from arbitrator or arbitration committee. When it is taken into account that the arbitration proceedings is an *adversarial proceedings*, at the same time, arbitrator or arbitration committee accepts the claim of one party and rejects the claim of other party, at the same rate. The word of "*rejected"* in the Article, does not indicate only plaintiff who gets benefit from insurance contract but also the other party. In this case, the Court of Appeals disrupted the decision of the first instance court, because it has accepted as a distruption reason that it was not awarded one fifth attrneyship fee for both of the parties.

III- VIEW BASED ON "ENCOURAGEMENT"

According to the decision, numbered 2013/4229-2013/5904 of 17th Private Law Department of Court of Appeal, it was awarded that; "*It was decided in the decision of Arbitral Council, that 2.660.-TL attorneyship fee, calculated in 1/5 ratio accordingly Art.30 (17) of Insurance Act, taking care of plaintiff has been represented himself with an attorney, should be paid to plaintiff by taking from* defendant. *In fact, said provision regulated attorneyship fee, which will be awarded against plaintiff when claim is rejected partially or wholly. The provisions of Tariff,*

[21] Official Gazette, 17/08/2007-26616.
[22] Official Gazette: **19/01/2016-29598.**
[23] "*Assurance Account, meets medical treatment expenses of those who suffer bodily injuries (disabilities and death) pays disability indemnities to those who become disabled due to such accidents and also death benefits to dependents who have been deprived of the deceased's support in case of death*"
http://www.guvencehesabi.org.tr/default_en.aspx (Acssess date: 20 Jan., 2016.

on the date of award, should be considered totally, according to Art.16 of The Minimum Attorneyship Fee Tariff."

Similarly, under the decision, dated 22.10.2013, numbered 2013/11349-2013/14120 of 17th Private Law Department of Court of Appeal, "*To be awarded one-fifth of relative attorneyship fee to the advantage of plaintiffs, according to Art.30 (17), is inappropriate. Besides, it is improper as it should be awarded taking consideration Art.12 (2) of the Minimum Attorneyship Fee Tariff, it is awarded in the written way."*
The awards of 17th Division of Private Law, Court of Appeals (dated 15.05.2014, no.2014/5005-2014/7686), 17th Division of Private Law, Court of Appeals (no.2014/2255-2014/3620), 17th Division of Private Law, Court of Appeals (no.2013/4237-2013/5552), 17th Division of Private Law, Court of Appeals (dated 31.10.2013, no.2013/15884-2013/14731) and 17th Division of Private Law, Court of Appeals (dated 29.04.2013, no.2013/4229-2013/5904) are conform with the above Awards.

IV- EVALUATION OF DIFFERENT VIEWS

When an action is pursued by an attorney, attorneyship fee, which will be designated *ex lege,* in a lawsuit that will be pursued by an attorney, is one of "*litigation expenses"* (Art.323 (1) ğ of Code of Civil Procedure)[24]. The term "*Litigation expenses"* is defined as the whole money, paid by parties for pending and conclusion of a case[25]. The judge/arbitrator or arbitral tribunal awards attorneyship fee *ex officio*[26]. Barring the circumstances stated by the statute, jurisdiction/arbitration costs are awarded to be collected from the party against whom the judgement is rendered (Art.326 (1) of Code of Civil Procedure). If both parties partially prevail in the action, the court shall divide the judicial costs according to the proportion of their rightfulness (Art.326 (2) of Code of Civil Procedure) [27].

The provision of Art.436 (1), ç of Code of Civil Procedure states that arbitration awards shall contain obligations, imposed on or rights, bestowed upon the parties with enumeration in a clear and exact manner and arbitration costs. According to 441 (1), d, costs in arbitration proceedings shall comprise; attorney fee to be determined by the arbitrator or the arbitral tribunal according to the tariff on minimum fee for attorneys, for the attorney of the prevailing party if he had one. The amount of attorneyship fee is determined by The Minimum Attorneyship Fee Tariff[28].
Besides, the attorney fee to be charged to those whose request is partially or wholly rejected is one fifth of the attorney fee stated in the Minimum Attorney Fees Tariff, in compliance with Art.30 (17) of Insurance Act. Aforementioned provision was brought by The Act on Amendment of The Act on System for Individual Retirement Savings and Investment and some Decrees (Art.58), which was published by Official Gazette, dated 29.06.2012, no.28338.
The provision of Art.30 (17) is sometimes implemented by petitioners in the way that the attorneyship fee to the detriment of either party, which will be awarded, to be one-fifth of defined attorneyship fee. In fact, in the By-Laws on Arbitration in Insurance, after its amendment (Art.16 (13), a provision, concerning when the parties are represented by attorneys,

[24] For detailed explanation, see Kuru/Arslan/Yılmaz, 707-708.
[25] Kuru/Arslan/Yılmaz, 697.
[26] *"Even if there isn't any claim, attorneyship fee is decided by court, ex officio"* Decision of Joint Chambers, 29.05.1957, 4-16 see Aydın, 460.
[27] Muşul, 499-500.
[28] Kuru/Arslan/Yılmaz, 702.

attorneyship fee which will be awarded to the detriment of parties, will be one-fifth of calculated attorneyship fee, in the Minimum Attorneyship Fees Tariff, for each party, was allowed.
According to the precedent of 10th Division of State Council, dated 26.10.2010, numbered 2007/6066 and 2010/8400, if there is a contradiction between legal provisions and provisions of by-laws, upper rule of law; namely legal provisions should be applied by neglecting lower rule of law; namely provisions of by-laws. So, under *hierarchy of norms*, the provision of Insurance Act[29] should be regarded before the provision of By-Laws.
The Republic of Turkey is a democratic state governed by rule of law according to Article 2 of Constitution of Republic of Turkey. One of the fundamental characteristics of state of law is that no person or organ shall exercise any state authority that does not emanate from the Constitution and lower norms shall not contrary to upper norms in hierarchy of norms. Attorneyship fees, based on the Minimum Attorneyship Fees Tariff, which is emanete from Attorneyship Act, are published and entered into force every year, upon the proposal of the Turkish Union of Bar Associations and approval of the Ministry of Justice. Attorneyship fees, if and only, have to be regulated by statute. To regulate on advocate's fee by regulatory transactions of Administrative Authority will be contradiction to law. Moreover, Administrative Authority does not have any power in this direction. Other than that, Administrative Authority cannot establish unlawful by-laws and regulative transactions.
According to Article 4 of the Tariff on Amendment of Minimum Attorneyship Fees Tariff, published by Official Gazette, dated 30.11.2016 and no.29904; Insurance Arbitration Commissions decides on attorneyship fee, according to the third part of Tariff, by taking into consideration the fee, designated on behalf of opposite party from the point of rejected part in Second Part of Second Division of the Tariff stated for courts of first instance, in case of partially or wholly rejection of petitions of applicants to the Commission and provided that accorded with 1/5th rate in Insurance Act. In case of, fixed fee, stated for courts of first instance should be based on, 1/5th deduction has been made. Solely, decided fee cannot exceed the amount, has been accepted or rejected.

The Regulation which was entered into force by Article 16 (3) of By-Laws on Insurance Arbitration, concerning with attorney fee charged on behalf of applicant for application to Insurance Arbitration Commission, shall be 1/5th of attorneyship fee calculated for transactions proceeded in the court of first instance, defined in Minimum Attorneyship Fees Tariff, constitute a contradiction to Art. 30 (17) of Insurance Act, Art. 168-169 of Attorneyship Act and precidents of Supreme Court.

Damages that individuals have been incurred, due to unlawful regulatory transactions have to be compensated by Administrative Authority and persons who practice those unlawful regulatory transactions. Whole activities and transactions of Administrative Authority have to be in accordance with law due to the fundamental principle; as *legal administrative principle*. Administrative authority cannot be involved in an activity and transact on a unauthorised subject by laws. Moreover, administrative authority cannot transact unlawful regulatory transactions. When administrative authority transacts unlawful regulatory transactions, it is liable to compensate the damages incurred because of unlawful transactions. Therefore, to award attorneysip fee according to a by-law issued unmistekably against Attorneyship Act, will be unlawful. When administrative authority compensates damages, administrative authority will revoke defective persons.
Undersecreteriat of Treasury, as it is not a rule-maker, cannot make any regulation on rights recognized by regulated transactions of administrative authority. In Turkey, rule-making power exclusively belongs to Turkish Grand National Assembly and this power cannot be assigned

[29] Look at Art. 30 (17).

anyway. Transactions contrary to this rule is declared null and void. A verdict cannot be given on the basis of those administrative transactions which are declared null and void.

In insurance arbitration jurisdiction, rule maker has given some duties and powers to Undersecreteriat of Treasury by Article 30 (18) of Insurance Act. When Article 30 (18) of Insurance Act has been examined, it is clear without any dispute that any power and duty haven't been given to Undersecreteriat of Treasury regarding amount and rate of attorneysip fees.

Conclusıon

In current practice, "*encouragement*" is applied for only the benefit of plaintiff; as insurer.. So, the applicant whose claim is rejected, is charged one-fifth of defined attorneyship fee to pay insurer or Assurance Account. On the contrary, the insurer or Assurance Account who loses a lawsuit, is charged to pay the whole defined attorneyship fee to insured.

It may be recommended that, *de lege ferenda,* both the Principle of Equality and encouragement idea should be regulated by the Insurance Act. This means, one fifth of defined attorneyship fee will be applied to the parties; insurer/Assurance Account and insured.

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Electronic Contracts And Consumer Protection

Kenan Koç, Selahattin Erol

1. Introduction

In today`s world , technological advances have increased tremendously and people experienced a big change in their life style.

This acceleration of technological developments have led to some changes in the field of law. For example; in this process, the ""electronic contract"" concept has emerged and became important.

Basically, these contracts are not different from the classical agreement. However, there are some differences in secondary terms conditions.

They can be made in different ways such as web sites, electronic data interchange, mobil phones, emails etc. In this study, we specifically emphasize the contracts established through web sites.

This agreements are usually created through a form stipulated by contract. Companies, banks and some other powerful parties regulate this form in order to use it for some several contracts.

Consumers need to be protected by regulation against these powerful parties in the contracts created through web sites since consumers do not have enough power to negotiate these conditions with the market giants. They only have right to choose whether they can participate to these contracts or not. As regards the contracts which are established through web pages, it is not possible to negotiate in the course of the contract with computers adjusted automatically.

Moreover, internet sector which has developed in an unbelievable way due to industrial revolution, has also started using general process conditions. Internet is used at all banks and at nearly all shopping malls and the collocutors who want to make contract are also confronted with general process conditions.

As a consequence, the consumer needs to be protected. There are variety of ways to protect the consumer. We are going to mention about the protection by general process conditions which are indicated by law.

Swiss and Turkish Obligation Codes include in many articles. The main purpose of this study, we try to discuss these issues in and out.

2. The definition of Electronic Contracts

Electronic contracts are not different from classical Code of Obligations contrats in terms of either legal or philosophic basic (Özdemir Kocasakal, 2003).

For this reason, it is appropriate to define electronic conracts as the ones which are made through electronic tools (Altınışık, 2003).

Electronic contracts are different from classical contracts only because they are based on digital technology and so they are made through using this electronic environment (Sözer, 2002).

3.Establishment Forms of Electronic Contracts

In electronic environment, contracts can be established through various ways. The most evident way of these are: EDI , e mail and conracts which are established via web pages.

EDI,in other words ‘electronic data interchange’, is the change of data within computers (Altınışık, 2003). There is a framework contract and within this contract, new agreements are established automatically among computers.

In this respect, human factor is only effective when framework agreements are established. Computers handle everything apart from this. We consider that the views which claim that EDI is not a contract , are not appropriate. Hence computers can not be useful on their own and people set computers in order to establish these agreements.

The only difference of e mail which is a good example to be given concerning classic contracts, which are done in electronic environment, is that it sent through this environment. Therefore, we find it sufficient to mention about this issue briefly as it is not significiant concerning our issue and it is even not included within electronic contracts by some authors.

Contracts which are established through web pages, are the most controversial subjects related to electronic ones and as a result they are what actually matter us. The concept of general process conditions does not appear differently in contracts established through either EDI or e-mails and it is also encountered in contracts which are established through web sites.

In fact, most of the contracts that are established via web sites are done so by using general process conditions. Here, as the consumer states his own will by using computer,the seller is totally in the position of computer and replies to the ones that are prepared with comments uploaded beforehand (Sözer, 2003).

4. The Problem of Whether The Contract is made between the prepared or non-prepared ones

It is significiant to determine whether the contracts are among the ones which are ready or not in order to give an answer to when electronic agreements are going to take place ,their provisions and results (Savaş, 2005).

In the fourth article of Obligations Code, the suggestions which are made through tools such as telephone and computers enabling instant communication, are accepted to be among the ready ones. Hence , the statements of acceptance that are made within the prepared ones are considered to be done within the prepared ones and contracts are established within them. The suggestions which are not accepted immediately are consumed to have been denied.

Moreover, the suggestions which are made among the non-prepared ones are also consumed to have been denied if they are not accepted in appropriate time. The concept of ‘time’ we have mentioned here varies according to the conditions of the existent situations.

One of the controversial issues is to determine whether the suggestios made through e mails are within the ready ones or not.

E-mails are sent instantly via computers and if people are aware that they are ready,the contract is considered to have been made within the prepared one as if talking on the phone.

In other words , the important point here is whether the communication is uninterrupted or not. The channel of communication does not have a significiant part while determining this (Oğuzman and Öz, 2015).

5. General Process Conditions are the contracts that restrict the liberty of will

As regards the contracts which are established through web pages, it is not possible to negotiate in the course of the contract with computers adjusted automatically.

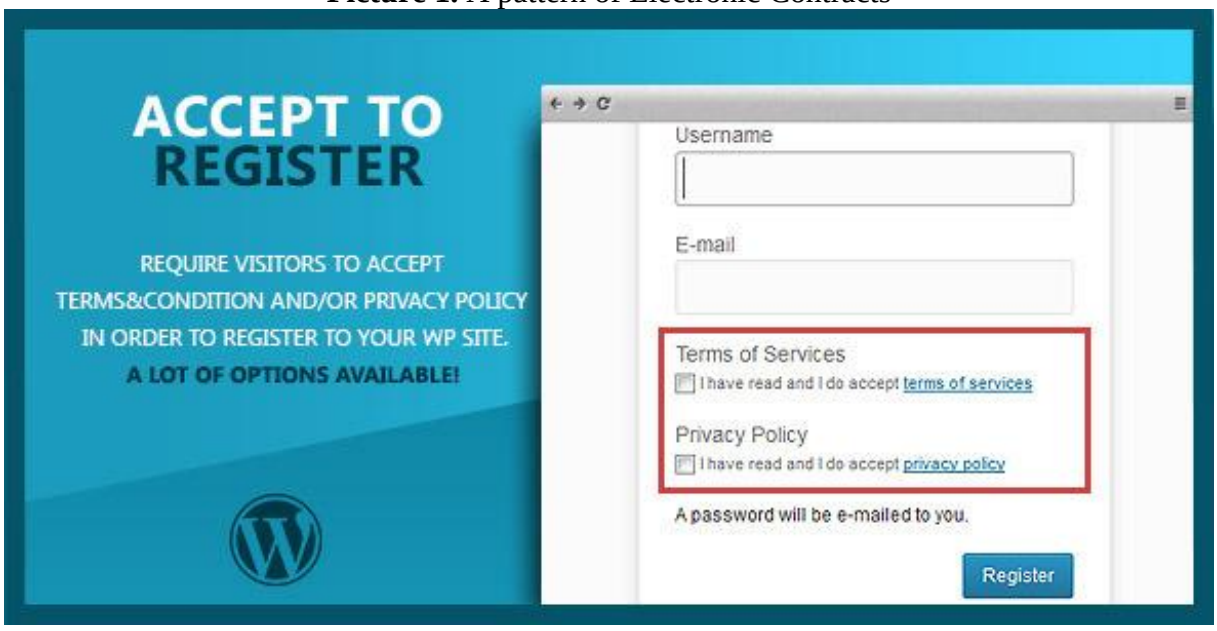
As we have mentioned above, the consumer may only have the statement of will to participate in the contract or not (Reisoğlu, 2012). As a consequence, the consumer needs to be protected. There are variety of ways to protect the consumer. We are going to mention about the protection by general process conditions which are indicated by law.

6.General Process Conditions At Electronic Contracts

General process conditions which are products of industrial revolution are defined as follows: 'General Process Conditions are the provisions of contracts which the arranger presents to the collocutor by preparing alone, beforehand, and with the aim of using for other similar contracts later on (Eren, 2012).

As it can be understood from the definition, general process conditions are prepared beforehand by the collocutor who is stronger and need to be accepted by the other party/side (Akyol, 2012).

Picture 1. A pattern of Electronic Contracts



Source: https://codecanyon.net/item/wp-accept-to-register-terms-of-service-p-policy/6278256

General process conditions which can frequently be encountered in practice, is usually used by banks and insurance companies. Even if it is possible legally,negotiation can not done upon these articles in practice (Eren, 2012).

The most significiant reason fort his is that the arranger of the contract is stronger economically.

General process conditions, which generally take place in Civil Code and Obligations Code in various countries of the World, are arranged within TBK's 20th and 25th articles and also TKHK's 6500 th law in our country.

Moreover, internet sector which has developed in an unbelievable way due to industrial revolution, has also started using general process conditions. Internet is used at all banks and at nearly all shopping malls and the collocutors who want to make contract are also confronted with general process conditions.

7.Principles of General Process Conditions

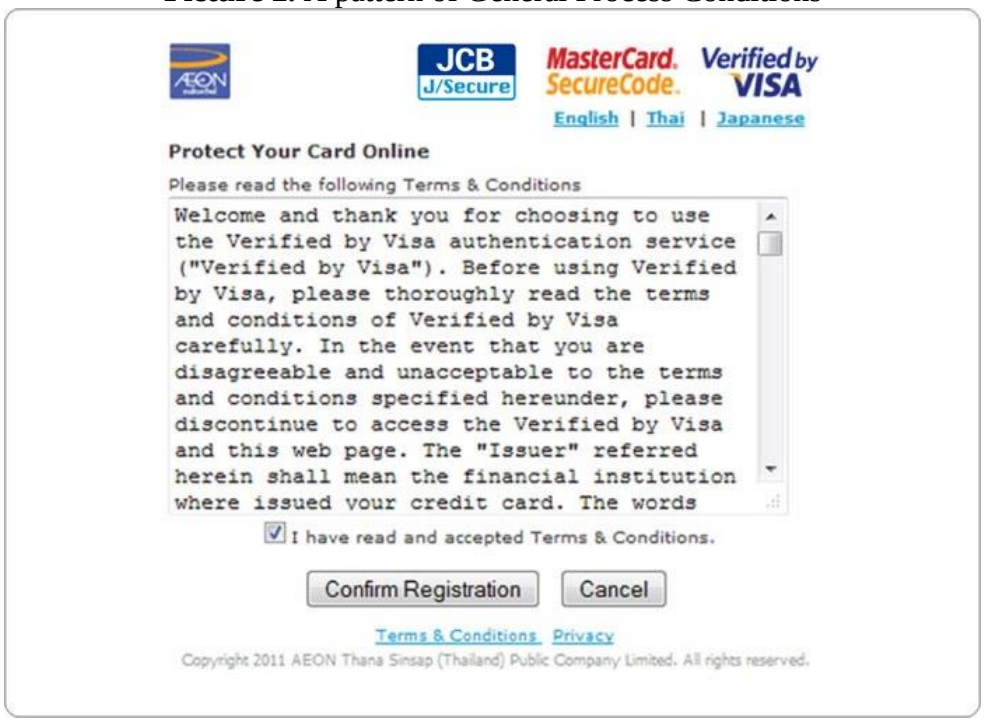
In TBK (Turkish Code of Obligations), principles of general process conditions are grouped under four titles. These are: General process conditions forming the content of a contract, being prepared before a contract, being written in order to be used for other similar conracts and presented to the collocutor (Atamer, 1999).

General process conditions are prepared beforehand in order not to make seperate conracts with plenty of people one by one. Therefore, as a rule, general process conditions already form

the content of the contract (Atamer, 1999). Nonetheless, existence of some specific arrangements for the contract is not precluded. For instance, issues such as the adress of the product at the contract and the form of payment may be eveluated in this matter (Yelmen, 2014).

If general process conditions are not approved while doing shopping on the internet,passage to the other stages of the shopping is not allowed by the relevant web site. The reason for this is that these conditions are also contents of the contract.

Picture 2. A pattern of General Process Conditions

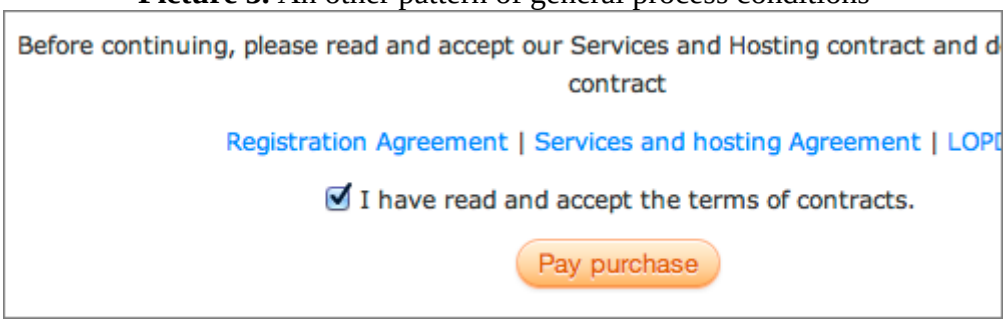


Source: http://www.aeon.co.th/aeon/cards/secure3s.html?&language_id=1

The fact that general process conditions are arranged before the contract is made does not actually indicate that a certain contract which has particular sides can be made. In fact,it indicates that there are uncertain number of contracts to be made or have the possibility to be made later on or at least, they are written for that reason (Kılıçoğlu, 2002).

The third principle of general process conditions is that they are made to establish contract with more than one person in the long term. Here, the important point is not that they are made with more than one person, but it is that they are written in order to be made with more than one person.

Picture 3. An other pattern of general process conditions



Source: https://www.mrdomain.com/help/en/2/how-can-i-register-domain/

General process conditions have to be presented to the collucutor at latest while the contract is being made. Here the significiant point is that general process conditions are presented to the

collocutor while the contract is being made. As a consequence,general process conditions presented after the contract is made, does not interest the collucutor as can be understood from law.

8.Judicial Inspection of General Process Conditions

Three conditions have to be fulfilled at the same time so that validity of inspection. The first condition is that the side who arranges general process conditions has to inform the collocutor unequivocally about these conditions. The second is that the arranger has to provide oppurtunity fort he collocutor to learn the content of general process conditions. The third condition is the acceptance of the collocutor either deficitly or implicitly.

Inspection of general process conditions is the evaluation of these conditions as regards Civil Code art.2. It is on inspection which has to be done at situations in respect to prohibition of breach of trust and rule of honesty.

Related provisions are valid at electronic contracts made through web pages and at all other electronic contracts.

According to 21/3 article of Turkish Obligations Code, the collocutor needs to be informed about the existence of general process conditions against the benefits of the collocutor can be valid. Otherwise, general process conditions can not gain validity. Here, the term ‘clearly’ is not indicated deficity by law. The maining that needs to be taken from this is that the collocutor has to be informed about the existence of general process conditions.

However, at electronic contracts, established through web pages, the arrenger needs to indicate general process conditions clearly. These conditions can be presented to the consumer automatically by a link. As an alternative, if an avarage computer user knows that he has to click on the link with care.

The comsumer may decide on opening the link. Nonetheless, the necessity of clicking on the link has to be clear. No contract should be established before clicking the link.

According to law, one of the conditions fort he validity of general process conditions against the benefit of the collocutor is that the collocutor has the opportunity of having Access to the content of general process conditions.

Here, the significiant point is that the conditions that are in questions are under the control of the collocutor.

These conditionscan be given to the collocutor in a written way. As we have already mentioned, the significiant point is the conditions are under the control of the collocutor.

The side who presents the general process conditions at contracts established via web pages, has to provide the opportunity to have Access to the content of the conditions. In other words, this conditions have to be clear clear and comprehensible.

Related to the contracts which are made through web sites , the collocutor is not responsible for general process conditions which come along after the contract is made. If the contract is made before the conditions are approved , it is accepted to be invalid.

This inspection is done in order to determine whether the conditions, mentioned above, are fulfilled or not so that general process conditions can be part of the contract.

Furthermore, in order to interpret general process conditions, two conditions have been foreseen in TBK.

The first of these is not being clear and unequivocal and the second is having more than one meaning. One of these conditions is sufficient to make the interpretation. Here, the interpretation is going to be made against the arranger. There is no prejudice of applying these conditions, which are going to be applied at contracts of Obligations Code, at electronic contracts.

The last inspection is the one for content. This inspection is arranged in TBK. According to this provision: 'No provision if it is contrary to integrity, against the collocutor and aggravates the situation, can be put on general process conditions'.

9.Conclusion

Electronic contracts are not different from classical Code of Obligations contrats in terms of either legal or philosophic basic. However, there are some differences in secondary terms conditions.

Electronic contracts are different from classical contracts only because they are based on digital technology and so they are made through using this electronic environment.

In electronic environment, contracts can be established through various ways. The most evident way of these are: EDI , e mail and conracts which are established via web pages.

It is significiant to determine whether the contracts are among the ones which are ready or not in order to give an answer to when electronic agreements are going to take place ,their provisions and results. In the fourth article of Obligations Code, the suggestions which are made through tools such as telephone and computers enabling instant communication, are accepted to be among the ready ones. Hence , the statements of acceptance that are made within the prepared ones are considered to be done within the prepared ones and contracts are established within them. The suggestions which are not accepted immediately are consumed to have been denied.

According to law, one of the conditions fort he validity of general process conditions against the benefit of the collocutor is that the collocutor has the opportunity of having access to the content of general process conditions. The significiant point is that the conditions that are in questions are under the control of the collocutor.

General process conditions are provisions of contract which the arranger prepares alone, beforehand and in order to for plenty of other similar contracts. General process conditions which are products of industrial revolution are defined as follows: 'General Process Conditions are the provisions of contracts which the arranger presents to the collocutor by preparing alone, beforehand, and with the aim of using for other similar contracts later on.

General process conditions which can frequently be encountered in practice, is usually used by banks and insurance companies. Even if it is possible legally,negotiation can not done upon these articles in practice.

The only way for the collocutor to declare his own will is to agree or disagree with the contract.

Electronic contracts are absorptional contracts and they are generally prepared by using general process conditions.

Within electronic contracts, the ones, which are prepared via web pages are the only types of contracts which are different and in which general process conditions are used. While making contract at web page , the arranger and the collocutor do not have a chance to negotiate. The collocutor may choose the form of payment and colour, etc, of the product when he takes position as a consumer. However this choice may only be within the alternatives presented by the arranger.

Secondly,the arranger has to enable the collocutor's Access to the contents of the general process conditions and make him comprehend easily.

As a consequence, electronic contracts are forms of classic contracts that are made via electronic environment. Therefore, provisions of Obligations Code are applied to electronic contracts as conveniently as possible.

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An Overview of the Minority Rights in Joint Stock Company under the Provisions of New Turkish Commercial Code

Ebru Tuzemen-Atik

1. Introduction

Turkish Commercial Code (TCC) no. 6102 was accepted on January 07, 2011 and put into practice on July 01 that year with the exclusion of few exceptional clauses. It has been only five years since its exercise; however, it is relatively a short period of time for an essential code like this to be fully comprehended and practiced. Therefore, TCC no. 6102 may still be qualified as a 'new' one. Concerning the company law, this new commercial code has brought about a number of improvements and alterations some of which are related to the minority rights which caused many faults during the period the previous code was in use.

The profitability, efficiency and investment strategies of companies do not only concern the shareholders but also the countries whose nationality these companies belong to [1]. Following limited liability companies, joint-stock companies are the second most preferred type of company structure in Turkey. This type of companies, which are favoured for sizeable investments on account of their capital and operational structures, has a key role in Turkish Law. Besides, foreign investors who opt for doing business in Turkey choose either to start a joint-stock company or to partner up with an already existing one. For such an actuality, it is of paramount importance to provide proper operations of these companies that hold the majority of the total capital.

The principle of majority dominates the operations of joint-stock companies. However, the provision of a balance among the shareholders in the given system is required in order to protect and exercise the rights of minorities. In this regard, TCC no. 6102 has been reviewed the rights of minority shareholders in the light of the principle of shareholding protection. The new regulations enhanced the existing rights in accordance with content, scope and effectiveness (TCC Draft, General Preamble (1/324), p. 31) and minorities were offered several new rights.

Minority rights in joint-stock companies are not meant to empower minority shareholders against the majority but to protect minorities against the power of the majority and to ensure these rights. As in many continental European countries, these rights fall into the category of 'protective rights (Tekinalp, 1988, p. 231). The minority rights that had been impractical due to many formalities in the former Turkish Commercial Code acquired a better dimension in the new TCC.

2. The Concept of Minority

According to the principle of majority, the shareholder(s) possessing 51% of the capital in joint-stock companies is (are) defined as the controlling shareholder. As opposed to that, a minority is defined as the shareholder(s) representing a specific amount of the capital in respect to benefiting from the rights provided in the code. In the new TCC, a minority is the shareholder(s) who hold at least 10%, or in publicly held companies 5% of the capital (TCC, Art. 399/4-b, 411/1, 420/1, 439/1, 531/1, 559/1). On the other hand, in cases where the articles of association offer rights to minorities, those shareholders who will be defined as minority have to be stated in the articles of association (e.g. TCC, Art. 360/1).

In joint-stock companies, the rights are categorized as individual, majority and minority rights depending on their usage. However, the aforementioned minority rights must not be confused with the individual rights each shareholder has. Once the majority and more than one

person gather, the majority will be provided to ensure the minority rights and it will be possible to use the minority rights. However, if this rate is represented by only one person, it is possible for him or her to exercise these rights (TCC Draft, Art. 360, p. 166). In single-member joint-stock companies, it is impossible to discuss minority rights.

No essential difference exists between the former and the new TCC with respect to the capital ratio a minority has to represent. TCC no. 6102, unlike its predecessor, does not include any extra procedures such as entrusting the certificates of stock to a bank in order to exercise the minority rights. The alterations and the improvements are more of the scope of minority rights.

Minority rights appear in the new TCC from the establishment to the termination of joint-stock companies. These minority rights enforced by laws are among the rights which are impossible for shareholders to withdraw. Besides, more minority rights may be provided in the articles of association.

The minority right in the TCC have either mandatory or sometimes relative mandatory character. While the regulations regarding the exercise of minority rights are mandatory rules, the TCC Art. 411/1, which specifies the ratios of the shareholders to be considered as minority, has a relative mandatory character. In other words, the counter regulation of the aforesaid article is possible only if it is agreed upon in favour of minority shareholders. In this circumstance, a smaller ratio may be enabled to exercise minority rights if a clause is inserted in the articles of association.

Minority rights are qualified as negative if they prevent an agreement despite the vote of the majority, and affirmative if they serve assistance to an agreement in the case of nonexistence of a majority. In this context, it is possible to state that except for the right to compromise and release of those who are responsible on account of the company establishment, which will be discussed in details shortly, and the right to prevention of the provision of the qualified, all the remaining minority rights may be qualified as affirmative.

3. The Rights of Minority Shareholders

3.1. The Right to Representation in the Board of Directors (BoD)

TCC, Art. 360/1 enabled the minority to be represented in the BoD providing that it is stated in the articles of association, which is one of the improvements in the TCC no. 6102. As a result, this exercise, which was not included in the former TCC yet still in defacto use via judicial opinion in principle, received a legal basis and started to be legally implemented. However, it is bound to be stated in the articles of association.

To that end, if articulated in the articles of association, the members of the BoD may be elected among the minority shareholders, and the minority may be entitled to nominate a candidate to the board. It is mandatory to elect a candidate who belongs to the minority and nominated by the general assembly provided that no rightful objection is made. In the case where the minority is entitled to be represented in the board, its representative is elected by the general assembly (Sümer, 1991, p. 11). The stocks will be regarded privileged after receiving the right to be represented this way, which is an exception to the principle of stock-related privilege.

Specific groups of shareholders and the shareholders who constitute a group according to their characteristics and qualifications are also entitled to this right along with minority shareholders. This type of a right to be represented cannot exceed half of the number of the members of the board in publicly held companies except for the independent members of the BoD.

3.2. The Right to Bring a Lawsuit for the Dismissal of the Auditor

TCC Art.399 enables the minority as well as the BoD to bring a lawsuit for the dismissal of the auditor. Upon the minority's application, the commercial court may decide on dismissal after the auditor and the parties testify. However, it is mandatory to have evidence of a rightful motive regarding the auditors' personality which necessitates a dismissal, and to have suspicion of the auditor for especially impartial treatment. The commercial court, which relieves the acting auditor, is required to assign another auditor. The lawsuit for the dismissal of the auditor and the appointment of a new one may occur in the following three weeks of the announcement of the auditor's election.

Several prerequisites were stated in the TCC in order for the minority to bring this type of a lawsuit. The right of the minority to bring a lawsuit depends on the fact that he or she has voted against the elected auditor, and minuted his or her objection. In addition, the minority shareholder has to be entitled the shareholder of the company for at least three months prior to the general assembly meeting during which the auditor's election was held. (TCC, Art. 399/5). What is paid attention to is not the power to vote but the capital (Pulaşlı, 2015, p. 1249), hence, the privileges in the right to vote will not be taken into consideration.

3.3. The Right of Convocation of the General Assembly and Inclusion of a Subject to the Agenda

The principle of compliance with the agenda is accepted in TCC (Art. 413/2). Consequently, no subject off the agenda may neither be discussed nor concluded. The agenda is determined by the party who has summoned the ordinary or extraordinary general assembly (TCC, Art. 413/1). As a result, the authority, by law, belongs to the BoD who is authorized to convocate the general assembly.

For joint-stock companies, TCC made significant exceptions to the principle of compliance with the agenda, which prevents the effective exercise of minority rights. With this scope, it is possible for minority shareholders to have a subject discussed and concluded by demanding both the convocation of the general assembly and the inclusion of a subject to the agenda. In the former TCC, the principle of compliance with the agenda, which used to be a serious hurdle for the minority shareholders, was smoothly modified, thus became a significant factor in providing a balance among shareholders.

The authority to convocation of the general assembly for a meeting belongs to the BoD (TCC Art. 410/1) but in the cases when meetings of the BoD are discontinual; when the possibility of quorum is low or non-existent, a single shareholder may convocate with a court order. However, this exceptional right given to a single shareholder is related to the inability of a meeting. Therefore, minority shareholders were also entitled to convocate the general assembly. This right, which had also been included in the former TCC with very little possibility to be exercised, became functional owing to the new TCC.

According to TCC, Art. 411/1, minority shareholders may require the BoD to convocate the general assembly or to include a subject to the agenda if the general assembly has already been called for. This request, which has to be made in a written form, has to include the necessitating reasons and the agenda. In the stated regulation, minority is defined as the shareholder(s) who hold at least 10%, or in publicly held companies 5% of the capital. However, as stated above, the fact that these ratios may be lowered was openly regulated. The request for inclusion of a subject to the agenda has to be delivered to the BoD prior to the date of the payment of the notice fee related to the announcement of the call. Both the convocation and the inclusion of a subject to the agenda requests need to be notarized.

The BoD's acceptance or rejection of the request (or when the board is considered to have rejected) made by the shareholder is subject to various legal consequences. If the convocation request is accepted, general assembly meets in maximum forty-five days. In the former TCC, the BoD's convocation of the general assembly would take several months despite the acceptance of the request, which made it difficult for the regulation to be exercised. With the intent of the acquisition of the expected benefits, the new code put a time limit (TCC Draft, Art. 411, p. 199). This period of time will start following the date when the decision is made.

In the case that the BoD accepts the request but not convocate the general assembly within the time limit, the right to convocate passes on to those who made the request, namely, to the minority shareholders. In this situation, the minority does not need to appeal to the court. In the case that the minority will convocate the general assembly, it is one of the duties of the BoD to provide assistance in the operation of the convocation (Çamoğlu, 2014, p. 484).

On the other hand, in the case that the BoD does not include the subject requested by the minority to the agenda, the minority may ensure a decision to include his request to the agenda by appealing to the court (Çamoğlu, 2014, p. 502). In the case that the court order is neglected, the legal and the criminal responsibilities of the BoD will emerge.

The fact that the BoD directly or indirectly refuses the request does not prevent the exercise of this right. In the case when the request of convocation of the general assembly and the inclusion of a subject to the agenda by the shareholders is rejected or when this request is not affirmed in seven days, on the appeal of the same shareholders, the commercial court of first instance in the city where the company is located makes the decision to convocate the general assembly. If the judge finds the convocation necessary, he or she will assign a trustee in order to convocate the general assembly in accordance with the laws and set the agenda. Judicial remedy is not possible when the final decision is made by the court (TCC, Art. 412).

TCC enables joint-stock companies to have a general assembly meeting without convocation when all of the shareholders or their representatives are present (TCC, Art. 416/1). However, a consensus is required to include a subject to the agenda. In these circumstances, naturally, minority shareholders are not entitled to include a subject to the agenda in a general assembly without convocation. A clause stated in the articles of the association will be overruled since, as not being an ordinary procedure, it requires a consensus to hold a general assembly without convocation and to set the agenda.

3.4. The Right of Adjournment of the Deliberations concerning the Financial Tables

Upon the request of the minority, the deliberations concerning the financial tables and the related subjects may be adjourned for a month by the chairperson (TCC, Art. 420/1). The general assembly does not need to reach a conclusion for that, and the discretion of the chairperson is out of question. The set time limit is the minimum, and the deliberations may be adjourned to a longer period of time. Without the consent of the minority, it is against the law to adjourn the deliberations to a shorter period of time (Pulaşlı, 2015, p. 1561). The adjournment of the deliberations concerning the financial tables will result in the adjournment of all the subjects (Birsel, 1970, p. 640).

An adjournment of a general assembly is only possible to be re-adjourned if the objected and minuted points in the financial tables have not been responded by those in charge according to the principle of accountability.

3.5. The Right to Demand the Appointment of a Special Auditor

With the new TCC, an independent audit system is adopted in joint-stock companies. Another method of audit in joint-stock companies is special audit. To demand the appointment of a

special auditor is the base of minority shareholders. This system, which was not operational due to the disputes over its necessity in the former TCC, became functional with the new TCC.

Each shareholder of a joint-stock company is entitled to the right to demand the appointment of a special auditor. In this context, each shareholder may require the general assembly to clarify specific incidences via special auditing even if it is not on the agenda in the cases when it is necessary to exercise his or her shareholding rights and if he or she has previously made use of his or her right to demand information and inspection. If the request is affirmed, the special auditor will either be appointed by the company or by the court upon the appeal of the shareholder.

Here, a minority right emerges in the case that his or her demand is rejected. Therefore, minority shareholders may appeal to the court to appoint a special auditor in the case of a possibility of the rejection of their demand to appoint a special auditor. (TCC, Art. 439/1). In that circumstance, a special auditor will be appointed provided that the appealing party convincingly puts forward that the acts of the founders or the partners of the company damage the company or the shareholders by disobeying the code or the articles of association.

In the justification of the regulation for the minority right to demand the appointment of a special auditor, the report written by the special auditor will lead to a liability case in the court and the adjournment of deliberations on the financial tables if necessary were reasoned (TCC Draft, General Preamble (1/324), p. 31) because if the special auditing mechanism does not function, the expected benefit from the minority rights will not be realized.

A request having been made at the general assembly and the minority's appeal to the court related to this are the initial steps needed in order a special auditor to be appointed because the aforementioned minority right emerges when his or her demand is rejected. On the other hand, only the minority is entitled to the right to appeal to the court while any shareholder may demand a special auditor.

For the regulation to demand the appointment of a special auditor, along with the shareholder(s) who hold at least 10%, or in publicly held companies 5% of the capital, the shareholders whose shares have the nominal value of minimum TL1.000.000 (approximately €300.000) are also entitled to exercise these minority rights.

3.6. Discharge Concerning the Incorporation and Capital Increase

The new TCC entitles minorities to the right to prevent the abolishment through compromise and release of the responsibilities of the founders, the members of the BoD and the auditors emerging from the foundation of the company and capital increase (Art. 559/1). The aforementioned responsibilities cannot be abolished through compromise and release within four years since the company register. When this period of time is over, compromise and release gain validity with the approval of the general assembly. However, if the minority shareholders object to the abolishment of the compromise and release when the binding time period is over, it is impossible for compromise and release to be approved.

This right has significance since it allows for a liability lawsuit against the BoD. As exercised to prevent a decision by voting against it, it is defined as one of the negative minority rights.

3.7. The Right to Demand Termination with Justified Reasons

The right to demand termination with justified reasons in joint-stock companies was not included in the former TCC. According to this clause, which was inspired by the Switzerland's obligations law, in the emergence of a justified reasons, the minority shareholders may appeal to the commercial court of first instance in the city where the company is located and demand

the termination of the company (TCC, Art. 531/1). Doctrinally, exercising such a right has rightfully been specified as the most effective means against a majority which is reckless, ill-intended and/or unable to operate the company (Tekinalp, 2014, p. 618).

A definition of justified reason is quite challenging, thus, outlining the basics of this concept is more rational than making a definition (Sümer, 2010, p. 173). In this respect, justified reasons are the happenings which make the relationship unbearable and which need to be evaluated in accordance with the principle of accountability (Tekinalp, 1974, p. 322-324). It is in the judge's discretional power to decide whether the reasons may be justified or not.

Upon the request of termination, the court may decide that plaintiff shareholders are paid the amount of the net value of their shares for the closest date to court's decision and squeezed out of the company or it may find and appropriate and agreeable resolution. The court has a large discretional power to identify what other resolutions may be according to the dynamics of each case.

The right to appeal to the court for a termination is the most powerful right a minority is entitled to (Sümer, 2010, p. 178). However, the fact that the court may decide on squeezing out from the company or on another resolution is to prevent the exercise of this right ill-intendedly or arbitrarily. Moreover, several doctrinal remarks have been made that a new legal regulation, which requires warranty, is needed in order to prevent any potential abuse of this right and the restitution of any collateral damage (Moroğlu, 2005, p. 163).

3.8. Other Minority Rights

The minority rights are not limited to those mentioned above. According to TCC, Art.486/3, in closed joint-stock companies, the minority has the right to demand registered share certificates in print. Upon this request, registered share certificates are printed and distributed to every shareholder. However, it is not mandatory for this type of companies to print registered share certificates. The right to demand registered share certificates in print is one of the improvements in the new TCC.

In addition to its legal rights, the minority plays a significant role in the operation of the company by the impeding the realization of the ratio when qualified majority is sought. Furthermore, the minority may also hinder decision making when consensus is required. For instance, as the relocation of the head office of the company to another country requires an alteration in the articles of association, it is impossible to make a decision unless consented by the minority (Poroy, Tekinalp & Çamoğlu, 2014, p. 579). Indeed, this is one of the negative rights of the minority.

In addition to the rights in the TTC, several other minority rights exist in the Capital Market Law with respect to publicly held joint-stock companies. An example is the licence to present draft resolution in accordance with the agenda items along with the right to inclusion of a subject to the agenda of the general assembly. However, the minority rights in the capital market law will not be discussed in this paper as the topic of interest is the new TCC. On the other hand, as mentioned above, minorities may be entitled to extra rights in the articles of association in addition to those in the new TCC.

With the purpose of curving and rationalizing the principle of majority in joint-stock companies, several individual rights were also provided to each shareholder in addition to minority rights. It must be noted that the right to demand information (TCC, Art. 437), the right to demand the dismissal of the liquidator through court appeal (TCC, Art. 537/2) are among the rights that each shareholder in a minority may individually exercise since each minority shareholder is entitled to exercise individual shareholding rights.

While exercising the minority rights, similar to other legal rights, it is important to act according to the principle of honesty since the legal order does not protect the ill-intent exercise

of a right. At this point, there arise the issue whether the adjournment of minority decision may or may not be demanded, which is a hot topic within the doctrine. According to the viewpoint that we also agree on, it is, however, impossible to bring a lawsuit against the minority decisions due to lack of legal regulations for that matter (İmregün, 1989, p. 153), (Poroy, Tekinalp & Çamoğlu, 2014, p. 532).

4. Squeezing Out

When the minority rights are concerned, another issue that needs discussing is the squeezing out, which came into use in the TCC no. 6102. Squeezing out is an implementation that has long existed for other company structures, but it is new to joint-stock companies.

In the former code, the exercise of minority rights resulted in occasional congestion in the operation of the company. In this context, when there is a conflict of interests between the majority and the minority shareholders, the majority shareholders are enabled to continue the company operations by buying out the shares of the minority shareholders. As a precaution to the exercise of minority rights against the company's interest, this right proposes a rational remedy that is appropriate to the balance of interest with respect to the operation of the company.

The first circumstance of squeezing out appears when the termination of the company with justified reasons is demanded (TCC, Art. 531/1) as mentioned above. Apart from this, squeezing out emerges when stipulation of a payment is made in return for parting from the company during merger. According to this, when companies are being merged, minority shareholders may be squeezed out after receiving partnership buyout during the merging. If the merger contract estimates a partnership buyout, the partners who have the right to vote must be consented if the transferring company is a private company. If it is an equity company, it must receive 90% of those who are entitled to vote (TCC, Art. 151/5).

Another circumstance of squeezing out is possible for the controlling shareholder of the enterprise system to buy out the shares of the minority in order to continue the operations of a company. Accordingly, the controlling company may be entitled to buy out the shares of the minority provided that it possesses minimum 90% of the shares and the rights to vote equity company (TCC, Art. 208/1). However, the exercise of this right is bound to the condition that the minority prevents the operation of the company, behaves against the principle of honesty, acts recklessly or causes distress.

In the case of this squeezing out, net values of the shares will be taken into account. The minority to be squeezed out may appeal to the court to be bought out by being paid its stock market value. If it is unlikely or the stock market value is not equitable, it may demand a buyout for its objective value or a generally acceptable value.

According to the law's preamble, the purpose of the mentioned regulation is to terminate the hindering and distressing acts of the shareholders who are against the decision (mostly for personal reasons) made by 90% of the capital and votes of a company, and to provide a peaceful environment in the company (TCC Draft, Art. 208, p. 143). The right to squeeze out does not violate to the constitutional right of property as the depletion of the related shares (Manavgat, 2015, p. 95). As a matter of fact, the Supreme Court of Germany has found the article in the code related to squeezing out accord with the constitution (Pulaşlı, 2003, p. 651).

5. Conclusion

In joint-stock companies, the principle of majority dominates the operations. However, this principle is curved with the minority rights as its utmost exercise will result in serious inconveniences. From a general point of view, it is possible to assert that, on one hand, the

minority rights have been reinforced and on the other they have acquired a more functional and realistic dimension with the new TCC.

With the recent regulations, minority shareholders were entitled new rights while the existing rights were reviewed to be more operational. However, the precautions have been taken to prevent any congestion in the operations of the companies while these rights are exercised. What need to be considered in the operation of a joint-stock company are the interests of neither the majority nor the minority but the mutual benefits of all the shareholders, which mean the company's own interests. Within this frame, the minority right system in TTC is a warrant to provide a balance of interest not only for the minority shareholders but also for the majority shareholders, as well.

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Conditions for Granting Legal Aid in Civil Proceedings in Respect of Decisions of the European Court of Human Rights

Mehmet Ertan Yardım

1. Introduction

At the beginning, I would like to express the difference between "legal service" and "legal aid". Legal aid includes legal advice, assistance and representation as like any legal service but the important part is this kind of service is served free of charge or inexpensive by financial support of government in many countries or by support of social funds or charitable organizations (e.g. pro bono legal services working on civil cases in United States). In this manner, legal aid is a financial term that indicates completely or partly free legal service and also litigation costs as court fees and proceeding expenses. So legal aid can be simply defined as free or cost reduced legal service and/or "exemption of court fees and expenses" which is provided to people who cannot afford it/who has sufficient resources, according to jurisdictional criteria (Kılınç, 2013, p. 8).

In a perfect and idealistic world, we can easily say that, there should be no condition, no criteria or limitation on getting legal aid; every one, whatever their situation is, should be able to obtain legal aid in any term. But as all we know world is not perfect, financial resources are limited and it seems financial barriers getting more serious in last couple of years. Even many developed countries, like United States, England, having budget cuts on legal aid. Financial limitations increasing importance of conditions that we seek in process of identify who obtains legal aid who don't. Before the examination of legal aid conditions, it would be helpful to mention fundamentals of legal aid.

Legal aid is directly and intensely related on human rights. The well-known sixth article of European Convention on Human Rights (ECHR) refers directly to legal aid. According to the third paragraph of Article 6, *"Everyone charged with a criminal offence has rights to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require*". Article 6 (3) letters are seen that Article 6 covers only criminal proceedings but European Court of Human Rights (ECtHR) found in 1979 that Article 6 (1) also implies the right to free legal assistance in certain civil cases (Airey v. Ireland, Application No 6289/73, Judgment of 9 October 1979). In newer documents of Human Rights Law, we see provisions on legal aid that indicates clearly the right to legal aid both criminal and civil matters; for example 47th article of "Charter of Fundamental Rights of the European Union". According to his article, *"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*."

Right to access to justice is no doubt one of the fundamental human right. Right to access to justice ensures simply everyone can equally access to justice through courts whether they are rich or poor, guilty or innocent, child or adult… ECtHR mentioned even at 1975 that the Article 6 guarantee of the right to a fair trial must be considered to include the right to access to the courts in general, in civil as well as in criminal matters (Golder v. United Kingdom, Application no 4451/70, Judgment of February 21, 1975). As the Article 6' title is "fair trial" and the right to access to justice is not regulated separately in ECHR; the ECtHR considers that the right to fair trial includes the right to access to court. Recent years, we have seen more that the term of

"right to access to justice" is used as a upper term which includes the right to fair trial, the right to an effective remedy and some other related rights. Juriloo indicates the relation between right to access justice and legal aid that

> "Access to justice is an umbrella term encompassing several fundamental human rights, such as the right to a fair trial, the right to access to court, the right to an effective remedy, and equality before the law. By using access to justice as a starting point, the argument that free legal aid is a human right touches upon all aspects of the wide-ranging right to access to justice." (Jüriloo, 2015, p. 204)

Proper settled conditions for legal aid will prevent inability to access justice because of insufficient means. It can be considered that providing lawyer or exemption of court allowances simply legal aid is an obligation of governments in the jurisdictional circumstances according to human rights law (Galowitz, 2006; Jüriloo, 2015).

2. Litigation Costs

2.1. Court Fees

To evaluate legal aid, we have to start from the basics, in other words we have to look reasons which make establishment of legal aid systems necessary. We need legal aid system, because accessing court is expensive. Expensive as not affordable for many people. Why justice is so expensive? Because there are three different type of costs that required to be paid by litigants in almost every lawsuit. We can simply name these three type of costs as court fees, litigation expenses and attorney's wages.

There are many people who serves in legal system like judges, legal officers, ministry of justice employees… Official system needs a lot of workers to run the system and also complex facilities such as court houses, enforcement offices, prisons… When we take all these to consideration, legal service of government costs can be really high. In this manner, claimant shall pay court fees generally at the beginning of the trial to participate government's expenditure in almost every lawsuit. As a principle, court fees are not collected to suspense all government's expenditure on all jurisdiction system. Court fees are only a particular value, which have to be paid by claimants or plaintiffs. The main financial source of official legal system is of course taxes. That's why, court fees are relatively affordable, in some cases totally free. Many times, court fees are the smallest part in total financial burden of claimant. Legal aid practice about court fees appears usually as provided exemption for related party by government.

I would like to express that elimination of courts' fees and making courts totally free should not be an option. This will cause increase on general taxes and it will be unfair when we consider some people have not been related legal conflicts. I mean, many people do not see a courtroom or just one or two times during their lives. So we have to differ citizens who has benefit from legal service or not. Of course, we are focusing on civil proceedings as written on our study's title; on the other hand, different ideas can be considered on criminal proceedings.

2.1. Proceeding Expenses

In the process of jurisdiction, judge and parties need help or service from people who do not work directly in legal system. For instance, post officers deliver legal notices, legal experts assist on evaluation of the matters subject to conflict, in some discovery processes may be needed transportation… As it is seen, one group of cost is litigation expenses. In many legal systems including Turkey, court fees and sometimes even litigation expenses shall be paid at the beginning of the trial with statement of claim. If plaintiff does not pay costs, his action will

dismissals even without investigation whether he has right or not. The ECtHR do not consider violation of sixth article to laying down payment condition in civil lawsuits (Tunc v Turkey, Application no 20400/03, Judgment of February 21, 2008).

2.3. Lawyer Fees

The last type of cost is attorney's fee. As a principal, attorney's fees are determined freely between lawyer and client but there are many rules especially in continental European law systems that limits freedom of determination of fees to protect both attorney and client. Determination of very low or very high attorney's fees could be considered as interruption to public order or public welfare. That's why, states limit the minimum amount of attorney fees according to related civil or criminal case, on the other hand regulates the maximum amount or percentage of attorney to protect client.

In many cases, lawyers' fees are the most expensive part at the sum of costs. We can say that as a general principle in civil proceedings that lawyer fees and other litigation costs are collected from the unjustifiable party at the end of the proceeding. Although this principal is an important rule on share of financial burden, the main problem is providing a serious amount of money during preparation and application period.

3. Comparison Between Civil and Criminal Proceedings Related Legal Aid

In many European civil justice systems, having attorney is permissive but the complexity of law rules enforce parties to apply for professional legal assistance. Mandatory representation practice is seen far more in criminal proceedings. Although, in some countries, representation by an attorney is mandatory as principle even in civil proceedings. For instance, in Germany, parties have to be represented by an attorney in conflicts which financial value is more than a certain monetary. In Turkey, there is no obligation for parties to represent themselves by a lawyer in civil litigation as a principle (there are only two exceptions) on the other hand there is a serious large scope that criminal defendant have to be represented by a lawyer in criminal litigation. For example, if the criminal defendant is child or charged criminal offence requires more than five year jail, attorney representation is mandatory.

We can mention basic legal aid differences in criminal proceedings and civil proceedings. First, I must express that governments policies can be really different. Turkish legal system is typical example which establishes different systems for these two type of proceedings. When the representation is mandatory, it has been seen adequate to provide legal aid when the criminal defendant declare that he has not chosen an attorney to represent him or her. After this declaration, an attorney is assigned whose charges is covered by government even tough criminal defendant does not want an attorney. In permissive representation it has been asked that if defendant wants an attorney during transactions before police, prosecutor or judge. If defendant wants an attorney but he has not arranged one already, government offers an attorney whose charges paid by government. In this examples, nobody assets any personal condition like sufficient means for granting legal aid in criminal proceedings in Turkish Law. Of course, usage of limited resources in this way could possibly be criticized.

In civil proceedings which not render compulsory representation, a declaration or a will of litigant is never enough to be granted legal aid. Despite criminal proceedings, state must not provide legal aid for every dispute relating to civil rights, that's why state may determine specific conflicts, conditions or law fields to provide legal aid. The ECtHR decided that the Convention does not provide a duty upon state to provide free legal aid in every civil case that is brought before a court (Airey v Ireland).

Family law matters are one of the most common practice of legal aid in civil proceedings (Dickson, 1999). In many countries, to protect child during divorce process or prevent any kind of illegal acts against children, governments establish special provisions. Labor law is another common practice of legal aid, workers whose rights are violated by employer are having financial problems and usually have not enough knowledge about their rights. In many labor law cases, workers do not have sufficient financial income because of the conflict that is going on among them and the employers.

In Turkish legal system, there is no limitation or special rules depending type of dispute in civil proceedings [e. g. contrary to Norwegian Law, (Jüriloo, 2015)]. In family matters, labor matters also commercial conflicts, people can apply for/demand legal aid within exactly same conditions. Besides, criterions on getting legal aid are not related with criticism of the conflict or the importance of what is at stake according to Turkish Civil Procedure Law. On the other hand, I would like to mention that, they are two different legal aid systems in Turkey. One is provided and determined by the Bar in every province of Turkey according to the Regulation (The Legal Aid Regulation of Turkish Bar Associations, adopted May 30, 2004) and other is determined by courts/judges according to the civil procedure law. As we know from practice, province bars evaluate usually how critic is the conflict depending on the wide consideration authority which recognized by related Regulation. In fact, this Regulation does not bring specific legal aid conditions and gives right to discretion to bar association. In our study, we will examine conditions on the Turkish Civil Procedure law which was amended recently according to European Union legislations and the ECtHR's decisions.

4. Conditions for Legal Aid

4.1. In General

I would like to explain that main conditions which we will examine at further paragraphs were determined according to ECHR and Judgments of the ECtHR. It is clear that European Convention on Human Rights is not only treaty which includes provisions on legal aid. For example, African Charter on Human and People's Rights and the InterAmerican Convention on Human Rights and related regulations have also provisions on conditions for legal aid and assessment of criteria. On the other hand, there are also very important articles which includes suggestions from distinguished authors (Galowitz, 2006; Jüriloo, 2015; Durbach 2008). But we need to focus on conditions which are settled by European Convention on Human Rights and ECtHR in our current study because of lack of time and room.

4.2. Insufficient Resources/Means

Main condition for granting legal aid is lack of sufficient resources to pay litigation costs. The ECtHR has not definite "sufficient means" in general; instead the Court indicates taking all individual circumstances of each case to determine litigant's financial situation. The ECtHR requires case by case assessment of legal aid conditions.

First of all, insufficient means criteria does not refer directly poorness or low income. Person who has no problem providing his and his family's living in normal conditions can be also granted legal aid. To determine financial situation, the amount which is required to ensure his and his family's living, shall be decreased from litigant's total income. After that, this amount should be compared with litigation costs that had been calculated for specific conflict. If litigations costs are far more than the determined part of income, litigant shall obtain legal aid. Some countries such as France and England, establish also certain monetary limits to determine financial situation.

The litigant bears the burden of proving that he cannot afford to pay legal assistance, but he does not have to prove his indigence "beyond all doubt". In Pakelli v Germany, the Court relied on "some indications" that the applicant had been unable to pay for his lawyer, including tax related statements and fact that the applicant had spent the previous two years in custody. But I would like to express that only declaration of applicant is not enough and indications are required. In Bakan v Turkey, the ECtHR decided that representation by a lawyer could not be a dismissal reason of legal aid; evaluation should be on financial status of the litigant. Of course, lawyers can work pro bono or delay their fees in some cases **(**Bakan v. Turkey, Application No 50939/99, Judgment of June 12, 2007). On the other hand, the ECtHR took also into account the fact that the applicant was represented by a lawyer retained by his family in Santambroggio v. Italy case (Santambroggio v. Italy, Application no 50939/99, Judgment of June 21, 2004).

2013/C 378/03 numbered European Commission Recommendation refers to a means test in the process of assessment insufficient income condition. Of course test itself should be prepared by states; but Recommendation express some criteria on this test. According to this, the assessment of the applicant's economic situation should be made on the basis of objective factors such as income, capital, etc. and the cost of a defense lawyer.

In Turkish legal system, understanding of insufficient income is not different from the ECtHR. Provisions regarding legal aid in Turkish Civil procedure law rules have been amended recently to adopt ECtHR decisions but provisions on insufficient means have not been changed. There is no monetary limits in Turkish Law System; judge shall decide taking all specific circumstances to consideration in every case.

4.3 The Interests of Justice

Interest of justice is also not defined by the ECtHR or international regulations. One of the most important Judgment of SCtHR on interest of justice is Quaranta v. Switzerland case. The Court stated specific tests depending interest of justice that triggers legal aid which are consideration of the seriousness of the offense, the complexity of the case and the ability of defendant to provide his representation (Quaranta v. Switzerland, Application no 12744/87, Judgment of May 24, 1991). For instance, the ECtHR founds no violation of Article 6 because of deny of legal aid demand in a case of a customs offence where neither the legal nor the factual issues are complex, there was no indication the possibility of a sentence of imprisonment and the applicant was capable of defending himself because he was an educated economist (Wolff v. Switzerland, Application no 31983/96, Commission admissibility decision of May 24, 1991).

The importance of what is at stake for the applicant in civil matters as like the seriousness of the offence and the severity of the potential penalty in criminal matters should be considered in the assessment of legal aid demand. For instance, when the penalty includes a custodial sentence, the interest of justice criterion should be considered as fulfilled in criminal proceedings according to 2013/C 378/03 numbered European Commission Recommendation. The ECtHR decided that applicants should be granted legal aid while contesting the severance of their parental right in child abuse proceedings, because of the complexity of the case, the importance of what was at stake and the highly emotional nature of the subject matter (P, C & S v. United Kingdom, Application no 56547/00, Judgment of October 4, 2003). On the other hand, European Commission of Human Rights mentioned that defamation cases do not necessarily serious as family matters (Airey test) for the litigants when the consequences are considered (Munro v. United Kingdom, Application no 10594/83, Commission decision of July 14, 1987).

The complexity of the case, particularly when the legal representation is mandatory by law and the capacity of the applicant to effectively exercise his right to access to court should be evaluated together. Especially, immigrants, foreign workers or inability of communication

skilled people can be granted legal aid more easily than merchants or landlords as comparison. The ECtHR decided that the applicant who was an illegal immigrant with no settled employment did not have the means to retain counsel before the Court of Cassation (Biba v. Greece, Application no 33170/96, Judgment of September 26, 2000). In Airey v Ireland case, the ECtHR drew attention that the applicant was form a humble background, had gone to work as a shop assistant at a young age before marrying and having four children and had been unemployed for much of her life. On the other hand, the ECtHR found no violation of the Article 6 (1) in McVicar v United Kingdom case because applicant was well educated and experienced journalist and the law was not sufficiently complex to require a person in the applicant's position to have legal assistance (McVicar v United Kingdom, Application no 46311/99, Judgment of May 7, 2002).

Despite, the first condition, Turkey had hard times before the ECtHR because of abandoned provisions of Civil Procedure Code. Turkey were seeking basic/simple proving of rightfulness on the claim regarding legal aid application. Judges considered the possibility of the acceptance of the claim at the beginning of the case to decide granting or not granting legal aid. The ECtHR found this criteria against the Convention in Bakan v Turkey case even though the Court accepted the assessment of the success chance of claim regarding legal aid application but refused the assessment rightfulness of claim. The Turkish Civil Procedure Code's related provisions had amended by 6459 numbered and 11.04.2013 dated Law after a serious time following the ECtHR decisions. According to new provision, the applicant's claim should not be clearly unmeritorious for granting legal aid.

In my opinion, not being clearly unmeritorious criteria should not be seen violation of the Article 6 or had been no breach to ECHR according to Judgments of ECtHR and decisions of ECtHR Commission. In Thraw v. United Kingdom, the applicant the administrative authority (of United Kingdom) refused legal aid on the basis that applicant had shown no grounds for being a party to the proceedings and his claim had very little prospect of success and the Commission found the applicant's complaint ill-founded (Thaw v. United Kingdom, Application No 27435/95, Commission decision of June 26, 1996). At the first related case of Belgium (Aerts v Belgium) the Court decided that the right to tribunal had impaired when the Legal Aid Board had refused the application because the claim did not at that time appear to be well-founded (Aerts v Belgium, Application no 25357/94, Judgment of July 30, 1998). After that the related Belgium Law amended and the rule that came to force refers claim should not be manifestly ill founded. This new rule did not considered as violation of European Convention by ECtHR in Debeffe v Belgium Case (Debeffe v. Belgium, Application no 64612/01, Judgment of July 9, 2002). Also, Jüriloo, suggested without any relation with the Court decision that the criterion should be regarded as unfulfilled only if it is clear that there is no chance of success (Jüriloo, 2015). As a result, we can say that the new Turkish Civil Procedure provision sets up a proper criteria at the assessment of granting legal aid.

5. Conclusion

In many cases, access to courts requires payment of serious litigations costs. Sum of court fees, proceeding expenses and lawyer fess can reach non affordable amounts for many people who wants to apply a court to seek justice. The right to access to justice is a no doubt a fundamental human right that requires equally everyone to bring a case or claim before a court whether he is rich or not, competent enough or not. Ineligibility to access to justice because of insufficient means had been breach to ECHR.

Providing legal aid is basically a financial issue even though they are other ways to obtain legal aid as like simplifying procedure for the applicant. Financial sources have limits as always. States are allowed to settle conditions or criterion for granting legal aid because it is

clear that there is no option to provide everyone legal aid. On the other hand, to organize all judicial system out of litigation costs is not seen also possible. In the light of these facts, we should settle proper conditions on determination who granted legal aid who not. We have to be sure to provide legal aid who needs most. In this aspect, two main criterias are established as insufficient means and interest of justice.

The assessment of legal aid criterias should be realize case by case according to induvial properties of case and applicant. The litigant bears the burden of proving that he cannot afford to pay legal assistance, but he does not have to prove his indigence "beyond all doubt". The litigant should states some indications that his income is not enough to pay both litigation costs of the specific conflict and his or his family's living expenses.

Interest of justice condition for granting legal aid is mainly refers to consideration of the seriousness of the offense, the complexity of the case and the ability of litigant to provide his representation. All these tests should be taken account for every specific case. Prevention of ineligibility to access to justice depends on precious assessment of criteria of legal aid in every case.

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Heirship of Surviving Spouse in Turkish Law and a Proposal for Turkish Law under the Light of Comparative Law

Cigdem Mine Yilmaz

1. Introduction- Pourparty of Spouse in Turkish Law

In Turkish Law of Heritance, which is based on parental system, "the spouse" is not a parental heir. Principally, spouse is heir with any degree of relatives, and the presence of a spouse is a restraint for the escheat. The share of spouse, when he/she is heir with other degrees of relatives, is regulated in Article 499 of TCC. Accordingly, the share of spouse, when together with first degree relatives, is ¼ of heritage. In Turkish law, the first degree relatives are the descendants, and downwardly limitless. Second degree of relatives is the testator's parents and their descendants. It continues downwardly as testator's brothers and sisters, nephews and nieces, and second cousins. Third degree of relatives consists of testator's grandparents and their descendants. In other words, testator's uncles, aunts, and their descendants constitute the 3rd degree relatives. But, when the surviving spouse becomes heir together with 3rd degree relatives, the succession is limited. If the spouse falls heir together with the heads of 3rd degree relatives and their children, the share of spouse shall be ¾ of the heritage (TCC Article 499/3). According to TCC 497/V, "In presence of surviving spouse, his/her share shall be passed to his/her own child(ren) if one of the grandparents have died before the testator, to grandparents of that side if he/she has no child, and to other side if both of grandparents have died." In other words, spouse of testator can fall heir together only with grandparents and their children. But, if cousins are alive, the spouse is heir solely. With the finalization of annulment of marriage, according to TCC 181/I, spouses cannot be heir of each other, as well as the testamentary dispositions that they have made for each other automatically become annulled. (Tekinay has discussed the invalidity of testamentary disposal upon the death of one of the spouses. Author has stated that "If a husband makes a will in favor of his wife and dies 10 years after the divorcement, the fact that he had no amendment in testament during 10 years is a clear evidence that he wanted to keep the testament. The testamentary disposition, which has not been altered after the divorcement, should have been considered void only when the duration was short." (Tekinay, 1990, p. 294.) But, if it has been stated in testamentary disposition that the testament shall be valid even in case of a divorce, the spouse, in favor of whom the testament is, shall request the fulfillment of the testament.

2. Heirship of Surviving Spouse in Turkish Law of Heritance If One of the Spouses Dies During the Divorce Suit

TCC 181/II has a different provision on the cases, in which one of the spouses dies during a divorce suit. 181/II (Amendment to Article 19 of the Law No. 6217 ın 03.31.2011 refers to 181/I) by stating that "the provisions of first paragraph are applied if one of the heirs of spouse that died during the divorce suit continues the lawsuit and the fault of other spouse is evidenced". In Article 181/I referred, it can be seen that the legislative authority imposed that the testate and intestate succession principally remains in force because the marriage ended with a death rather than a divorcement (Dural&Öz,2013, p. 43); in same parallel Serozan&Engin, 2014, p. 199) TCC 181/II, however, brings an exceptional situation. According to this paragraph, if one of the heirs continues the suit and the faults of other spouse are evidenced, the surviving spouse shall lose his/her heirship. (Topuz has discussed the contradiction of the provision of Article 181/II with the right of succession granted by Article 35 of Constitution. But the author has rightfully concluded that, since the heritage remained in

assets of family other than the spouse, the right to succession is under protection as a constitutional right. (Topuz, 2012,p. 221-256) Considering this providing, there are some consequences. That is to say: The deceased spouse may be defendant or complainant. While the heirs of deceased spouse have been granted this right only when the deceased spouse is complainant (Thus, this provision has been criticized by Hatemi since it doesn't fit to the principle of "fairness of the contract". (Hatemi, 2013, p.109) based on the Court of Appeal's decision No. 102/14 (docket Nr.2008/102, date: 01.21.2010- Official Gazette Nr. 27737 dated 10.22.2010), the provision has been amended (According to İnan&Ertaş&Albaş, such a decision of Court of Appeal doesn't fit to the system of Civil Law. Hence, from the aspect of the technique of civil law, the court ruling the case should have made a decision within the frame of TCC Article 1 when concluded that this was an unconscious gap. (İnan&Ertaş&Albaş, 2015, p. 125). In this amendment, it has been accepted that the deceased spouse may be "complainant" or "defendant". Hence, in decision of Court of Appeal, the granting the right of continuing the suit only to the heirs of complainant spouse has been found to be contrary to the principle of equality in 10th article of Constitution and to the right to a fair trial in 36th article of Constitution. Again, from the grammatical interpretation of this provision, it can be concluded that one of the heirs of deceased may continue the lawsuit, and participation of all the heirs is not required. It can also be concluded that anyone that doesn't have the heirship shall not participate into the lawsuit, and the heir to continue the lawsuit may be the legal or assigned heir. For instance, if the deceased spouse has descendants, his/her parents shall not continue the lawsuit. Hence, only the heirs of deceased person have benefit in continuing the lawsuit. On the other hand, according to the clear provision of code, oblige of the testament shall not continue the lawsuit.

As stated in justification of Article 181/II, in case of the death of one of the spouses during the lawsuit, the meaning of continuance of one of the spouses is not to continue to the divorce suit but to determine "which spouse is faulty in divorcement" (Justification of Decision, p. 377). In other words, according to Article 181/II, the "continued lawsuit" is for ascertaining which spouse is faulty in events causing the divorce suit,(Yıldırım,2014 p. 86.) Because the marriage has automatically ended with the death. If the fault of surviving spouse is evidenced during the continuing lawsuit, the faulty spouse shall not be heir of unfaulty spouse as they have divorced. (According to Dural&Öz, if this is only a declaratory judgment, the determination of the faultiness of defendant shall not prevent his/her heirship. Another lawsuit requiring the determination of qualification shall be claimed then. On the other hand, if the court decides to end the heirship of surviving spouse, then it would be a decision eliminating the heirship of surviving spouse. Hence, along with this decision, the heirship of surviving heir is ended. (Dural&Öz, p. 44.) Moreover, in its judgment dated 04.11.2006, the Court of Appeal has considered the lawsuit, where the heirs have continued, to be a lawsuit for ascertainment of fault. (Court of Appeal, 2nd Civil Chamber. 11.04.2006 t. 2005/17867 Docket No., 2006/5233 Decree No., Yargıtay Kararları Dergisi, Vol. 32, Issue. 9 September 2006 p.1397) .Again in Article 181/II, stating the "participation of heirs into the actual lawsuit", it can be concluded that the heirs have no right to file a new lawsuit, and that, if the actual lawsuit is not followed by the heirs or considered unfiled, it is not possible to achieve this result in a new lawsuit. (Kılıçoğlu, 2015, p. 186.) In addition to the above conditions ıt should not be understood otherwise from the testamentaryif the spouses' inheritance depends on a testamentary disposition. (According to Feyzioğlu having an opposing opinion, Article 146/II of Turkish Civil Code No. 743 is of compulsory character. For this reason, the registry regarding the validity of testamentary disposition, which has been prepared before the death, is void. (Feyzioğlu, 1986, p. 377.)

In this provision, the legislative authority assumed that the marriage has ended via the death. For this reason, in Article 181/II, it is concluded that, until the finalization of decision,

filing a divorce suit does not solely alter the legal heirship of spouses. Therefore, in case of the foreclosure of lawsuit due to the death, the surviving spouse remains being legal and appointed legatee.(Akkanat, 2004,p. 48) In Turkish law, in case of the death of complainant spouse, the only way of preventing the rights of surviving spouse is the continuance of one of the heirs and to evidence the surviving spouse's fault in divorcement. In this case, according to some authors in doctrine, TCC MK. 181/II has brought the provision of disinheritance, which has not been regulated in TCC Article 578. (Dural&Öz, p. 43; İnan &Ertaş&Albaş, p. 123.)

In doctrine, there are different opinions regarding if the provisions of TCC. 181/II shall be applied to all of the reasons for divorcement. Some of the authors have expressed that they shall be applied to all of the reasons,(İnan&Ertaş&Albaş, p. 125) some others have sought for the presence of grounds for divorce requiring gross fault.(Kılıçoğlu, 2004, p. 23). According to Kılıçoğlu, in high-conflict divorce suits, if it has been understood that the complainant spouse has shared fault, this provision shall not be applied. (Kılıçoğlu, 2004,p. 23)

This provision is also criticized from the aspect of rules of procedure. That is to say; Article 181/II required amendment in terms of the configuration. Thus, there are problems about what sort of amendment it is, and about the relationships between the heirs continuing the lawsuit and the commitment of heirs to the proceeding lawsuit's consequences (TaşKorkmaz, p. Akkanat, p. 47).Moreover, another criticism is made from the aspect of characteristics of the right. That is to say; the ability of heirs to continue the lawsuit after the death is considered "strange" even if the point was to ascertain the pure fault of the person in divorce lawsuit. (Serozan&Engin, p. 61) Considering the effects of the rules of procedure in terms of substantive law, there also is an uncertainty. It has not been cleared how one of the heirs would continue the lawsuit. There is no problem if the heir is aware of the procedure and willing to continue the lawsuit. But, if the heirs do not know about the lawsuit, it is not clear what will be done. According to Kılıçoğlu,(Kılıçoğlu, 2015, p. 186.) in such a case, the court shall summon the civil registry extract of the deceased, the addresses of heirs shall be investigated from the aspect of delivery, the statements of heirs regarding if they will continue the lawsuit, and the action shall be proceeded in this parallel. In this case, even if one of the heirs would have been reported to the court that he/she will continue the lawsuit, other heirs should also be ascertained, and then invited to the lawsuit. This solution would protect other heirs from the risk of one heir's discontinuance or disclaimer. For this purpose, it is recommended ascertaining all of the heirs of deceased spouse, inviting them to the lawsuit, and giving them time for making statement about if they are willing to continue the lawsuit.(Antalya,2009, p. 96)

3. Heirship of Spouse in Comparative Law

In Swiss law, the share of spouse is ½ when together with 1st degree relatives (ZGB Art. 462- Amended by Annex No. 8 of the Same Sex- Partnership Act of 18 June 2004, in force since 1st January 2007.) and ¾ when together with 2nd degree relatives. The presence of spouse, on contrary with Turkish law, hinders the heirship of 3rd degree relatives. TCC Article 181/I has been quoted from ZGB 154. And this provision has been amended by Article 120/II with the same content. Article 181/II is not present in Swiss Civil Code. According to some authors, who characterized this situation as the conscious silence of law, (Dural/Öz, p. 44). ZGB Article 109 regulates the provisions of results when one of the spouses died during the suit of annulment of marriage continues, but not the results when the annulment of marriage is concluded; it means that the legislative authority consciously remained silent.(https://www.admin.ch/opc/en/classified-compilation/19070042/index.html) For this reason, according to Dural/Öz, the death of one of the spouses during the divorce suit doesn't influence the heirship of surviving spouse. In other words, the surviving spouse remains legal heir of the deceased, and being capable of requesting the fulfillment of his/her rights arising from the

testamentary dispositions. (Dural&Öz, p. 44) According to Hegneuer, to a certain extent, this is a consequence of the capacity of accession to divorce suit, which is belonged to the spouses, and consequently the end of marriage with a death rather than divorcement because the heirs cannot participate into the lawsuit. (Dural&Öz p. 45) Hence, in Switzerland Bundesgericht's BGE 76 II 252, BGE 51 II 539, BGE 76 II 129, and JdtT 1951 I 130 decisions, the opinion that the heirs of deceased shall not continue the lawsuit is dominant. (Topuz, p. 244). To my opinion, the annulment of marriage may include reasons based less on the fault, when compared to divorcement. For instance, fault, the lack of legal representative. Such a regulation that is valid for annulment of marriage shall also be applied to the spouses being in the stage of divorcing.

In German Law, the first article of German Civil Code (BGB) dated 1st of January 1900 (BGB § 1933), it has been remarked that "The deceased spouse has right to file a divorce suit because of the fault of surviving spouse until the death and, if the spouse has filed a divorce suit or claimed the annulment of marriage, the heirship of surviving spouse ends." According to this provision, the legator spouse is complainant and surviving spouse loses his/her rights arising from legal heirship. In German law, surviving spouse's loss of heirship arising from the testamentary disposition is regulated in BGB § 2077. Amended form of BGB § 2077 (amended in year 1938) is as follows: "If the marriage is void or the marriage ends before the legator died, the testamentary dispositions of legator in favor of surviving spouse become invalid. Legator has right to file a suit for annulment of marriage until his/her death; if the legator has filed a claim and if the surviving spouse is considered faulty in course of divorcement or in annulment of marriage, then the consequences of the annulment of marriage will be the same with the results of marriage's end in relation with the law of inheritance." In 2nd paragraph, it has been specified that, if the engagement ends before the death of legator, the testamentary dispositions of legator in favor of his/her fiancé(e) become null. In 3rd paragraph, it has been stated that, if the dispositions of legator have been made valid even in such cases, then these dispositions do not become invalid. German Civil Code Article 2077 has been amended by Marriage Law (EheSchIRG) in 1998. Current form of provision is as follows: According to 2077/1; if the marriage is void or has ended with death, then the testamentary dispositions of deceased in favor of surviving spouse become invalid. If the conditions of divorcement have been met before the legator has died or if the legator has claimed or approved the petition for divorce, the consequences regarding the law of inheritance would be same with the end of marriage. In 2nd paragraph, it has been remarked that if the engagement ends before the death of legator, the testamentary dispositions in favor of fiancé(e) become null. In 3rd paragraph, it has been remarked that "If the legator has approved the validity of dispositions even under such conditions, then the dispositions will not become null.

In this case, in actual form of German Civil Code BGB § 1933 and 2077, the statement of "materialization of the divorce conditions" has been emphasized. With this amendment, the condition of "fault" has been removed from the German law for the loss of heirship. Marriage Law dated 1998 has been amended by 1st Reform Regulation on Family and Marriage Law, and the principle of "fault" has been changed to principle of "breakdown of marriage". (Topuz, p. 228) Mentioned regulation has remarked that, in case of the materialization of conditions of breakdown of marriage, the complainant spouse or the spouse accepting to divorce loses his/her heirship. (According to Serozan&Engin, petition of divorce means almost the disinheritance of spouse in German law. Serozan&Engin, p. 61) German doctrine accepts that this regulation is compliant with the will of legator and prevents the negative effects of any delay in trial from the aspect of law of inheritance. (Topuz, s. 229) In both of German Civil Code § 1933 and § 2077, the surviving spouse's loss of heirship is regulated. According to these provisions, for the loss of legal and testamental heirship, legator spouse must have claimed a divorce suit (BGB 1564/satz 1) or accepted the petition of divorce against him/her (1566/ Abs1)*, so the conditions

of divorce must be met. In other words, the divorce suit filed based on a valid reason has been considered equal to the annulment of marriage. In this article, it has been emphasized that the decision of judge brings a legal consequence same with the annulment of marriage. (The faulty spouse, to whom the divorce suit has been filed based on this provision, will not profit from the "coincidence" of the early death of complainant. (Serozan&Engin, p. 61/ Aksu, 2009, p. 76) According to BGB §2077, in order for a surviving spouse to lose his/her testamentary heirship, in addition to mentioned conditions, the legator spouse must have not approved the validity of testamentary dispositions in cases of divorcement or the claim filed for annulment of the marriage. But, in Turkish doctrine, these provisions are criticized since the divorce suit doesn't annul the heirship of both of the parties. Hence, it is considered quite unfair that the complainant spouse may be heir to the defendant spouse if the defendant spouse dies during the proceedings (Serozan & Engin, p. 61).

4. Proposal for Turkish Law

An amendment in TCC Article 181/II would protect the benefits of spouses and other heirs. Since it is not thought that the death may coincidentally occur in the nature of life, the possibility of spouses' heirship to each other does not even comes to the mind. Despite this possibility, it is clear that any of the spouses, at least the complainant spouse, doesn't want the other spouse to be his/her heir heirship when a divorce suit is filed. Considering the provisions of TCC regarding the law of heritance, the heirship of spouse, which is one of the legal heirs, is coherent with the reputed will of legator spouse. In other words; as long as the person's marriage continues, it can be naturally accepted that the person wants his/her spouse to fall heir to him/her. But, when he/she wants to annul the marriage, it is hypothetically clear that the complainant spouse do not want the heirship anymore. But, on the other hand, considering the provisions of Turkish Civil Code, loss of heirship is available only through denial of inheritance, renunciation of the inheritance, annulment, or disqualification. In testamentary heirship, the legator may resign from the testamentary disposition. In legal heirship, however, the heirship might be eliminated only via disappropriation from heirship or disqualification. For instance, the husband has beaten his wife, and then thrown her out of the house, and is wife filed a divorce suit. But, if the complainant woman dies as a result of traffic accident during the procedure and if the heirs do not continue the lawsuit, the defendant husband can be heir to the descendant wife because the grounds of disinheritance are limited in code. This is because, according to TCC Article 578, beating the legator and throwing him/her out of the house are not reason for disinheritance.

But, on the other hand, since disinheritance is regulated in Turkish Civil Code, it may be thought that a new regulation is unnecessary and the complainant may disinheritance his/her spouse when alive. But, disinheritance has some disadvantages. For instance; in disinheritance, the legator might disinherit the heir based on one of 2 grounds: 1. Committing a serious crime against the legator and/or his/her relatives and 2. Severe violation of the familial responsibilities towards the legator. In both clauses, there is "serious crime or severe violation". But, in divorce suit, the surviving spouse may be "faulty" but might have not committed such violations. For this reason, there is a handicap in disinheritance. On the other hand, disinheritance requires the testament, which has been prepared by legator when he/she was healthy. But, especially in populations having low educational level, the spouses may not even know what the testamentary disposition is, or may die before disposing even if he/she knows, or he/she might have not done because of the threats of spouse.The legal ground, on which more than half of divorcements in Turkish law are based, is TCC Article 166/V. In this clause, no fault is sought. According to the clause, "…… if the common life couldn't be established again, then the marriage is considered principally broken down, and divorcement is decided upon the claim of

one of the spouses." To my opinion, even during such a lawsuit, the heirs of deceased may continue the lawsuit for ascertaining the faulty party. Hence, considering the letter of law (TCC 181/II), there is no handicap for fault examination. But, however, even if none of the spouses is faulty, the death of one of the spouses, who couldn't establish a common life during 3 years, during the divorce lawsuit and becoming heir to deceased spouse may seem like a lottery for surviving spouse. There is no doubt that such an event may cause social unrest.

According to TCC 166, in case of the continuance of divorce suits filed, there is another question, answer of which is sought in doctrine. That is to say; when a lawsuit is continued according to Article 181, shall the full fault of surviving spouse be sought or shall he/she be less faulty than deceased spouse was. In such a case, even if the surviving spouse is found to be slightly faulty, the surviving spouse cannot have any right on the heritance. Since the provisions of TCC Article 181 are applied to all of grounds for divorce, as well as it is aimed to prevent undesired consequences, it is also thought in some cases that it may cause legal disadvantage. (İnan&Ertaş&Albaş, p. 124,125)In Turkish Law, another remarkable suggestion regarding our topic is that "attempted murder" that might be considered absolute ground for divorce may also be considered a ground for disinheritance. But, the rights of spouse, who have learnt about the grounds for divorce such as adultery, indignity, committing a crime or living a dishonorable life and clearly declared that he/she will file a divorce suit but died before filing that suit, have not been regulated. (İnan&Ertaş&Albaş, 2015, p. 124; Akkanat, p. 48) In doctrine, considering the provision anticipating that, in order for the right of mental anguish to pass to heirs, it would be enough to be alleged by the legator, it has been thought that it would be better to grant the heirs the right of filing a divorce suit in cases, where the will of legator leaves no room for doubt. (İnan&Ertaş&Albaş, p. 124) But, since the marriage ends with death, the suit that the heirs will file could be "a declaratory action" rather than the "divorce suit". To my opinion, the "hypothetical will" of deceased spouse also requires this. In doctrine, some of the authors asserted that, in case of the death of one of the spouses before the divorce suit reached at finalized decision, the defendant party shall be disinherited if the deceased spouse is complainant or the complainant shall be considered to have renounced the other spouse's inheritance rights if the deceased spouse is defendant party. According to the author, if the complainant evidenced that the conditions are met, one should call upon the payment of financial requests from the heritance. (Hatemi& Kalkan Oğuztürk, 2013, p. 109) To my opinion, in cases, where the divorce claim is built on a solid ground, it should be carefully considered for Turkish law to prepare a legal solution removing the heirship of both spouses. (At same opinion Serozan&Engin, p.62) Thus, the benefit of both of spouses will be paid through claim of participation, which shall be paid from heritance according to the regime of participation in acquired property, when no selection has been made. (For detailed information, please see Acar, 2014)

The ground of spouse's heirship is constituted by the marriage. Regardless of fault, the marriage has entered into the process of annulment. For this reason, heirship of surviving spouse to the deceased spouse is not fair anymore. Thus, divorcement is not solely based on the principle of "fault" in Turkish law. For this reason, there are many divorce decisions, where no fault has been sought. Moreover, the presence of "fault" principle in actual regulation and the evidential tools are rarely known by ones other than the spouses. There may be many events, which are known only by spouses and disrupting the marriage. Therefore, it has been concluded in decisions of Court of Appeal that the heirs of deceased spouse can continue the lawsuit in a "divorce suit filed based on a ground for divorce, where the factor of fault is not regulated as a concrete event". (CoA 2nd CC. 20.02.2006 17321 E. 1794 K.; CoA 2nd CC. dated 06.04.2009 No. 3668 E. 6307) In these decisions, it has been emphasized that Article 181/II grants the heirs of deceased spouse with a direct special right and mentioned provision remarks that no discrimination shall be implemented to the grounds of divorce. In mentioned decision; CoA.

2nd CC. E.2008/3668, K.2009/6307, (the statement of opposition lodged by member Ömer Uğur Gençcan is as follows: "Marriage is to maintain coupledom in good and bad times. Is it fair to grant the person, who attempted to divorce from the spouse because the spouse got mentally ill because of a divine disaster, with the right to continue the lawsuit upon the death of deceased spouse? Is it possible for the heirs of complainant to evidence any fault of defendant, who was already mentally ill? Because the behaviors of a mentally ill person cannot be conscious, is it possible for the heirs of complainant to continue the divorce suit upon the metal illness? According to the author, not every divorce lawsuit shall be continued by the complainant's heirs according to the provisions of TCC § 181/II. (Gençcan, 2008, p.868) Therefore, according to the author, in actions based on Article 166/III regulating the consensual divorce and 166/IV regulating the contested divorce, the lawsuit shall not be continued by the heirs of complainants based on the same grounds. Author member has opposed to the majority by stating that how may the heirs of complainant assert the fault of defendant, even if the complainant spouse would never be capable of evidencing that fault if he/she would be alive.

To my opinion, in Turkey's realities, where the spouses avoid from revealing the real reasons of the divorcement because of various factors, thinking that the TCC 181 cannot be applied to consensual divorce suits is caused from the literal interpretation of provision. Even the ability of heirs to assert the evidence of fault where no fault has been asserted is more suitable for the objective of provision. For this reason, in Turkish law, it would be appropriate to make a regulation similar to and even beyond the German law. Discontinuance of heirship upon the filing a lawsuit overlaps more with the reality of the absence of willingness to continue the marriage.

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